

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Kai Yip Constituency of the Kwun Tong District Council (“DC”) on 24 January 2007 upon the death of Ms Au Yuk-har, Grace, an elected member of the constituency. Pursuant to sections 26(a) and 32(1) of the District Councils Ordinance (Cap 547) (“DCO”), the Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 2 February 2007.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC” or “the Commission”) was required to arrange for a by-election to return a candidate to fill the vacancy.

The Constituency

1.3 The Kai Yip Constituency is one of the 34 DC constituencies in the Kwun Tong District, with a registered electorate of 7,221. A map showing the boundary of the constituency is at **Appendix I**.

The polling day and the nomination period

1.4 The Chief Electoral Officer (“CEO”) of the Registration and Electoral Office (“REO”) appointed Sunday, 20 May 2007 as the polling

day for the by-election and specified the period from 29 March to 17 April 2007 (both dates inclusive) as the nomination period of the by-election by publishing a notice in the Gazette on 2 March 2007.

Section 2 – Appointments and Nominations

Appointments

2.1 Miss WONG Po-lin, Pauline, JP, District Officer (Kwun Tong) (“DO(Kwun Tong)”) and Miss CHOI Mui-fun, Jenny, Assistant District Officer (Kwun Tong) were appointed by the EAC Chairman as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the by-election. Their appointments were published in the Gazette on 2 March 2007. Miss LEE Ka-wai, Karen, Government Counsel of the Department of Justice (“D of J”) was appointed by the EAC Chairman as the ARO(Legal) for the by-election on 26 February 2007.

2.2 Mr HO Bing-kwan, Barrister-at-law, was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election to provide the RO with the necessary legal advice on the eligibility of the candidates being nominated. Mr HO’s appointment, covering the period from 29 March to 21 April 2007, was published in the Gazette on 2 March 2007.

Nominations

2.3 By the close of the two-week nomination period on 17 April 2007, the RO received a total of two nominations. The nominees were Messrs

LAM Fai, Frederick and SZE Lun-hung. All the nominations were verified by the RO as valid. The NAC(DC) had not received any request from the RO for legal advice on the validity of the nominations. The names of all validly nominated candidates were published in the Gazette on 27 April 2007.

Briefing for the candidates

2.4 A briefing session for the candidates and their agents, hosted by the EAC Chairman, was conducted on 21 April 2007 at the Kwun Tong District Office (“KTDO”). The Chairman highlighted the major electoral arrangements, including the major provisions in the electoral legislation and guidelines governing election advertisements (“EAs”) and election expenses, for their attention. The Chairman encouraged them to disseminate publicity materials to electors by e-mails and on a household basis in order to reduce the use of paper. Details of these measures are set out in paragraph 3.10 below. The CEO, RO and representatives from the D of J, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the briefing. They took the opportunity to brief the candidates present and answer enquiries on subjects within their respective purview.

2.5 After the briefing session, the RO, witnessed by all parties present, drew lots to determine the candidate number (to be shown on the ballot paper) for each candidate and allocated the designated spots to

them for the display of their EAs in the constituency. As a result of the lots drawing, Messrs LAM Fai, Frederick and Sze Lun-hung were allocated the candidate number 1 and 2 respectively. A total of 86 spots in the Kai Yip Constituency were designated for the display of their EAs during the election period, and each candidate was equally allocated with 43 spots.

EAC Guidelines on election-related activities

2.6 The revised guidelines issued for the by-election held on 23 October 2005 were used for this by-election.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 Similar to the previous DC by-elections, the staff of REO were appointed to take up the polling and counting duties. To ensure that the staff were competent in discharging their duties, a half-day briefing session on polling and counting duties including a mock-up session on counting work was conducted on 14 May 2007 to enable all the staff concerned to familiarise themselves with their duties.

The polling-cum-counting station

3.2 As in the previous DC by-elections, both the poll and the count for the by-election were conducted at the same place. The Kai Yip Community Hall was designated by the CEO as the polling-cum-counting station for the by-election. The designation of the polling and counting station was published in the Gazette for public notice on 27 April 2007. The station was accessible to the disabled.

