

## **Section 1 – Background**

### **Cause of the By-election**

1.1 Mr Leung Fuk-yuen, an elected member of the 2007 DC Election for the Shap Pat Heung North Constituency, was elected as the Chairman of Shap Pat Heung Rural Committee (“RC”) on 7 March 2011. In accordance with section 9(1)(c) and 17(1) of the District Councils Ordinance (Cap 547) (“DCO”), Mr Leung has become an ex-officio member of the Yuen Long District Council (“DC”) since 1 April 2011 by virtue of his holding office as the Chairman of the aforesaid RC.

1.2 In accordance with section 10 of the DCO, if a person holding office as an elected member or appointed member of a DC ("the first office") becomes entitled to hold office as an ex-officio member of the same or another DC ("the second office"), that person is taken to have resigned from the first office with effect immediately before the date on which the person commences to hold the second office. Section 26(b) of the DCO stipulates that an elected member’s office becomes vacant if the member is taken to have resigned under section 10. In this connection, a vacancy arose in the Shap Pat Heung North Constituency of the Yuen Long DC on 31 March 2011.

1.3 Pursuant to sections 32(1) of the DCO, the Director of Home Affairs declared the existence of a vacancy in the Shap Pat Heung North Constituency of the Yuen Long DC by a notice published in the Gazette on 15 April 2011.

1.4 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 Shap Pat Heung North Constituency of Yuen Long DC.

### **The Constituency**

1.5 The Shap Pat Heung North Constituency is one of the 29 DC constituencies in the Yuen Long District, with a registered electorate of 10,846. A map showing the boundary of the constituency is at **Appendix I**.

### **The Polling Day and the Nomination Period**

1.6 The Chief Electoral Officer (“CEO”) of the Registration and Electoral Office (“REO”) appointed 26 June 2011 (Sunday) as the polling day for the Yuen Long DC Shap Pat Heung North Constituency By-election (“the By-election”) and specified the period from 6 May to 20 May 2011 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 29 April 2011.

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

### **Appointments**

2.1 Mr Yeung Tak-keung, JP, District Officer (Yuen Long), and Mr Tsoi Kin-pan, George, Assistant District Officer (Yuen Long), 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 29 April 2011. Ms Ling Ka-wah, Florence, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO(Legal) on 21 April 2011 for the By-election. She was subsequently replaced by Ms Lee Ka-wai, Karen, Senior Government Counsel of DoJ, as the ARO(Legal) for the By-election with effect from 26 May 2011.

2.2 Mr Lui Kit-ling, 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 Lui’s appointment, covering the period from 6 May to 23 May 2011, was published in the Gazette on 29 April 2011.

### **Nominations**

2.3 By the close of the two-week nomination period on 20 May 2011, the RO received a total of two nominations. The two nominations were determined valid by the RO. The nominees were Messrs Shum Ho-kit and Cheng Yin-ping. 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 27 May 2011.

### **Briefing for the Candidates**

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the two candidates on 25 May 2011 at the Yuen Long 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, Messrs Shum Ho-kit and Cheng Yin-ping were allocated the candidate numbers 1 and 2 respectively. A total of 48 spots in the Shap Pat Heung North Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 24 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 used for 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 16 June 2011 to familiarise all the staff concerned with their duties. Separately, a half-day briefing session was held on 17 June 2011 for staff who would man the dedicated polling stations (“DPSs”).

### **The Polling-cum-counting Station**

3.2 In view of the large area of the Shap Pat Heung North Constituency, three polling-cum-counting stations were set up at Yuen Long Government Primary School, Chung Sing School and Buddhist Wing Yan School to facilitate the electors to cast their votes. The CEO designated the polling-cum-counting station at Buddhist Wing Yan School as the dominant counting station and main counting station for the By-election, where the votes cast therein and in the DPSs were to be counted and where the result of the election was to be announced. All the three polling stations were accessible to electors with disabilities.

3.3 The three polling stations were set up in the afternoon of the day preceding the polling day. They were converted into counting stations after the close of poll. Within the counting area of each counting station,

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 observe the count around the counting table.

