Hougang voters could seek High Court clarification: experts

Constitutional law experts here say it may be possible for eligible voters of Hougang SMC to seek clarification on applicable laws pertaining to a by-election in the High Court. (Yahoo! file photo)

Eligible voters from the Hougang single-member constituency (SMC) can consider going to Singapore's High Court to seek clarification on the applicable laws that govern by-elections.

This, say constitutional law experts, may be the only way for a definite conclusion to be drawn on the ongoing debate over whether or not it is mandatory for a by-election in the constituency to be called following the highly-publicised dismissal of Hougang's former member of parliament (MP) Yaw Shin Leong from the Workers' Party last month.

The meanings of the terms "shall" and, more recently, "election", seem to have been called into question in a sharp war of words between nominated MP Eugene Tan and MP for Bishan-Toa Payoh group representation constituency (GRC) Hri Kumar Nair, as exchanged via letters sent to the Today newspaper over the course of the past week.

"At the end of the day, only the Supreme Court can provide a definitive ruling of what the relevant provisions of the Constitution mean," pointed out assistant professor in constitutional law at Singapore Management University (SMU) Jack Lee, who said it would be possible for a person with sufficient standing to file an application with the High Court to seek clarification on what exactly the terms refer to.

"This could be a voter living in Hougang SMC, or — possibly — a political party that wishes to contest a by-election in that constituency," said Lee, who qualified that it is for the Court to decide who the appropriate party to bring the matter before them is.

Constitutional law professor Thio Li-ann, who lectures at the National University of Singapore's (NUS) law faculty, suggested that another possible route to seek clarification
would be for a Workers' Party MP to ask a direct question in Parliament about what the provision means, as well as the political reasons for calling or not calling a by-election.

"The only constitutional tribunal we have is the one set up under article 100 of the Constitution, but that again depends on the President, acting on the advice of the Cabinet, referring a constitutional question to the tribunal for an advisory opinion," she said.

There has only been one previous occasion where a resident in Jurong GRC took his case of not being entitled to a by-election to the High Court after his MP Ong Chit Chung passed away in July 2008. Opposition politician and lawyer J B Jeyaratnam represented him at the time, although the case was withdrawn after his death in September of the same year.

The debate continues

In MP Hri Kumar's latest response to Tan, published on Wednesday, the former subtly implied the possibility of taking an expanded interpretation of the term "election" in Section 49 of the constitution, which states that any vacated parliamentary member's seat "shall be filled by election".

In his letter, Hri Kumar wrote of the chance of the word "election" referring to either a general election or a by-election, concluding with the point that either way, the decision on when it should be timed rests with Prime Minister Lee Hsien Loong.

Responding to this, SMU's Lee noted that Hri Kumar was reiterating the PM's party line that was mentioned in Parliament during the August 2008 debate, but said that his suggestion that the word "election" could refer to a general election reflects a "rather odd" reading of the provision.

He pointed out that Article 49(1) of the constitution, which deals directly with vacancies in parliamentary seats created by circumstances other than the dissolution of parliament, "clearly applies only to vacancies that arise in the middle of a Parliamentary term".

"Reading the word election as including a general election makes Article 49(1) redundant," he told Yahoo! Singapore. "It is no longer necessary to fill one vacant seat that arises mid-term at a general election, because a general election is only triggered when Parliament is dissolved and all the seats are vacated," he added.

Adjunct professor Kevin Tan, who also teaches constitutional law at NUS, noted that when Article 49(1)provides that "the vacancy shall be filled by election in the manner provided" by written law, it implies that it must be filled by way of a by-election before the current Parliament is dissolved.

He contended that the Prime Minister does not have carte blanche (complete or 'blank-cheque') discretion to decide whether or not to call a by-election for a recently-vacated seat. It must, he argued, be filled by way of a by-election, before the next General Election is called.
"The Constitution does not say: 'If the Prime Minister, acting in his discretion, determines that any vacant seat is to be filled, it shall be filled by an election...' or words to that effect," he said.

NUS' Thio added that there are two possible ways of interpreting the constitutional clause "shall be filled by election in the manner provided by" the written law in force, which in this case refers to the Parliamentary Elections Act (PEA).

She said the meaning of the clause depends on the part that is emphasised -- either "shall be filled by election", or "in the manner provided by" the law in force. If the former, the clause would mean that the constitution requires the vacancy must be filled by way of a by-election, details of which are to be sorted out by statute. If the latter, the clause would mean that both whether and how (editor's italics) a by-election should be held in the event of a vacated seat in parliament can be decided by the PEA.

"Since the PEA empowers the President to issue a writ for a by-election on the advice of the Cabinet, one might interpret this as meaning Cabinet (which is led by the PM) has discretion in this matter," she added.

NUS' Tan also pointed out that Singapore's constitution is a variation of the Westminster parliamentary model of government, which consists of representatives of the people (MPs) elected during periodic general elections.

"You therefore cannot have a Parliament made up of people who were not elected... neither should you have a Parliament bereft of MPs," he said.

"In cases where seats remain empty, constituents of that constituency are left without representation and a voice in the legislature. This defeats the whole idea behind parliamentary democracy and representative government under the entire scheme," he added.

Speaking on the two interpretations of Article 49(1), Thio concluded, "Personally, my view is that the interpretation more faithful to the principles of representative democracy and popular will which are part of the constitutional architecture, (that is) who cares how the seat got vacated, it's vacant, fill it so the Hougangites get to have their representative in Parliament."

WP did not disagree with 2008 motion: Lim

Separately, Workers' Party (WP) chairman and MP for Aljunied GRC Sylvia Lim wrote a letter to Today in response to Hri Kumar's second letter on Thursday, urging PM Lee to call a by-election "as soon as practicable".

Reiterating that the term used in Article 49(1) is "shall", and not "may", Lim said that holding a by-election is "not optional".

At the same time, she clarified a point Hri Kumar brought up in his letter about the WP representatives in parliament voting against the motion tabled by Thio and several other
then-NMPs, saying that they did not disagree with the call for a three-month deadline to hold a by-election.

"When speaking then on the motion, I made it clear that WP was unable to support the motion for the simple reason that an attempt to refine the GRC system would be tantamount to accepting GRCs in our system, which WP does not," wrote Lim.

She also added that the WP had pushed for an amendment to the motion, which was to abolish the GRC system, while preserving the move for a three-month timeline for calling a by-election.