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Jack Tsen-Ta LEE

Singapore Management University, jack.tt.lee@gmail.com

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School of Law
Singapore Management University

60 Stamford Road, #04-11, Singapore 178900
jacklee@smu.edu.sg • <http://www.law.smu.edu.sg>

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**Let Presidential Hopefuls Have
Their Say**

Jack Tsen-Ta *Lee**

* LLB (Hons) (Nat'l University of Singapore), LLM (UCL, Lond); PhD candidate (B'ham); Advocate & Solicitor (Singapore), Solicitor (England & Wales); Assistant Professor of Law, School of Law, Singapore Management University.

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Let Presidential Hopefuls Have Their Say

Jack Tsen-Ta Lee¹

The announcement by the Presidential Elections Committee (PEC) of the prospective candidates who have been issued certificates of eligibility for the 2011 presidential election in Singapore makes interesting reading for what it does and does not say. The Committee's decision-making process is also fairly opaque. It is submitted the rules governing the PEC's task should be reviewed before the next election. At least, it is hoped future Committees will adopt as constitutional conventions the practices of granting hearings to applicants, announcing decisions well ahead of nomination day, and issuing full reasons.

TWO DAYS AGO [August 11, 2011], the Presidential Elections Committee (PEC) issued certificates of eligibility to four of the six prospective candidates who applied to contest the presidential election. We are thus assured of a poll for the first time in 18 years, and with the largest number of candidates to date.

The PEC's announcement of its decisions makes interesting reading for what it does and does not say. It allows observers to examine how the Committee goes about fulfilling its crucial duty.

The Committee's decision-making process is fairly opaque. It confers in private; the Prime Minister's press secretary previously said that public hearings might affect the Committee's independence and politicise its decisions. Significantly, the Committee may inform itself in any manner and consult such persons as it thinks appropriate.

It is not bound to meet a presidential aspirant or the referees vouching for his character in person.

It does not appear from the PEC's statement that any applicant was asked to appear before the Committee. It based its decisions on data provided in their application forms. Information was also obtained from government agencies, though its nature was not explained. When a hearing is not granted, an applicant cannot impress upon the Committee the importance of considering certain facts or arguments. Refuting allegations through the media is an inadequate substitute.

The PEC is not legally required to provide reasons for its decisions. Any controversy is likely to centre around two requirements for candidates. First, applicants must prove themselves persons of integrity, good character and reputation. Secondly, if an applicant has not, for three years or more, held certain key public offices or been the chairman or CEO of a company with at least a \$100 million paid-

¹ LLB (Hons) (Nat'l University of Singapore), LLM (UCL, Lond); PhD candidate (Birmingham Law School, University of Birmingham, United Kingdom); Advocate & Solicitor (Singapore), Solicitor (England & Wales); Assistant Professor of Law, School of Law, Singapore Management University.

up capital, he qualifies if he has held office “in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee, has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President”.

The Committee’s statement was factual and to the point, but we now know a person may have the requisite financial ability even if he has worked for a co-operative. Also, a sufficiently complex organisation need not have a minimum paid-up capital of \$100 million. It is heartening that the PEC avoided interpreting the Constitution rigidly, though further elaboration would have been welcome.

This is particularly true for Andrew Kuan’s bid, which was turned down in terms similar to his 2005 rejection. The Committee merely said his former appointment as JTC group chief financial officer was “not comparable” to the positions mentioned in the Constitution.

What legal recourse exists for an applicant denied a certificate? The Constitution specifies that the PEC’s decisions concerning his character or financial ability “shall be final and shall not be subject to appeal or review in any court”. Lawyers call this an ouster clause, as such provisions aim to oust the courts’ usual jurisdiction to examine if actions taken by government bodies are legal.

Such clauses are not always as effective as their wording suggests. In 1999, the High Court considered an Employment Act provision stating that a certain decision by the Manpower Minister “shall be final and conclusive and shall not be challenged in any court”. The Court held it was ineffective in ousting its jurisdiction if the Minister’s decision was made in breach of natural justice – if the Minister was biased, or did not allow the affected person to put forward his case.

However, whether the constitutional ouster clause prevents courts from halting other types of serious unlawfulness is unclear. Suppose the PEC is challenged for its finding that an applicant lacks ability to exercise the President’s fiscal powers. Might the High Court quash the decision? We do not know, as no such case has yet been brought. But in practical terms, the Committee’s reluctance to provide detailed grounds makes it hard for applicants to decide whether a legal challenge is warranted in the first place.

By law, the PEC need only notify applicants by the eve of nomination day. If it does so, this leaves practically no time for disappointed applicants to seek legal advice and avail themselves of the court process. An applicant might ask the High Court for an urgent injunction restraining the Returning Officer from carrying out his nomination day duties. But if the Court acceded to the request, the election timetable would be derailed.

During the 1993 and 1999 elections, the PEC announced its decisions only two days and a day before nomination day respectively. However, the trend is towards earlier announcements – five days in 2005 and, this time round, a week. This is a positive development.

The PEC fades into the background as we look toward August 17 for confirmation of the candidates running for Singapore's highest office. Nonetheless, the rules governing the PEC's task should be reviewed before the next election. At least, it is hoped future Committees will adopt as constitutional conventions the practices of granting hearings to applicants, announcing decisions well ahead of nomination day, and issuing full reasons.

The writer is an Assistant Professor of Law who teaches and researches administrative and constitutional law at the Singapore Management University.