

## Written Representation 32

Name: Lee Zhen Ying, Darius  
Advocate and Solicitor

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Dear Sirs,

### Written Representations on Deliberate Online Falsehoods

I refer to the Green Paper presented to Parliament on “Deliberate Online Falsehoods: Challenges and Implications” (Misc. 10 of 2018) and the terms of reference of the Select Committee.

I submit herein my written representations on the abovementioned matter.

My particulars are as follows:

- Name : Lee Zhen Ying, Darius
- Occupation : Advocate and solicitor

I do not represent or make the submissions on behalf of any organisation. However, I would like to state that I maintain a blog on current affairs, *I on Singapore* (<https://ionsg.blogspot.sg/>), and contribute to a number of other blogs and other forums including the newspaper forums and social media.

I am willing to appear before the Committee to give evidence, if required.

Thank you.

Yours Sincerely,

Darius Lee

# Written Representations on Deliberate Online Falsehoods

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## A. Introduction

1. Singapore is a multi-racial and multi-religious society with a secular democratic state, with a small but highly literate digitally-connected population.
2. As of 2016, 91% of Singapore households have internet access, while 84% of residents are internet users.<sup>1</sup> Internet penetration in Singapore is the second highest in Southeast Asia (at 82%), behind only Brunei, which has a rate of 86%.<sup>2</sup> At the same time, Singapore boasts one of the highest literacy rates in the world, with a literacy rate among residents aged 15 years and over of 97.2% as of 2017.<sup>3</sup>
3. Consequently, Singaporeans are very likely to have access to, view and comprehend any online falsehood. Yet, at the same time, Singaporeans are generally well-educated, discerning, and – in the words of Deputy Prime Minister Shanmugaratnam – “*do not read blindly*”.<sup>4</sup>

## B. Online falsehoods and their impact on democracy

4. Free speech is the lifeblood of democracy. It is grounded in the goals of attaining truth, promoting self-actualisation, and citizen participation in public discourse. For a healthy democracy to function, it must be fuelled by a healthy supply of accurate information from diverse sources.<sup>5</sup>
5. Democracy thrives on a marketplace of diverse ideas. Just as the economic marketplace is negatively affected by the peddling of counterfeit goods, the proliferation of falsehoods damages democracy. The Singapore Court of Appeal has stated that “*society*

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<sup>1</sup> Infocomm Media Development Authority, “Infocomm Usage-Households and Individuals” (last updated 3 November 2017), online: <<https://www.imda.gov.sg/industry-development/facts-and-figures/infocomm-usage-households-and-individuals>> (Accessed on 4 February 2018)

<sup>2</sup> Simon Kemp, “Digital in Southeast Asia 2017” (15 February 2017), online: <<https://wearesocial.com/sg/blog/2017/02/digital-southeast-asia-2017>> (Accessed on 4 February 2018)

<sup>3</sup> Singapore Department of Statistics, “Latest Data”, online: <<http://www.singstat.gov.sg/statistics/latest-data>> (Accessed on 8 February 2018)

<sup>4</sup> “Singaporeans more liberal, feel less fear: DPM Tharman” *The Straits Times* (22 September 2017)

<sup>5</sup> Thio Li-ann, “The Virtual and the Real: Article 14, Political Speech and the Calibrated Management of Deliberative Democracy in Singapore” [2008] SJLS 25 (“*The Virtual and the Real*”) at 25

*does not derive any value*” from false statements as “*there is no interest in being misinformed*”.<sup>6</sup> Therefore, to borrow a term from macro-economics, falsehoods are a form of “market failure” justifying regulation and intervention by the State, in much the same way the State intervenes if counterfeit goods are being peddled in the market.

6. It has been said that, in war, truth is the first casualty. The same can be said about political, economic or cultural battles. False and inaccurate statements have always been present, and have traditionally been dealt with by criminal laws or civil laws in relation to matters such as defamation. However, online falsehoods pose some unique challenges due to their particular nature.

