

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 99

Magistrate's Appeal No 9321 of 2018/01

Between

Lim Teck Kim

And

Public Prosecutor

JUDGMENT

[Criminal Law] — [Statutory offences] — [Protection from Harassment Act]
— [Unlawful stalking] — [Sentencing framework]

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Lim Teck Kim
v
Public Prosecutor

[2019] SGHC 99

High Court — Magistrate's Appeal No 9321 of 2018/01
Chan Seng Onn J
22 March 2019

18 April 2019

Judgment reserved.

Chan Seng Onn J:

Introduction

1 Stalking is the label given to a series of acts repeated with unreasonable frequency, with the effect that the recipient of such unsolicited attention feels that his privacy is violated, or, worse still, feels that his personal safety is threatened.

2 To curb such antisocial conduct, the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("POHA") was enacted in 2014, with s 7 of POHA specifically targeted at acts of unlawful stalking.

3 Since then, there have been multiple cases of stalking prosecuted under s 7 of POHA. In each case, the severity of the stalking, as well as the harm caused to the victim(s), were of varying degrees. Having amassed a sufficient

number of cases from which a rough sentencing trend may be derived, it is now apposite to provide a sentencing framework so as to ensure greater clarity, coherence and consistency in sentencing offenders convicted for such offences (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”) at [37]).

Background

4 Lim Teck Kim, the appellant in this case, was the jilted ex-boyfriend of the victim. In his fruitless attempt to rekindle his relationship with her, he committed two offences, namely criminal trespass and unlawful stalking. He pleaded guilty to both offences and he was sentenced to a \$500 fine and three months’ imprisonment respectively by the District Judge.¹

5 The appellant appealed against the three months’ imprisonment term which he received for the unlawful stalking charge (under s 7 of POHA) on the basis that it was manifestly excessive.

6 Having considered the cases and developed a sentencing framework, I allow his appeal, and reduce his sentence for the unlawful stalking charge to a \$5,000 fine (in default two weeks’ imprisonment).

Facts

7 Sometime in December 2016, the victim broke up with the appellant. Later, in mid-2017, the victim informed her condominium security officers not to let the appellant enter the condominium.²

¹ Record of Appeal (“ROA”) at p 2.

² Statement of Facts (“SOF”) at [6]; ROA at p 9.

The criminal trespass charge

8 On 12 March 2018, the appellant rode his e-scooter through the ‘In’ driveway reserved for residents of the victim’s condominium. He then waited for the victim in the basement carpark. A security officer went to the basement carpark to confront the appellant. When the appellant saw the security officer, he fled the premises on his e-scooter.³

9 This formed the substance of his criminal trespass charge under s 447 of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”), for which he was fined \$500 by the District Judge.⁴ He did not appeal against the fine.

The unlawful stalking charge

10 The unlawful stalking charge under s 7 of POHA related to the following acts committed by the appellant with intent to cause harassment and alarm to the victim during the period of 23 February 2018 to 13 March 2018 (about three weeks).

The incidents on 23 February 2018

11 On 23 February 2018, at about 1.30am, at the victim’s residence, the appellant was upset after quarrelling with the victim. He therefore self-inflicted bruises on his face and showed them to the victim, blaming her for making him hit himself. She was appalled and tried to pacify him. She then let him stay over because she was afraid of further backlash if she tried to make him leave.⁵

³ SOF at [7] – [11]; ROA at p 9.

⁴ ROA at p 2.

⁵ SOF at [13]; ROA at p 10.

12 Later the same day, the victim returned home from work early at the appellant's insistence. At about 6.30pm, when the victim said that the appellant's bruises looked better, the appellant threatened to hurt himself if she made him leave the house or if she left him. He then began hitting himself on the face and throwing around items in her house. He also spat the blood in his mouth onto her side table. She felt afraid and told her domestic helper to ask security to call the police.⁶

13 On the same day, at about 7.45pm, at the victim's residence, before the police arrived, the appellant shouted at the victim that he would rather kill himself than end their relationship.⁷

14 Upon the arrival of the police, the appellant was arrested for an offence of attempted suicide under s 309 of the Penal Code;⁸ such a charge does not however appear to have been preferred against him in this case.

Acts of stalking after 23 February 2018 to 13 March 2018

15 After being released on bail, between 23 February 2018 and 6 March 2018, the appellant made and attempted to make communication through mobile messaging applications (iMessage and WhatsApp) to the victim, pleading with the victim to see him in person.⁹

16 Between 4 March 2018 to 13 March 2018, the appellant also loitered around the victim's condominium and the vicinity, pleading for her to rekindle her relationship with him.¹⁰ For example, on 6 March 2018, the appellant was

⁶ SOF at [14]; ROA at p 10.

⁷ SOF at [15]; ROA at p 10.

⁸ SOF at [16]; ROA at p 10.

⁹ SOF at [17]; ROA at pp 10 – 11.

aware that the victim had a chiropractor's appointment at Bukit Timah Shopping Centre ("the shopping centre"). Armed with such knowledge, he approached her at the carpark of the shopping centre, and attempted to initiate a conversation with her, despite her informing him that she wanted nothing to do with him.¹¹

17 On 15 March 2018, the victim obtained an Expedited Protection Order pursuant to s 13(1) of POHA against the appellant.¹² Thereafter, the statement of facts do not disclose any further acts of harassment by the appellant.

18 This appeal relates to the three months' imprisonment which he received for his unlawful stalking offence that flowed from the above facts.

Sentencing framework for unlawful stalking under s 7 of POHA

19 As alluded to above, I have developed a sentencing framework for cases of unlawful stalking, which is an offence punishable with a fine not exceeding \$5,000 or with imprisonment for a term not exceeding 12 months or to both (s 7(6) POHA).

20 This framework draws from the two-step sentencing framework developed by the Court of Appeal in *Terence Ng*. The court first identifies the offence-specific factors to determine the appropriate sentencing band for the particular offence. Thereafter, the court considers the aggravating and mitigating factors specific to the offender to calibrate a sentence that is appropriate for that offender (*Terence Ng* at [39]). This two-step sentencing framework has since been followed in other criminal cases (see, *eg*, *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR

¹⁰ SOF at [18] – [23]; ROA at pp 11 – 12.

¹¹ SOF at [19]; ROA at p 11.

¹² SOF at [25]; ROA at p 12.

580 (“*Kunasekaran*”) and *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048).

21 However, the framework proposed herein seeks to refine the methodology which was developed in *Terence Ng*.

The points system to determine the appropriate sentencing band

22 In *Terence Ng*, the Court of Appeal considered several offence-specific factors which go towards the aggravation of the offence. In the context of rape, which was the offence before the court in *Terence Ng*, such offence-specific factors included the abuse of position and breach of trust, premeditation, and the use of violence (*Terence Ng* at [44]).

23 After considering the aggravating offence-specific factors in the case, the sentencing judge would be able to determine the appropriate band which the accused’s offence fell within.

24 Cases which presented no offence-specific factors or where the factors were only present to a very limited extent were classed as Band 1 cases, which were punishable with ten to 13 years’ imprisonment, with six strokes of the cane. Cases with two or more aggravating factors fell under Band 2, and were punishable with 13 to 17 years’ imprisonment, with 12 strokes of the cane. Finally, extremely serious cases of rape, which, “by reason of the number and intensity of the aggravating factors”, were classed as Band 3 cases, for which the appropriate punishment was 17 to 20 years’ imprisonment, with 18 strokes of the cane (*Terence Ng* at [47]).

25 In *Kunasekaran* at [47], I observed that the “two-step sentencing bands” approach has much to commend it, and that it is a reliable methodology which improves clarity, transparency, coherence and consistency in sentencing.

26 Nonetheless, a problem which arises from the two-step sentencing band approach is that there is an overt focus on the *number* of aggravating factors. Hence, in *Terence Ng*, once there were two or more aggravating factors, the case inevitably tipped out of Band 1 into Band 2. I understand that it is possible to adjust beyond the sentencing range prescribed for the band when considering the appropriate sentence at the second stage of the framework (*ie*, offender-specific factors stage) (see *Terence Ng* at [62]). However, this does not curb the problem identified, which relates to the excessive or inadequate weight which may be given to *offence-specific* factors (the first stage). Given the inevitable focus on the sheer *number* of offence-specific factors present, the current two-step sentencing band approach implicitly assumes that each offence-specific factor carries the same weightage. This disregards the possibility that each of these offence-specific factors may carry different aggravating weights in influencing the sentence.

