

Demystifying Prosecutorial Discretion – What It Is & How It Is Exercised

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I. Introduction

Parti Liyani was an Indonesian domestic helper who was charged with stealing up to \$34,000 worth of items from then-Changi Airport Group chairman Liew Mun Leong and his family.¹ She was initially sentenced to jail, but on appeal the High Court acquitted Ms Liyani of all charges.² The High Court held that the Prosecution had not provided sufficient credible evidence to support its claims.³ Furthermore, the Prosecution could not rebut the Defence’s allegation that Ms Liyani’s employers had an improper motive in making a police report against Ms Liyani, i.e. to prevent her from lodging a complaint to the authorities about being asked to work outside her approved place of employment.⁴

This overturning of Ms Liyani’s conviction sparked debate over how prosecutorial discretion was exercised, with several websites even suggesting that the Prosecution had acted unfairly.⁵ Specifically, there were concerns as to why she was charged in the first place, and whether external factors such as her employer’s prominent job⁶ could have played a part in influencing the Prosecution’s decision to charge her.⁷ In response, Attorney-General (“AG”) Lucien Wong acknowledged there were “imperfections in the past year”, and that there was a need to “demystify the inner workings of prosecution” in order to make the criminal legal system more “accessible and intelligible to the public.”⁸

This article will attempt to help address this issue, by providing some explanations as to how prosecutorial discretion is exercised by the AG. It will also propose solutions to better facilitate public understanding of the concept of prosecutorial discretion.

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¹ Gabrielle Andres, “Maid acquitted of stealing \$34,000 worth of items from Changi Airport Group Chairman’s home”, *Channel News Asia* (4 September 2020) <<https://www.channelnewsasia.com/news/singapore/maid-acquitted-changi-airport-group-boss-liew-mun-leong-theft-13082514>> (accessed 11 May 2021).

² Lydia Lam, “Maid found guilty of stealing S\$30,000 worth of items from Changi Airport Group chairman’s family”, *Channel News Asia* (20 March 2019). <<https://www.channelnewsasia.com/news/singapore/maid-found-guilty-of-stealing-s-30-000-worth-of-items-from-11361556>> (accessed 11 May 2021).

³ Selina Lum, “Parliament: New facts cast different light on ‘improper motive’ inference in Parti Liyani case, says Shanmugam”, *Straits Times* (4 November 2020) <<https://www.straitstimes.com/singapore/politics/parliament-new-facts-cast-different-light-on-improper-motive-inference-in-parti>> (accessed 11 May 2021).

⁴ *Parti Liyani v Public Prosecutor* [2020] SGHC 187 at [52].

⁵ Netizens question AGC leadership in light of cases such as Parti Liyani, *The Online Citizen* <<https://www.theonlinecitizen.com/2021/01/12/netizens-question-agc-leadership-in-light-of-cases-such-as-parti-liyani/>> (accessed 26 May 2021).

⁶ Changi Airport Group (S) Pte Ltd is the company managing Changi Airport, the largest commercial airport in Singapore. The Chairman of Changi Airport Group undertakes key functions focusing on airport operations and management, air hub development, commercial activities and airport emergency services. See generally the official website of the Changi Airport Group <<https://www.changiairport.com/corporate/about-us/our-story.html>> (accessed 20 May 2021).

⁷ Lydia Lam, “Lessons from Parti Liyani’s case: AG says imperfections in 2020 exposed AGC to ‘intense scrutiny and criticism’”, *Channel News Asia*, (11 January 2021) <<https://www.channelnewsasia.com/news/singapore/agc-legal-year-parti-liyani-imperfections-intense-scrutiny-13935934>> (accessed 11 May 2021).