**(i) The unique challenges of online falsehood**

7. The internet, together with other means of communication such as instant messaging, have “*dramatically [shortened] the globe’s communicative synapses*”, expanding “*the potential reach and impact of any individual idea or expression*”.<sup>7</sup> The internet also enables users to hide behind the anonymity of cyberspace, thus reducing the need for accountability in delivering one’s ideas.<sup>8</sup> Thus, the internet has potentially enabled anonymous and foreign entities to spread ideas with limited accountability.
8. Furthermore, the use by social media of filters which selectively feed stories to users based on their preferences, coupled with confirmation bias wherein people seek information that support their current convictions, has been shown to promote greater balkanisation and polarisation of society into ideological “echo chambers”.<sup>9</sup> Coupled with the formation of “virtual gated communities” around similar interests or viewpoints, social media may have the adverse effect of undermining genuine interaction with differing viewpoints and hence impede understanding of the diverse interests at stake.<sup>10</sup>

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<sup>6</sup> *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“**Review Publishing (CA)**”) at para. 283

<sup>7</sup> *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR(R) 453 at para. 1

<sup>8</sup> See, for instance, the case involving the bloggers who had posted racist remarks on their blogs in *Public Prosecutor v Koh Song Huat Benjamin and Another* [2005] SGDC 272

<sup>9</sup> “How social media filter bubbles and algorithms influence the election” *The Guardian* (22 May 2017); Walter Quattrociocchi, Antonio Scala and Cass R. Sunstein, “Echo Chambers on Facebook” (June 13, 2016), online: <<https://ssrn.com/abstract=2795110>> (Accessed on 10 February 2018)

<sup>10</sup> *The Virtual and the Real* at 53

9. These factors accentuate the unique threat that *online* falsehood poses to democracy. The highways of the internet enable such falsehoods to spread like wildfire, accentuating individual biases, and exacerbate ideological faultlines in society by polarising different segments of society deeper into their “echo chambers”.

**(ii) The need for a carefully-calibrated law**

10. In the wake of the election of Donald J. Trump to office as President of the United States, the issue of “fake news” has taken the forefront. Some have suggested that fake news led to the election of Trump to office.<sup>11</sup> At the same time, Trump has accused a number of mainstream media outlets of peddling fake news.<sup>12</sup>

11. While none of these involve state action to curb the spread of falsehoods (and without commenting on the veracity of these allegations), these mutual accusations – whether true or false – highlight two potential dangers to democracy *if falsehoods, online or otherwise, are addressed through force of law*:

(a) On the one hand, widespread falsehood can undermine the proper functioning of democracy by illegitimately skewing public opinion;

(b) On the other hand, if unrestrained, people in positions of power may use the law to stifle and suppress opposition on the pretence of suppressing falsehood or, even if some falsehood is present, effectively crushing a nut with a sledgehammer by penalising the smallest or most inconsequential errors.

12. The key to navigate both dangers is to carefully calibrate the law to balance the rights and interests at stake. Traditionally, the law has drawn the line at the harm caused by the falsehood, rather than allow the State to be the arbiter of truth *per se*. Clear examples of this are laws against defamation or contempt of court. As the Court of Appeal has stated, “[*it*] is one thing to falsely claim that an UFO has been spotted over the skies

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<sup>11</sup> Hannah Jane Parkinson, “Click and elect: how fake news helped Donald Trump win a real election” *The Guardian* (14 November 2016)

<sup>12</sup> “Trump Hands Out ‘Fake News Awards,’ Sans the Red Carpet” *New York Times* (17 January 2018)

*of Singapore; it is quite another to falsely assert that a person is a crook or a charlatan, especially if that person is also a holder of public office.”<sup>13</sup>*

13. In economic theory, over-correction of “market failure” does more harm than good by raising the barriers to entry into the market and unduly burdening economic actors. Similarly, over-regulation of essentially harmless false statements may have the negative effect of stifling otherwise generally healthy discourse.
14. In discourse, false statements are often mixed with opinions and other true statements. It is a natural and reasonable part of discourse to point out inaccuracies and falsehoods, apart from disputes over the opinions and conclusions to be drawn from the facts. Thus, although “*there is no interest in being misinformed*”, it does not mean that *all* false statements (without more) should *automatically* be the subject of legal regulation or sanction.

