

Section 1 – Background

Cause of the by-election

1.1 Ms FUNG King-man, Virginia, an elected member of the Kowloon City District Council (“DC”) Hung Hom Bay Constituency, was disqualified from holding her office on 24 May 2007 as a DC member for the remainder of her term of office in accordance with section 24(5), (6) and (7) of the District Councils Ordinance (Cap 547) (“DCO”), as she had not attended meetings of the DC for four consecutive months since 18 January 2007 without obtaining the consent of the DC¹. According to s 32(1) of the DCO, the Director of Home Affairs declared the existence of the vacancy on 24 May 2007 by a notice published in the Gazette on 1 June 2007.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC” or “the Commission”) was required to arrange for a by-election to return a candidate to fill the vacancy.

¹ Under section 24 (5) to (7) of the DCO, an elected member is disqualified from holding office for the remainder of that member’s term of office if the member does not attend meetings of the DC for four consecutive months (“disqualifying period”) without obtaining the consent of the DC before the end of that period. The disqualifying period begins on the day next following the date of the meeting of the DC at which the member is first absent without consent. If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent. Ms Fung was first absent from the Kowloon City DC meeting without consent of the DC on 18 January 2007. As there was only one DC meeting (on 22 March 2007) in the four months following that meeting, the disqualifying period was extended to end immediately after the 3rd consecutive meeting from which she was absent (i.e. on 23 May 2007). Hence, she was disqualified on 24 May 2007.

The Constituency

1.3 The Hung Hom Bay Constituency is one of the 22 DC constituencies in the Kowloon City District, with a registered electorate of 8,108. A map showing the boundary of the constituency is at **Appendix I**.

The polling day and the nomination period

1.4 The Chief Electoral Officer (“CEO”) of the Registration and Electoral Office (“REO”) appointed 29 July 2007 (Sunday) as the polling day for the by-election and specified the period from 13 to 27 June 2007 (both dates inclusive) as the nomination period of the by-election by publishing a notice in the Gazette on 8 June 2007.

Section 2 – Appointments and Nominations

Appointments

2.1 Miss WONG Tin-yu, Agnes, JP, District Officer (Kowloon City) (“DO(Kowloon City)”) and Miss WONG Wing-chee, Chelsea, Assistant District Officer (Kowloon City) were appointed by the EAC Chairman as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the by-election. Their appointments were published in the Gazette on 8 June 2007. Ms CHENG Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“D of J”) was appointed by the EAC Chairman as the ARO(Legal) for the by-election on 25 May 2007.

2.2 Mr HO Bing-kwan, Barrister-at-law, was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election to provide the RO with the necessary legal advice on the eligibility of the candidates being nominated. Mr HO’s appointment, covering the period from 13 to 29 June 2007, was published in the Gazette on 8 June 2007.

Nominations

2.3 By the close of the two-week nomination period on 27 June 2007, the RO received a total of two nominations. The nominees were Messrs

CHAU Chung-leung and CHEUNG Yan-hong. All the nominations were verified by the RO as valid. The NAC(DC) had not received any request from the RO for legal advice on the validity of the nominations. The names of all validly nominated candidates were published in the Gazette on 6 July 2007.

Briefing for the candidates

2.4 A briefing session for the candidates and their agents, hosted by the EAC Chairman, was conducted on 29 June 2007 at the Kowloon City District Office (“KCDO”). Both candidates and their agents attended the briefing. The Chairman highlighted the major electoral arrangements, including the major provisions in the electoral legislation and guidelines governing election advertisements (“EAs”) and election expenses, for their attention. The Chairman encouraged them to disseminate publicity materials to electors by e-mails and on a household basis in order to reduce the use of paper. Details of these measures are set out in paragraph 3.9 below. The CEO, RO and representatives from the D of J, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the briefing. They took the opportunity to brief the candidates present and answer enquiries on subjects within their respective purview.

