

**CLOSING SUBMISSIONS ON BEHALF OF THE HONGKONG
ELECTRIC CO. LTD. AND CREW OF LAMMA IV**

Introduction

1. The Commission has heard heartbreaking stories from the survivors and the rescuers. It is a tale of horror and loss leavened only by deeds of bravery and selflessness.
2. It is in this light that the Commission will no doubt assess and evaluate the evidence not only of those who were on Lamma IV and to a lesser degree on Lamma II, who witnessed a great tragedy and its aftermath, but also the crew of Lamma IV who so nearly lost their lives, and were traumatized by the deaths and suffering of their passengers.
3. In the cold light of a large room in Central Government Offices, surrounded by the mundane trappings of normality and formal procedure, what must always be borne in mind is the unique nature and immediacy of this ghastly tragedy.
4. We have had described to us a tale of good people, who, having had a fine outing with friends and family, good cheer and good food, board Lamma IV in fine spirits to prepare for the culmination of the day's festivities, the fireworks.
5. This idyllic scene, is suddenly and cataclysmically shattered and within moments, the atmosphere of bonhomie and fellowship are replaced with terrified people facing not only

their own deaths, but worse still, the deaths of children, relatives, sweethearts and friends, and struggling in a hostile environment, for their very lives, with panic spreading contagiously.

6. As graphically as the story has unfolded in this room, nevertheless those of us who thankfully have never experienced near and sudden death, cannot in reality imagine the full horror of the cries of distress, desperation and terror, terrible shrieks of mental and indeed physical agony, as this dreadful ordeal suddenly engulfed these poor people.
7. As the Commission has heard, the world for these survivors turned upside down, literally, within seconds.
8. We do not paint this scene from the Inferno in order to shock, but to illustrate that when assessing the evidence given by those people who were so terribly affected, and we include the crew of Lamma IV, it is futile to expect them to recall minutely, in fine detail, as has sometimes been required of them from time to time in this hearing, or to narrate what happened with exactitude, how many seconds this or that action took, who was standing where, who said what to who and when, what noises they heard, eg the whistle, how far away Sea Smooth was at a given moment in time etc.
9. People, and again we include the crew, who suddenly within seconds, are facing death and disaster, cannot be held to account (“the sliderule” approach as described by the Chairman)

for every second, indeed every action, indeed every word, that was spoken by whom or to whom, in those fateful minutes or seconds, compressed into nano-seconds by the awful events. Their clarity of recollection must inevitably be distorted by the events, and the torture they underwent in the reliving and retelling of their ordeal during the passage of time since then.

Background to the Collision

10. During the afternoon of 1 October 2012 Lamma IV was berthed at Lamma Island Power Station typhoon shelter Pier 2, bow southerly. This was in preparation for a trip to Central carrying employees of HK Electric, families and friends to the scheduled firework display planned later that evening.
11. At around 20:00 on 1 October 2012 124 passengers boarded Lamma IV in preparation for the passage to Central. There were 3 crew members aboard, the coxswain Chow Chi Wai, engineer Leung Pui Sang and sailor Leung Tai Yau, and a working party team responsible for the care of the passengers during the day's planned activities.
12. In the meantime Sea Smooth was alongside Pier 4, Central taking aboard passengers for the short passage to Yung Shue Wan, Lamma Island. Just after 20:04 on the 1 October 2012 Sea Smooth departed Pier 4.
13. Prior to the boarding of passengers at the Lamma Island Power Station typhoon shelter the coxswain prepared the wheelhouse

**Day 34
p.103 lines 13-24**

for sailing. This included checking that all navigation lights were switched on (having already been switched on by the coxswain at sunset) and switching on the radar whose range was set to 1 nautical mile. The coxswain stated that this was the usual range he set for this route and he preferred this range because at a longer range scale the picture becomes cluttered and confused with numerous targets in and around the anchorages and West Lamma Channel. Captain Pryke agreed with this view. As Lamma IV was going to Central, HK Electric had provided a route chart as per their normal navigation instruction. The coxswain also checked that all navigation lights, the radar and steering gear were operating normally. According to the engineer's comments the machinery was operating correctly.

Day 46
p.24 lines 1-9
Operation Manual
for Coxswain
RSRB1, p.303

Day 37
p.66 lines 16-23

14. At about 20:15 Lamma IV departed from Pier 2.
15. At this time Sea Smooth was some 2.2 nautical miles directly north of Lamma IV's position.
16. The Hong Kong Observatory reported visibility at Central, Chek Lap Kok and Waglan Island to be 11 – 12km. Visibility was good. The wind was easterly 9 knots (16km/h). The tide was flooding, northerly within the West Lamma Channel, the rate was unknown. However it was considered to be slight.
17. The bow of Lamma IV was pointing south so on slipping it came astern and then swung around to the north to pass between breakwaters on its passage to Central. The coxswain

Hong Kong
Observatory
Weather Report
Miscellaneous
Bundle, item 5, p.15
and Marine Bundle 8
p.1906

steered Lamma IV by using the joystick. The rudder is said to begin to respond approximately 1 second after the control lever is moved. The coxswain of Sea Smooth also gave evidence as to the advantages of the joystick over the wheel, and Captain Pryke confirmed the advantages of doing so.

Day 42
p.73, lines 19-22

18. Also berthed just forward of Lamma IV was Lamma II. Lamma II departed her berth once Lamma IV was clear and en route to Central.

