

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Ap Lei Chau North Constituency of the Southern District Council on 14 December 2004 upon the death of Mr WONG King-cheung, an elected member of 2003 District Council Election (“DC Election”) for the constituency. Pursuant to sections 26(a) and 32(1) of the District Councils Ordinance (Cap 547) (“DCO”), the Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 24 December 2004.

1.2 In accordance with 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 (“the by-election”).

The Constituency

1.3 The Ap Lei Chau North Constituency is one of the 17 DC constituencies in the Southern District, with a registered electorate of 7,203. A map showing the boundary of the constituency is attached at **Appendix I**.

The polling day and the nomination period

1.4 The Chief Electoral Officer (“CEO”) from the Registration and Electoral Office (“REO”) appointed Sunday, 20 March 2005 as the polling day for the conduct of the by-election and specified the period from 1 to 16 February 2005 (both dates inclusive) as the nomination period for candidates by publishing a notice in the Gazette on 14 January 2005 for public information.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr LAU Kwok-choi, JP, the District Officer (Southern) (“DO(Southern)”) and Mr LEE Kwok-hung, Damian, the Assistant District Officer (Southern) were appointed as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the by-election. Their appointments were made by the EAC Chairman and published in the Gazette on 14 January 2005. Mr CHEUNG Siu-nam, Rex, 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 19 January 2005.

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 1 to 18 February 2005 was published in the Gazette on 14 January 2005.

Nominations

2.3 By the close of the two-week nomination period on 16 February 2005, the RO received five nominations. The nominees were Mr CHAN Ting-wing Petrus, Ms CHEUNG Sik-yung, Mr WAN Kam-cheung, Mr NG Ting-kit and Mr CHIU Kwing-shing. The nominations were verified by

the RO as valid. The NAC(DC) did not receive any request from the RO for legal advice on the validity of the nominations.

2.4 As stipulated in section 2 of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (“the DC Subscribers and Election Deposit Reg”), the amount of deposit to be lodged by or on behalf of a candidate in respect of his nomination as a candidate in the election is HK\$3,000. In accordance with section 4 of the said regulation, the deposit will be returned to the candidate if he secures in his favour not less than 5% of the total number of ballot papers containing valid votes received.

Briefing for the candidates

2.5 On 19 February 2005, 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 to allocate the designated spots to them for the display of their election advertisements (“EAs”) in the district. As a result of the lots drawing, Mr CHAN Ting-wing Petrus, Ms CHEUNG Sik-yung, Mr WAN Kam-cheung, Mr NG Ting-kit and Mr CHIU Kwing-shing were allocated with the candidate number 1, 2, 3, 4 and 5 respectively. A total of 195 spots in the Southern district were designated for the display of EAs during the election period and each candidate was allocated 39 spots.

2.6 A briefing session for the candidates and their agents, hosted by the EAC Chairman, was conducted on 22 February 2005 in the Southern District Office. The Chairman highlighted the major electoral arrangements, including the major provisions in the electoral legislation and guidelines governing EAs and election expenses for the attention of the candidates and their agents. The CEO, the 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 and answer enquiries on subjects within their respective purview.

2.7 On 25 February 2005, the RO published in the Gazette the candidates’ names, their candidate numbers and principal residential addresses for public information.

EAC Guidelines on election-related activities

2.8 The revised guidelines issued for the preceding by-elections held on 6 March 2005 were used for this election.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 Similar to the DC by-elections conducted on 6 March 2005 for the Fort Street and Nam Cheong Central constituencies, the staff of the REO took up the polling and counting duties and a mock polling/counting exercise was organized on 17 March 2005 to familiarize them with the electoral processes on the polling day.

The polling-cum-counting station

3.2 As in previous DC by-elections, both the poll and the count for the by-election were conducted at the same place. In view of the size of the electorate and for the convenience of the electors, two polling-cum-counting stations were set up at the Ap Lei Chau Sports Centre (code: D0301) and the Hong Kong True Light College (code: D0302). The CEO designated the polling station at the Ap Lei Chau Sports Centre as the dominant station where the result of the poll was to be announced. The designation of these places as the polling and counting stations was published in the Gazette on 25 February 2005.

3.3 Setting up arrangements for the polling stations were held in the afternoon on the day preceding the polling day. Each venue was partitioned into two parts, ie the polling area and the counting area. Within the counting area, there was a counting zone, a seating area for the

candidates and their agents and an area for members of the public to observe the counting of votes.

