Poh Boon Kiat *v* Public Prosecutor
[2014] SGHC 186

Case Number : Magistrate's Appeal No 36 of 2014

Decision Date : 25 September 2014

Tribunal/Court : High Court

Coram : Sundaresh Menon CJ

Counsel Name(s) : Mervyn Tan Chye Long and Kea Cheng Han (Anthony Law Corporation) for the appellant; Ong Luan Tze, Muhammad Faizal, Francis Ng, Tan Wen Hsien and Norine Tan (Attorney-General's Chambers) for the respondent.

Parties : Poh Boon Kiat — Public Prosecutor

Criminal Procedure and Sentencing

25 September 2014 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 The appellant, Poh Boon Kiat, set up and ran an online vice ring which was unravelled by the police within 10 days of operations commencing. At the time of his arrest, the appellant employed five Thai prostitutes who worked from two premises. The appellant pleaded guilty to eight charges under Part XI of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"), with a further 12 similar charges taken into consideration.

2 The District Judge sentenced the appellant to an aggregate of nine months' imprisonment (see *Public Prosecutor v Poh Boon Kiat* [2014] SGDC 109 ("the GD")). The proceeded charges, the statutorily prescribed punishments and the sentences were as follows:

Provision in the Act	Number of Charges	Prescribed punishment for first time offender	Sentence imposed
s 140(1)(b) (Procuring a prostitute)	2	An offender "shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding $10,000."	Four months' imprisonment per charge (one sentence to run consecutively)
s 140(1)(d) (Receiving a prostitute)	2		Four months' imprisonment per charge
s 140(1)(d) (Harbouring a prostitute)	2		Four months' imprisonment per charge

s 146(1) (Living on immoral earnings)	1		Four months' imprisonment (to run consecutively)
s 148(1) (Managing a brothel)	1	An offender "shall be liable on conviction to a fine not exceeding $3,000 or to imprisonment for a term not exceeding 3 years or to both."	One month imprisonment (to run consecutively)

3 Dissatisfied, the appellant appealed against his aggregate sentence of nine months' imprisonment. At the end of the hearing, I informed counsel that I would reserve judgment as I wanted to reflect further on two points of concern. The first was that the sentencing precedents appeared to be in some disarray. The second was that the District Judge ordered three sentences to run consecutively even though the circumstances of the case did not appear to be exceptional. After the hearing, and for reasons which will become apparent later in this Judgment, I invited the parties to make further submissions on the interpretation of certain punitive provisions in the Act. These were received on 29 August 2014.

4 Having now further considered the matter, I allow the appeal for the reasons that follow.

Background facts

5 The appellant is a 30 year old male with no prior antecedents. Prior to committing the offences, the appellant ran his own business. When that venture failed, the appellant looked for ways to raise capital to start another business. He evidently decided that the fastest way of doing so would be to set up a prostitution ring.

6 Much thought and planning went into his new enterprise. On his own admission, the appellant took two months to set up the entire operation. He procured some women with the help of various agents whom he knew in Thailand. In exchange for a commission, these agents approached women in Thailand and urged them to work in Singapore as prostitutes. Three out of the five prostitutes involved were procured in this manner, while the other two were separately introduced to him. There was nothing to suggest that these women were coerced into joining the sex trade. Instead, it appeared that they had done so for the money: one of the prostitutes earned about $4,000 in the span of just eight days.

7 The women's desire to get rich quickly presented the opportunity for the appellant likewise to get rich quickly. The women agreed with the appellant that they would charge their clients an average of $150 for a "session" and would, from their 28th client onwards, earn $85 out of that amount; the rest of the money would go to the appellant. It was not entirely clear from the statement of facts how much the appellant earned in total before he was apprehended. At one point in the statement of facts, the appellant admitted that he would earn about $500 per day, a portion of which was spent on his sex workers' living expenses. If this estimate were true, it would mean that the appellant earned just under $5,000 in total. However, this appeared to be a rather conservative and inaccurate estimate since the appellant also admitted in another part of the statement of facts that he received $8,070 from just one prostitute alone. The total amount of earnings which he collected within 10 days was probably much more. In the absence of any evidence suggesting otherwise, however, I assume for the purposes of the present appeal that he earned a total of $8,070.

8 The operation, so far as the Singapore side of things was concerned, was essentially a one-man operation. The appellant did everything from chauffeuring the women from the airport, to securing clients for them, to collecting payment from their clients and then disbursing payments to the women according to their agreed terms. He even took care of their living expenses. Counsel for the appellant, Mr Mervyn Tan, described the appellant as a "glorified coffee boy". This was a rather understated description, given that Mr Tan also conceded that the appellant was effectively the mastermind of the entire operation. In fact, it was a rather sophisticated one and, as I have observed above, entailed considerable and careful planning. Prior to the arrival of the sex workers, the appellant had already rented two premises, one at Waterloo Street and the other at Pearl Centre to provide the women with accommodation as well as a place to service their clients. Apart from this, the appellant also set up a website where he uploaded photos of these workers to advertise their services.

9 As it turned out, the appellant's pimping days were short-lived due to the diligence of the police. On 16 August 2013, 10 days after the appellant picked up his first prostitute from the airport, the police conducted a night raid at the Waterloo Street premises and the appellant was apprehended together with three of the prostitutes. The police then conducted a separate raid on the Pearl Centre premises hours later and apprehended the other two prostitutes.

The proceedings below and the District Judge's decision

10 The appellant initially faced 20 charges but 12 were eventually stood down and the appellant consented to those being taken into consideration. The Prosecution urged the District Judge to impose:

(a) a term of imprisonment of between five and six months for the offences of (i) procuring, (ii) receiving, and (iii) harbouring the prostitutes and (iv) that of living on immoral earnings; and

(b) a term of imprisonment of between two and three months for the offence of managing a brothel.

In total, the Prosecution submitted that the appellant should suffer a term of imprisonment of between seven and nine months (with one sentence from [10(a)] above to run consecutively with the sentence for the offence at [10(b)]). The Prosecution submitted that this was justified in the light of the transnational nature of the offences and the substantial amounts of money made by the appellant.

11 The Defence disagreed. The Defence submitted that the appropriate sentence should fall in the range between a fine and a term of imprisonment of up to two months per charge on the basis that there were no aggravating factors in that the women were not under-aged and the appellant was not a member of a syndicate.

12 The District Judge stated that the starting position for all eight proceeded charges, for first time offenders who pleaded guilty and where there were no aggravating factors present, was a fine: GD at [15]. However, the District Judge was satisfied that the custodial threshold had been crossed because of the following aggravating factors:

(a) The appellant had committed a total of 20 offences.

(b) The operation had a transnational element since it involved the use of agents in Thailand.

(c) The business was not small in scale since five prostitutes were involved and two premises

were used.

(d) The appellant played an integral role in the entire operation which was organised, well-run and had a certain level of sophistication.

(e) There was some degree of exploitation since the women were enticed into prostitution on the promise of earning good money.

In the District Judge's view, a high fine would not deter like-minded offenders since vice activities were financially lucrative: GD at [16] to [18].

13 The District Judge considered the precedents in *Public Prosecutor v Tan Meng Chee* [2012] SGDC 191 ("*Tan Meng Chee*") and *Public Prosecutor v Peng Jianwen* [2013] SGDC 248 ("*Jianwen*") (at [19] to [21] of the GD). Eventually, the District Judge concluded that the present case was similar to *Jianwen* in terms of the scale of the operation, the number of prostitutes and sums of money involved, the trans-national element and the number of charges preferred.

The issues arising in this appeal

14 At the outset, I remind myself that there is a limited scope for appellate intervention when it comes to sentencing and that I should only interfere with the District Judge's decision if I am satisfied, among other grounds, that the sentence imposed was wrong in principle or that it was manifestly excessive.

15 In my judgment, the question of whether intervention was appropriate here may be approached by considering the following two issues:

(a) First, what was the appropriate sentence for each *individual* offence committed by the appellant?

(b) Second, which and how many sentences ought to run consecutively?

Before going into the issues, I think it is helpful first to consider the legislative policy on prostitution and the legal framework enacted by Parliament within which this policy operates.

The problem of prostitution in context

16 Historically, activities relating to prostitution were criminalised in Singapore to suppress prostitution at a time when the colonial government was concerned over the high incidence of sexually transmitted diseases ("STDs") amongst the population and the trafficking of women and girls into Singapore for the sex trade. Nevertheless, prostitution itself was not outlawed in colonial Singapore. That this remains the position today is a conscious policy decision of the government and it is borne out of pragmatism. This much was clearly articulated in 1999 by the then Home Affairs Minister, Mr Wong Kan Seng (*Singapore Parliament Debates, Official Report*, (5 May 1999) vol 70 at col 1434) when responding to questions on the government's policy towards prostitution:

> Mr J. B. Jeyaretnam asked the Minister for Home Affairs if he will state what is the policy of his Ministry towards prostitution.
>
> Mr Wong Kan Seng: … prostitution per se is not an offence under our laws. This has been so since the colonial days. Singapore is not the only country where prostitution is not an offence. Many other countries also adopt the same position.

