

## **Section 1 – Background**

### *The vacancy*

1.1 Mr Tanny TSANG Yau-fat, an elected member from the Mei Foo constituency of the Sham Shui Po District Council, was disqualified from holding his office as a member of the District Council (“DC”) for the rest of his term in accordance with s 24(5) and 24(6) of the District Council Ordinance (“DCO”), after being absent from the DC meetings for four consecutive months since 10 September 2002 without obtaining the consent of the DC.

1.2 The Director of Home Affairs, as required by s 32(1) of the DCO, declared in the Gazette published on 17 January 2003 that a vacancy had arisen in the membership of the Sham Shui Po DC since 11 January 2003. Pursuant to s 33(1)(a) of the DCO, it was necessary for the Electoral Affairs Commission (“EAC” or “Commission”) to conduct a by-election (“the by-election”) to return a candidate to fill this vacancy.

### *The constituency*

1.3 The Mei Foo constituency is one of the 21 DC constituencies in the Sham Shui Po District, with a registered electorate of 6,730. A map showing the boundary of this constituency is at **Appendix I**.

***The polling day and the nomination period***

1.4 The Chief Electoral Officer (“CEO”) published a notice in the Gazette on 24 January 2003 designating 6 April 2003 as the polling day of the by-election and the period from 14 to 27 February 2003 as the nomination period.

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

### *Appointments*

2.1 The EAC Chairman appointed Ms Michelle LI, the District Officer (Sham Shui Po) (“DO(SSP)”) as the Returning Officer (“RO”) and Ms Romy CHEUK, the Assistant District Officer (Sham Shui Po) as the Assistant RO (“ARO”) of the by-election. Their appointments were published in the Gazette on 24 January 2003. The Chairman also appointed Ms Dorothy CHENG, a Senior Government Counsel of the Department of Justice (“D of J”), as the ARO(Legal) on 10 March 2003.

2.2 The EAC Chairman appointed Mr Lawrence LOK Ying-kam, SC, as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election for providing the RO with legal advice, as and when necessary, on the eligibility of the candidates nominated. Mr Lok’s appointment covered the period from 14 February to 1 March 2003 and was published in the Gazette on 24 January 2003.

### *Nominations*

2.3 At the close of nomination, the RO received a total of three nominations. The nominees were Messrs YEUNG Yiu-chung, SHE Kwok-hung Billy and WONG Tak-chuen Joe. The RO verified that they were validly nominated. As the cases were relatively straightforward,

the RO did not need to request the NAC(DC) for legal advice on the candidates' eligibility.

### *Briefing for the candidates*

2.4 The EAC Chairman hosted a briefing session for the three candidates at 10 am on 1 March 2003 in the conference room of the Sham Shui Po DC, a venue within the district where the by-election was to be held. The aim of the briefing session was to draw the candidates' attention to the electoral arrangements of the by-election and the major provisions of the electoral legislation and guidelines.

2.5 Of the three candidates, two turned up personally and the other was represented by his agents. 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 questions from them on subjects within their own purview.

2.6 After the briefing session, the RO, witnessed by those present, drew lots firstly to determine the candidate number for each of the candidates and secondly to allocate the designated spots to the candidates for their display of their election advertisements ("EAs"). As a result, Messrs WONG Tak-chuen Joe, SHE Kwok-hung Billy and YEUNG Yiu-chung were allocated the candidate number 1, 2 and 3 accordingly. A total of 30 designated spots in the Mei Foo constituency was allocated

to them for displaying their EAs, each candidate equally getting 10 of these designated spots.

2.7 The RO published in the Gazette on 7 March 2003 a notice showing the candidates' names, their candidate numbers and principal residential addresses.

## **Section 3 – Preparation Work**

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

3.1 As in previous by-elections, because of the relatively smaller scale of this by-election, staff of the Registration and Electoral Office (“REO”) themselves took up the polling and counting duties. An in-house refresher session was organised for them on 2 April 2003 in the REO’s conference room in Guardian House.

