IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 160

Originating Summons No 495 of 2017

Between

TAN CHENG BOCK

… Plaintiff

And

ATTORNEY-GENERAL

… Defendant

JUDGMENT

[Constitutional Law] — [Constitution] — [Interpretation]

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v
Attorney-General

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12 July 2017 Judgment reserved.

Quentin Loh J:

Introduction

1 The Plaintiff, Dr Tan Cheng Bock, seeks a declaration that:

(a) s 22 of the Presidential Elections (Amendment) Act 2017 (Act 6 of 2017) ("the PE(A) Act 2017") is inconsistent with Arts 19B(1) and/or 164(1)(*a*) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"), and therefore void by virtue of Art 4 of the Constitution; alternatively,

(b) the reference to President Wee Kim Wee ("President Wee") in the Schedule referred to in s 22 of the PE(A) Act 2017 is inconsistent with Arts 19B(1) and/or 164(1)(*a*) of the Constitution, and therefore void by virtue of Art 4 of the Constitution.

2 The Plaintiff, represented by Mr Chelva Retnam Rajah SC ("Mr Rajah SC"), contends that Art 19B(1), properly interpreted in context and having regard to its purpose, means that the first Presidential term to be counted for the purpose of determining a reserved election under Art 19B(1) ("Reserved Election") (*ie*, a Presidential election reserved only for candidates from a particular community) must be that of a President who was elected by the citizens of Singapore to a six-year term of office. The Schedule to the Presidential Elections Act (Cap 240A, 2011 Rev Ed) ("PEA"), as enacted by s 22 of the PE(A) Act 2017, is unlawful and invalid because it starts the count for a Reserved Election from President Wee, who was elected by Parliament and not by popular vote of the citizens.

3 The Attorney-General ("the AG"), represented by Deputy Attorney-General Mr Hri Kumar Nair SC ("Mr Nair SC"), contends otherwise and resists the grant of the declaration sought.

4 The parties are in agreement that the issue to be decided is a question of law, *viz*, whether Parliament acted constitutionally in specifying the last term of office of President Wee as "the first term of office of the President to be counted for the purposes of deciding whether an election is reserved under Art 19B" ("First Term") (Art 164(1)(*a*)).

The issue of standing

5 The Plaintiff brings this action under O 15 r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). To seek such declaratory relief, the Plaintiff must show that he has the requisite standing to do so. In *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan*"), which was approved of in the subsequent cases of *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 (at [16])

and *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 (at [46]), the Court of Appeal ("the CA") recognised at [115] that an applicant will have standing to bring a constitutional challenge if the following three requirements are satisfied:

(a) the applicant has a real interest in bringing the action;

(b) there is a real controversy between the parties to the action for the court to resolve; and

(c) there is a violation of a personal right.

In respect of requirement (c), an applicant need only show an "actual or arguable violation" of a personal right (see *Tan* at [73]).

6 The Defendant is prepared to accept that the Plaintiff has standing to seek this declaration.[1] During the hearing on 29 June 2017, neither party made submissions on the Plaintiff's standing before me.

7 In the likely event that this is taken up elsewhere, I should express my views on standing. On the assumption that the Plaintiff meets the eligibility criteria and other requirements for standing for the office of President under the Constitution and the PEA, which are not issues before me or within my purview, I am prepared to accept that the Plaintiff has standing to bring this action for the following reasons:

(a) First, the Plaintiff, who is a medical doctor by profession and a former Member of Parliament ("MP") for some 26 years,[2] ran in the

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1 Affidavit of Goh Soon Poh dated 19 May 2017 ("Goh's Affidavit") at para 33.

2 Affidavit of Tan Cheng Bock @ Adrian Tan dated 25 May 2017 ("Plaintiff's Affidavit") at paras 2 and 23 and TCB-1 (p 25).

2011 Presidential Election. The Plaintiff garnered a very credible number of votes with the current President succeeding only by a narrow margin in 2011. The Plaintiff, who is about 77 years old today, publicly announced his intention on 11 March 2016 to stand in the next Presidential Election.[3] It is not disputed that at the time of this application, the Plaintiff still wishes to stand as a candidate in the Presidential Election slated for September this year ("the 2017 Presidential Election").

(b) Secondly, if the amendments which the PE(A) Act 2017 effected to the PEA are valid, they will prevent the Plaintiff from standing as a candidate in the 2017 Presidential Election as it will be a Reserved Election for the Malay community: see ss 9(4)(c) and 9(5) of the PEA.

(c) Thirdly, the Plaintiff has put forward serious arguments challenging the start of the count, for the purpose of the hiatus-triggered mechanism for a Reserved Election ("the Model") under Art 19B(1), from the second term of office of President Wee who, as mentioned above, was elected by Parliament and not by popular vote of the citizens. If, as the Plaintiff contends, the count could only start from the first *popularly elected President*, *ie*, President Ong Teng Cheong ("President Ong"), then the 2017 Presidential Election cannot be a Reserved Election under the Constitution as it stands today. The Plaintiff will then be able, on the assumption made above, to be nominated as a candidate for the office of President.

For these reasons, I am prepared to accept that the Plaintiff satisfies the elements of standing which the CA reaffirmed in *Tan*.

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[3] Plaintiff's Affidavit at TCB-1 (p 29).

The background

The origins of the Presidency

8 When Singapore gained its independence from the United Kingdom on 16 September 1963, it did so as a state within the Federation of Malaysia. Singapore's Head of State was then called the Yang di-Pertuan Negara. This office was created by the Singapore (Constitution) Order in Council 1958 (GN No S 293/1958), which also abolished the equivalent colonial office of the Governor and Commander-in-Chief of the Colony. Encik Yusof bin Ishak, who was the Yang di-Pertuan Negara on 16 September 1963, continued as the Head of State of Singapore in Malaysia under Art 1(1) of the State Constitution set out in Sched 3 to the Sabah, Sarawak and Singapore (State Constitutions) Order in Council 1963 (GN Sp No S 1/1963) ("the 1963 State Constitution") which preserved the office of the Yang di-Pertuan Negara. He was formally appointed as the Yang di-Pertuan Negara under the 1963 State Constitution on 4 December 1963: see *Singapore Parliamentary Debates, Official Report* (30 November 1967) vol 26 at col 407 (Lee Kuan Yew, The Prime Minister).

9 When Singapore became an independent nation on 9 August 1965, the Head of the Federation of Malaysia, the Yang di-Pertuan Agong, relinquished his sovereignty, jurisdiction, power and authority over Singapore; and this was vested in our Yang di-Pertuan Negara (see s 6 of the Constitution and Malaysia (Singapore Amendment) Act 1965 (Act 53 of 1965) (M'sia), which was passed by the Malaysian Parliament, and s 3 of the Republic of Singapore Independence Act (Act 9 of 1965), which was passed by our Parliament). On 22 December 1965, Parliament passed the Constitution (Amendment) Act 1965 (Act 8 of 1965) ("the 1965 Amendment Act") which was given retrospective effect from 9 August 1965. The 1965 Amendment Act contained the following relevant provisions:

(a) s 2(1)(*a*) changed the title of the Yang di-Pertuan Negara of Singapore to that of the President of Singapore;

(b) s 3 repealed Art 1 of the 1963 State Constitution, which had provided for the office of the Yang di-Pertuan Negara (see [8] above), and inserted a new Art 1 in its place. The new Art 1(1) provided for a President of Singapore to be elected by Parliament. Under Art 1(3), the President was to hold office for a term of four years; and

(c) s 9 stated that the person holding the office of Yang di-Pertuan Negara on 9 August 1965, *viz*, Encik Yusof bin Ishak, was deemed to be the President of Singapore as if he were duly elected by Parliament and entered upon his office on 4 December 1963.

10 Encik Yusof bin Ishak became the first President of independent Singapore under s 9 of the 1965 Amendment Act. Thereafter, Parliament re-elected Encik Yusof bin Ishak and elected the next three Presidents:

(a) Upon the expiry of Encik Yusof bin Ishak's first term in office, he was re-elected as President by Parliament on 4 December 1967. However, he passed away in office on 23 November 1970 before he could complete his second term.

(b) Dr Benjamin Sheares was elected by Parliament as our second President on 30 December 1970, and assumed office on 2 January 1971. He was re-elected by Parliament for a second and then third term of office; but unfortunately, he too passed away in office on 12 May 1981.

(c) Mr Devan Nair succeeded Dr Benjamin Sheares as our third President on 23 October 1981. He resigned on 28 March 1985, some months before his term expired, due to health reasons.

(d) Dr Wee Kim Wee became our fourth President on 30 August 1985. He served a total of two terms and retired on 31 August 1993.

11 It should not escape anyone's notice that our first four Presidents were each of a different race. Encik Yusof bin Ishak was Malay, Dr Benjamin Sheares was Eurasian, Mr Devan Nair was Indian and Dr Wee Kim Wee was Chinese. This was no accident. In an interview in 1999, the then Senior Minister Mr Lee Kuan Yew referred to "the convention of rotating the Presidency among the races … to remind Singaporeans that their country was multi-racial": see Zuraidah Ibrahim and Irene Ng, "Good to rotate EP among races", *The Straits Times* (11 August 1999) at p 27.

12 The role of the first few Presidents, elected by Parliament, was largely ceremonial and symbolic. Thus, one MP described the President as "a symbol of the dignity and honour of our people … a symbol of the unity and the values of our Republic": see *Singapore Parliamentary Debates, Official Report* (30 December 1970) vol 30 at col 380 (Ch'ng Jit Koon). Another MP spoke of the President as "the living depository of all things Singaporean": see *Singapore Parliamentary Debates, Official Report* (23 October 1981) vol 41 at col 240 (Ho See Beng). The President's role was thus in line with the nature of the British monarch, whom Bagehot famously described as "at the head of the dignified part of the constitution": see Walter Bagehot, *The English Constitution* (Cambridge University Press, 2001) at p 9.

13 In keeping with the ceremonial and symbolic nature of the Presidency, the President's powers were largely non-discretionary and to be exercised only in accordance with the advice of the Cabinet or a Minister acting under its authority: Art 21(1) of the Constitution of the Republic of Singapore (1980 Reprint) ("the Constitution (1980 Reprint)"). These powers were as follows (see

the *Report of the Constitutional Commission 2016* ("the 2016 Commission") (17 August 2016) ("the Report") at para 2.10):

> (a) to appoint the Prime Minister ("the PM") – an MP who, in the President's judgment, was likely to command the confidence of the majority of the MPs (Art 21(2)(*a*) read with Art 25(1) of the Constitution (1980 Reprint));
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> (b) to withhold consent to a request for a dissolution of Parliament (Art 21(2)(*b*) of the Constitution (1980 Reprint));
>
> (c) to remove the PM, if the President was satisfied that the PM had ceased to command the confidence of a majority of the MPs (Art 26(1)(*b)* of the Constitution (1980 Reprint)); and
>
> (d) to dissolve Parliament, if the PM's office was vacant, and the President was satisfied that a reasonable time had passed since the office had been vacated and no MP was likely to command the confidence of a majority of the MPs (Art 65(2) of the Constitution (1980 Reprint)).