## **C. Motivations and reasons for spreading online falsehoods**

15. Two main motivations have been suggested for the spread of online falsehoods: pecuniary and ideological motives.<sup>14</sup> As the examples below demonstrate, two may not necessarily be mutually exclusive and often overlap.

### **(i) Pecuniary motives**

16. The first possible motive for the spread of online falsehoods is pecuniary; news articles that go viral on social media can draw significant advertising revenue when users click to the original site.<sup>15</sup>
17. In the case involving the founders of now-defunct socio-political site The Real Singapore (“**TRS**”), Yang Kaiheng and Ai Takagi, evidence was led that they had earned advertising revenue of A\$474,594 (S\$492,500) from TRS between December

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<sup>13</sup> *Ibid.*

<sup>14</sup> Hunt Allcott and Matthew Gentzkow, “Social Media and Fake News in the 2016 Election” (2017) 31(2) J. Econ. Perspect 211 (“*Allcott & Gentzkow*”) at 217

<sup>15</sup> *Allcott & Gentzkow* at 217

2013 and April 2015. Takagi was sentenced to 10 months' jail for publishing doctored and "*patently false*" material which targeted foreigners. In sentencing co-founder Yang Kaiheng to 8 months' jail, District Judge Chay Yuen Fatt observed that at the heart of the case involved "*the exploitation of [feelings of xenophobia and racism] purely for financial gain.*"<sup>16</sup>

**(ii) Ideological motives**

18. The second motivation is ideological.<sup>17</sup> This may encompass any form of ideological agenda, including political, economic or cultural agendas.
19. For instance, the abovementioned case involving the TRS founders may likewise be characterised as a case where they had deliberate fabricated falsehoods for ideological ends, whether directly or otherwise, in order to promote and stoke feelings of xenophobia and racism.<sup>18</sup>
20. Similarly, the man who doctored a picture of a news report about the Court of Appeal's decision in the case involving the leaders of City Harvest Church, Neo Aik Chau, to read "PAP Lawyer 'saved' the accused from harsher penalties" (emphasis added), may have done so to further his political or ideological ends. In his published apology, he accepted that the doctored image and the accompanying words in his post "*wrongfully alleged that the Court of Appeal ruled in favour of the accused persons involved with the City Harvest Church on 1 February 2018 because one of the accused persons was represented by a lawyer who is also a Member of Parliament from the People's Action Party.*"<sup>19</sup>

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<sup>16</sup> "Former TRS editor Ai Takagi sentenced to 10 months' jail for sedition" *Channel NewsAsia* (23 March 2016); "TRS trial: Yang Kaiheng sentenced to 8 months' jail" *Channel NewsAsia* (28 June 2016)

<sup>17</sup> *Allcott & Gentzkow* at 217

<sup>18</sup> See the speech by Attorney-General Lucien Wong at the Singapore Law Review Lecture 2017, "Prosecution in the Public Interest", online: <<https://www.agc.gov.sg/newsroom/speeches/newsitem/paper-presented-by-attorney-general-lucien-wong-s.c.-on-prosecution-in-the-public-interest-at-the-singapore-law-review-annual-lecture-2017>>

<sup>19</sup> "Man who doctored City Harvest news article publishes apology, undertaking as required by AGC" *Channel NewsAsia* (8 February 2018)

## D. The constitutional justification for laws against online falsehoods

21. Articles 14(1)(a) and (2)(a) guarantee the rights of every Singapore citizen to freedom of speech and expression as follows:

### *“Freedom of speech, assembly and association*

14.—(1) *Subject to clauses (2) and (3) —*

*(a) every citizen of Singapore has the right to freedom of speech and expression; ...*

*(2) Parliament may by law impose —*

*(a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence; ...”*

22. In *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 (“**Ting Choon Meng**”), Chief Justice Sundaresh Menon opined in his dissenting decision that section 15 of the Protection from Harassment Act (“**POHA**”) (which addresses false statements of fact) was consistent with the Constitution as it was “*a necessary or expedient restriction on the right to free speech in the interest of public order*”.<sup>20</sup> The majority of the Court of Appeal, on the other hand, found it “*unnecessary*” to address the issue, having reached their decision on other grounds.<sup>21</sup>

