

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Tsz Wan West Constituency of the Wong Tai Sin District Council (“DC”) on 31 August 2008 upon the death of Ms Tam Yuet-ping, 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 12 September 2008.

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

The Constituency

1.3 The Tsz Wan West Constituency is one of the 25 DC constituencies in the Wong Tai Sin District, with a registered electorate of 10,978. 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 30 November 2008 (Sunday) as the

polling day for the by-election and specified the period from 10 to 23 October 2008 (both dates inclusive) as the nomination period of the by-election by publishing a notice in the Gazette on 26 September 2008.

Section 2 – Appointments and Nominations

Appointments

2.1 Mrs Teresa Wong, JP, District Officer (Wong Tai Sin), and Miss Chan Tsz-ki, Trinky, Assistant District Officer (Wong Tai Sin), were appointed by the EAC as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the by-election on 23 September 2008. Their appointments were published in the Gazette on 26 September 2008. Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“D of J”), was appointed by the EAC as the ARO(Legal) for the by-election on 23 September 2008.

2.2 Mr Lui Kit-ling, 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 Lui’s appointment, covering the period from 10 to 27 October 2008, was published in the Gazette on 26 September 2008.

Nominations

2.3 By the close of the two-week nomination period on 23 October 2008, the RO received a total of three nominations. The nominees were Mr Lui Wing-kei, Mr Yuen Kwok-keung and Ms Lee Ling-fung. All

the nominations were confirmed valid by the RO. 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 31 October 2008.

Briefing for the candidates

2.4 The EAC Chairman held a briefing session on 28 October 2008 at the Wong Tai Sin District Office (“WTSDO”) to draw the attention of the candidates and their agents to the major provisions in the relevant electoral legislation and guidelines. Topics included polling and counting arrangements, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO and representatives of the RO, 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 the designated spots to be allocated to the candidates for displaying EAs. As a result of the lots drawing, Mr Lui Wing-kei, Mr Yuen Kwok-keung and Ms Lee Ling-fung were allocated the candidate number 1, 2 and 3 respectively. A total of 63 spots in the Tsz Wan West Constituency were designated for the display

of EAs during the election period, and each candidate was equally allocated with 21 spots.

EAC Guidelines on election-related activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election updated in August 2008 were used for this by-election.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 The staff of REO were appointed to take up the polling and counting duties. A half-day briefing session on polling and counting duties including a mock session on counting work was conducted on 25 November 2008 to familiarise all the staff concerned with their duties.

The polling-cum-counting station

3.2 The polling-cum-counting arrangement was adopted for this by-election. Ho Lap Primary School (sponsored by Sik Sik Yuen) was designated by the CEO as the polling-cum-counting station for the by-election. Designation of the school as the polling-cum-counting station was published in the Gazette on 31 October 2008. The station was accessible to the disabled.

3.3 The polling station was set up in the morning of the day preceding the polling day. It was converted into a counting station after the close of poll. 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. The PRO worked closely with the RO. When the count started, the PRO assumed the role of Counting Supervisor in overseeing the counting process and was 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 to provide the electors with a hindrance-free access 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 the NSZ.

Notification to electors

3.6 The REO sent a poll card to each registered elector of the Tsz Wan West Constituency on 13 November 2008 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a guidance note on voting, a location map of the polling-cum-counting station and a leaflet on clean and fair elections issued by the ICAC. The “Introduction to Candidates” which included the candidates’ election platform was also uploaded to the REO’s website.

Publicity

3.7 The REO 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's 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 to the REO's website for public information.

Contingency plan

3.8 To cater for the unforeseen situations in which the by-election might not be held as scheduled (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling-cum-counting station to reserve the same venue on the following Sunday on 7 December 2008. 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-cum-counting station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling hours

4.1 The poll was scheduled from 7:30 a.m. to 10:30 p.m. on 30 November 2008. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 31 October 2008.

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 disseminating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received. The centre operated at the REO office in Guardian House from 7:00 a.m. on the polling day until 1:00 a.m. on 1 December 2008. A media enquiry hotline was set up from 7:30 a.m. until the announcement of the election result to handle press enquiries and to disseminate information to the public through the media at regular intervals. The election enquiry hotline operated from 7:00 a.m. to 11:00 p.m. 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 set up in the REO office in Harbour Centre to receive and process election-related complaints. It was manned by the staff of the Complaints Unit of the EAC Secretariat and operated throughout the polling hours from 7:30 a.m. to 10:30 p.m.

4.4 At the district level, a district command centre, manned by the staff of the Home Affairs Department (“HAD”), was set up at the WTSDO 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 the Civil Aid Service rendered support in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting station.

Turnout of electors

4.6 Out of 10,978 registered electors for the Tsz Wan West Constituency, 4,538 cast their votes. The overall turnout rate was 41.34%. A breakdown of the hourly turnout rate of electors is at **Appendix II**.

Visits

4.7 Mr Justice Pang, the EAC Chairman, and Mr Lawrence Lok, the EAC Member, visited the polling station in the morning of 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.

4.8 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling station on the polling day.

Section 5 – The Conversion

5.1 The poll closed at 10:30 p.m. 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 open again for the public to observe the count.

