

(Translation)**Sham Shui Po District Council By-election on 6 April 2003****Mei Foo Constituency****Electoral Affairs Commission****Public Censure Against****Radio Television Hong Kong****for Inviting Only One Candidate to Attend the “City Forum” Programme**

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The Complaint

The Electoral Affairs Commission (“EAC”) received a complaint alleging that one of the candidates contesting the captioned by-election attended the “City Forum” programme produced by the Radio Television Hong Kong (“RTHK”) on 23 March 2003 and questioning whether RTHK had been acting appropriately.

The Incident

2. Paragraph 8.1 of Chapter 8 of the Guidelines on Election-related Activities in respect of the 1999 District Councils Election (“Election Guidelines”) issued by the EAC on 13 September 1999 states that the

chapter deals with election broadcasting through electronic means (which covers all programmes including those on current affairs and news reporting on the radio and television), media reporting and the holding of any election forum. Paragraphs 8.3 and 8.4 of the chapter also state clearly that candidates may take part freely in current affairs and other programmes on TV and radio which are not election advertisements and which are conducted on an “equal time” principle. No unfair advantage should be offered to or obtained by any candidate over others regarding election campaigning.

3. Paragraph 8.6 of the chapter states that broadcasters should ensure that the “equal time” principle as well as the “no unfair advantage” principle are applied to political parties or political organisations who have members contesting the election, whether or not contesting the same constituency. All political parties or political organisations whose members contest as candidates in the election should be invited and given equal time to take part in a current affairs or any other programme.

4. Moreover, paragraph 8.7 of the chapter points out that when inviting a candidate or a political party or political organisation to attend a programme, broadcasters should include in the invitation a warning to the invitee that a similar invitation has been or will be made to other candidates or political parties or political organisations, so as to give the invitee an equal opportunity to appear. A record should be kept by the broadcaster of the date, time and contents of the invitation and the warning until three months after the election.

5. “City Forum” is a live show produced by RTHK and broadcast on some TV channels every Sunday.

6. According to the fair and equal treatment principles mentioned above, RTHK should avoid allowing any of the candidates be given any unfair opportunity to promote his candidature, thereby gaining an advantage over the other candidates in their electioneering activities. RTHK should not have invited only one of the candidates of the by-election to be the guest in the programme as this was unfair to the other candidates and contravened the provisions of the Election Guidelines.

Opportunity to Defend

7. Before deciding on issuing a public censure against RTHK, the EAC wrote to RTHK on 4 April 2003 asking them to give explanations or make representations regarding the complaint before 11 April 2003 for the EAC’s consideration.

RTHK’s Response and Explanations

8. RTHK had responded to the Returning Officer on 25 March this year with regard to the complaint:

“City Forum” is an on-going weekly programme, and the topic discussed on 23 March 2003 was about the impact of the

US-Iraq War on the world's political situation. As the topic of the day was not election-related and the candidate was invited to attend in his [official] capacity, the other two candidates were not invited.

9. On 8 April this year RTHK gave the following views and explanations in response to the EAC's query that they had breached the provision in Chapter 8 of the Election Guidelines:

(a) RTHK did not consider "City Forum" should be covered by the Election Guidelines. Paragraph 8.1 of Chapter 8 of the Election Guidelines states that "this chapter deals with election broadcasting through electronic means". Obviously Chapter 8 only deals with election-related programmes broadcast on the radio and television. "City Forum" has since 1980 been a regular weekly public forum for discussing current affairs topics and providing the public with information on current affairs. The public has been widely familiar with the nature of the programme and the programme is definitely not election broadcasting.

(b) The topic of "City Forum" on 23 March this year was the "Impact of the US-Iraq War on the World's Political Situation". The producer would like to see that there would be discussions on the subject in the political and educational contexts. For this very reason, [a person meeting these two requirements (the

candidate)] was invited to attend the programme.

- (c) As stated above, “City Forum” is not an election-related programme, and the topic of the day was not election-related. Therefore, the other two candidates of the Mei Foo Constituency by-election were not invited, and there was no breach of the “equal time” and the “no unfair advantage” principles.

Investigation Outcome and Justifications

10. The EAC is of the view that the electronic media and the candidates have different responsibilities when it comes to complying with the requirements set out in Chapter 8 of the Election Guidelines. It is because only the electronic media can determine whom is/are to be invited to which programme(s), and at the same time ensure whether the producer of the programme is observing the “equal time” principle. Hence, paragraph 8.6 of Chapter 8 of the Election Guidelines requires that broadcasters must comply with both the “equal time” and “no unfair advantage” principles, which should also apply to those political parties whose members are contesting in the election. Paragraph 8.7 further points out to the electronic media that, when inviting a candidate to appear in a programme, they have the obligation to inform that candidate that similar invitations have been or will be extended to other candidates, so as to give all invitees equal opportunity of exposure. The Election Guidelines also explicitly state that broadcasters must keep such records of

invitations. This shows the importance of the electronic media's need to comply with the requirements set out in paragraph 8.7.

11. The EAC has carefully considered the reasons and explanations put up by RTHK, but unfortunately finds none of them strong enough to support RTHK's not complying with the provisions of Chapter 8 of the Election Guidelines. RTHK has all along been self-defending by claiming that the programme in question was a current affairs programme which had nothing to do with elections, and so there was breach of the "equal time" and "no unfair advantage" principles. The EAC concludes that RTHK has either completely misunderstood or deliberately flouted paragraphs 8.1 and 8.3 of the Election Guidelines. Paragraph 8.1 clearly points out that Chapter 8 covers all programmes broadcast on the radio and television, including those on current affairs, and paragraph 8.3 points out that candidates may take part in current affairs and other programmes that are produced on the "equal time" principle.

12. Moreover, paragraph 8.7 of the Election Guidelines also stipulates that broadcasters must inform the invitee(s) that similar invitations have been extended to other candidates, so as to give all candidates equal opportunity of exposure (regardless of whether the programme is related to elections or not). This principle of equal opportunity mirrors the realisation of the "no unfair advantage" principle.

The Censure

13. As RTHK has breached the “equal time” and “no unfair advantage” principles, the EAC deems it appropriate to issue a public censure against RTHK. The EAC is of the opinion that it is under no circumstances acceptable for RTHK, being a public organisation, to breach the provisions of the Election Guidelines. A public censure is hence issued.

(Signed)

(WOO Kwok-hing)

Chairman

Electoral Affairs Commission

12 May 2003