23. The difficulty with grounding restrictions on online falsehoods in the “*public order*” limb of Article 14(2)(b) of the Constitution, is that it is either based on too wide a reading of “*public order*” or, if a narrower reading of “*public order*” is preferred,

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<sup>20</sup> *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 (“**Ting Choon Meng**”) at para. 118

<sup>21</sup> *Ting Choon Meng* at para. 37

places the threshold too high since there must be some demonstrable public order threat caused by the falsehood.<sup>22</sup> The latter would render the existence of separate laws addressing online falsehood virtually ineffectual or nugatory, since there already exist other laws covering threats to public order.

24. In my respectful opinion, a better foundation for restrictions on online falsehoods is on the basis of “*morality*” under Article 14(2)(b) of the Constitution. As the Court of Appeal observed in *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“**Review Publishing (CA)**”), “*Our political culture places a heavy emphasis on honesty and integrity in public discourse on matters of public interest, especially those matters which concern the governance of the country.*”<sup>23</sup> Prime Minister Lee Hsien Loong has also emphasised the importance of “*high standards of integrity*” and honesty as an “*absolute necessity*” to “*constructive politics*”.<sup>24</sup>
25. These moral principles not only explain Singapore’s tough stance against matters such as corruption in politics, but also bear out the principle that dishonesty, deception and fraud in perpetrating falsehoods – which are immoral in and of themselves – have no place in Singapore’s public discourse, whether online or offline.

## **E. Principles in addressing deliberate online falsehoods**

26. In light of the unique challenges posed by deliberate online falsehoods, this section sets out some principles that should guide Singapore’s response to such falsehoods, and specific measures, including legislation, that should be taken.

### **(i) The principles that should guide Singapore’s response**

27. The State holds no monopoly on truth, and should not hold itself out to be the arbiter of truth, lest it enter the realm of policing thought. Instead, the State’s interest is in

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<sup>22</sup> See *Ting Choon Meng* at para. 120

<sup>23</sup> *Review Publishing (CA)* at para. 285

<sup>24</sup> Transcript of Prime Minister Lee Hsien Loong’s Speech on the Debate on President’s Address on 28 May 2014, online: <<http://www.pmo.gov.sg/newsroom/transcript-prime-minister-lee-hsien-loongs-speech-debate-presidents-address-28-may>> (Accessed on 10 February 2018)

protecting the rights and interests of its citizens. Therefore, in its approach to deliberate falsehoods, whether online or offline, it should regulate matters with a light touch.

28. Accordingly, several key principles should guide Singapore's response to the phenomenon of online falsehoods:

(a) *State action should be a last resort*

29. With a well-educated, highly literate and digitally-connected population, Singaporeans' primary response to falsehoods, whether online or offline, should be one of careful discernment. The fundamental assumption must be that the vast majority of Singaporeans are rational and discerning individuals, who know how to sieve out the wheat from the chaff, and distinguish between truth and falsehood. The proper response to untruth is *the truth*, rather than state action.

30. Key to proper respect for individual liberty by the State includes a sound respect for their capacity as rational human beings. The education system plays an important role in equipping citizens to face the challenges in a complex world, by equipping people with the necessary skills of discernment. Rather than teaching *what* to think, education should be focused on *how* to think. State action, whether in court or through executive action, should only be used as a last resort to prevent some demonstrable prejudice or harm.

