

CHATROOM | EUGENE TAN

Judgment upholds the rule of law

■ *What is your reaction to the ruling. Were you surprised by it?*
 Delighted. The earlier High Court ruling was not persuasive. So I thought there was a strong possibility that the Court of Appeal (CA) would disagree with that judgment on the substantive points. Hence, the CA decision wasn't surprising to me, despite the appeal being unsuccessful.

The ruling might also encourage more Singaporeans to challenge laws and executive actions they think are unconstitutional or are expressions of unfettered power. In the larger scheme of things, that's good for Singapore. It's a sign of our maturing as a democracy.

■ *What is the significance of the ruling? Has anything really changed for the Prime Minister?*

It was important that the Court clarified the meaning of Article 49 of the Constitution, resolving the question of whether a by-election had to be called to fill a vacancy. But even more important was the fact that the CA upheld the centrality of the rule of law. This means all discretionary power is subject to legal limits. There should be very few circumstances, if any, under which the PM's discretion is unfettered.

That said, I don't think the operating considerations have changed significantly for the PM, simply because the PM has not act-

ed as though he has unfettered discretion on by-elections. There may have been political posturing in the past as to the PM's discretion but the law is now clear.

If you look back on both of the recent by-elections – Punggol East and Hougang – the PM indicated to the public that he was actively considering the matter but would not be bound by any timeline. Legally, it would be very difficult for someone to mount a challenge in those instances.

Also, both by-elections were held after a short time. Hougang after three months, and Punggol East within one month. They demonstrated the PM's recognition of his constitutional duty to hold a by-election to fill a vacated seat.

■ *When Parliament was debating in 2008 a motion to set a time limit for holding by-elections, PM Lee said "the Prime Minister of the day has a discretion to decide when he wants to call or whether he wants to call (a by-election)". Does the ruling overturn this position?*

Put simply, yes. If a future PM says he has absolute discretion over whether to call a by-election or if he goes so far as to declare he has no intention to, then he opens himself to a legal challenge. Based on this ruling, there are very good grounds for such a challenge.

But we must recognise that the ruling still gives the PM a fair mea-

sure of latitude. If Parliament's term is coming to an end, he can quite easily say he is not going to fill the seat in view of the coming general election. Even if the election is some way off, this ruling allows the PM to consider a very wide range of factors in deciding when to call for a by-election.

A delicate balancing exercise is at work – the voters' right to representation, and the PM's discretion as to when to call for a by-election, which the CA acknowledged is a "polycentric matter".

Eventually, we might see a constitutional convention develop and crystallise, based on practice, as to what constitutes a reasonable timeframe, as Professor Thio Li-ann has said. I think this will likely be the case.

But my personal preference is to legislate a time limit. This is the best way to ensure voters are not disenfranchised.

It also reduces political uncertainty. We won't have a situation where political parties engage in endless bickering and people get upset over what they see as the Government trying to leverage on its advantage of being able to decide when to hold a by-election.

■ *The ruling says that the Court can intervene in the PM's discretion in "exceptional cases". What might an exceptional case be?*



Mr Tan favours setting a legal time limit to hold a by-election. ST PHOTO: LIM YAOHUI FOR THE STRAITS TIMES

This would be the PM exercising discretion arbitrarily. If, for example, he does not hold a by-election simply because he believes his party would do badly. But this would be very difficult to prove.

Another example: Say, in the case of the Hougang by-election, if the PM had said he wasn't filling the seat because it was WP's fault for vacating it, and Hougang voters had to live with the consequences of voting for WP at the general election.

■ *Assuming such an exception does occur, does the Court have*

the power to compel the PM?

If a challenge succeeds, the Court can rule that a by-election must be called promptly. The Court would be overstepping its powers if it prescribed an election date. That is the PM's prerogative, but he ignores the Court at his political and Singapore's peril.

The Court is not toothless. In extremis, if the PM ignores the Court, it can hold the PM to be in contempt of court. Of course, in a healthy, functioning constitutional democracy, the PM would have announced a timeline after the first ruling, to avoid a constitutional crisis.

■ *A lot hangs on what the law means when it says a vacant seat "shall be filled by election". The earlier judgment by Justice Pillai (which has been overturned) said the phrase means that if the seat were filled, it had to be filled by election and not by any other method. This ruling says the phrase simply means it must be filled, and by election. What is your view?*

On a plain reading of the phrase, the latter interpretation must stand. As such, it was difficult to understand the reasoning of the earlier judgment. The CA said the High Court's interpretation was "simply unwarranted", as it substantially modified the meaning of the law.

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