職安培訓復生會意見書

人力事務委員會

2017年3月21日（星期二）下午4時30分

在立法會綜合大樓會議室1舉行的會議

僱員補償條例下工傷補償申索爭議的處理

1. 前言

續戰後嬰兒潮之後，本港人口已經進入老化期，跟據政府統計數字，長者現時佔香港的人口比例大約為16%，到了2064年更加會達至，每3個人當中便會有1個是長者；香港人力資源的委縮，由此可見。由於人力資源供應緊張，本港現職僱員工作量龐大，而標準工時長尚未立法，直接及間接引來社會問題。加上中國和東南亞國家的經濟增長和生活水平上升，亦和本港爭奪人力資源，本港人才外流亦是另一個隱憂。

例如，在過去有充足的菲傭和印傭來港工作，但現在已經減少了，故在2017年2月尾政府宣告柬傭也可以來港工作。因為安老院舍的護理照顧員(Personal Care Worker) 嚴重不足，安老事務

委員會主席林正財先生在2017年3月18日，亦透過電台訪問，提出香港可以效法澳門政府，輸入外傭來解決上述問題。

因為沒有標準工時，僱員需要長時間工作，積勞成疾，引致心腦血管病死而身亡的，亦屢見不鮮。在處理這個因工猝死的問題時，香港政府祇是頭痛醫頭，腳痛醫腳。用狹窄的勞工問題去處理，但他們並沒有從社會福利和教育角度去處理這個猝死問題。

在區域法院於2017年2月13日審結一宗因工猝死的個案中DCEC 1673/2013，判在2012年4月5日所發生的地盆工人猝死案件，死者Mr. Lam Chi Wah的遺霜和女兒獲得勝訴。在案發當日死者的妻子51歲和有2名兒女，大仔12歲和另細女4歲。試想一下，就算是贏了官司，死者的遺霜和子女，要等5年才獲得賠償，可以說是遲來的春天。這5年來這個家庭的生活如何渡過呢？家庭經濟出現問題和突然喪失了父親，這2位年幼的子女，在學習上亦會受到了一定的影響。如果能夠及時把一筆基金給了她們，令她們不用擔心將來的生活，不用申請綜援，可以安心讀書，大學畢業，成為香港未來的人力資料。

故鼓勵年青長者和義工投入人力市場和鼓勵現職人士更有效地工

作，是解決人力資源問題其中一個有效的方法。故本會倡議政府成立一個基金去幫助因工猝死的僱員、自僱人士、僱主和義工。

2. 猝死基金服務對象

甲、　因工猝死的僱員

在香港,猝死的個案每年正在增加,隨著猝死人數增加,在職因工猝死人士的數目亦相應增加。然而,在職猝死的意外並不包括在勞工保障的範圍內,故不少的遇事者身後蕭條,境況悲涼。

多年以來政府用一個錯誤的角度，去處理因工猝死的案件。勞工處認為不具爭議的，按照正常程序，去給予賠償；具爭論的交由法庭裁決。政府忽略了，就算接正常程序，亦需要一段頗長的時間。正如上述的官司區域法院需要 4 至 5 年時間的時間去審理，有的審理時期更加長。就算贏得官司，受害家庭的創傷已經再不能夠再彌補。這不獨是意外所做成的創傷，亦是政府沿用以往錯誤的政策所做成的。

他們並不明白，一個家庭支柱，忽然因工猝死，對死者家庭所引起的傷痛、徬惶和經濟安全需要。更重要的是，並不是每一個猝死的個案都可以獲得法律援助去追討賠償。上述家庭死者在工傷

猝死之後，能夠獲得法律援助去爭取到應得的賠償，已經是不幸之中的小幸。很多工傷猝死的個案，是未能夠申請到法律援助，而未能夠獲得任何賠償和為死者討回公道。

筆者在 2015 年曾經處理過一宗工猝死個案（勞工處編號：01-2015-00XXX; 法律援助署編號 ECC / 16XXX/2015）中，有一位工人於工作時間和地點摔到，其他工人有見及此，立即電招救護車送他入院。入院之後被診斷為中風，稍加治理之後，便轉送另外一間醫院，繼續治理。後來病情惡化，再轉送返之前的醫院治理，但不幸隨即過身。其遺霜於一夜間失去了丈夫，無論在心靈或生活上皆收到衝擊，極其需要外界援助。可惜死者的僱主沒有給予任何的賠償或慰問金，故她經過前立法會議員的轉介求助本會。本會協助她申請法援，但因為證據不足，故未給予法律援助。在普通的工傷個案，那些尚存的工傷者，還可以講得出受傷的過程和在庭上作供。我們如何能夠叫一位死者從墳墓中爬上來作供呢？再加上於案發之後，死者的同事，大都為著自己份工著想，不願作證和透露半點資料，你們教這個遺霜如何獲得證據去提出控訴呢？

筆者家父在 1976 年，本人初出茅廬工作之時，為著家庭生計家

父因為連續幾天在高溫底下開補水 (overtime) 工作，在長時間過勞工作底下，而引致腦部中風，即日入住聯合醫院，於翌日清晨身故。本人和家庭成員，在當時並不知道這是因工猝死，祇有顧住處理父親的身後事，沒有想過是工傷問題。在處理家庭經濟和生活方便，當時需要一位家庭成員，立即出來工作幫手支持頭家。剛好一位弟弟和一位妹妹，在當年都是應屆會考生。弟弟自告奮勇，出來工作幫手支持頭家，他日間工作，晚上他的同學幫他補習。當然妹妹順利考到會考合格，而他就不及格了。如果不是他在會考最需要時間讀書的最後幾個月出來工作的話，相信他亦能夠會考合格和妹妹一樣大學畢業，成為香港更加有用的人力資源。本人於實習律師期間，才知道這是工傷猝死；所以在成為律師之後，於 2001 年成立職安培訓復生會，去幫助因工受傷的人士，令他們能夠渡過難關，重返社會工作。

工傷不獨是個人，其實整個家庭亦受影響，如果政府能夠適時的介入和施予援手，可以為香港哉培更多人才。

乙、　自僱人士

社會普遍認為自僱人士是不願收到勞工法例拘束，以沒有僱傭束縛的方式自願承擔工作風險。惟現時香港法例未能及時追上瞬息

萬變的社會發展。很多基層勞工被逼轉為自僱人士,甚至當上董事一職。但他們實質的工作和一般僱員的工作無異,如地盤工人簽自僱合約和環保回收工人做了公司老板，的士和小巴司機租車工作等。他們亦有龐大的工作量及心理壓力，惟因現時法例所限，他們失去了勞工法例的保障。但是他們的實質工作和受僱人士沒有多大的分別，他們同樣是，用勞動力去賺取金錢。

若他們於工作期間猝死，其家屬亦同樣頓失依靠。因此本會認為政府應該成立基金為因工猝死而需要援助的市民服務。

丙、　僱主

工作壓力不單止勞工及基層人員，甚至一些中小企業的小老板和承建商,生意亦不容易做。養活一間公司和員工,並不容易,他們承受工作壓力亦不少,家庭環境亦未必一定富裕。當他們因工作而猝死之時,他們的家庭經濟亦陷於困境。再者,政府正鼓勵年輕人士創業,這些年輕人正正用了他們的所有積蓄或向政府和親友借貸,才能一展其創業夢想。然而，創業壓力大，工時長，年輕人亦慣於「博殺」，祈能儘快得到事業成功。若不幸在此期間猝死,因其僱主身份，他們並不能獲得任何賠償。

為減輕他們對上述的心理壓力和鼓勵他們有效地工作，故建議上

述基金亦應該保障埋他們。

丁、　義工

現今香港社會有不少市民願意為非政府組織和慈善機構工作，成為全職或半職義工。亦因為義工不受勞工條例所保障，機構的保險亦不包括任何意外發生的賠償（公眾意外除外）。本會亦處理個一個個案，就要一位義工，在慈善機構開董事會議之時，突然腦中風，送院治療，需然大難不死，但終身亦要拐杖為伴。因為是義工，所以是沒有任何賠償。

