

Section 1 – Prologue

The vacancy

1.1 A vacancy has arisen in the membership of the Kowloon City District Council on 22 August 2002 upon the death of Mr David CHU Chor-sing, an elected member of the Kai Tak Constituency. Pursuant to ss 26(a) and 32(1) of the District Councils Ordinance (“DCO”), the Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 30 August 2002.

1.2 In accordance with s 33(1) of the DCO, the Electoral Affairs Commission (“EAC” or “Commission”) must conduct a by-election (“the by-election”) to return a member to fill that vacancy in the District Council (“DC”).

1.3 The boundary of the Kai Tak Constituency is described in detail in **Appendix I**.

Date of the by-election and nomination period

1.4 The Chief Electoral Officer (“CEO”) published a notice in the Gazette on 6 September 2002, appointing 3 November 2002 as the polling day of the by-election and specifying the period from 13 to 26 September 2002, both dates inclusive, as the nomination period.

Section 2 – Preparation and Nomination

Appointment of the Returning Officer and Assistant Returning Officers

2.1 Mr Kevin YEUNG, District Officer (Kowloon City) (“DO(KC)”) was appointed as the Returning Officer (“RO”) with Miss Alice CHOI, Assistant District Officer (Kowloon City) as the Assistant Returning Officer (“ARO”) and Ms Dorothy CHENG, a Senior Government Counsel of the Department of Justice (“D of J”), as the ARO(Legal). Their appointments were published in the Gazette on 6 September 2002.

Appointment of the Nomination Advisory Committee

2.2 Mr Lawrence LOK Ying-kam, SC, was appointed as the Nominations Advisory Committee (“NAC”) for the by-election to provide legal advice to the RO on the eligibility of the nominated candidates. His appointment covering the period from 13 to 28 September 2002, both dates inclusive, was published in the Gazette on 6 September 2002. During this period the RO did not lodge with Mr Lok any request for legal advice.

Nominations

2.3 During the nomination period from 13 to 26 September 2002, the RO received a total of six nominations. These nominations were all

found to be valid. The validity nominated candidates were Messrs LAM Ming, LIU Sing-lee, HUI Ching-po, Alexander IP Chi-wai, Wilfred KAM Yiu-ming and LAM Ho-yeung. A notice of their particulars was published in the Gazette on 4 October 2002.

Briefing for the candidates

2.4 The Chairman of the Commission gave the candidates a briefing on the electoral arrangements and the major provisions of the electoral legislation and guidelines at 10 am on 30 September 2002 in the Committee Room of the Queen Elizabeth Stadium in Wan Chai.

2.5 Five of the six candidates turned up at the briefing session and the other one was represented by his election agent. Also present at the briefing session were the CEO, RO, representatives of the D of J, Independent Commission Against Corruption (“ICAC”) and the Hongkong Post. The departmental representatives briefed the candidates on the subjects within their purview.

2.6 Immediately after the briefing, the RO, witnessed by all parties concerned, drew lots to determine the candidates’ numbers appearing on the ballot paper and the designated spots for the candidates to display their election advertisements (“EAs”). A total of 180 designated spots have been allocated to the candidates to display their EAs for this by-election.

Briefing materials for the RO

2.7 An operational manual containing all relevant information which the RO need to know was sent to him separately before the nomination period.

Notification to the electors

2.8 The poll card, together with an introductory pamphlet on the candidates, a guidance note on voting, a map showing the location of the polling station, a letter from the DO(KC) appealing to the electors to cast their votes at the polling station on the polling day and a leaflet prepared by the ICAC on supporting clean elections, was sent to the 5,996 registered electors on 17 October 2002.

Appointment and training of polling and counting staff

2.9 In view of the relatively small scale of the by-election, it was not necessary to conduct a service-wide recruitment exercise for polling and counting staff. Instead, staff of the Registration and Electoral Office (“REO”) assumed these duties themselves. A series of briefing sessions and mock counting exercise were organised on 25 October 2002 for them by the REO.

Polling-cum-counting station

2.10 The Commission was considering whether vote counting at the polling station should be adopted for the 2003 DCs election with a view to shortening the waiting time for election results. The Commission took the opportunity of the by-election to try out this arrangement. The polling-cum-counting station was at the Emmanuel Primary School Kowloon on Shing Tak Street in the Kowloon City District. The designation of this venue was published in the Gazette on 4 October 2002.