19. Once the passenger numbers were logged and the sailor had completed his rounds he and the engineer joined the coxswain in the wheelhouse.

20. At approximately 20:18:40, some 3.5 minutes after departure from Pier 2, the coxswain sighted Sea Smooth on his radar as she appeared on his screen right ahead at 1 nautical mile. At that time Sea Smooth was maintaining a southerly course and speed of about 24 knots.

Radar Data
Expert Bundle 1, item
2, p.328

21. During the period from 20:18 to 20:20 the vessels approached each other nearly head-on; Sea Smooth was transitting the North Lamma Anchorage. Captain Pryke accepted that the larger vessels therein may well have caused a “slight delay” in her sighting by Lamma IV up until 20:20 (ie less than 20 seconds before collision). The coxswain of Lamma IV was navigating by line of sight on a course to pass the Shek Kok Tsui light 1 to 1.5 cables to starboard in accordance with HK Electric’s passage directions. This would take him slightly to

Day 3
p.55 lines 20

RSRB1 at 303
Day 34 p.54 line 13

Day 35 p.69 line 13

starboard of his then 350° track, so he was gradually altering to starboard.

22. Just prior to 20:20 shortly after sighting Sea Smooth visually, Lamma IV altered her course hard to starboard. Due to the restricted sea room (1.5 cables) from the rocks and reef off Shek Kok Tsui it was accepted that the coxswain could not turn earlier. The coxswain claims he sounded one short blast on the whistle prior to this particular starboard alteration although no one else appears to have heard it. These distances and action are consistent with his police statement of 2nd October 2012. He expected Sea Smooth to alter course to starboard (perhaps an example of Captain Pryke's navigator's DNA).
23. However a few seconds after his own alteration to starboard, the coxswain could see the forepart and green sidelight of Sea Smooth which indicated it had altered course to port i.e. towards Lamma IV.
24. After this hard over alteration to starboard, the Shek Kok Tsui light appeared on Lamma IV's port bow indicating an alteration of heading to starboard of some 40°. At about this time when Sea Smooth was about 200 metres away, Lamma IV's coxswain gave a single flash on the searchlight. This could be what was seen by Mr Rebanks and Mr Niu Gang. The engineer, when he first saw Sea Smooth, did so through the port window, a manifestation of substantial starboard alteration, as acknowledged by Captain Pryke.

Day 35
p.17 lines 1-6
Dr Armstrong 2nd
Supp Report
Para 34
Expert Bundle 2
Item 10, p.935
Police Bundle H
p.324-1

Captain Pryke's
Drawing
Expert Bundle 1
p.361-1
Day 35
p.17 lines 11-17
Day 32
p.102 line 12

Day 35
p.1 line 16 to
p.2 line 2

Day 35
p.2 line 3

Day 45
p.51 lines 22-23

25. Between 20:20:17 and 20:20:20 Sea Smooth collided with Lamma IV, striking the port side aft between frames 2 to 7 at an approximate angle of between 33° – 41°. Dr Armstrong suggests 40° as the “nominal” value confirmed by his 2nd Supplemental Report. **Dr Armstrong Expert Bundle 1 p.400 Expert Bundle p.395 para 34**
26. The coxswain dialled 999 and informed the police his vessel had been struck by another vessel off Yung Shue Wan, requesting rescue services. The police asked if any one was injured and so he left the wheelhouse to check, quickly reporting that there were injuries. On completion of his call to the police the coxswain called Lamma II on the trunk radio hand set requesting immediate assistance. **Police Bundle E p.1220-71**
27. Lamma II arrived on the scene at about 20:22. By this time Sea Smooth had separated from Lamma IV and was stationed between 30 m and 100 m off the port side. It appears Lamma IV had continued to swing to starboard after an initial movement of her bow to port caused by the force of the impact on her stern after disengaging and prior to sinking.
28. Lamma IV coxswain remained on board assisting passengers to safety. Within a very short time the vessel sank by the stern and was submerged completely up to frame 13.
29. Sea Smooth only remained on the scene until 20:24 before continuing on to Yung Shue Wan to discharge her passengers, offering no assistance to Lamma IV.

The Collision

Application of the Collision Regulations

30. The International Regulations for Preventing Collisions at Sea 1972 (as amended) (the “COLREGS”) are divided into four Parts, A-D, and 4 Annexes. Relevant Parts are Part A and Part B. Part A contains General Rules 1-3, including General Definitions. Part B – the Steering and Sailing Rules – contains Rules 4-19, which govern the conduct of vessels in given circumstances. It is divided into Sections I, II and III in respect of which only Sections I and II are relevant to this case (Section III concerns the conduct of vessel in restricted visibility). Section I concerns the conduct of vessels in any condition of visibility (keeping a good lookout, safe speed, ascertaining risk of collision etc). Section II concerns the conduct of vessels in sight of one another.

Legislation Bundle
Tab 8

“In sight”

31. Rule 3(k) states:

“Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.”

