IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 253

Magistrate's Appeal No 3 of 2016

Between

Koh Yong Chiah

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Offences Against Public Servants]
[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark Sentences]

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Koh Yong Chiah
v
Public Prosecutor

[2016] SGHC 253

High Court — Magistrate's Appeal No 3 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA, See Kee Oon JC
23 August 2016

18 November 2016 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 Section 182 of the Penal Code (Cap 224, 2012 Rev Ed) ("Penal Code") criminalises the giving of information to a public servant which one "knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him". This offence can be committed in a wide range of situations for a wide range of purposes. A passenger who lies to the traffic police that he was the driver of the car to protect an intoxicated friend who was driving, a father who lies to a school principal about his home address to get his child into primary school, or

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a public servant who lies to his boss at work to conceal certain errors he made, may all be found guilty of an offence under s 182 of the Penal Code ("s 182").

2 Thus, to define the interest that the offence was intended to protect is difficult. The interests at stake vary across the wide range of different possible situations. Nevertheless, it may generally be said that at the heart of the offence lies the *harm* that would be caused from lying to a *public servant* (as opposed to any other ordinary person) because of the *unique powers and duties* that a public servant generally has – as the provision specifies, the offender must *intend* or *know* that his false information will likely cause the public servant to misuse his lawful powers or act in breach of his duties as a public servant.

3 This appeal concerns an ex-school principal who pleaded guilty to an offence under s 182 of the Penal Code (Cap 224, 1985 Rev Ed) ("Penal Code 1985") for falsely telling his Cluster Superintendent that he was *not* having an extra-marital affair with a school vendor. The district judge ("the DJ") meted out a sentence of four weeks' imprisonment, and the appellant appeals against his sentence on the basis that the DJ erred in fact and law, and that the sentence is manifestly excessive. This appeal gives us the opportunity to provide some guidance on the correct approach to sentencing s 182 offences, which hopefully will help lower courts in dealing with the myriad of factual situations that come before them, and enable a greater degree of consistency in sentencing. We appointed a young amicus curiae, Mr Benny Tan Zhi Peng ("the amicus"), to address us on the appropriate sentencing guidelines for offences under s 182 of the Penal Code. We were greatly assisted by his written brief and would like to record our gratitude.

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Background facts

4 Mr Koh Yong Chiah ("the Appellant") is a 61-year-old male Singapore citizen who was a principal at four different schools from 1995 to 2012 and a Cluster Superintendent for three months in 1999, where he supervised school principals.[1] Specifically,

(a) from 1999 to 2002, he was the principal of the Chinese High School ("CHS")[2];

(b) from January 2003 to December 2009, he was the principal of Jurong Junior College ("JJC")[3]; and

(c) from December 2009 to September 2012, he was the principal of River Valley High School ("RVHS")[4].

5 He became acquainted with one Loke Wai Lin Ivy ("Ivy") in 2000, when Ivy approached CHS with a view to getting the school to participate in a community service project in China.[5] At that time, Ivy was working at the Television Corporation of Singapore.[6] But since 2005, she incorporated and became the director and majority shareholder of Education Architects 21 Pte Ltd and Education Incorporation Pte Ltd ("Ivy's Companies")[7], both of which

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[1] Statement of Facts ("SOF") at para 1.

[2] SOF at para 3.

[3] SOF at para 2.

[4] SOF at para 2.

[5] SOF at para 7.

[6] SOF at para 7.

[7] SOF at para 4.

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provide education-related services including the organising of overseas learning journeys, conference management and assorted logistical services[8].

6 The Appellant and Ivy developed a sexual relationship and their first sexual encounter was during a CHS community service trip to Lijiang, China in March 2001.[9] This sexual relationship lasted up to and including the period that the Appellant was the principal of RVHS.

The procurement process for school contracts

7 As principal of the various schools, the Appellant was on a panel that approved contracts awarded by his school to vendors.[10] The teaching staff would prepare the specifications for an Invitation to Quote, outlining the goods and services required, evaluate the bids received from vendors and recommend the preferred bid to the Quotation Approval Panel ("QAP").[11] The QAP would approve the bid if they agreed with the recommendations and thereafter, the contract would be awarded to the vendor.[12] In JJC, the Appellant was one of three persons on the QAP, and in RVHS, the Appellant was one of two persons on the QAP.[13]

8 From May to November 2005, as principal of JJC and a member of its QAP, the Appellant signed off on *six contracts* with a total value of *$162,491.25* to Ivy's Companies.[14]

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[8] SOF at para 5.

[9] SOF at para 8.

[10] SOF at para 11.

[11] SOF at para 11(i) and (iii).

[12] SOF at para 11(iv), (vi) and (vii).

[13] SOF at para 11(iii).

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The Appellant's false statement

9 In November 2005, the Ministry of Education's ("MOE") Director General of Education ("DGE") received an anonymous complaint alleging that the Appellant was having an affair with Ivy and that they behaved inappropriately on school premises and on overseas school trips.[15] The DGE instructed the Appellant's Cluster Superintendent, Ms Chia Ban Tin ("Ms Chia"), to interview the Appellant.[16] Ms Chia first inquired into Ivy's background and found out that she was the director of a company which was a service provider of JJC.[17]

10 On 24 November 2005, Ms Chia interviewed the Appellant. She asked him whether he had an affair with Ivy. The Appellant falsely stated to Ms Chia, a public servant, that he was not having an affair with Ivy, information he knew to be false.[18] Ms Chia then reminded the Appellant about the importance of maintaining the integrity of the procurement process and advised the Appellant against any personal involvement with Ivy, whose company was bidding for contracts and providing services to JJC.[19] The Appellant acknowledged that he understood her advice. This false statement is the subject of the first and only proceeded charge against the Appellant, which the Appellant pleaded guilty to. It states:

> You, Koh Yong Chiah... are charged that you, on 24 November 2005, in Singapore, being a Principal of Jurong Junior College

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[14] SOF at para 12.

[15] SOF at para 15.

[16] SOF at para 16.

[17] SOF at para 16.

[18] SOF at para 18.

[19] SOF at para 19.

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> ("JJC"), did give false information orally to a public servant, namely one Chia Ban Tin ("Chia"), a Cluster Superintendent of the Ministry of Education, who was tasked to assess the truth of an anonymous complaint lodged against you alleging misconduct in having an affair with one Loke Wai Lin ("Loke"), a Director of Education Architects 21 Pte Ltd, a service provider of JJC, to wit, by falsely stating that you were not having an affair with Loke, which information you knew to be false, knowing it likely that you would thereby cause Chia to do an act, namely submit a report to the Director General of Education that there was no such misconduct on your part, which Chia, as a public servant, ought not to do if the true state of facts respecting which such information was given were known to her, and you have thereby committed an offence punishable under section 182 of the Penal Code, Chapter 224 (1985 Rev Ed).

11 Following the interview, Ms Chia submitted a report to the DGE stating that the Appellant had denied having an inappropriate relationship with Ivy. The Appellant's false statement led Ms Chia to omit to inform the DGE that the Appellant was involved in a sexual relationship with Ivy.[20] The Appellant knew it was likely that, after the interview, Ms Chia would inform the DGE that the Appellant denied being involved in an extra-marital affair with Ivy. Further, a day after the interview, the Appellant called and spoke to the DGE about the allegations levelled against him.[21]

12 If the Appellant had been truthful, MOE would have ensured that he was no longer allowed to approve contracts awarded to Ivy's Companies. The Appellant may also have been subject to disciplinary proceedings.[22]

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[20] SOF at para 20.

[21] SOF at para 22.

[22] SOF at para 21.

