

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the Fuk Loi Constituency of the Tsuen Wan District Council (“DC”) on 21 May 2011 upon the death of Mr Chiu Ka-po, an elected member of the 2007 DC Election for the constituency. Pursuant to section 26(a) of the District Council Ordinance (Cap 547) (“DCO”), Mr Chiu’s office became vacant. The Director of Home Affairs, in accordance of section 32(1) of the DCO, declared the existence of a vacancy in the Fuk Loi Constituency of the Tsuen Wan DC by publishing a notice in the Gazette on 27 May 2011.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC”) was required to arrange for a by-election to return a candidate to fill the vacancy in the Fuk Loi Constituency of Tsuen Wan DC.

The Constituency

1.3 The Fuk Loi Constituency is one of the 17 DC constituency areas in the Tsuen Wan District, with a registered electorate of 7,554. A map showing the boundary of the constituency area 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 24 July 2011 (Sunday) as the polling day for the Tsuen Wan DC Fuk Loi Constituency By-election (“the By-election”) and specified the period from 11 June to 24 June 2011 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 3 June 2011.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr Cheung Doi-ching, JP, District Officer (Tsuen Wan), and Mr Pau Pak-sun, Sunny, Assistant District Officer (Tsuen Wan), were appointed by the EAC as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the By-election. Their appointments were published in the Gazette on 3 June 2011. Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO (Legal) on 31 May 2011 for the By-election.

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 candidates. Mr Ho’s appointment, covering the period from 11 June to 27 June 2011, was published in the Gazette on 3 June 2011.

Nominations

2.3 By the close of the two-week nomination period on 24 June 2011, the RO received a total of two nominations. The two nominations were determined as valid by the RO. The nominees were Mr Kot Siu-yuen and Ms Mui Yee-ling. The NAC(DC) did not receive any request from the RO for legal advice on the validity of the

nominations. The names of the two validly nominated candidates were published in the Gazette on 8 July 2011.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the two candidates on 29 June 2011 at the Tsuen Wan District Office to remind them and their agents of the major provisions in the relevant electoral legislation and guidelines and the need for strict compliance. Topics included polling and counting arrangements, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO, RO and representatives of DoJ, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the session to brief the candidates 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 for each candidate to be shown on the ballot papers and the designated spots to be allocated to the candidates for displaying EAs. As a result of the lots drawing, Mr Kot Siu-yuen and Ms Mui Yee-ling were allocated the candidate number 1 and 2 respectively. A total of 22 spots in the Fuk Loi Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 11 designated spots.

EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election (“the Guidelines”) updated in January 2010 were applicable to this By-election.

Section 3 – Preparation Work

Appointment and Training of Polling/Counting Staff

3.1 The staff of REO were appointed to take up the polling and counting duties. A half-day briefing session on polling and counting duties including a mock session on counting work was conducted on 21 July 2011 to familiarise all the staff concerned with their duties. Separately, a half-day briefing session was held on 20 July 2011 for staff who would man the dedicated polling stations (“DPSs”).

The Polling-cum-counting Station

3.2 The CEO designated the polling-cum-counting station at the Holy Cross Lutheran School as the main counting station for the By-election, where the votes cast therein and in the DPSs were to be counted. The result of the election was to be announced at this polling-cum-counting station. The polling station was accessible to electors with disabilities.

3.3 The polling station was set up in the afternoon of the day preceding the polling day. It was converted into a counting station after the close of poll. Within the counting area of the counting station, there were 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 observe the count around the counting tables.

Dedicated Polling Stations

3.4 To enable registered electors of the Fuk Loi Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their vote on the polling day, DPSs were planned to be set up in penal institutions for this By-election. As advised by the CSD on 23 July 2011, a total of 9 registered electors of the Fuk Loi Constituency would be in their custody on the polling day in nine penal institutions. Hence, a DPS was set up in each of these penal institutions. Owing to security considerations, the polls at these DPSs were conducted from 9:00 a.m. to 4:00 p.m.