Governments around the world and through the ages have tried to eradicate prostitution, but none had succeeded. Criminalising prostitution will only drive such activities underground, resulting in crime syndicates taking control over such activities.

The Ministry of Home Affairs therefore has taken a pragmatic approach of *recognising that the problem cannot be totally suppressed or wished away*. *Our approach is therefore to contain the situation*, particularly through continuing enforcement against prostitutes and pimps who *solicit in public*. Soliciting and pimping in public are offences under the Miscellaneous Offences (Public Order and Nuisance) Act and the Women's Charter respectively. The Police also conduct regular checks at known locations and on those involved in the trade to *prevent criminal gangs from exploiting the prostitutes, and under aged girls from getting involved*.

…

Mr Jeyaretnam: Are we to understand that this pragmatic view that the Minister says his Ministry has adopted is that this is something that we cannot do anything about? So is the Ministry considering amending the laws in the Women's Charter?

Mr Wong Kan Seng: What the Ministry has done is to ensure that crime syndicates, gangsters and secret societies do not get involved in controlling this trade. And if they do, then Police will take action. We all know that no country has ever succeeded in eradicating prostitution and therefore we have taken a pragmatic approach in ensuring that only certain areas have such activities taking place. And it is better that the Police know where these areas are and enforcement action can be taken, *rather than to disperse these brothels to the whole of Singapore* and we have a cat-and-mouse game chasing after them or, worse still, drive them underground, and they will be operating everywhere.

...

Mr Jeyaretnam: Does the Minister realise that if you have laws and they are not enforced by the enforcement agencies, it only leads to disrespect for the law?

Mr Wong Kan Seng: Sir, the relevant section in the Women's Charter is still being enforced. *If there are under aged girls being involved in prostitution, if there are people coercing women or girls into prostitution, they will face the force of the law*.

[emphasis added]

17 From this passage, it emerges that the government recognised the reality that prostitution can never be eradicated, and considered that criminalising prostitution would drive it underground making it even harder to control. The passage also reveals the government's four main concerns about the problems related to prostitution:

(a) First, the harm to women and girls through their exploitation when they are coerced or tricked into joining the sex trade.

(b) Second, the abuse and corruption of children and minors through prostitution.

(c) Third, the public nuisance that is caused by prostitutes and pimps soliciting in public and to neighbourhoods from vice-related activities in general.

(d) Fourth, the links between vice activities and other criminal elements.

18 On this basis, the government adopted a multi-pronged approach towards combatting the problem. For instance, apart from its enforcement policy described in the passage above, it has also sought to cut off the "supply" to the vice trade through the strict enforcement of immigration laws. Under ss 8(3)(e) and 8(3)(f) of the Immigration Act (Cap 133, 2008 Rev Ed) ("the Immigration Act"), foreign sex workers and pimps are deemed to be "prohibited immigrants" and may be removed from Singapore (s 31 of the Immigration Act). Those who enter Singapore for this purpose are liable to a fine, imprisonment and deportation (ss 8(5) and 58 of the Immigration Act).

The legal framework in relation to vice-related activities

19 The legal framework that has been enacted supports the government's efforts to suppress and contain vice-related activities and to deter persons from entering into the trade. The main provisions criminalising activities that relate to prostitution are found in Part XI of the Act. Others exist in the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, Rev Ed 1997), the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") and the Immigration Act. I shall only discuss those which are relevant to the present appeal here.

"Offences relating to prostitution"

20 Section 140 of the Act states:

> **Offences relating to prostitution**
>
> 140.—(1) Any person who —
>
> (a) sells, lets for hire or otherwise disposes of or buys or hires or otherwise obtains possession of any woman or girl with intent that she shall be employed or used for the purpose of prostitution either within or without Singapore, or knowing or having reason to believe that she will be so employed or used;
>
> (b) procures any woman or girl to have either within or without Singapore carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore;
>
> (c) by threats or intimidation procures any woman or girl to have carnal connection except by way of marriage with any male person either within or without Singapore;
>
> (d) brings into Singapore, receives or harbours any woman or girl knowing or having reason to believe that she has been procured for the purpose of having carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore and with intent to aid such purpose;
>
> (e) knowing or having reason to believe that any woman or girl has been procured by threats or intimidation for the purpose of having carnal connection except by way of marriage with any male person, either within or without Singapore, receives or harbours her with intent to aid such purpose;
>
> (f) knowing or having reason to believe that any woman or girl has been brought into Singapore in breach of section 142 or has been sold or purchased in breach of paragraph (a) receives or

harbours her with intent that she may be employed or used for the purpose of prostitution either within or without Singapore;

(g) detains any woman or girl against her will on any premises with the intention that she shall have carnal connection except by way of marriage with any male person, or detains any woman or girl against her will in a brothel;

(h) detains any woman or girl in any place against her will with intent that she may be employed or used for the purpose of prostitution or for any unlawful or immoral purpose;

(i) has carnal connection with any girl below the age of 16 years except by way of marriage; or

(j) attempts to do any act in contravention of this section,

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding $10,000.

(2) Any male person who is convicted of a second or subsequent offence under subsection (1) (a), (b), (c), (d), (e) or (f) shall, in addition to any term of imprisonment awarded in respect of such offence, be liable to caning.

21 I make a couple of observations about s 140. First, notwithstanding the heading "Offences relating to prostitution", not all the offences in s 140 actually relate to prostitution. For example, s 140(1)(i) criminalises sex with a girl under the age of 16 outside of marriage. It seems more accurate to say that the offences in s 140 are directed against the prevention of the exploitation of women and girls. Second, s 140(2) makes it clear that Parliament intended certain categories of repeat offenders to be additionally liable to caning. Third, it appears that the most commonly invoked provisions of s 140(1) are s 140(1)(b) (procurement) and s 140(1)(d) (harbouring and receiving), which incidentally, are the relevant provisions in the present case.

Living on immoral earnings

22 Section 146 criminalises those who make a financial gain from the prostitution of another person:

Persons living on or trading in prostitution

146.—(1) Any person who knowingly lives wholly or in part on the earnings of the prostitution of another person shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding $10,000.

(2) Any male person who is convicted of a second or subsequent offence under this section shall, in addition to any term of imprisonment imposed in respect of such offence, be liable to caning.

…

As can be seen, the prescribed punishment for first and subsequent offences in s 146 is identically worded to that for an offence under s 140.

Managing a brothel

23 Section 148 criminalises the keeping or managing of a brothel:

Suppression of brothels

148.—(1) Any person who keeps, manages or assists in the management of a brothel shall be guilty of an offence under this section.

…

(5) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding $3,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 5 years or to both.

There are three obvious differences between the prescribed punishments for offences under ss 140(1)(b) and 140(1)(d) (procuring, harbouring and receiving prostitutes) and s 146 (living on immoral earnings) on the one hand, and that under s 148 on the other. First, the provisions, in particular the penal provisions, are worded completely differently. Second, the maximum penalty for a first-time offender under s 148 is lower. Third, there is no provision for the court to order a subsequent male offender under s 148 to be caned. In my view, these differences are significant to the decision in the present case. I will return to them shortly.

The sentencing precedents

24 Initially, I was concerned because the sentencing precedents showed that the same offence committed under seemingly similar circumstances attracted a fine in some instances but a custodial sentence in others. However, having reviewed the sentencing precedents alongside the prescribed punishments provided for by Parliament for each of the offences, there are two aspects which I found even more troubling:

(a) the starting point adopted for sentences under s 140(1)(b) and s140(1)(d) (procuring, harbouring receiving prostitutes) and s 146 (living on immoral earnings); and

(b) the range of sentences ordered for the individual vice-related offences discussed above.

I deal with each of these in turn.

The starting point of sentences for the offences under ss 140(1) and 146

25 The authors of *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) observe (at pp 1210–1211) that a fine is the norm for a first offender who pleads guilty in relation to these offences and where no aggravating factors are present.

26 This is a view borne out in the precedents. For instance, in *Public Prosecutor v Chan Soh* [2008] SGDC 277, an agent promised two Chinese nationals that she would secure jobs for them in Singapore in exchange for payment of RMB 45,000. When the two women arrived in Singapore, the accused fetched them to their lodging. There, he informed them that their visas would not permit them to work legally in Singapore and he suggested that they work illegally in massage parlours by providing sexual services. The accused pleaded guilty to one charge of attempting to procure a woman for the purpose of prostitution under s 140(1)(b) of the Act and was ordered to pay a fine of $3,000 (in default three weeks' imprisonment).

27 A more dated example is *Lee Swee Yang v Public Prosecutor* [1991] SGHC 117 where the accused pleaded guilty to one procurement charge under s 140(1)(*b*) for bringing a Thai prostitute into Singapore. Although he had done so under the instructions of a vice syndicate, his involvement appeared otherwise to be minimal. At first instance he was sentenced to three months' imprisonment, but on appeal, the High Court reduced his sentence to a fine of $4,000 (in default six months' imprisonment).