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Award of contracts following the Appellant's false statement

13 After the 24 November 2005 interview, the Appellant continued to sign off on contracts awarded to Ivy's Companies.[23] As principal of JJC, he approved another 48 contracts to Ivy's Companies.[24] As principal of RVHS, he approved 39 contracts to Ivy's Companies.[25] Between 2005 and 2012, as a member of the QAP of JJC and RVHS, the Appellant approved ***$3.2m*** worth of contracts awarded to Ivy's Companies.[26] Further, during this period, the Appellant would sometimes help Ivy amend some of the details of the itinerary or quotations before she submitted her bid to JJC and RVHS.[27] Specifically, in September 2012, the Appellant vetted Ivy's quotation in relation to a study trip to Japan and advised her on how to negotiate the contract with the JJC staff; nevertheless, the contract was eventually awarded to *another vendor* based on the recommendation of the QAP.[28]

14 On 23 March 2012, the Corrupt Practices Investigation Bureau ("CPIB") received information that the Appellant was suspected of being involved in corrupt dealings with Ivy and that there was impropriety in the procurement processes given his relationship with Ivy.[29] During the investigations, on 18 December 2012, the Appellant falsely told a Chief Special Investigator of CPIB that his *first* sexual contact with Ivy was in *2006* (when it was in fact in 2001). This false statement is the subject of the *second*

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[23] SOF at para 24.

[24] SOF at para 24.

[25] SOF at para 26.

[26] SOF at para 27.

[27] SOF at para 30.

[28] SOF at para 30.

[29] SOF at para 6.

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charge against the Appellant under s 28(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), which the Appellant has consented to have taken into consideration ("TIC") for the purposes of sentencing. The Appellant was not eventually charged with corruption or any further offence relating to his role in approving contracts to Ivy's Companies.

The DJ's decision

15 As mentioned, the DJ sentenced the Appellant to four weeks' imprisonment (*PP v Koh Yong Chiah* [2016] SGDC 21 ("the GD") at [13]). The DJ found that the dominant and relevant sentencing principle was general deterrence, and a custodial sentence was clearly warranted and justified.[30] In the DJ's view, a fine would have been of negligible deterrent value.[31]

16 In coming to her conclusion, the DJ made the following observations:

(a) Ms Chia interviewed the Appellant in her *official capacity*, advised him against any personal involvement with Ivy and reminded him of the importance of maintaining the integrity of the procurement process.[32]

(b) The Appellant ignored Ms Chia's advice and continued to award $3.2m worth of contracts to Ivy's Companies. This was a gross contravention of the Government Instruction Manual.[33]

(c) The absence of a corruption charge was a neutral factor.[34]

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[30] The GD at [12].

[31] The GD at [12].

[32] The GD at [5].

[33] The GD at [5].

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(d) Even if the Appellant did not give any specific advantage to Ivy or show her favour, his actions gave rise to a public perception that he was showing her favour and that there was no level playing field in the award of school contracts. This brings into question the integrity of the procurement process and may affect public confidence and trust in the system.[35]

(e) The offence is not a one-off incident as the Appellant also gave false information in 2012, which is the subject of the second charge.[36]

(f) The case of *Public Prosecutor v Lim Yong Soon Bernard* [2015] 3 SLR 717 ("*Lim Bernard CA*") can be distinguished because (a) the offender was not holding as high a rank as the Appellant, (b) the value of the contract involved was only $57,200, and (c) the false statement was recanted after two days, in contrast with the seven years in this case. [37]

(g) Little mitigating weight was placed on the fact that the Appellant was a first offender as he is expected to be of good character as a senior public servant.[38] However, the Appellant's plea of guilt is of mitigating value as it is an indication of his remorse.[39]

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[34] The GD at [6].

[35] The GD at [7].

[36] The GD at [9].

[37] The GD at [10].

[38] The GD at [11].

[39] The GD at [11].

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Issues on appeal

17 The *first issue* relates to laying down sentencing guidelines for s 182 offences. This should be discussed first so that it can be applied to the facts. The *second issue* is whether the sentence in the present case is manifestly excessive. Specifically, consideration must be given as to whether the *custodial threshold* is crossed, and if so, whether the *duration* of four weeks' imprisonment is manifestly excessive.

Sentencing guidelines for s 182 of the Penal Code

18 It is imperative to first consider the statutory provision. Section 182 of the Penal Code 1985, which is the provision the Appellant was charged under because his offence was committed in 2005, states:

> Whoever gives to any public servant any information orally or in writing which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with *imprisonment for a term which may extend to 6 months, or with fine which may extend to $1,000, or with both*. [emphasis added]

19 This was amended in 2008, and the *present* s 182 of the Penal Code (Cap 224, 2012 Rev Ed) states:

> Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with *imprisonment for a term which may extend to one year, or with fine which may extend to $5,000, or with both*. [emphasis added]

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The main effect of the 2008 amendment was to increase the maximum sentence for a s 182 offence from *six months' imprisonment and a $1,000 fine*, to *one year imprisonment and a $5,000 fine*.

20 The amendment was intended to afford the courts more flexibility to impose higher sentences when the facts justified it, rather than to signal that Parliament viewed the offence with increased severity. In the 2007 Parliamentary debates on the Penal Code (Amendment) Bill, which contained the abovementioned change to the maximum sentence for s 182 offences as well as the penalties for other offences, Member of Parliament Mr Lim Biow Chuan said as follows (*Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at col 2418):

> … I would like to seek the Minister's affirmation that by amending the range of penalties prescribed, the intention of Parliament is not for the judges to automatically increase the punishment nor should the courts interpret the setting of a higher limit to mean that the crime has become more serious…
>
> …
>
> … [I]n this current set of amendments which are not specific to any particular offence, the intention of Parliament surely must be simply to allow the courts to have greater sentencing options to mete out appropriate sentences. Heavier penalties should thus be imposed by the courts only where there are aggravating factors and there should not be a rise in the punishment across the board for all offences simply because of this amendment.

In response, Senior Minister of State for Home Affairs, Assoc Prof Ho Peng Kee, agreed with Mr Lim's observation (at col 2439):

> … Mr Lim Biow Chuan asks whether what we have done will lead automatically to fines or punishments going up. I do not think so. He has mentioned, for example, the benchmarks, the sentencing guidelines, that the courts have. I think the guidelines will continue. It does not mean that automatically when the maximum punishment is raised, the punishment

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> will go up. Because every punishment must depend on the facts of the case. …

Sentencing precedents

21 Before considering specific sentencing guidelines for s 182 offences, it is helpful to first identify the main ways in which s 182 offences have been committed in Singapore. A review of the sentencing precedents would allow an appreciation of the different circumstances in which the offence would normally arise, as well as the factors which have played a role in sentencing.

22 First, a significant number of s 182 cases concern persons who falsely report innocent persons to the police.

(a) In *Rajeshwary d/o Batumalai v Public Prosecutor* [2014] SGDC 153, the offender falsely made a police report alleging that her stepfather had stolen her jewellery when in fact, she had agreed to allow her stepfather to pawn her jewellery. She made the false report because she was angry with her stepfather for not returning a sum of money which he had borrowed. Her stepfather was arrested. She recanted her false statement only *four and a half months later*. The district judge sentenced her to twelve weeks' imprisonment. On appeal to the High Court, this was reduced to *six weeks' imprisonment*.[40]

(b) In *Siew Yit Beng v Public Prosecutor* [2000] 2 SLR(R) 785, the offender gave false information to the police alleging that she had been molested and raped by her Chinese physician. In truth, she had a consensual sexual relationship with him but was afraid that her husband might divorce her if he found out about their relationship. She

[40] Magistrate's Appeal No 54 of 2014.

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maintained the falsehood for approximately *eight months* before retracting the false allegations, and had even reasserted the truth of those allegations at her trial for two s 182 charges. She was sentenced to *four weeks' imprisonment per charge*, to run concurrently.