Notification to electors

3.4 In line with past practice, the REO sent a poll card to each registered elector of the constituency. The poll cards were sent on 4 March 2005 together with other election-related materials, including a location map of the polling station assigned to the elector concerned, a guidance note on voting, candidates' introductory leaflet, an appeal letter from the DO(Southern) and a leaflet on clean and fair elections issued by the ICAC.

Publicity

3.5 The REO arranged press releases to cover the major events in respect of this by-election which included the EAC Chairman's briefing for the candidates, the poll, the count and the EAC visits to the stations. Besides, all relevant information had been uploaded onto the EAC and the REO homepages for public viewing.

The contingency plan

3.6 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), arrangements were made with the venue

management of the polling stations concerned to reserve them for polling on 27 March 2005 as fall back. Besides, extra stock of electoral equipment and materials were put in reserve.

Section 4 – The Poll

Polling hours

4.1 The polls were scheduled from 7:30 am to 10:30 pm on Sunday, 20 March 2005. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 25 February 2005.

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 stations on the polling day. In addition, the centre provided support services including assistance in handling enquiries and complaints. The centre was also responsible for collating statistical information on electors' turnout rates, number and types of complaints received, etc. Such information was disseminated to the public through the media at regular intervals. It operated at the REO office in Guardian House from 7:00 am on the polling day until the end of counting. Simultaneously, an enquiry centre with 2 hotlines was set up for public enquiries and providing information to the polling stations on electors' entitlement to vote.

4.3 At district level, a district command centre, manned by staff of the Home Affairs Department was set up at the Southern District Office to serve as the contact point between the RO and the PROs. PROs were responsible for keeping the RO and ARO informed of all significant events

which occurred within the district and for handling election-related complaints. A district team, under the direction of the district command centre, took action against unauthorized EAs and illegal canvassing activities in the public area surrounding the no canvassing zones and the polling stations.

4.4 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 and cases 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 on the polling day.

4.5 With the support rendered by the Hong Kong Police Force and the Civil Aid Service, law and order was well maintained during the poll and the count within the two polling stations, no canvassing zones and no staying zones.

The electoral arrangement

4.6 Similar to the two by-elections conducted on 6 March 2005, arrangements were made to address public concern on the illegal use of mobile telephones inside the polling stations during the poll, these measures included –

- (a) prominent signs were displayed inside (including voting

compartments) and outside the polling stations to remind electors that it was an offence to use a mobile telephone, pager or any other device for electronic communication, or to film, take photographs or make any audio or video recording within a polling station without the express permission, in writing, of the EAC, RO or PRO;

- (b) the polling staff at the ballot paper issuing desk reminded each elector not to use mobile telephone or telephones with camera function inside the polling stations;
- (c) no curtain was installed in front of the voting compartments so that the polling staff, the candidates and their agents could observe the conduct of an elector inside the voting compartment; and
- (d) an enlarged restricted zone (around 2 metres) was designated outside the voting compartments and the table on which the elector placed his ballot paper to mark his vote had been set in such a position that would cause his body to block the marking from being visible to persons outside the compartment.

4.7 To avoid the unnecessary exposure of electors' personal particulars shown on the registers at the ballot paper issuing desks, especially to the elector waiting in a queue, a restricted zone (around 1

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.

Turnout of electors

4.8 Out of 7,203 registered electors for the Ap Lei Chau North Constituency, 2,253 turned up to cast their vote. The turnout rate was 31.28%, which was 12.85% lower than the rate for this particular constituency in the 2003 DC ordinary election. The number of registered electors of the constituency has increased by 658 since 2003.

4.9 The turnout rates for the dominant polling station and the polling station at the Hong Kong True Light College are as follows:

	Number of registered electors (a)	Total number of elector turnout (b)	Turnout Rate (b)/(a) x 100%
Dominant Polling Station (Ap Lei Chau Sports Centre)	4,643	1,606	34.59%
Polling Station (Hong Kong True Light College)	2,560	647	25.27%
Total:	7,203	2,253	31.28%

A breakdown of the hourly turnout rates of electors in respect of this by-election is shown in **Appendix II**.