### **Dedicated Polling Stations**

3.4 To enable registered electors of the Shap Pat Heung North Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to 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 25 June 2011, a total of 14 registered electors of the Shap Pat Heung North Constituency would be imprisoned or remanded under their custody on the polling day in eight 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 Yuen Long Police Station for registered electors of the Shap Pat Heung North 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 Shap Pat Heung North Constituency at any time on the polling day, the DPS at the Yuen Long Police Station was required to be open throughout the polling hours from 7:30 a.m. to 10:30 p.m. as

with other ordinary polling stations. 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 Buddhist Wing Yan 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 stations and the DPSs was published in the Gazette on 27 May 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 (“PRO”) 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 each polling station, assisted by the Deputy PRO (“DPRO”) and/or Assistant PROs (“APROs”), was responsible for ensuring the smooth and efficient operation of the polling station. The PROs worked closely with the RO. When the count started, the PROs assumed the role of Counting Supervisors in overseeing the counting process and were 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 Buddhist Wing Yan 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 outside 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 Shap Pat Heung North Constituency on 10 June 2011 notifying him / her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a guidance note on voting, a location map of the polling-cum-counting station 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 commencement and the close of the nomination period, the poll, the count, the setting up of DPSs 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 3 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 stations to cater for any necessary transportation needs.

## **Section 4 – The Poll**

### **Polling Hours**

4.1 The polling hours for the ordinary polling stations and the DPS at the Yuen Long Police Station were scheduled from 7:30 a.m. to 10:30 p.m. on 26 June 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 27 May 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, number and types of complaints received. The centre operated inside the Buddhist Wing Yan School from 7:00 a.m. on the polling day until 12:30 a.m. on 27 June 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 identity and 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 complaints 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 Yuen Long 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 stations. Police officers were also stationed at the DPS at the Yuen Long Police Station to provide support to the PRO.

## **Turnout of Electors**

4.7 Out of 10,846 registered electors of the Shap Pat Heung North Constituency, 2,823 cast their votes in the respective polling stations. The overall turnout rate was 26.03%. 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, and Professor Andrew Chan, EAC Member, visited the polling stations in the morning of the polling day. Mr Justice Fung first visited the DPS at Tung Tau Correctional Institution, followed by the polling stations at Chung Sing School, Buddhist Wing Yan School and Yuen Long Government Primary School. Professor Chan paid a visit first to the polling station at Yuen Long Government Primary School, followed by the DPS at Yuen Long Police Station and the polling station at Buddhist Wing Yan School. They concluded the visit by briefing the press on the latest progress of the poll at the polling station at Buddhist Wing Yan School.

4.9 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling station at Buddhist Wing Yan School on the polling day.

## **Section 5 – The Conversion**

5.1 The poll at the polling stations at Yuen Long Government Primary School, Chung Sing School, Buddhist Wing Yan School, and the Yuen Long Police Station closed at 10:30 p.m. as scheduled.

5.2 The PROs of the DPS at the Yuen Long Police Station and the DPSs at the 8 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 Buddhist Wing Yan School.

5.3 After the close of poll at the polling stations at Yuen Long Government Primary School, Chung Sing School and Buddhist Wing Yan School, a notice was promptly displayed at the entrance of each 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 for each station to facilitate communication between the candidates' agents and the station staff. Before the counting of votes began, another notice was displayed outside each station, announcing the approximate time when the station would be open again for the public to observe the count.

5.4 At the three ordinary polling stations, the PROs sealed the ballot boxes in the presence of the candidates or their agents, 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, observed the entire conversion process in the polling stations at Buddhist Wing Yan School, Yuen Long Government Primary School and Chung Sing School respectively. They were satisfied with the smooth conduct of the conversion of the counting stations.