(c) In *Public Prosecutor v Liu Linyan* [2013] SGDC 434 ("*Liu Linyan*"), the offender falsely accused one Ng Say Leong ("Ng") of robbing her. She did so because Ng had accidentally scratched her and she wanted to ensure that he would not get away. Ng was chased and pinned to the ground by passers-by, before being arrested by the police and held in police custody for 19 hours. *A day later*, the offender recanted her false statement. The district judge sentenced the offender to *two weeks' imprisonment*, and this was upheld on appeal.[41]

(d) In *Public Prosecutor v Mathiyalagan Mathiselvam* [2016] SGMC 1, the offender pleaded guilty to two charges under s 182. He had falsely told the police that he had been attacked and robbed by 12 to 13 persons armed with knives and wooden boards, and that Selvanathan Rajesh ("Selvanathan") was part of the group. As a result of the false information, Selvanathan was arrested and kept in a police lock-up for seven hours. In fact, the offender had been attacked by a group of men which included Selvanathan, but no knives were used and money was not stolen from him. The offender retracted his false allegation after *seven hours*. He concocted the false story because he was angry that he had been assaulted and wanted to hasten police investigations. The court sentenced the offender to *10 days' imprisonment per charge*, to run concurrently. A slightly lower

[41] Magistrate's Appeal No 284 of 2013.

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sentence was imposed because the offender had actually been assaulted (at [26]). The sentence was upheld on appeal.[42]

(e) In *Public Prosecutor v Tan Ban Sin* (Magistrate's Appeal No 330 of 1998) (a summary of this case is available at *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice*") at p 1111-1112), the offender gave false information to the police about an incident in which he had allegedly been a victim of robbery and extortion. He did so because he felt he had been cheated by the victims, who promised him contracts for his renovation business if he paid them $10,000. After he paid them $4,000, no contracts materialised. Further, the victims continued pestering him for the remaining $6,000. The offender stated in mitigation that he had been put under extreme pressure to pay and did not realise that he could be prosecuted for making a false police report. Further, he was only prosecuted after three years. The district judge found that the mitigating factors were sufficient to spare the offender a prison sentence and ordered the *then maximum fine of $1,000*. The Prosecution withdrew its appeal against the sentence.

23 In such cases, it seems that (a) imprisonment terms tend to be the norm, (b) the provision of false information has a serious impact on both the victims of the false allegations as well as on the investigative process, and (c) the time the offender took to recant the false statement has a material impact on the sentence to be imposed.

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[42] Magistrate's Appeal No 9199 of 2015.

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24 Second are cases where a person gave false information to the authorities to shield *himself* from investigation or prosecution.

(a) In *Public Prosecutor v Moscardon Mark Henry Pueyo* [2009] SGDC 304 ("*Moscardon*"), the offender falsely told the police that his name was "Mark Henry" when he was apprehended for shop theft. He was an illegal over-stayer who only had a social visit pass. He planned the deception by searching the Internet for another person's identity to conceal his illegal status in Singapore. The police had to expend additional resources to determine the offender's true identity, locate him and then charge him for these offences. He was sentenced to *six months' imprisonment* for the s 182 offences. The Prosecution's appeal against sentence was withdrawn.

(b) In *Public Prosecutor v Mok Wai Hoong Aaron* [2015] SGDC 264, the offender fraudulently obtained a renovation project for his company and made a profit. To cover up the profits he made from the project, he lied to the investigating officer that he had paid substantial sums to a contractor, Keppel, for certain services and he conspired with his friend, Lim, from Keppel to lie to the investigating officer as well. The offender pleaded guilty to one charge of cheating, forgery as well as an offence under s 182. The district judge sentenced him to *two months' imprisonment* for the s 182 offence. His appeal against sentence was dismissed.[43]

(c) In *Public Prosecutor v Park Jeoung Sang* [2015] SGDC 311, the offender was found guilty of one charge of drink-driving, one charge of driving whilst under disqualification, one charge of

[43] Magistrate's Appeal No 128 of 2015.

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dangerous driving and one charge of giving false information under s 182. He falsely told the police, and maintained in court, that he was not the driver of the vehicle at the material time. He was sentenced to *two weeks' imprisonment* for the s 182 offence. The offender's appeal against conviction and sentence was withdrawn.

(d) In *Public Prosecutor v Feng Meizhen* [2008] SGDC 274, the offender admitted that she had entered Singapore illegally when she had in fact overstayed, and falsely told the police that her name was "Huang Siew Fang". She was sentenced to *two weeks' imprisonment*. The sentence was upheld on appeal.[44]

25 From these two groups of cases, it appears that the sentence meted out varies, depending on (a) the complexity of the deceptive scheme employed on the public servant (*eg*, whether other people were asked to corroborate the lie, whether it was planned and premeditated, *etc*), (b) the seriousness of the offence the offender sought to cover up, and (c) the extent to which public resources were wasted because of the false information.

26 Third, are cases where a person gave false information to the authorities to shield *another person* from investigation or prosecution.

(a) In *Public Prosecutor v Sivaprakash s/o Narayansamy* [2004] SGMC 7 ("*Sivaprakash*"), the offender permitted his wife to drive his vehicle when she did not possess a valid driving licence. They eventually got into an accident and when apprehended by the police, the offender claimed that he was the driver of the vehicle. He faced two charges under s 182. The offender claimed trial and he and his

[44] Magistrate's Appeal No 12 of 2008.

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wife maintained that he was the driver of the car. The district judge found him guilty of the s 182 offences. Taking into account the fact that (a) it was irresponsible for the offender to allow his wife to drive without a licence (at [87]); (b) the offender's actions enabled his wife to get away with the offence and perverted the course of justice (at [88]); (c) the offender showed no remorse by persisting with his falsehoods in claiming trial to the charges (at [89]); and (d) the offender continued with his lies in a premeditated manner (at [90]), the judge sentenced him to five weeks' imprisonment and a fine of $1,000 on each of the two charges. On appeal, the two *imprisonment terms of five weeks* for each charge were ordered to run concurrently (see *Sentencing Practice* at pp 1104–1105).

(b) In *Public Prosecutor v Yeo Fang Yi* [2015] SGMC 9 ("*Yeo Fang Yi*"), the offender falsely represented to the police that she was the driver of the vehicle. She did so once when questioned on the night of the incident on 4 November 2009, and a second time when called for questioning on 31 July 2012. She was then charged with an offence of driving under the influence of alcohol on 30 August 2012. On 2 November 2012, she recanted her previous two statements, saying they were false. Investigations revealed that the offender was not the driver of the car. She had lied to shield the actual driver from a drink-driving charge. Taking into account the fact that drink-driving was a serious offence (at [22]), the offender did not tell the lie under pressure from another (at [25]) and the offender perpetuated her falsehood three years later (at [27]), the district judge sentenced her to a *one-week imprisonment term* and this was upheld on appeal.[45]

[45] Magistrate's Appeal No 9044 of 2015.

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(c) In *Public Prosecutor v Poh Chee Hwee* [2008] SGDC 241 ("*Poh Chee Hwee*"), the offender gave a false statement to the police claiming to have been the driver of a motor van to help his brother avoid prosecution for driving while under disqualification. He pleaded guilty to one charge under s 182. The factors that aggravated the offence include the fact that the offender's actions obstructed the course of justice and had the potential to frustrate the progress of police investigations (at [12]), the offence of driving under disqualification is a serious traffic offence (at [13]) and the offence was premeditated (at [16]). The mitigating factors include the fact that the offender wanted to shield his brother from prosecution, he did not derive any benefit, an innocent party was not implicated, the offender's brother was ultimately brought to justice, the offender pleaded guilty and he had no related antecedents (at [17]). The judge sentenced the offender to *two weeks' imprisonment*, and this was upheld on appeal (see *Sentencing Practice* at 1106).

(d) In *Public Prosecutor v Francis Clinton Wong Chee Meng* [2010] SGDC 378 ("*Francis Clinton*"), the offender was involved in a conspiracy with, *inter alia*, a housing agent Goh Choon Liang ("Goh") to cheat Standard Chartered Bank. In a false statement to a Commercial Affairs Department officer, he stated that one Zurkifli Bin Alang Noordin and not Goh was the housing agent involved. This was the subject of the s 182 charge he faced. The offender pleaded guilty to the offence of conspiracy to cheat and to the s 182 charge. The district judge sentenced the offender to one months' imprisonment for the s 182 charge. However, on appeal, the High Court substituted the imprisonment term for the s 182 offence with a *$1,000 fine* because the court found that the s 182 offence was committed because Goh had

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threatened to take revenge on the offender if Goh's identity was revealed (see *Sentencing Practice* at 1107).