3.3 Setting up arrangements for the polling station was held in the morning on the day preceding the polling day. The venue at the Kai Yip Community Hall was partitioned into two areas, one for the poll and the other reserved for the count. Within the counting area, there was a counting zone, a seating area for the candidates and their agents, a press

area and a public area where members of the public might stay and observe the count. Candidates and their election/counting agents were allowed to stand around the counting table to observe the count from a close distance.

3.4 During the polling hours, the Presiding Officer (“PRO”) of the polling station, assisted by one Deputy Presiding Officer (“DPRO”) and eight Assistant Presiding Officers (“APROs”), was responsible for ensuring the smooth and efficient operation of the polling station and to work closely with the RO. When the count started, the PRO assumed the role of Counting Supervisor in overseeing the counting process and was also responsible for determining the validity of questionable ballot papers while the DPRO and APROs performed the duties of Assistant Counting Supervisors.

3.5 Outside the polling station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO so that the electors could have a free and safe passage to the station. A notice was put up at a conspicuous spot outside the station, notifying the public of the delineation of the NCZ and NSZ.

Other electoral arrangements

3.6 Similar to the preceding DC by-elections, arrangements were

made to address the public concern on vote secrecy during the poll, including –

- (a) displaying prominent signs inside and outside the polling station to remind electors that it was an offence to use a mobile telephone inside the polling station;
- (b) the polling staff reminding each elector at the ballot paper issuing desk not to use mobile telephones;
- (c) not installing any curtain in front of the voting compartments so that the polling staff, the candidates and their agents could observe whether the elector was using a mobile telephone inside the voting compartment;
- (d) designating an enlarged restricted zone (around two metres) outside the voting compartments and not allowing any other person to stay in the zone, so that the elector's choice on the ballot paper would be prevented from being seen by other persons; and
- (e) setting the table inside the voting compartment in such a position that would cause the body of the elector to block the marking from being visible to persons outside the voting compartment.

3.7 To avoid exposure of the elector's personal particulars shown on the registers at the ballot paper issuing desks, especially to the electors waiting in a queue, a restricted zone (around one metre) was delineated in front of each issuing desk and a specially designed cardboard stand was placed at the front edge of the desk to block the line of vision of anyone standing behind him/her.

Notification to electors

3.8 In line with the established practices, the REO sent a poll card to each registered elector of the by-election on 2 May 2007 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including a candidates' introductory leaflet, a guidance note on voting, a location map of the polling station, an appeal letter from the DO(Kwun Tong) to electors to exercise their civic rights by casting their votes and a leaflet on clean and fair elections issued by the ICAC. The introductory leaflet which included the candidates' election platform was also uploaded onto the REO's website for public browsing.

Reduction of paper consumption

3.9 To reduce paper consumption on election-related materials in the by-election, similar to the preceding DC by-elections, a revised layout of the candidates' introductory leaflet was adopted in which each

candidate was allocated with the size of no more than a quarter of an A4 paper, as compared to the previous practice of allowing half an A4 size page.

3.10 The REO had also put in place the following arrangements on a trial basis –

- (a) similar to the DC by-elections held since October 2005, to encourage candidates to send their election-related publicity materials electronically to the electors, the REO had sent appeal letters to the electors of the Kai Yip Constituency beforehand inviting them to provide the REO with their e-mail addresses. A total of 168 e-mail addresses were thus collected for this particular by-election. The candidates were provided with a CD-ROM containing information of electors who had chosen to receive election-related publicity materials by e-mail (together with the addresses of all electors); and
- (b) similar to the preceding DC by-election held on 11 March 2007, to facilitate candidates to send election-related publicity materials on a household basis, the REO had provided an option to all candidates to select one set of gum labels of the addresses of all electors in the constituency from either (i) addresses of all electors on household basis, or (ii) addresses of all electors on

individual basis. Of the two candidates of the by-election, one of them opted for the arrangement of sending his election-related materials to electors on a household basis.