## **Section 6 – The Count**

### **Start of the Count**

6.1 Before 11:00 p.m., the stations were 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 DPRO / APROs of each station transferred the sealed ballot boxes to the counting tables. At the dominant and main counting station at Buddhist Wing Yan School, the PRO concerned unsealed the ballot boxes. The first one was then jointly emptied by Mr Justice Fung, the EAC Chairman and Mr Stephen Lam, the Secretary for Constitutional and Mainland Affairs. 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 Buddhist Wing Yan School before counting. As for the counting stations at Yuen Long Government Primary School and Chung Sing School, the PROs concerned emptied the unsealed ballot boxes with EAC Members Mr Lawrence Lok and Professor Andrew Chan respectively. The count then commenced immediately.

### **Invalid and Questionable Ballot Papers**

6.2 Out of 2,823 ballot papers issued, there was one ballot paper stamped with “UNUSED” and kept by the PRO. Among the remaining 2,822 ballot papers cast into the ballot boxes, 24 ballot papers were determined as invalid (including 18 unmarked, two not marked



with the chop provided by the REO and four containing votes for more than one candidate). These 24 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 43 ballot papers were identified as questionable.

6.3 In the presence of the candidates or their agents, the PROs concerned, with the assistance of the ARO(Legal) (who was stationed in the dominant and main counting station at Buddhist Wing Yan School) if necessary, examined carefully the questionable ballot papers to determine their validity. Four questionable ballot papers were determined as invalid and were not counted as three of them were voided for uncertainty while another one contained writing or mark by which the elector could possibly be identified. The remaining 39 questionable ballot papers were ruled valid by the PROs and were counted. The total number of ballot papers not counted was 28. A summary of the ballot papers not counted is at **Appendix III**.

### **Election Result**

6.4 Upon completion of the count, the PROs verified the number of ballot papers counted at their counting stations with their ballot paper accounts. The figures were found consistent. The PROs of all counting stations made known the counting results to the candidates and their agents who were present at the counting zones. The PROs of the counting stations at Yuen Long Government Primary School and Chung Sing School then reported the counting results to the PRO of the

dominant counting station immediately. After consolidating the results, the PRO of the dominant counting station reported to the RO the counting results of the three counting stations.

6.5 As there was no request for a re-count from the candidates, the RO declared the election result at about 11:55 p.m. Mr Shum Ho-Kit was elected with 1,828 valid votes, representing 65.43% of the total number of 2,794 valid votes cast. The other candidate, Mr Cheng Yin-ping received 966 votes. The election result for the Shap Pat Heung North Constituency was published in the Gazette on 30 June 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 6 May 2011, and ended 45 days after the polling day on 10 August 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 PROs 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 two complaints were received from members of the public by the Police and ICAC while the EAC, the RO and the PRO did not receive any complaint. A breakdown of the complaints is as follows:

Nature	Cases Received by		Total
	Police	ICAC	
1. Bribery in relation to voting	0	1	1
2. Obstruction to pavement	1	0	1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>2</b>

7.3 The ICAC received a complaint about bribery before the polling day. The case is still under investigation. The Police received a complaint about obstruction to pavement on the polling day. After conducting an on-site investigation, the Police found the situation acceptable and no action was required.

## **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.

### **Preparation and setting up of dedicated polling stations**

8.2 A total of nine DPSs were set up for registered electors of Shap Pat Heung North Constituency who were imprisoned, remanded or detained to cast their votes in this By-election. The number of DPSs set up was considerable for a DC By-election. The polling operation at these DPSs was smooth throughout the polling day.

8.3 **Recommendation:** In view of the large number of constituencies in the coming 2011 DC Election (i.e. 412) to be held on 6 November 2011, it is likely that more DPSs would need to be set up. In this regard, it would take a much more complex operation to have the votes cast in the DPSs sorted at the ballot paper sorting stations (“BPSSs”) according to their constituencies before they are delivered to the main counting stations of the respective DC constituencies for counting. The EAC recommends that in order to ensure the smooth operation of the DPSs and BPSSs and the effective delivery of the sorted

ballot papers from the BPSSs to the respective main counting stations in the 2011 DC Election, the REO should take great care to map out the required logistical arrangements and provide sufficient training to the staff concerned.

## **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

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 substantially 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.