(e) In *Ee Chong Kiat Tommy v Public Prosecutor* (Magistrate's Appeal No 143 of 96) ("*Ee Chong Kiat Tommy*"), the offender and his female companion were in the car driven by the latter when she drove the car up the kerb into a retaining wall. When the police arrived, the offender falsely told the police that he had been driving. When the truth was uncovered, the offender was charged with a s 182 offence and on appeal, was *fined $1,000* by the High Court but did not receive a custodial term (see *Sentencing Practice* at p 1101).

(f) In *Kuah Geok Bee v Public Prosecutor* (Magistrate's Appeal No 171 of 96) ("*Kuah Geok Bee*"), the offender falsely claimed to be the driver of the vehicle to allow her husband who had been driving under the influence of alcohol to evade police investigation. She pleaded guilty to an offence under s 182 and on appeal, was *fined $1,000* by the High Court but did not receive a custodial term (see *Sentencing Practice* at p 1102).

27 From the above, it appears that offenders who provide false information to shield *another person* from investigation or prosecution have not necessarily been treated less severely than offenders who provide false information to shield *themselves*. Nevertheless, on some occasions, offenders who committed the offence to protect another person have been treated more lightly by the courts if no other aggravating factors are present (see for *eg*, *Ee Chong Kiat Tommy* and *Kuah Geok Bee*, which were cited in *Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 at [23] as being "exceptions to the norm" due to their unique circumstances). It would appear that in some

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circumstances, the absence of personal gain could play a role in reducing the seriousness of the offence.

28 Fourth, are cases where a person gave false information to public servants to subvert a public institution's screening process.

(a) In *PP v Loo Way Yew* (PS 2278/97) ("*Loo Way Yew*"), the offender gave false information on six occasions in his blood donor registration form about whether he had had sex with a prostitute in the past 12 months and whether he had lived in or visited other countries. He pleaded guilty to three charges under s 182 and gave his consent for three other similar charges to be taken into consideration. His blood was tested positive for HIV and had been transfused to two patients who contracted HIV. The offender was not aware of his condition at all material times. He was sentenced to *six months' imprisonment* for each charge, with two of the sentences ordered to run consecutively. He therefore faced a total of 12 months' imprisonment and there was no appeal against this decision (see *Sentencing Practice* at p 1097).

(b) In *CLB and another v Public Prosecutor* [1993] 1 SLR(R) 52 ("*CLB*"), the appellants were blood donors who made false declarations on the blood donor registration form about their sexual history. Their blood was later tested positive for HIV, though neither of them knew they had the disease. They each pleaded guilty to a single charge under s 182 for giving false information to a public servant, the Medical Director of the Singapore Blood Transfusion Service, in their respective donor registration forms. The High Court found that a two-month sentence would have been appropriate given (i) the importance of encouraging blood donors not to treat the

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questionnaire in the donor registration form lightly, and (ii) the danger inherent in the particular falsehoods given. However, bearing in mind the mitigating factors in this case (*CLB* at [4] and [8]), including the fact that a voluntary donation of one's blood is a commendably noble and civic-conscious act, no harm was caused, the appellants did not act with malice, not knowing that they themselves were infected, the appellants pleaded guilty at the first opportunity, and personal gain did not operate as an active incentive to lie, the High Court sentenced the appellants to *one months' imprisonment* (see *CLB* at [10]).

(c) In *PP v West Jack Gilbert* [2004] SGDC 310 ("*West Jack Gilbert*"), the offender made false statements to the Ministry of Education in his application forms for "Registration as a Teacher" in order to obtain an employment pass to work as a teacher. He declared that he had not been convicted in a court of law in any country when he had in fact been convicted for drug offences, rape, criminal intimidation and carrying concealed weapons in the United States of America. He was sentenced to *one months' imprisonment* for each of the two s 182 offences. The offender's appeal against sentence was withdrawn.

(d) In *Wong Yi Hao Henry v Public Prosecutor* [2015] SGHC 232 ("*Wong Yi Hao Henry*"), the offender gave false information about his residential address in his application to register his daughter for primary school admission. The High Court held that "in the absence of any material indicating that offences of this nature had been or are becoming more prevalent, and with no additional aggravating features present", there was insufficient basis to impose a custodial sentence and the sentence of two weeks' imprisonment should be reduced to a

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$5,000 fine (at [6] and [7]). No opposition was raised by the Public Prosecutor.

29 Many of the above cases clearly trigger the public interest and are examples of possible situations in which the provision of false information to a public servant has the potential to cause serious harm to a large group of people. Of course, the gravity of the offence still can vary greatly within this category of cases (comparing, for *eg*, the seriousness of lying about one's criminal record in an application to be a teacher against providing false information for primary school admissions). Further, the comparison between *CLB* and *Loo Way Yew* demonstrate that the materialisation of actual harm can make a significant difference to the sentence.

30 Fifth are cases where a person who gave false information to public servants to facilitate fraud on a third party to gain some personal benefit.

(a) In *Public Prosecutor v Tew Yee Jeng* [2016] SGDC 28, the offender (a Malaysian) conspired on multiple occasions with different groups of people to stage road traffic accidents in Singapore for the purpose of making fraudulent insurance claims. He managed to cause several accidents involving heavy vehicles, and submitted insurance claims thereafter. On one occasion, the offender induced one Helen to make a police report stating that a genuine accident had happened and that she was the driver of the vehicle when it was actually the offender behind the wheel. Helen was also asked to omit to mention the offender's involvement in the accident. Helen then made a fraudulent insurance claim. The offender was charged with several counts of conspiracy to cheat, dangerous driving, and one count of abetting another person to furnish false information under section 182 read with

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section 109 of the Penal Code. In relation to the s 182 offence, the district judge found that "the "false report has to be viewed in the context of the overall motor insurance fraud that was being perpetrated by the Accused and his accomplices. In this light, the false report took on a completely different complexion and fell into a very aggravated form of a section 182 offence" (at [32]). In particular, the district judge took into account the fact that (i) the offender played a central role in the offences, (ii) he entered Singapore with the sole purpose of committing these offences, and (iii) innocent road users had been exposed to great risk of personal injury and property damage (at [21]). A *four-month imprisonment term* was therefore meted out for the s 182 offence. This was upheld on appeal.[46]

(b) In *Public Prosecutor v Kumaran A/L Subramaniam* [2009] SGDC 220 ("*Kumaran*"), the offender was an operations manager of a security firm and was engaged to escort cash of approximately $80,000 from the Hyatt Hotel to the bank. He falsely reported to the police that the money was stolen to cover up his misappropriation of the funds. He faced two charges under s 182, and further charges for criminal breach of trust. In determining the sentence, the judge took into account the fact that (i) the offender was the mastermind of the whole scheme (at [84]), (ii) the offences committed were serious in nature (at [86]), (iii) his scheme involved removing the money beyond the boundaries of the country (at [86]), (iv) the offender was one of the very few senior security personnel in the firm entrusted with performing escort duties and yet he misappropriated the very money which he had been charged to protect (at [86]), and (v) the offence struck at the heart of the

[46] Magistrate's Appeal No 9011 of 2016.

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security industry here and adversely affected the reputation of Singapore as a safe country to do business, thus engaging the public interest (at [87]). He was sentenced to *two months' imprisonment* for each of the two charges he faced under s 182 (to run concurrently). The sentence was upheld on appeal.[47]

(c) In *Public Prosecutor v Alvin Chan Siw Hong* [2010] SGDC 411 ("*Alvin Chan*"), the offender gave false information in a police report claiming that his motorcycle was stolen in Singapore when it was stolen in Malacca, Malaysia. The offender's motivation for making the false report was to defraud his insurers and get an insurance pay-out. The district judge found that the case was "devoid of any aggravating factor" as the offender was not evading prosecution, shielding someone from prosecution, or making a false allegation of a crime to exact revenge or injure reputation (at [9]). The judge thus found that a *fine of $4,000* would serve the ends of justice (at [9]). The Prosecution withdrew its appeal against sentence.