2.11 The station was set up in the afternoon on the day before the polling day after the pupils had finished school. It was partitioned into two separate sections with wooden boards. One section was to be used as the polling station, furnished with polling booths, ballot-paper issuing desks and the polling staff's table. Polling activities were restricted to the polling station only. The other section was reserved as the counting station, where the counting tables and other equipment were stored and markings were made on the floor to delineate the counting zone. An area in the section was set aside for the RO to determine questionable ballot papers. The counting station would not be opened until the poll had been closed.

Contingency plan

2.12 For contingency situation, the REO had also reserved the venue for the following Sunday, ie 10 November, in case the by-election had to be postponed because of inclement weather conditions.

Publicity

2.13 The major activities of the by-election (such as the briefing session for the candidates, the polling-cum-counting arrangement, EAC and VIP visits to the polling cum counting stations etc) were widely covered by both the print and electronic media. The EAC and REO websites also helped disseminate information relating to the by-election.

Section 3 – The Poll

Polling hours

3.1 The polling hours were announced in the Gazette on 4 October 2002. The poll started at 7.30 am on 3 November 2002 and ended at 10.30 pm that day. Although the polling hours were shortened by advancing the closing time from 10.30 pm to 7.30 pm in the two previous elections (the 2001 Legislative Council (“LegCo”) by-election and the 2002 Election Committee Subsector (“ECSS”) by-elections held on 16 September 2001 and 6 January 2002 respectively), this practice was not followed in this by-election. This was in response to the general feedback received after the publication of the EAC’s report on the 2002 Chief Executive election and 2002 ECSS by-elections, that longer polling hours would be preferred for district elections for the convenience of the general public. Hence the poll closed at 10.30 pm, instead of 7.30 pm.

Logistics

3.2 As in previous elections, a command post was set up for overseeing the entire operation throughout the poll and providing logistical support whenever necessary. It also assumed the responsibility of collating statistical information, eg the hourly elector turnout rates and the number and types of complaint cases, for dissemination to the media. This time the centre was set up in the REO’s office in Guardian House and manned by REO staff. It operated

from the start to the close of the poll.

3.3 A complaints-handling centre was set up in the REO's office in Harbour Centre for the entire duration of the poll to receive and process complaints lodged over the phone or by fax. It was also manned by REO staff.

3.4 The Police and the Civil Aid Service ("CAS") provided assistance in maintaining order at the no canvassing zone, no staying zone and the polling-cum-counting station.

Turnout of electors

3.5 Of the 5,996 registered electors in the constituency, 1,896 turned up to cast their votes, representing about 31.62% of the electorate. This was higher than the turnout rate of 25.82% in the 1999 ordinary election in this constituency. The higher turnout rate might be attributed to the relatively larger number of candidates and the efforts rendered by their campaign assistants in canvassing activities. A breakdown of the hourly turnout rates is shown in **Appendix II**.

EAC visit

3.6 Members of the Commission visited the polling station at about 10.40 am on the polling day. They were satisfied with the set up of the station and the overall operation of the poll. At the end of the

visit, they met the media outside the no staying zone.

Visits by other VIPs

3.7 Several senior government officials visited the polling station to observe the conduct of poll on the polling day. Mr Stephen LAM, the Secretary for Constitutional Affairs (“SCA”) arrived at the station at about 10 am and met the media before he left the station. Mr Clement MAK, the Permanent Secretary for Constitutional Affairs, visited the polling station at about 2.30 pm, followed by Dr Patrick C P HO, the Secretary for Home Affairs, who visited the polling station at about 4.30 pm.

Section 4 – The Conversion Process

4.1 The poll closed at 10.30 pm and so was the door to the polling station. The Presiding Officer (“PRO”) sealed the ballot box while the other staff cleared the polling station, removed the partition boards separating the polling and counting areas and positioned the counting tables. In less than half an hour the polling station was converted into a counting station, with the counting zones set up and the polling area cleared to serve as the area to accommodate members of the public and the media.

4.2 The polling team was re-deployed to counting duties upon completion of the poll. The PRO was also appointed as the Counting Supervisor.

4.3 The EAC Chairman and Members and the SCA arrived before the close of poll to observe the conversion process and were satisfied with the new arrangement.

Section 5 – The Count

Commencement of the count

5.1 At about 11 pm the station was re-opened to admit the candidates, their agents, members of the media and the public to observe the count. In the presence of all parties concerned, the PRO and Deputy PRO carried the ballot box to one of the counting tables. The EAC Chairman and Members, the SCA and the RO proceeded to open and empty the ballot box. The count then began.