本會建議上述基金亦應該提供保障給予他們，以便政府更加有效宣揚義務工作。

3. 總結

基於以上資料,本會重申政府應成立一個基金以補償因工猝死的僱員、自僱人士、僱主和義工。

剛好，曾經許下諾言的特首候選人林鄭月娥女士，亦於 2017 年 3 月 26 日順利當選了。本會希望她能夠兌現她的承諾撥出 60 億元作為教育基金，和從這個基金再撥出一些款項來成立瘁死基金。

如果未能夠從上述教育基金撥出，亦可以考慮從商業登記費和汽車牌照費用抽取一個百份比來成立猝死基金（詳情請看隨本信附上，本會和香港樹仁大學社會工作學系的在職期間猝死報告書）。

為使上述基金能夠有效發揮作用,幫助到有需要的家庭,我們建議有關單位可對死者及其家屬實施一種恩恤性的補償，如果有所需要可以加設資產審查(Means Test)， 但條例應略為放寬, 因屬恩恤性質。

職安培訓復生會有限公司

姓名： 唐 文 標

職位： 主 席

日期： 2017 年 3 月 27 日

附件：

1. DCEC 1673/2013 的審判書
2. 在職期間猝死報告書

DCEC 1673/2013

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

EMPLOYEES' COMPENSATION CASE NO 1673 OF 2013

IN THE MATTER OF AN APPLICATION BETWEEN:

YU PO CHING (余保程) for herself and on behalf of the members of the family of LAM CHI WAH (林智華), deceased	Applicant
and	
CHINA STATE CONSTRUCTION ENGINEERING (HONG KONG) LIMITED (中國建築工程(香港)有限公司)	1st Respondent
KWONG HING MARBLE WORK COMPANY LIMITED (廣興雲石工程有限公司)	2nd Respondent

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Before: Deputy District Judge Elaine Liu in Court

Date of Hearing: 3, 5 & 6 January 2017

Date of Judgment: 13 February 2017

JUDGMENT

A. Background

1. On 5 April 2012 at about 2 pm, when Mr Lam Chi Wah ("the Deceased") was working at an outdoor construction site, a rainstorm suddenly came. The Deceased and his co-workers ran to take shelter in a covered glass house. After the Deceased arrived at the shelter, he suddenly collapsed ("the Incident"). He was sent to the hospital and was certified dead on the same day.

2. According to the post-mortem report and the autopsy report, the medical cause of death was ischaemic heart disease.

3. A claim for employee's compensation was lodged under sections 5 and 24 of the Employees' Compensation Ordinance ("ECO") against the respondents.

4. The Deceased was a marble worker employed by the 2nd respondent for about 4 years. The 1st respondent was the main contractor of a construction site at the rooftop at Lei Yue Mun Plaza, Kowloon ("the Construction Site").

5. At the time of the Incident, the Deceased was aged 53, married with a 12 year old son and a 4 year old daughter.

6. The applicant is the Deceased's widow. She, being an eligible member of the Deceased's family under section 3 and section 6A of the ECO, took out this application for herself and on behalf of the Deceased's family.

7. The applicant's case was that the Deceased's death was caused by and/or contributed to by the prolonged work pressure and heavy workload before the Incident.

8. The respondents disputed.

B. The Parties' Agreement on Quantum

9. At the beginning of the trial, the parties have helpfully come to an agreement on the following matters in the event that this court finds for the applicant on the issue of liability:-

(1) the Deceased worked 24 days in March 2012 (which was the month immediately preceding the date of the Incident) as per the records of the respondents;

(2) the Deceased's daily wages in March 2012 was $850;

(3) the monthly earnings of the Deceased calculated in accordance with section 11(1)(a) and section 6(1)(b) of the ECO are $850 x 24 working days x 60 = $1,224,000;

(4) the funeral expenses under section 6(5) of the ECO are $15,000;

(5) therefore, the total amount of compensation that should be awarded to the applicant (if liability is found) is $1,239,000 (being $1,224,000 + $15,000).

10. With this agreement of the parties, the only issue before the court is on liability.

C. Issue on Liability

11. Section 5(1) of the ECO provides that:-

> "… if in any employment, personal injury by accident arising out of and in the course of employment is caused to an employee, his employer shall be liable to pay compensation in accordance with this Ordinance."

12. The compensation awarded under section 5 of the ECO is on a no fault basis.

13. Under section 5(1), the applicant has to prove on a balance of probabilities that :-

(1) there was a personal injury by accident;

(2) the accident arose out of and in the course of the employment.

14. As to second requirement, section 5(4)(a) of the ECO provides a statutory presumption that "an accident arising in the course of

an employee's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment."

15. In *LKK Trans Ltd v Wong Hoi Chung* (2006) 9 HKCFAR 103 at paragraph 30, the Court of Final Appeal has enunciated that:-

> "Plainly, this section [section 5(1)] requires a causal connection first, between the employment and the accident (so that the accident arises "out of" the employment) and between the accident and the injury suffered by the employee: the accident must cause the injury. None of this is controversial."

16. The respondents accepted and took no issue of the following:-

(1) the applicant was employed by the 2nd respondent at the time of the Incident[1];

(2) by virtue of section 24 of the ECO, the 1st respondent, which is the main contractor of the Construction Site, will be liable to pay the compensation to the applicant as if the applicant had been immediately employed by the 1st respondent (See also *Wong Leung Tak v Hip Hing Construction Co Ltd* [1991] 2 HKLR 345);

(3) the Incident took place in the course of the applicant's employment[2];

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[1] Answer filed by the respondents paragraph 1a
[2] The respondents' opening submission paragraph 7

(4) the respondents did not seek to rebut the presumption under section 5(4)(a) of the ECO[3]. No evidence was adduced to prove that the Incident was not arisen out of the employment with the 2nd respondent.

17. The respondents' acceptance that the Incident took place in the course of the Deceased's employment and did not seek to rebut the presumption in section 5(4)(a) suggested that there was no dispute on the second requirement, and that the only dispute was on whether or not there was a "personal injury by accident" within the meaning of section 5(1) of the ECO.

18. It transpired at the course of the trial that the respondents did take issue on the connection between the accident, the injury and the employment. The respondents also disputed the fact that there was increase in the workload of the Deceased at the months prior to his death.

19. In all fairness, I will also deal with the issue on the connection between the accident, the injury and the employment. Mr Shum, counsel for the applicant, did not disagree to this approach.

D. *Legal Principles*

20. I shall first consider the relevant legal principles.

"Personal Injury by Accident" – meaning of an "accident"

[3] The respondents' opening submission paragraph 7

21. The expression "accident" was not defined in the ECO.

22. In the context of section 5 of the ECO or its English equivalent[4], the word "accident" has been defined by the House of Lords in *Fenton v Thorley & Co Limited* [1903] AC 443 as "an unlooked-for mishap or an untoward event which is not expected or designed" (*per* Lord Macnaghten at page 448) or in the words of Lord Lindley at page 453 "any unintended and unexpected occurrence which produces hurt or loss".

23. This definition was widely adopted by subsequent English and local decisions, including *Clover, Clayton & Co Limited v Hughes*, [1910] AC 242; *Yip Ho v Hong Kong & Kowloon Wharf & Godown Company Limited* [1969] HKDCLR 1; *Zhu Defang for herself and the members of the family of Kong Yi, deceased v Wing Hing Construction Company Limited and another*, unreported DCEC 1160 of 2012, 28 August 2013; *Sit Wing Yi Sibly v Berton Industrial Ltd* [2013] 5 HKLRD 225)

24. "Accident" under section 5 of ECO is not limited to extraneous events such as car accident or industrial accident that we commonly come across.

25. It has been clearly accepted by the English and Hong Kong courts that "internal accident", that is a physiological change invisible from outside the body (such as a rupture, an aneurism or an infarction), is capable of falling within the meaning of the term "accident" in section 5(1) of ECO. (*Fife Coal Co Ltd v Young* [1940] AC 479, *per* Lord Atkin at p.

[4] The Workmen's Compensation Act 1897

488 and 489; *Yip Ho*, *supra*; *Sit Wing Yi Sibly v Berton Industrial Ltd* [2011] 4 HKLRD 91 (court of appeal) *per* Tang VP at p.97 and *per* Yuen JA at p.107)

26. In *Fenton*, *supra*, the deceased was at work at his machine which he had got through the operation on that day many times without hitch or difficulty. At night, when the time came for opening the vessel, the wheel could not turn. He then called a fellow workman to his assistance. The two men together set to work to move the wheel. Suddenly Fenton felt something which he describes as "a tear in his inside", and it was found that he was ruptured. There was no evidence of any slip or wrench or sudden jerk. The House of Lords overturned the court of appeal decision and held that the injury sustained by Fenton was within the meaning of "injury by accident" under the Act.

