

## **CHAPTER 13**

### **THE COMPLAINTS**

#### **Section 1 – A General View**

13.1 The complaint-handling mechanism forms an important part for the EAC to safeguard the fairness and integrity of the electoral system. Complaints can often reveal the deficiencies in certain aspects of the electoral arrangements and help the EAC make better arrangements for future elections.

13.2 The complaints mechanism also provides a monitoring system for candidates to undertake mutual checks among themselves and through these complaints, they will better understand the requirements of the electoral legislation and Guidelines. The EAC is committed to handling complaints received fairly and efficiently and ensuring that the complaints mechanism is not abused.

#### **Section 2 – Election Committee Subsector Ordinary Elections**

13.3 The complaints-handling period for the ECSS Ordinary Elections started from 8 November 2016, i.e. the day when the nomination period commenced, and ended on 25 January 2017, i.e. 45 days after the polling day. Based on past experience, the number of complaints to be handled in the ECSS Ordinary Elections would be small. Therefore, instead of forming a Complaints Committee as in some other elections, the EAC assumed the task of handling the election-related complaints for this election. A total of 5 designated parties were responsible for handling complaints during the complaints-handling period. They were the EAC, ROs, Police, ICAC and the

PROs (who discharged the duties on the polling day only). Complainants could lodge their complaints with any of the above parties. Each of these parties had their respective areas of responsibilities depending on the nature of the complaints. The EAC, supported by its Secretariat, dealt with cases that were within its jurisdiction and not involving criminal liability. The ROs were responsible for handling complaint cases of a minor nature under the authority delegated to them by the EAC. The Police handled complaints that involved criminal offences, e.g. breaches of the EAC (EP) (EC) Reg and criminal damage of EAs and the ICAC attended to offending cases that involved breaches of the ECICO, Prevention of Bribery Ordinance (Cap. 201) and Independent Commission Against Corruption Ordinance (Cap. 204), etc. The PROs handled complaints received at the polling stations on the polling day and took action on those cases which required immediate attention.

13.4 By the end of the complaints-handling period on 25 January 2017, a total of 94 cases were directly received from the public by the aforementioned 5 parties, i.e. the EAC (61 cases), ROs (6 cases), Police (3 cases), ICAC (3 cases) and PROs (21 cases). Of these, 43 cases were received on the polling day by the EAC (19 cases), ROs (1 case), Police (2 cases) and PROs (21 cases).

13.5 The majority of the complaints were related to election expenses (16 cases) and EAs (12 cases). A detailed breakdown of the complaints by receiving party and nature lodged during the complaints-handling period is at **Appendices XI (A) – (B)**. A breakdown of the outcome of investigations is at **Appendices XII (A) – (D)**.

### **Section 3 – Chief Executive Election**

13.6 The complaints-handling period for the CE Election started on 16 January 2017 and ended on 10 May 2017, i.e. 45 days after the polling day. As in the case of ECSS Elections, the EAC directly handled complaints relating to the election and appointed a Senior Government Counsel 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 purview. The RO handled complaints received at the main polling station on the polling day and was delegated with the authority by the EAC to take action on cases that required immediate attention, e.g. unlawful activities carried out in the polling station, NCZs or NSZs.

13.7 During the complaints-handling period, a total of 97 complaints were received by the EAC, Police, ICAC and the PROs. Among the 64 complaint cases received by the EAC, 41 were about media reporting. A breakdown of all these complaint cases by receiving party and nature is shown at **Appendices XIII (A) – (B)**. The outcome of complaint cases investigated by category is shown at **Appendices XIV (A) – (C)**.

### **Section 4 – Matters of Public and Media Attention**

13.8 It was reported by the media that before the commencement of the nomination period, certain social media pages (or blogs) had been set up on the Internet publishing messages which might promote or prejudice the election of individuals who publicly declared their intention to stand in the CE Election. The EAC noted the situation and issued a press release on 27 January 2017 to remind the public of the statutory requirements on EAs and election expenses under the relevant electoral laws.

