

# 立法會

## *Legislative Council*

LC Paper No. LS153/02-03

### **Paper for the Panel on Transport**

#### **Information paper on matters relating to the investigation of Tuen Mun Road Traffic Incident on 10 July 2003**

##### **Purpose of paper**

This paper provides an analysis on whether an independent committee may be appointed to inquire into the causes of the Tuen Mun Road traffic incident (the Incident) on 10 July 2003 and the circumstances leading to the Incident notwithstanding that the driver of the container truck involved in the Incident has been arrested for suspected dangerous driving causing death and the likelihood that a coroner's inquest will be held into the death of persons resulted from the Incident.

##### **Nature and purpose of an inquest under the Coroners Ordinance (Cap. 504)**

2. Under section 14(1) of the Coroners Ordinance (Cap. 504), where a person dies suddenly, by accident or violence, or under suspicious circumstances, a coroner may, if he considers that an inquest is necessary, hold an inquest into the death, with or without a jury. If a coroner decides to hold an inquest, the inquest will be held in open court, unless the coroner directs that the public should be excluded from the inquest or any part of the inquest. The purpose of an inquest is to inquire into the cause of and the circumstances connected with the death of a person (section 27). There are limitations in what a coroner or jury may include in the coroner's finding. Under section 44 of the Ordinance, the finding shall not be framed in such a way as to appear to determine any question of civil liability, and the coroner or jury shall not express an opinion on any matter other than (a) the identity of the deceased; (b) how, when and where the person came by his death; (c) the particulars for the time being required by the Births and Deaths Registration Ordinance (Cap. 174) to be registered concerning the death; and (d) the conclusion of the coroner or jury as to the death. Where in the course of an inquiry it appears to the coroner that a criminal offence in relation to the death of the person the subject of the inquest may have been committed by a person appearing at the inquest, the coroner may, and shall (where the suspected criminal offence is murder, manslaughter, infanticide or death by dangerous driving) adjourn the inquest and refer the

matter to the Secretary for Justice for his decision whether or not criminal proceedings should be instituted. A coroner shall adjourn an inquest if, before the conclusion of the inquest, a person has been charged before a magistrate with the murder, manslaughter or infanticide of the person whose death is the subject of the inquest or with dangerous driving causing the death of such person.

3. It can be said that an inquest is a fact finding inquiry conducted by a coroner, with or without a jury, to establish reliable answers to limited factual questions set out in section 27 of the Coroners Ordinance. It is not an inquiry to find out who is guilty or culpable. The scope of an inquest is limited to matters directly causative of death. In ascertaining how the deceased came by his death, the task of a coroner is not to ascertain how the deceased died, which might reach general and far-reaching issues, but a more limited question directed to the means by which the deceased came by his death<sup>1</sup>.

4. Members may wish to note that a coroner or a jury at an inquest may make recommendations designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held, to prevent other hazards to life disclosed by the evidence at the inquest, and to bring to the attention of a person who may have power to take appropriate action any deficiencies in a system or method of work which are disclosed by the evidence at the inquest and which are of public concern. This power of a coroner is however regarded as ancillary to the inquest and not its mainspring<sup>2</sup>.

### **Nature and purpose of an inquiry conducted by a Commission of Inquiry appointed under the Commissions of Inquiry Ordinance (Cap. 86)**

5. Under section 2 of the Commissions of Inquiry Ordinance (Cap. 86) (COIO), the Chief Executive in Council may appoint one or more Commissioners to inquire into the conduct or management of any public body, the conduct of any public officer or into any matter which is, in his opinion, of public importance. A Commissioner need not be a judge and more than one person may be appointed as Commissioners of one Commission of Inquiry. If a Commission of Inquiry is appointed, the Chief Executive in Council may specify the subject of the inquiry and may give directions on various matters in respect of the inquiry, including to whom and by what time a report is to be rendered, the powers of the Commission and the practice and procedure of the inquiry. Every inquiry held under COIO is deemed to be a judicial proceeding.

6. For the purpose of an inquiry, a Commission is given extensive powers. These include the power to receive evidence not admissible in civil or criminal proceedings, to summon witnesses, and to issue warrants compelling the attendance of witnesses and production of documents (section 4). A person

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<sup>1</sup> *R v HM Coroner for North Humberside & Scunthorpe ex parte Jamieson* [1995] QB 1, CA.

