

Commission of inquiry
into the Collision of Vessels near Lamma Island on 1 October 2012

Opening Submissions by Counsel for the Commission

Introduction

1. On 1 October 2012, at about 20:20, near Lamma Island, a ferry called the Sea Smooth and a launch called the Lamma IV collided. The Sea Smooth remained afloat and proceeded to Yung Shue Wan. However, the Lamma IV sank within minutes, stern first, with the loss of 39 lives.
2. This was the worst marine casualty in Hong Kong in 40 years. The whole of Hong Kong was in mourning in the days that followed. The City witnessed an unprecedented display and outpouring of public grief.
3. For many survivors, the healing process is continuing. I am sure that everyone involved in this Inquiry, and indeed the people of Hong Kong, will join me in wishing that the survivors and the family can recover quickly from any trauma and bereavement following the incident, and to do so with strength and courage.
4. In Hong Kong, following any significant casualty, the machinery of justice can be expected to run its normal course. Investigations by law enforcement agencies may ensue. Civil responsibilities for the incident will need to be resolved. The Courts will be the ultimate arbiter of any civil and criminal responsibility. However, following a casualty of such tragic scale and nature, the public – especially the survivors and the relatives and friends of those who had lost their lives – has a legitimate interest in learning the truth as to what in fact happened and society has a wider interest in understanding what lessons could be learned.

5. Against such background, the Chief Executive established this Commission of Inquiry under the Commissions of Inquiry Ordinance (Cap.86).

The Inquiry

6. The terms of reference of the Commission are as follows:-

“Inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012:

- (1) ascertain the causes of the incident and make appropriate findings thereof;*
- (2) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and*
- (3) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.”*

7. The purpose of a public inquiry is to carry out a full, fair and transparent investigation into the relevant events and to expose the facts to public scrutiny without fear or favour. That is or should be the purpose of every public inquiry.

8. However it is not the role of a public inquiry to establish civil liability or to consider whether a crime has been committed. It is not in the public interest that it should do either. Determination of civil liability is the role of the civil courts and may involve many questions of fact and law which it would not be appropriate to debate at a public inquiry. Criminal investigation and prosecution is the responsibility of the police and the Director of Public Prosecutions. If a prosecution is brought, determination of guilt falls within the exclusive province of the criminal courts..

9. This point is emphasized by the express terms of the direction given by the Chief Executive in Council in his notice of appointment of the Commission of Inquiry:-

“the determination of any criminal or civil liability of any person shall be outside the terms of reference of the Commission.”

10. That said, the report of the Commission could well subject persons to criticism. The report may also make recommendations which have long term impact or effect on the way persons or Government departments conduct themselves in future. Hence, there arises a duty of fairness to such parties who may be affected by the Inquiry. At the Preliminary Hearing, leave to participate by legal representatives was given to various involved parties.

11. I am appointed as Counsel to the Commission of Inquiry. I am assisted by Mr Roger Beresford and Mr Mike Lui on the instructions of Lo & Lo, solicitors to the Commission of Inquiry.

12. Counsel to the inquiry have five principal functions:-

- (1) to assist and liaise with the Commission in relation to preliminary and administrative matters associated with the inquiry;
- (2) to consider with the Commission whether any and if so, what, lines of inquiry should be pursued;
- (3) to consider and decide what evidence is to be adduced before the Commission;
- (4) to question witnesses at oral hearings;
- (5) to make submissions to the Commission on the subject matter of the Inquiry, both on law and on the evidence adduced before the

Commission. These submissions will be made openly and there will be opportunities for the other involved parties to comment. It is, however, entirely a matter for the Commission whether to accept our submissions or indeed the submissions of any other party. The ultimate task of compiling the report to the Chief Executive is exclusively that of the Commission.

13. Our role is not that of a “prosecutor” who has a particular case to prove against particular parties. Therefore in considering what evidence to call, or what lines of inquiry to pursue, or what questions to ask in the course of the hearing, we are not constrained by any preconceived bias or perceptions in favour of or against any particular party or cause.
14. The procedure is inquisitorial in nature, and lines of inquiry, and potential allegations, could very well change as and when items of evidence is unearthed, presented, bolstered or discredited in the course of the hearing.
15. Mr Clive Grossman SC and Mr James McGowan represent the owners and crew of the Lamma IV on the instructions of Reed Smith Richards Butler, solicitors.
16. Mr Charles Sussex SC acts on the instructions of Messrs Holman Fenwick & Willan, solicitors for the owners and crew of the Sea Smooth.
17. Mr Johnny Mok SC together with Miss Eva Sit and Miss Frances Lok act on the instructions of the Department of Justice, representing the interests of the Marine Department (“**Mardep**”), the Fire Services Department (“**FSD**”) and the Commissioner of Police (“**Police**”).
18. This opening address is made by me as Counsel for the Commission. It must not be taken or understood as expressing or implying the view of the Commission on any matter of controversy.

