

Legislative Council Panel on Constitutional Affairs

2004 Legislative Council Election

Introduction

This paper informs Members of the action being undertaken by the Electoral Affairs Commission (EAC) to investigate into the various problems and complaints regarding the practical arrangements for the Legislative Council (LegCo) election on 12 September 2004.

Complaints and Investigation

2. The EAC has received a number of complaints regarding the practical arrangements for the election, in relation to the following major areas:

- (a) opening of sealed ballot boxes in some polling stations during the poll;
- (b) use of cardboard boxes as ballot boxes in some polling stations;
- (c) suspension of operation in some polling stations during the poll;
- (d) eviction of candidates or their agents from some polling stations;
- (e) ballot discrepancy in four functional constituencies; and
- (f) delay in announcement of election results for geographical constituencies.

3. In the past few weeks, the EAC has been conducting investigation into the complaints. During the investigation process, the EAC has been in touch with the complainants, insofar as the complainants could be reached, to obtain more information. The EAC has also sought information from relevant polling staff. Paragraphs 4 to 20 below set out the relevant background.

Insufficient Supply of Ballot Boxes

4. As explained by the EAC Chairman at a press conference on 15 September 2004, for this year's election, a new design of the ballot papers was introduced to include photographs and particulars of candidates. The ballot papers were of A3 size. Due to this, a new type of ballot boxes was necessary, since the old ballot boxes, which were larger, would be too heavy to handle when filled with the heavier new ballot papers.

5. The problem of insufficient supply of ballot boxes at polling stations arose because of a wrong assumption made by the Registration and Electoral Office (REO) on the capacity of the new ballot boxes. The EAC has made an apology to electors who have been inconvenienced by the problem. The EAC has also undertaken to conduct more thorough and effective testing should new polling equipment be introduced in future elections.

6. The EAC is investigating into the details of the matter, including the reasons for the over-estimation of the ballot box capacity, and the steps taken by REO to replenish the supply of ballot boxes on polling day.

Opening of Ballot Boxes

7. Due to the shortage of ballot boxes in a number of polling stations, the EAC gave a directive on polling day to all Presiding Officers that, as a contingency measure pending the arrival of additional ballot boxes, they could open ballot boxes to repack the ballot papers cast so as to make room for more ballot papers. The EAC had made clear in its directive that if ballot boxes had to be opened, it should be done in the presence of candidates or their election/polling agents, or, in their absence, a police officer.

8. There have been concerns that the EAC has no legal authority to adopt such a contingency measure. As explained by the EAC at the press conference on 15 September 2004, according to section 4(b) and 4(h) of the Electoral Affairs Commission Ordinance, the EAC is responsible for the conduct and supervision of elections, and to generally make arrangements, take such steps or do such other things as it considers appropriate for the purpose of ensuring that elections are conducted openly, honestly and fairly. Section 5(g) provides that the EAC may do such other incidental act or thing or exercise such powers as it considers

necessary or expedient for the performance of its functions. Thus, the EAC considers that it has the power and authority to make arrangements or take appropriate measures which are necessary or expedient for the performance of its functions for the conduct of the election.

9. The purpose of allowing Presiding Officers to open ballot boxes is to ensure that polling will not be disrupted, pending the arrival of additional ballot boxes. Further, as the act of opening of ballot boxes should be witnessed by candidates, election/polling agents, or police officers, the integrity of the election should not be affected.

10. The EAC has received five complaints, involving eight polling stations, about the opening of ballot boxes during the poll. The EAC is now investigating into each complaint individually, including whether the opening of the boxes was witnessed by candidates, their election/polling agents or police officers.

Use of Cardboard Boxes as Ballot Boxes

11. The EAC has received 15 complaints, involving five polling stations, that cardboard boxes were used as ballot boxes. As explained by the EAC at the press conference on 15 September 2004, the Presiding Officer, as the person in charge of a polling station, has the discretion to take expedient actions to cater for an emergency situation such as shortage of ballot boxes, to ensure that the electoral process can be continued in an open, fair and honest manner. The EAC is now investigating into each complaint individually to see if cardboard boxes have in fact been used as ballot boxes in the polling stations referred to in the complaints, and if so, the circumstances under which the measure was adopted, and the steps taken by the polling staff to ensure the integrity of the electoral process.

Suspension of Operation of Polling Stations

12. The EAC has received four complaints involving one polling station had suspended operation during the poll. The EAC is now investigating into the complaint to consider the circumstances under which the polling station suspended operation and whether the polling staff had taken any action to minimize the inconvenience caused to electors.

Eviction of Candidates or Agents from Polling Stations

13. The EAC has received 15 complaints relating to the eviction or exclusion of candidates and their agents from 31 polling stations when the stations were being converted into counting stations.

14. Electoral legislation has provision regarding who may stay in a polling station after the close of poll. Under section 63 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, candidates, election agents, and counting agents may stay in the polling station while it is closed for the preparation for the counting of votes.

15. The EAC is now investigating into each complaint individually. In all cases, where a person who may stay in a polling station has been asked to leave or has been refused entry, the Presiding Officer will be requested to explain his decision.

Ballot Discrepancy in Four Functional Constituencies

16. Some candidates from four functional constituencies (FCs), namely the Social Welfare FC, Labour FC, Accountancy FC and Health Services FC, complained that the number of ballot papers counted exceeded the number of voter turnout figures announced during the poll.

17. As explained by the EAC at the press conference on 15 September 2004, the hourly voter turnout figures announced during the poll were meant to be for reference by the media and the public only. The EAC has checked the accounts and returns of the four FCs prepared by polling staff after the end of poll, and found that the number of actual ballot papers counted was in fact slightly fewer than the number of ballot papers issued as recorded in the accounts and returns. The EAC takes the view that this phenomenon is not irregular and should not give rise to concern.

18. To avoid misunderstanding and too much reliance being placed on the hourly voter turnout figures published during the poll, the EAC will consider adding an express reminder when announcing hourly voter turnout figures in future elections that the figures are for provisional reference only.

Delay in Announcement of Election Results

19. The EAC has received three complaints from candidates about the delay in announcement of election results for the geographical constituencies.

20. As explained by the EAC at the press conference on 15 September 2004, due to the malfunctioning of the computer system which was used to compile voter turnout figures, it was necessary to conduct an overall verification of all voter turnout data manually after the close of poll to ensure that all relevant data were correct before the election results were announced. The EAC is now investigating into the reasons for the malfunctioning of the computer system.

Way Forward

21. Under section 8(1) of the Electoral Affairs Commission Ordinance, the EAC is required to submit a report on an election to the Chief Executive (CE) within three months of the conclusion of the election. Thus, the EAC should submit a report on the 2004 LegCo election to the CE by 12 December 2004. In view of public concern, the EAC will submit an interim report to the CE to give an account of the progress of investigation and their findings so far. It aims to make the submission in the near future. A final report will be submitted to the CE before the statutory deadline. The interim report will also deal with complaints relating to the accessibility of polling stations to disabled persons.

Registration and Electoral Office
15 October 2004