⁸ *Ibid.*

II. The Framework for Prosecutorial Discretion

The AG has two primary roles: as the Public Prosecutor (“PP”), as well as the Government’s legal adviser.⁹ As the PP, the AG represents the public in legal issues of public interest, including criminal proceedings.¹⁰

Under Article 35(8) of Singapore’s Constitution,¹¹ the AG is given the “power, exercisable at his discretion, to institute, conduct or discontinue any proceedings from office”.¹² This gives the AG (acting as the PP) control over its decision to initiate prosecution, prefer charges, amend charges and to discontinue prosecution (subject to certain legal limits).¹³ This power, known as *prosecutorial discretion*, can be found in common law jurisdictions over the world.¹⁴

There are two main steps in the framework guiding prosecutorial discretion. First, the PP analyses whether there is sufficient evidence giving rise to a reasonable prospect of obtaining a conviction.¹⁵ If there is, the PP would then consider the public interest in exercising its discretion.¹⁶

(1) *Is there a reasonable prospect of obtaining a conviction?*

The PP will work closely with the police, which conducts the initial investigation, to determine whether there is a reasonable prospect of obtaining a conviction against the alleged offender.¹⁷ The PP then assesses whether there is sufficient evidence, such that there is a reasonable prospect of obtaining a conviction against the alleged offender.¹⁸ This includes considering the admissibility, reliability and credibility of the evidence, as well as the availability of relevant witnesses, in accordance with the requirements of the law.¹⁹ Only if there is sufficient evidence and thus a reasonable prospect of conviction, would the PP proceed to the second stage inquiry of public interest.²⁰ Otherwise, the PP would likely close the case at this stage of assessment.²¹

⁹ Constitution of the Republic of Singapore (1999 Reprint) Art 35(7).

¹⁰ Attorney-General Chambers, Overview of Functions <<https://www.agc.gov.sg/our-roles/public-prosecutor/public-prosecutor-overview-of-functions>> (accessed 18 May 2021).

¹¹ Constitution of the Republic of Singapore (1999 Reprint) Art 35(8).

¹² *Ibid.*

¹³ Goh Yihan & Paul Tan, *Singapore Law: 50 years in the making* (Singapore Academy Publishing, 2015) at p 428.

¹⁴ For instance, public prosecution is carried out in the United Kingdom by the Crown Prosecution Service, in the United States of America by the United States Attorneys and in Malaysia by the Malaysian Attorney-General’s chambers. See generally the official website for the Crown Prosecution service, <<https://www.cps.gov.uk/about-cps>>, offices of the United States Attorneys <<https://www.justice.gov/usao/mission>> and the official website for Malaysia’s Attorney-General’s Chambers <<https://www.agc.gov.my/>>

¹⁵ Kumaralingam Amirthalingam, “Prosecution is a shield, not a sword”, *National University of Singapore*, (2019) <<https://law.nus.edu.sg/publications/prosecutorial-discretion-is-a-shield-not-a-sword/#:~:text=Equally%2C%20there%20is%20a%20risk,or%20to%20undermine%20individual%20rights>> (accessed 11 May 2021).

¹⁶ Lucien Wong, “Prosecution in the Public Interest”, *Singapore Law Review Lecture* (2017) at [10] <<https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf>> (accessed 8 May 2021).

¹⁷ Attorney-General Chambers - Overview of Functions <<https://www.agc.gov.sg/our-roles/public-prosecutor/public-prosecutor-overview-of-functions>> (accessed 18 May 2021).

¹⁸ Kumaralingam Amirthalingam, “Prosecutorial Discretion and Prosecution Guidelines” at [58] in *Singapore Journal of Legal Studies* (National University of Singapore, Faculty of Law, 2013) at p 50.

¹⁹ *Id.*, at [58].

²⁰ See Wong, *supra* n 17 at [10].

²¹ *Id.*, at [9].

(2) *Is it in the public interest?*

The PP's exercise of prosecutorial discretion is constrained by the public's interest.²² The PP "cannot decide at his own whim and fancy who should or should not be prosecuted, and what offence a particular offender should be prosecuted for."²³ Instead, it must enforce the law for the greater good of society.²⁴ Accordingly: prosecutions are conducted in the name of and for the good of the public, according to values expected by the public, and action is taken in the eyes of the public.²⁵

