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ENHANCING SENTENCES IN THE ABSENCE OF A PROSECUTION APPEAL

Criminal Procedure Code[1]

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Sometimes, following a conviction, an appeal is brought by the convicted person without any cross-appeal by the Prosecution on the sentence. Can the appellate court nevertheless increase the sentence imposed below? This study of the relevant cases and statutory provisions in Singapore suggests that both the High Court and the Court of Appeal are vested with the power to increase the sentence even where the only appeal is brought by the convicted person.

I. INTRODUCTION

A convicted person may choose to appeal his conviction, his sentence or both. There is an exception to this general rule: a person who has pleaded guilty may appeal only against his sentence.[2] But apart from this it is his right and entitlement to take the trial judge's decision to a higher court.[3] Likewise, the Prosecution may appeal against the acquittal of the accused person (if he is acquitted) or the sentence imposed on him (if he is convicted). In reality, however, a person found guilty at trial not infrequently discovers that he is the only one who has filed an appeal. The Prosecution has decided not to appeal against the sentence imposed. Can the appellate court in such a case enhance the sentence, notwithstanding that the Prosecution has not asked for it to be increased?

II. THE LEGISLATIVE LANDSCAPE

Before 2010, it was necessary to differentiate between appeals in the High Court and appeals in the Court of Appeal. In the case of the latter, if the Court of Appeal thought that a different sentence should have been passed, it could quash the sentence below and pass such other sentence warranted in law (whether more or less severe) in substitution therefor, pursuant to s. 54(4) of the *Supreme Court of Judicature Act*.[4] This pellucid language arguably permitted the passing of an enhanced sentence even

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1 Cap. 68, 2012 Rev. Ed. Sing. [*2012 CPC*].
2 *Ibid.*, s. 375.
3 See *e.g.*, *Leong Mun Kwai v. Public Prosecutor* [1971-1973] S.L.R.(R.) 707 at para. 2 (H.C.).
4 Cap. 322, 2007 Rev. Ed. Sing. [*SCJA*].

where the only appeal brought was by the convicted person. That is the position taken in Malaysia, which has a provision similar to s. 54(4),[5] and also previously in England when the equivalent legislation was in force there.[6]

The power of the High Court to interfere with sentence, on the other hand, was found in s. 256 of the 1985 *Criminal Procedure Code*,[7] under which the court could, in an appeal against conviction or sentence, reduce or enhance or alter the nature of the sentence. It had previously been explained that this section, read with s. 268 of the same Code, conferred on the High Court a power under its revisionary jurisdiction which enabled it to increase a sentence even in the absence of an appeal by the Prosecution. In *Navaseelan Balasingam v. Public Prosecutor*,[8] the convicted person had appealed against the manifest excessiveness of his sentence. Tay Yong Kwang J. disagreed. He thought that the sentence was manifestly *inadequate*, and was inclined to enhance it. After examining the law, Tay J. concluded that whilst the Prosecution had not appealed against the sentence imposed, he was entitled to exercise his powers of revision to modify the permutation of the consecutive prison sentences, which resulted in an overall increase of two years' imprisonment.[9]

Prior to 2010, therefore, it was clear that both the High Court and the Court of Appeal possessed the power to enhance a sentence even in the absence of an appeal by the Prosecution. Crucially, however, the Court of Appeal was permitted to increase a sentence pursuant to its *appellate* powers under s. 54(4) of the *SCJA*, while it was said that the High Court was exercising its *revisionary* powers when it enhanced a sentence.

