

## **Section 1 – Background**

### *Cause of the by-election*

1.1 A vacancy arose in the membership of the Sham Shui Po District Council in June 2003 when Mr WONG Chung-ki, an elected member of the Lai Kok constituency of this District Council (“DC”), was disqualified from holding his office as a member of the Sham Shui Po DC for the rest of his term in accordance with s 24(1)(d)(i) of the District Councils Ordinance (“DCO”), after having been convicted of impersonating a public officer and sentenced to four months’ imprisonment.

1.2 The Director of Home Affairs acted according to s 32(1) of the DCO and declared in the Gazette published on 6 June 2003 that a vacancy had arisen in the membership of the Sham Shui Po DC since 16 May 2003. The Electoral Affairs Commission (“EAC” or “Commission”) had therefore to conduct a by-election (“the by-election”) to return a candidate to fill this vacancy, as required by s 33(1)(a) of the DCO.

### *About the constituency*

1.3 The Lai Kok constituency is one of the 21 DC constituencies in the Sham Shui Po District, with a registered electorate of 12,298, which was the largest of the constituencies in the district at the time of the

by-election. A map showing the boundary of this constituency is at **Appendix I.**

*The polling day and the nomination period*

1.4        3 August 2003 was designated as the polling day and the period from 20 June to 3 July 2003, as the nomination period. These were announced in the Gazette by the Chief Electoral Officer (“CEO”) on 13 June 2003.

## **Section 2 – Appointments and Nominations**

### *Appointments*

2.1 Ms Michelle LI, the District Officer (Sham Shui Po) (“DO(SSP)”), was appointed as the Returning Officer (“RO”) and Ms Romy CHEUK, the Assistant District Officer (Sham Shui Po), as the Assistant RO (“ARO”). Their appointments were made by the EAC Chairman and published in the Gazette on 13 June 2003. Ms Dorothy CHENG, a Senior Government Counsel of the Department of Justice (“D of J”) was appointed by the EAC Chairman as the ARO(Legal) on 16 July 2003.

2.2 Mr Lawrence LOK Ying-kam, SC, was appointed by the EAC Chairman as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election to provide the RO with legal advice, as and when necessary, on the eligibility of the candidates nominated. Mr Lok’s appointment covered the period from 20 June to 5 July 2003 and was published in the Gazette on 13 June 2003.

### *Nominations*

2.3 At the close of nomination the RO received a total of two nominations. The nominees were Ms Tracy LAI Wai-lan and Mr FAN Kwok-fai. These nominations were verified by the RO as valid. As the cases were not complicated, there was no need for the RO to request

the NAC(DC) for legal advice on the validity of the nominations.

### *Briefing for the candidates*

2.4 A briefing session, hosted by the EAC Chairman, was conducted for the two candidates at 10 am on 5 July 2003 in the conference room of the Sham Shui Po DC. In this session the EAC Chairman briefed the candidates on the electoral arrangements of the by-election and the major provisions of the electoral legislation and guidelines. Both candidates attended the briefing session in person. Also present at the briefing session were the CEO and RO, and representatives from the D of J, Independent Commission Against Corruption (“ICAC”) and Hongkong Post. These departmental representatives briefed the candidates and answered their questions on subjects within their respective purview.

2.5 After the briefing session was the session on drawing lots. Witnessed by all parties present, the RO drew lots, in the first place, to determine the candidate number for each of the two candidates and, in the second place, to allocate the designated spots to the candidates for the display of their election advertisements (“EAs”). Ms Lai was allocated the candidate number 1 and Mr Fan, number 2. As regards the designation of spots for displaying EAs, which amounted to a total of 130, each of the two candidates was allocated 65 spots.

2.6 The RO published in the Gazette on 11 July 2003 the candidates' names, candidate numbers and principal addresses.

### **Section 3 – Preparation Work**

#### ***Appointment and training of polling/counting staff***

3.1 As in all previous by-elections, in view of the relatively smaller scale of this by-election, staff the Registration and Electoral Office (“REO”) themselves assumed the polling and counting duties. As usual an in-house refresher session was organised for them in the afternoon of 29 July 2003 in the REO’s conference room on 10/F Guardian House in Wan Chai.

#### ***The polling-cum-counting station***

3.2 As in the previous by-elections, the arrangement whereby the same venue is used for the conduct of both the poll and the count was adopted. In this by-election, because of the relatively larger electorate, two polling-cum-counting stations were set up to convenience the electors: one at the Lai Kok Community Hall in the Lai Kok Estate in Cheung Sha Wan, and the other at Shop No. CX 28 on the ground floor of the Fu Cheong Shopping Centre in the Fu Cheong Estate, also in Cheung Sha Wan. The designation of these places as the polling stations was announced in the Gazette by the CEO on 11 July and as the counting stations, by the CEO on 25 July. The Lai Kok Community Hall was designated as the dominant counting station.