The consideration of public interest plays a significant part in how the PP will exercise its discretionary power,²⁶ from: (a) whether it chooses to charge or to warn an offender, to (b) deciding the appropriate charges to bring against the accused, or (c) discontinuing the prosecution, and (d) determining whether to appeal against the court's decisions.²⁷

a. Warning vs charge

The PP may issue a warning (as opposed to charging the offender with a crime) if that is in the public interest.²⁸ A warning is employed "where there is some evidence of criminal offending but where the public interest may not necessarily mandate the prosecution of the individual in question."²⁹ The offender is informed that if he continues to engage in this type of conduct, or any criminal conduct, further leniency may not be shown.³⁰ A warning means that the offender will not face any criminal conviction and will not have a criminal record for the offence.³¹

For instance, minor offences committed by a first-time offender, such as a "single offence of shoplifting"³² where the value of the item is low, are more likely to garner a warning by the PP as being in the public interest.³³ Conversely, the PP would likely consider it in the public interest to prosecute an offence of greater severity,³⁴ such as murder or drug trafficking.

In the *Parti Liyani* case, the PP considered it in the public interest to charge rather than warn Ms. Liyani although theft was a relatively minor offence, because it considered that the evidence suggested: a) she had been stealing many expensive items (including a Prada bag, a Vacheron Constantin watch, and two Apple iPhones); and b) the thefts had occurred over a period of time.³⁵ Thus, it is possible that the PP considered that the alleged offence constituted significant harm to society.

²² *Ramalingam Ravinthran v Attorney-General* ("Ramalingam") [2012] 2 SLR 49 at [53].

²³ *Id.*, at [53].

²⁴ *Ibid.*

²⁵ See *Wong*, *supra* n 17 at [14].

²⁶ *Id.* at [13].

²⁷ Gary Chan, *Prosecutorial Discretion and the Legal Limits in Singapore* (Singapore Academy of Law Journal, 2013) at [6].

²⁸ *PP v Raveen Balakrishnan* [2018] 5 SLR 799 at [113].

²⁹ Kadir & Lee, "Criminal Procedure, Evidence and Sentencing" (2015) 16 SAL Ann Rev 396 at [14.31].

³⁰ See *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [183]; *Wham Kwok Han Jolovan v Attorney-General* ("Wham Kwok Han") [2016] 1 SLR 1370 at [33].

³¹ Tan Hee Joek, "Be Warned of the Stern Warning" *Singapore Law Gazette* (September 2013) at p 4.

³² *Id.*, at p 3.

³³ *Id.*, at p 2.

³⁴ *Ibid.*

³⁵ *Singapore Parliamentary Debates, Official Report* (4 November 2020) vol 95 at cols 41, 47 (K Shanmugam, Minister for Home Affairs and Law, explaining the PP's decision-making process).

b. Appropriate charges

The PP must specify which charge(s) it is bringing against the accused.³⁶ As the offender's conduct could constitute several offences under different laws, or the same law may provide for "different levels of seriousness of the offence" which attract different charges, the PP will have to decide what crime to charge the offender with.³⁷ Different charges will also attract different sentencing ranges.

For instance, in 2013, although plastic surgeon Woffles Wu had been the actual driver behind the wheel of a speeding car,³⁸ his employee falsely indicated in the traffic offence form that he had been the driver.³⁹ The PP potentially had a choice between charging him under section 81(3) of the Road Traffic Act (abetting the giving of false information by his employee to the police);⁴⁰ or under section 204A of the Penal Code (intentionally perverting the course of justice).⁴¹ Wu was eventually charged under the more lenient Road Traffic Act⁴² (with a maximum sentence of 6 months, rather than 7 years under section 204A of the Penal Code) because his offence had been committed before section 204A of the Penal Code had been enacted, and it could not apply retrospectively.⁴³

In determining the appropriate charge(s), the PP considers both the *legal guilt* of the offender and considerations of *public interest*.⁴⁴ With regard to *legal guilt*, the PP must consider whether the offender's guilt, under the specific charge, can be proven beyond reasonable doubt in court.⁴⁵

For instance, the infamous Orchard Towers murder case involved a confrontation between a group of seven friends and the deceased, which led to the deceased being fatally stabbed.⁴⁶ The PP decided to bring a *murder* charge against only one (Tan Sen Yang) out of the seven, under section 300(c) of the Penal Code.⁴⁷ This was because the evidence showed that Tan had caused the victim's death (by stabbing him).⁴⁸ Although three of the other defendants had also attacked the victim (by kicking and punching him), the evidence showed that they had legal guilt only for the offence of causing hurt with common intention.⁴⁹ This was because "they did not know

³⁶ Criminal Procedure Code (Cap 68, 2012 Rev Ed) at s 123(1).