27 To more accurately evaluate the appropriate amount of weight to be ascribed to each offence-specific factor, I therefore propose a points system, whereby each offence-specific factor is given a range of points, allowing the sentencing judge to determine the appropriate number of points to be ascribed based on the intensity of the aggravating factor. Once the total number of points from the offence-specific factors are tallied, the indicative starting sentence, based on the sentencing band, can be determined. The sentencing band which the accused’s offence falls under will therefore be determined not primarily by the number of offence-specific factors present, but by the combined *intensity* of all the offence-specific factors present, as reflected by the aggregated number

of points. This takes into account not only the *number* of offence-specific factors present but also the *different weightage* that each of these offence-specific factors may have.

28 I now present the sentencing framework for the offence of unlawful stalking under s 7 of POHA to better demonstrate my point.

The first step: determining the band of the offence

Offence-specific factors

29 In determining the appropriate band of the offence, the court should first have regard to the offence-specific factors that relate to *both* the degree of harm caused by the offender and the degree of his culpability.

30 A review of cases in relation to unlawful stalking offences (s 7(1) POHA) discloses the following, non-exhaustive, list of offence-specific factors which *independently* reflect the increased culpability of the accused or the heightened level of harm suffered by the victim, thereby aggravating the offence:

- (a) *Duration and frequency of stalking*: Cases of unlawful stalking are necessarily disruptive and harmful to the lives of the victims, who live subject to the offender’s watchful eye. Where the stalking continues for a longer period of time and at a high frequency, the harm and disruption caused to the victim will inevitably be of a higher degree: see *Public Prosecutor v Tan Khoo Aik Nelson* (SC-913209-2016, Magistrate’s Arrest Case No 903858 of 2017 and others) (“*PP v Nelson Tan*”), *Tan Yao Min v Public Prosecutor* [2018] 3 SLR 1134 (“*Tan Yao Min v PP*”) at [91] and s 7(5)(b) POHA.

(b) *Degree of intrusion into the victim's life*: There are varying degrees of unlawful stalking. In certain cases, the intrusion may amount to merely loitering around the victim's premises. Here, lesser adjustment is required by the victim to avoid the accused person. In certain cases, the offender may follow the victim to places he/she frequented, call or message him/her daily, confront the victim inside or outside his/her home, etc: see *Public Prosecutor v Tan Boon Wah* (SC-905671-2016, Magistrate's Arrest Case No 904633-2016 and others)¹³ (“*PP v Tan Boon Wah*”), discussed in *Tan Yao Min v PP* at [87]. The latter class of cases would amount to a high degree of intrusion into the victim's life (see ss 7(5)(b)–(e) POHA). This discloses additional harm suffered by the victim, and is independent from the duration and frequency of stalking. Hence, additional points may be attributed.

(c) *Vulnerable victim*: Where the targeted victim is a minor, the offender's unlawful stalking would be considered more egregious, particularly when the offender is significantly older than the victim: see *Tan Yao Min v PP* at [90] and *Public Prosecutor v Ng Han Wei* (SC-912985-2016, Magistrate's Arrest Case No 901757 of 2016) (“*PP v Ng Han Wei*”). Preying on victims ailing under physical or mental conditions would also be an aggravating factor: see s 7(5)(g) POHA.

(d) *Public dissemination of sensitive information or images*: In certain cases, the offender may publicly disseminate sensitive information or images of the victim, such as nude photographs which are not otherwise available in the public domain: see *Public Prosecutor v Adrian Goh Guan Kiong* (SC-902574-2016, Magistrate's Arrest Case

¹³ The case number is incorrectly stated as SC-910153-2016 in *Tan Yao Min v PP*: see CRO (Main) of *PP v Tan Boon Wah* at p 2, accessible in SC-910153-2016.

No 902040 of 2016) (*“PP v Adrian Goh”*), discussed in *Tan Yao Min v PP* at [83]. The public nature of such acts would exacerbate the degree of harm and embarrassment suffered by the victim, and would clearly increase the offender’s culpability. Such cases are particularly egregious, especially if the harassment crosses into the online domain, whereby the leak of such sensitive information or images could have a “viral and permanent” impact (*Singapore Parliamentary Debates, Official Report* (13 March 2014), vol 91 (Mr K Shanmugam, Minister for Law)).

In fact, the offender’s culpability is also heightened as such cases often involve an abuse of a position of trust, as accused persons with access to such highly sensitive information or images of the victim would often have shared a relationship with the victim: see *PP v Adrian Goh*, *PP v Tan Boon Wah and Public Prosecutor v Lai Zhi Heng* (SC-912644-2015, Magistrate’s Arrest Case No 909122 of 2015 and others) (*“PP v Lai Zhi Heng”*) (discussed in *Tan Yao Min v PP* at [19] and [82]).

(e) *Use of threats against the victim*: When the offender uses threats against the victim, the degree of harassment, alarm, fear or distress caused to the victim would be heightened, thereby increasing the harm caused to the victim: see *PP v Nelson Tan* and s 7(5)(g) POHA.

(f) *Harm to victim beyond those ordinarily caused in (a), (b), (d) and (e) (“extraordinary harm”)*: The harm suffered by the victim of unlawful stalking varies from victim to victim. In most cases, the harm suffered by the victim will be factored into the sentence by factors (a), (b), (d) and (e), which incorporate the harm ordinarily suffered by the victim. For example, a victim who is frequently stalked over a long

duration is likely to suffer loss of his “freedom to do any act which he is legally entitled to do” (s 7(5)(f) POHA). Such ordinary harm is already accounted for in factor (a) above, which ascribes points based on the duration and frequency of stalking. To prevent double counting against the accused, no additional points ought therefore to be attributed for such ordinary harm suffered.

In certain cases, however, the victim may suffer harm beyond what is normally caused by factors (a), (b), (d) and (e). For example, while a victim who suffers the public dissemination of his or her sensitive information or images (see factor (d) above) may ordinarily be expected to suffer emotional trauma and damage to his or her reputation, where the victim suffers from permanent emotional or psychological scars or loses his job as a result of the accused’s acts, such would amount to extraordinary harm. If found to be present by the objective circumstances or an unrefuted victim impact statement, such extraordinary harm would be an aggravating factor *independent* from the other factors considered above, for which points may be attributed without double counting against the accused.

(g) *Involving third parties*: When the offender also involves persons other than the victim, such as the victim’s next-of-kin or the victim’s partner (the “third parties”), the inconvenience and distress would extend beyond the victim himself, as the third parties affected may also have to employ self-help measures to avoid the offender: see *Tan Yao Min v PP* at [91]. Where no separate charges are preferred for such inconvenience caused to the third parties, this should be considered as an aggravating factor. If separate charges are preferred, this factor

should not be considered aggravating to prevent double counting against the accused: see *PP v Nelson Tan*.

31 Points are to be ascribed to each of the offence-specific factors based on the degree of aggravation of the offence occasioned by the presence of that factor. Where the offence in relation to the particular factor is more serious, more points are to be given to that factor. No points are awarded if the factor is absent.

32 Furthermore, I propose ascribing a maximum of between three to five points to each of the offence-specific factors identified based on their relative weightages. Accordingly, the maximum number of points allocated to each factor may differ. For example, the factor of public dissemination of sensitive information or images may result in irreversible harm to the victim's reputation. To reflect its potential greater weightage as a factor (*ie*, when compared to other factors such as the use of threats against the victim, which are often temporal in nature), the maximum number of points allocated to the factor of public dissemination of sensitive information would be higher so as to allow more points to be eventually ascribed to it during the points assessment process by the judge.

33 At the outset, it is emphasised that the framework as proposed applies to cases where the accused has claimed trial, rather than pleaded guilty to the offence. As discussed at [45(a)] below, a plea of guilt may entitle an accused to a discount in sentence.

