

## **Law Minister debunks notions on what president can say** **Elected president can speak on issues only as authorised by Cabinet**

**Lydia Lim**

**The Straits Times**, 6 August 2011

The Law Minister yesterday declared that an elected president who speaks in public without the advice of the Cabinet would be acting unconstitutionally.

Mr K. Shanmugam laid out the legal position as he saw it, at an Institute of Policy Studies forum on the Roles, Responsibilities and Power of the Elected President.

The Constitution, he said, is the source of the president's powers. Being directly elected does not change the scope of those powers.

He also commented on public discussion thus far, in the lead up to the Aug 27 presidential polls.

Much of it has focused not on the president's real powers but on issues which have no legal basis, he said, such as whether the president can publicly disagree with the Government.

'It's quite clear the president has no such power and that was not the role that was envisaged for the president,' he said.

'The president,' he added, 'can speak on issues only as authorised by the Cabinet; and he must follow the advice of the Cabinet in the discharge of his duties.'

It was the second time the minister had sought to debunk notions that the president can publicly challenge the Government or initiate policy change.

On June 6, he issued a three-page statement on the president's powers. It focused on the 1991 amendment to the Constitution, which made the presidency an elected office.

The amendment gave the president blocking powers in five specific areas, namely the spending of past reserves, the appointment of key public sector leaders, Internal Security Act detentions, investigations by the Corrupt Practices Investigation Bureau, and restraining orders to maintain religious harmony.

Yesterday, he said these powers provided for by the Constitution are extremely important. They are to be used if the Government is corrupt or incompetent.

However, the 1991 Constitutional amendment 'does not change the fundamental position' that except as otherwise provided, the president has to speak and act on the advice of the Government, he added.

The president can also wield influence in private, through his regular discussions with the prime minister, which are confidential.

'Whether the president actually wields influence obviously depends on who the president is. If he is someone who commands little or no respect of the prime minister, then of course influence will be limited,' he said.

Thus, Singaporeans should be asking themselves which potential candidate has the knowledge, skill and acumen to protect the reserves.

They should also look at who would best command the confidence of the prime minister and Cabinet, to be able to influence them; and ask themselves which aspirant has the gravitas and stature to be the symbol of the country.

'What I would call the 'wrong questions' would be: Who is going to speak up publicly? Who's going to contradict the Government? Who's going to engage publicly on political issues? These are wrong questions because the president can't do any of these things,' he said.

Five presidential hopefuls have emerged to date. They are former deputy prime minister Tony Tan, former People's Action Party member of Parliament Tan Cheng Bock, former NTUC Income chief executive Tan Kin Lian, investment adviser Tan Jee Say, and former Jurong Town Corporation group chief financial officer Andrew Kuan.

The second speaker at yesterday's IPS forum was constitutional law professor Thio Li-ann.

She raised the question of whether the legal model for the elected presidency was one of 'specific authorisation' or 'specific prohibition'.

The former means the president only has discretion to act in specific areas authorised by the Constitution.

The latter means the president can do anything so long as he is not prohibited by the Constitution.

She also suggested two ways to improve the process to pre-qualify candidates.

The first is that the Presidential Elections Committee should be required to give reasons for either granting or denying an applicant a certificate of eligibility, and the explanation should be 'more than one line'.

The second is that applicants who fail in their bid should be given a right of reply, so they can defend their reputation.

During a lively hour-long discussion that followed the two presentations, forum participants lobbed questions on issues ranging from the qualification process, the independence of candidates and the hidden nature of much of the president's work as custodian of the reserves.

Professor Tommy Koh, who moderated the discussion, and two academics also probed Mr Shanmugam's stance on what the president could say in public.

They painted two scenarios. The first, raised by Dr Ian Chong of the National University of Singapore, involved the president speaking up for the disabled.

Mr Shanmugam drew the line at the president saying what the Government should do for the disabled, such as spend more money on them.

The second involved heightened racial tensions due to government mismanagement.

Dr Cherian George of the Nanyang Technological University asked if it would be proper for the president to come out independently to ask people to calm down, instead of seeking the advice of the Government. He cited as an example an intervention in 1992 by the Thai King at a time of political crisis in Thailand.

Mr Shanmugam said the model for Singapore's elected presidency was not the Thai monarchy but the English monarchy and its conventions.

If the president were to speak up in the hypothetical situation cited by Dr George, he would be acting unconstitutionally, Mr Shanmugam said.