Significant amendments in 2010 resulted in the repeal of s. 54(4) of the *SCJA* and the re-enactment of the *Criminal Procedure Code*.[10] The powers of an appellate court, be it the High Court or the Court of Appeal, have now been consolidated in a single provision, s. 390 of the *2012 CPC*.[11] Under s. 390(1)(b) the court may, in an appeal from a conviction, reduce or enhance or alter the nature of the sentence. These powers are also available in an appeal as to the *sentence*.[12] All this has to be read in conjunction with s. 394, pursuant to which the appellate court may set aside a sentence only if it is wrong in law, against the weight of evidence, or manifestly excessive or inadequate in all the circumstances of the case.[13]

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[5] *Rosli bin Supardi v. Public Prosecutor* [2002] 3 M.L.J. 256 at 262 (C.A.); *Azmi bin Harun v. Public Prosecutor* [2006] 5 M.L.J. 353 at para. 7 (C.A.); *Kesavan a/l Baskaran v. Public Prosecutor* [2008] 6 M.L.J. 384 at paras. 12, 13 (C.A.). For similar comments in Australia, see *e.g.*, *R H McL v. The Queen* (2000) 203 C.L.R. 452 at para. 82 (H.C.A.); *Arnaout v. The Queen* [2008] NSWCCA 278 at para. 15. See also *R. v. Hill* [1977] 1 S.C.R. 827 for a Canadian take on a differently worded provision, and *HKSAR v. Tong Fuk Sing* [1999] 3 H.K.C. 332 in Hong Kong.

[6] Lord Goddard, "The Working of the Court of Criminal Appeal" (1952-1954) 2 Journal of the Society of Public Teachers of Law, New Series 1 at 2. The English provision was s. 4(3) of the *Criminal Appeal Act, 1907* (U.K.), 7 Edw. VII, c. 23, upon which Singapore enacted s. 6(3) of the *Court of Criminal Appeal Ordinance 1931* (S.S.) (No. 5 of 1931).

[7] *Criminal Procedure Code* (Cap. 68, 1985 Rev. Ed. Sing.) [*1985 CPC*].

[8] [2007] 1 S.L.R.(R.) 767 (H.C.) [*Navaseelan*].

[9] *Ibid.* at paras. 29-32. See also *Ho Kin Luan v. Public Prosecutor* (1959) 25 M.L.J. 159 at 161 (C.A.); *Jamalludin B Khadiron v. Public Prosecutor* [2004] 7 M.L.J. 280 at para. 17 (H.C.).

[10] Both changes were effected by the *Criminal Procedure Code 2010* (No. 15 of 2010, Sing.).

[11] *2012 CPC*, *supra* note 1.

[12] *Ibid.*, s. 390(1)(c).

[13] *Public Prosecutor v. Lee Meow Sim Jenny* [1993] 3 S.L.R.(R.) 369 at para. 12 (C.A.).

III. Does Section 390 of the *2012 CPC* Permit an Appellate Court to Enhance a Sentence Even in the Absence of a Prosecution Appeal?

Three permutations exist in a case where the Prosecution has not appealed: the convicted person appeals his conviction, his sentence, or his conviction *and* sentence. It is convenient to discuss the first two scenarios separately, following which the third should fall into place. In an appeal against conviction the court may, under s. 390(1)(b)(ii) of the *2012 CPC*, reduce or enhance the sentence passed below.[14] There is no ambiguity here; the court can increase the sentence notwithstanding that the Prosecution has not also filed an appeal.[15] The history of the provision confirms this. Its predecessor, s. 310(b)(ii) of the 1936 *Criminal Procedure Code*,[16] was amended precisely to allow the court to enhance a sentence in an appeal from a conviction. Section 310(b)(ii) in its earliest forms—that is, s. 302(d)(2) of the *Criminal Procedure Code 1900*,[17] and later s. 303(d)(2) of the *Criminal Procedure Code 1910*[18]—stated that in an appeal from a conviction the court could, in respect of sentence, only reduce it.[19] The words "*or enhance*" were deliberately introduced via an amendment in 1933,[20] the reason being that this was "based on the corresponding law in the Federated Malay States".[21] This appears to be a reference to s. 314(b)(ii) of the Federated Malay States' *Criminal Procedure Code 1926*.[22]

The second scenario is where the convicted person has appealed his sentence only. Section 390(1)(c) of the *2012 CPC* is the applicable provision here, and it states that the appellate court may, "in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence".[23] A casual reading might suggest that the court can reduce or enhance the sentence in *any* appeal as to sentence, regardless of whether it was brought by the Prosecution or the Defence. But the position is not that clear. Section 390(1)(c) of the *2012 CPC* is undoubtedly a reproduction of s. 256(c) of the *1985 CPC*, which, as mentioned earlier, applied only to appeals in the High Court.