27. Lord Macnaghten said at page 446 that:-

> "If a man, in lifting a weight or trying to move something not easily moved, were to strain a muscle, or rick his back, or rupture himself, the mishap in ordinary parlance would be described as an accident. Anybody would say that the man had met with an accident in lifting a weight, or trying to move something too heavy for him."

28. There is no need to prove carelessness. Lord Lindley said at pages 453 of *Fenton*:-

> "The word "accident" is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word "accident" is also often used to denote both the cause and the

> effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events."

29. In *Clover, supra*, an employee suffering from serious aneurism was employed in tightening a nut by a spanner when he suddenly fell down dead from rupture of the aneurism. The death was caused by a strain arising out of the ordinary work of the deceased. It was held that the rupture of the aneurism under the strain was an accident that caused the death of the employee. Lord Loreburn, in holding that the judge below was entitled to regard the rupture as an "accident" within the meaning of the Act, had said at page 245:-

> "The first question here is whether or not the learned judge was entitled to regard the rupture as an 'accident' within the meaning of this Act. In my opinion, he was so entitled. Certainly it was an "untoward event". It was not designed. It was unexpected in what seems to me the relevant sense, namely, that a sensible man who know the nature of the work would not have expected it … No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due to both internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident. It cannot be disputed that the fatal injury was in this case due to this accident, the rupture of the aneurism under the strain."

30. In *Yip Ho, supra*, an employee was engaged in lifting barrels of paint in the forenoon and in the afternoon in pushing carts loaded with rolls of paper each weighing about 600 to 700 pounds. The works on that

day were heavier than usual as the cargoes had to be loaded in a hurry for export, but these works were not heavier than what the employee was occasionally obliged to do. The afternoon shift stopped at 5 pm. With one hour's break, the employee commenced the evening shift. He and the other workers were given a cart which they pushed into the godown for loading by other employee. Having performed the work for about 45 minutes, the employee complained of abdominal pains and went to the toilet. About half an hour later, he was found lying unconscious in the toilet with his trousers down. He was subsequently certified dead. The cause of death was myocardial infarction. Judge Yang (as the learned judge then was), after considering a number of English and local authorities, held at page 8 on the issue of the existence of an accident as follows:-

> "I suppose, following the definition of Lord Macnaghten in Fenton's case, an infarction may be regarded as an accident in the same way as a rupture or a stroke is regarded as an accident. It is "an unlooked-for mishap, or an untoward event, which is not expected or designed." That the infarction was the cause of death is clear from the evidence."

31. Judge Yang has cited and considered in *Yip Ho* other English cases, including *Ismay, Imire & Co v Williamson* [1908] AC 437, as follows:-

> "an employee, who was weakened and emaciated, and more likely to suffer heat stroke than others was held to have died by accident when heat stroke came upon him suddenly and unexpectedly while he was attending a boiler in the stokehold of a steamship."

32. In *Moore v Tredegar Iron & Coal Co. Ltd* (1938) 31 BWCC 359, the court of appeal awarded compensation under the Act to a collier who died sometimes after work. Judge Yang in *Yip Ho* described *Moore* as follows:-

> "In Moore v Tredegar Iron & Coal Co Ltd, the Court of Appeal awarded compensation on the following facts. A collier left home one evening apparently in good health. His work during the night was heavier than his usual work, but not heavier than what he was occasionally required to do. A quarter of an hour after he had ceased work, and after he had walked 190 yards from his place of work on his way to the surface, he was found unconscious on the ground. On being helped up, he recovered and walked a short distance but collapsed again and died. A post mortem examination showed disease of the heart. It was held that on the evidence, the workman's death had been accelerated by his normal work on the night in question: and that, if he had not been working in the mine and had not had the strain of his normal work, he would not have died when he did die and would probably have died at a later age. It would appear that in that case the workman had apparently been in a stage of perfect health on the morning when he went to work and that his ordinary work, including the more laborious work that he occasionally had to do, had not, up to that morning, affected his heart in any way. The doctor in that case said that strenuous physical exercise was not good for a man with heart disease, and that he would not advise him to work as a collier because the heavy strain of collier's work might cause his death."

"Personal Injury by Accident" – relationship between the injury and the accident

33. The accident and the injury are distinct from each other. The accident is a contributory cause to the injury and the injury is the effect (*Sit Wing Yi Sibly, supra*, CFA at page 230 §21).

34. The accident does not have to be a proximate cause of the death or injury. The argument that the accident has to be a proximate cause of the death or injury was categorically rejected by the House of Lords in *Fenton*, where Lord Lindley said at page 454:-

> "What is meant by "personal injury by accident"? Mr. Powell, in his very able argument, contended that there must be, first, a personal injury;

> second, that there must be an accident causing it; third, that such accident must be the proximate cause of the injury, and that nothing more remote than the proximate cause can be properly taken into account. My Lords, I cannot accede to this contention. Assuming that there must be something unintended and unexpected besides the personal injury sustained, or, in other words, assuming that there must be a personal injury and an accident causing it, I cannot agree with Mr. Powell that this statute ought to be construed as if it were a policy of insurance against accidents."

"Personal Injury by Accident" – connection between accident and employment

35. There shall be some causal connection between the accident and the employment. The employment does not have to be the sole or dominant cause of the death. It suffices that the employment or the work is a contributory cause of the injury. (*Sit Wing Yi Sibly, supra,* at page 230).

36. Lord Scott has said in *Wilson v Chatterton* [1946] KB 360 at page 44 that:-

> "It is only if the accidental injury has no causal connexion with the employment at all that it can be said not to arise out of it, though it may occur in the course of it. It is for that reason that the employer cannot escape liability by showing that some factor such as disease is a predisposing or even contributing cause of the injury; he must show that it is the sole cause, as has been said frequently in decided cases."

37. It was only in cases where the injury has no causal connection with the employment at all that it could be said not to have arisen out of the employment. (*Lee Fuh v Ming Hing Construction Co.* [1991] HKDCLR 105)

38. The Court of Final Appeal has held in *Sit Wing Yi Sibly v Berton Industrial Ltd, supra*, that the question of whether the injury was by accident was distinct from any question of whether what had happened arose out of or in the course of the employment. The presumption under section 5(4)(a) of the ECO did not go to the distinct and anterior question of whether the injury was by accident. The applicant cannot simply rely on the presumption under section 5(4)(a) of the ECO.

39. The case of *Sit Wing Yi Sibly*, which the respondents heavily relied on, has to be viewed against its unique fact that there was a lack of evidence on the cause of the death. The employee in this case was found slumped on the floor of a toilet at work in the mainland China with blood in his mouth and nose. He died before arriving at the hospital. The hospital stated that the cause of death as "sudden cardiac death".

40. No autopsy has ever been carried out on the deceased. The conclusion reached by the two pathologists in their joint report is "there is really insufficient factual information to allow for the determination of a reasonable cause of death. There is no evidence to suggest that the death was due to a pre-existing congenital or hereditary condition or related to his previous medical conditions. Neither is there evidence to suggest that the death was a result of his employment."

41. It is this unique feature of the lack of any evidence on the cause of the death that the Court of Final Appeal described as an "insuperable difficulty" of the claim:-

> "the human sympathy due to the deceased's family is obvious. But as a matter of law, the claim was met by an insuperable difficulty due to the

> fact that the cause of the deceased's death is unknown. The expression "injury by accident" plainly encompasses cause and effect, with accident as the cause and injury as the effect. Without a known cause of death, the injury can hardly be found to be an injury by accident. Contending for a concept of accident and injury as one and the same event is to say that cause and effect can be one and the same thing. Axiomatically they cannot. In the course of his skillful agreement that they can be one and the same thing, Mr Denis Chang SC for the widow has sought to place reliance on a number of judicial statements made in cases where the employee had a pre-existing medical condition. But Mr Chang could point to only one claim which succeeded otherwise than on the basis that the work was at least a contributory cause of the injury."