Questionable ballot papers

5.2 At the end of the counting process, of the 1,896 ballot papers cast into the ballot box, 18 were identified as questionable. The RO, accompanied by the ARO(Legal) and in the presence of all parties concerned, determined the validity of these questionable ballot papers. Five were determined not valid and rejected; the other 13 were determined valid and accepted. A breakdown of the rejected ballot papers is shown in **Appendix III**.

The result

5.3 The count took about 50 minutes to complete. At about 12 midnight, the RO announced the election result. Mr LIU Sing-lee was elected, with 886 valid votes, representing about 46.85 % of the total

number of valid votes cast (ie 1,891). Two of the candidates, ie Messrs Alexander IP Chi-wai and Wilfred KAM Yiu-ming, received 43 and 44 votes respectively. Their election deposits were forfeited in accordance with s 4(2) of District Councils (Subscribers and Election Deposit for Nomination) Regulation because the number of valid votes they each obtained was less than 5% of the total number of valid votes cast. The election result, published in the Gazette on 7 November 2002, is shown in **Appendix IV**.

Meeting the media

5.4 After the announcement of the election result, the Commission met the media in the counting station.

Section 6 – Complaints

Complaints handling period

6.1 In anticipation of the relatively smaller number of complaint cases, instead of forming a Complaints Committee to consider the cases as in the ordinary election, the Commission itself assumed the responsibility for the by-election.

6.2 The complaints-handling period started on 13 September 2002 (ie the commencement of nomination) and ended on 18 December 2002 (ie 45 days after the polling day). During this period a total of 109 complaint cases was received and processed. Besides the Commission, the public could and did also lodge their complaints with the RO, Police and ICAC on the polling day. A detailed breakdown of the complaints handled by all parties concerned is shown in **Appendix V**.

Complaints received on the polling day

6.3 On the polling day, a total of 28 complaint cases were received, of which four were received by the REO complaints centre, four by the RO and 20 by the Police. The ICAC and the PRO received none.

6.4 The complaints received on the polling day were handled without delay. Of the 28 cases received, 25 were solved on the spot. The other three, which were received by the RO concerning unauthorised

display of EAs, required follow-up action after the polling day. The majority of the complaint cases received on the polling day were those on noise nuisances caused by the use of sound amplifying devices by the candidates in their canvassing activities and unauthorised display of EAs. Details are shown in **Appendix VI**.

Outcome of investigations

6.5 The 109 cases were processed and investigated, of which 52 were found substantiated or partially substantiated and 54 unsubstantiated. The remaining three were still under investigation by the ICAC.

Public Censure against Mr LIU Sing-lee

6.6 During the complaints-handling period the EAC and the RO had received 18 complaints against Mr LIU Sing-lee for repeatedly breaching the electoral guidelines and regulations governing the display of EAs. The complaints were all found substantiated by the RO, who issued warning letters to Mr Liu on several occasions. The letters cautioned him not to repeat the breaches failing which he would face public censure.

6.7 Having examined the case in great detail, the Commission was of the view that the offences made by Mr Liu were inexcusable and that it would be appropriate to censure him publicly in accordance with s 6(3) of

the Electoral Affairs Commission Ordinance (“EACO”). Pursuant to s 6(4) of the EACO, Mr Liu was given an opportunity to defend himself. In this regard, the Commission informed Mr Liu in writing on 27 November 2002 that the Commission was considering issuing a public censure against him and requesting him to make representations as to why a public censure not be issued against him, and that his representations should reach the EAC the latest by 12 noon on 30 November 2002 (Saturday).

6.8 Mr Liu responded in the morning of 30 November 2002. The explanations given by Mr Liu in his reply were broadly that (a) the publicity materials in question had been displayed in places outside the Kai Tak constituency and before the election period commenced, so they should not be regarded as his EAs for this by-election; and (b) his campaign assistants were not familiar with the electoral guidelines and therefore inadvertently made the breaches. He stressed that it had never been his or his campaign assistants’ intention to breach the electoral rules.