(1) Ascertaining the number of points

34 The points to be ascribed to each offence-specific factor is as follows:

Factor	Points	Explanation
(a) Duration and frequency of stalking	<u>1 – 5 points</u> <u>1 point</u>: Short duration, low frequency <u>5 points</u>: Long duration, high frequency	This factor forms the crux of the unlawful stalking charge. A sufficiently broad range of points allows the sentencing judge to ascribe the appropriate number of points that reflects the accused’s culpability. The duration would be short if the stalking occurred over a few weeks (rather than months). The duration of stalking would be regarded as long if it spanned more than six months. The frequency would be highest if the stalking was conducted daily, and would be lower if the stalking was more sporadic.
(b) Degree of intrusion	<u>1 – 3 points</u> <u>1 point</u>: Low intensity <u>3 points</u>: High intensity	Apart from the duration and frequency of stalking, the degree of intrusion would be relevant for determining the amount of distress and harassment caused by the accused to the victim. The degree of intrusion would be low if the accused simply loitered around the victim’s vicinity, or harassed the victim primarily through electronic means. The degree of intrusion would be high if the accused’s actions severely impeded the victim’s right to free movement, or if the accused’s stalking extended to disturbing the victim’s peace in his/her own home (eg, by peering through the window).

(c) Vulnerable victims	<u>1 – 3 points</u> 3 points, unless there are exceptional circumstances	The stalking of victims who are vulnerable by reason of their young age, physical frailty, mental impairment or disorder, or learning disability, is an aggravating factor as such victims would be less able to protect themselves against such intrusions. Barring exceptional circumstances (eg, the accused is also a minor who is proximate in age to the victim), 3 points are to be ascribed to this factor to reflect the accused's increased culpability.
(d) Public dissemination of sensitive information or images private to the victim	<u>1 – 5 points</u> 1 point: Less sensitive information disseminated to a smaller audience 5 points: Highly sensitive information disseminated to a larger audience	Up to 5 points may be ascribed to this factor to reflect the different degrees of culpability of an accused in relation to the public dissemination of the victim's sensitive information. 1 point may be ascribed to cases whereby less sensitive information, such as the victim's phone number, is disseminated to a small audience, such as the scribbling of such a number on physical public spaces. 5 points may be ascribed to cases whereby highly sensitive images, such as non-public nude images of the victim, are disseminated to a large (and potentially infinite) audience, such as on an online social media platform. The irreversible harm to the victim's reputation in such cases reflects the heightened culpability of the

		accused.
(e) Use of threats against the victim	<u>1 – 3 points</u> <u>1 point:</u> Threats against the accused's self <u>2 points:</u> Indirect threats to the victim, or direct threats to the victim of a lesser degree <u>3 points:</u> Direct threats to the victim's wellbeing, safety or life	There are varying degrees of threats. 1 point may be ascribed where the accused's threats relate entirely to the accused's wellbeing. Such cases amount to emotional manipulation, and the alarm caused to the victim would ordinarily be lesser. 2 points may be ascribed where the threats are of an indirect nature (eg, an insinuation that the accused would publicise sensitive information if the victim does not abide by his demands), or if they are direct but of a less threatening nature (eg, threats to call the victim's family or spouse). 3 points may be ascribed where the threats are direct, and relate to the wellbeing, safety or life of the victim (eg, threats to harm the victim).
(f) Extraordinary harm suffered by the victim <i>beyond those normally caused in (a), (b), (d) and (e):</i>	<u>1 – 3 points</u> <u>1 point:</u> Minor harm, largely reversible <u>3 points:</u> Severe harm to the safety, health, reputation, economic position, or freedom of the victim	Relevant to determining the appropriate sentence is also the additional harm (if any) caused to the victim beyond those normally flowing from (a), (b), (d) and (e). This can often be discerned from the victim impact statement or the objective circumstances. The harm suffered by each victim may vary. 1 point may be ascribed to cases where such harm caused is not major and largely reversible. 3 points may be ascribed where

		the harm caused is severe and fairly long lasting. For example, in cases of public dissemination of nude pictures of the victim, apart from demonstrating the high culpability of the victim (relevant for the public dissemination point), the victim may also suffer severe and long lasting emotional and psychological harm.
(g) Involving third parties	<u>1 – 3 points</u> <u>1 point</u>: Low degree of intrusion <u>3 points</u>: High degree of intrusion	In certain cases, the accused may also involve third parties, such as the victim’s partner, spouse or family, and cause alarm and inconvenience to these third parties. The number of points to be ascribed to such cases depends on the degree of intrusion with respect to such third parties and the number of third parties involved. If, for example, the accused merely calls such third parties, the degree of intrusion would be low (1 point). If the accused’s actions are such that the victim’s family, for example, has to take necessary steps to also avoid the accused, the degree of intrusion would be high (3 points).
Total number of points		The total number of points is to be collated to determine the appropriate sentencing band (see [38] below).

Any additional <i>independent</i> factors		The factors explored above seek to collate the independent offence-specific factors that reflect an accused's culpability and the harm caused to the victim. If more <i>independent</i> offence-specific factors are disclosed on the facts over and above those enumerated above, more points may be added. Every one point leads to an increment of 0.8 months to the indicative starting sentence.
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(2) Determining the appropriate sentencing band

35 Once the severity of the offence, as gleaned from the number of points, has been ascertained, the offence may be placed in the appropriate sentencing band.

36 Cases with one to five points would be of the lowest severity, for which the custodial threshold would not be crossed. Such cases fall under Band 1, for which the indicative sentence would be a fine of up to the maximum of \$5,000.

37 Once the case exceeds five points, the custodial threshold would generally be crossed, subject to any offender-specific mitigating factors which may justify a high fine in lieu of a custodial sentence. Once the custodial threshold is crossed, the indicative starting sentence would be 0.8 months' imprisonment (six points), with a 0.8 months' increment for each additional point.

38 The sentencing bands are thus as follows:

- (a) Band 1 (one to five points): up to \$5,000 fine;
- (b) Band 2 (above five points to ten points): \$5,000 fine, or up to four months' imprisonment;
- (c) Band 3 (above ten points to 15 points): four to eight months' imprisonment;
- (d) Band 4 (above 15 points to 20 points): eight to 12 months' imprisonment.
- (e) Band 5 (above 20 points): 12 months' imprisonment and above.

39 In detail, the indicative starting sentence for each point is as follows:

Points	Indicative starting sentence
1	\$1,000 fine
...	...
5	\$5,000 fine
6	0.8 month's imprisonment
7	1.6 month's imprisonment
8	2.4 months' imprisonment
9	3.2 months' imprisonment
10	Four months' imprisonment
11	4.8 months' imprisonment
...	...
15	Eight months' imprisonment

...	...
20	12 months' imprisonment
21	12.8 months' imprisonment
22	13.6 months' imprisonment
23	14.4 months' imprisonment
24	15.2 months' imprisonment
25	16 months' imprisonment
...	...

40 It can be seen that after 20 points, the indicative starting sentence exceeds the statutory maximum of 12 months' imprisonment for unlawful stalking offences under s 7 POHA. This is not problematic, as the indicative starting sentence is but a reflection of the appropriate sentence after the consideration of the offence-specific factors only (*ie*, the first stage). At the next stage, the indicative starting sentence may be calibrated downwards to account for offender-specific mitigating factors, such as a timely plea of guilt. After accounting for both the offence-specific and offender-specific factors, a recommended final sentence would be obtained. This recommended final sentence may fall below 12 months' imprisonment. If the recommended final sentence continues to exceed 12 months' imprisonment after considering the offender-specific factors (*ie*, the second stage), the actual sentence to be imposed must in any case not exceed the maximum imprisonment term of 12 months' imprisonment, although the court may couple that maximum imprisonment term with a fine not exceeding \$5,000 (see s 7(6) POHA). This means that the mandatory statutory cap on the actual sentence *must be applied*

even though the culpability and recommended final sentence assessed under the sentencing framework may be higher than the maximum prescribed by law.

41 The points-based framework serves simply to guide judges in exercising their discretion in arriving at the appropriate indicative starting sentence, having regard to the offence-specific factors of each case. It does not take away the discretion vested in sentencing judges, who must ultimately conduct an “exercise in evaluative ethical judgment” (*Terence Ng* at [48]) in determining the appropriate number of points (if any) to attribute to each of the offence-specific factors.

42 Such a methodology, which does not depart in substance and in principle from the two-step sentencing band approach developed in *Terence Ng*, has at least two advantages over the present number-of-aggravating-factors focused approach:

(a) First, it allows for calibration *between* the offence-specific factors. Certain factors cause far more harm, or reflect the heightened culpability, of the accused. For example, in the context of unlawful stalking, the public dissemination of sensitive information or images may cause irreversible harm to the reputation of the victim, and therefore requires more points to be ascribed to it within the given range to better reflect the greater intensity of the offender’s wrongdoing. Hence, the maximum number of points that can be given for this factor is higher when compared to the maximum number of points that can be given for a factor assessed to be of lower weightage.