VIP visits

4.10 Mr Justice WOO, the EAC Chairman, Dr Elizabeth SHING and Mr Lawrence LOK, members of the Commission, paid visits to the polling stations on the polling day. They visited the polling station at the Hong Kong True Light College in the morning before proceeding to the dominant polling station at the Ap Lei Chau Sports Centre. They concluded the visit by meeting the media in the Ap Lei Chau Sports Centre, appreciating the smooth conduct of the polls for the by-election.

4.11 Mr Stephen LAM, the Secretary for Constitutional Affairs also visited the polling stations 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 both stations, notifying the public of the end of the poll and the temporary closure of the stations to facilitate their conversion into counting stations. Before the counting of votes began, another notice was displayed outside the stations, announcing the approximate time when the stations would be opened again for the public to observe the count.

5.2 The PROs 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 in both stations in less than 30 minutes.

5.3 Mr Justice WOO and Dr Elizabeth SHING observed the entire conversion process in the dominant counting station, while Mr Lawrence LOK observed the conversion process in the counting station at the Hong Kong True Light College. They were satisfied with the smooth conduct of the conversion process at both stations.

Section 6 – The Count

Start of the count

6.1 Before 11:00 pm, both stations were 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 Deputy PRO of each station transferred the sealed ballot box to the counting table. At Ap Lei Chau Sports Centre, the ballot box was opened by the PRO with its contents emptied onto a counting table in the presence of Mr Justice WOO, Dr Elizabeth SHING and Mr Stephen LAM. As for the counting station at the Hong Kong True Light College, the unsealed ballot box was jointly emptied by Mr Lawrence LOK and the PRO concerned. The count then commenced immediately.

Invalid and questionable ballot papers

6.2 Out of the 2,253 ballot papers cast into the ballot boxes in the two stations, 12 ballot papers were determined as invalid (including 8 unmarked, 3 contained votes for more than one candidate and 1 not marked by the chop provided by REO) and therefore not counted pursuant to section 78 of the EAC (EP) (DC) Reg. An analysis of the invalid ballot papers is shown in **Appendix III**. In addition, another 12 ballot papers were identified as questionable. In the presence of the candidates and their agents, the PRO, with the assistance of the ARO(Legal) examined carefully each questionable ballot paper to determine its validity. As a

result, all questionable ballot papers were determined as valid and were accepted.

Election result

6.3 Upon the completion of the count at the dominant counting station and counting station at the Hong Kong True Light College, the PRO concerned verified the number of ballot papers counted at their counting stations with their ballot paper accounts. The figures were found consistent. The PRO of the counting station at Hong Kong True Light College made known the result of the counting of votes to the candidates and their agents who were present at the counting zone and reported the counting results to the PRO of the dominant counting station by phone and by fax immediately.

6.4 The first round of vote counting showed that two of the candidates, namely Ms CHEUNG Sik-yung and Mr CHIU Kwing-shing, had received the equal highest number of valid votes. The RO acceded to the candidates' request for a re-count of all the votes in both counting stations. The PRO of the dominant counting station informed the PRO of the counting station at the Hong Kong True Light College to conduct a re-count while she conducted a re-count at the dominant counting station simultaneously. After the re-count, the RO was satisfied that the re-count result was consistent with the first round of counting result for each of the counting stations.

6.5 In accordance with section 41(3) of the DCO, the RO must determine the election result by drawing lots. In the presence of all the candidates and their agents, 10 table-tennis balls each marked with a number from 1 to 10 were put into an empty opaque bag, provided by the REO. Ms CHEUNG drew a table-tennis ball from the bag with number 8 marked on the ball. The ball was put back into the bag immediately. Mr CHIU drew a table-tennis ball from the same bag in the same manner. The number marked on the ball was 2. The RO declared Ms CHEUNG successfully elected as DC member for the constituency concerned. She had received 702 valid votes, representing 31.33% of the total number of valid votes cast. The other four candidates, namely Messrs CHAN Ting-wing Petrus, WAN Kam-cheung, NG Ting-kit and CHIU Kwing-shing received 25, 491, 321 and 702 votes respectively. The election deposit of Mr CHAN was forfeited in accordance with section 4(2) of the DC Subscribers and Election Deposit Reg because the number of valid votes he secured was less than 5% of the total number of ballot papers containing valid votes received. The election result for the Ap Lei Chau North Constituency was published by a notice in the Gazette Extraordinary on 24 March 2005 (**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 arrangements in both stations 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 making the by-election a success.