28 The imposition of a fine as the starting point appears to have its roots in the hitherto accepted premise that the words "shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding $10,000" in ss 140(1) and 146 should be read as "shall be liable on conviction to imprisonment for a term not exceeding 5 years, *or* a fine not exceeding $10,000, *or* both" [emphasis added]. In other words, *because* of the prefatory phrase "shall be liable", the two punishments listed – imprisonment and a fine – were treated as being alternatives with the court having the discretion to impose either or both. Unsurprisingly, counsel for the appellant urged me to read the punitive provisions in this manner.

29 This reading of a discretion into ss 140(1) and 146 is, at first blush, consistent with a line of authorities tendered by counsel for the appellant which have construed "shall be liable" and "shall also be liable" (as opposed to "shall be punished") in penal provisions as *prima facie* rendering the punishment which follows discretionary: see (i) *Public Prosecutor v Lee Soon Lee Vincent* [1998] 3 SLR(R) 84 ("*Vincent Lee*"); (ii) *Public Prosecutor v Mahat bin Salim* [2005] 3 SLR(R) 104 ("*Mahat*") and (iii) *Lim Li Ling v Public Prosecutor* [2007] 1 SLR(R) 165 ("*Lim Li Ling*"). A closer analysis of these authorities, however, shows that the approach of the courts in these cases might in fact be more nuanced. It is not necessary for the purpose of this case for me to come to a firm view on the correctness of the proposition that the use of these words can only signify a discretionary sentencing *option* but I set out some observations so that the point maybe considered more fully on a future occasion.

30 In *Vincent Lee*, the issue was whether the court had to impose an imprisonment sentence *in addition* to a fine for a repeat offender of driving under influence contrary to s 67(1) of the Road Traffic Act (Cap 276, 1997 Rev Ed) ("the RTA"). The relevant provision provided that an offender "*shall be liable* on conviction to a fine… or to imprisonment… and, *in the case of a second or subsequent conviction*, to a fine… *and* to imprisonment…" [emphasis added]. Although Yong CJ took the view that the phrase "shall be liable" (as opposed to "shall be punished") *prima facie* contained no obligation or mandatory connotation, he ultimately concluded that s 67(1) made an imprisonment term mandatory for repeat offenders.

31 In arriving at his decision, Yong CJ had regard to the legislative history of the punishment provisions in s 67(1) as well as the manner in which other offences in the RTA were drafted. In particular, Yong CJ observed that s 64(1) RTA, which dealt with reckless or dangerous driving, provided that a repeat offender "shall be guilty of an offence and *shall be liable on conviction*… in the case of a second or subsequent conviction, to a fine… or to imprisonment… *or to both*" [emphasis added] and that the old s 67(1) RTA similarly provided that a repeat offender "shall be liable on conviction... to a fine… or to imprisonment… *or to both*" [emphasis added]. In those circumstances, he considered that the difference in the drafting of the present day s 67(1) RTA suggested that Parliament intended to change the punishment provision to make the imprisonment term mandatory.

32 In *Mahat* (in which *Vincent Lee* was considered), one of the issues was whether the court had to impose an additional punishment of a fine or caning for three separate offences in the Penal Code (Cap 224, 1985 Rev Ed) that the accused had been convicted of. The relevant provisions in that case included:

(a) Section 356 (snatch theft) pursuant to which offenders "shall be punished with imprisonment… and shall also be liable to caning";

(b) Section 380 (theft in a place of dwelling), pursuant to which offenders "shall be punished with imprisonment… and shall also be liable to fine"; and

(c) Section 394 (voluntarily causing hurt in committing robbery), pursuant to which offenders "shall be punished with imprisonment… and shall also be punished with caning…".

33 Yong CJ held that (i) the additional punishment of caning and a fine for s 356 (snatch theft) and s 380 (theft in a place of dwelling) respectively was discretionary, but that (ii) caning for voluntarily causing hurt in committing robbery was mandatory. In relation to the former, even though Yong CJ again started off with the proposition that *prima facie*, the words "shall be liable" (as opposed to "shall be punished") contained no obligatory or mandatory connotation, he acknowledged that there were instances where the phrase "shall be liable" may properly be construed to be of mandatory effect. It was only after having considered the wording of ss 356 and 380 in its context that he accepted that this was not one such instance (see *Mahat* at [29]).

34 In *Lim Li Ling* (in which both *Vincent Lee* and *Mahat* were considered), one issue was whether s 5(a) of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("the CGHA") mandated the imposition of a fine in addition to an imprisonment term. Section 5(a) provided that an offender "shall be guilty of an offence and *shall be liable* on conviction to a fine… *and shall also be punished with* imprisonment…" [emphasis added].

35 As was the case in *Mahat*, Tay Yong Kwang J in *Lim Li Ling* stated at [41] that "it is trite law that generally, the expressions 'shall be liable to' and 'shall be punished with' respectively prescribe discretionary and mandatory sentences". He did not, however, come to the conclusion that a fine under s 5(a) CGHA was merely discretionary on this ground alone. Instead, he held that a plain and ordinary meaning of the phrase "shall be liable" *where the same penal provision used the phrase* "shall be punished with" *as well* (see [34] above) suggested that the punishment which followed the former (*ie* the fine) was discretionary. Further, Tay J was satisfied that the legislative history and Parliamentary debates leading to the present day form of s 5(a) CGHA strongly suggested that Parliament intended the imposition of a fine to remain discretionary for that offence.

36 It seems to me from these cases that although the courts have tended to view penal provisions that are introduced with a phrase such as "shall be liable" as conferring a discretion, this generally is not, and in my judgment ought not to be done without considering the provision in its textual as well as legislative context. Thus, in the present case, the context in which the phrase "shall be liable" or "shall also be liable" is critical to the accurate construction of the meaning of the phrase and accordingly the ambit of the provision.

37 With that in mind, the obvious differences which I alluded to at [23] above in the way the prescribed punishments for different offences in Part XI of the Act were drafted are brought into sharper focus. In my judgment, the differences in the wording of the prescribed punishments are odd, to say the least, if the intention was for the sentencing structures for the different offences prescribed under the same legislation to be the same. On the contrary, these differences suggested that the draftsman intended that there be different sentencing structures for the different offences. Indeed, the legislative history leading to the development of the offences which now find themselves in Part XI of the Act affirms my concern in this regard and it is to this that I now turn.

The 1955 Revised Edition of the Women and Girls Protection Ordinance

38 I start with the Women and Girls Protection Ordinance (Cap 126, 1955 Rev Ed) ("the 1955 Ordinance"). Section 4(1) of the 1955 Ordinance provided that persons guilty of an offence under that section (*ie* what would now be an offence under s 140(1)(b) of the Act) "shall be liable to imprisonment for any term not exceeding two years or to a fine not exceeding one thousand dollars or to both". Section 4(2) of the 1955 Ordinance then provided that any male person convicted of certain offences (including procuring, receiving and harbouring a prostitute) "may, at the discretion of the court and in addition to any other punishment which may be awarded in respect of such offence, be sentenced to be once privately whipped".

39 Section 5(1) of the 1955 Ordinance provided that a person who trafficked in women and girls would receive a punishment similar to that prescribed in s 4(1) of the 1955 Ordinance.

40 Section 7(1) of the 1955 Ordinance provided that every male person who lived on immoral earnings "shall be liable to imprisonment for any term not exceeding two years". Like s 4(2), s 7(2) gave the court the discretion to order a male offender to be whipped as well. However, the court did not have the power to impose a fine on a person guilty of living on immoral earnings.

41 Section 9 of the 1955 Ordinance provided that a person convicted of managing a brothel "shall be liable to imprisonment for any term not exceeding six months or to a fine not exceeding one thousand dollars, or to both; and on a second or subsequent conviction shall be liable to imprisonment for any term not exceeding twelve months or to a fine not exceeding two thousand dollars, or to both".

42 In short, save for the offence of living on immoral earnings under s 7(1) of the 1955 Ordinance, for which imprisonment was mandatory (there being no other sentencing option for this offence), in each of the other instances, the prescribed punishment plainly vested in the sentencing court a discretion to impose a term of imprisonment or a fine or both.

The 1961 Women's Charter

43 A significant change took place in relation to these provisions when the Women's Charter 1961 was first passed into law by Ordinance No 18 of 1961 ("the 1961 WC"). The purpose of the 1961 WC was, among other things, to amend the law relating to the punishment of offences against women and girls. As explained by the Minister for Labour and Law, Mr Kenneth Michael Bryne in his second reading speech to the Women's Charter Bill (*Singapore Parliament Debates, Official Report*, (6 April 1960) vol 12 at col 438-442):

> The opportunity has been taken to consolidate the existing laws relating to marriage, divorce, the rights and duties of married persons, the maintenance of wives and children, and the punishment of offences against women and girls.
>
> …
>
> … the existing law relating to offences against women and girls is re-enacted, *but the provisions of the law have been strengthened and the punishments for the offence have been increased*. It can be hoped with confidence that the Women's Charter will not only maintain but will also increase and safeguard the rights of women. …
>
> [emphasis added]

When the Women's Charter was eventually passed into law a year later, it did exactly that.