(b) Secondly, it allows for calibration *within* each of the offence-specific factors. As is patent from the table at [34] above, the severity

within each offence-specific factor may vary from case-to-case. For example, where the stalking occurs over a longer period and with greater frequency, more points within the given range ought to be allocated to this offence-specific factor. The natural corollary is that an accused with a greater *number* of aggravating factors (each of a low weightage) may not necessarily fall on a higher band than an accused with a lesser *number* of aggravating factors (but each of which may be of a high weightage); the appropriate sentencing band depends cumulatively therefore on the degree of severity of each of the aggravating factors present having regard also to their individual relative weightages, as reflected in the aggregate number of points scored in each particular case. In other words, the total number of points scored reflects the cumulative effect of all the aggravating factors present, *including* their relative degree of importance or significance in terms of both the harm caused and the culpability of the offender.

The second step: offender-specific factors

43 At the second step, the court should have regard to the offender-specific factors (whether mitigating or aggravating). The court has the discretion as to the appropriate amount of weight to place on such factors, and an adjustment *beyond* the sentencing range prescribed in each sentencing band may be called for in the appropriate case. For example, in cases on the borderline of each sentencing band, the mitigating or aggravating factors may tip the case to the lower or higher sentencing band.

44 Some offender-specific aggravating factors include:

(a) Offences taken into consideration for the purposes of sentencing, especially when the offences taken into consideration are of a similar nature: see *PP v UI* [2008] 4 SLR(R) 500 at [38].

(b) The presence of relevant antecedents, especially if the offences were committed against the same victim, such that the harm suffered by the victim is compounded.

(i) *Enhanced penalty provision: relevance of subsequent similar offences*: It is noted that a person who has been convicted under s 7 POHA is liable for enhanced penalty for any subsequent offence. If the subsequent offence is prosecuted under the enhanced penalty provision in s 8 POHA, the accused shall, on conviction, be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding two years or to both (s 8(e) POHA). The fine and imprisonment terms for the enhanced offence is therefore twice that of the initial offence, which carries a maximum fine of \$5,000 or imprisonment not exceeding one year or both (s 7(6) POHA). In such cases, the accused would already be punished by way of the enhanced penalty charge under s 8 POHA, and no additional aggravating weight should therefore be given to the prior antecedents of the accused in coming to an appropriate sentence for the s 8 POHA charge.

If, however, the Prosecution exercises its discretion and elects to prosecute a subsequent offender with a prior conviction under s 7 POHA (even though s 8 POHA could be used), the relevant antecedents could then be considered as an aggravating factor.

- (c) The offender committed the present set of offence(s) while on court bail for other offence(s).

45 Some offender-specific mitigating factors include:

- (a) Pleas of guilt: In unexceptional plea of guilt cases, a timely plea would be “indicative of genuine remorse” (*Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [57]). It also has mitigating value as it “spares the victim the ordeal of having to testify, thereby saving the victim the horror of having to re-live the incident” and “saves the resources of the State which would otherwise have been expended if there were a trial” (*Terence Ng* at [66]). In such unexceptional cases, considering that the maximum imprisonment term for unlawful stalking offences under s 7 POHA is a relatively short period of 12 months’ imprisonment, an approximate 25% discount from the indicative starting sentence as determined after the first-stage (offence-specific factors) would be appropriate.

The amount of discount for a plea of guilt may be scaled upwards or downwards if other factors are present. For example, if the accused had earlier elected to claim trial and only pleaded guilty on the first day of the trial, the discount ought to be far lesser, as resources would already have been expended in preparing for a trial. This accused is also likely to be less remorseful than one who pleaded guilty at the first available opportunity.

- (b) The youth or advanced age of the offender: *Terence Ng* at [65].
 - (i) For youths, rehabilitation is a key sentencing consideration, for which a lower or alternate rehabilitative

sentence like probation or reformatory training may be considered. However, in egregious cases of unlawful stalking (eg, Band 4 and 5 cases), “a condign punishment” would be required “in order to satisfy the needs for deterrence and retribution” (see *Terence Ng* at [65(b)], citing *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449).

(ii) For older offenders, “the imposition of substantial custodial terms deprives the elderly of a larger fraction of their expectation of life. This – a concern for the overall proportionality of punishment ... is the real reason for affording leniency on account of advanced age” (*Terence Ng* at [65(c)]). Nonetheless, given that the maximum imprisonment term for the offence of unlawful stalking is only 12 months’ imprisonment, the custodial term is unlikely to be so substantial such that this factor features weightily.

46 The offender-specific factors stated above are non-exhaustive. Ultimately, each sentence must be calibrated to best fit the accused’s circumstances. In this regard, the classic principles of sentencing, namely retribution, deterrence, prevention and rehabilitation are helpful in determining the appropriate amount that an accused’s sentence ought to be enhanced or reduced at the second stage of the framework.

Application of the sentencing framework

47 Applying the framework to past cases of unlawful stalking will provide a better illustration of the usefulness of the refined two-stage sentencing framework.

Methodology

48 As per the framework, the offence-specific factors present in each case will first be analysed, with the appropriate number of points attributed depending on the facts disclosed. An indicative starting sentence (falling within the appropriate sentencing band) would then be disclosed from the aggregate number of points after this first stage.

49 Moving to the second stage, appropriate additions or subtractions to the indicative starting sentence will be made depending on the offender-specific factors present in each case. A final sentence derived by applying the framework would then be disclosed (the recommended final sentence).

50 Later in this judgment, the recommended final sentences disclosed from each case will be back-tested and compared against the actual sentences imposed in the individual cases. This back-testing will demonstrate the efficacy and reliability of the framework in ensuring clarity and consistency in sentencing which is commensurate with the culpability and the harm in each case.

Analysed cases

51

PP v Lim Seow Kiat [2018] SGMC 44
Summary of facts: The 68-year-old male offender harassed the victim between 15 January 2018 and 30 January 2018. During this period, the offender sent two messages to the victim. The contents of the messages were innocuous, such as reminding the victim to buy Toto. On 16 January 2018, he also drove into the compound of the victim's new residence, having obtained the address by asking the movers of the victim, and going up to her unit to look at her new residence. On 30 January 2018, the offender sent another

innocuous and anonymised letter to the victim.		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Short duration, low frequency</i> : four separate occasions over about two weeks.	1
Degree of intrusion (1 – 3 points)	<i>Low degree of intrusion</i> : the offender only sent innocuous messages and a letter to the victim. While he loitered around her new residence, he only looked at it.	1
Indicative starting sentence:	2 points (Band 1)	\$2,000 fine
Offender-specific factors	<i>Aggravating</i> : Offender had relevant antecedents, as he was traced for two prior offences against the same victim: mischief causing damage (2013: day reporting order and community service order) and using threatening, abusive or insulting words or behaviour with intent to cause harassment, alarm or distress (2015: \$1,000 fine). <i>Mitigating</i> : Plea of guilt.	Antecedents warrant an uplift for specific deterrence. However, viewed in light of the plea of guilt, the custodial threshold was not crossed.
Recommended final sentence	\$3,000 fine	
PP v Ng Han Wei		
Summary of facts: The 24-year-old male offender chanced upon		

the 12-year-old victim on her way to school. Thereafter, on three separate occasions across a two-week period (between 29 April 2016 and 10 May 2016), he loitered around her house and followed her in the lift and on her way to school. On one particular occasion, the offender asked the victim if he could kiss her, which she duly ignored and proceeded to school.		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Short duration, low frequency:</i> three separate occasions across a two week period (29 April, 9 May, and 10 May 2016).	1
Degree of intrusion (1 – 3 points)	<i>High degree of intrusion:</i> Loitered around victim’s unit, took the same lift as her, asked the victim for her name in the lift, asked if he could kiss her, followed her to school, waited for her outside her house.	3
Vulnerable victim (1 – 3 points)	<i>Vulnerable victim, no exceptional circumstances:</i> Victim was 12, offender was 24, and the parties had no relationship.	3
Indicative starting sentence:	7 points (Band 2)	1.6 months’ imprisonment
Offender-specific factors	<i>Aggravating:</i> Offender had relevant antecedents, as he was traced for outrage of modesty (2011: reformatory training) and uttering words or making any gesture intended to insult the modesty	Antecedents warrant an uplift of one month’s imprisonment for specific deterrence.