Publicity

3.11 The REO had, on appropriate occasions, issued press releases covering the major events of the by-election which included the commencement and the close of the nomination period, the poll, the count and the EAC visits to the polling and counting station. Besides, all relevant information on the by-election (including press releases, the hourly electors' turnout rate, election result, etc) was uploaded onto the REO's website for public information.

Contingency plan

3.12 To cater for unforeseen situations in which the by-election might not be proceeded with as scheduled for one reason or another (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling station to reserve the same venue for polling on the following Sunday, i.e. 27 May 2007. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. A dedicated van was also provided to the polling station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling hours

4.1 The poll was scheduled from 7:30 am to 10:30 pm on Sunday, 20 May 2007. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 27 April 2007.

Logistical arrangements

4.2 A central command centre was set up for overseeing the operation of the poll and providing logistical support to the staff in the polling station on the polling day. In addition, the centre also assisted in handling enquiries and complaints and collating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received, etc. The centre operated at the REO office in Guardian House from 7:00 am on the polling day until 1:00 am on 21 May 2007. A press enquiry desk was set up from 7:30 am until the announcement of the election result for handling press enquiries and disseminating information to the public through the media at regular intervals. The election enquiry hotline operated from 7:00 am to 11:00 pm to handle general enquiries from the electors and to provide information to the polling station on the identity and eligibility of electors.

4.3 A complaints centre was also set up in the REO office in Harbour Centre to receive and process election-related complaints lodged with the EAC direct from the public by phone, fax or e-mail and those referred to the EAC through other complaint-handling channels. It was manned by the staff of the Complaints Unit of the EAC secretariat and operated throughout the polling hours from 7:30 am to 10:30 pm on the polling day.

4.4 At the district level, a district command centre, manned by staff of the Home Affairs Department (“HAD”), was set up at the KTDO to serve as the contact point between the RO and the PRO. The PRO was responsible for keeping the RO and ARO informed of all significant events which occurred within the polling station and for handling election-related complaints. Under the direction of the district command centre, a district team took action against unauthorised EAs and illegal canvassing activities in or around the NCZ and the polling station.

4.5 The Hong Kong Police Force and Civil Aid Service (“CAS”) rendered support in maintaining law and order in the NCZ, NSZ and inside the polling-cum-counting station.

Turnout of electors

4.6 Out of 7,221 registered electors for the Kai Yip Constituency,

3,392 turned up to cast their votes. The overall turnout rate was 46.97%, which was 2.19% lower than the rate for this particular constituency in the 2003 DC ordinary election.

4.7 A breakdown of the hourly turnout rate of electors in respect of this by-election is shown in **Appendix II**.

Visits

4.8 Mr Justice PANG, EAC Chairman and Professor Andrew CHAN, Member of the Commission, paid visit to the polling station in the morning on the polling day. They concluded the visit by briefing the press on the latest progress of the poll. They also encouraged the electors to cast their votes.

4.9 Mr Stephen LAM, Secretary for Constitutional Affairs, also visited the polling station on the polling day.

Section 5 – The Conversion

5.1 The poll closed at 10:30 pm as scheduled. A notice was promptly displayed at the entrance of the station, notifying the public of the close of poll and the temporary closure of the station to facilitate its conversion into a counting station. The telephone number of the APRO concerned was also shown on the notice to facilitate communication between the candidates' agents and the station staff. Before the counting of the votes began, another notice was displayed outside the station, announcing the approximate time when the station would be opened again for the public to observe the count.

5.2 The PRO sealed the ballot boxes in the presence of all candidates and their agents, while the polling staff were preparing for the conversion of the station. The conversion process was completed smoothly within 20 minutes.

5.3 Mr Justice PANG, EAC Chairman and Mr Lawrence LOK and Professor Andrew CHAN, Members of the Commission, observed the entire conversion process in the counting station. They were satisfied with the smooth conduct of the conversion.