³⁷ See *Kumaralingam*, *supra* n 19 at p 71.

³⁸ *Singapore Parliamentary Debates, Official Report* (13 August 2012) vol 89 at p 469 (K Shanmugam, Minister for Home Affairs and Law).

³⁹ Amanda Lee, "Woffles Wu suspended from practice for four months", *Today Online*, (8 April 2014) <<https://www.todayonline.com/singapore/woffles-wu-suspended-practice-4-months>> (accessed 11 May 2021).

⁴⁰ Road Traffic Act (Cap 276, 2004 Rev Ed) at s 81(3).

⁴¹ Penal Code (Cap 224, 2008 Rev Ed) at s 204A.

⁴² "PP v Wu Tze Liang Woffles" at [2], *Attorney-General's Chambers* <<https://www.agc.gov.sg/docs/default-source/newsroom-documents/media-releases/2012/agcpressrelease17jun2012.pdf>> (accessed 24 May 2021).

⁴³ *Id.*, at [4].

⁴⁴ *Ramalingam*, *supra* n 23 at [63].

⁴⁵ *Wham Kwok Han*, *supra* n 31 at [34].

⁴⁶ "Orchard Towers Murder: Case for Accused Person Tan Sen Yang To Be Tried In The High Court", (*"Orchard Towers Murder"*), at [1], *Attorney-General's Chambers* <<https://www.agc.gov.sg/docs/default-source/default-document-library/agc-media-release---orchard-towers-murder-case-for-accused-person-tan-sen-yang-to-be-tried-in-the-high-court.pdf>> (accessed 8 May 2021).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Orchard Towers Murder*, at [6].

that Tan would use a weapon during the fight”, and “their acts resulted (only) in two abrasions on the deceased’s upper body, which were minor and non-fatal in nature”.⁵⁰

With regard to *public interest considerations*, in exercising its discretion, the PP must also consider the following (non-exhaustive) factors:

“[the offender’s] moral blameworthiness, the gravity of the harm caused to the public welfare by his criminal activity, and ... other factors, including... whether the offender is willing to cooperate with the law enforcement authorities in providing intelligence, and... the possibility of showing some degree of compassion in certain cases.”⁵¹

The PP would consider these factors in choosing a charge; such a charge would likely have a sentencing range that best fits with its view on the type of consequences that are warranted.⁵² For example, the PP would likely undertake “prosecution to the maximum extent permitted under the law”⁵³ against those who commit extremely serious offences. These include violent crime, organised crime and drug trafficking.⁵⁴

c. Discontinuing Prosecution

The PP also has the discretion to discontinue prosecution either (a) before an accused is acquitted, or (b) where an accused has been convicted but before he has been sentenced.⁵⁵ The PP also exercises its discretion in this area based on the public interest.

For example, in *Yong Vui Kong v Public Prosecutor*,⁵⁶ the PP applied for a discontinuance not amounting to an acquittal (“DNAQ”) for the 26 charges against alleged co-conspirator Chia Choon Leng (who had been implicated by the defendant Yong Vui Kong).⁵⁷ This was due to “the difficulty of the evidence”⁵⁸ that the PP faced when it reassessed the evidence, which caused the PP to doubt that they had “sufficient evidence to secure Chia’s conviction of any of those charges.”⁵⁹ The court held that in discontinuing the prosecution, the PP had “exercised his prosecutorial discretion impartially”⁶⁰ and upheld its responsibility in protecting the “integrity of the prosecutorial process, which is vital to public confidence in (Singapore’s) criminal justice system and the rule of law.”⁶¹

d. Appealing against Court Decisions

The court will ultimately determine the innocence/guilt of the accused and sentence him/her accordingly. The PP will then consider whether it is in the public interest to appeal against an acquittal given by the court, or the sentence passed by the court.⁶²

⁵⁰ *Ibid.*

⁵¹ *Ramalingam, supra* n 23 at [63].

