

## **Protection From Online Falsehoods and Manipulation Bill**

### **Second Reading Debate**

**Delivered at 1.17pm, May 8<sup>th</sup> 2019, Parliament of Singapore**

**Assoc Prof Walter Theseira (Nominated Member):** Mr Speaker, in 1633 the scientist Galileo Galilei was put on trial by the Roman Inquisition of the Catholic Church. The charge? Promoting the heliocentric theory that the Earth travels around the Sun. We take this as fact today. But the geocentric model, which incorrectly puts Earth at the centre of the Universe, was accepted fact for thousands of years. Galileo's contribution was to use the first astronomical telescope – which he invented – to precisely observe the stars. Galileo argued these observations meant the heliocentric model was a provable fact, and not a theory. This forced the Inquisition to act.

The Inquisition did not reject Galileo's scientific evidence. However, they found his evidence fundamentally incompatible with The Bible. The Bible has passages stating the Earth is immovable. The Inquisition interpreted this as a matter of fact. Galileo was forced to recant, on pain of being condemned as a heretic. His books were forbidden. Legend has it that Galileo said, after recanting, "And yet it moves". Mr Speaker, beliefs do not change the nature of reality.

What are the lessons for this debate? I take three points. First, when we speak of the problem of online falsehoods the real concern is our shared reality as a society. I agree with the Minister that this is the central concern: what is the infrastructure of facts that we depend on as a society? Galileo was part of a wider battle to define shared reality at the end of the Renaissance in Europe. Would reality be defined by science and reason, or by tradition and religion?

Second, governments are concerned about shared reality, because our beliefs have practical consequences. Galileo's findings supported a reality that threatened the temporal power of the Church. Populists today and in history have spread lies to promote the alternative reality where society is under threat justifying the use of extraordinary powers to save democracy.

Points one and two, taken together, mean that judgements about shared reality by governments are inherently political acts. I do not mean they are always partisan acts, carried

out for narrow political gain. A good government would not act that way. I trust that this Government would not. But they are political acts because they serve the definition of public interest that the government of the day believes in.

Third, governments can get assessments of fact wrong. The Church of Galileo's time was not opposed to science. The earliest degrees granted by universities were in the fields of law, medicine and theology. Galileo's supporters included princes and priests of the Church. They were among the few people in Europe who had the education at the time to appreciate his findings. But even a government of experts can have blind spots.

This brings us to the central dilemma. A good government must act to defend the shared reality that best serves the public interest. But even a good government may face the temptation to gradually conflate the public interest with their own political gain. This may be subtle. It may be through sins of omission, by neglecting to fix blind spots in judgment, rather than by promoting falsehoods outright. It may be through believing that the public interest demands the suppression of all competing ideologies. But as with Galileo, these good intentions may eventually lead a good government to ignore reality. That is why the best government of all will shackle itself where necessary rather than grant itself more power.

I believe this Government understands this dilemma more than most. That is why this Government sincerely believes it has crafted a Bill that shackles itself while granting the necessary powers to defend our infrastructure of truth. Our disagreement is about whether this Bill has got this balance right.

Sir, let me put on the record who is concerned about this Bill. One hundred and twenty-four academics in Singapore and abroad, including 52 Singaporeans, signed a statement expressing concern that the Bill could adversely affect academic research on Singapore, especially in social sciences where critical research contests established facts and narratives. Other parties expressing concern include 30 Singaporean civil society and arts community organisations, The Asia Internet Coalition, traditional and independent online media, the International Commission for Jurists, the United Nations Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, and the ASEAN Parliamentarians for Human Rights.

I will stand corrected, but I do not think these parties are enemies of Singapore. I do not think they are agents of the forces who propagate online falsehoods. You will find in their statements broad agreement with the Bill's legislative intent. I agree with the Bill's intent.

Online falsehoods are dangerous. Even if there is no malevolent intent, they may distort our shared reality and lead to harmful decisions. They are not readily corrected through self-regulation or education. They spread virally, and when there is a threat of imminent harm to society, government has a duty to act immediately to stop the threat. This Bill will create novel and proportionate tools, such as Correction Directions, that preserves online speech and promotes public education while minimising harm.

I do not agree with all of the concerns expressed by the parties I have cited. The Minister has been kind to correct some of the misconceptions out there. My concern rather is that some of the debate around this Bill has conflated criticism of the Bill with support for irresponsible freedom of speech or with sinister intent towards Singapore. Sir, constructive criticism is not an unpatriotic act.