2.5 After the briefing session, the RO, witnessed by all parties present, drew lots to determine the candidate number (to be shown on the

ballot paper) for each candidate and allocated the designated spots to them for the display of their EAs in the constituency. As a result of the lots drawing, Messrs CHAU Chung-leung and CHEUNG Yan-hong were allocated the candidate number 1 and 2 respectively. A total of 72 spots in the Hung Hom Bay Constituency were designated for the display of their EAs during the election period, and each candidate was equally allocated with 36 spots.

EAC Guidelines on election-related activities

2.6 The revised guidelines issued for the by-election held on 23 October 2005 were used for this by-election.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 Similar to the previous DC by-elections, the staff of REO were appointed to take up the polling and counting duties. To ensure that the staff were competent in discharging their duties, a half-day briefing session on polling and counting duties including a mock-up session on counting work was conducted on 20 July 2007 to enable all the staff concerned to familiarise themselves with their duties.

The polling-cum-counting station

3.2 As in the previous DC by-elections, both the poll and the count for this by-election were conducted at the same place. The Holy Carpenter Secondary School was designated by the CEO as the polling-cum-counting station for the by-election. The designation of the school as the polling and counting station was published in the Gazette on 6 July 2007. The station was accessible to the disabled.

3.3 Setting up arrangements for the polling station was held in the morning on the day preceding the polling day. The venue at the Holy Carpenter Secondary School was partitioned into two areas, one for the poll and the other reserved for the count. Within the counting area, there was a counting zone, a seating area for the candidates and their

agents, a press area and a public area where members of the public might stay and observe the count. Candidates and their election/counting agents were allowed to stand around the counting table to observe the count from a close distance.

3.4 During the polling hours, the Presiding Officer (“PRO”) of the polling station, assisted by 1 Deputy Presiding Officer (“DPRO”) and 9 Assistant Presiding Officers (“APROs”), was responsible for ensuring the smooth and efficient operation of the polling station and to work closely with the RO. When the count started, the PRO assumed the role of Counting Supervisor in overseeing the counting process and was also responsible for determining the validity of questionable ballot papers, while the DPRO and APROs performed the duties of Assistant Counting Supervisors.

3.5 Outside the polling station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO so that the electors could have a free and safe passage to the station. A notice was put up at a conspicuous spot outside the station, notifying the public of the delineation of the NCZ and NSZ.

Other electoral arrangements

3.6 Similar to the preceding DC by-elections, arrangements were

made to address public concern on the secrecy of votes during the poll, including –

- (a) displaying prominent signs inside and outside the polling station to remind electors that it was an offence to use a mobile telephone inside the polling station;
- (b) the polling staff reminding each elector at the ballot paper issuing desk not to use mobile telephones;
- (c) not installing any curtain in front of the voting compartments so that the polling staff, the candidates and their agents could observe whether the elector was using a mobile telephone inside the voting compartment;
- (d) designating an enlarged restricted zone (around two metres) outside the voting compartments and not allowing any other person to stay in the zone, so that the elector's choice on the ballot paper would be prevented from being seen by other persons; and
- (e) setting the table inside the voting compartment in such a position that would cause the body of the elector to block the marking from being visible to persons outside the voting compartment.

3.7 To avoid exposure of the elector's personal particulars shown on the registers at the ballot paper issuing desks, especially to the electors waiting in a queue, a restricted zone (around one metre) was delineated in front of each issuing desk and a specially designed cardboard stand was placed at the front edge of the desk to block the line of vision of anyone standing behind him/her.

Notification to electors

3.8 In line with the established practices, the REO sent a poll card to each registered elector of the by-election on 12 July 2007 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including a candidates' introductory leaflet, a guidance note on voting, a location map of the polling station, an appeal letter from the DO(Kowloon City) to electors to exercise their civic rights by casting their votes and a leaflet on clean and fair elections issued by the ICAC. The introductory leaflet which included the candidates' election platform was also uploaded onto the REO's website for public browsing.

