

Is our judiciary really deferential to the Govt?

FROM **MANDY LIM**

In his commentary, "What court decision on by-election reveals" (Aug 6), Dr Jack Lee stated that the decision in the Hougang by-election case "came as a surprise to those used to a judicial stance that is fairly deferential towards the Government".

By deference, he meant that judges "assume that the Government is better placed than they are to make certain types of decisions" and may hence be willing to give the Government the benefit of the doubt.

Dr Lee noted that the by-election ruling was "one of only a handful of cases in which the courts have not accepted the Government's interpretation of the Constitution".

In my opinion, we should not be too quick to conclude that the judiciary is fairly deferential towards the Government based on raw statistics of past cases. It could well be that in those other cases, the judiciary agreed with the Government's interpretation of the Constitution on its own assessment, without the need to defer.

The Constitution is not monolithic either. Article 14, for instance, is phrased in a way that gives Parliament latitude to impose restrictions on freedom of speech, assembly and association. So, apart from deference, the judiciary is constrained by the text of the Constitution, which it has to interpret.

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Finally, constitutional jurisprudence is at its infancy in Singapore. Many provisions of the Constitution have not been adjudicated upon, and it is anyone's guess as to how they would be interpreted by the judiciary in particular cases.

The Hougang by-election case was, to my knowledge, a first involving the interpretation of a provision on the electoral system. Hence, we should not be too quick to generalise at this point.

Dr Lee also pointed out that the by-election ruling "makes it harder for applicants to raise constitutional issues" before the courts "if the factual basis for the issues has dissipated, even though resolving the issues would provide guidance to the Government and the public".

Perhaps there is good reason for the stand taken by the Court of Appeal. The purpose of judicial review is arguably to protect the rights and interests of individuals.

If the factual situation giving rise to a possible breach has been resolved, and rights are no longer in danger of being violated, perhaps the issue should be resolved in the political arena rather than by the judiciary.

This would help reinforce the separation of powers, another fundamental aspect of our system of governance, where matters of public policy are determined by the Government, and issues of legality by the judiciary.