Collection of materials

19. Since the Commission was appointed on 22 October 2012, and prior to commencement of its public sitting, it has been collecting a substantial body of material.

20. The materials obtained by the Commission has been obtained from three principal sources:-
 - (1) The Police;
 - (2) The FSD;
 - (3) Mardep.

21. The materials obtained from the Police consist of:-
 - (1) Statements of passengers on (a) the Lamma IV; (b) the Sea Smooth; (c) the Lamma II and (d) statements of other witnesses;
 - (2) Voice records of 999 calls and Digital Radar Surveillance System records;
 - (3) Statements from officers of the FSD;
 - (4) A statement from an officer of Mardep;
 - (5) Vessel information, including licenses, drawings and photos;
 - (6) Statements from Officers of the Government Flying Service;
 - (7) Information, including autopsy reports, about the deceased;
 - (8) Police investigation reports and statements;

- (9) Records relating to arrested persons, such as police notebooks and records of interview;
 - (10) Documents seized from the owners and builders of the vessels concerned; and
 - (11) Numerous albums of photographs.
22. The materials obtained from Mardep consist of:-
- (1) Records of interviews with the crew;
 - (2) Certificates, licences and qualifications of the crew;
 - (3) Certificates, licenses, plans and surveys of the vessels;
 - (4) Photographs;
 - (5) A DVD containing video and audio records of vessel movements and communications, with a copy extract from the Vessel Traffic Centre log book;
 - (6) Correspondence, vessel plans submitted for approval, test and inspection reports;
 - (7) Guidelines for the survey of launches and ferry vessels;
 - (8) Witness statements explaining the operation of the Vessel Traffic Service System and the log book of the Vessel Traffic Centre;
 - (9) Information on vessels anchored in the vicinity of the Lamma Channel during 1900 to 2100 on 1 October 2012; and

- (10) Visibility reports which Mardep had obtained in turn from the Hong Kong Observatory.
23. The materials obtained from the FSD consist of records of the response of the emergency services, including ambulance, triage points, diving units, fireboats, fire appliances.
24. Other materials obtained include charts from the Hydrographic Office and weather information from the Hong Kong Observatory.

The expert

25. On 19 November 2012, the Commission appointed Captain Nigel Robert Pryke, an Elder Brother of Trinity House in London, to assist the Commission in discharging its duties under the terms of reference and by acting as an expert witness in these hearings.
26. On 4 December 2012, Captain Pryke reported to the Commission on the causes of the incident (Item (a) in the Terms of Reference). Copies of the report have been made available to the represented parties.
27. On 6 December 2012, the Commission further appointed another expert namely Dr. Anthony Armstrong, a Fellow of the Royal Institute of Naval Architects, to assist the Commission in discharging its duties under the terms of reference and by acting as an expert witness in these hearings. He will address issues of ship construction.
28. The Commission's efforts to collect relevant materials will continue, but in view of the timeframe set in its terms of reference, it proposes to start this inquiry now with the immediate focus upon the first item in its terms of reference, namely the causes of the incident. That can conveniently be

subdivided into two questions: (i) Why did the collision occur? And (ii) Why did the Lamma IV sink so quickly?

Overview of the events in the evening of 1 October 2012 leading to and following the collision

29. Before evidence is adduced, it would assist the Commission and the public to have a broad overview of the facts and events surrounding the collision insofar as they are relatively free from controversy.
30. See Chart at [MB1/1/1].
31. Shek Kok Tsui is a point at the North Western extremity of Lamma Island. There is a reef with a rock on which there is a light-beacon (white concrete tower), which extends 1 cable (ie 1/10th of a nautical mile) north west from the point. This light is referred to sometimes as the Shek Kok Tsui “lamppost”.
32. Yung Shue Wan (Banyan Bay) is entered between Shek Kok Tsui and the Lamma Power Station, 9 cables to the south. There is a small typhoon shelter on the north side of Lamma Power Station. The power station is owned by The Hong Kong Electric Company Limited, commonly known as Hong Kong Electric.
33. There is a ferry pier in the south part of the bay, by the village. A ferry service between Central and the Yung Shue Wan ferry pier is operated by Hong Kong and Kowloon Ferry Holdings Limited. On public holidays in the evenings, the ferry service runs from Central at half hour intervals.
34. Northwest of Shek Kok Tsui there is the North West Lamma anchorage. Some ships were anchored here in the evening of 1 October 2012.