	of a woman (2015: four weeks' imprisonment). <i>Mitigating:</i> Plea of guilt.	25% discount of 0.6 month's imprisonment from uplifted sentence for plea of guilt.
Recommended final sentence	Two months' imprisonment	
PP v Adrian Goh		
Summary of facts: The offender was in a relationship with the victim, and had taken nude photographs of the victim with her permission. At the material time of the offence, their relationship was strained, and the offender felt insecure that the victim had a close relationship with several male colleagues. On 31 July 2015, feeling resentful that the victim would be going on a trip with her male colleague, the offender transferred the nude photographs of the victim from his phone into her phone, and thereafter sent them to a chat group that consisted of the victim's colleagues and superiors. Along with the photographs, the offender sent messages to the same chat group suggesting that the victim and her male colleague were having an affair. ¹⁴ On 3 August 2015, the offender sent an email to the victim's superior using a fictitious account, making baseless suggestions that the victim and her male colleague had sexual intercourse in their workplace uniform. He also addressed a letter to the victim's father suggesting that church-goers had found out that the victim had multiple sexual partners, knowing that her father would be disapproving of such conduct. ¹⁵		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking	<i>Short duration, low frequency:</i> Three separate occasions, across a four day	1

¹⁴ PP v Adrian Goh SOF at [10] – [11].

¹⁵ PP v Adrian Goh SOF at [16] – [18].

(1 – 5 points)	period.	
Degree of intrusion (1 – 3 points)	<i>Low degree of intrusion:</i> Harassment limited to electronic and non-physical means.	1
Public dissemination of sensitive information or images private to the victim (1 – 5 points)	<i>Public dissemination of highly sensitive images:</i> The offender sent highly-sensitive nude photographs of the victim to a chat group that consisted of the victim’s colleagues and superiors. This was a grave abuse of trust, as he had only obtained the photographs with the victim’s consent, on the condition that he did not disseminate them. ¹⁶	5
Involving third parties (1 – 3 points)	<i>Involved victim’s male colleague and father:</i> The harassment extended to distress being caused to the victim’s male colleague as well as her father.	3
Extraordinary harm (1 – 3 points)	<i>Moderate degree of extraordinary harm:</i> The victim impact statement disclosed that, as a result of the incident, the victim “feared entering a new romantic relationship” and continued to fear seeing the offender on the streets for fear of being beaten up by the offender. There was therefore a moderate level of	2

¹⁶ PP v Adrian Goh SOF at [4].

	psychological harm caused to the victim that was above and beyond the harm considered in the earlier factors.	
Indicative starting sentence	12 points (Band 3)	5.6 months' imprisonment
Offender-specific factors	<i>Mitigating:</i> Plea of guilt.	25% discount of 1.4 months' imprisonment
Recommended final sentence	4.2 months' imprisonment	
PP v Tan Boon Wah		
Summary of facts: The offender was previously in a three-year relationship with the victim. Unable to accept the end of the relationship, he stalked his former partner frequently for about one year, confronting him outside his home following him to places he frequented, as well as calling and sending him messages frequently which gave the victim the impression that he was under surveillance. In addition to the prolonged stalking, the offender uploaded photographs of them kissing to his Facebook account, and e-mailed the victim nude photographs that he had surreptitiously taken of the victim during their relationship.		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Long duration, high frequency:</i> Stalked ex-partner frequently for about one year.	5
Degree of intrusion	<i>High degree of intrusion:</i> The stalking entailed confronting	3

(1 – 3 points)	him outside his home, following him to places he frequented, as well as calling and sending him messages frequently which gave the victim the impression that he was under surveillance.	
Public dissemination of sensitive information or images private to the victim (1 – 5 points)	<i>Public dissemination of moderately sensitive image:</i> Offender uploaded photographs of him kissing the victim (another male) to his Facebook account.	3
Use of threats (1 – 3 points)	<i>Indirect threat to victim:</i> The offender emailed the victim nude photographs that he had surreptitiously taken of the victim during their relationship, suggesting that he would release them if the victim did not comply with his demands.	2
Indicative starting sentence	13 points (Band 3)	6.4 months' imprisonment
Offender-specific factors	<i>Mitigating:</i> Plea of guilt.	25% discount of 1.6 months' imprisonment
Recommended final sentence	4.8 months' imprisonment	

Tan Yao Min v PP		
Summary of facts: The 21 year-old male offender was obsessed with two biological sisters, who were aged 14 and 18 respectively. The unlawful stalking charge related to the younger, 14-year-old sister. For about one and a half months (between 12 January 2017 and 24 February 2017), the offender waited for the victim near her block, followed her and tried to make eye contact with her. He also followed her to a bus stop near her home. When the bus she boarded stopped at a traffic light, he knocked on the window of the bus. He also sent her a Facebook friend request. On one occasion, the accused chased the younger sister and tried to touch her with his outstretched hands, which conduct formed the subject of a separate charge against him that was taken into consideration for sentencing. The offender also visited the victim's father's workplace to speak with the father's colleague. The sisters' family had to take numerous self-help measures to guard against the offender's stalking as a result (<i>Tan Yao Min v PP</i> at [91]).		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Short duration, moderate frequency:</i> While the stalking was over a relatively short period of one and a half months, it was moderately frequent.	2
Degree of intrusion (1 – 3 points)	<i>High degree of intrusion:</i> For about one and a half months, the offender waited for the victim near her block, followed her and tried to make eye contact with her. He also followed her to a bus stop near her home. When the bus she boarded stopped at a traffic light, he knocked on	3

	the window of the bus. He also sent her a Facebook friend request. On one occasion, the accused chased the younger sister and tried to touch her with his outstretched hands, which conduct formed the subject of a separate charge against him that was taken into consideration for sentencing.	
Vulnerable victim (1 – 3 points)	<i>Vulnerable victim, no exceptional circumstances:</i> Victim was 14, offender was 21, and the parties had no relationship.	3
Extraordinary harm (1 – 3 points)	<i>Extraordinary harm:</i> The victim impact statement disclosed that the sisters, who had been harassed by the offender for a period of six and a half years, suffered “severe trauma and distress” (<i>Tan Yao Min v PP</i> at [102]). This was significant extraordinary harm beyond those normally flowing from the charge of unlawful stalking which the offender faced.	3
Use of threats (1 – 3 points)	<i>Indirect threats:</i> The offender also sent handwritten letters to the sisters’ home asking to have sex with the younger sister for money, thereby sparking concerns about her safety.	0

	<i>No double counting:</i> However, no points were given for this as he faced a separate alarm charge, for which he received two weeks' imprisonment, in relation to this letter.	
Involving third parties (1 – 3 points)	<i>Involved the victim's family to a significant degree:</i> Finally, the offender also involved third parties, in particular the victim's family. In this regard, he had visited her father's workplace to speak with his colleague. The sisters' family had to take numerous self-help measures to guard against the offender's stalking as a result (<i>Tan Yao Min v PP</i> at [91]).	3
Indicative starting sentence	14 points (Band 3)	7.2 months' imprisonment
Offender-specific factors	<i>Aggravating:</i> Two prior antecedents for similar offences against the <i>same</i> victim (October 2010: 30 months' term in juvenile home; March 2015: 15 months' supervised probation). <i>Mitigating:</i> Plea of guilt.	Antecedents warrant an uplift of two months' imprisonment to specifically deter the offender. 25% discount of 2.3 months' imprisonment from uplifted sentence for

		plea of guilt.
Recommended final sentence	6.9 months' imprisonment	
PP v Nelson Tan		
Summary of facts: The offender had romantic feelings for the victim which were not reciprocated. For a long period of about one and a half years (between November 2015 and July 2017), the offender physically monitored the victim at her home and her workplace. Apart from consistently loitering around the victim, the offender also sent a total of 104 WhatsApp and Facebook messages to the victim between May 2016 and July 2017, asking her to meet up with him and warning her to stay away from her boyfriend. In his messages, he threatened to cause harm to the victim's boyfriend if the victim did not break up with her boyfriend. When the victim blocked the offender on Facebook, he created three fake profiles and continued messaging her from those accounts.		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Long duration, high frequency:</i> For a long period of about one and a half years, he consistently monitored the victim physically outside her home and workplace, and sent a total of 104 messages to the victim.	5
Degree of intrusion (1 – 3 points)	<i>High degree of intrusion:</i> Physically monitored the victim at her home and at each new workplace.	3
Use of threats (1 – 3 points)	<i>Indirect threats to harm the victim's boyfriend:</i> In his messages, the offender threatened to cause harm to the victim's boyfriend if the	2

	victim did not break up with her boyfriend. When the victim blocked the offender on Facebook, he created three fake profiles and continued messaging her from those accounts. While the offender was separately charged for the acts he did to the victim's boyfriend, the threatening messages were sent to the <i>victim</i>, and would have caused her to suffer alarm and harm separate from any harm suffered by the victim's boyfriend, for which points ought to be attributed.	
Extraordinary harm (1 – 3 points)	<i>Moderate degree of extraordinary harm:</i> The victim impact statement disclosed that the victim experienced mood swings, and “contemplated cutting her hand to release her frustration”.¹⁷ Her fear of the offender turning up at her workplace or her home also made it difficult for her to concentrate at work. The harm suffered by the victim exceeded that which a victim of stalking would ordinarily suffer. Apart from the loss of freedom to do things which she was legally entitled to do, the victim suffered psychological damage, and poorer performance in her	2