(b) *Declaration of falsehood should be made or reviewable by a court of law*

31. The separation of powers is one of the very bedrocks of the Singapore Constitution,<sup>25</sup> which is the supreme law of the land. The powers and legitimacy of the legislative, judicial and executive branches are conferred by the Constitution. All legal powers have legal limits, and the notion of a subjective or unfettered discretion is contrary to the rule of law. Judges are entrusted with the task of ensuring that any exercise of state power is done within legal limits.<sup>26</sup>

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<sup>25</sup> *Public Prosecution v Lam Leng Hung and others* [2018] SGCA 7 at para. 283

<sup>26</sup> *Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 at para. 1; *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at para. 78

32. Courts are placed in our constitutional order to objectively assess the evidence and make findings of fact, whether in criminal or civil proceedings. It should be the duty of the court to make a declaration or finding of falsehood in any law addressing deliberate online falsehoods.
33. In this regard, a similar scheme is already in place under section 15 of POHA concerning false statements, where the District Court must first be satisfied on the balance of probabilities that “*the statement of fact complained of is false in any particular about the subject*” in order to invoke the section. The Court of Appeal has cautioned that courts should be slow to make an order under the section unless the statements complained of are more likely than not to be false, and must exercise sound judgment in arriving at this conclusion.<sup>27</sup>
34. Any similar legislation empowering persons or the government to make an application to court for a declaration of falsehood should lay down a similar threshold in the fact-finding exercise.
35. There are falsehoods that will necessitate or involve executive action. For instance, a decision may be made to block a foreign source from broadcasting falsehoods during the time of elections in Singapore. However, since the Cabinet is normally comprised of key leaders drawn from the ruling party, such executive action may potentially lend itself to criticisms or the risk of partisanship, especially if such action is taken during political campaigning or in the run up to elections.
36. In law, the review of executive action is comprised of:
  - (a) Whether a jurisdictional or precedent fact is involved. Where a jurisdictional fact issue arose, the scope of review extends to deciding whether the evidence justified the decision.

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<sup>27</sup> *Ting Choon Meng* at para. 48

(b) Whether the exercise of discretion can be challenged on the basis of illegality, irrationality or procedural impropriety.<sup>28</sup>

37. Thus, in the event the falsehood must be restrained through executive action, it must be a jurisdictional or precedent question whether or not the statements are false. In other words, the executive branch must satisfy the judicial branch of government that the statements are, objectively, more likely than not to be false, thereby justifying the exercise of its discretion. If this threshold is satisfied, the executive may exercise its discretion to prevent demonstrable public harm provided such exercise is not illegal, irrational or procedurally improper.

(c) *Civil remedies should balance the rights and interests at stake*

38. Civil remedies are generally thought of as addressing “private” wrongdoing. In granting civil remedies, the law should balance the rights and interests at stake by making the appropriate orders to correct the falsehood only if it is just and equitable to do so.

39. This approach is evident from section 15 of POHA, which provides a unique civil remedy in relation to false statements of fact. The publisher of the false statement is not required to take down the publication or pay damages, but publish such notification as is deemed by the court to be necessary to bring the falsehood to the attention of the readers of the statement.<sup>29</sup> Despite its limited scope, it is not merely sufficient to show that “*the statement of fact complained of is false in any particular about the subject*”, it is also necessary to show that it is “*just and equitable*” to make an order under the section.

40. In *Ting Choon Meng*, the majority of the Court of Appeal set out a non-exhaustive list of factors which the court may consider in deciding whether it is just and equitable to make an order under section 15 of POHA:

(a) the nature of the false statement and the seriousness of the allegation made;

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<sup>28</sup> *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 at paras. 108 and 119

<sup>29</sup> *Ting Choon Meng* at para. 91

- (b) the purpose of the false statement, for example, whether it is said in jest or for the purposes of satire;
- (c) the impact of the statement on the subject and the degree of adverse emotional or psychological harm suffered;
- (d) the degree to which the false statement has been publicised to the public;
- (e) whether the subject has the means to publicise his or her own version of the truth (and on a channel that is accessible to the readers of the false statement);
- (f) whether the author and/or publisher of the statement has made genuine efforts to point out that the veracity of the statement is not undisputed; and
- (g) the ordinary instances of daily living that may be expected to be tolerated by reasonable persons.<sup>30</sup>

41. This approach should be commended to any other civil remedy that the Government intends to create. Bearing in mind that section 15 of POHA is a limited civil remedy, any new civil remedy which may sound in damages, restraining orders, or any more severe consequences should require a *higher* threshold than section 15 of POHA, and not any less.