Death caused by disease alone or by disease and employment taken together

42. In cases where the disease of an employee is a cause to his death, the proper approach of the court is to ask whether the employee died from the disease alone or from the disease and the employment taken together, looking at it broadly. Lord Loreburn has held in *Clover*, *supra* that:-

> "It may be said, and was said, that if the Act admits of a claim in the present case, every one whose disease kills him while he is at work will be entitled to compensation. I do not think so, and for this reason. It may be that the work has not, as a matter of substance, contributed to the accident, though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and employment taken together, looking at it broadly?"

43. This approach was adopted in *Yip Ho* where the learned judge came to the conclusion at page 9 as follows:-

> "Looking at it broadly and without over-nice conjectures, I would say that it was the disease and the strain of work on the 30th of March which killed the deceased."

Approach on Evidence

44. The determination on causation is a matter for the court, but not for the doctors. The decision of the court will be assisted by medical evidence however, the court has to bear in mind that the standards and approaches adopted by medical expert in determining the cause of death are different from those adopted by the court. Common sense could be used to fill the gap.

45. In *Lee Kin-kai v Ocean Tramping Co Ltd* [1991] 2 HKLRD 232, the court of appeal laid down the cardinal principle in relation to the standard of evidence as follows:-

> "First causation is essentially a matter for the judge not for the doctors. It is a matter upon which the judge will no doubt be assisted by the medical evidence but he is not dictated to by it. Secondly it is important to bear in mind that the law and medicine here, it seems to me, apply quite different standards. In law there is a sufficient causal connection if it is shown on the balance of probabilities that the accident was a substantially contributing cause of the injury. A cause is sufficient; it need not be shown to be the sole cause. The doctors' practice, what is known as the science of aetiology. In the words of one in particular, they look for "clinical cause", proof certainly beyond reasonable doubt and perhaps beyond any doubt. They are looking for what Lord Kilbrandon called in *McGhee v. National Coal Board* [1973] 1 WLR 1 at p. 10 "an irrefragable chain of causation".
>
> Thirdly, a judge when considering causation is not only entitled, he is bound, to use his common sense, to approach the question in the same way as would a juror. The point was conveniently made in *McGhee v. National Coal Board* which was a case where owing to limitations of

medical knowledge, the plaintiff was unable to prove a strict causal connection in the medical sense between the negligence and his injury. He failed in the courts below. The House of Lords agreed that common sense could be used to fill the gap. Lord Reid at p. 5 said:

> "It has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man's mind works in the everyday affairs of life."

Lord Salmon, at page 11, repeated an earlier dictum of his own where he said:

> "I consider, however, that what or who has caused a certain event to occur is essentially a practical question of fact which can best be answered by ordinary common sense rather than abstract metaphysical theory".”

46. In *Lee Fuh, supra*, Burrell DJ (as the learned judge then was) reiterated and applied the principles laid down in *Lee Kin-kai*, carefully analyzed the conflicting medical evidence on causation of the death and use common sense to resolve the differences. At page 112 E to G, Burrell DJ said that:-

> “In this case, there is no doubt in my mind that there is a gap in the medical knowledge. The crucial question in this case is a medical moot-point. By deciding legal cases judges do not presume to resolve or even contribute to the medical debate. I do not have to say which doctor is medically correct and would not presume to do so. I entirely respect their different stances on the issue. …
>
> I have concluded that at the end of Dr Nariman’s evidence his opinion that there was a connection between the deceased’s labour and the death was indeed one which commended itself to common sense and logic. I have concluded that it was a view which an ordinary reasonable person would come to having heard all his evidence and taking into account the length of his experience the extent of his expertise and his reasoning and methodology adopted in forming his opinion.”

47. At page 109:-

> "Dr Nariman suggested that a subset of patients walking around the wards or up and down stairs in hospital is not the same as a subset digging ditches or performing heavy labour at the time of or just before collapse. He went on to point out that the latter subset would never become available for analysis. Thus it will never be possible to either prove or disprove a connection or a causal link between heavy labour and infarction formation or rupture. Therefore, says Dr Nariman, one has to postulate and use common sense. He describes his conclusion as an educated guess or if I may put it another way on his behalf, an inference based on over 40 years experience as a lung specialist with intimate knowledge of the function of the heart."

Summary of relevant legal principles

48. In summary, I respectfully adopt and add on the propositions helpfully and succinctly summed up by Mr Shum in his closing submission as follows:-

(1) The expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed. It was unexpected in the sense that a sensible man who knows the nature of the work would not have expected it: *Fenton and Clover*. An "accident" can be internal or external: *Clover, Yip Ho, Sit Wing Yi Sibly.*

(2) The legislative intent is to put the obligations on the employers to compensate for personal injuries of the employees for which such employers were not responsible before, there is no need to prove carelessness or that the employers are at fault: *Fenton.*

(3) The accident and the injury are distinct from each other. The accident is a contributory cause and the injury is the effect: *Sit Wing Yi Sibly*. The accident does not have to be a proximate cause of the death or injury: *Fenton.*

(4) There shall be some causal connection between the accident and the employment. It suffices that the employment is a contributory cause of the injury, proof of the employment as a sole or dominant cause is not necessary. It is irrelevant whether or not the work has been heavier than the deceased was occasionally obliged to do: *Clover*. *Yip Ho, Zhu Defang* and *Sit Wing Yi Sibly.*

(5) In cases where the employee's disease is a cause of the death, the court should consider whether he died from the disease alone or from the disease and employment taken together, looking at it broadly and free from over-nice conjectures: *Yip Ho* and *Clover*.

(6) Even if the deceased had already been suffering from very serious disease prior to death, provided that the work accelerated his death, the employment is a contributory factor of the death: *Yip Ho, Moore* and *Clover*.

(7) Causation is a matter for the judge and not for the doctors. The judge is assisted by it but he is not dictated by it: *Lee Kin-kai*.

(8) The court shall apply common sense. This is especially so when it will not be possible to prove or disprove medically a connection or a causal link between heavy labour and infarction formation or rupture: *Yip Ho, Lee Fuh* and *Lee Kin-kai*.

(9) If there is no known cause of death, the court cannot find there be personal injury by accident: *Sit Wing Yi Sibly*.

49. Against the background of the above legal principles, I now turn to the evidence in the present case.

E. Factual Witnesses

50. The applicant called two factual witnesses, herself and Madam Siu, the cousin of the Deceased.

51. It can be discerned from the parties' arguments that there are two major factual disputes on the evidence of the factual witnesses:

(1) whether there was an increase in the Deceased's workload before his death and the impact of such workload, if any, on the Deceased; and

(2) the details of the Incident.

Increase in Workload of the Deceased

52. The gist of the applicant's evidence was that the Deceased earned wages on a daily basis. He usually had holiday on Sunday and statutory holidays. At the end of 2011, the workload of the Deceased increased substantially. The Deceased had worked in the construction sites at Yau Tong and Fo Tan/University in March 2012 (a month before his death). Since the respondents have taken up several construction projects, the Deceased was required to work overtime since the end of 2011, and was required to work on some public holidays. He was very tired when he got back home from work. Due to the heavy workload at that time, he was not allowed to take holiday on the Ching Ming Festival and he could not return to the mainland to pay tribute to ancestors, which was an activity he used to do yearly on the Ching Ming Festival. The Deceased's parents and brothers reside in the mainland. The 2nd respondent's refusal to give holiday to the Deceased at the Ching Ming Festival deprived the Deceased of his chance to have a reunion with his family.

53. Madam Siu's evidence corroborated with those of the applicant. Madam Siu testified that she used to have gathering with the Deceased and his family every two weeks. Since about February and March 2012, the Deceased became very busy and had to work on Sunday.

Between Chinese New Year in late January 2012 and Ching Ming Festival in April 2012, she only met the Deceased twice.

54. At cross examination by counsel for the respondents, the applicant agreed that the Deceased was able to return home for dinner with the family at around 7 pm every evening in March 2012, and this pattern was the same since the Deceased worked for the 2nd respondent. The respondents suggested that the Deceased was not required to work overtime in March 2012.

55. I have to evaluate this part of the applicant's evidence together with the other evidence given by her and the other witness. I will also test the evidence with contemporaneous documents.