44 Section 128(1) of the 1961 WC (the successor of s 4 of the 1955 Ordinance and predecessor of s 140 of the Act) provided that a person guilty of offences in that section "shall on conviction *be punished with imprisonment* for a term not exceeding five years *and shall also be liable to a fine* not exceeding ten thousand dollars" [emphasis added]. Section 128(2) then provided that a male offender who was convicted of a *second or subsequent offence* under certain paragraphs of s 128(1) (including procuring, receiving and harbouring a prostitute amongst others) "shall in addition to *any term of imprisonment* awarded in respect of such offence be liable to caning." [emphasis added]. Three points are clear from this. First, an imprisonment term was now made mandatory *even for first time offenders*. Second, caning could only be ordered against male offenders who reoffended. Third, in the light of the first and second points, the reference in s 128(2) to "in addition to any term of imprisonment awarded" was simply an acknowledgement that an imprisonment term was mandatory for an offence under s 128(1). It seems clear that this was meant to signal a break from the past.

45 For the offence of trafficking in women and girls under s 129 of the 1961 WC (the successor of s 5 of the 1955 Ordinance and predecessor of s 141 of the Act), similar amendments were made such that imprisonment was now made mandatory as well.

46 Amendments were also made to the offence of living on immoral earnings under s 131 of the 1961 WC (the successor of s 7 of the 1955 Ordinance and predecessor of s 146 of the Act), so that the prescribed punishments were the same to those of s 128 of the 1961 WC. This meant that an imprisonment term *continued to be* mandatory for persons who lived on immoral earnings. Additionally, however, it also provided that the courts were empowered to fine a person who was living on immoral earnings where no such power existed previously.

47 The prescribed punishment, however, for managing a brothel under s 133 of the 1961 WC (the successor of s 9 of the 1955 Ordinance and predecessor of s 148 of the Act) remained the same, albeit with higher maximum sentences. Section 133 of the 1961 WC provided that an offender "shall be liable to imprisonment of either description for any term not exceeding three years or to a fine not exceeding three thousand dollars, or to both such imprisonment and fine; and on a second or subsequent conviction shall be liable to imprisonment of either description for any term not exceeding five years or to a fine not exceeding ten thousand dollars, or to both such imprisonment and fine."

48 In my judgment, the Legislative Assembly in 1961 made these amendments because it intended to change the sentencing structure for, amongst others, the offences of procuring, receiving and harbouring a prostitute and the offence of living on immoral earnings by making a term of imprisonment mandatory, *in addition* to increasing the maximum punishments that could be imposed by law for these offences. This becomes even more apparent when one considers that (i) the previous incarnation of the offences under s 128 of the 1961 WC (procuring, receiving and harbouring a prostitute *etc*) made it absolutely clear that an imprisonment sentence was discretionary, (ii) the previous incarnation of the offence under s 131 of the 1961 WC (living on immoral earnings) *already* made an imprisonment sentence mandatory and (iii) the Legislative Assembly did not amend the drafting of the prescribed punishment for the offence of managing a brothel under s 133 of the 1961 WC. In fact, it added a new offence of managing a place of assignation in s 132 of the 1961 WC (the predecessor of s 147 of the Act) which had the same prescribed punishments as that of managing a brothel. In short, I am satisfied that the Legislative Assembly intended that the punishments to be imposed for procuring, receiving and harbouring a prostitute and for living on immoral earnings would be different from those for managing a brothel (or a place of assignation). The key and fundamental difference was that imprisonment would be mandatory for the former offences but not the latter.

The 1970 Revised Edition of the Women's Charter

49 It was apparent from the 1970 Revised Edition of the Women's Charter that no changes were made to the punishment provisions of the offences under discussion by the amendments to the Women's Charter between 1961 and 1970.

The 1981 Reprint of the Women's Charter

50 Changes then appeared in the Reprint of The Women's Charter (Chapter 47 of the Revised Edition) ("the 1981 Reprint of the Women's Charter") prepared by the Attorney-General's Chambers, which incorporated all amendments to the Women's Charter up to 15 August 1981.

51 It should be noted that because this was a reprint, aside from collating the changes effected by legislative acts that transpired in the intervening period, a number of the changes effected by and reflected in the 1981 Reprint of the Women's Charter did not necessarily come about by any legislative act. Rather, changes could be effected by the Attorney-General pursuant to the power vested in him to make certain alterations, which power may be exercised as long as this does not change the meaning of the enactment. I elaborate on this below.

52 In the 1981 Reprint of the Women's Charter, the phrase "shall *on conviction be punished with imprisonment*" in the part of the Women's Charter which dealt with offences against women and girls was substituted with "shall *be liable on conviction to imprisonment*". No further substantive changes have been made to the wording of the relevant punishment provisions since 15 August 1981. It was thus in the 1981 Reprint of the Women's Charter that the prescribed punishments for ss 140 and 146 of the Act took its present form.

53 When one keeps in mind the sentencing structure which existed in the 1961 WC, this minor change in the drafting had the potential to alter the sentencing structure for "Offences relating to prostitution" under s 128 (present day s 140), the offence of trafficking in women and girls under s 129 (present day s 141) and living on immoral earnings under s 131 (present day s 146) from one where a term of imprisonment was mandatory upon conviction back to one where a term of imprisonment was discretionary. This would be the case if the interpretation that has been adopted by the courts at present were applied.

54 As the Prosecution rightly points out, it is relevant here to have regard to the provisions relating to the preparation of a reprint of an Act of Parliament under s 38 of the Interpretation Act (Cap 3, 1970 Rev Ed) ("the 1970 Interpretation Act") which was in effect at the time the 1981 Reprint of the Women's Charter was created. I note parenthetically that s 38 (found in Part V of the 1970 Interpretation Act) was repealed in 1994 by the Revised Edition of the Laws (Amendment) Act 1994.

55 Pursuant to s 38(1), the Attorney-General had the power to make reprints of Acts of Parliament and these reprints could contain amendments that he was authorised to make under s 38(2). Section 38(2) provided as follows:

> (2) The Attorney-General, in preparing any reprint, *shall have the following powers*:-
>
> (a) to incorporate in or omit from the reprint, as the case may be, all matters required to be added to, omitted from or substituted for any provisions of the Act *as a result of any amendments made to that Act by any other Act*;
>
> …

(d) to correct grammatical, typographical and similar mistakes in the Act and to make verbal additions, omissions or alterations *not affecting the meaning of any Act*;

…

[emphasis added]

56 In my judgment, if the substitution of the phrase "shall *on conviction be punished with imprisonment*" with "shall *be liable on conviction to imprisonment*" were construed as having the substantive effect of changing a mandatory sentence prescribed by Parliament to a discretionary sentence, it could not have come about pursuant to the powers granted to the Attorney-General under s 38(2)(a) of the 1970 Interpretation Act. Counsel for the appellant contended in further submissions that since Act 26 of 1980 was passed shortly before the 1981 Reprint of the Women's Charter, an inference could be drawn that this legislative act was passed to give effect to changes in the prescribed punishments in present day ss 140 and 146. I had no hesitation in rejecting this submission. Nothing in the Act 26 of 1980, or the other three Acts of Parliament which amended the Women's Charter between 1970 and 1981 (Act 21 of 1971, Act 34 of 1973 and Act 8 of 1975), related to these provisions. Similarly, nothing in the 1981 Reprint of the Women's Charter suggested that these provisions were amended by Act 26 of 1980 (or any Act of Parliament between 1970 and 1981 for that matter).

57 In the absence of any legislative act, the change in the wording of the punishment provisions must have come about pursuant to the powers granted to the Attorney-General under s 38(2)(d) of the 1970 Interpretation Act. In making the alterations, I agree with the Prosecution that the Attorney-General did not have the power to affect the meaning of the Women's Charter. I should add that, bearing in mind that the meaning of the phrase "shall be liable" has no fixed meaning and is ultimately dependent on its context, I am satisfied that the Attorney-General never in fact intended to change the effect of the provision through the change in wording. Thus, I am satisfied that the intention of the framers of the 1961 WC – an intention that was not subsequently altered by the publication of the 1981 Reprint of the Women's Charter – was that the persons who were guilty of offences under present day ss 140 and 146 should be subject to a mandatory imprisonment term.

58 The Court of Appeal had occasion to make similar observations in *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*"). In *Panweld*, one of the issues was whether the 1970 Law Revision Commissioners' decision to omit the words "(if necessary by analogy)" in s 6(8) of the Limitation Act (Cap 10, 1970 Rev Ed) ("1970 Limitation Act"), a phrase which previously appeared in s 6(6) of the Limitation Ordinance 1959 (No 57 of 1959), meant that the doctrine of limitation by analogy no longer applied in Singapore. The Court of Appeal concluded that the Law Revision Commissioners did not have the power to effect any substantive change to s 6(8) of the 1970 Limitation Act. In those circumstances, the omission of the phrase "(if necessary by analogy)" could not validly have affected or altered the scope and meaning of s 6(6) of the 1959 Limitation Ordinance or its successor provisions in the absence of any Act of Parliament passed to give effect to the deletion of the words "(if necessary by analogy)" before and after the 1970 Limitation Act came into operation.