Reduction of paper consumption

3.9 To reduce paper consumption on election-related materials in the by-election, the REO had put in place the following arrangements on

a trial basis –

- (a) similar to the DC by-elections held since October 2005, to encourage candidates to send their election-related publicity materials electronically to the electors, the REO had sent appeal letters to the electors of the Hung Hom Bay Constituency beforehand inviting them to provide the REO with their e-mail addresses. A total of 339 e-mail addresses were thus collected for this particular by-election. The candidates were provided with a CD-ROM containing information of electors who had chosen to receive election-related publicity materials by e-mail (together with the addresses of all electors); and

- (b) similar to the DC by-elections held since March 2007, to facilitate candidates to send election-related publicity materials on a household basis, the REO had provided an option to all candidates to select one set of gum labels of the addresses of all electors in the constituency from either (i) addresses of all electors on household basis, or (ii) addresses of all electors on individual basis. Both of the candidates of the by-election opted for the arrangement of sending their election-related materials to electors on a household basis.

Publicity

3.10 The REO had, on appropriate occasions, issued press releases covering the major events of the by-election which included the commencement and the close of the nomination period, the poll, the count and the EAC visits to the polling and counting station. Besides, all relevant information on the by-election (including press releases, the hourly electors' turnout rate, election result, etc) was uploaded onto the REO's website for public information.

Contingency plan

3.11 To cater for unforeseen situations in which the by-election might not be proceeded with as scheduled for one reason or another (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling station to reserve the same venue for polling on the following Sunday, i.e. 5 August 2007. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. A dedicated van was also provided to the polling station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling hours

4.1 The poll was scheduled from 7:30 am to 10:30 pm on Sunday, 29 July 2007. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 6 July 2007.

Logistical arrangements

4.2 A central command centre was set up for overseeing the operation of the poll and providing logistical support to the staff in the polling station on the polling day. In addition, the centre also assisted in handling enquiries and complaints and collating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received, etc. The centre operated at the REO office in Guardian House from 7:00 am on the polling day until 1:00 am on 30 July 2007. A press enquiry desk was set up from 7:30 am until the announcement of the election result for handling press enquiries and disseminating information to the public through the media at regular intervals. The election enquiry hotline operated from 7:00 am to 11:00 pm to handle general enquiries from the electors and to provide information to the polling station on the identity and eligibility of electors on the polling day.

4.3 A complaints centre was also set up in the REO office in

Harbour Centre to receive and process election-related complaints lodged with the EAC direct from the public by phone, fax or e-mail and those referred to the EAC through other complaint-handling channels. It was manned by the staff of the Complaints Unit of the EAC secretariat and operated throughout the polling hours from 7:30 am to 10:30 pm on the polling day.

4.4 At the district level, a district command centre, manned by staff of the Home Affairs Department (“HAD”), was set up at the KCDO to serve as the contact point between the RO and the PRO. The PRO was responsible for keeping the RO and ARO informed of all significant events which occurred within the polling station and for handling election-related complaints. Under the direction of the district command centre, a district team took action against unauthorised EAs and illegal canvassing activities in or around the NCZ and the polling station.

4.5 The Hong Kong Police Force and Civil Aid Service (“CAS”) rendered support in maintaining law and order in the NCZ, NSZ and inside the polling-cum-counting station.

Turnout of electors

4.6 Out of 8,108 registered electors for the Hung Hom Bay Constituency, 1,689 turned up to cast their votes. The overall turnout

rate was 20.83%. A breakdown of the hourly turnout rate of electors in respect of this by-election is shown in **Appendix II**.

Visits

4.7 Mr Justice PANG, EAC Chairman and Professor Andrew CHAN, Member of the Commission, paid visit to the polling station in the morning on the polling day. They concluded the visit by briefing the press on the latest progress of the poll. They also encouraged the electors to cast their votes.

4.8 Mr Stephen LAM, Secretary for Constitutional and Mainland Affairs, also visited the polling station before noon on the polling day.