3.5 A DPS was also set up on the polling day at the Hong Kong Police Lei Muk Shue Operational Base for registered electors of the Fuk Loi Constituency who were remanded or detained on the polling day by law enforcement agencies (“LEAs”) (other than the CSD) including the Police, the ICAC, Customs and Excise Department, Immigration Department, etc. to cast votes. Since the LEAs might arrest persons who happened to be registered electors of the Fuk Loi Constituency at any time on the polling day, the DPS at the Hong Kong Police Lei Muk Shue Operational Base was required to be open throughout the polling hours from 7:30 a.m. to 10:30 p.m. in line with other ordinary polling station. The set-up of a DPS was basically the same as that of an ordinary polling station, except that some of the polling materials had to be specially designed for security reasons.

3.6 To protect the secrecy of the votes cast in the DPSs, such votes were transferred to the main counting station at the Holy Cross Lutheran School and mixed with the ballot papers cast in that polling station before counting in accordance with section 76 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”).

3.7 The designation of the aforesaid venues as the polling-cum-counting station and the DPSs was published in the Gazette on 8 July 2011. Candidates were informed that subject to the required security clearance, they or their election agents could enter the DPSs to observe the poll and witness the Presiding Officer (“PROs”) concerned to deliver the ballot boxes to the main counting station in accordance with the relevant electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of the polling-cum-counting station, assisted by the Deputy PROs (“DPROs”) and Assistant PROs (“APROs”), was responsible for ensuring the smooth and efficient operation of the polling station. The PRO worked closely with the RO. When the count started, the PRO assumed the role of Counting Supervisor in overseeing the counting process and was responsible for determining the validity of questionable ballot papers, while the DPROs and / or APROs performed the duties of Assistant Counting Supervisors.

3.9 In view of the very small electorate of the DPSs, each PRO of DPS was supported by one APRO and / or one Polling Officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the main counting station at the Holy Cross Lutheran School after the close of poll.

3.10 Outside all the polling stations, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO to provide the electors with an unobstructed access to the station. A notice was put up at a conspicuous spot of each polling station, showing the areas of the NCZ and the NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the Fuk Loi Constituency on 8 July 2011 notifying him/her of the date, time and the assigned polling station. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a location map of the polling-cum-counting station with a guidance note on voting and a leaflet on clean and fair elections issued by the ICAC. The “Introduction to Candidates” which included the candidates’ election platform was also uploaded to the EAC’s website.

Publicity

3.12 The REO issued press releases covering the major events of the By-election, which included the nomination period, number of

nominations received, names of the candidates, the poll, the count, the setting up of DPSs, the turnout rates and the EAC's visits to the polling and counting stations. Besides, all relevant information on the By-election (including press releases, the hourly electors' turnout rate, election result, etc.) was uploaded to the EAC's website for public information.

Contingency Plan

3.13 To cater for the unforeseen situations in which the By-election might not be held as scheduled (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling stations to reserve the same venues on the following Sunday on 31 July 2011. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc.) was put in reserve. One 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 polling hours for the ordinary polling station at the Holy Cross Lutheran School and the DPS at the Hong Kong Police Lei Muk Shue Operational Base were scheduled from 7:30 a.m. to 10:30 p.m. on 24 July 2011. The polling hours for the DPSs in penal institutions ran from 9:00 a.m. to 4:00 p.m. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 8 July 2011.

Logistical Arrangements

4.2 A central command centre was set up by the REO to oversee the operation of the poll and to provide logistical support to the staff in the polling stations on the polling day. The centre was also responsible for disseminating statistical information on the hourly electors' turnout rate, election result and the number and types of complaints received. The centre operated inside the Holy Cross Lutheran School from 7:00 a.m. on the polling day until 12:40 a.m. on 25 July 2011.

4.3 A media enquiry hotline was set up from 7:30 a.m. until the announcement of the election result to handle press enquiries and to disseminate information to the public through the media at regular intervals. The election enquiry hotline, which was set up to handle general enquiries from electors and to provide assistance to polling

stations in ascertaining the eligibility of electors, operated from 7:00 a.m. to 11:00 p.m. at the REO Office at Guardian House on the polling day.

4.4 A complaint centre was set up at the REO office at Harbour Centre to receive and process election-related complaints. It was manned by the staff of the EAC Secretariat and operated throughout the polling hours from 7:30 a.m. to 10:30 p.m.

4.5 At the district level, a district command centre, manned by the staff of the Home Affairs Department (“HAD”), was set up at the Tsuen Wan District Office to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and the ARO informed of all significant events which occurred within the polling stations and for handling election-related complaints. Under the direction of the district command centre, a district team would take action against unauthorised EAs and illegal canvassing activities in or around the NCZs and the polling stations.