The definition is relevant to the distinction between instances where vessels are navigating in or near an area of restricted visibility and not in sight of one another such that their conduct is governed by Section III and not Section II of the Steering

and Sailing Rules. Marsden¹ points out that it's usually possible for vessels in sight of one another to recognise visually in sufficient time the position, aspect and approximate bearing of the other, and any lights and shapes being exhibited, so that the degree of responsibility to take action which each bears can be based on this and the vessels' respective abilities to take effective avoiding action.² Further, a vessel cannot claim that another is not in sight because she has failed to keep a proper lookout. In *The Lucille Bloomfield*, Karminski J said³: “‘*In sight*’, in my view, means something which is visible if you take the trouble to keep a lookout.” A visual, and not radar, lookout is what is meant.⁴

Section II of the COLREGS

32. The Rules of Section II therefore clearly apply to this case, which deal *inter alia* with responsibilities between vessels in a head-on or nearly head-on situation.

Rule 14 Head-on Situation

(a) *When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision [our emphasis], each shall alter her course to starboard so that each shall pass on the port side of the other.*

¹ Collisions at Sea, Thirteenth Edition.

² *Ibid* para.6-129

³ [1966] 2 Lloyd's Rep. 239.

⁴ Marsden para. 6-130

- (b) *Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights....*
- (c) *When a vessel is in doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.*

Risk of Collision

33. It will be appreciated that Rule 14 only applies when there is a risk of collision.

Rule 7

- (a) *Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.*

The English Admiralty Court has consistently declined to lay down any hard and fast rules about when a *risk of collision* exists. *“That must always be decided according to the circumstances of each case, by men of nautical experience.”*⁵

Marsden states that it is not entirely clear what degree of risk is in question but suggests the second sentence represents a sensible principle of precaution supporting the view that it need

⁵ *The Mangerton* (1856) Sw. 120 per Dr Lushington.

not be a probability, but only a possibility or strong possibility in this context.

A Court will invariably look to a Nautical Assessor's assistance in determining when risk of collision exists in the given circumstances of any particular case, which is what Captain Pryke has done. He concludes that risk of collision existed at 20:18 for Sea Smooth and 20:19 for Lamma IV.

**Captain Pryke
Day 32
p.101 lines 5-13**

34. For Lamma IV this was about 20 seconds after Sea Smooth appeared on her radar at 1 mile at 20:18:41. If both vessels had maintained their courses they would not have collided. In these circumstances any delay in taking action by Lamma IV cannot be said to have had any causative potency. The subsequent alteration to starboard was made at a time when Sea Smooth's navigational alteration to port was insufficient to change the aspect of her light from "head on" to make Sea Smooth's alteration apparent to Lamma IV. Even allowing some latitude in this timing, and accepting for the sake of argument that Sea Smooth may have begun her turn a few moments earlier, she would still not have changed course so significantly as to have been noticeable to the coxswain before he began his turn to starboard.
35. Sea Smooth's alteration of course to port (described by Captain Pryke as "fatal"), appears to have commenced at 20:19:20. Crucially this was more than a minute after risk of collision should have been established. She was therefore in direct contravention of the requirements placed on her by Rule 14 and

Day 32 p.115 line 6

**Day 32
p.114 line 18 and
p.115-6**

her turn was the most significant cause of the collision as Captain Pryke repeated on many occasions both in his reports and his testimony. This was a direct consequence of a poor lookout, and a breach of Rule 5. It also coincided with Sea Smooth proceeding at an unsafe speed (in excess of 24 knots) and in breach of Rule 6. Speed contributed significantly to the damage suffered by both vessels.

The Design and Construction of Lamma IV

36. It is not intended in these submissions to enter into the dispute as to who was at fault in providing to HK Electric a vessel that, while perfectly safe on its routine journeys was in effect potentially a floating death trap should a collision occur to the after hull. The vessel was never designed or built to survive such a collision which opened up two compartments (as graphically depicted by Dr Armstrong's video) and it is only by luck rather than judgment that she would have stayed afloat in these particular circumstances if the bulkhead between the steering gear and tank room had been watertight.

**Expert Bundle 2
p.956-4**

37. What has been shown, beyond argument, is that there were design faults, errors in mathematical calculations, and above all an almost unbelievable failure to spot the failures, not only when the vessel was finally constructed and handed over in pristine state to HK Electric but also during the further surveys tests and calculations that were undertaken by the various parties during the ballast exercises in 1998 and 2005. See too the concessions of Wong Wing-Chuen, the senior surveyor and

**Day 43
p.26 lines 13-16
Marine Bundle 11 -
B4035
Marine Bundle 12 -
B4922**

the belated concessions to the same effect by Tam Yun Sing and Yuen Chin Wai. At the end of the day although there has been much finger-pointing, there is no real dispute concerning the construction and survey failure.

38. The errors above all related to the failure to have a watertight door in a designated and designed watertight bulkhead, the unnecessary thinness of the hull plating and the poor affixing of the seats to the deck.
39. No one has suggested, nor could they possibly do so, that in accepting the vessel in the condition it was in, or in sending it for its annual survey to a highly reputable shipyard that HK Electric could in any way be faulted.
40. Given the hierarchy of expertise in the construction, survey and final seal of approval by Mardep it would be an empty exercise to blame, even partly, HK Electric for accepting the vessel with its design and construction faults. Tang Wan-On stated, correctly, that HK Electric was the lay purchaser and it was not his place, nor that of his company to second guess the experts and the competent governmental authority. This is particularly so given the annual surveys and the “careful” and presumably meticulous inspections and checks which took place before and after the additions of the ballast. **Dr Armstrong
Day 47
p.178 lines 6-17**
41. To blame HK Electric would in effect place a “lay” purchaser of a custom built machine (ship, motor etc), such as HK Electric, under an obligation to employ or engage its own

engineer to verify the construction. This would be unreasonably onerous for a company such as HK Electric which is not in the shipping business.