35. On the island of Kau Yi Chau, about 3.3 nautical miles northwest of Shek Kok Tsui, there is a radar station, where there is a Digital Radar Surveillance System together with a remote long range daylight camera and a remote thermal imager.
36. According to information supplied by the Hong Kong Observatory, on 1 October 2012 between 8 and 9 pm, the visibility was clear, the wind was light and the tide off West Lamma was flowing north. Neither weather nor tide appeared to have been material to navigation.

The sequence of events

37. On 1 October 2012, the 8pm ferry departing from Central was the Sea Smooth. According to the radar data, she was under way by 20:04:00 at the latest. She was carrying four crew and at least 62 passengers.
38. Shortly thereafter, two of HK Electric's launches, the Lamma IV and the Lamma II, were to take HK Electric staff and their families and friends from the small typhoon shelter to watch the National Day fireworks in the harbour. The Lamma IV cleared her berth at the Lamma Power Station typhoon shelter at about 20:16. The Lamma IV had three crew and was carrying 127 passengers inclusive of the crew.
39. By the time the Lamma IV had cleared her berth and was under way, the Sea Smooth was well within two nautical miles of the Lamma IV. By 20:17, they should have been within sight of one another by radar and visually.
40. At about 20:20, off Shek Kok Tsui, the Sea Smooth and the Lamma IV collided. After the collision, the Sea Smooth disengaged from the Lamma IV, leaving part of its port bow in the port side of the Lamma IV, and proceeded to Yung Shue Wan. The Lamma IV sank stern first within a few minutes.

41. The Commission has obtained records of the 999 calls that were made. The evidence will show that the first timed call was at 20:21:03 from a passenger on board the Lamma IV. It appears from subsequent 999 calls that the Lamma IV had sunk in less than five minutes. According to the FSD, the Lamma IV was found submerged at 22° 14.161' N, 114° 6.159': see Incident summary at [FSB1/3/34]. The vessel came to rest almost vertically with its bow and forward section protruding above the water. Many persons on board the Lamma IV fell into the sea or were trapped inside the vessel.
42. 96 people from the Lamma IV were rescued from sea and the wreckage by FSD, the Police and nearby vessels. Nine injured onboard the Sea Smooth were conveyed by the Sea Smooth to Yung Shue Wan pier.
43. 30 bodies were found in and around the wreckage of the Lamma IV, the last victim being located and removed at about 1710 on 2 October 2012. Eight more people were certified dead upon arrival at hospitals and a girl was certified dead at the Pamela Youde Nethersole Eastern Hospital on 5 October 2012. A total of 39 people on board the Lamma IV are known to have died. Of the 39 deceased, eight were minors.

Presentation of evidence

44. Among the mass of materials collected by the Commission, of particular significance are a number of radar and electronic records of vessel movements which will be produced by Mardep and the Police and which show the track and speed of the two vessels leading up to the collision. They include the live radar images captured by radars. Radar images are normally supplemented by information derived from an Automatic Identification System (AIS) transponder transmitting from each vessel, where this is carried on board a particular vessel. In the present case, AIS information is available for the Sea Smooth, but not for the Lamma IV.