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

3.2 As in the cases of the Kai Tak Constituency By-election and Hoi Sham Constituency By-election, the same arrangement was adopted whereby the same venue was used for conducting both the poll and the count. In this by-election the polling-cum-counting station was set up in the Mei Foo Sun Chuen Community Centre at Ground floor, 38 Broadway, Stage II, Mei Foo Sun Chuen. The designation of this place as the venue was published in the Gazette by the CEO on 7 March 2003.

3.3 The station was set up in the afternoon on the Saturday preceding the polling day, ie 5 April 2003. The lay-out was similar to that adopted for the two previous by-elections, ie the place was partitioned into two sections, one serving as the polling area and the other reserved as the counting area.

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

3.4 The REO sent a poll card to each of the registered electors on 18 March 2003. Other information materials going together with this poll card included an introductory leaflet on the candidates, a guidance note on voting, a location plan of the station, a letter from the DO(SSP) appealing to the electors to cast their vote at the polling station on the polling day and a pamphlet prepared by the ICAC on the importance of keeping elections clean and fair.

### ***Publicity***

3.5 The major events of the by-election, eg the EAC Chairman's briefing for the candidates, the poll, the count, the EAC and other VIP visits to the station, etc, were extensively covered by the print and electronic media. Those interested could visit the EAC and REO websites for information about the by-election. The REO also issued press releases on the various key events.

### ***Precautionary measures against SARS***

3.6 Facing the outbreak of the Severe Acute Respiratory Syndrome ("SARS") in Hong Kong, the REO staff sought advice from the Department of Health ("DH") and adopted a series of precautionary measures against the epidemic to minimise the risk of electors and working staff from contracting the disease inside the station.

3.7 Prior to the polling day, arrangements were made for the entire station including the ventilation system, furniture and polling equipment to be thoroughly cleansed and sanitised. Disposable face-masks and gloves were made available to electors and the working staff.

***The contingency plan***

3.8 To cope with the unpredictable situation when the by-election could not be held as scheduled because of unforeseeable circumstances, eg inclement weather conditions, the REO arranged with the management of the Mei Foo Sun Chuen Community Centre to reserve the venue for the same purpose on the Sunday next after the polling day on 6 April 2003, ie 13 April 2003.



## **Section 4 – The Poll**

### *Polling hours*

4.1 The poll started from 7.30 am and closed at 10.30 pm on the polling day. The polling hours were announced in the Gazette by the CEO on 7 March 2003.

### *Logistics*

4.2 A command centre was set up in the REO's office in Guardian House. It was manned by the REO's staff for overseeing the operation of the poll and providing the necessary logistical support whenever required. The centre also collated the relevant statistical information, eg hourly electors' turnout rates, and number and types of complaints received during the poll, for public information through the media. The centre operated from the start to the close of poll.

4.3 Also operating during the polling hours but at a different place was a complaints-handling centre, set up in the REO's office in Harbour Centre and manned by staff of the Complaints Unit of the EAC Secretariat, to receive and process complaints lodged with the EAC direct and referred to the EAC by other parties concerned by phone or by fax.

4.4 Assistance from the Police and the Civil Aid Service (“CAS”) was, as before, enlisted for maintaining law and order in the no canvassing zone, no staying zone and the station.

#### ***Preventive measures against SARS***

4.5 Inside the station all the working staff, masked and gloved, carried out their duties as effectively as ever. Face-masks and disposable gloves were also available for issue to those electors who needed them when coming into the station to cast their votes. The cardboards with the chop attached were sterilised once they had been used and returned to the polling staff. Furniture items and the interior and poles of the voting booths were thoroughly cleansed at regular intervals. The air-conditioning system and the fans were in operation constantly and the windows at the top near the ceiling were open to ensure that the place was adequately ventilated. A box was placed near the exit for the electors to discard their gloves and masks when leaving the station.

#### ***Turnout of electors***

4.6 Of the 6,730 registered electors of the constituency, about 28.8%, ie 1,938, turned up to cast their vote. This was slightly lower than the 30.45% in the 1999 ordinary election for this constituency. This, nonetheless, was not considered as an uncommon phenomenon, since by-elections generally attracted less attention and interest from the

electorate than ordinary elections. In fact the Commission found this turnout rate encouraging in the face of the general apprehension about the SARS situation in the community. A breakdown of the turnout rates by the hour is detailed in **Appendix II**.

