

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Tsui Wan Constituency of the Eastern District Council (“DC”) on 16 June 2006 upon the resignation of Mr TANG Lai-ming, an elected member of the constituency. Pursuant to sections 26(b) and 32(1) of the District Councils Ordinance (Cap 547) (“DCO”), the Director of Home Affairs (“DHA”) declared the existence of the vacancy by a notice published in the Gazette on 23 June 2006.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC” or “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 Tsui Wan Constituency is one of the 37 DC constituencies in the Eastern District, with a registered electorate of 7,641. 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 Sunday, 10 September 2006 as the

polling day for the conduct of the by-election and specified the period from 26 July to 8 August 2006 (both dates inclusive) as the nomination period for candidates by publishing a notice in the Gazette on 14 July 2006.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr CHO Chun-wah, Herman, JP, the District Officer (Eastern) (“DO(Eastern)”) and Miss LI Sau-fung, Natalie, the Assistant District Officer (Eastern) 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 July 2006. Ms Dorothy CHENG, 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 6 July 2006.

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 26 July to 11 August 2006, was published in the Gazette on 14 July 2006.

Nominations

2.3 By the close of the two-week nomination period on 8 August 2006, the RO received 2 nominations. The nominees were Mr KU Kwai-yiu and Miss KEUNG Suk-man. 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 18 August 2006.

Briefing for the candidates

2.4 A briefing session for the candidates and their agents, hosted by the EAC Chairman, was conducted on 12 August 2006 in the Eastern District Office (“EDO”). 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 the attention of the candidates and their agents. The Chairman encouraged the candidates and their agents to disseminate publicity materials to electors by emails in order to reduce the use of paper. 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 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 district. As a result of the lots

drawing, Mr KU Kwai-yiu and Miss KEUNG Suk-man were allocated the candidate number 1 and 2 respectively. A total of 20 spots in the Eastern District were designated for the display of their EAs during the election period, and each candidate was equally allocated with 10 spots.

EAC Guidelines on election-related activities

2.6 The revised guidelines issued for the preceding by-election held on 23 October 2005 were used for this 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 these duties, a half-day briefing-cum-mock-up session on polling and counting duties was conducted on 5 September 2006 to enable all the concerned staff to familiarize themselves with such duties.

The polling-cum-counting station

3.2 As in the previous DC by-elections, both the poll and the count for the by-election were conducted at the same place. S.K.H Li Fook Hing Secondary School was designated as the polling-cum-counting station for the by-election. The designation of polling and counting station was published in the Gazette for public notice on 18 August 2006.

3.3 Arrangements to set up the polling station were made in the afternoon on the day before the polling day. The venue at S.K.H Li Fook Hing Secondary School was partitioned into two areas, one for the poll and the other reserved for the count. The counting station would be open after the close of poll. Within the counting area, there was a

counting zone, a seating area for 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 of the polling station (“PRO”), assisted by the Deputy PRO and Assistant PROs, 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.

3.5 Outside the polling-cum-counting station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO so that the electors can 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 by-elections, arrangements were made to address the public concern on the use of mobile telephones 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;
- (d) designating an enlarged restricted zone (around 2 metres) outside the voting compartments; 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 unnecessary 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.

Notification to electors

3.8 In line with past practices, the REO sent a poll card to each registered elector of the by-election on 24 August 2006 notifying him 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(Eastern) and a leaflet on clean and fair elections prepared by the ICAC. The introductory leaflet which included the candidates' election platform was also uploaded onto the REO website for public browsing.

3.9 To facilitate the distribution of electronic publicity materials to the electors by the candidates with the aim of encouraging candidates to reduce the use of paper in the election, the REO had sent appeal letters to the electors of the Tsui Wan Constituency beforehand inviting them to provide the REO with their e-mail addresses. A total of 251 e-mail addresses were thus collected for this particular by-election.

Publicity

3.10 The REO had, on appropriate occasions, issued press releases

covering the major events in respect 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 stations. Besides, all relevant information on the by-election (including press releases, the hourly electors' turnout rate, 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), arrangement was made with the venue management of the polling station to reserve the same venue for polling on the following Sunday, ie 17 September 2006, as fall back. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) were 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, 10 September 2006. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 18 August 2006.