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[14] *2012 CPC*, *supra* note 1, s. 390(1)(b)(ii).

[15] *Lin Bin v. Public Prosecutor* [2005] SGHC 213 at para. 57. The court there increased the sentence pursuant to s. 256(b)(ii) of the *1985 CPC*, the predecessor to s. 390(1)(b)(ii) of the *2012 CPC*. See also *Lim Chow Keng v. Public Prosecutor* [1973] 1 M.L.J. 156 at 157 (F.C.) [*Lim Chow Keng*]; *Tee Teng Heng v. Public Prosecutor* [2000] 3 S.L.R.(R.) 602 at para. 22 (H.C.).

[16] (S.S.) (Cap. 21, 1936 Rev. Ed.) [*1936 CPC*].

[17] (S.S.) No. 21 of 1900.

[18] (S.S.) No. 10 of 1910.

[19] Note also s. 423(1)(b)(3) of the contemporary Indian *Code of Criminal Procedure, 1898* (Act No. V of 1898, India), which stated expressly that in an appeal from a conviction the court could not enhance the sentence.

[20] *Criminal Procedure Code (Amendment) Ordinance 1933* (S.S.) (No. 36 of 1933), s. 37 [emphasis added].

[21] See "Objects and Reasons" of the *Criminal Procedure Code (Amendment) Bill 1933* in the *Straits Settlements Government Gazette* (29 September 1933) No. 1867, 1835 at 1880; (6 October 1933) No. 1907, 1985 at 2030. The Bill was passed with minimal amendments on 4 December 1933 (see *Straits Settlements Government Gazette* (29 December 1933) No. 2480, 2829; "Criminal Procedure Code (Amendment) Bill" in the *Supplement to the Straits Settlements Government Gazette* (17 November 1933) No. 111, 178; "Criminal Procedure Code (Amendment) Bill" in the *Supplement to the Straits Settlements Government Gazette* (5 January 1934) No. 1, 203).

[22] No. 22 of 1926, Federated Malay States.

[23] *2012 CPC*, *supra* note 1, s. 390(1)(c).

By expanding the scope of the provision to include appeals in the Court of Appeal, it is not difficult to surmise that the draftsman intended for s. 390(1)(c) of the *2012 CPC* to have the same effect in respect of such appeals that s. 256(c) of the *1985 CPC* had in relation to appeals in the High Court. So what effect *did* s. 256(c) have? What powers did it confer upon the High Court? In *Navaseelan*, Tay J. said that this section, when read with other statutory provisions conferring revisionary jurisdiction upon the High Court, gave that court the revisionary power to enhance a sentence even if the Prosecution had failed to appeal.[24] This power is not available to the Court of Appeal in respect of appeals from the High Court, for two reasons. The Court of Appeal does not possess revisionary jurisdiction under the relevant legislation,[25] and revisionary jurisdiction can only be exercised over an inferior court, which the High Court is not.[26]

It is in fact considered that s. 390(1)(c) of the *2012 CPC* confers on the appellate court a straightforward power under its *appellate* jurisdiction to increase a sentence even where the Prosecution has not appealed. After all, s. 390(1)(c) has to be viewed in harmonious tandem with its neighbouring provision, s. 390(1)(b)(ii), which plainly allows the court to enhance a sentence where the only appeal filed is one against *conviction*. It would seem highly incongruous to permit the court to increase the punishment only where the convicted person had appealed his conviction but not his sentence. No convincing reason exists why the power to enhance sentences should not extend to both types of appeals. In my opinion, therefore, the position is rightly stated in *Oloofsen v. Public Prosecutor*,[27] *Lim Chow Keng*,[28] and *Shafruddin bin Selengka v. Public Prosecutor*.[29] Notably, in several appeals brought by the convicted person against their sentence, the High Court also seemingly viewed the power to enhance sentences as one falling within its appellate jurisdiction.[30]