⁵² Attorney-General Steven Chong, “Publication of Prosecutorial Guidelines: Publication For Whom, and Publication To What End” at [5], *Association of Criminal Lawyers of Singapore Annual Lecture* (2013) <<https://www.agc.gov.sg/docs/default-source/speeches/2013/acls-lecture-2013.pdf>> (accessed 24 May 2021).

⁵³ *Ibid.*

⁵⁴ Attorney-General V.K. Rajah, “At the Opening of the Legal Year 2016”, *Attorney-General’s Chambers* at [4].

⁵⁵ Criminal Procedure Code (Cap 68, 2012 Rev Ed) at s 232(1).

⁵⁶ *Yong Vui Kong v Public Prosecutor* [2012] 2 SLR 872.

⁵⁷ *Id.*, at [14].

⁵⁸ *Id.*, at [11].

⁵⁹ *Id.*, at [28].

⁶⁰ *Id.*, at [39].

⁶¹ *Ibid.*

⁶² See *Gary Chan, supra* n 28 at [6].

The PP takes into account public interest considerations when deciding whether to appeal a sentence passed by the court.⁶³ Specifically, the PP advances the public interest by ensuring that offenders are appropriately punished.⁶⁴ Thus, the PP may appeal against a sentence passed by a trial court if it is manifestly inadequate or excessive in the circumstances.⁶⁵

For example, the PP has acted to curb voyeurism by appealing for harsher sentences for such offences. In *Public Prosecutor v Siow Kai Yuan Terence*,⁶⁶ the offender was initially sentenced to 21 months' supervised probation for outrage of modesty. He had not received imprisonment because of a "strong propensity for reform",⁶⁷ based on the "relatively minor" nature of the acts and his academic record.⁶⁸ However, the PP appealed, seeking a more severe sentence as there was no link between the offender's academic excellence and his propensity to reform.⁶⁹ The High Court agreed and sentenced him to 2 weeks' imprisonment.⁷⁰

In *Public Prosecutor v Hoon Qi Tong*,⁷¹ the offender was sentenced to 130 hours of community service and a 14-day detention order for filming a female in the toilet.⁷² Similarly, the PP appealed for a harsher sentence of 8-12 weeks' imprisonment, as the offender was an adult "who committed a premeditated and highly sexual offence."⁷³ More generally, the PP has stated a policy of objecting to rehabilitative sentences for adult sexual offenders, including offences like voyeurism and outrage of modesty.⁷⁴

Conversely, the PP can appeal for more lenient sentences,⁷⁵ where the sentence meted by the trial court is manifestly excessive. For example, in *Public Prosecutor v Lim Choon Teck*,⁷⁶ the District Court had sentenced the accused to 8 weeks' imprisonment for knocking down an elderly pedestrian while cycling, and fleeing after doing so.⁷⁷ The PP appealed against the sentence as being excessive, because the accused had exhibited a lower order of rashness,⁷⁸ and had "pleaded guilty to the charge at the first reasonable opportunity."⁷⁹ The High Court eventually reduced the sentence to 3 weeks' imprisonment.⁸⁰

⁶³ See *Chong*, *supra* n 53 at [29].

⁶⁴ *Public Prosecutor v Lim Choon Teck* [2015] SGHC 265 at [78].

⁶⁵ Criminal Procedure Code (Cap 68, Rev Ed 2012) at s 394.

⁶⁶ *Public Prosecutor v Siow Kai Yuan Terence* ("Terence Siow") [2020] SGHC 82.

⁶⁷ *Id.*, at [24].

⁶⁸ *Ibid.*

⁶⁹ *Id.*, at [32].

⁷⁰ *Id.*, at [91].

⁷¹ *Public Prosecutor v Hoon Qi Tong* [2020] SGMC 5.

⁷² *Id.*, at [1].

⁷³ Louisa Tang, "Prosecution's appeal for jail time for SMU intern, who filmed colleague in toilet, dismissed by High Court", *Today* (30 July 2020) <<https://www.todayonline.com/singapore/prosecutions-appeal-jail-time-smu-intern-who-filmed-colleague-toilet-dismissed-high-court>> (accessed 12 May 2021).