13.9 According to section 2 of the ECICO, “candidate” includes a person who has publicly declared an intention to stand for election at any time before the end of nomination period for an election; “election advertisement” means any form of publication published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election; “election expenses” mean expenses incurred before, during or after the election period, by or on behalf of the candidate for the purpose of promoting or prejudicing the election of the candidate. The maximum amount of election expenses is prescribed by the law with a view to ensuring that the amount of election expenses of each candidate is kept within a reasonable and equal level. Anyone not authorised by a candidate as his/her election expense agent who incurred election expenses is in breach of section 23 of the ECICO, and is liable to a fine of \$200,000 and imprisonment for 3 years.

13.10 Propaganda or remarks promoting or prejudicing the election of any candidate by anyone through internet platforms such as websites, social media, communication networks, etc., will be regarded as EA. However, if anyone merely express, share or forward views or opinions on different candidates through internet platforms with no intention to promote or prejudice the election of any candidates, such expression, sharing or forwarding will not normally be regarded as publishing an EA. But if someone is instructed by a candidate or his/her election helpers to publish, share or forward the election publicity materials of the candidate through internet platforms with the intention to promote or prejudice the election of a candidate or candidates at the election, such an act will be regarded as publication of the candidate’s EA, and any costs incurred will have to be included in the election expenses of the candidate. Further, anyone not authorised by a candidate as his/her election expense agent who incurred election expenses is also in breach of the law.

13.11 In addition, according to section 26 of ECICO, a person is also engaged in illegal conduct at an election if the person publishes a materially false or misleading statement of fact about a particular candidate or candidates for the purpose of promoting or prejudicing the election of the candidate or candidates, and may be subject to a fine of \$200,000 and imprisonment for 3 years.

13.12 The EAC reminded members of the public that they should abide by the relevant legislation and the CE Election Guidelines in order to ensure that the election would be conducted in a fair, open, honest and clean manner. If the EAC or the RO received any complaint concerning any possible offence under the ECICO, the same would be referred to the LEA for investigation and follow-up action.

## **Section 5 – Judicial Review**

13.13 The Court has received a total of 4 applications for judicial review (“JR”) in relation to the 2017 CE Election. The details are set out as follows:

- (a) Mr CHEUNG Tak-wing filed an application for leave to apply for JR on 21 March 2017. He alleged that Mrs LAM CHENG Yuet-ngor, Carrie was not eligible for being nominated as a candidate in the 2017 CE Election, and requested the Court to order that the REO had committed administrative misconduct and that the candidature of Mrs Lam be invalidated (Case No.: HCAL 89/2017);
- (b) Mr KWOK Cheuk-kin filed an application for leave to apply for JR on 23 March 2017. He alleged that Mrs LAM CHENG Yuet-ngor, Carrie was not eligible for being nominated as a

candidate in the 2017 CE Election, and requested the Court to order that her candidature be revoked (Case No.: HCAL 94/2017);

- (c) Mr CHAN Yuk-lun filed an application for leave to apply for JR on 23 March 2017. He alleged that Mr TSANG Chun-wah, John, Mrs LAM CHENG Yuet-ngor, Carrie and Mr Woo Kwok-hing were not qualified for being nominated as candidates in the 2017 CE Election, and requested the Court to order that the notice published by the RO on 7 March 2017 was invalid, in which the aforementioned persons were declared as being validly nominated as candidates, and that an alternative legitimate arrangement should be separately made for the CE Election (Case No.: HCAL 97/2017); and
- (d) Mr Ahm Warm-sun filed an application for leave to apply for JR on 25 April 2017. He alleged that the election of Mrs LAM CHENG Yuet-ngor, Carrie, as CE would adversely affect the opportunity for Hong Kong citizens to attain a harmonious environment, and requested the Court to order that her eligibility to be the CE be revoked. The Court of First Instance handed down its judgment on 5 June 2017 and refused to grant leave to the JR application (Case No.: HCAL 158/2017).

13.14 Cases (a) to (c) are still being listed for hearing as at the date of the publication of this report.