Let me now speak for the group I am most familiar with. Academics do not challenge the right of governments or the public to dispute scientific facts. Knowledge advances by dispute. But such disputes must honour the essential character of scientific research, which is evidence based, driven by scientific methods, and held up to the highest standards of scrutiny.

Academics are concerned that when a government adjudicates scientific disputes there is a fundamental conflict of interest, as in my earlier example of Galileo and the Catholic Church. All governments have a political objective to defend a shared reality that suits their interest. For example, the United States Environmental Protection Agency changes its views on climate change science depending on who is President. Is it in the public interest for science to be unnecessarily determined by politics?

The other concern is scientific reputation. An academic whose scientific findings are the subject of a direction would not be able to communicate them online without risk of contravening the direction. She might have to write to scientific journals to ask for a retraction or correction. The journal would ask why. If our Government is not able to answer to the satisfaction of international experts, it would bring scientific condemnation on our country. Sir, the United States can survive an administration with anti-scientific tendencies

because good scientists have nowhere else to go for now. Is it in the public interest to discourage, even inadvertently, research that uses Singapore for field studies or to further our knowledge of social science and ourselves?

Let me now turn to why we tabled these amendments. We are concerned the Bill does not sufficiently limit, guide and oversee the exercise of Executive powers against online Falsehoods. Members have received our Explanatory Notes. Before I explain our amendments further I wish to first touch on points of agreement with the Bill. I thank the Minister and his staff for consulting with us throughout, though of course, we are solely responsible for the amendments.

We accept the two-part test for Executive action, including the definition of falsehood and the broad definition of the public interest. While we have concerns these give the Executive very broad powers, we could not develop constructive amendments that would be feasible for the Courts in trying facts, while also granting the Executive the discretion to act urgently to protect the public interest. We also accept the Executive must have power to act urgently. Developing an amendment to create a role for ex-ante judicial or independent oversight proved challenging, and risks considerable harm in the event of an immediate threat. Nonetheless, accepting the Bill as it is, in these areas, means we accept the Executive should have considerable latitude.

Rather, we decided the best way of limiting the discretion of the Executive was to ensure that we develop robust institutions within and without Government, to address online Falsehoods without fear or favour. These institution building amendments have two major parts. The Principles of Act, and the Independent Council Against Online Falsehoods. In addition our amendments require that any Directions issued are publicly justified, and require that the appeals process is expedited. My colleague Ms Anthea Ong has spoken on the Council. I will discuss the Principles which provide a guide to the exercise of powers under the Act.

The Principles of Act state that well-informed, free and critical speech is necessary for a well-functioning democracy, so the Act should be applied carefully to avoid chilling such speech. It codifies that the Act is targeted at statements which are materially false and not opinions, comments, critiques, satire, parody, generalisations or statements of experiences.

It sets out that the Act should be used proportionately, so the least restrictive tools, such as Corrections, are used first, with the most restrictive – take-downs – used only when necessary. It also protects the role of research in society, as research often contests established facts or ideas in order to advance knowledge, by stating that differences in facts established by an authority and a researcher do not imply falsehood just by that difference alone.

I believe the Minister's view is that the Government accepts many of these Principles. However, the Minister also believes the Principles create legislative confusion because they may already duplicate elements present in the Bill or in law. For example, I believe the Minister's view – and that of a Senior Counsel – is that proportionality in the exercise of powers is already incorporated in the "necessary or expedient" term used in the public interest clause of the Bill. I stand corrected if I have misunderstood.

But given proportionality is so important to avoid unnecessarily restricting speech and to build trust with the public, we believe the Bill must state clearly the principles behind what proportionality means in practice. We can accept that there may be better ways of phrasing the Principles. However, we disagree that it would be sufficient to have the Bill without the Principles of Act at all, or other amendments in plain language that have similar effect.

The Government has previously defined plain language Principles of the Act in the Mental Capacity Act and the Vulnerable Adults Act. This is important because these Acts give Government officials significant power over the autonomy and rights of persons. This Bill will also give Government officials significant powers over speech.

It is crucial that every Government official involved in the exercise of powers abide by a common set of principles in administering the Act. What is the difference between doing so in the Bill, versus leaving it to subsidiary legislation or internal regulation? Sir, the difference is governance. Subsidiary legislation can be changed without a Parliamentary vote. The primary legislation cannot.