42. Furthermore, the Government's ability to rely on any such civil remedies should be very rare and limited, if not inexistent. This is because government agencies possess significant resources and access to media channels, and are not helpless victims in the face of falsehoods, even if these may cast aspersions on the integrity and reputation of these agencies.<sup>31</sup>

(d) *Criminal sanctions should only apply if there are ill-intent and demonstrable public harm present as a result of the falsehood*

43. Criminal sanctions are generally thought of as addressing “public” wrongdoing. It is trite that a criminal offence is comprised of not only a wrongful act or illegal omission (*actus reus*), but also the corresponding mental fault element (*mens rea*). The standard

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<sup>30</sup> *Ting Choon Meng* at para. 43

<sup>31</sup> *Ting Choon Meng* at paras. 45 and 46

of proof is higher compared to civil wrongdoing, being proof beyond reasonable doubt rather than on a balance of probabilities.

44. In order for the publication of falsehood to attract criminal penalties, the following three conjunctive elements must be shown beyond reasonable doubt:
  - (a) *Falsehood*. The statement of fact complained of is false in any particular about the subject.
  - (b) *Ill-intent*, in that the falsehood is made or published deliberately or with the knowledge of its untruth.
  - (c) *Demonstrable public harm*. The falsehood in that particular about the aforementioned subject has caused demonstrable public harm.
45. Firstly, similar to section 15 of POHA, it must be necessary to show that “*the statement of fact complained of is false in any particular about the subject*”. However, the difference is that this must be shown on a criminal standard, which is that of proof beyond reasonable doubt.
46. Secondly, it should be a requirement that the falsehood is made *deliberately* or with the *knowledge of its untruth*. Flowing from the constitutional basis that such laws are necessary or expedient in the interest of morality under Article 14(2)(b) of the Constitution (see above at paragraphs 21 to 25), dishonest intent must be shown. Unintentional, careless, negligent or honest mistakes should not be the subject of penalty or sanction. However, wilful blindness to the truth should be deemed the legal equivalent of knowledge, and is morally culpable. Motive is not, strictly speaking, relevant.
47. Finally, it must be shown that the falsehood that particular about the aforementioned subject has caused demonstrable public harm. Such harm is not limited to direct, physical harm, but may include damage to the political or economic system. Ideally, such harm should be clearly spelt out in the legislation tackling deliberate falsehoods. In assessing the impact of such harm, the law should take into account the (non-exhaustive) factors laid down by the Court of Appeal in *Ting Choon Meng* (set out

above at paragraph 40). (See below on “Specific measures, including legislation, that should be taken”)

(e) *Contested ideas, beliefs and scientific evidence should not be covered*

48. In a democratic marketplace of ideas, there are “*ideas or beliefs which cannot or have yet to be proved with scientific certainty to be either true or false*”. In such instances, “*it is usually the case that one of these ideas or beliefs will eventually come to be accepted by society as “true” in the sense of being the most accurate or the most rational, with the others either being discarded or falling into disfavour.*”<sup>32</sup> However, even if a majority or vast majority of society accept a certain view as the most accurate or the most rational, this does not mean that the minority view is factually “false” in the sense contemplated here and, in any event, certainly does not justify legal regulation or sanction.

49. Contested political claims may also involve appeals to scientific data. For instance, in the constitutional challenge against section 377A of the Penal Code, the appellants argued that sexual orientation was immutable and/or there was intractable difficulty of change on the part of male homosexuals. The Court of Appeal observed that “*the scientific evidence on this particular issue is... unclear inasmuch as there is no definitive evidence pointing clearly to one side of the divide or the other.*”<sup>33</sup>

50. Assuming, for the sake of argument, that a vast majority of scientific opinion points towards and even establishes the immutability of “sexual orientation” (however defined), it should still be open to scientists to present and consider scientific evidence and opinion to the contrary. This is because all scientific knowledge is, by nature, tentative and provisional. The currently accepted scientific theory of a phenomenon is simply the best explanation among all available alternatives.<sup>34</sup>

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<sup>32</sup> *Review Publishing (CA)* at para. 282

<sup>33</sup> *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 at para. 176; see also para. 53