The Coxswain and Crew of the Lamma IV

42. During the course of the hearing, there was much criticism of Lamma IV coxswain. It was suggested amongst other things that his various versions of what he saw and when he saw it and who said what to who, etc were irreconcilable.
43. It is submitted that such criticism is largely misplaced. In the first place we refer to the Introduction in which we point out the extraordinarily sudden and traumatic experience that he underwent. In addition to this, one has to bear in mind that following the collision he has been undergoing psychiatric treatment with medication together with his continuing psychological counselling.
44. However what is clear is that he (in contradistinction to Sea Smooth coxswain and crew) cooperated fully with the police (including an interview while in hospital a few hours after the tragedy) and with the Marine Department's own investigation to try his best to recall what happened that evening. It is the very fact of his cooperation and willingness to try to assist that has highlighted discrepancies. If he had (as did Sea Smooth's crew) declined to give any information to the police and Mardep, doubtless the number of so-called contradictory

**Police Bundle M
p.3324-1**

statements, and opportunities to confront him with them, would have been much reduced.

45. But apart from the trauma, and associated memory distortion, it must be borne in mind that he was trying to do as best he could to describe instant occurrences. By way of analogy, if one sees a motor car at night coming straight at one, with headlights ablaze, it would be practically impossible to give any kind of rational explanation as to “when one first saw the headlights” or “how far away the other vehicle was when first detected”. The coxswain was doing his best to give these approximations. See for instance the remarks of Seagroatt J⁶, where he said, a propos of a road accident:

“It is impossible to expect any witness to talk with accuracy in terms of feet, seconds, distance or time some five years after the event. It is difficult enough to estimate time and distance immediately after such a traumatic event let alone years later. There is inevitably a degree of reconstruction. It is quite unreasonable to expect any such witness to speak reliably in terms of distance, time, and speed and equally unreasonable to take them to task on variations or inability to be precise.”

Admittedly the witnesses in that matter were deposing to events that had occurred 5 years earlier, but the principle is correct.

⁶ Chan Hwai Yan v Cheng Yip Chi & Ano, HCPI 510/2000 at p.3

46. The coxswain made it clear all the way through his statements and evidence that all he was doing was giving estimates and he should not be held to fixed times and distances. Much of the criticism of him missed this point and we show below how he was always at pains to explain that he was doing no more than co-operative guesswork.

- (a) (i) pp 51 “*I clearly recall that it was at this time [3 minutes after sailing c.f. pp 50] I saw for the first time the yellow flashing light of a high speed craft dead ahead of us...She appeared to be about 3 cables. I could see SEA SMOOTH’s white masthead light and both its red and green sidelights...*” **Day 34**
p.106 lines 9-13
- (b) (i) Just below halfway down the page “*Three minutes after leaving the pier, about 6 cables from the pier, I saw the other vessel...At that time that other vessel was immediately forward of my vessel. I saw her port side light, starboard said light, mast light and amber light and she was about 0.3 nautical miles from my vessel.*” (i.e. about 3 cables) **Mardep Notes of Interview**
Marine 1
p.89-5
- (c) (i) Bottom of page “*At that time [driving up to the Shek Kok Tsui Lampost in about 2-3 minutes c.f. 8 lines above], a vessel approached at a high speed from a distance of 500-600 m right in front*” **Day 35**
p.70 lines 11-19

of my vessel. As the navigation course would cause danger to both (vessels)... ”

- (ii) 500-600 m equals 2.7-3.2 cables (divide metres by 185.2 to get cables).
- (iii) He said that he saw Sea Smooth “right in front of my vessel”. **Day 36**
p.75 lines 12-13
- (iv) He said that keeping on the navigation course would cause danger. This can only mean head-on with red and green sidelights but the police did not ask what lights he had seen. **Day 36**
p.75 lines 17-18
- (v) “*Moreover, I could only see the starboard green light of the other vessel. At that time, the distance between our vessels was more than 200 metres.*” **Day 36**
p.76 line 3-16
ie closer and later than the earlier observation above, and at a time when Lamma IV was under hard starboard wheel.

47. The coxswain says he did sound the whistle but no-one else, crew or passengers, appears to have heard it. The engineer did hear the coxswain testing the horn before sailing. As we submitted in the Introduction, given the instant trauma that afflicted passengers and crews, it may simply have gone out of their minds, being unconnected with the immediacy of their predicament. **Day 37**
p.25 lines 10-13

48. One possibility may be that the coxswain, in the need to make a sudden and catastrophe – avoiding move to starboard, concentrated fiercely on his manoeuvre and rationalized, mistakenly, that he had sounded the whistle, as he would automatically have done if he had had time.
49. However, given the fact that Sea Smooth suddenly and unpredictably turned to port, it seems highly unlikely that sounding the whistle would have had any effect at all.
50. The engineer and sailor, who like the coxswain had spotless records, were also subject to much criticism during the hearing. However, the constraints on their ability to recall with precision times, movements etc are subject to the same observations as made in the Introduction.
51. As with the coxswain, the very fact of their anxiety to cooperate and assist and thus the relative multitude of statements they made between them, sometimes months apart, have provided a fruitful field to pick out and home in on perceived contradictions, not only in their own evidence but inter se.
52. Furthermore, it is notable that in the statements prepared with the help of their lawyers for the Commission, contradictions or contradictory statements have remained in place without any attempt to reconcile them, because that is what each crew member believes what happened. This is counter-indicative of any attempt at collusion.