31 The above cases also demonstrate the wide range of fraudulent schemes a s 182 offence can be part of, ranging from more complex insurance fraud schemes involving foreign syndicates, to the making of a false police report about where one's motorcycle was stolen in the hope of satisfying the terms for an insurance pay-out. The sentences imposed thus differed accordingly. However, it seems to us that the sentence imposed in *Alvin Chan* may have been too lenient, bearing in mind the fact that the fraud did not relate to an insignificant sum and there is a public interest in protecting the insurance industry.

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[47] Magistrate's Appeal No 251 of 2008.

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32 Sixth are cases where a public servant gave false information to another public servant about matters relating to the offender's employment.

(a) In *Public Prosecutor v Low Vins* [2015] SGDC 6, a police officer falsely told his superior that he had visited two drug offenders' homes and that they were not in, resulting in the drug offenders being deprived of the option of being sent to Drug Rehabilitation Centre even though they had dutifully reported for bail. Instead, they were considered as offenders who had absconded and were duly prosecuted and charged in court. The offender was convicted under two charges under s 182 and received *three months' imprisonment* per charge, to run concurrently. This was upheld on appeal.[48]

(b) In *Public Prosecutor v Charan Singh* [2015] SGDC 180 ("*Charan Singh*"), the offender was a senior investigation officer attached to the Investigations Department of the Land Transport Authority ("LTA"). Some of Super Bike Centre Pte Ltd's ("Super Bike") motorcycles were about to be auctioned off by the LTA to recover outstanding road tax arrears. The offender represented to the officers at the Road Tax Arrears department that his supervisor had authorised the removal of Super Bike's motorcycles from auction, and then represented to his supervisor that the road tax arrears had been paid even though they had not. The offender was convicted after trial of one charge under s 182. The district judge found that the following factors aggravated the offence: (i) the offence was deliberate, (ii) the offender abused his position as an investigation officer and trusted colleague, and (iii) he was in fact a law enforcement officer whose

[48] Magistrate's Appeal No 9035 of 2014.

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duty was to uphold the law rather than to subvert it in the way that he did (at para [104]). The judge thus imposed a custodial term of *four weeks' imprisonment* (at [107]). This was upheld on appeal.[49]

(c) In *Public Prosecutor v Bernard Lim Yong Soon* [2014] SGDC 356 ("*Lim Bernard DC*"), the offender was an Assistant Director of the National Parks Board ("NParks"). He was in charge of purchasing a batch of foldable bicycles for NParks. He tipped off one Lawrence Lim about the upcoming tender for the supply of bicycles and gave him an indication of the price NParks was willing to pay. It transpired that Lawrence Lim was the sole bidder and he was awarded the tender. In an internal investigation about NParks' purchase of a batch of foldable bicycles, which the offender was in charge of, the offender denied knowing Lawrence Lim. The offender also instigated Lawrence Lim to deny knowing him to the authorities who questioned him. He faced two charges under s 182, but was not charged with corruption. In sentencing the offender, the judge took into account the fact that (i) the price NParks paid for the bicycles was not excessive (at [98]), (ii) there was no predicate offence (at [104]), (iii) the offender recanted his false statement after two days (at [105]) and (iv) no reliance was placed on the offender's false statement (at [123]). The offender was sentenced to the maximum fine of $5,000 (at [138]).This was upheld on appeal.[50]

33 This final category of cases deals with the more unique situation where the offence involves the offender's performance of his duties as a public servant. These cases often engage a unique type of public interest related to

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[49] Magistrate's Appeal No 3 of 2015.

[50] Magistrate's Appeal No 124 of 2014.

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the integrity of the Public Service and the performance of public duties not seen in other cases. Slightly different considerations are therefore at play in sentencing.

34 From the above review, it can be seen that s 182 would encompass a wide range of misconduct in different circumstances. While certain fact patterns stand out, and while the sentences imposed in cases bearing similar fact patterns may be rationalised, it is doubtful if a *single* sentencing framework would ever be adequate to cater to the full range of different factual scenarios.

Submissions on the appropriate sentencing guidelines

35 We first consider the Prosecution's and the amicus' submissions on the appropriate sentencing guidelines for s 182 offences.

Prosecution

36 The Prosecution puts forward two broad guiding principles for determining whether the custodial threshold has been crossed:

(a) whether any serious consequences arose from the breach of applicable regulations or whether the conduct was so wholly innocent that one can disregard it as an incidental transgression; and

(b) whether the investigation relates to conduct which would, if undetected or unpunished, so undermine the standing of the public service that the punishment must be a custodial sentence.

37 The Prosecution also identifies four further factors which are relevant to offenders who are themselves public servants:

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(a) whether the offender was a high ranking or influential official, or a junior official;

(b) whether the consequences of the falsehood involved a significant aggregate amount;

(c) whether the falsehood was perpetuated over an extended period of time, or was repudiated/recanted soon after the falsehood was uttered; and

(d) whether the falsehood was said to cover-up a deliberate breach of conduct rules, or to cover-up a careless lapse on the part of the public servant.

38 In our view, while the Prosecution's proposed guiding principles identify relevant factors that the courts should take into account in sentencing offenders under s 182, they are not adequate as guidelines for *all types* of s 182 offences. For example, in the case of an offender who lies to the police to cover for his friend who would have been prosecuted for drink driving, there would be no breach of "applicable regulations" to speak of ([36(a)] above), nor would there be any "breach of conduct rules" to cover-up ([37(d)] above). The considerations proposed seem more directed at cases involving public servant offenders committing a s 182 offence in the course of their employment.

The amicus

39 The amicus proposes categorising all s 182 offences into four categories based on the level of culpability and harm:

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	Culpability and harm	**Range of sentences**
Cat A	No significant culpability and harm	Fine up to $5000
Cat BC	Significant culpability but not harm	Imprisonment term between 1 week and 6 months
Cat BH	Significant harm but not culpability	Imprisonment term between 1 week and 6 months
Cat C	Significant culpability and harm	Imprisonment term between 3 months and 9 months

40 *Significant culpability* can be found in one or more of these scenarios[51]:

(a) the offender plays a leading or significant role where offending is part of a group activity;

(b) there is the involvement of others through pressure, influence;

(c) there is an abuse of position of power or trust or responsibility;

(d) the offence is of a sophisticated nature and/or there has been significant planning;

(e) it involves fraudulent activity conducted over sustained period of time or on many occasions;

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[51] Amicus' brief at para 37.

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(f) there is the targeting of a large number of victims; or

(g) the offender deliberately targets a victim on basis of his or her vulnerability.

41 *Significant harm* can be found in these scenarios:

(a) where the false statement results in a perversion of the course of justice (*eg*, false statement to the police to help the statement-maker or another evade the prosecution of an offence, or falsely alleging a crime against another);[52] or

(b) where important public interests are at stake or strong public policy considerations are involved (*eg*, harm to a large group of victims, harm to the community at large, to national interest, or some other important public interest).[53]

42 According to the amicus, after determining the category under which the offence falls, the appropriate quantum of fine or length of custodial term should be determined by considering *further factors* that have an impact on the offender's culpability and the harm caused by the offence.

43 The *further* factors which are relevant in assessing the *level of culpability* of the offender include:[54]

(a) whether the offender knew or merely believed that the statement given was false[55];

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[52] Amicus' brief at para 59.

[53] Amicus' brief at para 70.

[54] Amicus' brief at para 42.