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 rates, number and types of complaints received, etc. Such information was disseminated to the public through the media at regular intervals. The centre operated at the REO office in Guardian House from 7:00 am on the polling day until the close of the count. An election enquiry centre with two hotlines was set up to handle general enquiries from electors and to provide information to the polling station on the identity and entitlement of electors.

4.3 At the district level, a district command centre, manned by staff of the Home Affairs Department (“HAD”), was set up at the EDO to serve as the contact point between the RO and the PRO. The PRO was

responsible for keeping the RO and AROs informed of all significant events which occurred within the district and for handling election-related complaints. Under the direction of the district command centre, a district team took action against unauthorized EAs and illegal canvassing activities in or around the NCZ and the polling station.

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 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 on the polling day.

4.5 The Hong Kong Police Force and Civil Aid Service rendered support in maintaining law and order in the NCZ, NSZ and inside the polling station.

Turnout of Electors

4.6 Out of 7,641 registered electors for the Tsui Wan Constituency, 3,468 turned up to cast their votes. The overall turnout rate was 45.39%, which was 1.07% lower than the rate for this particular constituency in the 2003 DC ordinary election.

4.7 A breakdown of the hourly turnout rate of electors in respect of

the by-election is shown in **Appendix II**.

Visits

4.8 Mr Justice PANG, EAC Chairman, Mr Lawrence LOK and Professor Andrew CHAN, members of the Commission, visited the polling station on the polling day. They concluded the visit by meeting the media expressing their appreciation on the smooth conduct of the poll for the by-election.

4.9 Mr Stephen LAM, Secretary for Constitutional Affairs, and Mrs Carrie LAM, Permanent Secretary for Home Affairs, also visited the polling station 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 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 30 minutes.

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

Section 6 – The Count

Start of the count

6.1 Before 11:00 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 Deputy PRO 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 A total of 3,468 registered electors turned up to cast their votes in the Tsui Wan Constituency by-election. However, only 3,467 ballot papers were cast into the ballot boxes because 1 elector had returned his unused ballot paper to the PRO.

6.3 Out of 3,467 ballot papers cast into the ballot boxes, 32 ballot papers were determined as invalid (including 24 unmarked, 6 marked with votes for more than one candidate and 2 not marked with the chop provided by the polling station) 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 22 ballot papers were identified as questionable.

6.4 In the presence of both 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, 8 questionable ballot papers were determined as invalid and rejected by the PRO (7 were void for uncertainty and 1 bore a mark by which the elector could possibly be identified). The remaining 14 questionable ballot papers were determined as valid and were accepted. The total number of ballot papers not counted was 40. An analysis of the ballot papers not counted is shown in **Appendix III**.

Election result

6.5 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 results of the count.

6.6 The count was completed at around 11:40 pm, and the two candidates, Mr KU Kwai-yiu and Miss KEUNG Suk-man, had received 1,733 and 1,694 votes respectively. The RO acceded to the request of a candidate for a re-count of the votes. The re-count was completed at about 12:05 am. The RO was satisfied that the re-count result was consistent with the result of the first round of counting.

6.7 At about 12:10 am, the RO declared the election result: Mr KU Kwai-yiu was elected with 1,733 valid votes, representing 50.57% of the total number of valid votes cast. Miss KEUNG Suk-man received 1,694 votes. The election result for the Tsui Wan Constituency was published in the Gazette Extraordinary on 14 September 2006 and is now reproduced at **Appendix IV**.

Meeting the media

6.8 After the announcement of the election result, the Chairman and the members of the EAC met the press immediately. They concluded 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 electoral procedures and arrangements for further refinement. The Chairman also took the opportunity to thank all parties concerned for the successful conduct of the by-election.

Section 7 – Complaints

Complaint-handling period

7.1 In line with the past practices, 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. Five 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 commenced on 26 July 2006 when the nomination period began. It ended on 25 October 2006, ie 45 days after the polling day. During the complaint-handling period for this by-election, a total of 50 complaints were received from the public by the EAC, RO, Police, ICAC and PRO.

