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NUS PROFESSOR
VALENTINE WINSLOW

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ST READER LIONEL DE SOUZA

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CONSTITUTIONAL LAW EXPERT
KEVIN TAN

BY-ELECTION PRAGMATISM OR PRINCIPLE?

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DR YVONNE LEE of
NUS Law Faculty

The key is whether the voters in a ward will be short-changed, and the more under-strength a GRC is in terms of MPs, the more that is likely to be the case.

SMU LAW PROFESSOR EUGENE TAN

It's a principle that should not be sacrificed on the altar of pragmatism.

NUS LAW PROFESSOR AND
NMP THIO LI-ANN

FILE PHOTO:
AFP

Not mandatory but there may be a moral or political case, say experts



By CLARISSA OON

THE death of Jurong GRC MP Ong Chit Chung has sparked a nagging question in the minds of some Singaporeans: Does the law require a by-election to find a replacement?

No, says the ruling People's Action Party (PAP).

And there are no plans to hold one to fill the late Dr Ong's Bukit Batok seat in the six-member group representation constituency (GRC).

Veteran opposition politician J.B. Jeyaretnam, however, says it is not clear from the law that there is no obligation to hold a by-election.

A legal argument was also cited by one of the four Singaporeans who wrote in to The Straits Times Forum page supporting Mr Jeyaretnam's call for a by-election following Dr Ong's death on July 14.

Mr Tan Eng Tat, in a letter published last Saturday, contended that if a seat in a GRC is vacated due to the death or resignation of a member, then that GRC no longer complies with its group number as declared by the President under Section 8A (1)(a) of the Parliamentary Elections Act.

This is reading too much into the law, says constitutional law expert Kevin Tan, an adjunct law professor at the National University of Singapore (NUS).

Not required by law

THE law stipulates only the number of members in a GRC that must be returned when an election is called, and "does not say that this number must be maintained throughout the duration of Parliament", he explains.

In actual fact, the holding of a by-election to fill a vacancy is not mandated by the law, says Dr Tan and three other constitutional law scholars consulted by Insight.

They point to Section 24 (2A) of the Parliamentary Elections Act as the relevant provision governing the holding of by-elections for GRCs.

Section 24 specifically addresses the issue of when elections are required to fill vacancies resulting from death or resignation, and (2A) says clearly that no writ shall be issued for an election to fill any vacancy in a GRC unless all its Members step down first.

This means that "all existing

MPs must resign and a new election be held for the GRC in its entirety - for all the seats and not only the one vacancy in the GRC", says Professor Valentine Winslow of NUS.

What is significant is that the law is silent on the time line for such a by-election.

The Government may choose to wait until the next general election to fill the vacancy, and on that basis a by-election is not legally required, says Prof Winslow.

NUS law professor and Nominated MP Thio Li-Ann also notes "the absence of a stipulated time period or even an instruction to issue a writ (for the holding of an election) 'in a timely fashion'."

As a result, the holding of a by-election "remains a question of political discretion" - even for single-seat wards - which she finds disturbing.

What then was the thinking behind Section 24 (2A), which came into being when GRCs were introduced in 1988?

The intention was "not to allow any particular MP, so elected as part of a group of MPs for the GRC, to hold the rest to ransom through resignation or otherwise", so that the rest "should not be forced to vacate their seats on account of one MP vacating his seat", Mr Wong Kan Seng, who was leader of the House, said during a 1999 debate in Parliament on the filling of vacancies.

Nonetheless, constitutional law scholars interviewed say a strong moral and political case - on the principle of representative democracy - can be made for holding a by-election in a GRC where one member has vacated his seat.

The fact is that "the GRC team was 'voted in' as a complete team", and "the absence of one member may entail the loss of mandate from the people", says Dr Yvonne Lee of NUS' Law Faculty.

A by-election should be held to maintain the "political legitimacy of the GRC", she opines. In Prof Thio's view, by-elections are "a way of allowing the incumbent team to field a replacement and for another set of politicians to put up their team and say 'Choose us, we are better'."

Most importantly, she says, it allows the citizen to choose: "In a democracy, the people always have the final say."

This, she stresses, is a "matter of principle" that should not always be "sacrificed on the altar of pragmatism".

Since GRCs were introduced, utilitarian considerations appear to have been the clincher when deciding whether or not to hold by-elections.

There are now a total of 14

What the law says about by-elections

Singapore Constitution

» Filling of vacancies:
49. - (1) Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force.

Parliamentary Elections Act

» Writ of election:
24. - (1) For the purposes of every general election of Members of Parliament, and for the purposes of the election of Members to supply

vacancies caused by death, resignation or otherwise, the President shall issue writs under the public seal, addressed to the Returning Officer.

- (2A) In respect of any group representation constituency, no writ shall be issued under subsection (1) for an election to fill any vacancy unless all the Members for that constituency have vacated their seats in Parliament.

» Election of members on a group basis in GRCs:
27A. - (2) All elections in any group representation constituency shall be held on a basis of a group of such number of candidates as designated for that constituency by the President under section 8A (1) (a).

GRCs - each with up to six MPs - and nine single-member constituencies.

After the Anson by-election of 1981, only one other has been called. This was in Marine Parade GRC in 1992.

The primary reason given for it being held was the need to bring new blood into the PAP's ranks.

A similarly pragmatic reason was given for not holding a by-election when one MP resigned from Jalan Besar GRC in 1999: that Singapore was in recession then and needed to focus on "economic recovery".

The three remaining MPs in the GRC at that time - Dr Lee Boon Yang, Dr Yaacob Ibrahim and Mr Peh Chin Hua - took over the duties of Mr Choo Wee Kiang, when he resigned after being convicted of a cheating offence.

This precedent is likely to be followed in the case of Jurong GRC, where the PAP has said that the five remaining MPs will share the responsibilities for tending to Dr Ong's Bukit Batok division.

When to call one?

THERE are Singaporeans who will accept this on practical grounds.

One of them, Mr Lionel de Souza, even said in this newspaper's Forum page on Wednesday that to hold a by-election in Jurong GRC "would be a waste of public funds and will be an invitation to political mercenaries to appear from the cold".

But there are two scenarios where the incumbent Government could lose political credibility by not calling a by-election, say legal scholars.

One is if an MP from a minority race in a GRC dies or resigns - which has so far not happened.

This would test the constitutional purpose of the GRC scheme, which was introduced to ensure multiracial representation in Parliament, says Prof Thio. In this case, a by-election should be called as soon as possible.

The other scenario would be if more than one MP in a GRC steps down.

"The question here is what is the threshold before the political trigger for a by-election is pulled? Is it two MPs out of five - 40 per cent under-strength - or two out of six?" muses Singapore Management University law professor Eugene Tan.

"The key is whether the voters in a ward will be short-changed. And the more under-strength a GRC is in terms of MPs, the more that is likely to be the case."

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