56. The respondents did not call any factual witness.

57. The respondents produced documents that the respondents claimed to be the records of the construction site at Yau Tong for March 2012 ("Timesheets"). These Timesheets show that the Deceased started work at around 8 am in the morning and finished work at around shortly after 5 pm. The respondents relied on these Timesheets to show that the Deceased had not worked overtime in March 2012. The Timesheets showed that the Deceased worked a total of 24 days in March 2012, including two days in Aberdeen.

58. The respondents have not called the maker of the Timesheets to give evidence. The Timesheets remained to be a hearsay evidence.

59. In respect of these Timesheets, I noted that:-

(1) There was no evidence on how the time was recorded on the Timesheet, who recorded them, who was in control of these records, when the records were made.

(2) Some of these Timesheets did not record the in and out time. Some of them only have the time of getting in, but not the time of leaving.

(3) At the bottom of the Timesheets, there were the words "寫入失敗". There is no evidence on the meaning of these words.

(4) There is no indication that the Deceased has verified or agreed to these Timesheets.

(5) According to the employment contracts produced by the respondents, the Deceased's working hours were from 8 am to 6 pm, and he was required to work 6 days per week. Many of these Timesheets showed that the Deceased finished works at about 5 pm, that was before the end of the working hours as required under the employment contract.

60. I do not find the Timesheets reliable and will attach no weight on them.

61. The 2nd respondent was the employer of the Deceased. It must have better and complete records of the Deceased's working time and the salaries he received before his death. The respondents, however, chose to produce only the Timesheets.

62. As shown in the Notification of Construction Work, the commencement date of the work at the Construction Site was 20 May 2009, the expected duration of which was 33 months. That means the work was expected to complete in February 2012. In Form 2 dated 10 April 2012, the expected completed date for the Construction Site was changed to May 2012. It showed that there was a delay or postponement of the construction work and apparently there was an inability to meet the original completion date. Further on the date of the Incident, the construction work was due to finish within a month according to the postponed completion date. It was most likely that the Deceased was in a rush to finish the marble works at the Construction Site.

63. It was also accepted by the respondents that the Deceased had to work in more than one construction sites before his death. The workload that the Deceased had to handle was more than those at the Construction Site.

64. Taking all the evidence as a whole, I accept the evidence of the applicant and Madam Siu that the Deceased had an increased workload prior to his death. These works exhausted him. I also accept that inability to pay worship to his ancestors in the mainland at the Ching Ming Festival upset and caused frustration to the Deceased.

The Incident

65. There was no direct evidence before the court on what had happened at the time of the Incident.

66. The applicant was not present at the time of the Incident. She gave evidence on what she had heard from the colleagues of the Deceased while she was in the hospital on the date of the Incident. However, she could not even provide the identity of the colleagues from whom she came to know the happening at the scene.

67. Similarly, the respondents did not adduce any direct evidence on the happening at the time of the Deceased's death. They relied on a statement given by a Mr Yeung to the Labour Department ("Yeung Statement"). Hearsay notice has been given in respect of the Yeung Statement. No application was made to cross-examine Yeung.

68. I have no doubt that, in these circumstances, the Yeung Statement was an admissible evidence in this case. Nevertheless, it remained to be a hearsay evidence and this court shall assess the weight to be attached on it.

69. Section 49 of the Evidence Ordinance provides that:-

> "(1) In estimating the weight, if any, to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> (2) For the purpose of subsection (1), regard may be had, in particular, to the following:-

> (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
> (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
> (c) whether the evidence involves multiple hearsay;
> (d) whether any person involved had any motive to conceal or misrepresent matters;
> (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
> (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight;
> (g) whether or not the evidence adduced by the party is consistent with any evidence previously adduced by the party."

70. There is no suggestion that the respondents could not locate Mr Yeung. This court cannot rule out the possibility that the introduction of the Yeung Statement as hearsay evidence is an attempt to prevent proper evaluation of its weight (section 49(2)(f) of the Evidence Ordinance).

71. The statement was made on 21 May 2012, one and a half month after the Incident. The court does not have evidence on how the statement was made and cannot assess the quality of the statement.

72. There was more than one worker present at the scene. We do not know why only one statement on what had happened at the scene was taken; or if there was more than one statement, why only one was produced.

73. It appears to me that the parties in personal injuries or employees compensation claims have a tendency to rely on the statements

taken by the Labour Department without calling the maker and expect the court to accept the contents of the statement as true. I do not find this satisfactory. In my view, the production of these statements without calling the maker does not offer much assistance to the court when there is conflicting evidence on the contents of the statements. Without the opportunity to cross-examine the statement maker and without knowing the circumstances under which the statement was taken, there is no or very little basis for the court to resolve the conflict of evidence.

74. The respondents submitted that the court shall accept the Yeung Statement in total. I do not consider that the court has to choose and accept in total either the applicant's version or the respondents' version. Given the doubts on the quality of the Yeung Statement, I do not find it prudent to accept this hearsay evidence in total. Likewise, I do not accept the hearsay evidence of the applicant in total.

75. The evidence in common accepted by both the applicant and the respondents was that the Deceased was working on the date of the Incident. In the afternoon, there was a rainstorm. The Deceased ran to the covered glass house to take shelter from the sudden rain. Shortly after the Deceased arrived at the glass house, he collapsed. I accept and find this as the fact.

F. Medical Evidence

76. The two medical experts, Dr Wong and Dr Ho have prepared a joint medical expert report. Both of them have given evidence in court.

77. The two experts agreed that the Deceased died of arrhythmogenic sudden cardiac death. There was a lack of or insufficient blood to the Deceased's heart, which caused arrhythmia, and then death.

78. The two experts differed on the development of the arrhythmogenic sudden cardiac death. In short, Dr Wong's opinion was that the employment was a contributory factor to the death of the Deceased. Dr Ho disagreed and took the view that it was difficult to prove that the employment contributed to the death of the Deceased.

79. Dr Wong opined that the work related stress and anxiety suffered by the Deceased was due to the increased workload, fatigue, the denial of the chance to worship ancestors in the mainland on the date before his death, and these contributed to the cause of his death. The concluding remarks of Dr Wong in the joint expert report are as follows:-

> "The sequence of events according to Dr Wong is a prolonged attack of arrhythmia like ventricular tachycardia that caused hypotension, impaired left ventricular function, pulmonary oedema and death. [The Deceased] had the propensity of the substrates for a sustained ventricular tachycardia to occur in terms of presence of old scars, 50% atheromatous disease in the LAD [left anterior descending artery] and myocardial bridging. The triggering factor was from the work related stress."[5]

80. Dr Wong explained in court that by using the word "prolonged", he referred to it in terms of hours.

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[5] Joint Expert Report paragraph 11.2

81. Dr Ho took the view that the Deceased's death was a natural progression of his illness. There was no obvious triggering mechanism caused by work to the fatal cardiac ischaemic event. Dr Ho's concluding remarks in the joint expert report are as follows:-

> "According to Dr Ho the arrhythmogenic sudden cardiac death is brought on by the natural progression of [the Deceased's] illness i.e. ischaemic heart disease. There was evidence of minor heart attack(s) in the past. Pathologically [the Deceased] harboured all adverse elements associated with intramyocardial bridging of the major coronary artery (LAD) which induced his myocardial ischaemia disease. The presence of old scars provided for substrate for arrhythmia. Another episode of major myocardial ischaemia on 4/5/2012 brought about his sudden cardiac arrest most probably from ventricular fibrillation. This sudden cardiac arrest happened within minutes. The conclusion is in line with the remarks of the forensic pathologist involved. There was no obvious triggering mechanism for the major fatal cardiac ischaemic event as far as work related stress is concerned. It was a natural progress of his illness."[6]

82. Dr Ho expressed his opinion on the suggestion of triggering factors arising from works as follows:-

[6] Joint Expert Report paragraph 11.3

> "It is difficult to establish any physical aggravating/triggering factors arising from work which could be said to have induced a major heart attack. Any postulation of mental stress related to the job would be purely speculative.[7]"
>
> …. It is difficult to establish any likely relationship between the workload stress, be it physical or mentally, and his sudden death. There is no relationship between his death on 5/4/2012 and his work.[8]"

83. Mr Shum has helpfully summed up in his closing submission the matters on which both experts are in agreement:-

(1) the Deceased was asymptomatic for years prior to the Incident despite his heart diseases, therefore he belonged to the group of "silent ischaemic", that is totally asymptomatic;

(2) other than ischaemic heart disease which is pathologically the immediate cause of death, the Deceased also suffered from arrhythmia which induced the fatal cardiac arrest;

(3) the historical heart diseases of the Deceased formed the substrates (foundation), and the Deceased has a higher propensity to have heart attack;

[7] Joint Expert Report paragraph 10.2.7
[8] Joint Expert Report paragraph 10.2.8

(4) generally the fatal heart attack caused by ischaemic and arrhythmia may be triggered by a triggering event;

(5) the secretion of catecholamine under stress could also contribute to such fatal heart attack (Dr Ho only said that the secretion had to be much in order to induce heart attack); and

(6) as to the stress level which may give rise to an increase in catecholamine, it is a matter of individual persons' variation.

