

Legislative Council Panel on Constitutional Affairs

Electoral Affairs Commission Report on the 2003 District Council Election

Purpose

This paper informs Members of the major findings and recommendations in the Electoral Affairs Commission (“EAC”) Report on the 2003 District Council Election (“the Report”).

Background

The Report

2. The second District Council (“DC”) Election was held on 23 November 2003. Section 8 of the Electoral Affairs Commission Ordinance (Cap. 541) requires, inter alia, that the EAC shall make a report to the Chief Executive, within three months after the election, on matters relating to that election in respect of which the Commission has any function under Cap. 541 or any other Ordinance. Accordingly, the EAC submitted its Report to the Chief Executive on 21 February 2004.

3. The Report describes how the EAC conducted and supervised the 2003 DC election and sets out the detailed arrangements at various stages of the election. The Report also contains a review of these arrangements in the light of experience, and improvement measures proposed for future elections.

4. The Administration agreed with the EAC’s recommendation that the Report should be made public⁽¹⁾. Copies of the Report are now available at District Offices and have been uploaded onto EAC’s homepage (www.info.gov.hk/eac). The Registration and Electoral Office has also separately distributed copies of the Report to Members for reference.

Major Findings and Recommendations

5. On the whole, the EAC considered that the election was smoothly conducted. A number of areas requiring improvements have been identified,

⁽¹⁾ Following EAC’s recommendation, paragraph 10.5 and the epilogue to Chapter 12 of the Report have been removed from the Report, pending the outcome of an election petition concerning the Ping Shek constituency.

and recommendations proposed. These are set out in Chapter 13 of the Report. Two major sets of recommendations, concerning the decentralized counting arrangements and the EAC's Guidelines on Election-related Activities, are highlighted in paragraphs 6 to 8 below. Other recommendations are set out in **Annex A**.

(A) Decentralized Counting Arrangements

6. In the 2003 DC Election, counting of votes was for the first time conducted in individual polling stations. This arrangement was made to speed up the counting process and to avoid any risks which might be associated with the need to transport ballot papers from polling stations to a central counting station. While the new counting arrangement was generally smoothly conducted, both the EAC and the Administration consider that certain areas require improvements in future elections. The EAC's major recommendations in this regard are summarized below.

- (a) Training for the Presiding Officers ("PROs") and other counting staff at the polling stations should be strengthened (paragraphs 13.18 – 13.19 of the Report).
- (b) The PROs should be relieved of mundane administrative duties so as to facilitate quicker completion of the conversion process from polling station into counting station after the close of poll (paragraphs 13.26 – 13.27 of the Report).
- (c) More back-up support should be provided for PROs in handling the media and maintaining order at the polling stations (paragraphs 13.28 – 13.29 of the Report).
- (d) The duties of the Returning Officers ("ROs") and the PROs should be examined to see if there is room for ROs to play a more active role in overseeing and monitoring the overall conduct of elections. The possibility of the ROs taking over some of the PROs' duties should be examined. (paragraphs 13.32 – 13.33 of the Report).

(B) Guidelines on Election-related Activities issued by the EAC

7. Taking into account the feedback provided by candidates, political organizations and the public, the EAC recommended that certain provisions of the Guidelines be improved or further clarified for the coming LegCo election. Two of the more important recommendations are highlighted below.

- (a) EAC will consider defining better the scope of electioneering activities in the Guidelines (paragraph 13.42 of the Report).
- (b) Consideration will be given to stipulating in the Guidelines that candidates are prohibited to attach to their election advertisements any materials published by the Government, to avoid giving the public the impression that the candidates are supported by the Government (paragraph 13.44 of the Report).

8. Other recommendations relating to the Guidelines can be found in **Annex B**. Members may wish to note that the EAC has already incorporated most of the recommendations, including the two referred to in paragraph 7 above, in the Proposed Guidelines on Election-related Activities in respect of the Legislative Councils (the “Proposed Guidelines”). The EAC is conducting a 30-day public consultation exercise on the Proposed Guidelines which will last until 20 April 2004. It will take into account the views received from the public before finalizing the guidelines.

Way Forward

9. Overall, the Administration considers the findings and recommendations of the Report generally acceptable. We will work closely with the EAC to follow up on the recommendations, taking into consideration the views expressed by Members as well as the community.

Constitutional Affairs Bureau
14 April 2004

**Recommendations not relating to Decentralized Counting Arrangements
and the Guidelines on Election-related Activities**

1. The EAC received views from electors on the delineation of constituency boundaries after the end of the consultation period on the subject. The EAC will take these views into consideration in the next demarcation exercise (paragraphs 13.2 – 13.3 of the Report).
2. The REO should ensure that more focused publicity programmes be launched to appeal to electors to report promptly any changes in their addresses and relevant particulars to the REO so that the voter register can be updated accordingly (paragraphs 13.4 – 13.5 of the Report).
3. The EAC received a suggestion from the public that the poll for the constituencies in Hong Kong Island, Kowloon and the New Territories be preferably held on different dates to facilitate closer supervision. The EAC considers that on the whole the polling was smoothly conducted, but it will examine scope for further improvement taking into account the availability of resources and public response (paragraphs 13.6 – 13.7 of the Report).
4. The REO will consider the suggestion of including the means of contacting candidates in their introductory leaflets, and a description of the boundary of the constituency concerned in the poll card (paragraph 13.8 and 13.9 of the Report).
5. During the DC election, there was a complaint against a candidate for allegedly making a false statement about his occupation in his nomination form. Whilst the complaint was being investigated by REO, the candidate's occupation was still shown on the REO's website. The complainant was of the view that the information should not be shown on the website after the complaint had been lodged. To go some way towards meeting the complainant's concern, the REO subsequently added a "Source of Information" note on REO's website to denote the time when the REO received the information concerned. The EAC recommends that this practice of including a note of "Source of Information" onto the REO website should continue in future elections (paragraphs 13.10 – 13.11 of the Report).