59 For this reason, I am satisfied that in so far as the sentencing precedents assume that an imprisonment term for offences under ss 140(1) and 146 is discretionary, they are incorrect and should not be relied on when assessing the appropriate starting point for these offences. For the avoidance of doubt, I base this primarily on the legislative history that I have outlined above; and also by construing the words "shall be liable" in these provisions in the light of this history as well as in the context of the legislation as a whole.

The sentencing precedents do not utilise the full spectrum of possible sentences

60 I now move to the second aspect of the sentencing precedents which I found troubling. It is trite that the statutory maximum sentence signals the gravity with which Parliament views any individual offence and that the sentencing judge ought to note the maximum penalty imposed and then apply his mind to determine precisely where the offender's conduct falls within the entire range of punishment devised by Parliament: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR 653 ("*Angliss*") at [86]. Put another way, the court should ensure that the full spectrum of sentences enacted by Parliament is carefully explored in determining the appropriate sentence: see *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [24].

61 From my review of the sentencing precedents, it was evident that although the aggregate sentences imposed on offenders were *generally* proportionate to the severity of their involvement in the vice trade, the entire range of sentences imposed by Parliament was not commonly utilised when it came to determining the appropriate sentence for *individual* vice-related offences.

62 For instance, in *Public Prosecutor v Tang Huisheng* [2013] SGDC 432 ("*Tang Huisheng*"), the accused pleaded guilty to four charges: (i) one charge of living in part on immoral earnings, (ii) one for bringing an under-aged girl from China into Singapore for the purposes of prostitution, (iii) one for harbouring her and (iv) one for abetting another offender in obtaining the sexual services from this girl who was a minor (contrary to s 376B read with s 34 of the Penal Code).

63 The facts of this tragic case may be briefly stated. The girl's family was in substantial financial debt having borrowed from relatives and illegal money lenders to pay for her father's cancer treatment. The offender, who was already a pimp in China before coming to Singapore, took advantage of this. Before coming to Singapore, the accused drugged the girl and had sex with her. The girl continued to have sex with the accused subsequently because he would beat her if she refused. When she was told that he would send her to Singapore to work as a prostitute she begged him to let her go home. In response, he detained her in a room for more than a week. The accused also threatened to harm the victim's family and the victim if she did not agree to work as a prostitute and confiscated her travel documents and money. While in Singapore, the accused forced the victim to service a client whom she did not wish to sleep with. After witnessing the arrest of the girl by the police, the accused went to a casino and gambled away most of the girl's earnings. He had also brought forward his return flight to China in an unsuccessful attempt to flee the country before he was apprehended.

64 The accused was sentenced to two years' imprisonment for each of the four charges. Although three of the sentences were ordered to run consecutively and his global sentence was six years' imprisonment, this seemed to me to be an extreme case and the severity of each individual offence could and perhaps should have attracted an individual sentence nearer the higher end of the scale (that is to say between four and five years).

65 In *Public Prosecutor v Seng Swee Meng* (DAC 34801/2011 & Ors – unreported) ("*Seng Swee Meng*"), the accused pleaded guilty to 15 charges arising from his role in a prostitution ring: (i) four charges of harbouring a prostitute, (ii) four charges of receiving a prostitute, (iii) four charges of living on immoral earnings, (iv) one charge of managing a place of assignation and (v) two charges of abetting the procurement of commercial sex with a minor with common intention (contrary to s 376B read with s 34 of the Penal Code). 36 similar charges were taken into consideration. The accused engaged in vice-related activities as part of a syndicate which involved 14 Vietnamese women (four of whom were under-aged). He had flown them into Singapore to work as prostitutes. He kept a tight watch over the women and instructed them not to reveal any details of their activities or their

involvement with him to the police should they be caught. One of the minors was physically abused when she expressed her reluctance to provide sexual services.

66 The accused in *Seng Swee Meng* was sentenced to (i) 12 months' imprisonment for each charge of living on immoral earnings, (ii) 10 months for each charge of receiving and harbouring the prostitutes, (iii) 9 months for the charge of managing the place of assignation and (iv) 18 months for the offence under s 376B. Again, although five sentences were ordered to run consecutively such that the accused received an aggregate sentence of five years' imprisonment, it seemed to me that as a matter of principle, the severity of the *individual* offences could and perhaps should have attracted an individual sentence nearer the higher end of the scale.

Issue 1: The appropriate benchmark for vice-related sentences

67 In the light of the two fundamental problems with the sentencing precedents highlighted above, I think it would appropriate to consider the sentencing benchmarks afresh for first time offenders of ss 140 and 146. I think it is also appropriate to reconsider the sentencing benchmarks for first time offenders of s 148 (managing a brothel) even though there is no doubt that a term of imprisonment is not mandatory for this offence.

The circumstances in which the offences occur vary greatly

68 One of the obstacles in formulating a coherent sentencing benchmark framework for vice-related offences is the fact that the severity of each offence depends on a wide variety of circumstances. This can be illustrated by briefly considering the parties who are involved in the "supply" side of the sex trade – the pimp and the prostitute.

69 I start with the pimp. At one end of the spectrum, there will be instances where one party to a relationship pimps his partner out as a result of severe personal difficulties, such as to pay off debts owing to loan sharks (see *Lim Hung Khiang v Public Prosecutor* (MA 142/1997, unreported)). Then there is the "classic pimp" who, whether as part of a criminal syndicate or otherwise, looks after the prostitutes or organises the vice operation in exchange for a share of their earnings. These pimps typically help the prostitutes to source for customers and exercise some degree of influence and control over the prostitutes.

70 In recent years, some of these "classic" pimps have taken their business online (see for example, *Tang Boon Thiew* and the present case). Although I express no concluded view on it, the offence of solicitation under the Miscellaneous Offences (Public Order and Nuisance) Act seems to presume that it takes place in a physical space. The manner in which pimps and prostitutes organise themselves will inevitably change with technology and this might be something that Parliament might wish to consider further.

71 Pimps may also operate under cover of what appears to be a legitimate business, for example a massage parlour (see *Public Prosecutor v Li ChunMei* [2008] SGDC 182 and *Public Prosecutor v See Guek Kheng* [2010] SGDC 335) or a pub (see *Public Prosecutor v Govindaraju Sivakumar* [2014] SGDC 1 ("*Govindaraju*") and *Public Prosecutor v Low Chuan Woo* [2014] SGHC 118).

72 Aside from all this, there are aggressive, even violent and cruel pimps. We saw this in *Tang Huisheng* and in *Seng Swee Meng*.

73 As for the prostitute, although prostitution is deemed exploitative under our laws, it must be recognised that women enter into the vice trade under a variety of circumstances. Those

circumstances may well have a bearing on the severity of the offence and hence on the punishment to be imposed. In the most serious cases, the woman may be the victim of sex trafficking, made to work in Singapore as a prostitute against her will under threats of violence to herself or her family (see for example *Tang Huisheng*) or because she was tricked (see for example *Public Prosecutor v Nguyen Thi Bich Lieu* [2012] SGDC 175). Other women enter the vice trade because they have actively been groomed and enticed by the pimp (see for instance, *Tan Kian Peng v Public Prosecutor* (MA 74/2000), unreported). But there are women who choose this path because they are attracted by the prospect of the quick financial gain that prostitution might provide, as was the case here.

The starting benchmarks ought to be determined with reference to the principal factual elements of each case

74 In my judgment, some structure would be brought to the law in this area by determining the severity of the offence on the basis of the *principal* factual elements of the case that are closely related to (i) the culpability of the offender in carrying out the offence and (ii) the harm resulting from the offender's actions. These principal facts will then determine the starting point and range of sentences within which the offender ought to be sentenced. This is consistent with the conceptual approach of the UK Sentencing Council towards similar offences and I believe it is a sensible one for our courts to adopt (albeit with appropriate adaptations to suit our conditions).

Culpability

75 The UK Sentencing Council's sentencing structure identifies three levels of "culpability" and I adopt this approach, albeit with some modifications. In my judgment, the three levels should adequately capture the role played by an accused in the vice operation as follows:

(a) The lowest level of culpability which I refer to as "C Culpability" arises when the offender performs limited functions under directions or where there is evidence that the offence was committed on a one-off basis with little or no pre-meditation.

(b) The next level of culpability which I refer to as "B Culpability", arises when the offender is closely involved with the work of the prostitutes, for example through the control of the prostitutes' finances, choice of clients, working conditions. The offender here plays a more substantial as opposed to an ancillary role in the vice operation.

(c) The most serious level of culpability which I refer to as "A Culpability", arises when in relation to the manner in which the offender secured the prostitute's entry into the trade, the offender:

(i) has abused the trust of the prostitute or the prostitute's family;

(ii) has exploited those known to be under-aged;

(iii) has abducted or actively limited the freedom of the prostitute;

(iv) has groomed the prostitute to enter prostitution through cultivation of dependency on drugs or alcohol; or

(v) has used violence or threats of violence against the prostitute.