5.2 The PRO sealed the ballot boxes in the presence of the candidates and their agents, while the polling staff were preparing for the conversion of the station. The conversion was completed smoothly within 30 minutes.

5.3 Mr Justice Pang, the EAC Chairman, together with Mr Lawrence Lok and Professor Andrew Chan, Members of the EAC, observed the entire conversion process of the station. They were satisfied with the smooth conduct of the conversion.

Section 6 – The Count

Start of the count

6.1 At about 11:00 p.m., the station was re-opened for admission of the public and 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 Out of 4,539 ballot papers cast into the ballot boxes, 13 ballot papers were determined as invalid (including one endorsed with the words “重覆” and “TENDERED”, nine unmarked and three containing votes for more than one candidate) and therefore not counted in accordance with section 78 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F). Another 77 ballot papers were identified as questionable.

6.3 In the presence of the candidates and their agents, the PRO, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. Four questionable ballot papers were ruled invalid by the PRO and were not

counted. They were voided for uncertainty. The remaining 73 questionable ballot papers were ruled valid by the PRO and were counted. The total number of ballot papers not counted was 17. A summary of the ballot papers not counted is at **Appendix III**.

Election result

6.4 The count finished at around 12:00 midnight. The PRO verified the number of ballot papers counted with the ballot paper account. The figures were found consistent. The PRO informed the RO of the result of the count.

6.5 At about 12:05 a.m., as there was no request for a re-count from the candidates, the RO declared the election result. Mr Yuen Kwok-keung was elected with 2,635 valid votes, representing 58.27% of the total number of 4,522 valid votes cast. The other two candidates, Mr Lui Wing-kei and Ms Lee Ling-fung, received 1,797 and 90 votes respectively. The election deposit of one of the candidates, Ms Lee Ling-fung, was forfeited in accordance with section 4(2) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A) because the number of valid votes she obtained was less than 5% of the total number of valid votes cast. The election result for the Tsz Wan West Constituency was published in the Gazette on 5 December 2008 and is now reproduced at **Appendix IV**.

Meeting the media

6.6 The Chairman and Members of the EAC met the press immediately after the announcement of the election result to conclude that the EAC 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 EAC undertook to continue to review the electoral procedures and arrangements with a view to refining and improving them for public elections in future. The Chairman also took the opportunity to thank all parties concerned for the smooth conduct of the by-election.

Section 7 – Complaints

Complaints-handling period

7.1 The EAC took up the responsibility of handling complaints in relation to the by-election. Five different parties were designated for handling and processing complaints: the EAC, RO, Police, ICAC and, on the polling day, the PRO as well. Complainants could lodge their complaints with any of the above parties.

7.2 The complaints-handling period started on the day when the nomination period commenced on 10 October 2008, and ended 45 days after the polling day on 14 January 2009. By the end of the complaints-handling period, a total of 23 complaints were received from the public by the five complaints-handling parties. The majority of these complaints concerned disturbances to electors caused by canvassing activities. A breakdown of the complaints is at **Appendix V**.

Complaints received on the polling day

7.3 The REO complaints centre, the RO, the PRO, the Police and the ICAC received altogether 15 complaint cases on the polling day. A breakdown of these cases is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO complaints centre	5
RO	3
Police	5
ICAC	1
PRO	1
Total	15

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned disturbances to electors caused by canvassing activities. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These 15 complaints are also included in **Appendix V**.

Outcome of investigation

7.5 Of the 23 complaints received during the complaints-handling period, four were found substantiated, three unsubstantiated, 12 requiring no further action and four under investigation.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC conducted an overall review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC found the polling and counting arrangement generally satisfactory. The area that has been reviewed and the related recommendation is set out in the ensuing paragraphs.

Sending election advertisements

8.2 To reduce paper consumption on election-related materials in the by-election, the REO had encouraged candidates to send their EAs to the electors by electronic means. Over 330 e-mail addresses of the electors of the Tsz Wan West Constituency were provided to each candidate for this purpose.

8.3 **Recommendation:** The EAC considers that candidates should continue to be encouraged to disseminate EAs by electronic means. Continuous efforts should be made by the REO to solicit e-mail addresses from electors, so that candidates can choose to send EAs to electors by electronic means.

Section 9 – Acknowledgement

9.1 The successful conclusion of the by-election was attributable to the dedicated and concerted efforts of all parties involved.

9.2 The EAC would like to thank the following government bureaux and departments for their support and assistance:

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Department of Justice

Drainage Services Department

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Home Affairs Department

Hong Kong Police Force

Hongkong Post

Independent Commission Against Corruption

Information Services Department

Official Languages Division (of the Civil Service Bureau)

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

9.4 The EAC would like to thank members of the media who had helped substantially to enhance the transparency of the by-election by giving a wide coverage.

9.5 The EAC would also like to express its appreciation to the electors who turned up to cast their votes and all those who complied with the electoral legislation and guidelines in the by-election.

Section 10 – Looking Forward

10.1 The EAC remains committed to fulfilling the mission of safeguarding the integrity of public elections in Hong Kong. It will continue to make its efforts in keeping a vigilant watch over every election to ensure openness, fairness and honesty. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

10.2 The EAC recommends that this report be made public, at a time the Chief Executive thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the by-election.