

CHAPTER 13

THE COMPLAINTS

Section 1 – A General View

13.1 The complaint-handling mechanism is one of the means to safeguard the fairness and integrity of the electoral system. Some complaints revealed deficiencies in a number of areas of electoral arrangements and helped the EAC to bring about better arrangements for future elections. It also provides a monitoring system for candidates to exercise mutual checks among themselves and through these complaints, they will better understand the electoral law and guidelines. The EAC is committed to handling the complaints received fairly and efficiently and ensuring that the complaint-handling mechanism is not abused.

Section 2 – The Election Committee Subsector Elections

13.2 The complaints-handling periods for the non-DC Subsectors and DC Subsectors for the ECSS Elections started from 8 November 2011 and 18 November 2011 respectively, i.e. the days when the respective nomination periods commenced, and ended on 25 January 2012, i.e. 45 days after the polling day on 11 December 2011. Instead of setting up a Complaints Committee as in some other elections, the EAC assumed the task of handling election-related complaints for the elections. Five different parties were responsible for processing the complaints received: the EAC, ROs, Police, ICAC and, on the polling day, the PROs as well. Members of the public could lodge their complaints to any of these parties. The EAC, supported by the EAC Secretariat, dealt with cases that were within its jurisdiction and not

covered by any statutory provisions involving criminal sanction. As the complaints for the elections could be complex in nature, the EAC appointed Ms Dorothy CHENG, Senior Assistant Law Officer (Civil Law)(Acting) from the DoJ, as the Legal Advisor for the purpose of providing legal advice in handling complaints relating to the elections. The ROs were delegated with the authority to handle those complaint cases that were less complicated. The Police handled cases that involved criminal sanction and the ICAC attended to cases that involved breaches of the ECICO and Prevention of Bribery Ordinance (Cap 201). The PROs handled complaints on the polling day at their respective polling stations and took immediate action on the spot on those cases which required immediate attention.

13.3 By the end of the complaints-handling periods, a total of 100 cases were received from the public by the EAC (56 cases), ROs (11 cases), Police (4 cases), ICAC (7 cases) and PROs (22 cases). Of these, 40 cases were received on the polling day by the EAC (13 cases), the ROs (2 cases), the Police (3 cases) and the PROs (22 cases). The majority of the cases concerned personal data privacy (20 cases) and election advertisements (13 cases). A detailed breakdown of these cases by the receiving party and nature is shown at **Appendices XI(A) – (B)**. The outcome of complaint cases investigated is summarised at **Appendices XII(A) – (D)**.

Section 3 – The Chief Executive Election

13.4 The complaints-handling period for the CE Election started on 3 January 2012 and ended on 9 May 2012, i.e. 45 days after the polling day on 25 March 2012. As in the case of ECSS Elections, the EAC directly handled complaints relating to the election and appointed Ms Dorothy CHENG, Senior Assistant Law Officer (Civil Law) (Acting) from the DoJ as the Legal Advisor

to provide legal advice as needed. The ICAC and the Police, collaborating with the EAC, also assisted in the handling of complaints within their respective purviews. On the polling day, the RO was delegated with the authority by the EAC to handle complaints received in the main polling station and required immediate action on the spot.

13.5 During the complaints-handling period, a total of 119 complaints were received by the EAC, Police and the ICAC. Among the 48 complaint cases received by the EAC, 14 cases were about media reporting. A breakdown of all these complaint cases by receiving party and nature is set out at **Appendix XIII(A) – (B)**. The outcome of complaint cases investigated is summarised at **Appendix XIV(A) – (C)**.

Section 4 – Judicial Review

13.6 Mr Chan Yuk-lun had lodged an application for leave to apply for judicial review (“JR”) to challenge the decision to declare that Mr Ho Chun-yan, Mr Tang Ying-yen Henry and Mr Leung Chun-ying were the candidates validly nominated for the 2012 CE Election on the ground that they were not qualified for nomination for the CE Election. The Court of First Instance handed down its judgment on 22 March 2012 and refused to grant leave to the JR application.