Section 6 – The Count

Start of the count

6.1 At about 10:50 pm, the station was re-opened for admission of the public including the media to observe the count. In the presence of all candidates and their agents, the PRO and DPRO transferred the sealed ballot boxes to the counting table. The PRO unsealed the ballot boxes which were jointly emptied by Mr Justice PANG, Mr Lawrence LOK, Professor Andrew CHAN and Mr Stephen LAM. The count then commenced immediately.

Invalid and questionable ballot papers

6.2 A total of 3,392 registered electors turned up to cast their votes in the Kai Yip Constituency by-election. However, only 3,390 ballot papers were cast into the ballot boxes because two electors had returned their unused ballot papers to the PRO.

6.3 Out of 3,390 ballot papers cast into the ballot boxes, 13 ballot papers were determined as invalid (including one endorsed with the word “TENDERED”, six unmarked, two not marked with the chop provided by the polling station and four marked with votes for more than one candidate) and therefore not counted pursuant to section 78 of the Electoral Affairs Commission (Electoral Procedure) (District

Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”). In addition, another 14 ballot papers were identified as questionable.

6.4 In the presence of the candidates and their agents, the PRO concerned, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. As a result, five questionable ballot papers were determined by the PRO as invalid and were not counted (two bore marks by which the elector could possibly be identified and three were void for uncertainty). The remaining nine questionable ballot papers were determined by the PRO as valid and were counted. The total number of ballot papers not counted was 20. An analysis of the ballot papers not counted is shown in **Appendix III**.

Election result

6.5 Upon the completion of the count, the PRO verified the number of ballot papers counted with the ballot paper accounts. The figures were found consistent. The PRO informed the RO of the result of the count. There was no request for a re-count of votes from the candidates or their agents.

6.6 The count finished at around 11:40 pm. At about 11:45 pm, the RO declared the election result: Mr SZE Lun-hung was elected with 2,020 valid votes, representing 59.91% of the total number of valid votes

cast. Mr LAM Fai, Frederick received 1,352. The election result for the Kai Yip Constituency was published in the Gazette on 24 May 2007 and is now reproduced at **Appendix IV**.

Meeting the media

6.7 The Chairman and Members of the EAC met the press immediately after the announcement of the election result to conclude that the Commission was content with the polling-cum-counting arrangement and the efficient completion of the counting process. They were satisfied that the principle of fairness, openness and honesty was upheld throughout the process of this by-election. The Chairman also took the opportunity to thank all parties concerned for the smooth conduct of the by-election.

Section 7 – Complaints

Complaint-handling period

7.1 The Commission took up the responsibility to handle complaints in relation to the by-election, instead of forming a Complaints Committee as in ordinary elections. Five different parties were responsible for processing the complaints received: the EAC, RO, Police, ICAC and, on the polling day, the PRO as well. Members of the public could lodge their complaints with any of these parties.

7.2 The period for receiving complaints for this by-election commenced on 29 March 2007 when the nomination period began. It ended on 4 July 2007, i.e. 45 days after the polling day. During this period, a total of 31 complaints were received from the public by the EAC, RO and Police. The majority of these complaint cases were about illegal canvassing in the no canvassing zone. There were also complaints against noise nuisances, EAs, disturbances to electors caused by loudspeakers and broadcasting vans, criminal damage and other nuisances. A breakdown of the complaints is set out in **Appendix V**.

Complaints received on the polling day

7.3 The REO complaints centre, the RO and the Police received altogether 27 complaint cases on the polling day. No complaint was received by the ICAC and PRO. The following shows a breakdown of these cases –

| | Number of complaints received on the polling day |
|-----------------------|---------------------------------------------------------|
| REO complaints centre | 3 |
| RO | 16 |
| Police | 8 |
| Total | 27 |

7.4 All cases received on the polling day were expeditiously handled and resolved on the spot. The majority of the complaint cases were about illegal canvassing in the no canvassing zone. A breakdown of complaint cases received on the polling day is shown in **Appendix VI**. These 27 complaints are also included in Appendix V.