3.3 The stations were set up in the afternoon of the preceding Saturday, ie 2 August 2003. The lay-out of each station was similar to that adopted for the previous by-elections, ie the place was partitioned into two areas, one for the poll and the other one reserved for the count. Though the threat of the Severe Acute Respiratory Syndrome (more commonly known as SARS) seemed to have subsided, REO staff did not disregard the need to keep the stations hygienic and adequately ventilated and continued to stay alert and make their best endeavours to sanitise the venues.

#### ***Notification to electors***

3.4 The REO sent a poll card to each of the registered electors on 18 July. As before there were other information materials going together with this poll card, which included an introductory leaflet on the candidates, a guidance note on voting, a location plan of the polling station, a letter from the DO(SSP) appealing to the electors to cast their vote at the polling stations on the polling day and a pamphlet prepared by the ICAC on the need to ensure elections clean and fair.

#### ***Publicity***

3.5 As in previous elections and by-elections, the REO issued press releases on the major events of this by-election, eg the EAC Chairman's briefing for the candidates, the poll, the count and the EAC's and VIPs' visits to the station. The media were responsive in covering

these major events. All the relevant information relating to the by-election has also been displayed on the REO and EAC websites for public visit.

### ***The contingency plan***

3.6 To cope with any unforeseeable situations in which the by-election could not be proceeded with as scheduled for one reason or another, eg inclement weather conditions, the REO made arrangements with the management authorities of the two venues to reserve them for the same purpose on the Sunday following the polling day, ie 10 August 2003.

3.7 Fortunately the by-election encountered no hiccups and was proceeded with as scheduled.

## **Section 4 – The Poll**

### ***Polling hours***

4.1 The polling hours were from 7.30 am to 10.30 pm. This was announced in the Gazette by the CEO on 11 July 2003.

### ***Logistical arrangements***

4.2 As in previous by-elections a command centre was set up in the REO's office on 13/F Guardian House on the polling day, operating from 7.00 am to 11.00 pm and manned by the REO staff. Its set up served two purposes – (a) to oversee the operation of the poll and provide logistical support to the polling staff whenever necessary, and (b) to collate the relevant statistical information, eg the hourly electors' turnout rates, the number and types of complaints received by the various complaints-handling parties, for public information through the media.

4.3 There was also a complaints-handling centre set up in the REO's office on 10/F Harbour Centre. It was manned by staff of the Complaints Unit of the EAC secretariat and operated from the start of the poll to the close of the poll. Its work was to receive and process complaint cases lodged with the EAC direct and cases referred to the EAC by other complaints-handling parties, by phone or by fax.

4.4 The Police and the Civil Aid Service (“CAS”) rendered assistance in maintaining law and order in the no canvassing zones, no staying zones and inside the stations.

### *Turnout of electors*

4.5 Of the 12,298 registered electors of the constituency, 4,704 turned up to cast their vote, 253 more than that of the 1999 ordinary election for the constituency. The turnout rate of this by-election was 38.25%. It was higher than the overall 35.82% of the 1999 ordinary election, but slightly lower than the 42.83% in the 1999 ordinary election for the constituency because the size of the electorate then was only 10,393. A breakdown of the hourly turnout rates of the electors in this by-election is shown in **Appendix II**.

### *EAC’s visit*

4.6 The EAC Chairman and Dr Elizabeth SHING, one of the EAC Members, visited both stations in the morning on the polling day; they first visited the station at the Fu Cheong Shopping Centre, arriving there at about 11.25 am. Then they proceeded to the station at the Lai Kok Community Hall, arriving there at about 11.50 am. They found the polling arrangements made at both stations satisfactory and observed that it was orderly both inside the stations and in the no canvassing zones outside.

4.7 The Commission's Chairman and Dr Shing thereafter met the media outside the no staying zone. The Chairman informed the media that they were satisfied with the polling arrangements and that, with the enactment of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 ("EAC (EP) (DC) (Amendment) Regulation 2003"), the new counting arrangement was adopted for this by-election, whereby both polling stations would be used for the conduct of the count after the close of the poll, instead of pooling together the ballot papers from both stations for the count to be conducted in one single station as in previous practice. The election result, he added, would be announced in the dominant counting station, ie the one at the Lai Kok Community Hall. He remarked that this arrangement would be effected in the coming DC ordinary election in November and carrying out this arrangement for this by-election would serve as a pilot test to assess the practicability and effectiveness of the arrangement.

#### *SCA's visit*

4.8 Mr Stephen LAM, the Secretary for Constitutional Affairs ("SCA"), visited the polling stations in the evening before the close of the poll to tour around the polling and counting areas.

