

# Elected presidency: Going beyond simplistic understanding of independence

Track record, values and character are fundamental to independence, but this focus must not lead to a compromise on competency and integrity, which could undermine the seat.



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In a few days, Singaporeans will know whether they will head to the polls on Sept 1 in the nation's sixth presidential election. Regardless of whether they get to cast their votes, Singaporeans need to have a good and accurate understanding of the roles, functions and powers of the elected presidency. Should there be a contest, this will enable them to make an informed choice.

A standout theme that has been the subject of much discussion and confusion is the independence of the president. The hopefuls have dwelled on competing notions of independence, including whether one is sufficiently "independent" or not of the government of the day.

One of the key things to understand is that despite being elected directly by the people, the president does not have an independent political role or power. The office is defined by the exercise of its custodial powers and the clearly stipulated limits on its power. He or she must scrupulously stand above the fray of partisan politics, given the presidency's *raison d'être* as a stabiliser in promoting and protecting good governance, a key ingredient in Singapore's success.

### CRITICAL UNDERSTANDING OF INDEPENDENCE

Mr Tharman Shanmugaratnam, a former People's Action Party (PAP) Cabinet minister, and Mr Ng Kok Song, the former chief investment officer of Singapore's sovereign wealth fund GIC, are often referred to as being from the establishment. In contrast, coming from the private sector, businessman George Goh and former NTUC Income chief Tan Kin Lian have described themselves as "truly independent".

But such an assertion is simplistic and belies a fundamental misunderstanding of the elected presidency and what the independence of the office is for. The Constitution clearly states that, unless specifically provided, the president "shall, in the exercise of his functions under this Constitution or any other written law, act in accordance with the advice of the Cabinet or of a minister acting under the general authority of the Cabinet".

Independence of the president matters immensely in relation to the president's custodial powers to safeguard the reserves of Singapore and the integrity of the public service. In these two key areas, the president can veto certain proposed measures, notwithstanding the Cabinet's advice.

Where Singapore's past reserves (that is, the reserves which were not accumulated during the present term of government) are concerned, the president is empowered to scrutinise and veto measures taken by Parliament or the Government that he considers would draw on past reserves.

For example, he can refuse to assent to a Supply Bill (the Budget) should it draw on the past reserves. Similarly, the president can disapprove the budgets and transactions of key statutory boards (namely the CPF Board, Housing Board, Monetary Authority of Singapore and JTC Corporation) and key government companies (Temasek and GIC) if he considers that they draw on the entities' past reserves.

The president's custodial power over the integrity of the public service relates to key



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public-sector appointments, including those of the chief justice and Supreme Court judges, the attorney-general, chairman and members of the Public Service Commission, the auditor-general, the accountant-general, the chief of defence force and the four service chiefs, the police commissioner and the Corrupt Practices Investigation Bureau director. This custodial power includes the ability to veto the removal of individuals from these positions.

When exercising these two specific custodial powers, the president does not act alone. Under the Constitution, he must consult the Council of Presidential Advisers (CPA). If the president exercises a veto contrary to the CPA's recommendation, Parliament may vote to overrule the president through a motion supported by not fewer than two-thirds of the total number of MPs (excluding nominated MPs).

### THINKING OF AND THINKING WITH INDEPENDENCE

One conception of the elected president's independence ("independence from") is that it is a means of ensuring that the exercise of the discretionary custodial powers is insulated from the pressure of partisan politics, including from the elected government of the day.

The other conception of the elected president's independence ("independence of") seeks to further the public good that the elected presidency was conceived for: the promotion and protection of good governance with respect to Singapore's national reserves

and the integrity of the public service.

In our one-party-dominant political system, where the ruling PAP has governed since 1959, the "independence from" conception is sometimes seen as prevailing over the "independence of" conception.

However, both conceptions of independence are intimately related and equally important to Singapore's governance. The valorising of one conception of independence over the other will diminish the common enterprise of governing for the good of Singapore and Singaporeans.

The president and the elected government must demonstrate the broad legitimising ground for the elected presidency, primarily through working together even as they carry out their respective constitutional functions independently.