¹⁷ PP v Nelson Tan SOF at [6].

	workplace.	
Involving third parties (1 – 3 points)	<i>No double counting for acts of harassment already charged for:</i> The offender also harassed the victim's boyfriend. However, the offender was separately charged for his harassment of the victim's boyfriend, and no points ought therefore to be attributed for his conduct towards the victim's boyfriend to avoid double counting. <i>Involving third parties to a significant degree:</i> Nonetheless, points should be attributed to this factor as the victim's family was significantly affected by the offender's stalking. In this regard, the victim's father had to pick her up from work every day. The victim's younger sister also moved out of the house because of the offender's repeated visits to the house, which caused stress to the victim's family.¹⁸	3
Indicative starting sentence	15 points (Band 3)	Eight months' imprisonment
Offender-specific factors	<i>Mitigating:</i> Plea of guilt.	25% discount of two months' imprisonment

¹⁸ PP v Nelson Tan SOF at [6].

Recommended final sentence	Six months' imprisonment	
PP v Lai Zhi Heng		
Summary of facts: The offender shared a “very brief sexual relationship” with the victim. ¹⁹ Thereafter, for a period of about one and a half years (between April 2014 and November 2015), the offender harassed her incessantly. Following repeated threats by the offender, the victim sent a total of 30 nude photographs of herself over multiple occasions. When the victim attempted to avoid the offender, the offender printed flyers with harassing messages, her nude photographs, and her personal information, and posted them publicly near her home. He also placed them in the letter boxes at her very block of flat. The offender’s abuse of the victim further extended to forcing her to write “I promise not to rebel again” a total of 200 times. When she tried to ignore him, he then uploaded her nude photographs onto the Facebook group for her interest group at school with the false message that she was offering prostitution services. In October 2015, the offender threatened the victim by saying that he would “wreck a havoc” in her life, and make her “regret it” if she did not meet him. ²⁰		
Offence-specific factors	Details	Point(s)
Duration and frequency of stalking (1 – 5 points)	<i>Long duration, high frequency:</i> The offender harassed the victim for about one and a half years, and the harassment was incessant in nature: he would threaten her, message her, visit her personally, etc.	5
Degree of intrusion	<i>High degree of intrusion:</i> Went to her house, posted	3

¹⁹ PP v Lai Zhi Heng SOF at [5].

²⁰ PP v Lai Zhi Heng SOF at [8] – [13].

(1 – 3 points)	nude photographs of her in the letter boxes at her very block of flat, forced her to meet him based on threats, <i>etc.</i>	
Public dissemination of sensitive information or images private to the victim (1 – 5 points)	<i>Public dissemination of highly sensitive information on multiple occasions:</i> Published her nude photographs on flyers, placed them into letter boxes at the victim's block of flats, and onto the Facebook group for her interest group at school with the false message that she was offering prostitution services.	5
Use of threats (1 – 3 points)	<i>Direct threats to the victim's safety and well-being:</i> In October 2015, the offender threatened the victim by saying that he would “wreck a havoc” in her life, and make her “regret it” if she did not meet him. This was after he had issued multiple earlier threats which he had acted upon by, for example, publicly disseminating the victim's nude photographs.	3
Extraordinary harm (1 – 3 points)	<i>High degree of extraordinary harm:</i> The victim's studies were disrupted, and she had to change schools, moving from a school in the west of Singapore (which was closer to her home) to another school in central Singapore.	3

	This was done to avoid the accused. ²¹	
Involving third parties (1 – 3 points)	<i>Involving third parties to a significant degree:</i> The victim's mother also lost her income as she had to quit her job to accompany the victim everywhere as a result of the accused's stalking.	3
Indicative starting sentence	22 points (Band 5)	13.6 months' imprisonment
Offender-specific factors	<i>Mitigating:</i> While the offender pleaded guilty, less weight ought to be given to his plea of guilt. After criminal proceedings were commenced against the offender in relation to the stalking of the victim, he approached the victim in the vicinity of her school, asking her to write a letter pleading for leniency on his behalf in relation to the criminal charge. When the victim refused to do so, he threatened to post the nude photographs of her online unless she complied with his request. This formed the substance of another criminal intimidation charge against the offender, which was proceeded with, and suggested that he had lesser remorse for the harassment	15% discount of two months' imprisonment

²¹ PP v Lai Zhi Heng SOF at [15].

	and distress he had caused the victim throughout his period of stalking. Nonetheless, time and resources were saved in prosecuting the offender as a result of his plea of guilt. Some discount was therefore warranted.	
Recommended final sentence	11.6 months' imprisonment	

Efficacy of the sentencing framework

52 As seen from the cases analysed, this points-based sentencing framework allows for a deeper consideration of each offence-specific factor, without giving an undue focus on the sheer *number* of such factors present. For the avoidance of doubt, the two-step sentencing band approach remains, albeit with refinements as to how the appropriate sentencing band is to be derived.

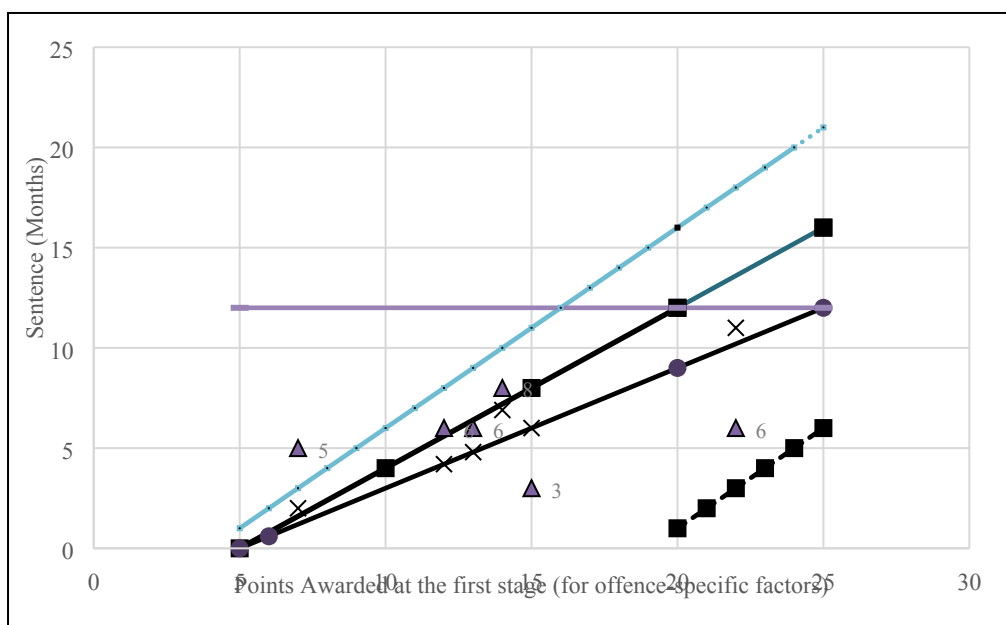
Back-testing of the sentencing framework

53 To evaluate the efficacy of the proposed sentencing framework, it has been back-tested against the cases analysed above.