## **Section 5 – The Conversion**

5.1 At 10.30 pm the poll closed and so were the entrances to the two stations. A notice was instantly put up at the entrance of each of the stations, notifying the members of the public and all other interested parties of the close of the poll, the temporary closure of the station to facilitate its conversion into the counting station and the approximate time when the station would be re-opened to allow admitting people to observe the count inside the station.

5.2 Meanwhile inside the stations the Presiding Officers (“PROs”) were sealing the ballot boxes while the other polling staff were arranging for the place to be converted into a counting station. In less than 30 minutes the conversion process was completed in both stations.

5.3 The polling staff became the counting staff, with the PROs as the Counting Supervisors.

5.4 The EAC Chairman, Dr Shing and the SCA were observing the entire conversion process in the station at the Lai Kok Community Hall, the dominant counting station. They were satisfied with the way it was done.

## **Section 6 – The Count**

### ***The new arrangement***

6.1 With the enactment of the EAC (EP) (DC) (Amendment) Regulation 2003 on 21 July 2003, the new counting arrangement was adopted for this by-election. On the implementation of this new arrangement, one should note the following features, which were absent in previous elections –

- (a) since there were two polling-cum-counting stations in the Lai Kok constituency, the Lai Kok Community Hall was designated by the CEO as the dominant counting station (as mentioned in paragraph 3.2 of Section 3 above), according to s 31(1B) of the amended Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (“EAC (EP) (DC) Regulation”), which states that, in cases where there are two or more polling-cum-counting stations in one constituency, the station at which the largest number of electors are to vote should be designated, by the CEO, as the dominant counting station for that constituency;
- (b) the count took place separately at the same time in each of the stations, and candidates, their agents and the public could observe the counting process in both venues;

- (c) the PROs of both stations unsealed and opened their respective ballot box (instead of the RO), as stipulated in s 74 of the amended EAC (EP) (DC) Regulation;
- (d) the PROs/Counting Supervisors determined whether questionable ballot papers were valid, as stated in ss 76(5) and 79 of the amended EAC (EP) (DC) Regulation);
- (e) certain ballot papers were determined as rejected ballot papers right away instead of being taken as questionable ballot papers and passed to the PROs/Counting Supervisors for determining whether they were valid (see s 76(5) of the amended EAC (EP) (DC) Regulation);
- (f) the verification of the number of ballot papers counted with the ballot paper account prepared under s 64 of the amended EAC (EP) (DC) Regulation was done after (instead of before) the count (see s 75(1)(b) of the amended EAC (EP) (DC) Regulation);
- (g) the PRO/Counting Supervisor of the other station informed the PRO/Counting Supervisor of the dominant counting station and the RO of the result of the count at his station (see s 80B of the amended EAC (EP) (DC) Regulation);

- (h) the PRO/Counting Supervisor of the dominant counting station informed the RO of the result of the count at both stations (see s 80B(12) of the amended EAC (DC) (EP) Regulation);
- (i) the RO, on receiving the counting results from the two PROs/Counting Supervisors, announced the election result in the dominant counting station; and
- (j) the candidates and their agents were allowed to stay in the polling stations while they were closed for the preparation for the count.

### *Start of the count*

6.2 At about 11 pm both stations were re-opened to admit the media and members of the public to observe the count. In the presence of all those present, the PRO and Deputy PRO of each station moved their respective sealed ballot box to the counting table. In the dominant counting station the PRO unsealed the ballot box for the EAC Chairman, Dr Elizabeth SHING, the SCA and the RO to empty it. The count then commenced. In the other counting station it was the PRO that unsealed the ballot box and, with the Deputy PRO's assistance, emptied the box for the count to commence.

### ***Rejected and questionable ballot papers***

6.3 Of the 4,704 ballot papers cast into the ballot boxes in the two stations, 28 fell into the categories as described in paragraph 6.1(e) above and were not counted and 57 were identified as questionable ballot papers. The PROs/Counting Supervisors, with the assistance of the ARO(Legal) and in the presence of all parties concerned, examined each of these 57 questionable ballot papers to determine their validity. As a result six of the 57 questionable ballot papers were determined as invalid and therefore rejected; hence the total number of rejected ballot papers was 34. The other 51 were determined as valid and accepted. An account of the rejected ballot papers is detailed in **Appendix III**.

### ***Election result***

6.4 There was no request for recount. The count at both stations finished at more or less the same time, at about 12.10 am. The PRO/Counting Supervisor of the other station informed his counterpart of the dominant station of the result of his count over the phone. The PRO/Counting Supervisor of the dominant station subsequently informed the RO of the results of the count conducted at both stations. At about 12.30 am the RO declared the election result: Ms Tracy LAI Wai-lan was elected. The result was published in the Gazette Extraordinary on 7 August 2003 and is now reproduced in **Appendix IV**.