45. From these what might be called “raw data”, equipment in both Mardep and the marine police have produced track reports showing – in text and numerical form – the speed, position and course of each vessel from the time of its departure until the time of the collision. The Commission will call witnesses from Mardep and the Police to explain the operation of the systems and the interpretation of these records at the beginning.
46. After the witnesses from Mardep and the Marine Police (“**Marpol**”), the Commission will call Captain Pryke to comment on the raw data and to explain his opinions about the causes of the collision.
47. I should add that the track reports generated by the equipment in Mardep and Marpol had shown slightly different figures for the location, the course and the speed of the vessels even though they were based on the same radar signals. Further evidence is expected from the relevant departments to explain such discrepancies from their equipment. Captain Pryke will be giving evidence as to whether such discrepancies are such as to materially affect his assessment of the cause of the collision.
48. Following the presentation of what one might call the “technical” evidence surrounding the collision, we will proceed to present evidence from the passengers who experienced, or witnessed, the incident first hand.
49. In this connection, over 100 passengers from the Lamma IV, the Sea Smooth and the Lamma II have been interviewed by the Police but it is not our intention to call all of them as witnesses for the Commission. We have selected passengers from the three vessels with a view to presenting a fair view of what passengers on the two vessels that evening, as well as those on the Lamma II, have or have not seen, or have or have not felt. In particular, for passengers on board the Lamma IV, we have tried to call witnesses from various decks and sides of the vessel.

50. Of the areas which the witnesses will be expected to testify are the following:-

- (1) Whether safety demonstrations or warnings had been given, especially on board the Lamma IV, prior to her departure.
- (2) Whether sound signals were sounded by any vessels prior to the collision.
- (3) The reaction of the crew members in the immediate aftermath of the collision.
- (4) The physical state of the decks and seats on board the Lamma IV after the collision.
- (5) The situation pertaining to life jackets on the vessel, in particular the absence of children's life jackets and the ease or difficulty with which adults life jackets could be put on.
- (6) The chaotic scene that ensued inside the Lamma IV when she began to sink.

51. While at this stage I will not go into the precise effect of the evidence insofar as they may be controversial, one point should be relatively uncontroversial as the above evidence unfolds, which is that following the collision, a number of seats on the Lamma IV, on what was referred to as the "upper deck", became detached from the floor and flew off. Some passengers are expected to describe this, and explain what difficulties this have caused to them when they were trying to escape from the Lamma IV, even with their life jackets on.

52. The process described so far is likely to take the Inquiry beyond the Christmas break. Hopefully what may be called the "technical" evidence about the radar signals and the track reports as well as the expert evidence will be completed

- before Christmas, and passenger evidence will begin to be called before the Christmas break and then continue after the break.
53. After the passenger witnesses, the Commission expects to call another category of witnesses namely witnesses involved in the rescue mission. These witnesses come from various Government departments such as the Marine Police and the FSD. Witness from the Police will also be expected to produce the Police 999 telephone recording, which would portray the immediate reaction of those on board the Lamma IV as well as the contemporaneous situation on board, as things happened. This will assist in identifying the point in time when the Lamma IV began to sink.
 54. The significance of the “rescue witnesses” is that they provide first hand evidence as to the actual situation in the Lamma IV after it had sunk and whilst they were carrying out their rescue mission. To a certain extent this will have been described by the passenger witnesses of the Lamma IV but the rescuers’ evidence will supplement that. More importantly the rescuers will be able to testify about any difficulties they had encountered in carrying out the rescue on the Lamma IV. They would also be able to describe the locations where dead bodies were found, and this could provide some insight into whether their death had anything to do with the physical state of the vessel especially the fact that seats had fallen off and possibly trapping passengers who were trying to escape.
 55. After the rescue evidence, the Commission proposes to re-call Captain Pryke to give evidence on ship safety and harbor management issues which are relevant to Terms of Reference items 2 and 3. It will also call its second expert Dr. Anthony Armstrong to deal with issues of ship construction which will be relevant to why the Lamma IV sank so quickly, and possibly to Terms of Reference items 2 and 3 in respect of the current system of harbor management and inspection of ships.

56. Then subject to any question of re-calling of witnesses for questioning and subject to any further lines of inquiry, the involved parties will then be able to give evidence and call their own witnesses.
57. One question which may arise is whether the crew members will testify. Under the Ordinance the Commission has the power to compel witnesses to testify and that power, in our submission, covers involved persons as well. That power of compulsion covers such persons even though they may be, or have already been, charged with criminal offences. Irrespective of whether they volunteer themselves, it always remains an option for the Commission to issue summons to compel their attendance to testify. In that event, under the procedure laid down by the Commission last week, their evidence will be led by their counsel.
58. The same considerations will apply to witnesses and officers of the corporate involved parties and Mardep (which is also an involved party). They are expected to be able to testify about safety arrangements and management of the vessels under their ownership, as well as issues about harbour management. Again irrespective of whether the corporate involved parties and Mardep volunteer such witnesses, the Commission has the power to compel their attendance before the Commission to testify.

Dated this 11th day of December 2012.

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