Independence is not solely about whether one has past affiliation to a political party, or the government. A president with no prior political or establishment affiliation is not independent if he chooses to deliberately or unnecessarily thwart the work of the elected government. Similarly, where a president chooses to further his private interests, he is clearly not independent and could even be abusing his office.

The Constitution requires a candidate to not be a member of any political party when he files his nomination papers to contest in a presidential election. The president's oath of office is also clarifying: that he will faithfully discharge his duties to the best of his ability "without fear or favour, affection or ill-will, and without regard to any previous affiliation

with any political party".

The institutional designers did not regard a person's prior political or establishment affiliation as a disqualification for a good reason. It would limit the pool of eligible men and women with the requisite experience and ability and integrity for the highest elected office of the land.

Singapore's elected heads of state have always honourably discharged their duties. Mr Ong Teng Cheong, a former chairman of the PAP, is often lionised for standing up to the government during his presidency between 1993 and 1999. His three successors all had ties to the PAP or the public service, but that did not prevent them from acting independently. They were scrupulous about safeguarding the independence of the presidency as much as recognising the interdependence of our carefully designed system of checks and balances within the executive branch of the state.

Independence is fundamentally about one's values and character. It imbues the president with autonomy and agency in the faithful performance of his duties. As such, an obsessive focus on independence, with unhelpful labels and with no regard to a candidate's track record, competencies and integrity, undermines the elected presidency, including its very independence.

### INSTITUTIONAL SAFEGUARDS OF INDEPENDENCE

Moreover, the concerns that the presidency will be overwhelmed by the government of the day – and so become less independent – ignore the fact that the formal

independence of the presidency is protected in our system of checks and balances.

They include the constitutional prescription of a president's term of office being a fixed six years that can be renewed, and a robust process, involving Parliament and the judiciary, before a president may be removed from office.

Furthermore, there are only two grounds on which a president may be removed.

One is where the president is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity.

The other is that the president has been guilty of intentional violation of the Constitution, treason, misconduct or corruption involving the abuse of the powers of his office, any offence involving fraud, dishonesty or moral turpitude, or intentionally or knowingly making a materially false or misleading statement of fact, or intentionally or knowingly failing to state a material fact, to the Presidential Elections Committee for the purpose of demonstrating his eligibility to be elected as president.

### INDEPENDENCE NOT A SITE OF POLITICAL POWER

To be clear, the ability of the president to exercise his custodial powers independently and impartially is of central importance in the governance safeguard that the elected presidency is.

This is precisely why the presidency became an elected office in 1991. Election confers on him the legal mandate and moral authority to exercise his custodial powers impartially and without fear or favour.

Independence is therefore more a means to, rather than an end in itself, promoting and protecting good governance. Independence (and accountability) of the president's exercise of custodial powers is crucial in conferring trust and legitimacy to key decisions of both the presidency and the elected government.

Presidential aspirants and voters alike must be clear that the presidency, even in a one-party-dominant political system, is not an alternative power centre to the elected government. It was never conceived as such and should never become one.

As Singapore's head of state, the elected president has important community and ceremonial roles. The Constitutional Commission of 2016, headed by Chief Justice Sundaresh Menon, had highlighted the president's critical role as the symbol of national unity. The president represents all Singaporeans, regardless of race, language, religion or political affiliation.

Should official campaigning commence next week, presidential candidates need to go beyond binary conceptions of independence. Instead, they should emphasise how, amid growing political diversity and contestation, they can unify Singaporeans. Secondly, they should show how they have promoted multiracialism and how they intend to be an advocate and protector of our pluralistic ethos.

Thirdly, given the apparent lack of understanding of the presidency, candidates should elaborate on how they can promote a better understanding of the president's custodial powers while ensuring the confidentiality of the exercise of such powers.

Despite the apparent inherent contradiction of the president having to exercise custodial powers while being a unifying figure at the same time, it is vital to our unique system of checks and balances that Singaporeans develop a deeper and nuanced understanding of the elected presidency. It can mean the critical difference as to whether our democracy thrives, and good governance prevails.

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