The creation of the Elected Presidency

14 The first paradigm shift in the Presidency to a popularly elected President with certain custodial powers was first mooted by the then PM Mr Lee Kuan Yew, in his National Day Rally speech in 1984. In that speech, he set out a vision of the President being empowered to stop the government of the day from spending Singapore's accumulated financial reserves. He further explained that, to do so, the President would have to be elected, for only then would one have the authority to veto the government.

15 On 29 July 1988, the then First Deputy PM, Mr Goh Chok Tong,

presented a White Paper in Parliament (*Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services* (Cmd 10 of 1988, 29 July 1988) ("the 1988 White Paper")). This described proposals to amend the Constitution to provide for an elected President and Vice-President. The 1988 White Paper made the following main proposals:

(a) The President would have "custodial powers" in two areas:

(i) the spending and disposal of assets and reserves which the government of the day had not accumulated; and

(ii) key appointments to the public service and specified statutory boards and government-linked companies.

The President would hold the second key in a "two-key safeguard mechanism". While the government retained the sole prerogative to initiate policy, it would require the President's concurrence for decisions in these two fields.

(b) The President and Vice-President would be elected by the citizens of Singapore for a term of six years. The Vice-President would assist the President, and assume the latter's functions if he or she was unable to perform them.

(c) A Presidential Committee for the Protection of Reserves would be established to advise the President in the exercise of his reserve powers with regard to finances and assets.

(d) The President and Vice-President would be required to possess the necessary experience and qualities. An impartial body would assess and determine whether Presidential candidates were properly qualified.

Parliament debated these proposals on 11 and 12 August 1988. It then resolved to support the principles in the 1988 White Paper as the basis for a Bill for an elected President: see *Singapore Parliamentary Debates, Official Report* (12 August 1988) vol 51 at col 638.

16 Two years later, on 27 August 1990, a second White Paper (*Safeguarding Financial Assets and the Integrity of the Public Services* (Cmd 11 of 1990, 27 August 1990) ("the 1990 White Paper")) was presented to Parliament. The 1990 White Paper broadly reaffirmed the scheme outlined in the 1988 White Paper. But it differed from its predecessor in the following key respects:

(a) The 1990 White Paper proposed that the President would have three further safeguard roles, beyond protecting Singapore's assets and public service. These related to:

(i) the detention of persons under the Internal Security Act (Cap 143, 1985 Rev Ed);

(ii) the issuing of restraining orders under the then-proposed Maintenance of Religious Harmony Act (Act 26 of 1990); and

(iii) investigations into complaints of corruption involving a Minister by the Corrupt Practices Investigation Bureau.

(b) There would be no Vice-President.

(c) A Council of Presidential Advisers ("the CPA") would be created instead of the previously proposed Presidential Committee for the Protection of Reserves (see [15(c)] above). If the President vetoed a Supply or a Supplementary Supply Bill, against the advice of a majority

> of the CPA, the Government could override the veto by passing the Bill in Parliament again with a two-thirds majority.

The 1990 White Paper also proposed that a Presidential Elections Committee would be established to determine if a person had the requisite experience and qualifications to serve as the President.

17 On 30 August 1990, the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill 23 of 1990) ("the 1990 Bill") was read in Parliament for the first time. Parliament debated the 1990 Bill on 4 and 5 October 1990; and, upon its Second Reading, it was committed to a Select Committee. The Select Committee's report was presented to Parliament on 18 December 1990: see *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990).

18 On 3 January 1991, Parliament passed the Constitution of the Republic of Singapore (Amendment) Act 1991 (Act 5 of 1991) ("the 1991 Act"). The 1991 Act, which largely came into effect on 30 November 1991, created the institution of the Elected Presidency, and vested the office with the custodial powers which the 1988 and 1990 White Papers had envisaged. This 1991 Act effected what has been described as "the biggest constitutional and political change in Singapore's modern era": see *Managing Political Change in Singapore: The Elected Presidency* (Kevin Tan and Lam Peng Er eds) (Routledge, 1997) at p i.

19 Notably, this paradigm change was made while President Wee, a President elected by Parliament, was in his second term of office (which only expired on 31 August 1993). Before the 1991 Act came into effect, President

Wee's discretionary constitutional powers had been, essentially, the limited powers set out at [13] above.

20 It is therefore of some importance to note that, by s 26 of the 1991 Act, Parliament provided that President Wee would continue to hold the office of President for the rest of his term. Again, by s 26, Parliament vested President Wee with all the functions, powers and duties conferred or imposed upon his office by the 1991 Act, as if he had been elected by the electorate to the office of President. This transitional provision is now contained in Art 163 of the Constitution, which provides as follows:

> **Person holding office of President immediately prior to 30th November 1991 to continue to hold such office**
>
> **163**.—(1) The person holding the office of President immediately prior to 30th November 1991 shall continue to hold such office for the remainder of his term of office and *shall exercise, perform and discharge all the functions, powers and duties conferred or imposed upon the office of President by this Constitution as amended* by the Constitution of the Republic of Singapore (Amendment) Act 1991 (Act 5 of 1991) (referred to in this Article as the Act), *as if he had been elected to the office of President by the citizens of Singapore* …
>
> (2) The Act shall not affect the appointment of any person made before 30th November 1991 and *that person shall continue to hold his office as if he had been appointed in accordance with the provisions of this Constitution as amended by the Act.*
>
> [emphasis added)

From a historical perspective, it is notable that Art 163 is akin to s 9 of the 1965 Amendment Act (see [9(c)] above). That provision had deemed Encik Yusof bin Ishak, who had held the office of Yang di-Pertuan Negara on 9 August 1965, to be the President of Singapore as if he had been duly elected by Parliament.

21 The Presidents who succeeded President Wee were all elected by the citizens of Singapore to the Presidency. They were:

(a) President Ong, who served one term from 1 September 1993 to 31 August 1999;

(b) President S R Nathan, who served two terms, from 1 September 1999 to 31 August 2011; and

(c) President Tony Tan Keng Yam, who became President on 1 September 2011 and whose term of office expires on 31 August 2017.

The reshaping of the Elected Presidency

22 From 1994 to 2015, Parliament made several constitutional amendments which refined the institution of the Elected Presidency in incremental steps. For example, in 1996, Parliament was empowered to override the President's veto if the latter acted against the CPA's advice in refusing to make or revoke a key appointment: see ss 5–7 of the Constitution of the Republic of Singapore (Amendment) Act 1996 (Act 41 of 1996). These developments tweaked and recalibrated the Elected Presidency, but they did not radically transform it.

23 However, on 27 January 2016, PM Lee Hsien Loong indicated that the time had come for more sweeping change to the Elected Presidency. In the course of a wide-ranging speech in Parliament, the PM announced that he would be appointing a Constitutional Commission to study and recommend changes to three aspects of the Elected Presidency. These were:

(a) the qualifying criteria for Presidential candidates,

(b) the representation of minority races in the Presidency, and

(c) the role of the CPA.

24 On 10 February 2016, the PM appointed a Constitutional Commission

chaired by the Chief Justice. On 17 August 2016, the Chief Justice, as Chairman of the 2016 Commission, submitted its Report to the PM.

25 On 15 September 2016, the Government issued a White Paper (*Review of Specific Aspects of the Elected Presidency* (15 September 2016) ("the 2016 White Paper")) in response to the Commission's recommendations.

26 On 10 October 2016, the Constitution of the Republic of Singapore (Amendment) Bill (Bill 28 of 2016) ("the 2016 Bill") was read in Parliament for the first time. Parliament debated the 2016 Bill from 7 to 9 November 2016.

27 The second paradigm shift in the office of the President of Singapore followed upon the Second and Third Readings of the Bill on 9 November 2016, with the passage of the Constitution of the Republic of Singapore (Amendment) Act 2016 (Act 28 of 2016) ("the 2016 Act").

28 The 2016 Act, which came into effect on 1 April 2017, made the following three important changes to the Presidency:

(a) The Act introduced the concept of a Reserved Election, *viz*, a Presidential election in which only candidates from a specified community would qualify to be elected as President.

(b) The Act updated the criteria for Presidential candidates from the private sector, to require such candidates to have held the position of chief executive in a company with shareholders' equity of at least $500m.

(c) The Act provided for two additional members to be appointed to the CPA, and for the President to consult the CPA before exercising his discretion regarding all fiscal matters concerning Singapore's reserves and all matters relating to key public service appointments.

29 On 9 January 2017, the Presidential Elections (Amendment) Bill (Bill 2 of 2017) ("the 2017 Bill") was read in Parliament for the first time. Parliament debated the 2017 Bill on 6 February 2017. During the debate, the Minister in the Prime Minister's Office, Mr Chan Chun Sing, announced that the Government would issue the writ for the next Presidential election, which would be a Reserved Election for Malay candidates, in late August 2017, such that, if the election is contested, polling day will fall in September 2017: see *Singapore Parliamentary Debates*, *Official Report* (6 February 2017) vol 94 (Mr Chan Chun Sing, the Minister, Prime Minister's Office).[4] The Second and Third Reading of the Bill then proceeded on 6 February 2017, whereupon the PE(A) Act 2017 was passed. The Act amended the PEA with effect from 1 April 2017.

The parties' cases

30 The parties agree on the following:

(a) Parliament inserted the Schedule to the PEA, by enacting s 22 of the PE(A) Act 2017, in the exercise of its power under Art 164, to specify the First Term (see [4] above).

(b) Articles 19B and 164 must be purposively interpreted, *ie*, interpreted in a way which promotes their purpose.

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4 1PBPD 557.

The parties' arguments proceed from this common ground.

31 The Plaintiff's case is as follows:

(a) Parliament's power under Art 164 to choose the First Term is limited by Art 19B(1) for two reasons. First, under Art 164, Parliament must specify the First Term "by law": Parliament must thus exercise that power in accordance with Art 19B(1), the "governing constitutional provision".[5] Secondly, as Mr Rajah SC submitted at the hearing before me, "Art 164 is a transitional provision to implement Art 19B(1)": the discretion under the former is thus subject to the latter.

(b) The purpose of Art 19B(1) is clear from its language and its textual context. Its purpose is "to provide for a Reserved Election if, but only if, the electoral process has failed to produce elected Presidents from all relevant communities".[6] Applying the principle of purposive interpretation, the phrase "5 most recent terms of office of the President" in Art 19B(1) refers to the five most recent terms of office of Presidents who were elected to their office by the citizens of Singapore.

(c) The Report, the 2016 White Paper and the Parliamentary debates on the 2016 Bill ("the Parliamentary Debates") confirm the purpose of Art 19B(1). These materials show that Art 19B(1) sought to address "the potential failure of open elections to produce community diversity in the occupants of the office of President".[7] Counting President Wee's second term as the First Term would fail to ensure "a close correlation between

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5 Plaintiff's Submissions dated 23 June 2017 ("Plaintiffs' Submissions") at para 28.

6 Plaintiff's Submissions at para 19.

7 Plaintiff's Submissions at para 23(a).

the mischief and the remedy",[8] because President Wee was elected by Parliament and not in an open election by the citizens.