Section 5 – The Conversion

5.1 The poll closed at 10:30 pm as scheduled. A notice was promptly displayed at the entrance of the station, notifying the public of the close of poll and the temporary closure of the station to facilitate its conversion into a counting station. The telephone number of the APRO concerned was also shown on the notice to facilitate communication between the candidates' agents and the station staff. Before the counting of the votes began, another notice was displayed outside the station, announcing the approximate time when the station would be opened again for the public to observe the count.

5.2 The PRO sealed the ballot boxes in the presence of all candidates and their agents, while the polling staff were preparing for the conversion of the station. The conversion process was completed smoothly within 25 minutes.

5.3 Mr Justice PANG, EAC Chairman and Mr Lawrence LOK and Professor Andrew CHAN, Members of the Commission, observed the entire conversion process of the station. They were satisfied with the smooth conduct of the conversion.

Section 6 – The Count

Start of the count

6.1 At about 10:55 pm, the station was re-opened for admission of the public including the media to observe the count. In the presence of all candidates and their agents, the PRO and DPRO transferred the sealed ballot boxes to the counting table. The PRO unsealed the ballot boxes which were jointly emptied by Mr Justice PANG, Mr Lawrence LOK, Professor Andrew CHAN and Mr Stephen LAM. The count then commenced immediately.

Invalid and questionable ballot papers

6.2 Out of 1,689 ballot papers cast into the ballot boxes, 14 ballot papers were determined as invalid (including 8 unmarked and 6 marked with votes for more than one candidate) and therefore not counted pursuant to section 78 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”). In addition, another 7 ballot papers were identified as questionable.

6.3 In the presence of the candidates and their agents, the PRO, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. As a result, 1

questionable ballot paper was determined by the PRO as invalid (on the ground of void for uncertainty) and was not counted. The remaining 6 questionable ballot papers were determined by the PRO as valid and were counted. The total number of ballot papers not counted was 15. An analysis of the ballot papers not counted is shown in **Appendix III**.

Election result

6.4 Upon the completion of the count, the PRO verified the number of ballot papers counted with the ballot paper accounts. The figures were found consistent. The PRO informed the RO of the result of the count. There was no request for a re-count of votes from the candidates or their agents.

6.5 The count finished at around 11:25 pm. At about 11:30 pm, the RO declared the election result: Mr CHEUNG Yan-hong was elected with 1,216 valid votes, representing 72.64% of the total number of valid votes cast. Mr CHAU Chung-leung received 458 votes. The election result for the Hung Hom Bay Constituency was published in the Gazette on 2 August 2007 and is now reproduced at **Appendix IV**.

Meeting the media

6.6 The Chairman and Members of the EAC met the press immediately after the announcement of the election result to conclude

that the Commission was content with the polling-cum-counting arrangement and the efficient completion of the counting process. They were satisfied that the principle of fairness, openness and honesty was upheld throughout the process of this by-election. The Commission undertook to continue to review the election-related procedures and arrangements with a view to refining and improving them for public elections in future. The Chairman also took the opportunity to thank all parties concerned for the smooth conduct of the by-election.

Section 7 – Complaints

Complaints-handling period

7.1 The Commission took up the responsibility to handle complaints in relation to the by-election, instead of forming a Complaints Committee as in ordinary elections. 5 different parties were responsible for processing the complaints received: the EAC, RO, Police, ICAC and, on the polling day, the PRO as well. Members of the public could lodge their complaints with any of these parties.

7.2 The period for receiving complaints for this by-election commenced on 13 June 2007 when the nomination period began. It ended on 12 September 2007, i.e. 45 days after the polling day. During this period, a total of 14 complaints were received from the public by the EAC, RO, Police and ICAC. The majority of these complaint cases were about EAs and noise nuisances. There were also complaints against electioneering activities on private premises, personal data privacy and false statement about a candidate. A breakdown of the complaints is set out in **Appendix V**.

Complaints received on the polling day

7.3 The REO complaints centre, the RO and the Police received altogether 6 complaint cases on the polling day. No complaint was

received by the ICAC and PRO. The following shows a breakdown of these cases –

	Number of complaints received on the polling day
REO complaints centre	1
RO	3
Police	2
Total	6

7.4 The majority of the cases received on the polling day were expeditiously handled and resolved on the spot. Most of them were about unauthorised display of EAs and noise nuisances. A breakdown of complaint cases received on the polling day is shown in **Appendix VI**. These 6 complaints are also included in Appendix V.