Outcome of investigation

7.5 Of the 31 complaints received during the complaint-handling period, 14 were found substantiated, 16 not substantiated and one partially substantiated.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC conducted an overall review of all aspects of the by-election with a view to improving the conduct of future elections. The EAC found the polling and counting arrangement generally satisfactory. The areas that have been reviewed and the related recommendations are set out in the ensuing paragraphs.

(A) Reduction of paper consumption on election-related materials

8.2 As a means to reduce paper consumption, the REO continued to try out in this by-election the arrangements of collecting e-mail addresses from electors to facilitate candidates to send their publicity materials electronically, and providing candidates with the address labels of electors on a household basis so that the candidates could send their publicity materials on a household basis. Details of the above arrangements are set out in paragraph 3.10 above.

8.3 **Recommendation:** EAC considers that the trial arrangements should continue for the coming DC by-elections before coming to a view on whether they should be adopted on a long-term basis.

(B) Arrangement of ballot paper issuing desks

8.4 As in other public elections, the ballot paper issuing desks of this by-election were arranged by the electors' Hong Kong Identity Card ("HKID") numbers. Generally, the order of HKID numbers is related to the order of age. Each ballot paper issuing desk would therefore likely be serving electors of similar age. The EAC noticed that there were occasionally long queues at the ballot paper issuing desks serving elderly electors while other issuing desks only had a few people waiting.

8.5 **Recommendation:** The EAC understands that the REO has adopted the arrangement of ballot paper issuing desks similar to that in other public elections, and the occasional long queues were mainly due to the voting habits of some elderly electors who went to vote in groups at certain periods in the morning. Also, the PRO had taken prompt action to alleviate the problem within a short period of time. However, the REO should try, as far as possible, to take into account the age profile of electors when arranging ballot paper issuing desks in the future, to avoid prolonged queuing at some of the issuing desks.

(C) Counting tables

8.6 The EAC noticed that a few ballot papers had accidentally fallen onto the floor when the ballot papers were poured out from the ballot boxes to the counting table before the commencement of

counting.

8.7 **Recommendation:** The EAC considers that to prevent ballot papers from falling onto the floor when they were being poured out onto the counting table, a plastic fence of about 1 to 2 inches high could be added around the edges of the counting table. The material of the fence should preferably be transparent so as not to block the sight of the candidates and the public. The REO should explore the feasibility of this arrangement for future elections.

Section 9 – Acknowledgement

9.1 The Commission wishes to express its gratitude towards the following government bureaux and departments for their valuable assistance rendered throughout the by-election: Constitutional Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Government Logistics Department, Highways Department, HAD, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Lands Department, Office of the Government Chief Information Officer (of the Commerce, Industry and Technology Bureau) and Official Languages Division (of the Civil Service Bureau). Their concerted efforts have contributed significantly to the successful conduct of the by-election.

9.2 The Commission is particularly grateful for the efforts of all REO staff, officers serving as RO, AROs, PRO and APROs, and the legal practitioner serving on the NAC(DC) in the by-election.

9.3 The Commission wishes to thank the media for their wide coverage of the key events in relation to this by-election which has contributed much to enhance its transparency.

9.4 Last but not least, the Commission would like to express its

appreciation to the electors who turned up to cast their vote and all those who complied with the electoral legislation and guidelines in the by-election.

Section 10 – Looking Forward

10.1 The imminent task for the EAC is the 2007 DC ordinary election scheduled to be held on 18 November 2007. Preparation work has already begun. The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to the views from the public on what measures should be taken to improve future electoral arrangements.

10.2 The Commission would like to recommend this report be made public, at a time the Chief Executive thinks fit, to enhance the transparency of the Commission's work in the conduct and supervision of the by-election under the EAC Ordinance (Cap 541).