53. This may be contrasted with the statements of the crew of Sea Smooth, all taken on 4/10/12 which bear an uncanny resemblance to each other and in respect of which, each member of the crew, to differing extents, was obliged to disavow, in testimony before the Commission.

54. Whatever shortcomings may eventually be attributed to the members of Lamma IV's crew, it is quite clear, as acknowledged by the Chairman, that they acted with commendable bravery after the collision and it is regrettable that their integrity has been called into question. And in this regard we also include Lai Ho Yin, the event organiser, who helped people to escape before eventually dropping into the sea as Lamma IV's open deck went underwater, as well as others from the working party.

Day 37
p.107 lines 16-22
Day 38
p.76 lines 2-6

55. Whilst accepting that a court would seldom hold one vessel blameless and the other wholly to blame for a collision involving two moving vessels, any shortcoming of Lamma IV's standard of lookout and appraisal of the risk of collision must be considered from the perspective of causation. In circumstances where Lamma IV took avoiding action that would have resulted in a safe passing distance but for Sea Smooth's poor lookout and alteration of course to port, at considerable speed, in breach of Rule 14 and clearly contrary to the ordinary practice of seamen, effectively eliminating all remaining options available to Lamma IV to avoid collision, it is submitted there are sufficient grounds to reasonably say that Lamma IV was blameless for the collision.

The Coxswain and Crew of the Sea Smooth

56. We make it clear that the criticisms we make of the coxswain and crew are not based on any minute examination of what happened at any specific time and we do not purport to undertake a microscopic examination of times, sightings, places etc.
57. The coxswain of Sea Smooth could only give one explanation for his failure to see Lamma IV in good time and that is, that for inconceivable reasons, Lamma IV's navigation lights were not illuminated. One must bear in mind that he had not "considered" using the radar, given that on his own evidence he did not know whether anyone else was keeping a look out and even if either of the sailors or the engineer had been keeping a look out from their sofa at the rear of the wheelhouse, they had departed downstairs not long before the collision.
58. The Commission of course will have formed its own view of the credibility of Sea Smooth's coxswain but in any event aside from his say-so, the evidence is all one way that the navigation lights of Lamma IV were properly illuminated.
59. i) It was the evidence of the coxswain and crew of Lamma IV that the lights were on, as early as sunset when the vessel was alongside. The overwhelming probability, apart from this evidence and the other evidence which is set out below, is that he would have switched on the

navigation lights. He was a very experienced coxswain and the chances of him forgetting (which he must have done if he had not switched on the lights) to illuminate them on is so minimal as to be non-existent.

- ii) Some witnesses on Sea Smooth and Lamma II including the coxswain (an employee of HKKF) saw the lights on and so did a FSD diver Tam Kum-lun (with marine experience and qualifications) who actually saw the green navigation light.
- (a) See statement and evidence of Niu Gang.
- (b) See Evidence of Leander Rebanks
- (c) The coxswain of Lamma II
- iii) The position of the light switches also demonstrate that the lights were on, when the vessel sank.
- iv) The forensic evidence makes it quite obvious beyond argument that when the vessel sank, the lights were on.
60. The only suggestions made, albeit obliquely, during cross-examination were either that the coxswain had forgotten to switch the navigation lights on, or that all the lights had fused somehow after setting sail and no one had noticed. This appears from the evidence to be scientifically impossible,

Day 10
p.102 lines 11-19
p.113 lines 17-
p.114 line 2

Police Bundle
B758-764
Day 7, p.8 line 19;
p,14 line 19
Day 7
p.103 line 4 to
p.105 line 6
Police Bundle
B711, Question 20

Marine Bundle 1
141

See reports of Dr
Cheng Yuk-ki
Expert Bundle 1
p.362 and
Expert Bundle 2
p.1095
and
Professor Ho
Day 47

particularly given the aural and visual warning indicators in place and switched on.

61. If the Commission therefore accepts (as it is respectfully urged to do) that the navigation lights of Lamma IV were fully illuminated, then the whole defence, as it were, of the coxswain of Sea Smooth evaporates. If the lights were on, they should have been seen in good time and, as he accepted, if he had seen them at least a minute or so before the collision when he should have done, the two vessels would have been in a head-on situation and thus the proper procedure was to turn to starboard, as the coxswain of Lamma IV had done. **Day 42**
p.70 line 23 to p.71
line 9; p.73 lines 1-
14
62. If the Commission accepts that Lamma IV's navigation lights were properly and fully illuminated, then the only realistic, indeed the only possible explanation for Sea Smooth's coxswain's failure to see them, was that he was not keeping a proper lookout.
63. As to why this was so, one does not know. The feeble excuse of the glare from the fog-light can be safely excluded as a far-fetched excuse. (See the note on the fog-light below). Whether it was the rice steamer or its contents or even their fatigue after their non-stop shuttle service which distracted him, is speculative, but as the coxswain himself conceded, his attention was faulty. **Log Book**
Police Bundle N(1)
p.3373-8
64. Given that he knew that this was a special evening because of the fireworks that there were likely to be many unscheduled **RSRB Bundle 1**
p.275

small craft in the vicinity, and in particular given that he knew (after all he had steered them himself) that an HK Electric vessel would be leaving the typhoon shelter at 2015, he certainly had to be extra vigilant. He himself volunteered this. The schedule of HK Electric's Lamma ferries which must have been known to the coxswain is attached as Appendix A and is marked in yellow for easier reading.