54 In the analysis of the cases above, points were attributed to the offence-specific factors in each case, thereby shedding light on the indicative starting sentence. Thereafter, the offender-specific factors were taken into account, to arrive at the recommended final sentence under the sentencing framework herein.

Congregation of sentences around three to six months' imprisonment

55 These recommended final sentences were then compared against the actual sentences meted out in the cases, revealing the following:



Legend	
Solid line with square markers	Indicative starting sentence after first stage
Dotted line with circular markers	Recommended final sentence after factoring in an ordinary plea of guilt (25% discount from indicative starting sentence)
Horizontal solid line without markers	Maximum imprisonment term for s 7 POHA cases
Triangular markers	Actual sentence in cases analysed
Crossed markers	Recommended final sentence for cases analysed

56 Reviewing the graph above, it will be seen that for cases on the lower end (less points), the recommended final sentence is lower than the actual sentence. As for cases on the higher end (more points), the recommended final sentence is higher than the actual sentence:

Case	Actual sentence (\$ or months)	Recommended final sentence (\$ or months)	Difference (\$ or months)
<i>PP v Lim Seow Kiat</i> (2 points)	\$5,000 fine	\$3,000 fine	-\$2,000 fine
<i>PP v Ng Han Wei</i> (7 points)	5	Indicative starting sentence: 1.6 months Antecedents: + 1 month Pleaded guilty (25% discount): - 0.6 months <u>Recommended final sentence:</u> 2 months	-3
<i>PP v Adrian Goh</i> (12 points)	6	Indicative starting sentence: 5.6 months Pleaded guilty (25% discount): - 1.4 months <u>Recommended final sentence:</u> 4.2 months	-1.8

<i>PP v Tan Boon Wah</i> (13 points)	6	Indicative starting sentence: 6.4 months Pleaded guilty (25% discount): - 1.6 months <u>Recommended final sentence:</u> 4.8 months	-1.2
<i>Tan Yao Min v PP</i> (14 points)	8	Indicative starting sentence: 7.2 months Antecedents: + 2 months Pleaded guilty (25% discount): - 2.3 months <u>Recommended final sentence:</u> 6.9 months	-1.1
<i>PP v Nelson Tan</i> (15 points)	3	Indicative starting sentence: 8 months Pleaded guilty (25% discount): - 2 months <u>Recommended final sentence:</u> 6 months	+3

<i>PP v Lai Zhi Heng</i> (22 points)	6	Indicative starting sentence: 13.6 months Pleaded guilty (15% discount due to lessened remorse): - 2 months <u>Recommended final sentence:</u> 11.6 months	+5.6
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57 On its face, the sentencing framework therefore *appears* to be more lenient to accused persons with lesser points (less serious offending), and stricter to accused persons with higher points (more serious offending).

(1) The sentencing trend of three to six months' imprisonment

58 However, the reason for the significant differences between the recommended final sentence and the actual sentence at the lower end and higher end of the framework is because the sentence for cases of unlawful stalking appear to have congregated around three to six months' imprisonment (the "sentencing trend") (*Tan Yao Min v PP* at [81]).

59 Hence, in determining the appropriate sentence for each case, judges refer to the sentencing trend of three to six months' imprisonment as the starting point. Thereafter, appropriate adjustments upwards or downwards are made if the case at hand is distinguishable from the cases which make up the sentencing trend (see *Public Prosecutor v Lim Seow Kiat* [2018] SGMC 44 ("*PP v Lim Seow Kiat*") at [27]–[29]).

60 For example, in *Tan Yao Min v PP*, the judge considered seven decisions where the offenders were sentenced to three to six months' imprisonment for unlawful stalking. After considering the cases, the judge noted the following aggravating factors in the case before him: (a) the victim was a minor and was thus a vulnerable victim, (b) the offender had committed similar offences against the same victim in 2010 and 2015, and (c) the offender's stalking affected third parties, as the offender had added the victim's friend on Facebook, and spoke to the victim's father's colleague at his workplace (*Tan Yao Min v PP* at [90]). While the judge noted that, unlike the offender in *PP v Lai Zhi Heng*, the offender did not disseminate the victim's nude photographs, he found that in totality, eight months' imprisonment was not manifestly excessive (*Tan Yao Min v PP* at [91]–[92]).

61 This approach was also adopted by the District Judge. First, he noted the sentencing trend of three to six months' imprisonment (*Public Prosecutor v Lim Teck Kim* [2018] SGMC 77 ("GD") at [10]). Thereafter, he reviewed the seven cases considered in *Tan Yao Min v PP*, and found the facts of the present case "similar to the case" of *PP v Nelson Tan* (one of the seven cases considered in *Tan Yao Min v PP*), where the offender was sentenced to three months' imprisonment (GD at [18]). In the circumstances, he also sentenced the appellant to three months' imprisonment (GD at [20]).

(2) Proof of congregation of sentences

62 As a result of the reliance on the sentencing trend as the starting point in determining the appropriate sentence, cases are often straightjacketed into a narrow sentencing width. This congregation of sentences can be seen when the actual imprisonment terms in the cases analysed were given notional discounts or uplifts depending on the *offender-specific* factors present. This was so as to

arrive at a notional first-stage sentence, which reflects the combined severity of the *offence-specific* factors only, without any regard being given to the factors in favour or against the particular offender (*ie*, *offender-specific* factors).

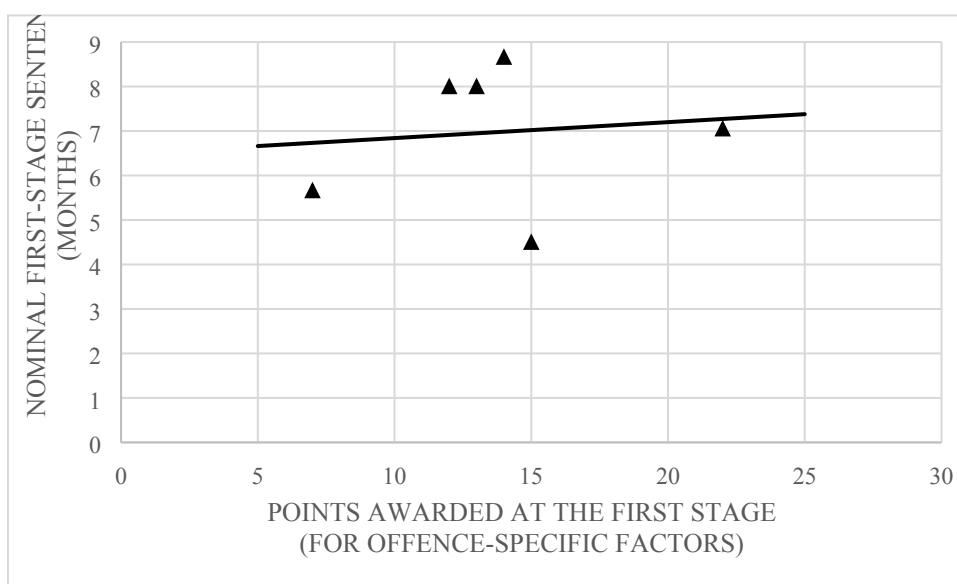
63 As the severity of the offence should increase with every increase in the number of points, a positive (upward) gradient would be expected for the notional first-stage sentences of the cases, whereby the *offender-specific* factors are disregarded.

64 The notional sentences for each case analysed were derived as such:

Case (Points)	Notional first- stage sentence (months)	Offender-specific factors: Notional discount/uplift to reverse the effect of offender- specific factor(s) (months)	Actual sentence (months)
<i>PP v Ng Han Wei</i> (7 points)	5.66	Two relevant antecedents: + 1 Pleaded guilty (25% discount): - 1.66	5
<i>PP v Adrian Goh</i> (12 points)	8	Pleaded guilty (25% discount): - 2	6
<i>PP v Tan Boon Wah</i> (13 points)	8	Pleaded guilty (25% discount): - 2	6
<i>Tan Yao Min v PP</i> (14 points)	8.66	Two relevant antecedents against the same victim: + 2 Pleaded guilty (25% discount): - 2.66	8

<i>PP v Nelson Tan</i> (15 points)	4.5	Pleaded guilty (25% discount): - 1.5	3
<i>PP v Lai Zhi Heng</i> (22 points)	7.05	Pleaded guilty (15% discount due to lessened remorse): - 1.05	6

65 Plotted on a graph, the notional first-stage sentences for the cases produced a best-fit line with a very mildly positive gradient:



66 The very mildly positive gradient (showing a total increment in the imprisonment term of only about one month from five points to 25 points) suggests that the sentences in the cases analysed are being decided primarily by reference to the present sentencing trend of three to six months' imprisonment, with insufficient regard to offence-specific factors and their respective intensity. As a result, the nominal first-stage sentences are bunched together at around

seven months' imprisonment (as can be seen on the best-fit line), even though the points, which reflect the intensity of the offence-specific factors and therefore serve as the proxy for the severity of each individual offence, do vary widely from seven to 22 points.