Section 390(1)(c) of the *2012 CPC* is derived from s. 256(c) of the *1985 CPC*, which is in turn traceable to s. 310(c) of the *1936 CPC*. The story behind the introduction of s. 310(c) is not uninteresting. In 1950 an appeal against sentence could be taken only in respect of an error of law or fact. Thus an amendment was passed to allow an appeal to be filed on the sole ground that the sentence was excessive or inadequate, as the case might be.[31] All this is gathered from a statement made by the Acting Attorney-General of the Colony of Singapore when he introduced the

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[24] *Supra* note 8 at paras. 30-32.

[25] *Mok Swee Kok v. Public Prosecutor* [1994] 3 S.L.R.(R.) 134 at para. 24 (C.A.); *Ng Chye Huey v. Public Prosecutor* [2007] 2 S.L.R.(R.) 106 at paras. 63, 64 (C.A.) [*Ng Chye Huey*].

[26] *Ng Chye Huey*, *ibid.* at paras. 40-53.

[27] (1964) 30 M.L.J. 305 at 305 (H.C.).

[28] *Supra* note 15 at 157.

[29] [1994] 3 M.L.J. 750 at 754 (H.C.) [*Shafruddin*].

[30] *Samnasivam s/o Sharma v. Public Prosecutor* [1992] 2 S.L.R.(R.) 514 at para. 11 (H.C.); *Narindar Singh s/o Malagar Singh v. Public Prosecutor* [1996] 3 S.L.R.(R.) 318 at para. 60 (H.C.); *Heng Jong Cheng v. Public Prosecutor* [1999] 1 S.L.R.(R.) 769 at para. 1 (H.C.); *Choo Pheng Soon v. Public Prosecutor* [2001] 1 S.L.R.(R.) 115 at para. 43 (H.C.).

[31] *Criminal Procedure Code (Amendment) (No. 2) Ordinance, 1950* (No. 30 of 1950, Sing.), s. 2. Section 4 of this amendment ordinance then inserted into s. 310 of the *1936 CPC*, *supra* note 16, the words "in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence".

amendment Bill in 1950:[32]

> The Privy Council in a recent appeal, *Mohinder Singh and another vs. The King*, has held that under the Criminal Procedure Code in its present form no appeal lies against any sentence of a Criminal District Court or a Police Court except in respect of some error in law or in fact. This ruling applies as fully to appeals by convicted persons as to appeals by the Crown. The purpose of this Bill is to legalise appeals as to sentence where the only ground of appeal is that the sentence is either excessive or inadequate.

While there is no citation for the case quoted in the passage, it is probably a reference to *Mohindar Singh v. R*.[33] The following table compares the reason given by the Acting Attorney-General for the amendment with amended s. 310(c) itself.

The Acting Attorney-General's reason for introducing the amendment	**Amended s. 310(c) of the 1936 *Criminal Procedure Code***
The purpose of this Bill is to legalise appeals as to sentence where the only ground of appeal is that the sentence is *either excessive or inadequate*. [emphasis added]	At the hearing of the appeal, the Court may… in an appeal as to sentence, *reduce or enhance the sentence*… [emphasis added]

This might seem to suggest that, under s. 310(c), the court could reduce the sentence in an appeal where it was argued that the sentence was excessive, *or* enhance the sentence in an appeal where it was argued that the sentence was inadequate. On one reading, the 1950 amendment was not intended to permit the court to reduce or enhance a sentence in the converse situations, that is, to allow reduction of the sentence where it was argued that the sentence was inadequate, and enhancement of the sentence where it was argued that the sentence was excessive. If this is correct, it would also mean that the court cannot increase a sentence if the Prosecution fails to appeal the sentence on the ground that it was inadequate.