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(b) whether the offender intended or merely knew it to be likely that the harm would arise[56];

(c) whether the giving of false information was pre-meditated or planned, or whether it was simply spontaneous;

(d) whether active, deliberate or sophisticated steps were taken by the offender to bolster the deception and boost the chances of hoodwinking the public authorities;

(e) the motive of the offender in giving the false information (malicious, revenge, innocuous, or altruistic intention);

(f) whether the deception was perpetrated despite or in active defiance of a warning not to lie;

(g) the number of times the lie was actively said;

(h) the number of people instigated or involved in the deception, and the specific role played by the offender;

(i) whether the offender had exploited or exerted pressure on others in the commission of the offence; and

(j) whether the offence is committed due to threat or pressure or fear of another person is a mitigating factor.[57]

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[55] Amicus' brief at para 32.

[56] Amicus' brief at para 33.

[57] Amicus' brief at para 113.

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44 The *further* factors which are relevant in assessing the *level of harm* caused by the offence include:

(a) whether the false statement was recanted, and if so, after how long;[58]

(b) the gravity of the predicate offence which the offender seeks to avoid or help another avoid;[59]

(c) the investigative resources unnecessarily expended;[60]

(d) the extent to which the innocent victims were affected, how many victims were affected, and the seriousness of the falsely-alleged crime;[61] and

(e) whether the offender obtained a financial advantage from the commission of the offence.[62]

45 We agree with the amicus' approach of sentencing offenders based on the degree of culpability and harm involved. Further, in our view, the amicus' proposed sentencing guidelines helpfully and comprehensively identify the type of concerns that have featured in the sentencing precedents and that should shape the sentences for offences committed under s 182. However, given (a) the narrow sentencing range available to the courts under s 182, (b) the wide variety of factual circumstances in which the offence may be

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[58] Amicus' brief at para 78.

[59] Amicus' brief at para 65.

[60] Amicus' brief at para 69.

[61] Amicus' brief at para 69.

[62] Amicus' brief at para 75.

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committed and (c) the importance of maintaining simplicity and flexibility in the sentencing guidelines laid down, we have some reservations about categorising the appropriate sentence for this offence into four groups based on *significant* culpability and harm. We shall explain.

Our view on the appropriate sentencing guidelines

46 In *CLB* at [9], the High Court observed that "s 182 covers an extensive array of misinformation of greatly varying degrees of iniquity". This diversity is evident from our above survey of the types of conduct falling within s 182. Indeed, in *Lim Bernard CA*, the Court of Appeal observed that a wide array of factors was germane to sentencing for a s 182 offence (at [22]), and that it was difficult to lay down sentencing benchmarks in the abstract without the particular facts of the case (at [23]). While this observation may be true of sentencing in general, in our view, the wide variety of misconduct that is caught under s 182 makes it *exceptionally* difficult to identify a single set of principal factors which can form the basis of a sentencing framework.

47 In *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 for example, the court managed to identify "principal factual elements" applicable across *all* the vice-related offences under consideration, and found it possible to define three levels of culpability and two categories of harm based on those principal facts (at [74]–[78]). Similarly, in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122, the court was able to build its sentencing framework for the offence of trafficking in diamorphine on the quantity of drugs involved in the trafficking charge as this would inevitably have a strong bearing on the sentence to be imposed (at [19] and [23]). From these examples, it is clear that a prerequisite to establishing a detailed sentencing framework for a particular offence is the possibility of identifying a set of

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principal fact(s) that significantly impact the gravity of the offence *across the board*.

48 In our judgment, it is difficult to categorise s 182 offences based on a set of "principal factual elements". The way in which the offence may be committed, the offender's motivation and the outcome of a s 182 offence can take a wide variety of shapes and forms. *In particular*, we find it difficult to define in the abstract a uniform set of factors that allows us to categorise an *offender's degree of culpability* for s 182 offences and in turn the appropriate punishment. For example, the significance of the fact that a lie was repeatedly told, or that the offender may have had an intention to reap personal benefit, must be assessed *in context* before the extent to which these factors aggravate the offence can be assessed. As we put to the parties in the course of the hearing, a public servant may have repeatedly lied to his superiors about not being the one who did not turn off the printer or the lights in the office. This is however unlikely to be treated by the courts as a serious criminal offence. We would add that the factors which the amicus identified as indicating "significant culpability" do not seem to be well suited to s 182 of the Penal Code. The amicus adapted those factors from the United Kingdom sentencing guidelines for the offence of fraud by failing to disclose information,[63] which is quite different from an offence of giving false information to a public servant. Also, as seen from the amicus' own illustrative table, the contemplated circumstances under which "significant culpability" may be found have rarely presented themselves in the s 182 offences we have seen in Singapore. Their utility as part of a sentencing framework is thus limited.

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[63] Amicus' brief at para 37.

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49 In the circumstances, given the broad nature of the s 182 offence, we are of the view that we can do no more than to give some broad guidance as to the type of cases that would generally attract a *custodial sentence* as a *starting point*. Thereafter, we identify a non-exhaustive set of factors which we think can affect the degree of culpability and harm of a s 182 offence. These factors can then be used to determine if the starting point should be departed from and/or what the appropriate quantum of fine or imprisonment term should be.

Custodial threshold

50 In our view, whether the custodial threshold is crossed should essentially be determined based on the *degree of harm* caused or likely to be caused by the s 182 offence. As the High Court in *CLB* observed at [9], "the [sentencing] norm must be varied according to the circumstances of each case, in particular, *the mischief that might be caused by the false information*" [emphasis added]. Specifically, if ***appreciable harm*** may be caused by the s 182 offence, the courts should, as a starting point, impose a custodial term. The range of harm that may ensue includes personal injury (*eg*, by causing another to contract HIV), loss of liberty (*eg*, by causing another to be unjustifiably arrested), financial loss (*eg*, by lying to facilitate the misappropriation of property or to commit insurance fraud) or harm arising from the wastage of public investigative resources.

51 Several qualifications should also be added:

(a) First, the harm must be *causally connected* to the provision of false information. In other words, the only relevant harm is the harm that was caused by the provision of false information. For example, an offender who lies about being the driver of the car to shield his friend from a drink driving charge merely makes it more difficult for the

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investigative authorities to bring the true perpetrator to justice and may cause the wastage of investigative resources – which is a different form of harm in itself. The false information, however, did not cause the drink driving offence to be committed.

(b) Second, the harm in question must be *more than de minimis*. It is important to keep in mind that a custodial term is only justified if the offence is of sufficient gravity. Parliament has increased the range of possible fines to give the courts more flexibility to impose higher fines instead of a custodial term. For example, unless otherwise proved, misleading investigative authorities for a few hours or even a day or two may not on the facts have the potential to bring about sufficient harm such as to justify a custodial term as the starting point. The *Lim Bernard DC* case is an illustration of this. The fact that the offender lied about his relationship with Lawrence Lim before recanting two days later cannot be said to have caused more than *de minimis* harm to the investigative process or public resources. By contrast, in *Liu Linyan* for example, although the false statement was recanted after a day, it caused the victim of the false allegation to be unjustifiably held in police custody for 19 hours (see [22(c)] above). This is clearly appreciable harm. Also, in *CLB*, lying on a blood donor form had the potential to cause significant harm even if no harm actually eventuated (in that no third person was infected with HIV); the serious potential consequences were sufficient to justify a custodial sentence as a starting point. In this kind of situation, public interest and general deterrence must be accorded paramount consideration.

(c) Third, harm in this context refers to both *actual* and *potential* harm. The fact that harm did not actually eventuate because the lie was

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detected fast enough or the offender was simply lucky should not detract from the justifiability of a custodial sentence if the potential for harm to be caused was real and significant. For example, in cases such as *Kumaran* (see [30(b)] above), even if the money was eventually recovered and returned to the victim after the offender was apprehended, the offence nevertheless still had the strong potential to cause the victim financial loss by facilitating the commission of the predicate offence and this harm should contribute to pushing the case across the custodial threshold. By contrast, and for the sake of argument, if the sum misappropriated had been merely a few dollars, this may be considered no more than *de minimis* harm.