(d) While the PM had stated, during the Parliamentary Debates, that the Government intended to specify President Wee's second term of office as the First Term, the Government had made this choice based on the AG's advice. In the light of the points summarised at [(b)] and [(c)] above, the AG's advice was wrong. Little weight should therefore be placed on the PM's statement.

32 In written submissions, the Plaintiff also made the following argument ("the Fundamental Rights Argument"):[9]

(a) Art 19B(1) encroaches on the rights of persons who are not from the community for which the Reserved Election is reserved ("the Reserved Community") to stand for election to the Presidency.

(b) The right to stand for election, or to participate in the presidential election process, is a fundamental right. Such rights should be given a "generous interpretation"; and restrictions on them must be "narrowly interpreted", especially when based on ethnicity.

(c) Therefore, the Court should be slow to interpret Art 19B(1) in a way which "accelerates" a Reserved Election, for this will result in an earlier encroachment of the right of persons who are not from the Reserved Community to stand for election to the Presidency.

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8 Plaintiff's Submissions at paras 24–25.

9 Plaintiff's Submissions at para 18; Plaintiff's Reply Submissions dated 29 June 2017 ("Plaintiff's Reply Submissions") at para 10.

However, I note that the Plaintiff did not raise this argument in oral submissions.

33 The Defendant's case is as follows:

(a) The language of Art 164 reveals that its purpose was to give Parliament the "full discretion" to specify any term of office of the President as the First Term.[10] The textual context of Art 164, including (in particular) Art 19B, confirms that this is the purpose of Art 164.[11]

(b) The Parliamentary Debates demonstrate that, in passing the 2016 Act, Parliament knew and intended that President Wee's second term would be specified as the First Term. The Court must give effect to this clear and specific intention of Parliament.[12] Moreover, the AG's advice to the Government regarding this issue was irrelevant.[13]

(c) The Report, the White Paper, the Parliamentary Debates and the Explanatory Statement for the 2016 Bill ("the Explanatory Statement") confirm that Parliament was intended to have full discretion in choosing the First Term.[14]

34 The parties' arguments were also joined over a narrow, technical point. The Plaintiff's first prayer in this originating summons ("OS") is for a declaration that s 22 of the PE(A) Act 2017 is unconstitutional. However, the Defendant submits that the proper object of challenge is the Schedule to the

10 Defendant's Submissions dated 23 June 2017 ("Defendant's Submissions") at paras 49–52.

11 Defendant's Submissions at paras 53–60.

12 Defendant's Submissions at paras 65–71.

13 Defendant's Submissions at paras 111–112.

14 Defendant's Submissions dated 72–89.

PEA, and not any provision of the PE(A) Act 2017, because the latter was rendered spent on 1 April 2017 when it was brought into operation. I will deal with this technical point after giving my decision on the substance of this action.

My decision

The law

35 As noted at [4] above, the issue in this case is whether Art 164 gives Parliament the power to specify President Wee's second term of office as the First Term, and thus render the 2017 Presidential Elections a Reserved Election for the Malay community, or whether Parliament is restricted to specifying the term of office of a President who had been (or will be) elected by the citizens for a six-year term.

Purposive interpretation

36 It is trite, and is common ground in this case (see [30(b)] above), that a court must adopt a purposive approach in interpreting the Constitution. Article 2(9) of the Constitution provides that the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") "shall apply for the purpose of interpreting this Constitution". Section 9A(1) of the Interpretation Act requires a court to prefer an interpretation of a provision of a written law which promotes the purpose or object underlying the same to one which does not promote that purpose or object. The purposive approach is mandatory; furthermore, it takes precedence over all common law principles of statutory interpretation: see *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [18]. It follows that a court must interpret the Constitution "to give effect to the intent and will of

Parliament": see *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 at [44].

37 In the quest for the legislative purpose of a provision, the first port of call is the text of the provision to be interpreted and its textual context, *ie*, the written law in which the provision is found. In the recent case of *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting*"), both the majority and the minority in the CA started their analysis with the text of the provision before them, namely s 15 of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("the POHA") and its textual context, in particular the long title to the POHA, before reviewing the relevant Parliamentary debates: see *Ting* at [15]–[16] and [73]–[90]. In this case, similarly, both the Plaintiff's and the Defendant's cases began from the wording of Arts 19B and 164 and their textual context, *ie*, other provisions in the Constitution. This starting point is appropriate for two reasons:

(a) First, if a provision is well-drafted, its purpose will emanate from the words in which it is formed: see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [51], *per* V K Rajah JA, and *Ting* at [57], *per* Sundaresh Menon CJ ("Menon CJ").

(b) Secondly, as this case aptly illustrates, the legislative purpose of a provision can be formulated in different ways. Depending on how the legislative purpose is cast, the purposive approach may result in varying and even conflicting interpretations of a provision: see *Ting* at [60], *per* Menon CJ. This difficulty may be resolved by reference to the wording of the provision and its textual context, which will often suggest how the legislative purpose should be framed. For example, in *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at [63], the CA formulated the

purpose of s 37(1) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA") after referring to the preamble to the Prevention of Corruption Ordinance 1960 (No 39 of 1960) (which is the same as the preamble to the PCA).

38 Having begun at the text of the provision and its written context, a court will often refer to materials which do not form part of the written law in which the provision is found ("extraneous materials"), if they can assist the court to ascertain the meaning of the provision: see s 9A(2) of the Interpretation Act.

39 In *Ting*, Menon CJ opined that, if the meaning of the provision is clear in view of its purpose as discerned from the written law, a court may only refer to extraneous materials to confirm that clear meaning: see *Ting* at [65] and [93]. A court cannot rely on extraneous materials to depart from that clear meaning. The majority in *Ting* did not expressly endorse or reject this proposition; and, as will become clear, it is unnecessary for me to say what their analysis implies because, whichever route is taken in the present case, we arrive, in my view, at the same conclusion.

The interpretation of fundamental rights

40 It will be convenient at this juncture to deal with the Plaintiff's written submission which invokes the principle that fundamental rights should be generously interpreted and restrictions on such rights narrowly construed, especially where such restrictions are based on a person's ethnicity (see [32(b)] above). The Plaintiff relies on four judgments of the Hong Kong Court of Final Appeal ("CFA") – *Ng Ka Ling (An Infant) & Anor v Director of Immigration* [1999] 1 HKC 291 ("*Ng*"), *Gurung Kesh Bahadur v Director of Immigration* [2002] HKCU 909 ("*Gurung*"), *Leung Kwok Hung and Others v HKSAR* [2005]

HKCU 887 ("*Leung*") and *Fok Chun Wa & Anor v Hospital Authority & Anor* [2012] 2 HKC 413 ("*Fok*") – as well as Lord Wilberforce's celebrated dictum in *Minister of Home Affairs and Another v Collins MacDonald Fisher and Another* [1980] AC 319 ("*Fisher*") at 328H that fundamental liberties "call for a generous interpretation avoiding … 'the austerity of tabulated legalism' …".

41 In my judgment, the principle which the Plaintiff invokes does not apply here. In *Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR(R) 710, Lord Diplock, delivering the judgment of the Privy Council, affirmed Lord Wilberforce's dictum in *Fisher* and held that it applies to the fundamental rights in Part IV of the Constitution (at [23]). These are the fundamental liberties enshrined in Arts 9 to 16 of the Constitution providing, *inter alia*, for liberty of the person (Art 9), the prohibition of slavery and forced labour (Art 10), freedom of speech, assembly and association (Art 14) and the freedom of religion (Art 15). Whilst I endorse this settled principle of constitutional interpretation, the right to stand for election to the Presidency is not found in Part IV of the Constitution.

42 Moreover, I do not consider that the Hong Kong CFA widened the scope of the principle stated in *Fisher*, in the four cases relied on by the Plaintiff, by holding that it applies to rights which are not constitutionally enshrined. In his oral submissions, Mr Nair SC submitted that, in all these cases, the court was concerned with a fundamental right (recognised under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (HK) ("the Basic Law")). The Plaintiff's counsel, Mr Rajah SC, did not dispute this. Having perused the cases, I agree with Mr Nair SC. *Ng*, *Gurung*, *Leung* and *Fok* pertained to the fundamental rights in Arts 24 (the right of abode – *Ng*), 25 (the right to equal treatment – *Fok*), 27 (the right of peaceful assembly – *Leung*) and 31 (the freedom to travel and to enter Hong Kong – *Gurung*) which

are enshrined in Chapter III of the Basic Law, which is equivalent to Part IV of the Constitution. Accordingly, none of the four cases cited by the Plaintiff support his contention that the purported right to stand for election to the Presidency should be generously construed.

43 Furthermore, in my judgment, the right to stand for election to the Presidency is very different from the rights in Part IV of the Constitution. As noted above, the President is the Head of State with important custodial powers. He is also a symbol of the dignity and honour of our people, a symbol of the unity and values of our country (see [12] above). He is our face to the world. It is for these very reasons that Art 19 specifies stringent expertise and experience for a person to be elected as President, and provides in Art 19(1) that no person shall be elected as President unless he is qualified for election in accordance with the provisions of the Constitution. In this light, the right to stand for election to the Presidency is plainly different from the rights in Part IV of the Constitution because it is clear that not everyone can meet the qualifying conditions and requirements.

44 For the foregoing reasons, I do not accept the second premise of the Fundamental Rights Argument (see [32(b)] above) which therefore fails. Mr Rajah SC did not pursue this argument in his oral submissions.

45 Having set out the applicable principles of purposive interpretation above, I now turn to the interpretation of Art 164.

Article 164

46 Article 164 states:

> **Transitional provisions for Article 19B**

> **164.**—(1) The Legislature *must, by law* —
>
> (*a*) *specify* the *first term of office of the President* to be counted for the purposes of deciding whether an election is reserved under Article 19B; and
>
> (*b*) if any of the terms of office that are counted for the purposes of deciding whether an election is reserved under Article 19B commenced before the appointed date, further specify the communities to which the persons who held those terms of office are considered to belong.
>
> (2) In this Article, "appointed date" means the date of commencement of section 9 of the Constitution of the Republic of Singapore (Amendment) Act 2016.
>
> [emphasis added]

The parties' arguments

47 The Plaintiff's case on Art 164 is, with respect, not quite clear from his written submissions. In some passages, he suggests that, under Art 164(1)(*a*), Parliament can only choose President Ong's term of office as the First Term.[15] However, in other passages, the Plaintiff appears to take a different position by contending that Art 164(1) confers a limited discretion on Parliament.[16] In oral submissions, in answer to the obvious argument that if Art 19B(1) is clear that the count must start from President Ong, then there would be no need for Art 164(1)(*a*), Mr Rajah SC clarified the Plaintiff's case by submitting that Parliament has the discretion under Art 164(1)(*a*) to delay the implementation of the Model but not to accelerate it. Parliament can thus choose President Ong's term, or the term of office of any President after President Ong, as the First Term. But Parliament cannot specify the terms of office of the Presidents who preceded President Ong as the First Term. This is because Parliament must use its discretion under Art 164(1)(*a*) "by law"; Parliament's discretion is therefore

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15 Plaintiff's Submissions at para 3; Plaintiff's Reply Submissions at para 20.