(3) Problem of congregation of sentences

67 This congregation of the sentences for the analysed cases between three to six months' imprisonment is plainly unsatisfactory for three reasons.

68 First, it is likely that the full sentencing range, which permits up to 12 months' imprisonment, will not be properly utilised (see *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 at [76] and *Soh Qiu Xia Katty v Public Prosecutor* [2019] 3 SLR 568 at [28(b)]).

69 Secondly, the dispersion of the nominal first-stage sentences of the cases (*ie*, based purely on the *offence-specific* factors and with the effects of all *offender-specific* factors removed) as plotted on the graph (at [65] above) also demonstrates a lack of logical consistency in sentencing. Some cases scoring lower points have higher nominal first-stage sentences than some of those cases scoring higher points, when the opposite should logically have been the case.

70 Thirdly and most importantly, it can lead to dissimilar cases being treated alike.

71 For example, while both *PP v Adrian Goh* and *PP v Lai Zhi Heng* involved the public dissemination of the victims' nude photographs, the duration and frequency of harassment as well as the degree of intrusion in the two cases were diametrically opposite. The offender in *PP v Adrian Goh* harassed the victim for a short four-day period, and his harassment was limited

to electronic and non-physical means. In contrast, the offender in *PP v Lai Zhi Heng* harassed the victim incessantly for one and a half years, harassing her around her school and house. He also issued threats to the victim, causing her to suffer such extraordinary harm that she had to switch schools to avoid the offender.

72 Considering the intensity of each offence-specific factor, it would be clear that the offence in *PP v Lai Zhi Heng* (scoring 22 points for the *offence-specific* factors) was of a far graver nature than that in *PP v Adrian Goh* (scoring only 12 points for the *offence-specific* factors). Yet, without a framework to guide the sentencing judge, such superficially similar cases may result in an inevitable congregation of sentences; indeed, both offenders in *PP v Adrian Goh* and *PP v Lai Zhi Heng* received the same sentence of six months' imprisonment. It must be noted that the incongruity cannot be explained by any possible differences between the two cases in terms of the *offender-specific* factors because there was nothing much in fact to differentiate between them: both offenders had no relevant antecedents and both had pleaded guilty.

73 The two-step sentencing framework therefore seeks to ensure that appropriate weight will be given to the *offence-specific* factors in each case. While two cases may appear at first blush to be largely similar, a closer analysis may reveal the differing seriousness of the offences in each case.

74 Applying the sentencing framework, "outliers" like *PP v Lai Zhi Heng* will therefore be minimised, and the sentencing judge would be assisted in arriving at a sentence with more clarity and coherence. Insofar as the offence-specific factors were derived from the analysis of the cases, the sentencing framework does not depart from the precedents, but rather seeks to refine them

and detail the sentencing considerations that each court should take into account for cases of unlawful stalking.

Application of the sentencing framework to the facts

75 Applying the framework to the facts of the present case, the offence-specific factors disclose an aggregate of six points:

(a) *Short duration, moderate frequency of stalking (two points)*: The appellant stalked the victim for a short duration of about three weeks (from 23 February 2018 to 13 March 2018). The frequency of stalking was moderate, as the appellant's stalking did not amount to a daily intrusion into the victim's life, given that there were gaps between the periods he sent the messages (the messages were sent on 23 February 2018, and 4 and 6 March 2018 only) and harassed the victim in person (on 23 February 2018, and 4, 6, 8, 12 and 13 March 2018 only).

(b) *Degree of intrusion was high (three points)*: The degree of intrusion by the appellant was high. On 23 February 2018, after having coerced the victim to allow him to spend the night at her place by inflicting injuries on himself and blaming the victim for such injuries, the appellant refused to leave the victim's residence, and threatened to hurt himself if she made him leave the house. He could only be removed after the police arrived and arrested him for attempted suicide as he had threatened to kill himself rather than end the relationship with the victim ("the 23 February incident").²² While his acts of harassment after 23 February 2018 amounted to merely sending messages or loitering around the victim's vicinity, viewed in light of the 23 February incident, which would have made the victim fearful of the appellant's presence,

²² SOF at [13] – [15].

they do not detract from the high degree of intrusion by the appellant into the victim's life.

(c) *Threats to self and not to the victim, unlike most other cases (one point)*: Finally, the appellant had issued threats to hurt himself. To this effect, he hit himself on the face, and threatened to kill himself rather than end the relationship with the victim. This made the victim feel afraid, such that she had to call the police for assistance.²³

76 With the aggregate of six points from the offence-specific factors, the appellant's conduct falls within the lowest end of Band 2, and just crosses the custodial threshold. The indicative starting sentence is therefore 0.8 months' imprisonment.

77 The District Judge had opined that the custodial threshold was crossed because, unlike the offender in *PP v Lim Seow Kiat*, where a \$5,000 fine was awarded, the appellant had issued threats to the victim (GD at [19]). This is not the case. The custodial threshold is crossed because of the aggregate of more than five points in this case. Indeed, the points-based sentencing framework herein emphasises the importance of considering the intensity of each offence-specific factor; not all threats are equally aggravating. As the threats to the victim in this case never extended to hurting the victim or jeopardising her safety or wellbeing, they were of the less egregious variety, for which one point would suffice. Hence, had the aggregate number of points been between one to five points only, the custodial threshold would not have been crossed notwithstanding the appellant's threats.

²³ SOF at [14].

78 In relation to the offender-specific factors, the appellant had pleaded guilty, for which mitigating weight was to be afforded. While the appellant was traced, his antecedents were dated (with the latest conviction being in 2004) and unrelated, with most of them being for drug offences. I therefore do not regard his antecedents as a significant aggravating factor.

79 As this is a borderline case that just crosses into Band 2, and in the light of his plea of guilt, I am prepared to discount the appellant's sentence and place him on the highest end of Band 1. In the circumstances, I find that the maximum fine of \$5,000 (in default two weeks' imprisonment) would suffice for this case. I therefore allow the appellant's appeal against sentence to that effect.

Conclusion

80 The sentencing framework as proposed is intended only as a guide for judges to arrive at the sentence that best fits the case before them. By focussing on one factor at a time, the sentencing framework enables the judge to better assess the seriousness of the offence for the purpose of sentencing, without being overwhelmed by the task of having to consider a whole host of offence-specific factors, each carrying different weight, at the same time. The process of considering the degree of aggravation of each offence-specific factor also ensures consistency and clarity in sentencing, as judges must specify their reasons for ascribing a particular weight to each factor. The risks of double-counting against an offender is also thereby mitigated.

81 Having said that, it must be borne in mind that the sentencing framework is not a rigid formula by which judges may surrender the need to apply their judicial discretion. They have to carefully evaluate and weigh a myriad of

considerations to determine the most just and appropriate outcome in the case before them.

82 Ultimately, sentencing is a fluid exercise with very concrete consequences for the accused at hand. Careful consideration of where justice may lie in each case is of primary importance.

83 Here, Lord Woolf CJ’s reminder in *R v Millberry* [2003] 1 WLR 546 at 556 (cited by Chao Hick Tin JA, “The Art of Sentencing – An Appellate Court’s Perspective”, speech at Sentencing Conference 2014: Trends, Tools & Technology (9 October 2014) at para 13) is deserving of restatement:

[G]uidelines ... can produce sentences which are inappropriately high or inappropriately low if sentencers adopt a mechanistic approach to the guidelines. It is essential that having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double accounting must be avoided and can be a result of guidelines if they are applied indiscriminately. *Guideline judgments are intended to assist the judge to arrive at the correct sentence. They do not purport to identify the correct sentence.* Doing so is the task of the trial judge. [emphasis added]

Chan Seng Onn
Judge

Kishan Pratap (Kishan Law Chambers LLC) for the appellant;
Stephanie Koh (Attorney-General’s Chambers) for the respondent.