(d) Fourth, it would usually, if not always, be relevant to assess the potential harm caused by the offence with reference to the *duration* that the falsehood was maintained. It can be fairly said that generally, if the falsehood was recanted quickly, appreciable harm is unlikely to be caused.

(e) Finally, it is acknowledged that "appreciable harm" is not a test capable of being applied with scientific precision. There will be many cases on the borderline, especially when the court is required to assess the potential consequences which *could have* ensued from the provision of false information, but did not on the facts. Nevertheless, it should be borne in mind that the sentencing court must still ultimately exercise its discretion on the facts of each case. The laying down of guidelines is merely intended to achieve a measure of consistency in sentencing and to provide a starting point for the courts. It is not meant to restrict the court's discretion in sentencing, something which we recognise is much needed especially in the context of s 182 offences.

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52 We would add that in our view, there is good basis to rely *essentially* on the *degree of harm* to define the custodial threshold as a *starting point*. Section 182 of the Penal Code ultimately seeks to protect the public against the *potential harm* that may result from a public officer misusing his/her powers, or failing to perform his/her duties.

53 This approach is generally consistent with the sentencing precedents. In *Wong Yi Hao Henry* for example, a fine was justified because no appreciable harm was caused by the offender lying to the primary school about his residential address (see [28(d)] above). But we must emphasise that should an offence of such a nature become more prevalent, the public interest may well dictate otherwise. Similarly, in *Lim Bernard DC*, a fine was justified because the offender's attempt to cover up his relationship with Lawrence Lim did not have the potential to cause appreciable harm given that his superiors did not take his word at face value and continued investigating into possible improprieties (see [32(c)] above). This would have made further improprieties in the procurement process unlikely even if the offender had not recanted his false statement. Moreover, that case involved a one-off purchase. Also, in cases where an offender provides false information to shield another from investigation (*eg*, in *Ee Chong Kiat Tommy* or *Kuah Geok Bee* – see [26(e)] and [26(f)] above), where this does not cause a significant wastage of investigative resources nor does it hurt any third party, the starting point of a custodial sentence may not be appropriate. However, we must reiterate that we are merely laying down a starting point. In *some* cases where harm is *de minimis* but culpability is high, (for *eg*, where aggravating factors such as the offender's irresponsibility (see for *eg*, in *Sivaprakash* at [26(a)] above), persistence in maintaining the lie (see for *eg*, in *Yeo Fang Yi* at [26(b)] above) or evidence of pre-meditation (see for *eg*, *Poh Chee Hwee* at [26(c)] above) exist), a custodial sentence *could* very well be justified on the facts.

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54 Conversely, cases in which the offender makes a police report alleging a crime against an innocent party have generally resulted in custodial terms given the risk of arrest and embarrassment those false allegations create (see [22] above). Also, cases in which the false information has caused a significant wastage of public resources have also resulted in a custodial term (see for *eg*, *Moscardon* at [24(a)] above).

55 We should point out that in the case of *Alvin Chan* (see [30(c)] above), while the offender was sentenced to a $4,000 fine on the facts, we are of the view that the *starting point* should have been a custodial sentence given that the attempted insurance fraud had the potential to cause significant financial losses to the insurer. Other mitigating factors may justify reducing the sentence to a fine instead – but that would have to depend on the specific facts of the case.

Other relevant sentencing factors

56 The above test of appreciable harm merely provides the sentencing court with a *starting point*. Other relevant sentencing factors should then be taken into account to determine (a) if the starting point should be departed from, and (b) what the appropriate quantum of fine and/or length of imprisonment should be. As to what these other relevant sentencing factors are, we gratefully adopt the factors identified by the amicus and reproduced at [43] and [44] above as a non-exhaustive list of factors that future courts should take into account (where applicable) in determining the appropriate sentence in each case.

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Present case

Appellant's submissions

57 The main grounds advanced by the Appellant in his appeal against his sentence are:

> (a) the prior and subsequent procurement improprieties the Appellant perpetrated from 2005 to 2012 (namely, signing off on contracts to Ivy's Companies despite his sexual relationship with her hence placing himself in a position of conflict of interest in breach of, *inter alia*, the Government Instruction Manual) should not be a relevant sentencing fact in this case because (i) the false information was given in response to a question about his personal affairs and not in the context of an inquiry about the way he awarded contracts to vendors or the integrity of the procurement process;[64] (ii) the Appellant provided the false information out of embarrassment[65] and the procurement process was not on the Appellant's mind when he denied the affair;[66] and (iii) there is no evidence that he actually manipulated the tender process or that he caused public funds to be misapplied;[67]
>
> (b) the DJ erred in speculating that there could have been corruption and that there were other reasons to explain why the Appellant was not charged with corruption[68];

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[64] Appellant's submissions at paras 17-24, 60.

[65] Appellant's submissions at paras 26-32.

[66] Appellant's submissions at para 60 .

[67] Appellant's submissions at para 52.

[68] Appellant's submissions at paras 66-68.

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(c) the lie about the affair in 2005 was one-off and the lie which is the subject matter of the TIC charge was of a different character from the first lie;[69]

(d) the DJ failed to consider relevant mitigating factors including his contributions to the public service[70] and evidence of his good character;[71]

(e) the DJ erred in failing to consider the sentencing considerations in *Lim Bernard DC* and in finding that that case was less serious than the present;[72] and

(f) the DJ failed to explain why the facts justified a custodial sentence, or why a four week term was appropriate[73] – in fact, this case is less serious than *CLB*, *Charan Singh* and *West Jack Gilbert*, all of which are cases where a four weeks' imprisonment term was meted out.

Relevance of the procurement improprieties

58 The most important question that arises on the facts of this case is whether the prior and subsequent procurement improprieties the Appellant perpetrated from 2005 to 2012 is a relevant sentencing factor. Before us, counsel for the Appellant, Mr Eric Tin ("Mr Tin"), submitted that the procurement improprieties were simply not on the Appellant's mind during the

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[69] Appellant's submissions at paras 72-74.

[70] Appellant's submissions at paras 89-91.

[71] Appellant's submissions at paras 92-94.

[72] Appellant's submissions at paras 121, 127-132.

[73] Appellant's submissions at paras 134 and 149.

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interview. Instead, he was overwhelmed by the embarrassment of being confronted with his extra-marital affair. The procurement improprieties are therefore not connected to the present offence and given that the Appellant is not being punished for those procurement improprieties but for the provision of false information about his affair with Ivy, the court should not take into account the procurement improprieties in sentencing the Appellant.

59 In this regard, it is essential to carefully scrutinise the section of the statement of facts describing the interview:

> 18. During the interview, Ms Chia directly questioned the accused on whether he had an affair with Ivy – a service provider to JJC. The accused falsely stated to Ms Chia, a public servant, that he was not having an affair with Ivy, which information he knew to be false. He was adamant in his denial.
>
> 19. During the interview, as the accused denied being sexually involved with Ivy, *Ms Chia reminded the accused about the importance of maintaining the integrity of the procurement process, and advised the accused against any personal involvement with Ivy, whose company was bidding for contracts and providing services to the accused's school.* ***The accused acknowledged that he understood Ms Chia's advice***. [emphasis added in italics and bold italics]

60 From the statement of facts, it is evident that (a) Ms Chia did direct the Appellant's mind to the issue of possible procurement improprieties, and (b) the Appellant acknowledged that he understood Ms Chia's advice. In this context, it is unbelievable that the issue of procurement improprieties was not on the Appellant's mind *at all*. Even if the Appellant did not realise, at the time he denied the extramarital affair, that the interview pertained to procurement issues, he must have realised what was at stake *after* Ms Chia reminded him about the importance of maintaining the integrity of the procurement process. At that point, it was open to him to retract his denial. Even if he was too embarrassed to do so, the least he could have done, if he

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truly felt embarrassment and remorse, was to remove himself from the position of conflict of interest thereafter. Instead, the Appellant continued signing off on contracts awarded to Ivy's Companies. The Appellant's provision of false information to Ms Chia *enabled* him to cover up his improper involvement in approving contracts to Ivy's Companies, and perpetrate the procurement improprieties for the next seven years, tainting the award of more than $3m worth of government contracts.