Outcome of investigation

7.5 Of the 14 complaints received during the complaints-handling period, 4 were found substantiated, 2 unsubstantiated, 2 withdrawn, 4 requiring no further action and 2 under investigation by ICAC. In substantiated cases, warnings had been issued to the candidate concerned by the RO and the Police.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC conducted an overall review of all aspects of the by-election with a view to improving the conduct of future elections. The EAC found the polling and counting arrangement generally satisfactory. The areas that have been reviewed and the related recommendations are set out in the ensuing paragraphs.

(A) Reduction of paper consumption on election-related materials

8.2 As a means to reduce paper consumption, the REO has continued to try out in this by-election the arrangements of collecting e-mail addresses from electors for candidates to send their publicity materials electronically, and of providing candidates with the choice of address labels of electors on a household basis instead of on an individual basis. Details of the above arrangements are set out in paragraph 3.9 above.

8.3 **Recommendation:** The EAC considers that the REO should analyse the results of all trial arrangements in previous by-elections to assess the overall effectiveness of such measures on reduction of paper consumption for the EAC's consideration.

(B) Counting tables

8.4 As in the previous by-election for Tai Po District Council Hong Lok Yuen Constituency held on 10 June 2007, REO had surrounded the edges of the counting tables with plastic strips of about 2 inches high so as to prevent ballot papers from falling onto the ground when they were being poured out from the ballot boxes to the counting tables.

8.5 **Recommendation:** Having regard to the effectiveness of this arrangement, the EAC recommends that this arrangement should continue to be adopted in future elections.

(C) Polling station at Holy Carpenter Secondary School

8.6 Due to a lack of suitable venue within the Hung Hom Bay Constituency, the polling station was set up outside the constituency at Holy Carpenter Secondary School. Some electors might consider the location of the polling station not too convenient. It was also noticed that other than the electors of the Hung Hom Bay Constituency, some electors of the Ka Wai Constituency (the constituency in which the polling station was located) visited the polling station and as a result, the polling staff needed to verify their voting eligibility through the enquiry hotline. This had posed additional workload on the part of the polling staff.

8.7 It was also noticed that the hall on the ground floor of Holy Carpenter Secondary School might not be large enough. In particular, the queuing area in front of the ballot paper issuing desks was insufficient.

8.8 **Recommendation:** The EAC recommends that, where possible, a larger venue within Hung Hom Bay Constituency should be identified as the polling station in future elections.

Section 9 – Acknowledgement

9.1 The Commission wishes to express its gratitude towards the following government bureaux and departments for their valuable assistance rendered throughout the by-election: Constitutional and Mainland Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Government Logistics Department, Highways Department, HAD, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Lands Department, Office of the Government Chief Information Officer (of the Commerce and Economic Development Bureau) and Official Languages Division (of the Civil Service Bureau). Their concerted efforts have contributed significantly to the successful conduct of the by-election.

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

9.3 The Commission wishes to thank the media for their wide coverage of the key events in relation to this by-election which has contributed much to enhance its transparency.

9.4 Last but not least, the Commission would like to express its

appreciation to the electors who turned up to cast their vote and all those who complied with the electoral legislation and guidelines in the by-election.

Section 10 – Looking Forward

10.1 The imminent tasks for the EAC are the 2007 DC ordinary election and the 2007 Legislative Council Hong Kong Island Geographical Constituency by-election scheduled to be held on 18 November 2007 and 2 December 2007 respectively. Preparation work has already begun. The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to the views from the public on what measures should be taken to improve future electoral arrangements.

10.2 The Commission would like to recommend this report be made public, at a time the Chief Executive thinks fit, to enhance the transparency of the Commission's work in the conduct and supervision of the by-election under the EAC Ordinance (Cap 541).