Day 42
p.5 line 7 to p.6 line 11; p.67 line 20 to p.68 line 4

65. The fact that his radar was only set to a scale of 0.75 miles is strange in itself. At 24 knots it would take Sea Smooth less than 2 minutes to cover that distance. If a vessel is coming from the opposite direction at 12 knots (as Lamma IV was) this time would be reduced to 1 minute 15 seconds, in which to assess the risk of collision and take appropriate action. As Captain Pryke commented, this was clearly inadequate.

Day 46
p.27 line 13 to p.28 line 2

66. His admitted failure to be vigilant (let alone "extra" vigilant), was compounded by his indifference as to whether any of his crew were keeping a lookout. Indeed their knowledge of their responsibilities and regulations as laid down by HKKF was effectively nil.

HFV19-25

Day 42
p.64 line 13 to p.65 line 7; p.170 lines 3-19

67. The question is surely not who was at fault in their navigation or why, but rather whether those faults identified by Dr Armstrong and Captain Pryke were causative of the collision. It is our submissions that they were not. See Annexure B for Dr Armstrong and Captain Pryke's views on the effective cause of the collision.

Why did the Sea Smooth not stop?

68. The story given by members of the crew was in effect identical. Passengers were injured, water was pouring in from the bow and some passengers were loudly demanding that the vessel sail for the pier immediately. There was chaos and screaming.
69. Curiously, not a single one of the crew saw Lamma IV in trouble, sinking rapidly and people drowning nearby. The coxswain did see Lamma IV from the port bow seconds after the collision and when his shouts went unanswered, he assumed that the other vessel was not in trouble (despite the vigour of the impact and the obvious severe damage to his own vessel) and most bizarrely of all, when he was in the wheelhouse on the phone or the radio, he did not turn his head, when even a quick glance would have revealed the extent of the effect of the collision with people screaming, jumping and falling into the water. Furthermore, it apparently did not occur to him to utilise the searchlight, the loudhailer, or deploy his life-saving equipment.
- Dr Armstrong
Expert Bundle 1
pp.452-462**
- Day 42
p.70 lines 3 to 30**
- Day 42
p.43 lines 11 to 18**
70. The engineer and the sailors from their differing vantage points more or less gave the same evidence as the coxswain. They too, most curiously, did not lay eyes on, or look for the vessel they had collided with or even think to ask what had happened.
71. However, the more objective evidence gives the lie to what unfortunately can only be called a “conspiracy of see no evil”.

72. Of course, one recognises that the crew's first obligation was to their own vessel and their own passengers. But the damage to Sea Smooth was minimal. Only two or three passengers were slightly injured and according to evidence from passengers on the vessel, there was none of the chaos and screaming attested to so graphically by the crew. See statement and evidence of Mr Niu Gang. **Police Bundle B758-764 Day 7 p.5 line 5**
73. There may have been water coming in but the tale of the water spurting through the manhole covers could only have taken place once the vessel was underway again eg See Niu Gang, Stephen Marsden and Chau Yi-ki. **Police Bundle B764-5 Day 7 p.4 line 13 Day 7 p.53 lines 4 and 18 and Day 8 p.8 line 16**
74. See too the forensic evidence of Dr Cheng Yuk Ki which shows that the manholes in the main deck cabin were 1.5 metres above the water. The vessel listed no more than 2.4° to port, hardly enough to cause the degree of panic deposed to by the crew. **Expert Bundle p.378 para 5.11 para 5.14**
75. It is perhaps worth noting in regard to the manhole covers that Sea Smooth had entered dry dock just 6 days before the collision. This may explain why the manholes were not screwed down properly. Also the engineer stated that he did not secure the manholes after inspection. **HFV122-3 Day 40 p.75**
76. Contrary to the repeated tale told by the crew, of passengers calling for the coxswain to head straight for the pier, there was evidence that a foreign passenger had requested the coxswain to stop and help the survivors from Lamma IV. After all, this **Police Bundle B 826-1 to 826-6**

was no mid-ocean collision, Sea Smooth took no more than a couple of minutes to reach the safety of the pier.

77. And contrary to the tales of immediate chaos and screaming, and contrary to the evidence of all the crew members, there was evidence from a passenger, Mr Chung Kin-Hing that a crew member at first shouted “Don’t worry. No need to put on life-jackets”.

**Police Bundle B
826-1 to 826-6**

78. Aside from anything else, the desertion of Lamma IV when it was in trouble was a breach of Section 29 of the Merchant Shipping (Local Vessels) Ordinance, Cap. 548. While one does not expect the largely uneducated crew members of Sea Smooth to have detailed knowledge of these pieces of legislation, nevertheless, they had all been at sea for the whole of their lives, and rushing to the assistance of people struggling for their lives in the water must be in their very DNA.

**Legislation Bundle
Tab 13**

79. The real issue, however, is this: if Sea Smooth had done its duty and stopped to help rescue passengers who were in distress, would more of them have been saved? When one bears in mind that the crew of Lamma II and the people on the passing pleasure craft saved many passengers, as shortly afterwards did the police and fire services, the overwhelming probability is that the death toll would have been, and should have been, very much less.