84. One major difference between Dr Wong and Dr Ho's opinion was that whether the Deceased's death was a sudden one happened at about 2pm on the date of Incident as suggested by Dr Ho, or the Deceased's heart attack was after prolonged period (in terms of hours) of hypotension connected with ischaemic as Dr Wong suggested.

85. Dr Ho took the view that the Deceased could not have suffered a period of hypotension that morning without any symptoms such as shortage of breath or sweating. First, there is no evidence on the Deceased's condition that morning, and the court cannot speculate whether or not the Deceased had suffered any of the suggested symptoms that morning. Further, this suggestion of Dr Ho does not sit well with the fact that the Deceased is totally asymptomatic for years, a fact that Dr Ho has agreed. Dr Ho could not rule out the possible phenomenon that a person could have a "come and go" hypotension continuously and therefore

accumulatively damaged his heart. As such the symptoms suffered by the Deceased might not be as apparent.

86. Dr Ho suggested that there is no evidence in support of the secretion of catecholamine that morning. However, Dr Ho also accepted that the level of stress that would trigger the secretion of catecholamine varies individually. He accepted that the level of catecholamine that had been secreted could not be detected medically and scientifically, therefore could not be shown in the autopsy report.

87. In the joint medical report, Dr Ho did not rule out the possibility of the effect that the employment may contribute to the death of the Deceased. He just said it was difficult to establish.

G. Cause of death – disease only or disease and employment together

88. The pertinent question this court has to decide is whether the death of the Deceased was caused by his disease alone or it was caused by the disease and the employment together, looking at it broadly and without over-nice conjecture. The court is assisted by the medical evidence, but is not bound by it.

89. I have approached and considered the evidence of two medical experts with common sense. I also took into account the finding that there was an increase in the workload that caused stress and frustration to the Deceased before his death. I accept that the evidence of Dr Wong is accorded with common sense and logic. I am of the view that the

Deceased's death was broadly speaking caused by his disease and the employment together.

F. Identification of a specific event as the accident

90. The respondents submitted that no specific event can be identified as the "accident" within the meaning of section 5(1) of the ECO.

91. The respondents referred to two English cases mentioned in *Yip Ho*, namely *Ormond v Holmes & Co Ltd* (1937) 2 AER 795 and *Coe v Fife Coal Co Ltd* (1909) 2 BWCC 8. The respondents submitted that a specific accident happened on a specific day at a specific place must be identified.

92. In the case of *Ormond*, the employee was died from stroke when he became ill and collapsed at work. There was no medical evidence that the work engaged by the employee contributed to or accelerated the stroke which caused his death. He was not awarded compensation. The English court of appeal took the view that it was not possible to point to any specific event that was within the meaning of section 1(1) of the Workmen's Compensation Act.

93. In *Coe,* the employee had become totally incapacitated by reason of a cardiac breakdown due to the fact that he had been engaged in work that was too heavy for him for some days. He had not been injured by any particular strain at any particular time. The death was caused by the disease. It was held by the court that the illness was not caused by a

particular unlooked for mishap or untoward event and therefore refused to award compensation.

94. The respondents then referred to the Hong Kong cases, *Chow Mui v Chow Cheuk-chung* [1970] HKDCLR 94 and *Wong Yuet Yung v Wah Fung Hong Gas Engineering Co Ltd* unreported, DCEC 1315 of 2003, 15 January 2007.

95. In *Chow Mui v Chow Cheuk-chung* [1970] HKDCLR 94, the employee died while employed as a watchman on board a ship in the harbour. He collapsed an hour after he had started his rest period and almost immediately after cooking a meal. According to the post-mortem report, the death was due to ruptured arch of aorta. The medical evidence in this case was not precise and definite. There was no evidence to show what brought about the accident. Nor was there evidence supporting the view that the employment was one of the contributing causes of the accident, Judge Yang (as the learned judge then was) therefore dismissed the application.

96. In *Wong Yuet Yung v Wah Fung Hong Gas Engineering Co Ltd* unreported, DCEC 1315 of 2003, 15 January 2007, while the applicant opened an iron gate and was exiting from the toilet for her work place to the back street, she saw some cleansing workers washing the street with a water hose. The applicant's case was that she was terrified and as a result she suffered the stroke. The respondent denied that the stroke was caused by the accident. After hearing evidence, the learned judge did not accept the evidence of the applicant and was unable to conclude that she was hit by strong water, being extremely horrified, or feeling unwell instantly (at

paragraph 34). The court also found that there was insufficient medical evidence saying that "fright would lead to the occurrence of a stroke" and there would be no basis upon which the court could draw such inference (paragraph 51). The court dismissed the application. The court of appeal dismissed the appeal (unreported CACV 33 of 2007, 19 February 2008).

97. I agree with the respondents that "accident" shall be a specific event and shall be identified. The conclusion of the above cases is however facts sensitive and very much dependent on the evidence or lack of evidence found by the court in those cases. Therefore, they are of limited assistance in the determination of the present case.

98. The respondents suggested that there was no specific event that can be identified as the "accident" happened in the present case. As I have stated above, accident can be extraneous or internal. In my view, having reviewed the entire evidence and the law, the unexpected unlooked-for mishap or untoward event that happened to the Deceased, (the accident) was the infacrtion.

99. As supported by medical evidence, the infacrtion is a contributory cause to the death (injury) of the Deceased.

100. The respondents next submitted that the applicant has failed to identify the "accident" in the application. The respondents relied on *Li Zhuoman v Easy-Access Transport Services Ltd*, unreported, DCEC 2695 of 2015, 23 December 2016 and submitted that the application filed by the applicant shall be bound by the pleadings rule.

101. The Employees' Compensation (Rules of Court) Rules, Cap 282B, Rule 16 provides that:-

> "(1) An employee or an employer or any other person who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the registrar of the court a written application in Form 1, 2 or 3 in the Schedule accompanied by particulars containing:-
>
> (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined;
> (b) the full name and address of the applicant, and the name and address of the respondent."

102. Insofar as it relates to the accident, the information asked in the statutory Form 2 to which this case applies, are mainly: paragraph 3(3), date and place of accident, nature of work on which the deceased was engaged, and nature of accident and cause of injury, and paragraph 3(4) nature of injury to the deceased and date of death.

103. I agree that the parties shall identify clearly in the application the causes of action in accordance with the rules of pleadings. The application shall contain specific and relevant facts in support of the cause of action.

104. Reading the applicant's application as a whole, I do not consider the application failed to identify the causes of action or otherwise is defective that the applicant should be denied of the relief sought.

Conclusion

105. I therefore find that the respondents are liable to pay compensation to the applicant under the ECO.

106. The quantum awarded to the applicant is the amount of HK$1,239,000 as the parties have agreed.

107. The applicant shall be entitled to interest on the compensation at half of the judgment rate from the date of the application to the judgment, and at the judgment rate from the date of judgment until payment.

108. I make a costs order *nisi* that the respondents shall pay the applicant costs of this proceedings on a party and party basis, to be taxed if not agreed, with a certificate for counsel. The above costs order shall become absolute if there is no application to vary the same within the next 14 days. The applicant's own costs be taxed in accordance with the Legal Aid Regulations.

109. I am grateful for the helpful assistance from counsel for the applicant and counsel for the respondents respectively.