61 In the circumstances, we are of the view that the Appellant's continued involvement in the award of government contracts to Ivy's Companies is clearly a relevant sentencing factor that should be taken into account and which aggravates the offence. It does not matter that the Appellant's intention may not have been to cover up the procurement improprieties or to help Ivy obtain more contracts in future. There is a clear causal connection between the provision of false information and the continuation of the procurement improprieties.

Custodial threshold

62 As mentioned, to determine whether the case justifies a custodial term, at least as a starting point, the court has to ask whether the offence caused, or had the potential to cause, appreciable harm. In this case, there is no finding of actual corruption or misuse of public funds. Nevertheless, in our view, appreciable harm was clearly caused by the offence. By concealing his affair with Ivy, a school vendor, and passively maintaining the falsehood, the Appellant was allowed to undermine the integrity of the procurement process and confidence in the Public Service,[74] especially since the conflict of interest

[74] Prosecution's submissions at paras 103-108.

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went undetected for a long period of time. It is also significant that a large number of contracts of significant value were infected by this impropriety (regardless of whether Ivy could have obtained the contracts without the Appellant on the final approving board).

63 This case is clearly distinguishable from *Lim Bernard DC*, which the defence relied heavily upon. In *Lim Bernard DC*, the provision of false information only impeded internal investigations for about two days, after which, the lie was recanted. The offending conduct in that case was done in order to *cover up* a *prior* impropriety; it did not facilitate or allow the commission of *further* improprieties. Harm to person or property, or to the public service, did not *continue* to be caused by the false provision of information. In this case, the provision of false information *enabled* the procurement improprieties to ***continue*** for the next ***seven years***, and for more than ***$3m worth of government contracts*** to be tainted by this. The harm in this case is therefore clearly much greater.

64 In our judgment, the custodial threshold in this case is undoubtedly crossed. As a starting point, a custodial sentence should be imposed. It only remains to be determined whether the other relevant sentencing factors justify (a) a departure from this starting point, or (b) lowering the term of imprisonment.

Other relevant factors

65 In our view, the fact that the Appellant did not repeat the lie which is the subject of the charge is not significantly mitigating. Given his senior position in the public service, he was clearly trusted by Ms Chia and MOE. The fact that he was allowed to continue sitting on the QAP approving contracts to Ivy's Companies demonstrates that the MOE assumed throughout

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that he was telling the truth (without him having to repeat the lie). We find it particularly aggravating that despite having been warned by Ms Chia, and claiming to have been embarrassed by the situation, he nevertheless allowed the procurement improprieties to continue for such a long time. Indeed, in a case like the present, so long as the false statement was not retracted, that effectively amounted to a continuous assertion of the falsehood by the Appellant.

66 Also, we did not think the DJ erred in treating the absence of a corruption charge as a neutral factor. While she may have given a view as to why the Appellant was not charged with corruption, she nevertheless treated that as a neutral factor and we do likewise in reviewing the Appellant's sentence. As we made clear at [62] above, we sentence the Appellant on the basis that there is no finding of actual corruption or misuse of public funds.

67 As to the Appellant's motive for lying, we are content to accept Mr Tin's submission that the Appellant's motive was not to cover up the previous procurement improprieties, or to enable the perpetration of further procurement improprieties for Ivy's benefit. However, even if he was, *momentarily*, motivated primarily by embarrassment, his subsequent brazen conduct was clearly inconsistent with any continued embarrassment or remorse. And as stated at [65], so long as he did not retract his false statement, he was in effect continuously asserting the falsehood.

68 In Singapore, the integrity of the public service and its freedom from corruption are matters which are highly prized. Public perception and trust in the government and in its integrity is of the highest importance. The Appellant's actions significantly threatened this, bearing in mind the length of time his affair went undiscovered, as well as the value of contracts that were

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improperly approved by the Appellant (given the conflict of interest). The Appellant knowingly concealed his affair with Ivy and continued to improperly approve government contracts to Ivy's Companies. Such conduct impinges on the public interest and must be deterred. This is especially since the effect of the Appellant's lie was enhanced by the trust reposed in him as a senior public servant by the MOE. No further investigation was carried out – he was taken at his word and allowed to continue awarding contracts to Ivy's Companies undiscovered. These are significantly aggravating factors. Seen in this light, we are of the view that his contributions to the public service and evidence of his good character – the very things he abused in committing the offence – are not of substantial mitigating value.

69 All things considered, therefore, we do not think that the four weeks' imprisonment term is manifestly excessive.

70 Mr Tin has raised three precedents which we will briefly deal with. *CLB* concerned the making a false declaration on a blood donor form (see [28(a)] above), and *West Jack Gilbert* involved an offender providing false information about his past criminal record on an application to MOE to be a teacher (see [28(c)] above). In both these cases, the offender was sentenced to four weeks' imprisonment and Mr Tin's submission is that the present case is less serious. In our view, these fact patterns are too dissimilar to the present to be a meaningful basis for evaluating the appropriateness of the present sentence. In *CLB*, the interest protected was the public health system and the well-being of patients who receive blood. In *West Jack Gilbert*, what was primarily at stake was the well-being of the students that the offender was allowed to interact with. In this case, we are concerned with the integrity of the Public Service and the procurement process. These are incommensurables and it is impossible to say which interest is more important and worthy of

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greater protection. We therefore see no basis for Mr Tin's submission that the offences in *CLB* and *West Jack Gilbert* are more egregious. Given the wide diversity of s 182 offences, it is only meaningful for the sentencing courts to compare sentencing precedents which bear at least *some* factual resemblance to the case before it.

71 *Charan Singh* bears slightly more resemblance to the present case as it also involves a public servant abusing his position in the provision of false information (see [32(b)] above). However, we note that the improprieties in *Charan Singh* were quickly detected (unlike the seven years it took in this case) and did not involve sums as large as those involved in the present case. Therefore, there is no basis to say that the offence in *Charan Singh* was more serious than the present.

Public servant offenders

72 Finally, we should address the relevance of the fact that the offender guilty of a s 182 offence may himself be a public servant. In our view, this is not *always* an aggravating factor. Insofar as the offender's status as a public servant may accentuate the harm caused by his actions, or may increase his culpability for the offence because he may have abused his position in the public service in telling the lie, these will certainly be relevant sentencing factors that aggravate the offence. However, where the false information was provided in a context that is completely unrelated to his work, the fact that the offender is a public servant is unlikely to be an aggravating factor.

73 In *Public Prosecutor v Mohdnizam bin Othman* [2007] SGDC 41, the offender, a police officer, falsely reported to the police that his ex-wife had forged his signature in an application for a card, triggering investigations into cheating and forgery against her. In fact, he had authorized her to sign the

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application form on his behalf. He only falsely reported his ex-wife to the police after their marital relationship broke down. The court found that the fact the offender was a police officer holding the rank of sergeant was an aggravating factor as his duty was to uphold the law, not to abuse it (at [52]), and sentenced the offender to three months' imprisonment. The sentence was upheld on appeal.[75] We have serious doubts as to the correctness of this proposition. The motive and circumstances in which the offence was committed clearly had nothing to do with the offender's job. It was done against his ex-wife following the break-down of his personal relationship. The fact that the offender also happened to be a sergeant with the police force should not have been treated as an aggravating factor.

74 The present case is different. Here, the fact that the Appellant was a senior public servant had implications on both his culpability as well as the harm caused by the false information he provided. It therefore was correctly taken into account in determining the Appellant's sentence.

Conclusion

75 In conclusion, we find that the DJ's sentence of four weeks' imprisonment was neither arrived at on the basis of an error of fact or law, nor is it manifestly excessive. As such, we dismiss the appeal.

Sundaresh Menon Chief Justice	Chao Hick Tin Judge of Appeal	See Kee Oon Judicial Commissioner

[75] Magistrate's Appeal No 188 of 2006.

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