<sup>2</sup> *In the Matter of Captain Christopher John Kelly* [1996] EWHC Admin 15 (14<sup>th</sup> June 1996).

who, inter alia, fails without reasonable excuse to attend at the time and place as specified in a summons issued by the Commission, or refuses to answer a question put by a Commission or to produce a document as required by the Commission is guilty of an offence and the offence may be dealt with by the Commission summarily as a contempt.

7. Unlike a coroner's inquest, there is no restriction in the scope of an inquiry conducted by a Commission of Inquiry appointed under COIO. The terms of reference of a Commission of Inquiry are decided by the Chief Executive in Council as he sees fit. A Commission of Inquiry can therefore examine wider issues than a coroner's inquest. For example, The Commission of Inquiry into the Garley Building Fire, which was appointed on 17 December 1996, was asked to inquire into the causes of the Garley Building fire of 20 November 1996 and the circumstances leading to the tragedy, to consider the response of the emergency services to the fire, and to advise on the adequacy and the co-ordination of that response, and to make recommendations as to the actions needed to prevent the recurrence of such a tragedy.

### **Independent inquiries appointed administratively**

8. Apart from the Commissions of Inquiry appointed under COIO, bodies or persons have been appointed not under statutory framework to inquire into matters of public importance. Examples of these non-statutory inquiries are the Committee of Inquiry appointed by the then Governor in August 1988 to look into the civil service pay adjustment for that year and related matters, the appointment of Mr. Justice Bokhary, as then he was, on 4 January 1993 to conduct an independent inquiry into the Lan Kwai Fong Disaster<sup>3</sup>, the Panel of Inquiry appointed by the then Financial Secretary in July 2002 to look into the Penny Stocks Incident and other related issues, and the SARS Expert Committee appointed by the Chief Executive in June 2003 to review the management and control of SARS outbreak in Hong Kong. Indeed, in respect of the Incident, the Chief Executive in Council has appointed an Independent Expert Panel to examine and make recommendations as to measures (including highway design and traffic management) to prevent similar catastrophes in the future.

9. Members may note that the bodies or persons appointed outside the statutory framework do not have the statutory powers to summon witnesses, examine witnesses on oath, compel the attendance of witnesses and production of documents.

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<sup>3</sup> "Information Note on Commissions of Inquiry", Research and Library Services Division, Legislative Council Secretariat, 20 March 2003, IN19/02-03.

**Whether a Commission of Inquiry may be appointed when a coroner's inquest is likely to be held**

10. There is no provision in the Coroners Ordinance that forbids an independent public inquiry being held into the events surrounding the death resulted from an accident if a coroner's inquest is pending or is being held. Neither is there provision in COIO which disallows the appointment of a Commission of Inquiry to inquire into a matter of public importance if a coroner's inquest is pending or is being held. Indeed, in the Garley Building Fire of 20 November 1996, both a coroner's inquest and an inquiry by a Commission of Inquiry had been held. As a matter of practice, however, the report on an independent inquiry is usually published after the completion of a coroner's inquest to avoid the possibility of prejudicing the judicial proceedings before the coroner<sup>4</sup>. Members may also note that under COIO, the Chief Executive in Council may direct that a report on the inquiry conducted by a Commission of Inquiry to be rendered after the completion of a coroner's inquest if he considers it appropriate.

**Whether a Commission of Inquiry may be appointed when the truck driver is subject to criminal investigation**

11. It has been suggested that the holding of a public inquiry by an independent committee into the Incident when the truck driver has been arrested for suspected dangerous driving causing death may interfere with or impede the administration of justice if criminal proceedings are subsequently instituted against the driver. The basis for this view, presumably, is that the publication of materials, whether by way of oral evidence, written statements, documents or otherwise, received by the independent committee in the course of inquiry might prejudice a fair trial.

12. It appears that whether an inquiry conducted by a Commission of Inquiry appointed under COIO into the causes of the Incident would prejudice a fair trial of the truck driver should he be prosecuted would depend on whether there is an overlap of issues to be decided by the court and the Commission of Inquiry, and if so, whether there are any safeguards under COIO which can safeguard his interests.