16 Plaintiff's Submissions at para 4(a).

limited by Art 19B(1), the "governing constitutional provision", which envisions that only the terms of office of *popularly elected* Presidents will count.[17] Moreover, since the purpose of Art 164(1)(*a*) is to implement Art 19B(1), the discretion under the former must be exercised in accordance with the latter.

48 The Defendant disagrees and, in essence, makes the following submissions:[18]

> (a) The plain text of Art 164 does not limit Parliament's discretion as to which term of office of the President it may specify as the First Term. This indicates that there is no such restriction, especially because Art 164(1)(*b*) contemplates that Parliament may look back in time, by specifying a term of office before the "appointed date", *ie*, 1 April 2017, when the 2016 Act came into effect (see [29] above). If Parliament had intended, in passing the 2016 Act, to limit its discretion to look back in time in specifying the First Term, one would have expected Art 164 to expressly reflect such a restriction.
>
> (b) The only restriction on Parliament's discretion under Art 164 is that it must make its choice "by law". The phrase "by law" requires that Parliament choose the First Term by enacting legislation, rather than by resolution. This requirement has been met, as Parliament specified the First Term by passing the PE(A) Act 2017.

In oral submissions, Mr Nair SC submitted that Art 19B(1) is not a "governing" provision in that Art 164 is "governed by" Art 19B(1). But he accepted that

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17 Plaintiff's Submissions at para 28.

18 Defendant's Submissions at paras 49–52.

Art 164 must be read consistently with Art 19B and submitted that the "real issue is whether Art 164 is fettered by Art 19B".

My decision

49 On a plain reading of Art 164, I draw the following conclusions from its text.

50 First, Art 164(1)(*a*) is both a duty-imposing and a power-conferring rule. It expressly imposes a duty on Parliament to specify the First Term and implicitly gives Parliament the power to do so.

51 Secondly, as Mr Rajah SC acknowledged (see [47] above), Parliament's power under Art 164(1)(*a*) is not limited to choosing a particular Presidential term of office as the First Term. This is clear from the text in three ways.

(a) Article 164(1)(*a*) imposes a duty on Parliament to specify the First Term. The text clearly does not stipulate or indicate which President's term that First Term should be.

(b) On the contrary, the very fact that a duty is imposed on Parliament to specify the term from which the count is to be made, to determine if an election is to be a Reserved Election, means that Art 19B does not determine which President's term that First Term should be. Art 164(1)(*a*) therefore provides that it is for Parliament to stipulate that important First Term from which the count is to be made.

(c) The word "if" in Art 164(1)(*b*) shows that Parliament has a choice whether the First Term shall be a term of office of a President which commenced before the appointed date, *ie*, 1 April 2017. There is no limitation in Art 164 on how far back Parliament can go.

52 Thirdly, I agree with the Plaintiff that Parliament must exercise its power under Art 164(1)(*a*) in accordance with Art 19B(1). In my judgment, both provisions should, where possible, be interpreted consistently and in harmony with each other. However, if there is an inconsistency, Art 19B should prevail. (Mr Nair SC implicitly conceded this point, by submitting that the real issue is whether Art 19B fetters Art 164 (see [48] above); for this submission presupposes that, in principle, Art 19B could fetter Parliament's discretion under Art 164(1)(*a*).) This is because, on a plain reading of Art 164, its purpose is to enable Parliament to implement the Model which Art 19B provides for:

(a) Art 164(1)(*a*) indicates that the power under it must be exercised "for the purposes of deciding whether an election is reserved under Article 19B";

(b) The heading of Art 164 ("Transitional provisions *for Article 19B"* [emphasis added]) (see [46] above) is consistent with the text of Art 164(1)(*a*) in indicating that Art 164 was intended to implement the Model. (I note that the heading of a provision, formerly known as the marginal note or the side-note, can be used as an aid to interpretation: see *Tee Soon Kay v Attorney-General* [2007] 3 SLR(R) 133 at [36]–[41]).

53 Before turning to Art 19B, I should deal with the Plaintiff's submission (see [47] above) that Parliament must exercise its power under Art 164(1)(*a*) in accordance with Art 19B(1) on the basis that Art 164(1)(*a*) uses the phrase "by law". In my judgment, with respect, that submission is incorrect. I agree with the Defendant that the phrase "by law" is used in contradistinction to "by resolution", which is found in, *eg*, Art 19(7)(*b*) of the Constitution. (This provision concerns the minimum amount in shareholders' equity of a company

for its chief executive to qualify to be elected as President under the private sector service requirements in Art 19. It enables Parliament to increase the minimum amount by resolution.) Notably, Art 19B also uses the phrase "by law" in Art 19B(4) (see [55] below). In my judgment, this phrase is used consistently across Arts 19B and 164. Its function is to constrain the form and not the substance of Parliamentary action.

54 Having construed Art 164, I now turn to construe Art 19B to see if it has put any fetters on Parliament's exercise of power under Art 164 and, in particular, whether its provisions show that only Presidents who have been (or will be) elected by the citizens of Singapore for six-year terms can be counted in ascertaining when an election is a Reserved Election.

Article 19B

55 Article 19B provides as follows:

> **Reserved election for community that has not held office of President for 5 or more consecutive terms**
>
> **19B.**—(1) An election for the office of President is reserved for a community if no person belonging to that community has *held the office of President* for any of the 5 most recent terms of office of the President.
>
> (2) A person is *qualified to be elected as President* —
>
> …
>
> (3) For the purposes of this Article, *a person who exercises the functions of the President under Article 22N or 22O is not considered to have held the office of President.*
>
> (4) The Legislature may, *by law* —

> (*a*) provide for the establishment of one or more committees to decide, for the purposes of this Article, whether a person belongs to the Chinese community, the Malay community or the Indian or other minority communities;
>
> (*b*) prescribe the procedure by which a committee under paragraph (*a*) decides whether a person belongs to a community;
>
> (*c*) provide for the dispensation of the requirement that a person must belong to a community in order to qualify to be elected as President if, in a reserved election, no person who qualifies to be elected as President under clause (2)(*a*), (*b*) or (*c*) (as the case may be) is nominated as a candidate for election as President; and
>
> (*d*) make such provisions the Legislature considers necessary or expedient to give effect to this Article.
>
> …
>
> (6) In this Article — … "term of office*" includes an uncompleted term of office*.
>
> [emphasis added]

The parties' arguments

56 The crux of the Plaintiff's case on the text of Art 19B, interpreted in the light of the other provisions of the Constitution, is as follows:[19]

(a) Article 19B(1) refers to the "President". But this only refers to Presidents who are elected by the citizens of Singapore because:

(i) Under Art 2 of the Constitution, the "President" is defined as the President "elected under this Constitution". Article 2 states:

Interpretation

19 Plaintiff's Submissions at para 19.

> **2**.—(1) In this Constitution, unless it is otherwise provided or the context otherwise requires —
>
> …
>
> "President" means the President of Singapore *elected under this Constitution* and includes *any person for the time being exercising the functions of the office of President*;
>
> …
>
> [emphasis added]

(ii) Article 17A(1) defines the phrase "elected under this Constitution" as "elected by the citizens of Singapore":

> **Election of President**
>
> **17A**.—(1) The President is to be *elected by the citizens of Singapore* in accordance with any law made by the Legislature.
>
> [emphasis added]

(b) Article 19B(1) uses the phrase "terms of office". Therefore, the only Presidents who fall within Art 19B(1) are those who were or are elected to serve for a term of six years, because Art 20(1) states:

> **Term of office**
>
> **20**.—(1) The President shall hold office *for a term of 6 years* from the date on which he assumes office.
>
> [emphasis added]

For the reasons given in [(a)] and [(b)] above, the phrase "the 5 most recent terms of office of the President" in Art 19B(1) refers to the terms of office of Presidents whom the citizens of Singapore elected to the Presidency, to serve for terms of six years. However, President Wee was elected by Parliament, and not by the citizens of Singapore; also, both his terms of office were only four years long.

(c) The provisions surrounding Art 19B all concern the election of a President by poll. Given this context, Art 19B must also be interpreted to refer to a President who was elected by poll.

57 The Defendant's case on the text of Art 19B is as follows:[20]

(a) First, the wording of Art 19B(1) itself does not limit the ambit of the phrase "held the office of President for any of the 5 most recent terms of office of the President" ("the Phrase") to exclude Presidents who are not elected by the citizens of Singapore.

(b) Secondly, Art 19B(3) and Art 19B(6) expressly define the scope of the Phrase. In particular, Art 19B(3) expressly excludes persons who exercise the President's functions under covering arrangements from the ambit of the Phrase. That Art 19 does not contain any other restriction on the Phrase shows that Parliament did not intend any other restriction.

(c) Thirdly, Art 19B(1) uses the expression "held the office". This same expression is also found in other provisions of the Constitution in relation to offices which are not popularly elected. In the light of those provisions, the expression "held the office" in Art 19B(1) does not refer to an office to which one must be popularly elected.

(d) Fourthly, while under the definition in Art 2 "President" refers to Presidents who are elected under the Constitution, all of Singapore's Presidents were elected under the Constitution. The only difference is that Parliament elected President Wee and the Presidents before him.

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[20] Defendant's Submissions at paras 53–60.

My decision

58 For the reasons that follow, I find that the word "President" in the phrases "the office of President" and "for any of the 5 most recent terms of office of the President" in Art 19B(1) does not only refer to those Presidents elected by the citizens of Singapore for terms of six years. These phrases can also refer to the Presidents of Singapore who were elected by Parliament for four-year terms.

59 First, the plain language of the text in Art 19B(1) only refers to the person who holds the "office of President" without any words to draw a distinction between Presidents who were elected by Parliament, and those who were elected by the citizens. The very next phrase reinforces this by stipulating that we look at "the 5 most recent terms of office of the President" to determine whether the next election should be reserved for a person belonging to a particular community. Again the text draws no distinction between Presidents elected by Parliament and those elected by the citizens.

60 The Presidency, the highest office in our land, has only been held by seven distinguished persons in our history of some 52 years of independence. It cannot be gainsaid that this is common knowledge of which I can take judicial notice. Such common knowledge also includes the fact that our first four Presidents were elected by Parliament; and that, at the time Art 19B and Art 164 were introduced, Singapore only had three Presidents elected by the citizens, the last of whom is the current President.

61 Looking at the text of Art 19B in this light, it would have been very easy, if Parliament meant to draw a distinction, to do so with appropriate language. This is especially because Art 19B includes Art 19B(6) which sets out certain

definitions for the purposes of Art 19B. Amongst other definitions, Art 19B(6) stipulates that, in Art 19B, "term of office" includes an uncompleted term of office. In my judgment, if Parliament had intended to exclude Presidents who were not popularly elected from the scope of the Model, it could easily have made its intention clear by stipulating accordingly in Art 19B(1) or Art 19B(6).

62 Secondly, where Parliament intended an exclusion for the purposes of Art 19B, it said so explicitly. Art 19B(3) specifically excludes those who exercise the President's functions when the office is vacant (Art 22N) and when the President is under a temporary disability (Art 22O) from being considered as persons holding the office of President. Art 19B(3) reads:

> (3) For the purposes of this Article, a person who exercises the functions of President under Art 22N or 22O is *not considered to have held the office of President*.
>
> [emphasis added]

This strongly reinforces the interpretation that the word "President" in Art 19B is not confined to Presidents who were or are popularly elected because, if it were, there would have been no need for Art 19B(3) because those persons who step in to exercise the President's functions under Arts 22N and 22O are not popularly elected. (While the Speaker of Parliament may be a popularly elected person, he or she (if popularly elected) is elected as an MP. The Speaker is not popularly elected for the purpose of exercising the President's functions.)