### *EAC's visit*

4.7 The Chairman and Members of the Commission, with their face-masks on, arrived at the station at about 11.40 am to see how the poll was conducted. They were generally satisfied with the arrangements and preventive measures taken. They also observed that it was orderly both inside and outside the station. Some children accompanying electors were seated in the area reserved for them where they waited for the electors till they finished their casting of votes.

4.8 At the time of the visit there was a man who, having been told by the polling staff that he could not vote this time because his name was not on the register, became infuriated and started a row with the polling staff. He complained that he had been deprived of the right to vote in this by-election and asked for the channel by which he could lodge his complaint formally. The polling staff gave him the answer and, on the advice of the Police, he left the station. (However, according to the records of the Complaints Unit and other complaints-receiving parties, they had not received any further complaint from this person after the election.)

4.9 After the visit the Commission met the media outside the no staying zone, and told them that they were generally satisfied with the arrangements and preventive measures taken against the SARS. They were also happy to see that the electors were undaunted by the SARS epidemic and still came to cast their vote.

*Visits by other VIPs*

4.10 Mr Stephen LAM, the Secretary for Constitutional Affairs (“SCA”) visited the station to observe the poll at about 10.30 am. He met the media after his visit. Mr Clement MAK, the Permanent Secretary for the Constitutional Affairs, visited the station in the afternoon.

## **Section 5 – The Conversion**

5.1 The poll closed at 10.30 pm when the entrance to the station was closed. At the same time a notice was put up at the entrance, informing the general public and all the parties concerned that the poll had come to an end and the polling station was temporarily closed for being converted into a counting station. The approximate time when the station would be re-opened to the public was also stated in the notice.

5.2 Inside the station, while the Presiding Officer (“PRO”) was sealing the ballot box, the other staff proceeded to convert the polling station into a counting station under the observation of some of the candidates and their agents. In about 20 minutes or so, the conversion was completed.

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

5.4 Members of the Commission and the SCA, who arrived before the close of poll, observed the conversion process and were generally satisfied with it.

## **Section 6 – The Count**

### *Start of the count*

6.1 At 11 pm the station was re-opened to admit the candidates, their agents, members of the media and the general public to observe the count. In their presence the PRO and Deputy PRO moved the sealed ballot box to one of the counting tables, where the EAC Chairman and Members, the SCA and the RO unsealed and emptied it for the count to proceed.

6.2 It is worth mentioning that the counting staff were gloved and masked whilst performing their duties, throughout the entire operation. The EAC Members and SCA were also masked.

### *Questionable ballot papers*

6.3 Of the 1,938 ballot papers cast into the ballot box, 12 were identified as questionable. The RO, accompanied by the ARO(Legal) and witnessed by all parties concerned, examined each of these questionable ballot papers and determined their validity. When this process was complete, five ballot papers were determined not valid and therefore rejected, and the other seven valid and accepted. An account of these rejected ballot papers is detailed in **Appendix III**.

*The recount*

6.4 It took about 30 minutes to finish the count, with the following result –

<u>Candidate</u>	<u>No. of votes obtained</u>
Candidate No. 1 – Mr WONG Tak-chuen Joe	849
Candidate No. 2 – Mr SHE Kwok-hung Billy	244
Candidate No. 3 – Mr YEUNG Yiu-chung	840

6.5 In view of the marginal difference in the number of votes obtained by Messrs WONG Tak-chuen Joe and YEUNG Yiu-chung, a mere nine votes, the RO, for the sake of ensuring the accuracy and fairness of the count, suggested to conduct a recount. Both Messrs Wong and Yeung agreed. The RO then announced the conduct of the recount.

6.6 The recount commenced and finished 25 minutes later. The result was the same as that of the first count.

6.7 At about 12 midnight the RO announced the result. Mr WONG Tak-chuen Joe was elected. This result was published in the

Gazette Extraordinary on 10 April 2003 and is now re-produced in **Appendix IV**.