<sup>34</sup> Satoshi Kanazawa, “Common misconceptions about science I: “Scientific proof”” *Psychology Today* (16 November 2008), online: <<https://www.psychologytoday.com/blog/the-scientific-fundamentalist/200811/common-misconceptions-about-science-i-scientific-proof>> (Accessed on 16 February 2018)

51. In contrast, the use of the force of law to silence minority, rejected or unfavourable ideas, beliefs and scientific theories under the guise of combating “falsehoods” is entirely contrary to the democratic ethos, and does far more damage to democracy than the perceived harm caused by any such minority views (if at all). Apart from unduly marginalising and penalising minorities on account of their views, this would also promote groupthink, ossify ideological orthodoxies and stifle democratic progress by effectively creating a nationwide echo chamber.

(f) *“False religious beliefs and practices” should not be covered*

52. There has been suggestion that laws against fake news should cover “*false religious beliefs and practices*”.<sup>35</sup> This should be wholly rejected. As a secular body, the State “*is not concerned with issues of religious doctrinal purity or deviance*”.<sup>36</sup> It would be wholly contrary to the secular nature of the State and the guarantee of religious freedom under Articles 15 and 16 of the Constitution for the State to purport to stand as an arbiter of religious truth.

53. Secular law ought instead only be concerned about the preservation of “*public order, public health or morality*”.<sup>37</sup> In this light, deliberate falsehoods which have been fabricated to intentionally vilify or incite violence against certain religious groups or individuals should be covered by the general laws regarding deliberate falsehoods, or other applicable laws.

**(ii) Specific measures, including legislation, that should be taken**

54. Bearing in mind the above principles, certain specific measures should be taken to address deliberate falsehoods, online or offline:

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<sup>35</sup> Nordin Amat, “Select Committee studying fake news should also look into false beliefs” *The Straits Times Forum* (8 January 2018)

<sup>36</sup> Singapore Parliament Reports, Oral Answers to Questions, “Cults” (6 March 2000) (col. 1141) (Assoc. Prof. Ho Peng Kee). Where Muslim religious doctrine is concerned, penalties for promulgating false doctrine are already provided for under the Administration of Muslim Law Act.

<sup>37</sup> Article 15(4), Singapore Constitution

(a) *Educating citizens to discern between truth and falsehood*

55. The primary and best defence against the propagation of falsehoods is a well-informed and discerning citizenry that is able to discern between truth and falsehood. Therefore, integral to Singapore’s response to falsehoods is to equip citizens with the right skills to manage the constant flow of information in a well-connected world.

56. At present, the social studies curriculum in secondary school seeks to impart, among other things, skills to evaluate sources of information.<sup>38</sup> The syllabus should be expanded at both primary and secondary school levels to inculcate in students the importance of honesty and integrity in public discourse, as well as to discern between truth and falsehood. As part of education, students should be given real-life examples of “fake news” and the damage caused by such falsehoods in Singapore and abroad, and to be presented with opportunities to assess and evaluate the veracity of sources and information.

57. The Government should also work with organisations like the Media Literacy Council to provide useful tools and guides to help citizens to spot and guard against falling prey to falsehoods.<sup>39</sup>

(b) *Criminal sanctions and executive powers to act against falsehoods which damage the political and economic order*

58. From the foregoing analysis, it should follow that state intervention to prevent falsehoods should be rare and limited to specific circumstances. Nevertheless, two forms of demonstrable public harm do warrant the enactment of laws to not only restrain the spread of falsehoods, but to punish and sanction those who are responsible for propagating them. These are:

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<sup>38</sup> Ministry of Education, “Syllabuses – Humanities”, online: <<https://www.moe.gov.sg/education/syllabuses/humanities/>> (Accessed on 18 February 2018)

<sup>39</sup> See, for instance, Media Literacy Council, “Your How-To Guide to Telling Fact From Falsehood – Lau Joon-Nie”, online: <<https://www.medialiteracycouncil.sg/campaign2017/telling-fact-from-falsehood.html>> (Accessed on 18 February 2018)