7.3 The majority of these complaint cases were about unauthorised display of EAs and illegal canvassing in the NCZ or NSZ. There were also complaints against disturbances to electors caused by telephone canvassing and broadcasting vans, the conduct of electioneering activities on private premises and false statements. A breakdown of all these complaints is set out in **Appendix V**.

Complaints received on the polling day

7.4 The REO complaints centre, the RO, the PRO and the Police received altogether 34 complaint cases on the polling day. No complaint was received by the ICAC. The following shows a breakdown of these cases –

	Number of complaint(s) received on the polling day
REO Complaints Centre	10
RO	20
PRO	1
Police	3
Total	34

7.5 All cases received on the polling day were expeditiously handled and most cases were resolved on the spot. The majority of the complaint cases were about unauthorized display of EAs and illegal canvassing in the NCZ or NSZ. A breakdown of complaint cases received on the polling day is shown in **Appendix VI**. These 34 complaints are also included in Appendix V.

Outcome of investigation

7.6 Of the 50 complaints received during the complaint-handling period, 14 were found substantiated, 18 not substantiated, 12 no further action required and 1 withdrawn. The 5 remaining cases, which mainly

concerned false statement about a candidate, false claim of support, bribery in relation to voting and corrupt conduct with respect to voting were under investigation by the ICAC.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC, following previous practices, 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 under review and the related recommendations are set out in the ensuing paragraphs.

(A) The polling-cum-counting arrangement

8.2 As in the 2003 DC ordinary election and all the DC by-elections held from 2003 to 2006, the polling-cum-counting arrangement had worked smoothly and efficiently in this by-election. The counting of votes in the polling-cum-counting station began about 30 minutes after the close of poll and the counting process was completed within 70 minutes including the time for re-count. All parties concerned were very satisfied with the efficiency of the arrangement.

8.3 **Recommendation:** The EAC recommends that the polling-cum-counting arrangement should continue to be adopted in future DC elections in view of its efficiency.

(B) Opening and closing times for the polling station

8.4 To confirm the precision of the opening and the closing time of the polling station, the PRO dialed the Hong Kong Observatory's hotline before the opening and closing of the poll on the polling day on 10 September 2006. This practice was suggested in the Report on the 2005 Kwun Tong District Council King Tin Constituency By-election, and was first implemented in the 2006 Central & Western District Council Centre Street Constituency By-election. The agents of the candidates in the polling station were kept informed of this arrangement.

8.5 **Recommendation:** The EAC finds that the above arrangement can provide a yardstick for and a ready defence over any argument with regard to the precision of the opening and closing times of the poll and recommends that this arrangement should be adopted in future DC elections and by-elections.

(C) Polling/counting station at S.K.H. LI Fook Hing Secondary School

8.6 The EAC found that the above polling station was easily accessible by the electors. The hall provided by the school was relatively spacious thereby facilitating the efficient conversion of the polling station to a counting station.

8.7 **Recommendation:** The school should continue to be selected as a venue for polling station of future elections, if available.

(D) Order in No Staying Zone and No Canvassing Zone

8.8 The EAC noted that with the assistance of the Police, law and order was maintained in the polling station to facilitate the smooth conduct of the poll. However, 13 complaints about illegal canvassing in the NCZ/NSZ were received on the polling day. Most of these complaints were against the electioneering team of a candidate stationing within the NCZ and very close to the NSZ, greeting electors on their way to the polling station and causing disturbances to them.

8.9 **Recommendation:** The EAC considers that the conduct of canvassing activities or semblance of such activities in the NCZ should be strictly forbidden and controlled. Where appropriate, the NSZ should be enlarged so as to reduce the disturbances caused to the electors. Police assistance should be sought for control of unruly situations.

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 Affairs Bureau, Civil Aid Service, 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, 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, AROs, PRO 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 during the various electoral processes.

Section 10 – Looking Forward

10.1 The imminent task for the EAC is the Election Committee Subsector Elections which will be held on 10 December 2006. 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).