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A Legal Backgrounder on By-elections

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A Legal Backgrounder on By-elections

Jack Tsen-Ta *Lee*[1]

The expulsion of Yaw Shin Leong, the Member of Parliament for Hougang Single Member Constituency, from the Workers' Party has once again thrust the issue of the Singapore Government's policy on by-elections into the limelight. This opinion piece considers whether the Government is right in taking the view that it has wide discretion to determine when, and if, to hold a by-election; and the possible consequences of an existing Non-constituency Member of Parliament (NCMP) standing as a candidate in a by-election.

The expulsion of Yaw Shin Leong, the Member of Parliament (MP) for Hougang Single Member Constituency (SMC), from the Workers' Party has once again thrust the issue of the Government's policy on by-elections into the limelight. This was last discussed in Parliament in August 2008 following the death of Dr Ong Chit Chung, MP for Jurong Group Representation Constituency (GRC).

Article 46 of the Constitution provides that when MPs are ousted from the political parties they stood for in an election, their seats are vacated. Parliament has final say on the matter. On 22 February, Mr Michael Palmer, the Speaker of Parliament, announced that since Mr Yaw had indicated he does not wish to challenge his expulsion, his seat became vacant on 14 February.

During the Parliamentary debate four years ago, Prime Minister Lee Hsien Loong said that the constitutional provision – often known as the "anti-hopping" clause – ensured a stable government. He recalled the tumultuous years in the Legislative Assembly – the predecessor to Singapore's post-independence Parliament. In 1961, 13 People's Action Party MPs were able to leave their party and cross the floor, decimating the Government's majority.

The constitutional clause that had allowed the defections to occur in 1961, and a requirement for by-elections to be held within three months of any vacancy arising, were abolished following Singapore's independence. The latter clause, introduced in 1963 when Singapore became a Malaysian state, had made it possible for legislators to force by-elections simply by resigning as MPs.

PM Lee also said that since Singapore politics is based on parties rather than individual MPs, an unfilled Parliamentary seat does not pose too many problems

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because the other MPs in a GRC – or, where an SMC is concerned, MPs of the same party in neighbouring constituencies – can care for the residents of the constituency bereft of their representative. The Workers' Party has already assured Hougang constituents that it will look after them for the time being.

If this is so, must a by-election be held?

The Government's view is that Article 49 of the Constitution confers on it wide discretion to determine when, and if, to hold a by-election.

Article 49(1) states that if a seat of an elected MP becomes vacant for a reason other than a dissolution of Parliament, the vacancy "*shall* be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force".

It might be argued that the provision makes it mandatory for a by-election to be called at some stage, even though the Parliamentary Elections Act (Chapter 218, 2011 Revised Edition) is silent on the timeframe for doing so. If this is an accurate reading of the provision, the Government cannot wait until Parliament is dissolved for the next general election.

This understanding is buttressed by section 52 of the Interpretation Act (Chapter 1, 2002 Revised Edition), which states that when a law does not prescribe or allow any time within which something shall be done, "that thing shall be done with all convenient speed". Our courts have not yet considered the meaning of "with all convenient speed", but a 1983 Malaysian case approved by the Privy Council in 1986 held that the phrase means "as soon as possible" or "within a reasonable time", and not "as late as possible".

The court has not yet had an opportunity to decide whether the Government's view or the view expressed above is correct in law. In 2008, J B Jeyaretnam filed a claim on behalf of a Jurong resident challenging the Government's decision not to hold a by-election. However, following Jeyaretnam's death, the case was withdrawn without having been heard.

If the Government calls a by-election, opposition parties which have Non-constitutency Members of Parliament (NCMPs) in the House will have to decide whether to field one of them, or a fresh candidate who may be relatively unknown. There are presently three NCMPs: Lina Loh of the Singapore People's Party, and Gerald Giam and Yee Jenn Jong of the Workers' Party.

Curiously, while Article 46(2B) of the Constitution mandates that Nominated Members of Parliament (NMPs) must vacate their seats in order to stand as candidates for any political parties in an election, NCMPs may do so without relinquishing their seats (Article 46(2A)). They need only do so if elected as an MP. Thus, it appears that an NCMP who unsuccessfully contests a by-election may resume his or her Parliamentary seat.

However, if an existing NCMP is duly elected at a by-election, there is no mechanism for the "best loser" to be appointed as an NCMP as a replacement. Neither can this status be conferred on some other opposition candidate from the past general election. It is quite clear from section 52 of the Parliamentary Elections Act that NCMPs may only be appointed following general elections. Opposition parties will therefore have to bear in mind that if, for instance, they field an existing NCMP in a by-election and the candidate is returned to Parliament, they will gain an MP at the expense of an NCMP.

The Prime Minister is carefully considering whether a by-election should be held in Hougang. The nation awaits.

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