63 During oral reply submissions, Mr Rajah SC submitted that Art 19B(3) was a necessary "carve-out" because the persons who exercise the President's functions under Arts 22N and 22O fall within the definition of "President" in Art 2 (see [56(a)(i)] above). With respect, I do not agree. Article 19B(3) starts with the phrase "[f]or the purposes of this Article" and goes on to make clear

that a person who steps in under Arts 22N and 22O to exercise the functions of the President will not be considered to have "held the office of President". In using the words "held the office of President", Art 19B(3) mirrors the language of Art 19B(1). In this light, I find that Art 19B(3) does not alter the definition of "President" for the purposes of Art 19B(1). Art 19B(3) is necessary because the phrase "held the office of President" in Art 19B(1) would otherwise apply to persons who exercise the President's functions under Arts 22N and 22O, notwithstanding that they are not popularly elected for the purpose of exercising those functions. Furthermore, Mr Rajah SC's acknowledgement that persons exercising the President's functions under Arts 22N and 22O would, but for this purported "carve-out", fall within the definition of the "President", is inconsistent with his position that the reference to "the President" in Art 19B(1) is limited to Presidents elected by the citizens of Singapore.

64 Thirdly, Mr Rajah SC submitted (see [56(a)] above) that Art 19B(1) only refers to a President who is popularly elected by the citizens because:

(a) Under Art 2, "President" is defined as meaning "the President of Singapore elected under this Constitution … "; and

(b) Art 17A(1) provides that "[t]he President is to be elected by the citizens of Singapore …".

65 I do not accept this argument for the following reasons:

(a) First, the definition in Art 2 only refers to a President who is "elected". It does not expressly stipulate that the President must be elected by the citizens of Singapore. On its clear terms, it includes a President whether elected by Parliament or by the citizens of Singapore.

(b) Secondly, in my judgment, it is unsurprising that Art 17A only refers to a President "elected by the citizens of Singapore". Art 17A sets out the position under our Constitution today. When Parliament enacted the predecessor to Art 17A, *viz*, Art 17(2), by s 4 of the 1991 Act, it necessarily had to repeal the superceded Art 17(1) of the Constitution (1980 Reprint) which provided for the President to be elected by Parliament. Similarly, it would not make sense for Art 17A to look backwards by referring to Presidents who were elected by Parliament. The Constitution is a document which reflects our prevailing constitutional arrangements at any given time. Therefore, in my judgment, that Art 17A does not refer to Presidents who were elected by Parliament does not indicate that the definition of President in Art 2 only applies to Presidents who were or are popularly elected.

(c) Thirdly, the definition in Art 2 was first included in the Constitution (1980 Reprint) and has not materially changed since then.[21] The only change which appears to have been made to the definition in the Constitution (1980 Reprint) was the substitution of the phrase "appointed to exercise" with the word "exercising", by s 2 of the 1991 Act. Under the Constitution (1980 Reprint), the phrase "elected under this Constitution" must have referred to Presidents elected by Parliament because, at that stage in our history, all our Presidents were elected by Parliament. The fact that Parliament retained the definition of President in Art 2 through the 1991 and 2017 constitutional amendments must be that the definition was of utility and valid because it would include Presidents elected by Parliament. Otherwise, all the Presidents before President Wee would no longer be Presidents "elected under this

[21] 2PBPD 600.

> Constitution" nor would they deemed to be such since Parliament did not enact a savings provision equivalent to Art 163 (see [20] above) in respect of those Presidents. As the Defendant submits, this would mean that all their acts, including all the Acts of Parliament to which they assented, would fall away.[22]

I therefore conclude that the phrase "this Constitution" in Art 2 does not mean the Constitution as it stands today. It must also include the Constitution as it stood in the past where the context requires it. Actions and decisions made in the past, under superceded provisions, remain valid unless revoked or amended or otherwise dealt with by the new amendments. Accordingly, all our Presidents were elected under "this Constitution", as they were all elected by Parliament under the Constitution (as it then stood) or by the citizens after the Constitution was amended in 1991 (with the anomalous position of President Wee, whose terms of office straddled both the old and new regimes, and who was expressly covered by Art 163). I thus do not accept the Plaintiff's submission (see [56(a)] above) that the word "President" in Art 19B(1) only refers to popularly elected Presidents.

66 Fourthly, I do not accept the Plaintiff's contention that the phrase "term of office" in Art 19B(1) implies that a President must be elected to serve for a term of six years in order to fall within the scope of Art 19B(1) (see [56(b)] above). The Plaintiff's argument here again relies on the assumption that the terms of Art 19B(1) – here, the phrase "terms of office" – must be defined by reference to the relevant provision in the Constitution today, *ie*, Art 20(1). For the reasons given in [65(b)] above, I do not accept this assumption. It would not make sense for Art 20(1) to refer to a term of four years, since that no longer reflects the position under our Constitution today.

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22 Defendant's Submissions at para 57(c).

67 I therefore conclude that, on the ordinary meaning of the plain text of Art 19B, read in the light of its textual context, the terms of office of any President of Singapore, whether elected by Parliament or by the citizens of Singapore, fall within the ambit of the Model which Art 19B establishes. Accordingly, there is nothing in Art 19B(1) limiting Parliament's power under Art 164(1)(*a*) in requiring that the count can only start with a popularly elected President.

The Extraneous Materials

68 I now come to the use of extraneous material in interpreting Art 19B and Art 164 of the Constitution. Section 9A(3) of the Interpretation Act sets out the materials which may be considered by the court in this regard:

> (3) *Without limiting the generality of subsection (2)*, the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include —
>
> (*a*) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
>
> (*b*) any *explanatory statement relating to the Bill containing the provision*;
>
> (*c*) *the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament*;
>
> (*d*) *any relevant material in any official record of debates in Parliament*;
>
> (*e*) any treaty or other international agreement that is referred to in the written law; and
>
> (*f*) any document that is declared by the written law to be a relevant document for the purposes of this section.
>
> [emphasis added]

69 In *Ting*, Menon CJ made the following observations on s 9A(3) of the Interpretation Act at [63]:

> … in the endeavour to ascertain the meaning of the text contained within a statute, the court is permitted to consider any material that is not included as part of the statute. Section 9A(3) [of the Interpretation Act] does expand on this by setting out, ***on a non-exhaustive basis***, examples of such extraneous material. On its face, the potential range of such material is unlimited. However, in my judgment, it is limited at least by reference to the purpose for which such material may be resorted to. Section 9A(2) states that it is material which is capable of helping to ascertain the meaning of the provision. This too is broad. Nevertheless, reading s 9A(2) in context with s 9A(1), such extraneous material may be resorted to where it is capable of helping to ascertain the meaning of the provision *by shedding light on the objects and purposes of the statute as a whole, and where applicable, on the objects and purposes of the particular provision in question.*
>
> [emphasis in original in italics; emphasis added in bold italics]

Menon CJ thus held that a court may have regard to material which does not fall under s 9A(3) if such material sheds light on the objects and purposes of the statute or the relevant provision. While the CA did not reach a unanimous decision in *Ting*, I do not consider, nor do the parties contend, that the majority disagreed with Menon CJ's opinion on this point.

70 The parties rely on the following extraneous materials in support of their interpretations of the purpose of Arts 19B and 164 (in no order of precedence):

(a) The Report (see [13] above);

(b) The 2016 White Paper (see [25] above).

(c) The official record of Parliamentary Debates (see [31(c)] above). In particular, the parties rely on excerpts of the following (see *Singapore Parliamentary Debates, Official Report* (7–9 November 2016) vol 94):

(i) The President's message, read out by the Speaker of Parliament on 7 November 2016 ("the President's Message");

(ii) PM Lee Hsien Loong's speech on 8 November 2016 ("PM Lee's Speech");

(iii) Deputy PM Teo Chee Hean's speech on 7 November 2017 on the occasion of his moving of a motion for the Second Reading of the 2016 Bill ("DPM Teo's Speech");

(iv) Speeches by MPs during the Parliamentary Debates; and

(d) The Explanatory Statement (see [33(c)] above).

71 The extraneous material referred to in [70(c)] and [70(d)] above clearly fall within s 9A(3)(*b*) to (*d*) of the Interpretation Act. However, the Report and the 2016 White Paper (see [70(a)] and [70(b)] above) do not fall within the list in s 9A(3) of the Interpretation Act. Nonetheless, in my judgment, they shed light on the object and purposes of the 2016 Act and, specifically, on Arts 19B and 164 (see [69] above). I will thus consider them, where appropriate, as well.

72 In respect of the weight to be accorded to these extraneous materials, s 9A(4) of the Interpretation Act provides as follows:

> (4) In determining whether consideration should be given to any material in accordance with subsection (2), *or in determining the weight to be given to any such material*, regard shall be had, in addition to any other relevant matters, to —
>
> (a) *the desirability of persons being able to rely on the ordinary meaning* conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
>
> (b) *the need to avoid prolonging legal or other proceedings without compensating advantage.*
>
> [emphasis added]

73 In *Ting*, Menon CJ opined at [71(h)] that, in determining the weight to be placed on extraneous materials, the court should have regard to "the clarity of the material and whether the statement [in the material] is directed to the very point in dispute between the parties". In relation to statements made in Parliament in particular, Menon CJ held as follows (at [70(a)]):

> … *The danger lies in the likelihood of the court being drawn into comparing one Parliamentary statement with another, appraising the meaning and effect of what was said and then considering what was left unsaid and why* (*per* Lord Bingham of Cornhill at 392 of [*R v Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd* [2001] 2 AC 349]). In the process, it can begin to appear as if the court is being asked to construe the statements made by Parliamentarians rather than the Parliamentary enactment. In line with this, and in my judgment, more importantly, a requirement recognised by the English courts is that *the statement in question must "disclose the mischief aimed at [by the enactment] or the legislative intention lying behind the ambiguous or obscure words*" (*Pepper v Hart* [1993] AC 593 at 634). Lord Browne-Wilkinson has further re-stated this in terms of a requirement that the statement should be "*directed to the very point in question in the litigation"* because to do otherwise would "involve the interpretation of the ministerial statement in question" (*Melluish (Inspector of Taxes) v BMI (No 3) Ltd* [1995] 4 All ER 453 at 468).
>
> [emphasis added]

Again, I do not consider, nor do the parties contend, that the majority in *Ting* disagreed with Menon CJ's opinion in this regard.

74 With this in mind, I turn to the parties' submissions on the purpose and object of Arts 19B and 164 in the light of the extraneous materials in question.