### *Meeting the media*

6.5 After the announcement of the election result, the EAC Chairman and Dr Elizabeth SHING met the media inside the station. The Chairman expressed their satisfaction with the polling-cum-counting arrangements in both stations and the relatively short time spent in completing the entire counting process and producing the election result, which was more or less the same as that in the three by-elections recently held. He remarked that both Dr Shing and he were very much satisfied with the general arrangements made and that the Commission would continue to review these arrangements to look for improvements to better the conduct of the ordinary election in November. He added that he was impressed to see two candidates participating in the by-election, despite the relatively short tenure of the office concerned. He was also happy to see that the fair, open and honest principle was upheld as reflected from the way the by-election was conducted. The Chairman thanked all parties concerned for making the by-election successful.

## **Section 7 – Complaints**

### ***Complaints-handling period***

7.1 As in previous by-elections, instead of forming a Complaints Committee as in ordinary elections, the Commission itself shouldered the responsibility of considering the complaint cases received in this by-election.

7.2 The period for receiving complaints commenced on 20 June 2003, when the nomination period started, and ended on 17 September, ie 45 days after the polling day. During this period the public lodged a total of 28 complaints (including the 19 cases received on the polling day as mentioned in para 7.3 below) with the EAC, RO, Police and ICAC. Of these 28 cases, 14 concerned EAs. A breakdown of all complaint cases handled is detailed in **Appendix V**.

### ***Complaints received on the polling day***

7.3 During the poll the REO's Complaints Centre, RO, Police and PROs received altogether 19 complaint cases, while the ICAC received none. The following is a breakdown of these cases –

REO's Complaints Centre	:	2 cases
RO	:	9 cases
Police	:	7 cases
PROs	:	1 case
ICAC	:	none

7.4 All of these 19 complaint cases were expeditiously handled and solved on the spot. Details of these cases are shown in **Appendix VI**.

#### *Outcome of investigations*

7.5 Of the 28 cases received during the complaints-handling period, nine were found substantiated or partially substantiated, 18 were found not substantiated and one case was being investigated by the ICAC. This case concerned bribery.

## **Section 8 – Review and Recommendations**

8.1 After the by-election, the EAC, following the past practice, conducted an overall review of all aspects of the by-election to see whether there could be further improvements for future reference. The EAC found the polling and counting arrangements generally satisfactory, particularly the new arrangement adopted for the conduct of the count.

### ***The new counting arrangement***

8.2 The Commission observed that the new arrangement for conducting the count had been working smoothly. The count took place simultaneously in two different venues and encountered no difficulties or discrepancies. The Commission considered it appropriate and effective for the PROs/Counting Supervisors to perform the former duty of the RO in determining the validity of questionable ballot papers. But the Commission was also of the view that the effectiveness of this arrangement would very much depend on whether the PROs/Counting Supervisors were experienced enough or had been adequately trained to take up this role. Nonetheless, the EAC was confident that the polling-cum-counting arrangement, which would surely save a lot of time and resources and could render an early announcement of election results, could be implemented equally well in more than one station and that the new counting arrangement could be safely applied to the coming DC ordinary election this November.

8.3 **Recommendations:** The EAC recommends that –

- (a) the polling-cum-counting arrangement be continued in the coming DC ordinary election and any future DC elections, in view of the successful implementation of the new counting arrangement; and
- (b) those recruited as PROs in the coming DC ordinary election and any future DC elections should be given adequate training not only in the discharge of polling duties but also in the discharge of counting duties, particularly in the determination of the validity of questionable ballot papers.

## **Section 9 – Acknowledgement**

9.1 The Commission wishes to extend its gratitude towards the following government bureau and departments for their valuable assistance rendered throughout the by-election: the Constitutional Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Government Logistics Department, Highways Department, Home Affairs Department, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Information Technology Services Department, Lands Department and Official Languages Division (of the Civil Service Bureau). Each and every one of them contributed to make the by-election a success.

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

9.3 The Commission wishes to thank the media for their wide coverage of the major events of the by-election.

9.4 Last but not least, the Commission would like to express its appreciation to the electors who turned up to cast their vote at the polling station and all those who complied with the electoral legislation and guidelines during the election period.

## **Section 10 – Looking Forward**

10.1 For the past nine months, DC by-elections came one after another; there was a total of four, which all received the utmost attention of the EAC. The imminent major task the EAC is now facing is the 2003 DC ordinary election, scheduled for 23 November this year, with the commencement of nomination period on 2 October. Preparation work has already begun. The Commission will continue with its mission of ensuring that this ordinary election and other future public elections as well are conducted in an open, fair and honest manner. The Commission will also remain, as always, open to the views from the public on what measures should be taken to improve future elections.

10.2 The Commission would like to recommend that this report be made public, at a time the Chief Executive thinks fit, to enable the public to know how the Commission performs its functions under the EAC Ordinance in this by-election.