Section 7 – Complaints

Complaint-handling period

7.1 As in previous by-elections, the Commission took up the responsibility to handle complaints in relation to the by-election, instead of forming Complaints Committees as in ordinary elections.

7.2 The period for receiving complaints commenced on 1 February 2005 when the nomination began. It ended on 4 May 2005, ie 45 days after the polling. During the complaint-handling period for this by-election, a total of 94 complaints were received by the EAC, RO, Police and ICAC.

7.3 The majority of these complaint cases were about display of EAs on non-designated spots. Apart from allegations on illegal canvassing in the no canvassing zone or no staying zone, there were also complaints against disturbances to electors caused by the use of loudspeakers or telephone canvassing in the conduct of electioneering activities. A breakdown of all these complaints is set out in **Appendix V**.

Complaints received on the polling day

7.4 During the poll, the REO complaints centre, the RO and the Police received altogether 85 complaints cases. The PROs and ICAC

received none. The following shows a breakdown of these cases –

	Number of complaint received on the Polling Day
REO Complaints Centre	3
RO	75
Police	7
Total	85

7.5 All cases received on the polling day were expeditiously handled and 83 complaints were resolved on the spot. The majority of the complaint cases were about unauthorized display of EAs and illegal canvassing in the no canvassing zone or no staying zone. As for the two cases that could not be resolved immediately on the polling day, appropriate referral and follow up have been undertaken. A breakdown of complaint cases received on the polling day is appended in **Appendix VI**.

Outcome of investigation

7.6 Of the 94 complaints received during the complaint-handling period, 45 were found substantiated and 44 not substantiated. Investigations on the remaining cases, which mainly concerned false statement about a candidate (2 cases), treating to electors (1 case), failing to comply with requirements in relation to publication of EAs (1 case) and criminal damage (1 case), were under investigation by the ICAC and the Police.

Section 8 – Review and Recommendations

8.1 The Ap Lei Chau North Constituency by-election was conducted only two weeks after the Fort Street Constituency by-election and Nam Cheong Central Constituency by-election held on 6 March 2005. This by-election was smoothly conducted without any hiccups. The polling and counting arrangements mainly followed the preceding by-elections, suggested improvement measures for ensuring the secrecy of vote during the polling process were also adopted. The EAC remains open to any views from the public on what should be done to make improvements in future elections.

Enlarge the size of the opaque bag

8.2 As two candidates obtained the highest equal number of valid votes in this by-election after re-counting of the ballot papers, the RO conducted the lots drawing to determine the election result in accordance with the DCO. During the course of the lots drawing, some agents and members of the public who were present pointed out that the opaque bag provided by the REO might not be large enough for mixing 10 table-tennis balls effectively.

8.3 **Recommendation:** The EAC appreciates feedback from the public and recommends that the size of the opaque bag be enlarged, from 18 cm x 26.5 cm to 23 cm x 35 cm so that there will be more space inside the bag for mixing the table-tennis balls effectively if lots drawing is necessary in future elections and by-elections.

Section 9 – Acknowledgement

9.1 The Commission wishes to extend its gratitude towards the following government bureaux and departments for their valuable assistance rendered throughout the by-election: Constitutional Affairs Bureau, Civil Aid Service, Department of Justice, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Government Logistics Department, Highways Department, Home Affairs Department, Hong Kong Police Force, Hongkong Post, Independent Commission Against Corruption, Information Services Department, Lands Department, Office of the Government Chief Information Officer (of the Commerce, Industry and Technology Bureau) and Official Languages Division (of the Civil Service Bureau). Each and every one of them contributed to making the by-election a success.

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

9.3 The Commission wishes to thank the media for their coverage of the major events in relation to this by-election.

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 who complied with the electoral legislation and guidelines during the electoral processes.

Section 10 – Looking Forward

10.1 The imminent tasks for the EAC were the Election Committee Subsectors By-elections and the Chief Executive Election. The Subsectors By-elections were held on 1 May 2005, while the Chief Executive Election is to be held on 10 July 2005. Preparation work has been proceeded in earnest. 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 appropriate, to enhance the transparency of the Commission's work in the conduct and supervision of the by-election under the Electoral Affairs Commission Ordinance (Cap 541).