⁷⁴ Yuen Sin, "AGC will object to rehabilitative sentences for adult sex offenders unless there are 'exceptional facts'", *Straits Times* (5 March 2021) <<https://www.straitstimes.com/singapore/agc-will-generally-reject-rehabilitative-sentences-for-adults-who-commit-offences-like>> (accessed 30 May 2021).

⁷⁵ See *Wong*, *supra* n 17 at [63].

⁷⁶ *Public Prosecutor v Lim Choon Teck* ("Lim Choon Teck") [2015] SGHC 265.

⁷⁷ *Id.*, at [2].

⁷⁸ *Lim Choon Teck*, *supra* n 77 at [63].

⁷⁹ *Id.*, at [12].

⁸⁰ *Id.*, at [73].

Similarly, in *Neil Kevin Gane v Jia Xiaofeng and Synnex Trading Pte Ltd*,⁸¹ the accused was sentenced to 12 weeks' imprisonment for selling illicit streaming devices.⁸² Though this was a private prosecution at the Magistrates' Courts,⁸³ the PP nonetheless intervened and appealed to the High Court, arguing that the sentence was excessive.⁸⁴ The High Court agreed and instead fined the accused \$31,200.⁸⁵

III. Checks on the Exercise of Prosecutorial Discretion

In addition to the framework above, prosecutorial discretion is also limited by the courts' constitutional power⁸⁶ to review decisions made by the PP. The PP is prohibited from exercising prosecutorial discretion in bad faith or in breach of fundamental liberties of the Constitution.⁸⁷ The court's power in this regard is known as the power of *judicial review*.⁸⁸ Judicial review allows the court to undertake an inquiry⁸⁹ into the actions of the PP which it considers unlawful. Thus, if there is sufficient evidence that the PP has exercised prosecutorial discretion unfairly or arbitrarily,⁹⁰ the courts may initiate a judicial review into the PP's exercise of prosecutorial discretion, and if warranted, quash the PP's decision.⁹¹

Indeed, the courts' role as examiner of evidence⁹² and final decision-maker helps ensure that a fair and principled outcome will be delivered even if there are shortfalls in the exercise of prosecutorial discretion. For instance, the case of *Parti Liyani* drew widespread media attention as many perceived the case to be an example of the rich and elite misusing prosecutorial discretion to bully the poor and powerless.⁹³ Ms Liyani was ultimately vindicated upon appeal, as the High Court found that the PP had not proven beyond reasonable doubt that Ms. Liyani had committed theft.⁹⁴ The High Court further found that the PP had been prejudicial in its examination of evidence provided by the Liews.⁹⁵ Based on the above, the High Court decided

⁸¹ *Neil Kevin Gane v Jia Xiaofeng and Synnex Trading Pte Ltd* (“*Synnex Trading*”) [2019] SGMC 73.

⁸² *Id.*, at [6] and [7].

⁸³ “Singapore High Court Addresses Criminal Liability for Sale of Illicit Streaming Devices”, *Rajah & Tann Asia Client Update: Singapore*, <https://eoasis.rajahtann.com/eoasis/lu/pdf/2020-4-SG_High_Court_Addresses_Criminal_Liability.pdf> (accessed 30 May 2021).

⁸⁴ “Filing of Notice of Appeal against Sentence in the Case of Synnex Trading Pte Ltd”, *Attorney-General's Chambers* at [3] <https://www.agc.gov.sg/docs/default-source/newsroom-documents/media-releases/2019/agc-press-release_synnex_31-oct.pdf> (accessed 26 May 2021).

⁸⁵ See *Synnex Trading*, *supra* n 82 at [Editorial Note].

⁸⁶ Constitution of the Republic of Singapore (1999 Reprint) Art 93.

⁸⁷ *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [149].

⁸⁸ Chan Sek Keong, “Judicial Review—From Angst to Empathy” (2010) 22 Sing. Ac. L.J. 469 at [7].

⁸⁹ Media Fact Sheet Judicial Review Proceedings at [1], *Attorney-General's Chambers*, (31 May 2012) <https://www.agc.gov.sg/docs/default-source/newsroom-documents/media-releases/2012/mediafactsheetonjudicialreviewproceedings_31may2012.pdf> (accessed 25 May 2021).