The Plaintiff's arguments

75 The Plaintiff relies on the following excerpts from the Parliamentary Debates to contend that the purpose of Art 19B was to address "the potential

failure of open elections to produce community diversity in the occupants of the office of President" (see [31(c)] above):[23]

(a) The President's Message (see [70(c)(i)] above) stating, *inter alia*, the following:[24]

> … After the Elected Presidency was instituted, all, but one of the *Elected* Presidents have been Chinese, including myself. The role of the President as a titular Head of State representing our multi-racial society is important and we should have a system that not only allows but facilitates persons of all ethnic groups to be President from time to time.
>
> The Government has accepted the Commission's recommendation for a mechanism of reserving a Presidential election for a specific ethnic group if a member of that group has not held the office of the Elected Presidency after five terms. I agree that this is a balanced approach. The mechanism ensures that Singapore is assured of a minority Elected President from time to time, but does not kick in if one is elected in an *open election*. …
>
> [emphasis added]

(b) DPM Teo's Speech (see [70(c)(iii)] above) stating, *inter alia*, the following:[25]

> … [A Reserved Election] involves minimal intervention, and will come into play only if *open elections* fail to periodically return Presidents from the different races. …
>
> [emphasis added]

(c) The following excerpts from speeches by MPs (see [70(c)(iv)] above):

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23 Plaintiff's Affidavit at para 35; Plaintiff's Submissions at para 22(c)–(d) and 23(a).

24 1PBPD 294.

25 1PBPD 305.

(i) Ms Tin Pei Ling (MP for MacPherson) on 7 November 2016:[26]

> … *when a member from any racial group has not occupied a President's Office after 30 years*, namely, five continuous terms, *the sixth Presidential Election* will be reserved for a candidate from that racial group to ensure that all races are treated equally. *Basically, I hope that we will never have to have a reserve election.* It is merely a preventive measure. …
>
> [emphasis added]

(ii) Mr Zaqy Mohamad (MP for Chua Chu Kang) on 8 November 2016:[27]

> … I welcome the proposal by the Constitutional Commission that proposed a reserved election for the candidate of a certain race, if for over five terms, *no candidate from that race has been elected as President*. The Government has also accepted the proposal in its White Paper. …
>
> [emphasis added]

(iii) Mr Yee Chia Hsing (MP for Chua Chu Kang) on 8 November 2016:[28]

> … I agree with the introduction of the hiatus-triggered mechanism to ensure minority representation in our highest office. However, *is a gap of five presidential terms, which is about 30 years*, considered too long? I hope the Government would monitor public sentiments in this respect and to make the appropriate adjustments in future, if necessary. …
>
> [emphasis added]

(iv) Ms Cheng Li Hui (MP for Tampines) on 9 November 2016:[29]

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26 1PBPD 320.

27 1PBPD 351.

28 1PBPD 404.

> … I hope that one day, this mechanism will no longer be needed. *That from time to time, representatives from different races will be voted into office. When that happens, the need for "reserved elections" will no longer be needed.* But until that day comes, I support the move to put in the safeguard mechanism. …
>
> [emphasis added]

(v) Ms Jessica Tan Soon Neo (MP for East Coast) on 9 November 2016:[30]

> It is important to note that a reserved election *will not be required if the election produces Presidents of different races*. It is only if no persons belonging to one of the main racial community has held the office of President for a five-term hiatus *which translates to 30 years, that there will be a reserved election for that racial group*. ***Thirty years. And in the last 46 years, we have not seen a Malay candidate***.
>
> This approach, while it is not comfortable and I do not think it is ideal, but it is important because it is a balanced approach to ensure that we maintain our principles of both meritocracy and multi-racialism.
>
> [emphasis added in italics and bold italics]

(d) PM Lee's Speech (see [70(c)(ii)] above) stating, *inter alia*, the following:[31]

> We have taken the Attorney-General's advice. We will start counting from the first President who exercised the powers of the Elected President, in other words, Dr Wee Kim Wee. *That means we are now in the fifth term of the Elected Presidency*.
>
> [emphasis added]

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29 1PBPD 466.

30 1PBPD 474.

31 1PBPD 342.

76 The Plaintiff also relies on the following excerpts from the Report and the 2016 White Paper (see [70(a)] and [70(b)] above):[32]

(a) The Report:[33]

> 5.36 … the Commission considers that the hiatus-triggered model is the best model of those it examined, entailing the lowest degree of intrusiveness. … Most importantly, it has a "natural sunset" – *if free and unregulated elections produce Presidents from a varied distribution of ethnicities, the requirement of a reserved election will never be triggered.* It will only be invoked when there has been an exceedingly long period of time during which no member of a particular ethnic minority has occupied the Presidency, which is a scenario that the Commission would agree is "worrying".
>
> …
>
> 5.39 All things considered, the Commission proposes setting "*x*" at the value of 5, as that would strike the right balance between these competing considerations. On this basis, *a reserved election would be triggered if no candidate from a particular racial group has held the office of President for 30 years or more.*
>
> 5.40 … An election is reserved for racial group A because no candidate from racial group A has been *elected* for 5 consecutive terms. …
>
> [emphasis added]

(b) The 2016 White Paper:[34]

> 81. Based on these principles, the Commission recommended a "hiatus-triggered" safeguard mechanism that operates as follows:
>
> …
>
> (b) In the Commission's view, this was the "best model" amongst those that were studied. Most importantly, it has a "natural sunset". *A reserved election will never arise if free and*

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32 Plaintiff's Affidavit at paras 28-29; Plaintiff's Submissions at paras 22(a) – (b).

33 1PBPD 108 – 111.

34 1PBPD 211 – 212.

> *unregulated elections produce Presidents of varied ethnicities.* It will only be invoked if there has not been a President of a given ethnicity for an "exceedingly long period".
>
> …
>
> 82. *The Government agrees with the approach proposed by the Commission. …*
>
> [emphasis added]

77 The Plaintiff argues, from these extraneous materials, that the purpose of Art 19B is to address a specific mischief: the possibility that open elections may fail to ensure that candidates from minority races are elected to the President from time to time.[35] Article 19B remedies this mischief, by providing for a Reserved Election if five consecutive Presidential elections fail to produce a President from a particular racial community.[36] The Plaintiff submits that its interpretation of Art 19B ensures "a close correlation between the mischief and the remedy", and that it would frustrate the purpose of Art 19B to specify President Wee's second term of office as the First Term.[37] Additionally, Art 164 must be interpreted in line with the purpose of Art 19B given that the former provision gives effect to the Model in the latter provision.[38]

78 The Plaintiff also submits that little weight should be placed on PM Lee's statement that the Government intended to specify President Wee's second term as the First Term. The Government made this choice on the AG's advice, which was wrong. Little weight should thus be placed on the PM's statement, and other statements by MPs in response to the PM's statement, for two reasons:

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35 Plaintiff's Submissions at para 23(a).

36 Plaintiff's Submissions at para 23(b).

37 Plaintiff's Submissions at paras 24–25.

38 Plaintiff's Submissions at paras 28–29; Plaintiff's Reply Submissions at para 1(a).

(a) First, the interpretation of Art 19B(1) cannot depend on the AG's view on how that provision should be read.[39] It is the court's power and duty to say what Art 19B(1) means; and the court's interpretation cannot depend on the AG's view. To place weight on the PM's statement would imply that what Art 19B(1) means depends on the AG's view thereon.

(b) Secondly, Parliament passed the 2016 Act on the basis of a misunderstanding as to what Art 19B(1) means.[40] Parliament thought, based on the AG's advice, that President Wee's second term could be the First Term under Art 19B(1). But this was a mistake. The fact that Parliament mistakenly believed Art 19B(1) means something does not preclude the court from holding that Art 19B(1) means something else.

The Defendant's arguments

79 The Defendant's case on the extraneous materials is as follows.

80 First, in terms of the Parliamentary Debates, they should be analysed as reflecting Parliament's intention at two different levels of generality:

(a) Parliament clearly and specifically intended that President Wee's second term would be specified as the First Term when it passed the 2016 Act.[41] PM Lee announced the Government's intention in this regard in his speech on 8 November 2016, as follows:[42]

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39 Plaintiff's Submissions at para 32(e); Plaintiff's Reply Submissions at paras 13(a)–(b).

40 Plaintiff's Submissions at para 32(f); Plaintiff's Reply Submissions at paras 3(c), 7(e) and 13(b).

41 Defendant's Submissions at paras 65 – 71.

42 1PBPD 342–343.

> … When should the racial provision start counting? The Constitutional Amendment Bill states that the Government should legislate on this point. The Government intends to legislate when we amend the Presidential Elections Act in January next year.
>
> We have taken the Attorney-General's advice. *We will start counting from the first President who exercised the powers of the Elected President, in other words, Dr Wee Kim Wee.* That means *we are now in the fifth term of the Elected Presidency*.
>
> …
>
> Therefore, ***by the operation of the hiatus-triggered model***, *the next election, due next year, will be a reserved election for Malay candidates. That means if a Malay candidate steps up to run, or more than one Malay candidate steps up to run, who is qualified, Singapore will have a Malay President again.* As Minister Yaacob Ibrahim observed yesterday, this would be our first Malay President after more than 46 years, since our first president Encik Yusof Ishak. I look forward to this.
>
> [emphasis added in italics and bold italics]

When Parliament passed the 2016 Act, it did so in full knowledge that the Government intended to specify President Wee's second term as the First Term. In this regard, the Defendant relied on, *inter alia*, the following statements by MPs after PM Lee's speech which celebrated or at least recognised that the next Presidential election would be a Reserved Election for a Malay President:[43]

(i) Mr Zaqy Mohamad (MP for Chua Chu Kang) on 8 November 2016:[44]

> … I am heartened that Prime Minister has just announced that *the next election would be a reserved Presidential election* and I think many in the Malay community would also be heartened to have *potentially a first Malay President for Singapore*. …

43 Defendant's Submissions at paras 67 and 85; Goh's Affidavit at para 21.

44 1PBPD 350.

> [emphasis added]

(ii) Mr Muhamad Faisal bin Abdul Manap (MP for Aljunied) on 8 November 2016:[45]

> … I have two questions for Deputy Prime Minister Teo *on the Government's plan to have a reserved election only for Malay candidates*. …
>
> [emphasis added]

(iii) Ms Sylvia Lim (MP for Aljunied) on 9 November 2016:[46]

> … Madam, I would just like to make a comment that, you know, while we are flattered with all this attention given to our proposal, I think Singaporeans overnight are reeling from the announcement that "There is hiatus-triggered mechanism being proposed in the Constitution which is least intrusive. *And the next election is going to be reserved for a Malay candidate!"* …
>
> [emphasis added]

(iv) Assoc Prof Fatimah Lateef (MP for Marine Parade) on 9 November 2016:[47]

> … It is true that for 46 years, Singapore has not had a Malay President since Encik Yusof Ishak. So we should be heartened that this was considered, *especially with the announcement that next year's election will be reserved for Malays*. …
>
> [emphasis added]

(v) Mr Darryl David (MP for Ang Mo Kio) on 9 November 2016:[48]

> … Madam, I mentioned Encik Yusof Ishak earlier in my speech and since Encik Yusof passed on

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45 1PBPD 399.

46 1PBPD 426.

47 1PBPD 435.

48 1PBPD 451.