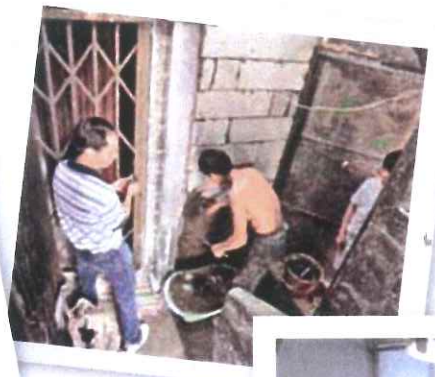
(Elaine Liu)
Deputy District Judge

Mr Erik Shum, instructed by Lau & Chan assigned by the Director of Legal Aid, for the applicant.

Mr Wong Chi Kwong and Mr Anson Wong Yu Yat, instructed by Waller Ma Huang & Yeung, for the 1st & 2nd respondents.

在職期間猝死及工業傷亡權益調查

報告書



香港樹仁大學社會工作學系
職安培訓復生會
合辦

在職期間猝死及工業傷亡權益調查

報告書

香港樹仁大學

職安培訓復生會

合辦

研究員

區榮光 博士
崔志暉 博士

2012

目 錄

序言

在香港，猝死的個案每年正在增加，隨著猝死人數增加，在職因工猝死人士的數目亦相應增加。然而，在職猝死的意外並不包括在勞工保障的範圍內，故不少的遇事者身後蕭條，境況悲涼。對此，本人身同感受，蓋因本人家父亦因工傷猝死，故本人成立職安培訓再生會，為工傷人士出力，年來協助不少勞工階層爭取權益，討回公道。

為瞭解在職人士對在職猝死及勞工權益的看法，本會委託香港樹仁大學社會工作學系，進行該調查，旨在探討在職人士在壓力下工作及所患的長期病關係；僱主預防員工在職猝死的相應措施及保障，並搜集受訪者對僱員在職受傷及猝死賠償的意見，藉此反映在職人士的需要。

我們有幸邀請香港樹仁大學社會工作學系區榮光博士及崔志暉博士作為調查的研究員，區博士及崔博士以其淵博的學術知識，定能為調查提出寶貴的專業意見。

謹此致謝！

唐文標 律師
職安培訓復生會主席
二零一二年一月三日

第一章

調查撮要

在香港, 猝死並不是一個陌生的名詞。 據香港心臟專科學院所提供的資料顯示, 在二零零二至二零零八年間, 全港猝死的人士為一千二百四十人。 在一千二百四十人名死者當中, 八百九十一名是在職年齡猝死, 百分之七十的死者身從事非勞力工作, 例如:金融及銀行業等等。 主要原因是香港在過去的十年期間, 經濟大起大落, 從事不同行業人士的工資及工作亦受影響。當面對著減人工及工作量增加的壓力下, 在職人士很容易出現長期病如心臟病等等。 不少文獻亦指出患心臟病的病人, 當病發時很容易引致猝死。醫學界指出香港人患心臟病的數目一直在增加, 猝死個案亦相應在上升。 據香港心臟病專科學院的資料顯示, 猝死的成因,百分之八十是因心臟病發, 香港平均每日有六人猝死。

近年來, 亦有勞工階層, 例如:職業司機及勞動工人在工作期間猝死。 據報導, 每年大約有十至二十個案因在工作期間突然昏迷。 在二零一一年的首八個月, 工業傷亡權益會已紀錄了二十個案在工作期間猝死。 根據工聯會統計數字所得, 建造業在二零一一年首四個月的八個死亡個案中,其中三個是由猝死所致的。 但是, 根據香港特區政府僱員賠償條例 282 章的資料顯示,在職猝死並不列入賠償之內。

有見及此, 香港樹仁大學社會工作學系與職安培訓復生會合辦「在職期間猝死及工業傷亡條例調查」,藉此瞭解僱員工作壓力及病患的情況, 並希望得知僱員在工作期間受傷或突然猝死的保障, 研究單位亦藉著調查, 探討受訪者對政府有否需要立例的看法，以加強僱員在職期間猝死的保障。

根據聯合國世界衛生組織的定義：「凡是一個健康者或病人在穩定的情況下，從發生病狀至死亡時候在 6 小時以內，就稱為猝死」。但學者認為猝死多發生於起病後 1 小時以內，甚至是幾分鐘內。據 National Heart, Lung and Blood Institute 的界定「猝死」的定義為癥狀出現後 1 小時內的死亡，就是猝死。

但是，若猝死者的死亡是出人意料之外，是自然的死亡而非暴力死亡，死因是不明不白的，這可能是與一些突發病患有關，根據一項在中國內地進行的調查顯示，在 1017 個猝死個案中，心血管系統疾病佔 421 個，為總數的四成；根據香港心臟專科學院所統計，2010 至 2011 年因心臟病而死亡的人數多達六千多人，大約 8 成為壯年的在職人士；當中近三分之一是死於心臟猝死，

平均為 2 千多人。

心臟科醫生指出，表面健康正常的壯年人士猝死，很大可能與隱性心臟血管問題有關，之前可以毫無先兆，大約 15%的心臟病更無迹可尋，部分人士更可能死後才驗出患有心臟病，飲酒及體力勞動等帶刺激活動，亦可能增加心臟負荷，間接引發心臟病或中風。香港心臟科專科學院兼東區尤德夫人那打素醫院內科部門主管李樹堅醫生表示：“……近年有不少患者屬於中年，而且整體患心臟病的人數也上升，患心臟病的人增加，猝死個案也上升”。猝死的原因有很多，多數與心臟病有關，最常見是冠心病，其餘的為心臟肌肉毛病，如心臟肥大，心臟肌肉擴張，這些均為心臟結構問題，另一些個案可能是由於突發性心臟韻律不正。

本調查為一定量資料及數字搜集，希望瞭解受訪在職人士的健康情況、對在職猝死員工權益的瞭解及搜集在職猝死的賠償、僱主及自僱人士須購買在職猝死的保險納人法例的意見。調查目的是探討工作在職人士所受壓力及所患的長期病關係;瞭解僱主預防員工在職猝死的措施及保障及瞭解受訪者對僱員在職受傷及猝死賠償的態度。

本調查設定的對象為 584 名由 18 至 65 歲受僱、自僱及作為僱主的香港居民。調查的進行是透過樹仁大學的學生，在香港不同區域：巴士總站、街上及工商業區，以街頭訪問形式在受訪者同意下，用問卷形式向受訪者進行調查。由於路過的受訪者在時間上有所限制，故問卷亦因此需要盡量簡化。

是次調查共訪問了 584 名在職人士, 286 名男性(48.9%)及 298 名女性(51%), 36 歲或以上的佔 51.5%, 18 至 35 歲的佔 51.3%。 在教育程度方面, 小學程度的佔(10.5%)； 中一至中三(19.1%)； 中四至中五(28%)；大專至大學程度(28.9%)。在職業方面, (18.5%)從事批發、零售及貿易工作； (15.2%)為餐飲及酒店業；(14.4%)運輸、倉庫及酒店；(22.5%)金融、保險及地產業。在職位方面, (27.5%)服務工作及商店銷售人員； (11.3%)非技術工人；(19.8%)文員; (12%)技術工人。 他們的工資集中在$10,000 至$14,999(20.9%); $15,000 至 19,999 (22.6%)及$20,000 至 24,999(16.9%)。

從以上資料分析, 受訪者大多數是中下階段的在職人士,在訪問中, 大約三成受訪者表示他們患有長期病,在 167(28.6%)名患長期病的受訪者中, 其中 57 名(9.8%)是高血壓, 15 名(2.6%)為心臟病；34 名(5.8%)為糖尿病, 34 名(5.8%)胆固醇過高等, 這都是對他們的健康有潛在的風險。

超過三成(37%)受訪者表示他們的工作量頗重或非常重, 其中四成(42.6%)受訪者認為他們有時會感到工作壓力, 二成(23.1%)表示他們經常有/總是有工作壓力, 再加上以上第 1 點所指出的近三成受訪者患有長期病,這表示圍繞著三成 584 名受訪者中, 174 個受訪者很容易因工作壓力而引致病發。

