

## KEVIN Y. L. TAN

The Constitutional Commission Secretariat  
1 Supreme Court Lane  
Singapore 178879  
Email: CCSecretariat@supcourt.gov.sg

19 Mar 2016

Dear Esteemed Members of the Constitutional Commission

### **REPRESENTATION ON CONSTITUTIONAL REVIEW OF THE ELECTED PRESIDENCY**

I append herewith my representation on the above review. I confirm that I am prepared, if needed, to present myself to answer any questions or queries which the Commission may have on my representation.

Yours sincerely

TAN YEW LEE KEVIN

## 1. PROLOGUE

1.1 The two principal functions of the Elected President are to safeguard Singapore's financial reserves and the integrity of the civil service. In 1991, Parliament determined that for the President to properly discharge these two duties, he or she should first have a *strong mandate* from the electorate to check on the government of the day; and second be *suitably qualified* to do so.

1.2 The two requirements of *mandate* and *competence* manifested in constitutional and legal requirements that were weighted heavily in favour of competence over mandate.

1.3 The Presidential Elections Act does not in fact require a contest for the office of President. Section 15 of the Act provides that if 'only one candidate stands nominated', the Returning officer 'shall immediately ... declare the nominated candidate to be elected to the office of President'. And in the instance where there is a contest, the Act operates a single-plurality system under which the candidate with the most number of votes is declared elected. As we saw in the 2011 Presidential Elections, this system guarantees a majority vote for the candidate only in contests where there are only two candidates. Once there are more two candidates, the person securing the most number of votes need not necessarily also secure the majority number of votes. A candidate who does not secure at least 50% + 1 of the vote cannot be said to have the *mandate* of the majority of voters.

1.4 On the other hand, Article 19(2) of the Constitution sets out very stringent criteria for qualification of candidates seeking presidential office. In particular, Article 19(1)(g) provides for the qualification of persons who have held office for at least 3 years as:

- a. Minister
- b. Chief Justice
- c. Speaker
- d. Attorney-General
- e. Chairman of the Public Service Commission
- f. Auditor-General
- g. Accountant-General
- h. Permanent Secretary

1.3 In addition persons who have served as 'chairman' or 'chief executive officer' of the Central Provident Fund Board; the Housing and Development Board; the Jurong Town Corporation; and the Monetary Authority of Singapore (Part 1 of Fifth Schedule) would also be eligible under Article 19(2).

1.4 Article 19(2)(g)(iii) further qualifies persons who have been chairmen or chief executive officers of ‘a company incorporated or registered under the Companies Act (Cap 50) with a paid-up capital of at least \$100 million or its equivalent in foreign currency’.

1.5 Finally, the Presidential Election Committee may qualify candidates who have held ‘any other similar or comparable position or seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector’.

1.6 These stringent requirements have long been the subject of controversy as they necessarily narrowed the pool of candidates eligible to stand for election. At the same time, it is not entirely clear that the competence and experience required to head up a large corporation can necessarily be equated to someone occupying the office of the Auditor-General or Speaker of Parliament, for example. As a simple matter of comparison, the Auditor-General of Singapore presided over an organisation with a budget of some \$32.2 million in FY2015; while the Speaker of Parliament’s institutional budget came to \$35.1 million in FY2015. These sums are still vast compared to the Public Service Commission’s budget in FY2015, which came to just over \$2 million. However, the threshold for ‘commercial candidates’ is \$100 million.

## **2. QUALIFYING PROCESS AND ELIGIBILITY CRITERIA OF PRESIDENTIAL CANDIDATE AND THE ROLE OF THE COUNCIL OF PRESIDENTIAL ADVISORS**

2.1 The Commission has been specifically asked to ‘review the qualifying process for Presidential candidacy’ and especially ‘the eligibility criteria’ for candidates. It appears from the Prime Minister’s opening of Parliament address that the Government is concerned that since 1991, there has been a proliferation of companies that have at least \$100 million in paid-up capital. This has meant the enlargement of the pool of potential candidates.

2.2 It would be unwise on this account to make the current criteria any more stringent. In deciding on the suitability of candidates, it is imperative that we consider whether the *competence* requirements currently extant enables the system to throw up candidates that have the ability to perform the two key presidential functions. In this connection, I would argue that the current criteria are already much too stringent. The Prime Minister, who oversees a much greater responsibility than the President and who oversees a much larger budget than most of the persons listed under Article 19(2), is not required to be so stringently qualified. Indeed, Article 44(2) of the Constitution only requires the Prime Minister to be a citizen of Singapore, above the

age of 21 and resident in Singapore and with ‘a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament’.