6. The REO should try as far as practicable to allocate to an elector a polling station that is most suitable to him, although the EAC understands that this would always be subject to the availability of the venue in question (paragraphs 13.12 – 13.13 of the Report).
7. The EAC noted that some electors were not aware of the fact that they had been allocated to a polling station different from the one to which they had been allocated in the previous election. The REO should consider adding a note in the poll card of these electors to draw their attention to the fact that they have been allocated to a different station (paragraphs 13.14 – 13.15 of the Report).
8. It was observed that some of the stations were not quite suitable to serve as counting stations, as they were either too small in size, too noisy or too exposed. In future elections, the REO will take this observation into account when identifying venues for polling stations (paragraphs 13.16 – 13.17 of the Report).
9. Publicity programmes should be enhanced so that they not only disseminate the necessary information with regard to the election, but also alert the electors to matters of their concern (paragraphs 13.20 – 13.21 of the Report).
10. The EAC had come across complaints from some electors that their personal data were easily exposed to the person standing behind them in the queue in the course of waiting for the issue of the ballot paper. In future elections, consideration should be given to drawing a line away from the ballot paper issuing desks, so as to create a distance between the person standing at the desk for the issue of his ballot paper and the one standing next behind in the queue (paragraphs 13.22 – 13.23 of the Report).
11. Some electors had the impression that the conduct of exit polls was unlawful and caused harassment. Consideration should be given to putting up a list of the organizations or persons permitted to conduct exit polls on REO's website and at the polling stations for public information. The exit poll interviewers should be reminded that they must wear their identification device and they must make it clearly known to the interviewers that they have the full discretion of answering the questions or not. The EAC should also brief the polling staff on what exit polls are and the points that require the attention of the interviewers (paragraphs 13.24 – 13.25 of the Report).

**Other Recommendations
relating to the Guidelines on Election-related Activities**

1. Background:

There was a misunderstanding between a Returning Officer (RO) and the EAC Chairman over which party was responsible for removing the election advertisements (EAs) within the no canvassing zone. The RO pointed out that there was ambiguity in the Guidelines on Election-related Activities (“Guidelines”) in this area. Legal advice was subsequently sought and confirmed that the RO should take the responsibility and must comply with EAC’s instructions.

Recommendation:

To avoid any ambiguity or misunderstanding between the EAC and any parties recruited for the conduct of an election, consideration should be given to making an express provision in the relevant regulation and making it clear in the Manuals for the ROs and the Presiding Officers that any parties recruited for the purpose of conducting an election must comply with the EAC’s directives or instructions (paragraph 13.40 of the Report).

2. Background:

There were complaints that two candidates who were both candidate No.1 in their respective constituencies appeared in the same joint canvassing activities, and this had caused confusion to the electors (paragraph 13.41 of the Report).

Recommendation:

A new provision requiring candidates to make known their constituencies to the electors while carrying out joint canvassing activities with candidates in another constituency should be added to the Guidelines (paragraph 13.41 of the Report).

3. Background:

There were complaints which alleged that the management bodies of private premises accorded differential treatments to candidates when processing the candidates' applications for conducting electioneering activities at the private premises. Some applications were put on hold for a long time by the management bodies which claimed that there were insufficient attendees to form the quorum of a meeting to decide on the application, whilst other applications were processed quickly (paragraph 13.43 of the Report).

Recommendation:

The Guidelines will need to spell out expressly that these delaying tactics indicate an unfair and unequal treatment to the candidates and will be denounced by the EAC (paragraph 13.43 of the Report).

4. Background:

Paragraph 7.26 of the Guidelines provided that the total area of joint advertisements put up by two or more candidates should not exceed the total area of all the designated spots allocated to the candidates concerned. The EAC handled a case in which a candidate claimed that as the size of his EA displayed at each of the ten designated spots allocated to him was smaller than the permitted size of the designated spot, he should have a remaining "balance" of area which could be used for displaying joint EAs with another candidate of another constituency at some other designated spots (paragraph 13.45 of the Report).

Recommendation:

Consideration should be given to spelling out clearly in the Guidelines that the total number of spots for displaying the joint advertisements of two or more candidates should not exceed the total number of designated spots allocated to each of the candidates concerned (paragraph 13.45 of the Report).

5. Background

There were complaints about the display of EAs by a candidate on both sides of a designated spot (paragraph 13.46 of the Report).

Recommendation:

The EAC will seek the views of ROs and other parties concerned to decide whether candidates can be allowed to display their EAs on both sides of a designated spot allocated to them (paragraph 13.46 of the Report).

6. Background:

The EAC came across a complaint case in which two persons who were incumbent DC members at the time asked the management body of a private building to display a newspaper article which publicized their past achievements. The complainant, who somehow knew their intention to seek candidature in the election, accused them of making use of the display to promote themselves for electioneering purpose (paragraph 13.47 of the Report).

Recommendation:

The EAC considers it necessary to include a provision in the Guidelines requiring all persons who put up any publicity materials, including those which do not look election-related, during the nomination period on private premises should declare to the management body concerned whether they are candidates or intend to stand as candidates in the election (paragraph 13.47 of the Report).