4.6 The Police rendered assistance in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting station. Police officers were also stationed at the DPS at the Hong Kong Police Lei Muk Shue Operational Base to provide support to the PRO.

Turnout of Electors

4.7 Out of 7,554 registered electors of the Fuk Loi Constituency, 3,121 cast their votes in the respective polling stations. The overall turnout rate was 41.32%. A breakdown of the hourly turnout rate of electors in respect of this By-election is shown in **Appendix II**.

Visits

4.8 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Andrew Chan, EAC Members, visited a number of polling stations in the morning of the polling day. They first visited different polling stations according to their individual itineraries. Mr Justice Fung visited the DPS at the Stanley Prison. Mr Lok paid a visit to the DPS at the Lai Chi Rehabilitation Centre and Professor Chan visited the DPS at the Hong Kong Police Lei Muk Shue Operational Base. After that, they visited the polling station at the Holy Cross Lutheran School together and concluded the visit by briefing the press on the latest progress of the poll there.

4.9 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling station at the Holy Cross Lutheran School on the polling day.

Section 5 – The Conversion

5.1 The poll at the polling station at the Holy Cross Lutheran School and the Hong Kong Police Lei Muk Shue Operational Base closed at 10:30 p.m. while that at the DPSs closed at 4:00 p.m. as scheduled.

5.2 The PROs of the DPS at the Hong Kong Police Lei Muk Shue Operational Base and the DPSs at the nine penal institutions sealed the respective ballot boxes in the presence of a police officer or an officer of the CSD at the close of poll. Under the escort of the Police, the PROs delivered the sealed ballot boxes to the main counting station at the Holy Cross Lutheran School.

5.3 Regarding the polling-cum-counting station at the Holy Cross Lutheran School, after the close of poll, 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 votes began, another notice was displayed outside the station, announcing the approximate time when the station would be open again for the public to observe the count.

5.4 In addition, the PRO of the station sealed the ballot box in the presence of the candidates or their agents who were present at the station, while the polling staff were preparing for the conversion of the station. The conversion was completed smoothly within 30 minutes.

5.5 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Andrew Chan, EAC Members, were present at the polling station to observe the conversion and were satisfied with the smooth conversion of the polling station into a counting station.

Section 6 – The Count

Start of the Count

6.1 At about 11:00 p.m., the station was re-opened for admission of the public and the media to observe the count. In the presence of candidates or their agents, the PRO and DPROs / APROs of the station transferred the sealed ballot boxes to the counting tables. At the main counting station at the Holy Cross Lutheran School, the PRO unsealed the ballot boxes. The first one was then jointly emptied by Mr Justice Fung, EAC Chairman, Mr Stephen Lam, the Secretary for Constitutional and Mainland Affairs and the EAC Members, Mr Lawrence Lok and Professor Andrew Chan. The PRO also unsealed and emptied the ballot boxes received from DPSs and mixed the ballot papers contained therein with those of the polling station at the Holy Cross Lutheran School before counting. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 3,121 ballot papers issued, three ballot papers were stamped with “UNUSED” and kept by the PRO. Among the remaining 3,118 ballot papers cast into the ballot boxes, 23 ballot papers were determined as invalid (including 18 unmarked, one not marked with the chop provided by the REO, four containing votes for more than one candidate). These 23 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 77 ballot papers

were identified as questionable.

6.3 In the presence of the candidates or their agents, the PRO concerned, with the assistance of the ARO (Legal) if necessary, examined carefully the questionable ballot papers to determine their validity. Three questionable ballot papers were determined as invalid and were not counted as two of them were voided for uncertainty while another one contained writing or mark by which the elector could possibly be identified. All of them were not counted. The remaining 74 questionable ballot papers were ruled valid by the PRO and were counted. The total number of ballot papers not counted was 26. A summary of the ballot papers not counted is at **Appendix III**.

Election Result

6.4 Upon completion of the count, the PRO verified the number of ballot papers counted at the counting station with the ballot paper account. The figures were found tallied. The PRO made known the counting result to the candidates and their agents who were present at the counting zones. The PRO subsequently reported to the RO the counting result.