⁹⁰ *Chan Yang Ling*, “Judicial Review in Singapore”, *Singapore Law Review* <<http://www.singaporelawreview.com/juris-illuminae-entries/2015/judicial-review-in-singapore>> (accessed 25 May 2021).

⁹¹ *Id.*

⁹² Evidence Act (Cap 97, Rev Ed 1997). See Also, “The Singapore Legal System”, *Singapore Law Watch* at 1.3.8 <<https://www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-01-the-singapore-legal-system>> (accessed 26 May 2021).

⁹³ Donald Low, “Parti v party: inequalities and the Justice System”, *Academia SG* (14 September 2020) <<https://www.academia.sg/academic-views/parti-v-party-inequalities-and-the-justice-system/>> (accessed 11 May 2021) There were a number of reasons for this perception. (See *Parti Liyani*, *supra* n 5 which provides details into the judgement); the PP had been prejudicial in its examination of evidence provided by the Liews; and regarding her alleged theft of a broken Pioneer DVD player, the prosecutors used a “sleight-of-hand” demonstration to force Ms Liyani into falsely conceding that the DVD player was fully functional.

⁹⁴ *Parti Liyani*, *supra* n 5 at [3].

⁹⁵ *Id.*, at [91].

to overturn Ms Liyani's conviction. Thus, as the final decision-maker on cases, the courts remain a check against the PP's powers of prosecutorial discretion, and serves as a reminder that the exercise of prosecutorial discretion has its limits.

IV. Conclusion

Given the unique factual circumstances of each case, it can be difficult for the PP to exercise prosecutorial discretion in a way that both makes sense to the public, and delivers justice in accordance with the dictates of the law. Further, the PP is under no legal obligation to give reasons for their decision to prosecute.⁹⁶ The PP only has to disclose its reasons for prosecution when there are profound concerns that an accused has been wrongfully convicted.⁹⁷ Thus, the PP's increasing usage of media releases to clarify their reasons for initiating (or withholding) prosecutions⁹⁸ is commendable, as it provides some transparency in the PP's exercise of prosecutorial discretion.

However, the PP's consistency in providing reasons for prosecution could be improved. For example, in sexual offence situations, the PP has declined to prosecute several cases⁹⁹ without providing their reasons for doing so. Although this is possibly due to the PP lacking sufficient evidence to initiate prosecution, from the victims' point of view, a failure to provide reasons for withholding prosecution may create the impression that offenders are able to get off scot-free. Thus, greater transparency in the PP's exercise of prosecutorial discretion would still be beneficial in facilitating public understanding of the PP's prosecutorial decisions.

In this regard, while it would be ideal for the PP to provide reasons behind all its decisions to prosecute (or withhold prosecution), this would be an overly onerous burden on the PP given the sheer volume of cases. Thus, the PP could focus on providing reasons for prosecutions which it believes (a) are a matter of serious public interest or (b) require further clarification.

Moving forward, the PP could even provide these reasons pre-emptively, to prevent potential public confusion towards a prosecutorial decision. By doing so, the PP would increase the transparency of prosecutorial discretion and also address concerns of justice and fairness towards all concerned.

⁹⁶ *Ramalingam, supra* n 23 at [76].

⁹⁷ *Ibid.*

⁹⁸ Aquil Haziq Mahmud, "Police, AGC had reason to take action against Parti Liyani; aspects of case could have been handled better, says Shanmugam" *Channel News Asia* (4 November 2020) <https://www.channelnewsasia.com/news/singapore/police-agc-reason-take-action-against-parti-liyani-shanmugam-13462578?cid=h3_referral_inarticlelinks_24082018_cna> (accessed 20 May 2021).

⁹⁹ Written Reply to Parliamentary Question on Sexual Assault Cases (5 January 2021), by Mr K Shanmugam, Minister for Home Affairs and Minister for Law", *Ministry of Home Affairs*, (5 January 2021). <<https://www.mha.gov.sg/mediaroom/parliamentary/written-reply-to-parliamentary-question-on-sexual-assault-cases-5-january-2021-by-mr-k-shanmugam-minister-for-home-affairs-and-minister-for-law/>> (accessed 11 May 2021).