*The Commission meeting the media*

6.8 After the announcement of the election result, the Commission met the media inside the station. The Chairman remarked that the Commission was satisfied with the relatively short time, about an hour, taken to produce the election result, particularly when there was a recount. The way that the election was conducted showed that the principle of holding elections in an open, fair and honest manner had been upheld. He also told the media that the Commission was very much impressed by the enthusiasm of the electors coming to cast their votes, despite their being haunted by the threat posed by the SARS virus. He hoped to see this spirit prevail, not only in elections but also in other aspects of life. The EAC was convinced that the polling-cum-counting arrangement was conducive to a more efficient conduct of the poll and the count and was thinking of adopting this arrangement for the DCs ordinary election to be held later this year. But the public would be widely consulted beforehand. The Chairman expressed his gratitude to all parties concerned for making the by-election a success.



## Section 7 – Complaints

### *Complaints-handling period*

7.1 As in previous by-elections the EAC took up the responsibility of vetting the complaint cases received in this by-election, instead of forming a Complaints Committee as in ordinary elections.

7.2 The period for receiving complaints started on 14 February 2003 (ie the commencement of the nomination period) and ended on 21 May (ie 45 days after the polling day). During this period the public lodged a total of 39 complaints with the EAC, RO and Police. The ICAC did not receive any complaints direct from the public but processed cases referred to them by the EAC and RO. Of these 39 cases, 21 concerned EAs. A detailed breakdown of all complaint cases handled is shown in **Appendix V**.

### *Complaints received on the polling day*

7.3 On the polling day during the polling hours, the REO's Complaints Centre, RO and Police received altogether 16 complaint cases, while the ICAC and PRO received none. A breakdown is shown as follows –

REO's Complaints Centre	:	2 cases
RO	:	9 cases
Police	:	5 cases

7.4 All of these 16 cases were given immediate attention, with 14 solved on the spot. The other two, which concerned making false statements, were received by the RO, who referred them to the ICAC for investigation on the Monday after the polling day. Details of the cases are shown in **Appendix VI**.

### *Outcome of investigations*

7.5 After processing and investigation, of the 39 cases received during the complaints-handling period, 16 were found substantiated or partially substantiated and 19 not substantiated. The other four were under investigation by the ICAC. These are all cases concerning false statement, including the two mentioned in para. 7.4 and two others referred to the ICAC by the REO's Complaints Unit after the polling day.

### *Public censure against RTHK*

7.6 The Commission received a complaint referred by the RO against Radio Television Hong Kong ("RTHK") for inviting only one of the three candidates of the by-election, Mr YEUNG Yiu-chung, to be a speaker in the TV programme "City Forum" on 23 March 2003 without extending such invitation to the other two candidates. The topic of the programme was on the impact of the US-Iraq war on the world's political situation. In this regard RTHK had apparently breached the "equal time" and "no unfair advantage" principles as laid down in Chapter 8 of

the Guidelines on Election-related Activities in respect of 1999 DCs Election, which was applicable to this by-election.

7.7 Having examined the case in great detail, the Commission was of the view that the breaches made by RTHK were inexcusable and that it would be appropriate to censure them in accordance with s 6(3) of the Electoral Affairs Commission Ordinance (“EACO”). Pursuant to s 6(4) of the EACO, RTHK was given an opportunity to defend themselves. In this regard, the Commission informed RTHK in writing on 4 April 2003 that the Commission was at that time considering issuing a public censure against them for breaching the electoral guidelines for not observing the “equal time” and “no unfair advantage” principles.

7.8 When requested to make representations, RTHK responded in writing on 8 April 2003 that (a) the programme in question was a current affairs programme. It was neither an EA nor an election-related programme, a fact that the public would have all along been familiar with, so they did not see the need to invite the other two candidates as well to the programme in question; (b) the producer would like to have the topic of the programme discussed in the political and educational contexts. He had therefore invited Mr YEUNG Yiu-chung to be a speaker at the programme having regard to Mr Yeung’s multiple capacity as a member of the Democratic Alliance for the Betterment of Hong Kong, the Vice-chairman of the Legislative Council Education Affairs Committee and the Headmaster of the Tin Shui Wai Heung To Middle School; and (c)

RTHK had not breached the “equal time” and “no unfair advantage” principles.