80. Why then did they turn tail and run? In making the following submission, we are acutely aware that the crew members are

largely uneducated and furthermore do not have the benefit of legal representation to articulate their defence. However, given :

- (i) The collision was the coxswain's fault, at least in the main,
- (ii) The crew obviously lied about not seeing or knowing that Lamma IV was in deep trouble,
- (iii) The danger to Sea Smooth and its passengers was minimal,

the overwhelming probability is, as suggested to the coxswain in cross-examination that he knew that he was at fault and he simply panicked and steamed away from the results of his fatal negligence.

Day 42
p.81 line 17 to p.82
line 1

The Fog Light

- 81. It was suggested by the coxswain and some of the crew of Sea Smooth that their vision was blurred or affected by the fog light on the pier of the typhoon shelter. This has been shown to be a nonsense, a post-event rationalisation (to put it kindly) and can be quickly disposed of.
- 82. The coxswain was experienced in sailing this route, indeed including on Lamma II and IV, and knew exactly where the fog light was and its intensity.
- 83. No complaint about its interference with navigation had ever been made to HKKF or HK Electric and in particular to the Marine Department.

84. At the very moment when the coxswain claimed that his vision was affected by the fog light, the crew disappeared downstairs to do their other duties, minutes before it was necessary to do so. And the so-called affected vision did not cause the coxswain to slow down, in clear contravention of Colreg Rule 6.
85. The coxswain did not think to ask any of the crew to wait a few moments to check the radar or until his vision was clear. **Day 42
p 42 line 2 to p.70
line 2**
86. At the very moment when he claims his vision was affected, the coxswain was actually in the process of turning to port and thus there was no interference whatsoever with his vision. **Day 42
p.33 line 3 to p.34
line 12**
87. The issue of the fog light as being a factor in the coxswain's inability to see Lamma IV until it was too late, should be dismissed out of hand.

Other criticisms leveled at the owner and crew of Lamma IV

(i) Lifejackets

88. The suggestion that the staff of HK Electric had conspired, year on year, to pretend that they had not complied with the licencing requirement by having no children's lifejackets, whereas in fact they had complied, is simply too ludicrous for any serious consideration. Why on earth they should risk being "found out" that they had indeed complied with the licence

when they were maintaining they had not, makes no sense whatsoever. They had far more adult life-jackets than required, (had done so since 1997) why should they stint on children's life-jackets?

89. As to the counting of the children's lifejackets, one wonders why the actual number was not stated in the licence. The later practice of putting an asterisk instead of the number required was very likely to cause confusion, leading owners and interested passengers to have to trawl through legislation to find out how many children's lifejackets were required by law. The common sense thing to do would have been to put "12" against the number required and then there could be no misunderstanding. **Marine Bundle 4 p.805**
90. Section 30(1) of Cap. 548G, mandates that the certificate of survey shall be displayed in a conspicuous place on the vessel. One assumes that the purpose of this requirement is to inform a lay person which lifesaving appliances are onboard. If that assumption is correct, then it would be quite pointless to have a series of asterisks as some sort of guide, because this would do nothing to assist the inquiring passenger. **Legislation Bundle Tab 15**
91. From July 2007 to May 2011, the Certificate of Survey had the notation "none" against "children's lifejackets". This indicates that there were no children's lifejackets required onboard at the time of the Mardep inspections and of course the operating licence was renewed annually. **Marine Bundle 4 p.760, p.775, p.796 and p.798**

92. Furthermore, and in any event, Wong Wing-Chuen confirmed that the requirement for separate children's lifejackets was not enforced by Mardep. This confirmed the view held by Tang Wan-On and the coxswain. **Day 43 p.44 lines 13 to p.51 line 3**
93. And in addition it was the Mardep view that the adult life-jackets were suitable for both adults and children. **Day 55 p.43 lines 5-8**
94. The Marine Department notice relating to 1/10/2012 advised the provision of children's lifejackets. The evidence was that this was indeed advisory as distinct from mandatory and it was left to the discretion of the coxswain whether to provide them or not. There was evidence from one of the divers that two of the children that he rescued had adult lifejackets on. Madam Lau Hau Yin, a passenger on Lamma IV placed both her children, aged 10 and 7 into lifejackets. The deckhand also testified that he put two children into lifejackets which fitted them. **Miscellaneous Bundle p.53
Statement of Shuen Chi-Keung
Marine 11 p.3675 para 12
Day 9 p.97 lines 10-12; p.102 line 20 to p.105 line 8
Police Bundle A1, 45-1
Day 6 p.93 line 8
Day 38 p.12 line 18 to p.13 line 19**
95. As to the adult lifejackets, although Dr Armstrong was rather dismissive of them, they were of standard design, accepted by Mardep.

(ii) Four crew members or two

96. The reasons why Mardep decided to increase the manning from two to four on Lamma IV but kept it to two on Lamma II (a similar size and having a larger passenger capacity) is incomprehensible. The Commission will recall the highly

unsatisfactory evidence of Mr Tam Yun Sing who could not remember why this was done, and made no note of it, had not discussed it with any superior etc. Furthermore the

**Day 22
pp.33-47**

Commission will recall the evidence of Tang Wan On that during the annual fire fighting demonstrations, Lamma IV utilized only three crew members, to the satisfaction of Mardep including, in 2009, a Mr Tam Yun Sing. Although Tang Wan On was present (not in crew uniform), as indeed he should have been as supervisor, it was not suggested that he somehow “pretended” to be a fourth crew member.