13. Under COIO, a Commission of Inquiry has the power to receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings. As such, if there are overlapping issues to be decided by the court and the Commission of Inquiry,

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<sup>4</sup> For example, the Report of the LegCo Select Committee on the Kwun Lung Lau case was published after the Coroner's Inquest on the case was completed, although the Select Committee was appointed and had commenced its hearing prior to the hearing of the Coroner's Inquest.

there may be some justification to assert that publication of the materials received by the Commission of Inquiry in respect of those overlapping issues might prejudice a fair trial by bringing to the attention of the public, including potential jurors, damaging matters which would otherwise be inadmissible evidence in the pending criminal proceedings against the driver<sup>5</sup>. The assertion of prejudice would be stronger in a criminal jury trial, as in the case where it is decided that a charge of manslaughter be laid based on the evidence available. If, however, it is decided that a charge of dangerous driving causing death should be laid, the possibility of prejudice would appear to be theoretical rather than real. The reason for this is that it is likely that the trial of the truck driver will be heard without a jury before a magistrate or the District Court given the level of penalty for the offence of dangerous driving causing death<sup>6</sup>. It is expected that a professional judge, in hearing the case against the truck driver, would rule out any evidence which is inadmissible in a court of law.

14. Even if there may exist a possibility of potential prejudice to the trial of the truck driver in the event that a Commission of Inquiry conducts an inquiry into the causes of the Incident pending the trial, it appears that such prejudice could be avoided by the adoption of appropriate procedures by the Commission of Inquiry. For example, the Commission may hold in camera the whole or part of the inquiry or prohibit the publication to or disclosure by any person attending before the Commission of all or part of the material received by the Commission<sup>7</sup>. Since a Commission of Inquiry has the power under COIO to determine the procedure to be followed at the inquiry, it is open to the Commission to adopt procedures as it considers appropriate to avoid unfairness to persons who are subject to criminal investigation. Apart from procedural safeguards, the truck driver, if he gives evidence before the Commission, will be protected by section 7 of COIO in that any evidence he gives will not be admissible against him in any civil or criminal proceedings by or against him except where he is charged with perjury under the Crimes Ordinance (Cap. 200) or contempt under COIO. It should also be noted that under COIO, the Chief Executive in Council may direct by what time the report of the Commission is to be rendered. Accordingly, if the Commission's report is rendered after the completion of the criminal proceedings, it is unlikely that the trial of the driver will be prejudiced. Indeed, as a matter of practice, the report on an independent inquiry is usually published after the completion of the relevant criminal proceedings<sup>8</sup>.

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<sup>5</sup> *AG v News Group Newspapers plc* [1988] 2 All ER 906.

<sup>6</sup> Under section 36(1) of the Road Traffic Accident (Cap. 374), the maximum penalty for the offence of causing death by dangerous driving is a fine at level 5 (\$50,000) and imprisonment for 5 years on conviction on indictment and a fine at level 4 (\$25,000) and imprisonment for 2 years on summary conviction.

<sup>7</sup> section 4(1)(i) and (j) of the Commissions of Inquiry Ordinance (Cap. 86).

<sup>8</sup> For example, the LegCo Select Committee on Building Problems of Public Housing Units has decided not to make public the report on the Tin Chung Court incident before the completion of the relevant criminal jury trials.

## **Conclusion**

15. From the legal point of view, although the truck driver is subject to criminal investigation and a coroner's inquest is likely to be held, the Chief Executive in Council may exercise the power conferred on him by COIO to appoint a Commission of Inquiry to investigate into matters relating to the Incident, if he considers that the Incident is of public importance. Decisions made by the Chief Executive in Council in the exercise of this statutory power are subject to judicial review.

16. From the policy point of view, members may wish to take into account the following matters in considering which form of inquiry is more appropriate in the present case:

- (a) whether a judicial inquiry should be held would depend on the gravity of an incident, the belief that both the public anxiety it causes and the interests of the victims can only be satisfied by such an inquiry, and the need for full, fair and fearless investigation of the incident and for the exposure of relevant facts to public scrutiny;
- (b) judicial inquiries are necessarily adversarial and they may be prolonged and expensive while technical inquiries tend to be shorter and are likely to be less expensive;
- (c) despite the public nature of an inquiry conducted by a Commission of Inquiry appointed under COIO, it is likely that a Commission, if appointed in the present case, would order part of the evidence such as that relating to the liability of the truck driver to be heard in camera so as not to prejudice the trial of the driver; and
- (d) it is likely that the report of the Commission of Inquiry will not be published until after all legal proceedings relating to the Incident, civil or criminal, have been completed in order not to prejudice those proceedings.

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