The real value, Sir, of these Principles comes in using them as a basis for building an institution that the public trusts. An institution that is not dependent on the political interests in charge. I believe the opposing benches are agreed that one such institution is the Judiciary.

But we know there may be practical difficulties with having the Courts decide on fast-moving online falsehoods.

So, why not a third way, why not strengthen the capacity of the Civil Service to implement these rules fairly, guided by the Principles.

I will now discuss what this Act will mean in practice. How would the Executive use the powers under this Act? One way to answer this is to examine how the Government has already been addressing the problem of online falsehoods. I conducted a review of Government actions against misinformation from 2015 to 2019. This review documented all posts on the Government's Factually website, as well as Fact Checks issued by MOM and MSF.

I first established for each Government action whether POFM would apply. Is there a specific subject statement that is potentially false? I assumed that the public interest test would be satisfied since these cases were serious enough for a Government response. Then, I examined the dispute. Is it mainly a dispute over facts or a dispute over conclusions drawn from facts that are not themselves contested? Finally, I examined whether the Ministry responded using keywords that declare publicly whether this case involves a matter for clarification, a misrepresentation or an outright falsehood.

Mr Speaker, may I have your permission to display a slide on the LED screens?

**Mr Speaker:** Yes, please. [*A slide was shown to hon Members.*]

**Assoc Prof Walter Theseira:** Thank you. I analysed 170 cases of Government action against online misinformation from 2015 to 2019; 110 cases involve no disputed facts, they are simply clarifications of policy. The Act would not apply. Of the remaining 60 cases, while facts were disputed, seven did not identify a subject statement. The Act would not apply.

Most Government actions on misinformation over the last few years would not have used any powers under the act because it does not apply. There is either no specific disputed fact or no identifiable subject statement.

The remaining 53 cases are for specific subject statements with an identifiable source. These are cases where the Act may have potentially applied retrospectively, for example.

Forty-three of these 53 cases are disputes involving the facts. The other 10 involve disputes over the conclusions drawn from facts.

Overall, the Government is quite clear about how it labels disputes involving the facts. Most are considered falsehoods, although some are considered clarifications or misrepresentations instead.

What I am concerned about is those cases which are declared to be falsehoods by the language the Government uses, although the dispute is actually over conclusions drawn from facts.

Let me illustrate with one example from MSF, although I am not picking on the Ministry; it is actually one of my favourite Ministries. In 2017, MSF reported data showing a sharp rise in ComCare assistance recipients between 2012 and 2015. A subject statement made the claim that this was and I quote, "the worst poverty result ever officially reported in Singapore", end quote. MSF called this and I quote, "not true", end quote, and MSF explained that a growth in ComCare recipients reflects more generous social welfare policies. Thank you, MSF.

My view is that this is a difference of opinion based on the same facts and not a falsehood. I will stand corrected, but I do not think there was an attempt by the subject statement to make up or distort the ComCare numbers. It was simply an interpretation of the facts. I think a Ministry should be free to make value judgements about criticism including labelling criticisms as false. But more caution is required to avoid the incorrect exercise of powers under the Act. The Ministry must set the record straight. But these differences in opinion may arise because the public may only have partial information. In this case, they may know about ComCare receipts but they may not know about changes in social welfare policy. We should not label such differences in interpretation as falsehoods, especially if the Ministry has not released all the relevant information.

Sir, I know this Government shares my conviction that government must be transparent and open in administration. We must ensure the public continues to have trust in the Government. This is why we have proposed the Principles of Act, which will help to build an institution that appropriately limits the exercise of these important powers.

Mr Speaker, I will not stand against the Bill that I believe, in the hands of a just and capable Government, will be used in the public interest. I agree with the principles of the Bill, and I support the Second Reading of this Bill. But I find it difficult to support final passage of this Bill unless I am satisfied the Bill contains strong protections against abuse by an unjust future Government. I understand why Members of the Government may not share my reservations. I accept they have great confidence that their present good governance will continue. But for me, this is a matter of policy and of conscience. I hope the Government will consider allowing a conscience vote for its Members.

1.35 pm

**Appendix A: Slide shown on Parliament LED Screen**

**Government Actions Against Misinformation, 2015-2019**

Source: [www.gov.sg/Factually](http://www.gov.sg/Factually) and MSF and MOM "Fact Checks"