2.3 Any number of criteria can be added to the list, but this will serve mainly to reduce the pool of candidates rather than to enhance competence. Instead of focusing on making the requirements for the President even more demanding, it would perhaps be better to enhance the competence level of the members of the Council of Presidential Advisors (CPA). Currently Article 37D merely requires candidates for the CPA to be Singapore citizens above the age of 35. As the body responsible for advising the President on decisions pertaining to the financial reserves, I feel that the CPA members should be more competently qualified than they are at present.

2.4 It is thus proposed that instead of making the qualification criteria for presidential candidates even more stringent, the Commission should consider recommending that the appointment criteria for CPA members to made stricter.

### **3. ETHNIC REPRESENTATION THROUGH THE PRESIDENCY**

3.1 The Commission was also asked to consider how to ‘safeguard minority representation in the Presidency’. In view of the decision made in 1991 to transform the Presidency into a competitive office, this task will be extremely difficult given the demographic make-up of Singapore’s ethnic communities. By dint of numbers alone, there will always be a smaller number of ethnic minority candidates than Chinese candidates for any electoral office. As such, this minority representation requirement is internally inconsistent with and contradictory to a competitive office.

3.2 Having determined to make the office of the President competitive, Parliament sought to privilege financial competence over ethnic representation. It will now be impossible to turn back the wheels unless particular electoral cycles are designated for minority candidates only. This will not only be odious to public sensibilities but potentially run counter to Article 12(2) of the Constitution.

3.3 The only way to continue making the office competitive and yet guarantee ethnic minority representation is to change the way in which the President is elected. One possibility draws its inspiration from the Group Representation Constituency system currently in operation. In the case of presidential elections, candidates *must* campaign and be elected as a team of three persons, comprising members from the Chinese; Malay and Indian or Other community. Once elected, each member of the team will assume the post of President for a period of two years and then be succeeded by the next member of the winning team. As the President’s term of office is 6 years, the third member will complete the rotation of team members serving as President. While not serving as President, the other two members will serve as members of the CPA (as the President’s nominees under Article 37C(3)(i) of the

Constitution); and one of them shall serve as the Chairman of the CPA and act as President when the President is either indisposed or out of the country.

3.4 Paragraph 3.3 above posits just one possible way in which both the objectives of fiscal prudence and competence, and ethnic representation, can be obtained through institutional engineering. However, I strongly advise against such a solution as it will emphasize ethnicity and difference in politics. Instead of the President being a unifying force, he or she will be divisive one.

3.5 A much better solution would be have Parliament nominate or elect a President in the way we did prior to the 1991 constitutional amendments. The only reason why elections were deemed necessary was because elections are expected to confer a majoritarian mandate on the winner of an election. However, unless the system is altered to give the winning candidate an absolute majority, any claim to majoritarian legitimacy would be spurious at best. If the Commission determines that the election system be maintained, then the system must be amended to meet the *mandate* requirements. A simple ‘run-off’ system could be instituted whereby the winning candidate needs to secure at least 50% + 1 vote in the election to be declared elected. If such a majority is not obtained, then the top two candidates will undergo a second round of voting after which the winner is declared.

#### **4. CONCLUSION**

4.1 While this may go beyond the Commission’s remit, I recommend that the office of President be filled by nomination or election by Parliament as was the case prior to 1991. This would allow Parliament to nominate a person thought to be the most suitable for the job and allow Parliament to weigh competence requirements against ethnic representation imperatives. If this happened, then the qualification criteria for the President should be lowered and not heightened. The age requirement could remain, but nothing else.

4.2 To support the scheme envisaged in paragraph 4.1 above, the qualifications of the CPA members need to be strengthened. Administrative and fiscal qualities should be the only criteria to be used for broadening the qualifications of CPA members.

4.3 If the present system of election *must* be maintained, the first two proposals above remain valid. Added to this will the amendments to the electoral system to secure an absolute majority for the winner of a presidential election thus vesting him or her with the requisite *mandate*, authority and legitimacy to check on the Government.

4.4 The only way to guarantee minority ethnic representation in the office of the President, and ensure that ethnic minorities have a chance to be elected, is to adopt a

team President system as outlined in paragraph 3.3 above. This is not a desirable option, merely a practical one.

**END**