However, the 1950 statement has not been the only official comment on the provision. In 2010, the Minister for Law made the following remark when moving the *Criminal Procedure Code Bill*:[34]

> Ms Lim has suggested that when an accused appeals against his sentence, without any cross-appeal by the prosecution, his sentence should not be enhanced by the Courts. *On any appeal against sentence, the Appellate Court is required to consider the totality of the circumstances and must have the discretion to enhance the sentence, if it considers that the sentence is inadequate.*

[32] See "Objects and Reasons" of the *Criminal Procedure Code (Amendment) (No. 2) Ordinance, 1950* in the *Supplement to the Colony of Singapore Government Gazette* (18 April 1950) No. S 124/1950, 479 at 480.

[33] [1950] A.C. 345 (P.C.), on appeal from the High Court of the Colony of Singapore.

[34] Sing., *Parliamentary Debates*, vol. 87, col. 571 (19 May 2010) (Mr. K. Shanmugam) [emphasis added].

> The criminal justice system must take cognisance not only of the accused person, but also the interests of the victim and the protection of the public. We should therefore not fetter the Court's duty to decide the punishment that fits the crime.

The Minister does not refer expressly to s. 390(1)(c) of the *2012 CPC*, but it is reasonably clear that he was alluding to that provision. Whatever the position that obtained when it was introduced in 1950, there is now little doubt that an appellate court is empowered under s. 390(1)(c) to increase the punishment in any appeal on sentence coming before it. This will include a case where only the convicted person (and not the Prosecution) has brought an appeal.

Now, if the s. 390(1)(c) power to enhance sentences resides under the court's *appellate* jurisdiction, then that power is equally available in appeals both before the High Court and the Court of Appeal. There is no need to invoke a revisionary power of any sort, provided that the appeal on sentence has been properly brought (whether by the convicted person or by the Prosecution). This is important. It means that in a case where only the convicted person has appealed against sentence, the usual standard of review should apply, that is, appellate interference will be justified if the judge below erred in respect of the proper factual basis for sentence or failed to appreciate the materials before him, or if the sentence was wrong in principle and/or law or manifestly inadequate.[35] There will be *no* need to establish a serious injustice before intervention is warranted, as would be required where the High Court was exercising its power of *revision* to increase a sentence.[36]

To briefly conclude on the first and second scenarios. If only the convicted person has filed an appeal and it is against his *conviction*, the court is empowered under its appellate jurisdiction to enhance the sentence, pursuant to s. 390(1)(b)(ii). If his appeal is against his *sentence*, the court also has the power under its appellate jurisdiction to increase the punishment, but this time pursuant to s. 390(1)(c). The third scenario of an appeal against both conviction and sentence is an *a fortiori* case. It needs to be appreciated that the operative provision will differ depending on whether the convicted person's appeal is brought against his conviction or his sentence. The point may seem slightly pedantic but it was overlooked, for example, in *Moganaruban s/o Subramaniam v. Public Prosecutor*[37] and *Cheong Siat Fong v. Public Prosecutor*,[38] where the court said that it was increasing the sentences under the forerunner to s. 390(1)(c) despite the appeals having been brought against *conviction*, not sentence. Finally, and on a practical level, there is much to be said for the court hearing the appeal to allow the convicted person the utmost latitude reasonably available to state why he should not be subject to a higher sentence, for the decision *sua sponte* to enhance a sentence will almost invariably inject an element of surprise.[39]

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[35] *Public Prosecutor v. Mohammed Liton Mohammed Syeed Mallik* [2008] 1 S.L.R.(R.) 601 at para. 82 (C.A.) [*Mohammed Liton*].

[36] *Navaseelan*, *supra* note 8 at para. 32.

[37] [2005] 4 S.L.R.(R.) 121 (H.C.).

[38] [2005] SGHC 176.

[39] See also *Lim Chow Keng*, *supra* note 15 at 157.