- (a) Falsehoods which damage the (democratic) political order by interfering with elections or electoral processes; and
- (b) Falsehoods which damage the economic order by destabilising the economic or financial system.
59. Both of these are aimed at protecting public “marketplaces” as a whole. The former seeks to protect the marketplace of ideas, which lies at the heart of the democratic order, while the latter seeks to protect the economic marketplace. Individual remedies are generally insufficient and inadequate to address the consequences of such falsehoods.
60. With regard to (a) falsehoods which damage the democratic political order by interfering with elections or electoral processes, it should be an offence to promote or denigrate through deliberate falsehood a political cause, party or candidate for the purposes of inducing person(s) to vote or refrain from voting for any cause, party or candidate. Given that the right to vote is part of the basic structure of the Constitution,<sup>40</sup> and that political fervour is heightened during an election or referendum, greater scrutiny of processes is required to ensure that voters are well-informed (as opposed to misinformed) and not unfairly induced or influenced in the exercise of their voting rights. This offence would complement the existing offences, for example, under the Parliamentary Elections Act and Presidential Elections Act.
61. With regard to (b) falsehoods which damage the economic order, it should be an offence to destabilise the economic or financial system through deliberate falsehoods. Examples of these may include the publication of deliberate falsehoods which mislead the public as to the degree and extent of trading or the prices of any securities on the market, or deliberate falsehoods which damage consumer confidence in a bank or banks, thus destabilising the banking system. Such laws are justified on the basis of the particular vulnerability of the Singapore economic system in the global market; a well-organised and targeted misinformation campaign may be able to confuse economic actors and do lasting damage to Singapore’s economic and financial system. This

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<sup>40</sup> *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at para. 69

offence would complement the existing offences, for example, under the Securities and Futures Act.

62. As stated above at paragraphs 43 to 47, in order for criminal penalties to apply, such demonstrable public harm must be established beyond reasonable doubt, and that the falsehood is made or published deliberately or with the knowledge of its untruth.
  63. Powers should also be granted to the executive branch to restrain or block sources which are propagating such falsehoods which cause demonstrable public harm to the political order or economic order, provided that the courts are able to review the jurisdictional or precedent question whether or not the statements are false (see paragraphs 35 to 37 above).
- (c) *Extra-territoriality of criminal laws on the basis of the “effects doctrine”*
64. Any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the State reprehends. This is known as the “effects doctrine”. In the case of *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489, the Court of Appeal observed, “As Singapore becomes increasingly cosmopolitan in the modern age of technology, electronics and communications, it may well be more compelling and effective for Parliament to adopt the effects doctrine as the foundation of our extraterritorial laws in addressing potential mischief.”<sup>41</sup>
  65. The rationale for extra-territorial application of criminal laws against deliberate online falsehoods is highly compelling here. Misinformation campaigns may originate from foreign sources or entities or be run through foreign servers, although the effects of such campaigns may be singularly focused on interfering with Singapore’s political or economic orders, in order to exploit local vulnerabilities. Therefore, criminal sanctions against such falsehoods should be given extra-territorial effect on the basis of the “effects doctrine”.

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<sup>41</sup> *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at paras. 85 and 88

## **F. Conclusion**

66. Jesus Christ said, “The truth shall set you free.” Freedom is founded on truth. Conversely, deception is the deepest form of captivity, and no society can thrive if falsehood is rampant. The foundation of lasting and self-sustaining peace, progress and prosperity of Singapore must be built on a bastion of truth.
67. In the democratic marketplace of ideas, the primary defence against untruth is a rational and discerning citizenry, and the proper response to untruth is *the truth*, rather than state action. Sound values of honesty and integrity in public discourse are the fibres in our moral fabric as a society, and the duty to uphold such values rests with every citizen.
68. However, just as counterfeit goods are a form of “market failure” justifying regulation in the economic order, deliberate falsehoods are a form of “market failure” in the marketplace of ideas. Thus, in circumstances where there is deliberate falsehood causing demonstrable public harm to the political or economic order, the State is justified in intervening to sanction, restrain or block the propagation of such falsehood.

Yours Sincerely,

Darius Lee  
20 February 2018