6.5 As there was no request for a re-count from the candidates, the RO declared the election result at about 12:20 a.m. on 25 July 2011. Mr Kot Siu-yuen was elected with 2,086 valid votes, representing 67.46% of the total number of 3,092 valid votes cast. The other

candidate, Ms Mui Yee-ling received 1,006 votes. The election result for the Fuk Loi Constituency was published in the Gazette on 25 July 2011 and is now reproduced at **Appendix IV**.

Section 7 – Complaints

Complaints-handling Period

7.1 The complaints-handling period started on the day when the nomination period commenced on 11 June 2011, and ended 45 days after the polling day on 7 September 2011. During the complaints-handling period, five different parties were designated for handling and processing complaints: the EAC, the RO, the Police, the ICAC and, on the polling day, the PRO as well. Complainants could lodge their complaints with any of the above parties.

7.2 By the end of the complaints-handling period, a total of 18 complaints were received from members of the public by the five complaints-handling parties. The majority of these complaints concerned nuisances caused by canvassing activities such as noise nuisances and obstruction of pavement. A breakdown of the complaints is **at Appendix V**.

Complaints received on the Polling Day

7.3 The REO complaints centre, PRO and the Police altogether received 12 complaint cases on the polling day. A breakdown of these cases is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO complaints centre	2
Police	7
PRO	3
Total	12

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned nuisances caused by canvassing activities such as noise nuisances and obstruction of pavement. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These 12 complaints are also included in **Appendix V**.

Outcome of Investigation

7.5 Of the 18 complaints received during the complaints-handling period, 3 were found substantiated, 2 unsubstantiated, 8 requiring no further action and 5 under investigation.

Section 8 – Review and Recommendations

8.1 After the By-election, the EAC conducted an overall review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC found the polling and counting arrangements generally satisfactory. The area that has been reviewed and the related recommendation are set out in the ensuing paragraphs.

Polling Station at Holy Cross Lutheran School

8.2 About 7,500 registered electors were assigned to vote at the polling station set up at the Holy Cross Lutheran School. It was the first time to set up a polling station at this venue. The EAC found that given the size of the electorate, the polling station was relatively small and that there was only one single point (about 2 metre in width) serving as both the entrance and exit of the polling station. It was noted that the aforesaid entrance and exit point became congested when a large number of electors, in particular wheelchair users, entered or left the polling station at the same time and/or when a number of electors queued up to get the ballot papers and the queue extended to the areas near the entrance and exit point.

8.3 **Recommendation:** In view of the size and layout of the Holy Cross Lutheran School as mentioned in paragraph 8.2 above, it might not be a very suitable venue for setting up a polling station. The EAC

recommends that the REO should endeavor to identify an alternative venue with a larger area and separate entrance and exit points within the constituency for setting up a polling station in future elections.

Section 9 – Acknowledgement

9.1 The successful conclusion of the By-election was attributable to the dedicated and concerted efforts of all parties involved.

9.2 The EAC would like to thank the following government bureaux and departments for their support and assistance:

Agriculture, Fisheries and Conservation Department

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Justice

Drainage Services Department

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Home Affairs Department

Hong Kong Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Leisure and Cultural Services Department

Marine Department

Official Languages Division (of the Civil Service Bureau)

9.3 The EAC is grateful for the efforts of all officers and REO staff serving as the RO, AROs, PROs, DPROs and APROs, and the legal practitioner serving on the NAC(DC) in the By-election.

9.4 The EAC is also grateful to the CSD and other LEAs for their assistance provided to the REO in making necessary arrangements to facilitate registered electors who were imprisoned, remanded or detained on the polling day to vote.

9.5 The EAC would like to thank the media who had helped to enhance the transparency of the By-election by giving all major events good coverage.

9.6 The EAC would also like to express its appreciation to the electors who turned up to cast their votes and all those who rendered support or assistance in ensuring compliance with the electoral legislation and guidelines in the By-election.

Section 10 – Looking Forward

10.1 The EAC remains committed to fulfilling the mission of safeguarding the integrity of public elections in Hong Kong. It will make continued efforts to keep a vigilant watch on every election to ensure openness, fairness and honesty. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

10.2 The EAC recommends that this report be made public, at a time the Chief Executive thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the By-election.