IV. Some Closing Thoughts

Having discussed the existence of an appellate power to enhance sentences even in cases where the Prosecution has not appealed, two concluding points are made. I had mentioned at the beginning the right of appeal belonging to a convicted person. In view of the appellate court's power to increase the punishment, however, a convicted person should consider carefully before launching an attack against the trial judge's decision. The bringing of "misconceived"[40] and "audacious"[41] appeals by convicted persons has not been countenanced by senior judges, who have responded by increasing the sentences in appropriate cases. Normatively speaking, there is ample justification for this stance, stemming from the desire to further the interests at stake—such as the protection of the public, the effective use of judicial time, and the integrity of the sentencing process in our criminal justice system. The courts themselves will no doubt be astute to the signals sent out by any practice of enhancing sentences. Only the truly deserving cases should attract the imposition of an increased sentence, and care should be taken not to do anything which would unduly inhibit prospective appellants from appealing. Of course, there is no necessary inconsistency between the two. The balance was caught by Yong Pung How C.J.:[42]

> The enhancement of the sentences, while also aimed at discouraging frivolous appeals, is certainly not to deter legitimate appeals. Appeal is, after all, a matter of legal right. But we do not want accused persons to appeal with the vain hope of a reduced sentence when it is clear that they should be put away for sufficient periods of time.

It is thought that a useful distinction can be drawn (at least in cases where only the Defence has appealed) between what is *necessary* and what is *sufficient* for the discretionary exercise of the power to enhance sentences. In that which is *necessary*, one refers to the usual standard of review of the trial judge's exercise of sentencing discretion, that is, the court must be satisfied either that the judge erred in respect of the proper factual basis for the sentence or failed to appreciate the materials before him, or that the sentence was wrong in principle and/or law or manifestly inadequate.[43] But is this *sufficient*? Perhaps two other important questions ought to bear on the court's mind when deliberating whether to increase a sentence. Is it fair in all the circumstances to impose an enhanced sentence even though the Prosecution has not appealed? Will enhancing the sentence in this case unduly discourage prospective appellants in others from exercising their right of appeal?[44] The answers will have to

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[40] *Choo Pit Hong Peter v. Public Prosecutor* [1995] 1 S.L.R.(R.) 834 at para. 87 (H.C.) [*Choo Pit Hong Peter*].

[41] *Wong Hoi Len v. Public Prosecutor* [2009] 1 S.L.R.(R.) 115 at para. 52 (H.C.) [*Wong Hoi Len*]. See also *Thong Sing Hock v. Public Prosecutor* [2009] 3 S.L.R.(R.) 47 at para. 62.

[42] "In Conversation with Chief Justice Yong Pung How" *Annual Report 1999—Leading Justice @ Subordinate Courts* at 26, online: State Courts Singapore <https://app.statecourts.gov.sg/Data/Files/File/AR_1999/conversation3.pdf>.

[43] *Mohammed Liton*, *supra* note 35 at para. 82.

[44] See *Wong Hoi Len*, *supra* note 41 at para. 21; *Shafruddin*, *supra* note 29 at 754.

depend on the facts of each case. Judicial restraint may be called for.[45] For instance, an increased sentence may well be justified where the convicted person had ignored legal advice not to proceed with a patently unmeritorious appeal, but an appellant who is unrepresented might attract greater leniency from the court. Or, to take another example, where the offence committed is newly created or has not previously been the matter of prosecution, the court may recognise the lack of precedential guidance and therefore stay its hand and not enhance the punishment. At the other extreme, where the sentence imposed at trial is patently wrong in law then there will be no room to say that it should not be increased to the proper level on appeal.[46] There are obviously many more circumstances which will affect the equation. Sentencing is a highly facultative exercise. But in a case where the only appeal has been brought by the convicted person the interests of the public and the individual become even more clearly defined.