7.9 The Commission was however, of the view that RTHK’s non-compliance with the provisions of Chapter 8 of the electoral guidelines was blatant, as it had clearly disregarded paras. 8.1 and 8.3 thereof. Para. 8.1 states that the chapter covers all broadcast programmes, including those on current affairs and para. 8.3 states that candidates may take part in current affairs and other programmes which are conducted on an “equal time” principle. Furthermore RTHK had breached the provision of para. 8.7 that the inviting broadcaster should include a warning to the invitee so as to ensure that “equal opportunity” is given to all relevant candidates, irrespective of whether or not the programme is election-related.

7.10 The Commission opined that clearly RTHK had either totally misunderstood the above provisions in the guidelines or deliberately disregarded them, in which case it was equally inexcusable. Hence the Commission decided that RTHK should be censured.

7.11 The Commission issued a public censure, in Chinese, against RTHK on 12 May 2003. The translated version of the censure statement is at **Appendix VII**. The original version is in the Chinese version of this report.

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

8.1 After the by-election, the EAC has, in line with established practice, conducted an overall review of all aspects of the by-election to look for further improvements for future reference. On the observations made, the EAC has come up with some recommendations. These are detailed in the following paragraphs.

### **(A) The polling-cum-counting arrangement**

8.2 The EAC has observed this arrangement on two previous occasions: the first time on the polling day of the Kai Tak Constituency By-election on 3 November 2002 and the second time on the polling day of the Hoi Sham Constituency By-election on 9 February 2003. This Mei Foo Constituency By-election was the third time when the EAC saw the implementation of this arrangement. It reaffirmed the EAC's belief that this arrangement definitely had its merits: it cuts down manpower and financial resources, requires no time for transporting the ballot box from one place to another and therefore substantially eliminates the security risk which would have otherwise been an issue demanding significant attention. And, most importantly, the arrangement indisputably shortens the waiting time for the election result to the benefit of all concerned.

8.3 **Recommendation:** The EAC recommends that this arrangement be adopted for the 2003 DCs ordinary election to be held later this year and any other by-elections, subject to the views gathered after consulting the public.

(B) **Hygienic conditions of the station**

8.4 During its visit to the station, the EAC observed that every effort had been made to keep the station hygienic. Though it was indeed the outbreak of the SARS that had called for the special sanitary measures, the EAC considers it prudent to make this practice a habit, irrespective of whether there is an epidemic. It will be in the interest of the public for all polling stations in future elections (and by-elections) to be kept as hygienic as practicable.

8.5 **Recommendation:** The EAC recommends that in future sanitary measures be taken as far as practicable to keep polling stations hygienic.

## **Section 9 – Acknowledgement**

9.1 The Commission was satisfied that the by-election had been successfully conducted.

9.2 The Commission wishes to extend its gratitude towards the following government bureau and departments for their dedicated support and unfailing co-operation throughout the by-election: the Constitutional Affairs Bureau, CAS, DH, 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.

9.3 The Commission is especially thankful to the staff of the REO, officers serving as the RO and AROs, and the legal practitioner serving on the NAC(DC) for the by-election.

9.4 The Commission would also like to express its appreciation of the media's wide coverage of the key events of the by-election.

9.5 Last but not least, the Commission is very much grateful to all those who complied with the electoral legislation and guidelines during the election period and those electors who turned up to cast their vote at the polling station.



## **Section 10 – A Concluding Note**

10.1 The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. The Commission will also continue to make its best endeavour to look for improvements for the conduct of future elections and will as ever be open to the views of the public on its proposed measures for making improvement.

10.2 The Commission would like to recommend that this report be made public, at a time the Chief Executive thinks fit, so that the public may know how the Commission performs its functions under the EACO.