> in 1970, *we have not had a Malay President, in 46 years*. In the course of my lifetime, and many of my generation, and the generation that have come after me, we have never known a Malay President.
>
> *I am heartened, however, that should this Bill get passed, and should an eligible candidate step forward that next year, this will change and I can then put my hand on heart and say that I am proud to have known a Malay Singaporean as my Elected President in my lifetime* and it is something that not just me, or my generation but all Singaporeans should proud of come 2017. …
>
> [emphasis added]

(vi) Ms Rahayu Mahzam (MP for Jurong) on 9 November 2016:[49]

> … Yesterday, *when the Prime Minister announced that the upcoming Presidential Elections will be reserved for Malays*, there was a feeling of joy in our community. This shows that the community welcomes this change. …
>
> [emphasis added]

(vii) Mr Azmoon Ahmad (Nominated MP) on 9 November 2016:[50]

> … As the Prime Minister also said, *the Presidential Election next year will be reserved for Malays*, after 46 years without someone from the Malay community assuming the office of the President. …
>
> [emphasis added]

Therefore, the Defendant submits, Parliament also intended, in passing the 2016 Act, that President Wee's second term be specified as the First

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49 1PBPD 455–456.

50 1PBPD 471.

Term. In interpreting Arts 19B and 164, the court must give effect to this clear and specific intention of Parliament.

(b) More generally, Parliament intended to introduce the Model into the Constitution. The statements during the Parliamentary Debates which referred to, *inter alia*, "open" elections, the "Elected" Presidency and a "30-year" hiatus pertained to the general operation of the Model, in the light of our present constitutional arrangements which provide for the President to be popularly elected. Therefore, these statements do not detract from Parliament's clear intention to choose President Wee's second term as the First Term which must prevail.

81 Secondly, neither the Report nor the 2016 White Paper "compel the adoption of any starting point for the hiatus-triggered mechanism".[51] The 2016 Commission did not apply its mind to the policy question of when the Model would come into effect. Similarly, the 2016 White Paper is not conclusive of Parliament's intent as to the purpose of Arts 19B and 164 which should be gleaned instead from the official record of the Parliamentary Debates.

82 Thirdly, the Report, the 2016 White Paper and the Parliamentary Debates all confirm, at an even higher level of generality (see [80] above), that the purpose of the Model was to ensure multi-racial representation in the office of the President. It is consistent with this aim that Parliament is not restricted, in choosing the First Term, to the terms of office of popularly elected Presidents. For the fact that a long time has elapsed since Singapore had a President of a certain race is troubling regardless of how our Presidents are elected.[52]

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51 Defendant's Submissions at para 72(a).

52 Defendant's Submissions at paras 73, 80 – 81 and 86 – 87.

83 Therefore, when recourse is had to the extraneous materials, they reveal that the purpose of Arts 19B and 164 is in line with the ordinary meaning of those provisions in the light of their textual context. Art 164, properly interpreted, gives Parliament "full discretion" to specify the First Term.[53]

My decision

84 Having considered the parties' submissions, I find that the Plaintiff's interpretation of the purpose and object underlying Arts 19B and 164 from the relevant extraneous materials fails for the reasons that follow.

85 In my judgment, the legislative purpose of the provisions can be viewed from three different levels of abstraction:

(a) At the most specific level, Parliament intended the Model to permit subsequent specification of President Wee's second term of office as the First Term (see the excerpts at [80] above).

(b) At a more general level, Parliament intended to ensure that our present system, where the President is popularly elected, produces Presidents from minority racial communities from time to time (see the excerpts at [75] above).

(c) At the highest level of abstraction, Parliament intended to uphold multi-racialism by ensuring minority representation in the Presidency in view of the President's role as a symbol of the nation and a unifying figure that represents multi-racial Singapore. I make this finding based on a reading of the Report, the 2016 White Paper and the Parliamentary Debates as a whole.

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53 Defendant's Submissions at paras 70, 88 and 89.

86 I start with the second level of generality at [85(b)] which is the most favourable to the Plaintiff. From this perspective, since the Model addresses a problem which only arises where the President is elected by the citizens of Singapore and not by Parliament, only the terms of office of popularly elected Presidents should be counted under the Model.

87 It is true that, in the excerpts at [75] above, the speakers were referring to popularly elected Presidents and six-year terms in their speeches on aspects of and reasons for the Model. But I find that no one specifically said when the count should start from or that the count should start from the first popularly elected President. It is, if at all, only by implication that we can surmise that the speakers meant that only popularly elected Presidents should be counted (in the light of their references to five election terms and a period of 30 years). However, as Menon CJ noted in *Ting* (see [73] above), we should not be construing speeches in Parliament as if they were statutory (or I daresay, well-drafted contractual) provisions with fine distinctions and deliberate nuances in the choice of words and phraseology. They are not always amenable to such dissection under the microscope. Rather, in considering these speeches in Parliament, we need to ask two questions. First, what were the MPs debating? Secondly, why were they doing so? My answers to these questions in this case are as follows:

(a) First, the MPs were clearly debating the Model proposed by the 2016 Commission, the 2016 White Paper and the 2016 Bill before the House. One would hardly expect them to be talking about Presidents elected by Parliament or their four-year terms. The basic premise of their speeches, and what they were debating, was the Model in the context of the existing scheme of popular elections, and the envisaged state of affairs going forwards. They were debating the future of popularly

elected Presidents with custodial powers. Therefore, in my judgment, it cannot safely be inferred, from the fact that some MPs spoke of popularly elected Presidents and their six-year terms, that Parliament intended only popularly elected Presidents to be counted for the Model.

(b) Secondly, in terms of why the MPs were debating the Model, it is clear that they were concerned with a possible side effect of the Elected Presidency that does not sit well with our country's multi-racial ethos. This scheme of popularly elected Presidents (through no fault of the candidates, I hasten to add) has produced, over four Presidential terms, totalling 24 years, only one Elected President who was not Chinese (see, in particular, the President's Message at [75(a)] above). Moreover, at the time of the Parliamentary Debates, Singapore had not had a Malay President for 46 years. The MPs were debating how to deal with this situation and the prospect that a member of a minority community (in particular, the Malay community) might not be elected to the Presidency in the immediate to near future. Therefore, in my judgment, Arts 19B and 164 should not be interpreted in the light of the purpose contended for by the Plaintiff alone. Even if I accept that Parliament's primary purpose, in enacting Arts 19B and 164, was to ensure that Presidents of minority races are elected by the citizens of Singapore from time to time, Parliament, in passing the 2016 Act, considered other matters, in particular the span of time since Singapore last had a Malay President. This is vividly brought out by the excerpt from Ms Jessica Tan Soon Neo's speech (see [75(c)(v)] above). Parliament did not merely intend to ensure that the electoral process returns Presidents of minority races from time to time. It also held the more specific and abstract intentions set out at [85(a)] and [85(c)] above. In my judgment, the interpretation of Arts 19B and 164 must account

> for these purposes. My point here is not that these more specific and abstract purposes necessarily trump the purpose which the Plaintiff contended for. It is simply that Parliament's intention is a complex of purposes at different levels of abstraction, and a purposive interpretation must, as far as possible, be true to Parliament's intention as a whole (albeit that, where there are conflicts, the purposes expressed by the majority as a whole prevail).

88 This leads me to the first level of abstraction set out at [85(a)] above. I have referred above to Art 164 which provides for Parliament to specify the First Term. The speeches in Parliament did not refer to this aspect of the Model until PM Lee stated the following on 8 November 2016 (see [80(a)] above):

> When should the racial provision start counting? The Constitution Amendment Bill states that the Government should legislate on this point. The Government intends to legislate when we amend the Presidential Elections Act in January next year.
>
> We have taken the Attorney-General's advice. We will start counting from the first President who exercised the powers of the Elected President, in other words, Dr Wee Kim Wee. That means we are now in the fifth term of the Elected Presidency.

89 No MP said that PM Lee was mistaken that the proposed provisions required the Government to legislate on when the count should start. The reason is that the text of Art 164 is clear and unambiguous. What did come up for debate later was the AG's advice. I deal with this below. It is apposite here to underscore what I said about interpreting Parliamentary statements at [87] above. PM Lee said that the Government had taken the AG's advice, followed by "We will start counting from …". Yet, later speeches by others interpreted this as PM Lee saying that the AG had advised the Government to start the count from President Wee. He never said that.

90 On the contrary, after PM Lee announced that the 2017 Presidential Election would be reserved for the Malay community, several MPs applauded the announcement (see, *eg*, the excerpts from the speeches of Mr Zaqy Mohamad, Assoc Prof Fatimah Lateef, Mr Darryl David and Ms Rahayu Mahzam at [80(a)(i)] and [80(a)(iv)]–[80(a)(vi)] above). Even though other MPs did not celebrate PM Lee's announcement, it is clear that the MPs knew that the Government intended that the 2017 Presidential Election would be a Reserved Election for Malay candidates (see, *eg*, the excerpts of the speeches of Mr Muhamad Faisal bin Abdul Manap and Ms Sylvia Lim at [80(a)(ii)]-[80(a)(iii)] above). Parliament then proceeded to pass the 2016 Act on 9 November 2016. Given that Parliament knew, at that time, that President Wee's second term was intended to be specified as the First Term, I find that Parliament, in passing the 2016 Act, intended the Model to permit subsequent specification of President Wee's second term of office as the First Term.

91 This intention is directly connected to the issue of whether, under Art 19B, Parliament could choose President Wee's second term as the First Term. Accordingly, in my judgment, to give effect to Parliament's will and intent on this issue, I must interpret Art 19B in light of Parliament's specific intention (see [36] above).

92 This brings me to the third and highest level of abstraction (see [85(c)] above). In my judgment, the recent constitutional amendments reflect a re-emphasis on the President's unifying role and the conviction that, in order for the President to fulfil that role, that office must reflect the multi-racial character of our country. This is evident from the Report (see the Report at paras 5.5 and 5.15). I accept the Defendant's submission that, from the perspective of ensuring multi-racial representation in the Presidency in view of the President's symbolic role, it makes no difference whether the President was elected by the

electorate or by Parliament (see [82] above). In either case, the President's capacity to symbolise Singapore is undercut if the occupants of the office do not reflect our multi-racial composition. Interpreting Art 19B in the light of the purpose framed at [85(a)] is consonant with the purpose in [85(c)], for it means that the 2017 Presidential Elections will be a Reserved Election for Malay candidates, thus ensuring that, after a passage of 46 years, Singapore's eighth President will, if a qualified candidate or candidates stand, be once more from the Malay community. Singapore will have its first Malay President since Encik Yusof bin Ishak (if a qualified candidate stands).

93 I now turn to address the Plaintiff's submission that I should place little weight on Parliament's clear and specific intention regarding how the Model should be implemented (see [78] above). In my judgment, with respect, the Plaintiff's arguments are flawed for the following reasons.

94 First, given that Parliament was making new law by inserting Art 19B and Art 164 into the Constitution, the Plaintiff's argument that Parliament was, in effect, under a mistake of law (see [78(b)] above), is misconceived. There was no law for Parliament to be mistaken about. The Plaintiff does not contend that Arts 19B and 164 are themselves unconstitutional, as the basis of his contention is that a Reserved Election should only take place in 2023 (at the earliest) and not 2017. Accordingly, when Parliament introduced these provisions into our Constitution, it had free rein to endow them with the meaning it intended and which I have found them to have.