The second point relates to the fact that often enough it is only the convicted person who has appealed against the trial judge's decision. The Prosecution has the discretion not to bring an appeal against the sentence imposed, and provided this discretion is exercised constitutionally and not arbitrarily it is unchallengeable.[47] In such a scenario, what position might the Prosecution take if the appellate court is of the opinion that the sentence should be enhanced? Well, at the very least the Prosecution ought to assist the court at the hearing, and if it thinks the sentence passed below is *adequate* it will no doubt submit arguments to the court on why the sentence should *not* be increased. What poses greater difficulty is where there are extraneous reasons for the Prosecution not having appealed, for example: if there was informal plea bargaining behind the scenes, if the sentence imposed below had fallen within the Prosecution's own internal acceptable benchmarks, if the convicted person had whistle-blown on his accomplices or revealed the identity of a criminal mastermind, or if it was simply a better allocation of Prosecutorial resources elsewhere. None of this may ever be made known to the appellate court.[48] But by the same token it cannot be remotely said that these matters, which are completely internal to the Prosecution, ought to have any impact (unless statutorily provided for) on the appropriate sentence to be passed, once the case is properly before the appellate court in the form of an appeal by the convicted person against his conviction or his sentence. The court is thenceforth duty-bound to exercise its discretion to select the punishment which it thinks appropriate, having regard to *established judicial principles*,[49] as well as possibly the considerations mentioned in the previous paragraph. No deference should thus ordinarily be afforded to the Prosecution's hesitation in bringing an appeal. What was said in *Liaw Kwai Wah v. Public Prosecutor*, that the Prosecution's

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[45] See *Choo Pit Hong Peter*, *supra* note 40 at para. 87; *Fricker Oliver v. Public Prosecutor* [2011] 1 S.L.R. 84 at para. 40 (H.C.); *Ang Jeanette v. Public Prosecutor* [2011] 4 S.L.R. 1 at para. 73 (H.C.); *Lee Chiang Theng v. Public Prosecutor* [2012] 1 S.L.R. 751 at para. 39 (H.C.).

[46] *Khirul Ihsan bin Hussain v. Public Prosecutor* [1999] 3 M.L.J. 397 (H.C.).

[47] *Huang Meizhe v. Attorney-General* [2011] 2 S.L.R. 1149 at para. 27 (H.C.); *Ramalingam Ravinthran v. Attorney-General* [2012] 2 S.L.R. 49 at para. 17 (C.A.); *Sabapathee v. Director of Public Prosecutions* [2014] UKPC 19 at para. 21.

[48] See *e.g.*, the puzzlement expressed in *Tan Sri Abdul Rahim bin Mohd Noor v. Public Prosecutor* [2001] 3 M.L.J. 1 at 4, 5 (C.A.).

[49] *Mohammad Faizal bin Sabtu v. Public Prosecutor* [2012] 4 S.L.R. 947 at para. 45 (H.C.).

right to appeal a sentence for manifest inadequacy cannot be usurped by a judge,[50] is undoubtedly correct but not quite relevant. That was uttered in relation to the judicial power of revision, which is primarily to be used only to right serious injustices and not to increase sentences in general fashion. Where an *appeal* has been properly brought by the convicted person, however, there can be no accusation that the court's exercise of the powers under ss. 390(1)(b)(ii) and 390(1)(c) of the *2012 CPC* to enhance a sentence is a trespass into the Prosecutorial bailiwick.[51]

[50] [1987] 2 M.L.J. 69 at 71 (S.C.).

[51] I therefore respectfully disagree with the sentiment expressed by Murphy J. in *Neal v. R.* (1982) 149 C.L.R. 305 at 311 (H.C.A.) and by Laskin J.A. (as he then was) in *R. v. Willis* [1969] 1 O.R. 64 at 75 (C.A.). In my view there is no necessary incongruity in a case where the court takes it upon itself in an appeal to increase a sentence even if the Prosecution does not consider the sentence inadequate. In fact, as elaborated on earlier, sufficient justification probably exists for the enhancement of a sentence in this way, if such enhancement is warranted on the facts of the case (see, in similar vein, *HKSAR v. Lui Kin Hong Jerry* (No. 2) [2001] 2 H.K.C. 513 at 524-526).