Harm

76 The UK Sentencing Council's sentencing structure further identifies two categories of harm which I also adopt with some refinements:

(a) The most serious level of harm which I refer to as "Category 1 harm" includes situations when the offender has secured the prostitute's continuance of her services through oppressive or cruel means or has treated the prostitute cruelly or oppressively while she was a part of the vice ring, including in the following respects:

(i) The offender has detained the prostitute against her will;

(ii) The offender has used violence or threats of violence against the prostitute or her family and friends;

(iii) The offender has levelled sustained and systematic psychological abuse against the prostitute;

(iv) The offender has forced or coerced the prostitute to participate in unsafe or degrading sexual activity; or

(v) The offender has forced or coerced the prostitute into servicing any customer against her will.

(b) "Category 2 harm" then refers to situations where the factors in Category 1 are not present.

The benchmarks

77 Bearing in mind that the courts should endeavour to utilise the full range of the sentences prescribed by Parliament, in my judgment, the appropriate range of imprisonment sentences for first time offenders ought to follow the matrix below for the offences of procuring, receiving or harbouring a prostitute (s 140(1)(b) and (d) of the Act) and for living on immoral earnings (s 146 of the Act):

	A Culpability	**B Culpability**	**C Culpability**
Cat 1 Harm	Start: 3 years 6 months Indicative Range: 2 years 6 months to 5 years	Start: 2 years Indicative Range: 1 year 6 months to 3 years	Start: 9 months Indicative Range: 1 to 12 months
Cat 2 Harm	Start: 2 years Indicative Range: 1 year 6 months to 3 years	Start: 6 months Indicative Range: 3 months to 1 year 6 months	Indicative Range: 1 day to 3 months

Further, in my view, it would be appropriate to consider imposing a fine (subject of course to the applicable maximum for each charge) – in addition to the imprisonment term – in order to disgorge any profits which the offender may have made from his illegal behaviour: see *Public Prosecutor v Lim Teck Chye* [2004] SGDC 14 at [376].

78 Similarly the appropriate range of sentences for first time offenders for the offence of managing a brothel (s 148 of the Act) (or for managing a place or assignation (s 147 of the Act)), should be as follows:

	A Culpability	B Culpability	C Culpability
Cat 1 Harm	Start: 2 years Indicative Range: 1 year 6 months to 3 years	Start: 1 year Indicative Range: 9 months to 1 year 6 months	Start: 5 months Indicative Range: $2,500 fine to 9 months
Cat 2 Harm	Start: 1 year Indicative Range: 9 months to 1 year 6 months	Start: 3 months Indicative Range: $3,000 fine to 9 months	Start: $1,500 fine Indicative Range: Up to $3,000 fine

Again, I think that it would be appropriate to consider imposing a fine, subject to the applicable maximum, in addition to the imprisonment term (if any), in order to disgorge any profits which the offender may have made from his illegal behaviour.

Relevant aggravating factors

79 The benchmarks at [77] and [78] above set out indicative starting points based on the severity of the offence having regard only to the principal factual elements of the offence. The precise sentence, however, should then depend upon on the assessment of the sentencing judge of where in the range of circumstances constituting A, B or C Culpability and Category 1 or 2 harm the precise facts fall as well as any aggravating or mitigating circumstances which might be present in each individual case. Although I have also set out some indicative ranges, it should be noted that the sentencing judge is always free to depart from these ranges as the facts require, though where this is done, the judge should explain the reasons for doing so. I propose here to discuss only the aggravating circumstances as the mitigating factors that would generally apply in these circumstances are similar to those that would apply in most other offences.

80 To this end, the sentencing precedents helpfully identify factors that may aggravate the gravity of an offence under Part XI of the Act (other than those which have already been applied to formulate the sentencing matrix above).

The scale and sophistication of the enterprise

81 I share the sentiments of the District Judge below when he says that the punishment for vice-related offences should constitute a sufficient deterrent lest potential offenders think it might be worth running the risk of being caught and punished given the lucrative nature of the business. It is hoped that the recognition that offences under ss 140 and 146 of the Act warrant a mandatory imprisonment term (and that it would be appropriate to impose fines to disgorge profits) might go some way towards deterring would-be offenders. In addition, in order to give effect to considerations of deterrence, in my judgment, the scale (evidenced by the number of prostitutes and premises

involved and any transnational element) as well as the sophistication of the commercial enterprise and the amounts of profits made by the offender would all be relevant aggravating factors (see for example *Pubilc Prosecutor v Ang Boon Kwee* (DAC 19683/2012 & Ors – unreported), *Govindaraju* and *Tang Boon Thiew*).

The circumstances of the accused at the time of the offence

82 The offences may be aggravated by reason of the accused person's circumstances at the time of the offence. For example, in *Tan Tian Tze v Public Prosecutor* [2002] SGDC 210 ("*Tan Tian Tze*"), the court thought it significant that the accused committed a further spate of vice-related offences on bail whilst facing charges for other vice and immigration-related offences (for harbouring an illegal immigrant who was working as a prostitute in Singapore). In this regard, more severe sentences ought to be imposed in such circumstances to give effect to considerations of specific deterrence.

Harm – from the prostitute's perspective

83 From the perspective of the prostitute, considerations of retribution require the court to consider the degree of harm inflicted on her aside from factors already considered for the purpose of classifying the matter as a "Category 1 harm" case. Aside from this, the withholding of basic necessities such as medical treatment and food would also be a significant aggravating factor. Further, the court should also treat as a serious aggravating factor evidence of excessive wage reduction or debt bondage (whether through the form of inflated travel or living expenses or otherwise). For instance, in *Govindaraju*, the trial judge took into account the fact that the girls had to pay off large debts to the accused that were purportedly incurred as costs for bringing them to Singapore and for the application of work permits before they could earn their own remuneration.

Harm – from society's perspective

84 From the perspective of society, prostitution harms society in a variety of ways and where this can be shown to have transpired in a given case in a particular way, it would be legitimate to regard them as aggravating circumstances. Some examples of these include the following:

(a) Prostitution harms society through the spread of STDs. Thus, it would be proper for the purposes of sentencing to consider whether the offender has procured prostitutes who are found to be infected with STDs (see for example *Tan Meng Chee* where one of the girls brought in by the accused was found to be HIV positive and this was taken into account);

(b) In my judgment, the procurement of sex workers from abroad, even if they are willing parties, encourages the international trafficking of women and brings disrepute to Singapore and evidence of this can legitimately be taken into account as an aggravating factor;

(c) The proliferation of vice activities in residential areas ought to attract a more severe sentence because of the propensity of vice-related offences to create social unease in the neighbourhood; and

(d) Any linkage to crime syndicates will be treated as an aggravating factor.

Period of offending

85 Another aggravating factor which often appears in the sentencing precedents is the length of time that the criminal enterprise has been afoot (see for example, *Govindaraju* where the trial judge

noted that the accused there had managed his vice operation for about 14 and a half months before he was apprehended).

Interference with the administration of justice

86 One must also consider the practical difficulties which the police face bringing the pimps to justice. Pimps are often convicted based on the evidence given against them by the prostitutes and people who work for him. Thus, in my judgment, it would also be appropriate for the courts to count as an aggravating factor any steps taken by the offender to prevent the reporting of an incident or to prevent witnesses from assisting or supporting the prosecution (see for example *Tan Tian Tze* where the accused had asked one of the prosecution witnesses to lie in his witness statement and *Seng Swee Meng* where the sex workers were instructed not to reveal details about the accused to the police if they were caught).

87 I recognise that the factors which I have outlined above are inevitably not exhaustive and ultimately, each case will turn on its own facts. However, the foregoing discussion might assist future courts to approach the sentencing of vice-related offences in a more structured fashion in the light of entire range of punishments which have been prescribed by Parliament.

The appropriate sentence for each individual offence committed by the appellant

88 In that light, I turn to consider the appropriate punishment for the individual offences in the present case. I am mindful that the revised benchmarks discussed above in relation to ss 140 and 146 are premised on an interpretation of the punishment provisions which has shifted the starting points for sentencing from a fine to an imprisonment term. I am also mindful that the revised benchmarks may lead to more severe punishments than were previously the case since the entire range of punishments prescribed by Parliament is now taken into account. I will return to this at [112] to [118] below where I discuss the applicability of the doctrine of prospective ruling to this case.

The appropriate starting point

89 Mr Tan submitted that the District Judge gave undue weight to the nature of the vice operation because it was not contended by the Prosecution that the appellant was part of a "syndicated operation". The way he framed the question was as follows: can a one-man operation be likened to a "syndicated operation" in terms of severity?