95 Secondly, and most crucially, I do not consider that I am at liberty to ignore Parliament's clear intention even if it had held this intention on the basis of a misunderstanding as to the meaning of Art 19B. On this point, the Plaintiff relied on *Birmingham Corporation v West Midland Baptist (Trust) Association*

(Inc) [1970] AC 874 ("*Birmingham Corporation*") to submit that, if Parliament misunderstands what a statutory provision means, a court is not therefore barred from stating the true legal position. In that case, the House of Lords considered the meaning of a statutory rule which governed the assessment of compensation for land which had been compulsorily acquired. Lord Reid opined that the meaning of the provision depended on what the law had been before the statute was enacted: see *Birmingham Corporation* at 897D. Importantly, Lord Reid noted that the previous rule was "a judge-made rule of law" (at 898A) before making the following observations (at 898F–H) on which the Plaintiffs relied:[54]

> These provisions do show that Parliament (or the draftsman) must have thought that the law was that compensation was assessable on the basis of value as at the date of notice to treat. *But the mere fact that an enactment shows that Parliament must have thought that the law was one thing does not preclude the courts from deciding that the law was in fact something different. … No doubt the position would be different if the provisions of the enactment were such that they would only be workable if the law was as Parliament supposed it to be.* But, in my view, all that can be said here is that these enactments would have a narrower scope if the law was found to be that compensation must be assessed at a date later than that of the notice to treat. I do not think that that is sufficient to preclude your Lordships from re-examining the whole matter.
>
> [emphasis added]

This passage is authority that, if Parliament misapprehends the law, a court may reaffirm the correct rule – if Parliament does not change the law. In my judgment, this caveat explains why Lord Reid said that the position would be different if Parliament enacted provisions which would only be workable if the law was as Parliament said it was (in that case, Parliament would be taken to have implicitly changed the law). The other judgments in *Birmingham Corporation*, which the Plaintiff did not cite, show that it is critical that Parliament does not change the law in order for a court to legitimately disregard

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54 Plaintiff's Submissions at para 32(f).

Parliament's misapprehension of the same. Lord Morris of Borth-y-Gest opined at 908F–G as follows:

> An argument was developed to the effect that a consideration of [three statutory provisions] shows that they were enacted on the assumption that the value of land is or has been ordinarily assessed by reference to the date of a notice to treat. I think that that does appear. *But Parliament has never so enacted*, and I do not think that we are precluded from demonstrating that the assumption need not be made.
>
> [emphasis added]

Lord Donovan made the following observations at 911A–B:

> … It is a trite observation that Parliament does not change the existing law *simply by* betraying a mistaken view of it. *It would be a very different state of affairs if Parliament in effect said that some existing practice should be treated as being and as always have been the law, and then proceed to enact some new provisions on that basis*. …
>
> [emphasis added]

In this light, *Birmingham Corporation* does not assist the Plaintiff. For it is not in dispute that, in introducing the Model into our Constitution by the 2016 Act, Parliament was making new law, which I consider to be a second paradigm change, and not simply stating its view of existing law. In this context, I am bound to give effect to Parliament's clear intention.

96 Thirdly, I do not agree with the Plaintiff's submission that to accord weight to the statements by PM Lee and other MPs, which indicate Parliament's intent that the 2017 Presidential Elections would be a Reserved Election, makes the meaning of Art 19B depend on the AG's view on Art 19B. I do not know what the AG's advice was. But more importantly, the reason why I have placed weight on the relevant statements is because they reflect Parliament's intention. Ultimately, the crucial point is that Parliament intended that the Model would permit subsequent specification of President Wee's second term as the First

Term (see [90] above). Whether this was based on the AG's advice or otherwise, is simply not relevant.

97 I now turn to address the Plaintiff's arguments on the Report and the 2016 White Paper. For the following reasons, these extrinsic materials do not strongly support the Plaintiff's interpretation of Arts 19B and 164:

(a) First, I agree with the Defendant that the official report of the Parliamentary Debates is a surer guide to Parliament's intention than the Report or the 2016 White Paper. This is especially because neither the Report nor the White Paper dealt with when the Model would be brought into effect (see [(c)] below).

(b) Secondly, I agree with the Defendant that neither the Report nor the 2016 White Paper compels that a certain term of office of the President be specified as the First Term (see [81] above).

(c) Thirdly, in respect of the Report, I note the passages on which the Plaintiff relied (see [76(a)] above) which suggest that the Model was only meant to apply to popularly elected Presidents. In my judgment, notwithstanding the point at [(b)] above, it may still fairly be asked whether the Commission ever contemplated that the Model would apply to Presidents who were not popularly elected. However, even if the answer to this is "no", I do not think that this supports the Plaintiff's interpretation of Arts 19B and 164. In my judgment, the Commission's recommendations in the Report did not extend to questions of when the Model would come into effect. Notably, the Commission's Terms of Reference were as follows:[55]

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[55] 1PBPD 14.

> …
>
> (2) To consider and recommend what provisions should be made to safeguard minority representation in the Presidency, taking into account:
>
> (i) The President's status as a unifying figure that represents multi-racial Singapore; and
>
> (ii) The need to ensure that candidates from minority races have fair and adequate opportunity to be *elected to Presidential office*.
>
> [emphasis added]

It is plain from the Terms of Reference that the Commission was given, fundamentally, the task of considering and proposing mechanisms to ensure that Presidential elections return Presidents from minority races from time to time. Thus, the Commission did not address questions of implementation regarding when the Model would be brought into effect. Therefore, even if the Commission did not contemplate that the Model would apply to Presidents who were elected by Parliament, I do not consider that this supports the Plaintiff's case. For Parliament addressed when the Model would be brought into effect; and it is Parliament's intention which is key in interpreting Arts 19B and 164.

(d) Fourthly, the White Paper, which accepted the recommendations made in the Report, should be read in the same light.

98 Finally, I agree with the Defendant that the Explanatory Statement for the 2016 Bill confirms that Parliament did not intend that the Model would only encompass the terms of Presidents who were popularly elected. The relevant provisions of the Explanatory Statement state:[56]

> …

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56 1PBPD 283.

> REPRESENTATION OF MAIN COMMUNITIES IN OFFICE OF PRESIDENT
>
> Clause 9 inserts a new Article 19B to provide for a Presidential election to be reserved for a community if no person belonging to that community has *held the office of President for any of the 5 most recent Presidential terms*. …
>
> Clause 32 requires the Legislature to make transitional provisions for the purposes of new Article 19B. Transitional provisions will specify *the first term of office of the President* to be counted for the purposes of deciding whether an election is reserved under Article 19B. If any of the Presidential terms to be counted commences before the date on which Article 19B is brought into force, the transitional provisions will also specify the communities to which the Presidents who held office for those terms are considered to belong. For future Presidents, the communities to which they belong will be decided in accordance with the laws enacted by the Legislature pursuant to Article 19B.
>
> [emphasis added]

Again, the Explanatory Statement mirrors the text of Arts 19B and 164: it does not indicate that Parliament intended that the terms of office of Presidents who were elected by Parliament would not fall within the ambit of the Model.

99 For all these reasons, I find that, when Art 19B is read in the light of its legislative purpose as garnered from the relevant extraneous materials, it bears the same meaning as and confirms its ordinary meaning read in the light of its text and textual context. Art 19B does not fetter Parliament's power to specify President Wee's second term of office as the First Term.

The technical challenge

100 There remains the technical point which I mentioned at [34] above. The Plaintiff's first prayer in this OS is for a declaration that s 22 of the PE(A) Act 2017 is unconstitutional. The Defendant argues that this prayer should be dismissed *in limine*, as the PE(A) Act 2017 was rendered spent upon its commencement.

101 The Plaintiff relied on *Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 ("*Prabagaran*") in support of its position; and, in particular, on the following observations by Chao Hick Tin JA at [32]:

> 32 … it is the *amending* Act and not the *amended* statute that the court looks to ***in determining if the unconstitutional portions can be severed from the remainder of the Act***. As a general proposition, it will ordinarily be the case that an unconstitutional amendment will result in no change to the pre-existing statute, which remains in the same form as it existed prior to the purported amendment. This is because if the amending Act is itself unconstitutional it cannot effect legislative change. …
>
> [emphasis in original in italics; emphasis added in bold italics]

In my judgment, these comments, concerning how the doctrine of severability applies where amendments are made to pre-existing statutes, do not support the Plaintiff's position. It should be noted that, in *Prabagaran* itself, the applicants challenged provisions in the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"); they did not challenge the Misuse of Drugs (Amendment) Act 2012 (Act 30 of 2012) which inserted the impugned provisions into the MDA. The CA plainly contemplated that the applicants had properly challenged the MDA instead of the Act which had amended it. I agree with the Defendant that, since the PE(A) Act 2017 was rendered spent after it came into effect, the proper object of the Plaintiff's challenge was the PEA and not the PE(A) Act 2017.

Conclusion

102 For the reasons set out above, I find that Parliament was entitled, through the passing of the PE(A) Act 2017, amending the PEA, to specify President Wee's last term in office as the First Term. This is clear from both the text and context of Arts 19B and 164 as well as the relevant extraneous materials. I therefore hold that the Schedule to the PEA is not unlawful or invalid or unconstitutional.

103 In my judgment, Parliament could have started the count from the first popularly elected President, President Ong, or, as Mr Rajah SC submitted, Parliament could have postponed the implementation of the Model by starting the count from any President after President Ong, but Parliament was equally free to accelerate the implementation of the Model, by starting the count from President Wee's second term. Ultimately, since Art 19B does not fetter Parliament's power under Art 164, Parliament's choice of the First Term is a policy decision which falls outside the remit of the courts.

104 The Plaintiff's application is dismissed. I will hear the parties on costs and on any consequential or subsequent orders, if any, that may be required of me.

Outstanding matter

105 I note that the first affidavit which the Plaintiff filed in this OS ("the Original Affidavit") included an opinion and an affidavit by Lord David Phillip Pannick QC ("Lord Pannick QC").[57] The Defendant applied in Summons No 2310 of 2017 ("Summons 2310/2017") to strike out Lord Pannick QC's opinion and affidavit, and references to Lord Pannick QC in the Original Affidavit on the basis that they were irrelevant and/or oppressive and/or an abuse of process.[58] Subsequently, the parties agreed that the Plaintiff would withdraw the Original Affidavit, and file a fresh affidavit, subject to being granted liberty to adduce Lord Pannick QC's opinion if the issue of standing was contested. Summons 2310/2017 remains outstanding but I believe only a formal order would be required.

Quentin Loh
Judge

Chelva Retnam Rajah SC, Earnest Lau Chee Chong and Zara Chan Xian Wen (Tan Rajah & Cheah) for the plaintiff;
Deputy Attorney-General Hri Kumar Nair SC, Aurill Kam, Nathaniel Khng, Seow Zhixiang and Sivakumar Ramasamy (Attorney General's Chambers) for defendant.

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57 Affidavit of Tan Cheng Bock @ Adrian Tan dated 5 May 2017.

58 HC/SUM 2310/2017.