6.9 The Commission, having thoroughly considered Mr Liu’s representations, came to the view that the representations were not convincing enough to dissuade it from issuing a public censure against him. The Commission considered that (a) the publicity materials said to be displayed in places outside the Kai Tak constituency should be Mr Liu’s EAs by their nature and Mr Liu had failed to comply with the requirements to seek permission for displaying or continuing to display the EAs, (b) a candidate cannot shirk his own responsibility by relying on

the negligence, inadvertence or ignorance of those assisting him in his campaigning activities, and (c) the contraventions caused unfairness to other candidates.

6.10 The Commission issued a public censure against Mr LIU Sing-lee on 13 December 2002. A copy of the censure statement is enclosed as **Appendix VII**.

Section 7 – Review and Recommendations

7.1 The EAC has reviewed the electoral arrangements and procedures of this by-election with a view to improving the conduct of future elections. The Commission's recommendations are detailed in the paragraphs 7.2 to 7.11 below.

(A) Polling hours

7.2 The Commission has noted that the public generally favours longer polling hours for district elections and has no strong objection against adopting the 7.30 am – 10.30 pm as the polling hours for DCs and LegCo elections.

7.3 **Recommendations:** The Commission recommends that the polling hours to be adopted for future DCs and LegCo elections and by-elections should remain from 7.30 am to 10.30 pm.

(B) Polling cum counting arrangements

7.4 The Commission considers it desirable to adopt the polling-cum-counting arrangement, which produced results more speedily, saved time in the transportation of ballot boxes, limited the security risk in the transportation process and saved manpower resources.

7.5 **Recommendations:** The Commission recommends that this

arrangement be included in the proposed Guidelines for future DCs elections for public consultation. The Commission also recommends that if the proposed arrangement is adopted, a notice be displayed outside the polling station at the close of poll to inform the candidates, agents and the public that the polling station is being converted into a counting station. The public will also be notified of the time when the converted station will be reopened to admit the public to observe the count.

(C) Nuisance caused by loudspeakers

7.6 The Commission has noted that complaints against the use of loudspeakers by the candidates for their canvassing activities constituted the majority of complaint cases received. It seems that the public are becoming more and more annoyed with the noise nuisance generated by such devices.

7.7 **Recommendations:** The Commission recommends that, in addition to drawing the candidates' attention to the relevant provisions in the electoral guidelines on the use of loudspeakers in their electioneering activities, the Commission would also appeal to the candidates to exercise caution in the use of loudspeakers so as not to cause noise nuisance and generate complaints from the public.

(D) Location of the venue for the briefing for candidates

7.8 Some candidates suggested that it would be preferable to hold briefings for candidates of DC by-elections in venues within the district or the constituency concerned.

7.9 **Recommendation:** The Commission accepts this suggestion and would take it into consideration in selecting venues for future DC by-elections as far as practicable.

(E) Locations of polling stations

7.10 The Commission was aware that, after the announcement of the election result in the counting station, the elected candidate and his host of campaign assistants, out of their joy for the candidate's triumph (and perhaps theirs as well), burst into an ecstatic uproar of hand-clapping and chanting. This turned out to be a cause for complaints from the neighbourhood because it was already in the small hours and the station, which was right next to some domestic premises, was not fully enclosed.

7.11 **Recommendations:** For future elections, the Commission would consider selecting stations used for announcing the election result farther away from domestic premises or within enclosed premises as far as practicable to avoid causing noise nuisance to the neighbours. In any event the candidates will be reminded to be considerate to the residents nearby and exercise self-control in this respect.

Section 8 – Acknowledgement

8.1 The by-election has been satisfactorily conducted. For this, the Commission wishes to extend its gratitude towards the following government bureaux and departments for their unfailing support and concerted efforts: the Constitutional Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Government Land Transport Agency, Home Affairs Department, Highways Department, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Information Technology Services Department, Lands Department, Official Languages Agency, Transport Department and Printing Department.

8.2 The Commission is particularly thankful to the staff of the REO, officers serving as the RO and AROs, polling/counting staff and the legal practitioner serving on the NAC.

8.3 The Commission is also grateful to all those who complied with the electoral legislation and guidelines during the by-election and the electors who went to the polling station to cast their votes.

Section 9 – Epilogue

9.1 The Commission will continue to make every endeavour in its pursuit of excellence in the conduct of future elections and by-elections. The Commission will stay alert as always in its role as the watchdog over the conduct of elections and uphold the principle that all elections are conducted in an open, fair and honest manner.

9.2 The Commission would like to recommend that this report be made public, at a time the Chief Executive thinks fit, so as to render it fully transparent for the public to see how the Commission performs its functions under the EACO.