90 The answer to this question, in my judgment, is "yes".

91 I consider that Mr Tan's argument misses the point. From the point of view of culpability, the appellant was certainly blameworthy as he played an integral role by masterminding the entire operation. As I mentioned above, this was not a spur of the moment decision but one which was the culmination of two months of planning. Everything about his operation suggested that it was a carefully laid-out plan: (i) he procured the prostitutes through the help of agents located in Thailand, (ii) he secured two premises where the prostitutes would ply their trade in relative safety, and (iii) he set up a website in order to advertise his business and obtain clients. I was thus satisfied that the appellant fell within "B Culpability".

92 I do accept, however, Mr Tan's submission that the District Judge erred in treating as an aggravating factor the fact that there was some degree of exploitation of the women "by preying on the economic and financial vulnerabilities of these women and enticing them into prostitution on the promise of earning good money": GD at [17]. In my judgment this was already inherent in the offence

and was thus not an aggravating factor in itself. Given the lack of any of the factors identified in Category 1 Harm, I am satisfied that the appellant fell within "Category 2 Harm".

93 In the circumstances, (i) the starting point for the procurement, receiving and harbouring and living on immoral earnings offences should be six months per charge and (ii) the starting point for the managing of a brothel offence should be three months. Next I consider the relevant aggravating and mitigating factors. Both parties proceeded on the basis that the relevant aggravating and mitigating factors applied equally to all the offences which the appellant pleaded guilty to. This is the correct approach for a case such as this where the appellant is being punished for his involvement in a single criminal enterprise and where the ss 140, 146 and 148 offences preferred against him reflect different (but equally important) aspects of this enterprise.

The use of the internet

94 Mr Tan submits that the use of the internet meant that no public disquiet was generated because the clients of this vice ring engaged the sex worker in private. In my judgment, the use of the internet was a factor against, rather than for, the appellant. As I observed earlier, the present case, like *Tang Boon Thiew*, demonstrates that those who engage in vice activities are harnessing the power of the internet to reduce operating costs and minimize the risk of apprehension by doing away with a physical place of operation. The internet can also act as a powerful multiplier allowing those who engage in vice activities to reach out to a larger pool of clients than the traditional red light districts. For these reasons, the use of the internet was, if anything, an aggravating factor. I have, however, only given this factor limited weight because I have already taken the establishment and use of the website as a factor that brought this appellant within B Culpability (see [91] above).

The transnational element of the operation

95 The Prosecution argued that the appellant's procurement of sex workers from abroad should be taken into account as an aggravating factor. For the reasons I have stated above at [84], I agree. At [91] above, I have taken into consideration the fact that the appellant engaged agents overseas to procure the sex-workers as part of the factual matrix that led to conclude that the appellant fell within "B Culpability". That was directed at the degree and extent of his involvement in the operation as well as the level of its sophistication. The consideration here is the separate point that the procuring of sex workers from abroad is a distinct aggravating factor to reflect the harm to society which has resulted.

The use of residential property

96 In their written submissions, the Prosecution argued that the appellant's vice operation encroached into a residential area and that this was an aggravating factor. I agreed with them in principle for the reasons stated above at [84] but gave no weight to this factor in the present appeal because this argument did not form part of their submissions on sentence to the District Judge.

The amount of money earned

97 Mr Tan rightly pointed out that the District Judge had erred in fact when he found that the appellant had collected a sum of $12,320 in earnings from one of the prostitutes: GD at [18]. This was based on an inaccurate reading of paragraph 20 of the statement of facts which stated that "[one of the prostitutes] had served approximately 77 clients during the course of [eight days], generating a sum of $12,320/- in earnings. The [appellant] then received $8070/- out of this sum." The correct figure was thus $8,070. Nevertheless, this is still a sizable amount of money and some

weight ought to be given to this.

The number of offences

98 It will be recalled from [12(a)] above that the District Judge considered the large number of offences committed as significant in calibrating the appropriate sentence. A quick perusal of the schedule of the 20 offences which were initially brought reveal that the appellant was charged with five counts of procuring a prostitute, five counts of harbouring a prostitute and five counts of receiving a prostitute. In effect, the appellant was charged for three different offences by employing each of the five prostitutes. The appellant was also initially charged with three counts of living on immoral earnings and two counts of managing a brothel (one charge for each location that he rented). In my judgment, taking into account the number of offences in this case as an aggravating factor entailed some degree of double counting since these facts had already been taken into account when considering the integral role played by the appellant and the scale and sophistication of the operation. I am therefore satisfied that the District Judge had erred by viewing this factor as a separate aggravating factor.

Other factors

99 Mr Tan placed emphasis on the short period of offending, the fact that the appellant was not part of a criminal syndicate (the Prosecution appeared to accept this), and the fact that he was apprehended swiftly. But as I have said in *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [24]–[25], and as Mr Tan accepts, the lack of an aggravating factor is not a mitigating factor. I therefore place little weight on these submissions.

Guilty plea and remorse

100 The relevance and weight of a plea of guilty depends very much on the facts of the case: *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361. To this end, the High Court in *Angliss* at [77] observed that a plea of guilty can be taken into consideration as a mitigating factor when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice.

101 The learned DPP, Ms Ong Luan Tze, submitted that the appellant had been apprehended by the police in a night raid and that cash and condoms were seized from him and one of the prostitutes. Ms Ong therefore submitted that the appellant's guilty plea likely stemmed from a pragmatic realisation that he had been caught red-handed and that there was therefore no point in denying the offence. In those circumstances, she urged that little mitigating weight should be given to his guilty plea. In all the circumstances, I am inclined to agree with this submission.

Preliminary conclusion on Issue 1

102 In light of the aggravating factors and the revised sentencing benchmarks, in my judgment, the appellant ought to have received a sentence of (i) eight months for each of the offences of procurement, receiving and harbouring and living on immoral earnings and (ii) four months for the offence of managing a brothel. I would observe that this falls slightly above the range of sentences which the Prosecution had initially sought from the District Judge (see [10] above) or that had been imposed by him. In my judgment, a fine would also have been appropriate in this case to disgorge the profits from the appellant. However, the Prosecution did not seek a fine and so I did not impose one in the circumstances.

Issue 2: Which and how many sentences ought to be ordered to run consecutively?

Issue 2: Which and how many sentences ought to be ordered to run consecutively?

103 In the present case, the Prosecution proceeded with eight charges and so the court is obliged by s 307 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) to order at least two sentences of imprisonment to run consecutively. The question therefore was whether more than two sentences ought to run consecutively and which offences should be made to run consecutively, bearing in mind the "one-transaction rule" that I discussed in detail in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*").

104 Ms Ong contended that the "one transaction rule" was not violated by the District Judge since the sentences that were ordered to run consecutively related to distinct offences which each reflected an invasion of different legally protected interests. According to Ms Ong:

(a) the procuring, receiving and harbouring offences were directed at the prevention of enticing and corrupting women to join the vice trade;

(b) the offence of living on immoral earnings was directed at the exploitation of women; and

(c) the offence of managing a brothel was directed as the misuse of residential property for the purposes of facilitating the vice trade.

Ms Ong therefore submitted that ordering the sentences for these three charges to run consecutively better reflects the distinct nature of the offences, all of which justified a strong show of disapproval by the court.

105 In addition (and I presume alternatively), referring to my observations in *Shouffee* at [81(j)], Ms Ong submitted that it was entirely appropriate for the District Judge to order three sentences to run consecutively. According to her, there was a pressing public interest in stemming prostitution-related offences, especially the facilitation of foreigners to Singapore for prostitution.

106 In my judgment, the distinction between the legally protected interests drawn in [104(a)] and [104(b)] was too fine. Ultimately, both provisions were squarely directed at protecting women and girls from what the law regards as exploitative behaviour. However, while this is also true to some extent of the offence of managing a brothel, I do see some merit in Ms Ong's argument that s 148 could be seen as directed toward a distinct interest. I say this for two reasons.

107 First, s 148(4) of the Act makes an owner of a place (such as a hotel) guilty of the offence of managing a brothel so long as he knows that the place is being used as one or if he has allowed the continued use of the place as a brothel. Section 150 of the Act also permits the owner of a place to require any occupier of that place convicted of managing the place as a brothel (or a place of assignation) to deliver up possession of the place. The thrust of ss 148 and 150 therefore arguably appear to be directed at ensuring that premises are not used as a brothel.

108 Second, I also note that the offence of managing a brothel was introduced by the Women and Girls Protection Ordinance, 1930 at the recommendation of the *Report of a committee appointed by the Secretary of State for the Colonies to examine and report on Straits Settlements Ordinance no. 15 of 1927 (Women and Girls Protection Amendment Ordinance) and Federated Malay States Enactment no. 18 of 1927 (Women and Girls Protection Amendment Enactment)* to facilitate the colonial government's efforts to address the issue of prostitution in Singapore. Prior to the enactment of this offence, the main provision in Ordinance No 143 (Women and Girls Protection) directed at brothels could be found in s 18:

> 18.—(1) On the complaint of three or more house-holders that a house in their immediate neighbourhood is used as a brothel or lodging-house for prostitutes or disorderly persons of any description to the annoyance of the respectable inhabitants of the vicinity a Police Court may summon the owner or tenant of the house to answer the complaint.
>
> (2) On being satisfied that the house is so used and is therefore a source of annoyance and offence to the neighbours such Court may order the owner or tenant to discontinue such use of it.
>
> (3) Any owner of tenant who fails to comply with such order within five days shall be liable to a fine…

109 It seems to me that s 18 of Ordinance No 143 (Women and Girls Protection) was designed to protect neighbours from the brothel being "a source of annoyance and offence" and I do not think the replacement of this offence with the offence of managing a brothel was meant change the underlying purpose of these offences.