**Day 29
p.57 lines 18-25**

**Day 22
p.64 line 8 to
p.66 line 10**

97. There was of course always a legitimate option for HK Electric to run Lamma II with 2 crew and Lamma IV with 4 with no affect on operational costs.

98. As was explained by Tang Wan On, there were sufficient HK Electric personnel on board on the night of the collision to meet the “quota” if necessary and they played their part in the rescue. See definition of “crew”. It is clear that arrangements were always in hand to provide an extra person on Lamma IV, coming from a small pool of mature and experienced junior management familiar with Lamma IV.

**Cap 548(2) and (32)
Legislation Bundle
Tab 13**

99. Indeed, realistically, no training, certification or experience could have equipped Lamma IV’s crew members for the catastrophic “post-collision” events that might. All the evidence however suggest that both the 3 crew men and the working party not only did their very best, in coping with the

unique circumstances that confronted them that evening in a vessel passed as “safe” for 16 years, but did so very well.

(iii) Too many people on the Sundeck

100. There was evidence that there were a lot of people on the upper deck but given the chaos in the cabin as soon as the collision took place and the dreadful scenes that followed with the seats collapsing, the air-conditioning unit and the ceiling falling down, it may well have been that more people would have died had they not been outside.
101. There were seats for only 14 passengers but that clearly was not a restriction on the number of people who could safely assemble there. After all, the purpose of the sundeck was specifically for passengers who were so inclined, to watch the scenery as they sailed and certainly no requirement that they be seated.
102. From the testimony before the Commission there was no evidence that those passengers who went into the cabin from the sundeck were unable to locate lifejackets. Lamma IV was of course not filled to capacity and there were ample lifejackets under the seats on both lower and upper decks. The Commission will recall the evidence of some passengers that there were many lifejackets floating on the sea. The sinking happened so quickly that there was simply not enough time for people to reach them, let alone wear them properly.

103. There has been no criticism of the “extra” people on the sundeck by Dr Armstrong and no indication in his calculations that this caused any stability problems. **See eg Expert Bundle 406 para 12**

(iv) The Seats

104. The design of the seating fixtures was inadequate to withstand a collision of the magnitude of the one that happened, combined with the rapid tilting of the vessel. This was essentially a design fault, not attributable to HK Electric. The first seats began to tumble when the deck reached 40°-50°. **Day 35 p.12 line 18**
The coxswain’s evidence is consistent with that of most of the passengers.
105. The evidence was that seats at any time found to be loose were either fixed by the crew or the maintenance department of HK Electric. To do so using the same method as had been utilised at the design and build stages is of course understandable.
106. The affixing of the seats was inspected by Mardep every year and there were no complaints.

(v) The Radar

107. There was no requirement in law for radar to be fitted, but in terms of the certificate of survey, if it is fitted, it must be properly utilised and there must be adequate training. The crew, or at least the coxswain had been trained albeit some years ago and the coxswain admitted his relative unfamiliarity **Marine Bundle 4 p.822**

with the new radar. There is, however, no issue that the coxswain was capable of switching on the radar, setting its range and reading the radar data, as he did on that fateful evening, and that was all that was required for normal navigation purposes. As it transpired, for reasons we deal with elsewhere, as he did turn to starboard as required and as Sea Smooth, at a considerable speed turned to port at approximately the same time, knowledge of radar became completely irrelevant to the cause of the collision.

(vi) Crew Training and Experience

108. Fire and other emergency drills were carried out weekly. Captain Pryke accepted that this was more than sufficient, particularly given that all the HKE Marine “operators” had been in post for many years and were well acquainted with what was required of them individually or as a team.

109. They were also medically and visually up to date, certainly within the improvement parameters suggested by Captain Pryke.

Part II

110. The Commission has received considerable evidence regarding the second part of its terms of reference relating to the general conditions of maritime safety and recommendations on measures required to prevent the recurrence of similar incidents in the future.

111. Mr Francis Cheng has outlined the measures taken by HK Electric for its fleet of vessels since the tragedy, to enhance their safety. **RSRB Bundle 1
pp.162-166**
112. HK Electric will study with great care all recommendations made by the Commission and of course will abide by any further obligations which may be imposed upon the company by the Marine Department or any other Government Department.

Conclusion

113. We recognize of course the possibility (without making any concession) that the Commission may attribute some fault to the coxswain of Lamma IV, on the basis that he did not keep a proper lookout and/or that he did not sound the whistle. However, in this event, we would still submit, as supported by Captain Pryke and Dr Armstrong, that the major fault for the collision lay with Sea Smooth. Whatever faults may be laid at the feet of the coxswain, they were not in the main causative of the collision.
114. As to the appalling death toll, that in the main is due to the faulty design/construction of Lamma IV and the unforgivable failure to notice this by those charged with that responsibility. And it must be said, finally, that the disgraceful disappearance from the scene by Sea Smooth in all probability resulted in fewer lives being saved.

115. When the Commission opened its Inquiry, we pointed to the importance of answering questions as to the what, why and how the tragedy happened on 1st October 2012. Now in closing on behalf of HK Electric and the crew of Lamma IV we thank the Commission for its painstaking efforts to deal with these questions. And finally, and once again, we express our condolences to the families and friends of all the deceased and injured.

Dated 11th March 2013

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