110 At the same time, I am conscious that one should not miss the wood for the trees. It bears repeating that the one-transaction rule is merely an evaluative rule directed towards enquiring whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time (*Shouffee* at [32]). Further, while it may be helpful to have regard to such factors as proximity and diversity of the legally protected interests, in the final analysis, the consideration must be undertaken as a matter of common sense (*Shouffee* at [40]). As I have already alluded to above, the appellant is being punished because he had set up and operated an online prostitution ring which barely survived for two weeks. In my judgment, common sense dictates that the mandated minimum of two consecutive sentences should have been ordered in this case in all the circumstances. This is also in line with the principle affirmed in *Shouffee* at [81(j)] that the imposition of more than two sentences would only be appropriate in exceptional circumstances, of which there appeared to be none here. Moreover, as the offence of managing a brothel was the most distinct offence from the other two, the District Judge ought to have ordered the sentence for one charge of procuring a prostitute and the charge of managing a brothel to run consecutively. To be fair to Ms Ong, I acknowledge that this was the Prosecution's original position before the District Judge when it sought a global sentence of up to nine months based on two sentences running consecutively (see [10] above). It is regrettable that the District Judge did not articulate his reasons for aggregating three sentences together despite expressly stating in the GD at [14] that he was applying the principles set out in *Shouffee* on consecutive and concurrent sentences; it bears repeating that when the sentencing courts aggregate sentences, they should do so in a principled and transparent manner.

111 In the present circumstances, the effect of all that I have said is that the aggregate sentence imposed by the District Judge cannot be regarded as manifestly excessive, at least by reference to the sentencing framework I have set out in this Judgment. In fact, had the District Judge adopted the benchmarks which I have set out above, and if he had only ordered two sentences to run consecutively, the District Judge would have arrived at an aggregate term of imprisonment of 12 months. This was longer than the aggregate sentence of nine months that he did impose. Nevertheless, I did not increase the term of imprisonment as the Prosecution rightly did not cross-appeal the sentence. In that sense, the appellant could count himself fortunate for having received the sentence that he did. But there was a further point to be considered in all the circumstances and it is to this I now turn.

Issue 1 revisited: The relevance of prospective ruling

112 As I foreshadowed above at [88], counsel for the appellant urged upon me – and the Prosecution conceded – that any revised benchmark which made imprisonment mandatory for first time offenders of ss 140 and 146 would be contrary to the legitimate expectations of the appellant (in so far as these offences were concerned). To this end, it would be apposite to refer to the recent three-judge High Court decision in *Public Prosecutor v Hue An Li* [2014] SGHC 171 ("*Hue An Li*"). In *Hue An Li*, where one of the issues concerned the doctrine of prospective ruling, the High Court held that our appellate courts have the discretion to restrict the retroactive effect of their pronouncements in exceptional circumstances and that this discretion was to be guided by various factors discussed in [124] of that judgment.

113 It is clear that the present case exhibits the factors discussed in *Hue An Li*. In particular, the sentencing precedents in relation to vice-related offences have entrenched the proposition that the starting point in relation to the punishment of first time offenders of ss 140 and 146 of the Act without any aggravating factors ought to be a fine. In fact, this was the Prosecution's initial position until I had invited further submissions on the legislative history and context of these provisions. The shift in the starting point for the sentences for the ss 140 and 146 offences constitutes a fundamental and unforeseeable change in the law from the appellant's perspective. Moreover the sentencing guidelines that I have set out at [77] and [78] above for the ss 140, 146 *and* 148 offences are designed to provide a coherent framework for sentencing in relation to these offences and these were, to some degree, influenced by the shift in the starting point for the ss 140 and 146 offences. Given the unique circumstances of this case, I find that it would be appropriate to invoke the doctrine of prospective ruling. I therefore turn to consider if the sentences imposed by the District Judge could be said to be manifestly excessive having regard to the prevailing practice and precedents.

114 Having said that, I should make it clear at the outset that once I found that on a true interpretation of the statute, a custodial sentence was mandatory, I doubt it would have been open to me on any basis to hold that I would not impose a custodial sentence. However, this poses no difficulty in this case because it cannot be denied that there were significant aggravating factors in the present case: the appellant was the mastermind of a carefully planned (not to mention lucrative) vice operation operating out of two premises and which had an online and transnational element (see the discussion at [89] to [91], [94], [95] and [97] above). In my judgment, this meant that even based on the prevailing sentencing practice and precedents, the custodial threshold for all the preferred charges was clearly crossed.

115 As to the sentences imposed for each offence, I have already observed at [13] above that the District Judge placed heavy reliance on the sentencing precedent of *Jianwen* where the accused was employed in a vice operation with similar characteristics to the one in the present case but for longer period of seven months. The accused in *Jianwen* received three months' imprisonment for each ss 140 and 146 offence and one month imprisonment for the offence of managing a place of assignation under s 147. Although the accused in *Jianwen* was ordered to serve three sentences consecutively (*ie* an aggregate of seven months' imprisonment), this was plainly to account for the significantly longer period of involvement in the criminal enterprise in that case. This stands in contrast to the present case where the period of offending was only ten days and where I have already held that the District Judge ought to have ordered only two sentences, one charge of procuring a prostitute and the charge of managing a brothel, to run consecutively.

116 Seen in that light, the key difference between the two cases, as the District Judge pointed out, was that the accused in *Jianwen* was an employee of a vice operation whereas the appellant was a mastermind. In my judgment, this had a significant impact on the difference in moral culpability between the two persons which ought to have been reflected in more severe *individual* sentences

imposed on the appellant than those ordered by the District Judge. It seemed to me that the individual sentences imposed in the present case were somewhat lenient and in all likelihood influenced by the District Judge's erroneous decision to order three sentences to run consecutively. In the circumstances, I am satisfied the enhanced moral culpability of the appellant (as compared to the accused in *Jianwen*) would be appropriately reflected in a term of imprisonment of:

(a) five months for each offence under ss 140 and 146 (*ie* two months more than that imposed in *Jianwen* for the same offences); and

(b) two months for the s 148 offence (*ie* one month more than that imposed in *Jianwen* for the similar offence of managing a place of assignation under s 147).

117 In arriving at this conclusion, I had *some* regard to *Public Prosecutor v David Ho* (DAC 12346/2012 & Ors – unreported) ("*David Ho*") which was tendered by the Prosecution. In *David Ho*, five Thai women were procured by agents in Thailand to work in Singapore as prostitutes in a vice ring that was masterminded by the accused's employer. That vice operation, like the one in the present case, also operated out of two residential premises and also had an online presence. The accused was involved in the vice operation for about 65 days as an employee. He was tasked with receiving the prostitutes from the airport and appeared to have a significant involvement in managing the brothels. On the other hand, he also had a string of prior antecedents. The accused pleaded guilty to five charges and was sentenced to (i) three months' imprisonment for each of the ss 140(1)(d) and 146(1) charges and (ii) two months' imprisonment in respect of the single charge under s 148; three sentences were ordered to run together such that the accused was sentenced to eight months' imprisonment in total. Even though I do not have the benefit of the sentencing judge's reasons for his decision, I consider the individual sentences of five months for each of the ss 140 and 146 offences and two months for the s 148 offence in the present case to be consistent with *David Ho* after taking into account (i) the fact that this was the appellant's first brush with the law (*cf* the accused in *David Ho*); (ii) the difference in the roles and responsibilities between the accused in *David Ho* and the appellant in their respective vice operations; (iii) the difference in the length of their involvement in their respective vice operations; and (iv) the fact that three sentences were ordered to run consecutively in *David Ho*.

118 Taken together, and had only two sentences been ordered to run consecutively, the appropriate sentence under the precedents prevailing prior to this judgment in the present case would have been an aggregate term of imprisonment of seven months. In that light, I do consider that the total term of imprisonment imposed by the District Judge was manifestly excessive.

Conclusion

119 For these reasons, I allow the appeal and substitute the District Judge's decision to impose an aggregate sentence of a term of imprisonment of nine months with one of seven months. In so doing, I set aside the term of imprisonment of four months imposed for each of the charges under s 140(1)(b) and (d) and s 146(1) and instead sentence the appellant to a term of imprisonment of five months for each of these charges with one sentence only under s 140(1)(b) to run consecutively and the rest to run concurrently. I also set aside the term of imprisonment of one month imposed for the charge under s 148(1) and impose a term of two months which is to run consecutively. In doing so, I have departed from the appropriate benchmark sentence of eight months' and four months' imprisonment respectively which I have set out at [102] above for the reasons given in [112] to [118] above.