而且, 在 587 名回答問題的受訪者中, 55%(322 名)受訪者曾遇上頭痛, 其中 10%(59 名)受訪者表示情況非常嚴重; 49.2%(287 名)頭暈, 當中 5.5%(37 名)表示情況非常嚴重, 40.6%(237 名)手腳發抖, 1.7%(10 名)表示非常嚴重, 38.2%(223 名)心跳加快, 4.1%(24 名)非常嚴重; 34.7%(203 名)氣喘,(11 名)的情況非常嚴重; 31.5%(184 名)呼吸困難, 當中(9 名) 表示情況頗嚴重;29.2%(171 名)心絞痛, 當中 1.5%(9 名) 表示情況非常嚴重。

以上資料顯示, 584 名回答問題的受訪者中,超過一半(55%)表示他們最少在工作期間出現頭痛的徵狀, 其次 11 名及 48 名受訪者的頭痛分別至非常及頗嚴重的程度。在心跳加快方面，當中 32 人次表示病徵達非常及頗嚴重的程度, 24 名受訪者表示徵狀已達非常及頗嚴重的程度。

以上所提及的，21 人次及 153 人次在 8 項病症中分別表示他們的病情非常嚴重及頗嚴重，若筆者認為非常嚴重的受訪者隨時有病發的危險，而頗嚴重的受訪者若繼續在工作中過勞，將會構成危險，這樣說並不過份，且不容忽視。

在訪問中, 一半(283 名) 48.8%受訪者不知道若在工作期間猝死並不列入勞工保障; 38.3%(222 名) 受訪在職受訪者認為工作期間猝死是有勞工保障的, 但真實的個案卻相反。這顯示出, 在 580 名受訪者中, 505 名(87.1%)對在職期間猝死勞工保障問題缺乏認識。

當訪問員對受訪者在職人士澄清他們的情況後, (82.7%)482 名受訪者均認為若在工作期間猝死,死因亦是工作壓力或環境導致, 他們的家屬應該在工業傷亡條例下得到賠償, 主要原因是(43.5%)215 名受訪者認為是因工作猝死; (22.4%)110 名受訪者認為照顧工人是政府的責任, (39.8%)162 名受訪者認為是僱主照顧工人的責任。

這可想而知，若 583 名受訪在職人士清楚知道自身的勞工保障時，超過八成(82.7%)名均認為他們應受到工業傷亡條例所保障。

在調查中，只有 27 名（4.6%）受訪者認為工人一旦在職期間因工猝死，是不應該受保障的，13 名(2.2%)認為是死於意外，12 名(2%)認為沒有人應負責任，6 名(1%)認為工人應自我照顧。

超過八成四（84.4%）同意及非常同意政府應該修例，把在職因工猝死的工人納入工業傷亡法例保障，另外，政府應規定僱主及自僱人士購買額外人身保險的佔（76%），共 437 人。這顯示出，在職人士清楚自身的勞工保障的情況後，他們均認為有關方面應加強他們在職的保障，若因工猝死，有關方面包括政府及僱主，應對僱員負起應有的責任。

在整個調查中，三成受訪者在職但另一方面是有病患，受訪者患心臟病的並不是想像中那麼普遍，但是，受訪者患與心臟病有關的血壓高卻與其他病症比較下

佔最高百份比，其次是糖尿病及高膽固醇。在訪問中，絕大多數的受訪者均不清楚一旦在工作時猝死，他們因猝死的賠償並不納入勞工權益內；然而；當他們清楚情況後，他們均認為政府應修例，把在職猝死的賠償納入勞工權益內，而且，受訪者亦贊成僱主及自僱人士均須購買有關在職死亡保險，對僱員及自身提高保障。這顯示，僱員均非常關心自身的勞工權益。

在調查中，工作量較重的被訪者比工作量較輕的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。工作量頗重/非常重的被訪者當中約 44%非常同意修改法例，而工作量不重/不太重的被訪者當中只有約 26%非常同意。這顯示出，受訪者自身認為工作量頗非常重的，也希望獲得多點保障。

在教育程度方面，教育程度較低的被訪者比教育程度較高的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。中學或以下教育程度的被訪者當中約 45%非常同意修改法例，而大專或以上的被訪者當中只有約 24%非常同意。當然，教育程度越低的人士，他們越大機會選取勞力工作，在較艱難的工作情況下，他們希望多點勞工保障也並不過份。

長期病患者比非病患者顯著較多同意勸喻僱主及自僱人士購買額外人身保險。在長期病患者當中 38.6%非常同意勸喻僱主及自僱人士購買額外人身保險，而非病患者當中只有 18.1%非常同意。這意味著患長期病的受訪者，希望在工作中多點勞工保障。

基於以上資料，筆者的建議：1. 在職期間猝死的僱員是工傷，應該受勞工法例所保障；2. 在工作期間死的自僱人士、承判商和商人(有商業登記證以下簡稱BR)也應該立法保障; 3. 在工作期間猝死的自僱人士承判商和商人(無商業登記證)應修例給予保障; 4. 政府修例為僱員有可能在職猝死提供保險賠償；5. 有關單位倡導大眾關注在職猝死問題的嚴重性；6. 向社區人士包括僱員及自僱人士推廣健康教育；7. 為僱主及僱員發展一套適當的價值觀訓練.

第二章

前言

在香港, 猝死並不是一個陌生的名詞。 據香港心臟專科學院所提供的資料顯示, 在二零零二至二零零八年間, 全港猝死的人士為一千二百四十人。 在一千二百四十人名死者當中, 八百九十一名是在職年齡猝死（註 1）, 百分之七十的死者身從事非勞力工作, 例如:金融及銀行業等等。 主要原因是香港在過去的十年期間, 經濟大起大落, 從事不同行業人士的工資及工作亦受影響。當面對著減人工及工作量增加的壓力下, 在職人士很容易出現長期病如心臟病等等。 不少文獻亦指出患心臟病的病人, 當病發時很容易引致猝死。醫學界指出香港人患心臟病的數目一直在增加, 猝死個案亦相應在上升（註 2）。 據香港心臟病專科學院的資料顯示, 猝死的成因,百分之八十是因心臟病發, 香港平均每日有六人猝死（註 3）。

近年來, 亦有勞工階層, 例如:職業司機及勞動工人在工作期間猝死。 據報導, 每年大約有十至二十個案因在工作期間突然昏迷（註 4）。 在二零一一年的首八個月, 工業傷亡權益會已紀錄了二十個案在工作期間猝死（註 5）。 根據工聯會統計數字所得, 建造業在二零一一年首四個月的八個死亡個案中,其中三個是由猝死所致的（註 6）。 但是, 根據香港特區政府僱員賠償條例 282 章的資料顯示,在職猝死並不列入賠償之內。

有見及此, 香港樹仁大學與職安培訓復生會合辦「在職期間猝死及工業傷亡條例調查」,藉此瞭解僱員工作壓力及病患的情況, 並希望得知僱員在工作期間受傷或突然猝死的保障, 研究單位亦藉著調查, 探討受訪者對政府有否需要立例的看法，以加強僱員在職期間猝死的保障。

第三章

理論架構

根據聯合國世界衛生組織的定義：「凡是一個健康者或病人在穩定的情況下，從發生病狀至死亡時候在 6 小時以內，就稱為猝死」。但學者認為猝死多發生於起病後 1 小時以內，甚至是幾分鐘內(註 7)。據 National Heart, Lung and Blood Institute 的界定「猝死」的定義為癥狀出現後 1 小時內的死亡，就是猝死(註 8)。

3.1 猝死多與心血病有關

但是，若猝死者的死亡是出人意料之外，是自然的死亡而非暴力死亡，死因是不明不白的，這可能是與一些突發病患有關，根據一項在中國內地進行的調查顯示，在 1017 個猝死個案中，心血管系統疾病佔 421 個，為總數的四成(註 9)；根據香港心臟專科學院所統計，2010 至 2011 年因心臟病而死亡的人數多達六千多人，大約 8 成為壯年的在職人士；當中近三分之一是死於心臟猝死，平均為 2 千多人。醫學界估計香港每天有 6 個人因心臟猝死(註 10)。

心臟科醫生指出，表面健康正常的壯年人士猝死，很大可能與隱性心臟血管問題有關，之前可以毫無先兆，大約 15%的心臟病更無迹可尋，部分人士更可能死後才驗出患有心臟病，飲酒及體力勞動等帶刺激活動，亦可能增加心臟負荷，間接引發心臟病或中風(註 11)。香港心臟科專科學院兼東區尤德夫人那打素醫院內科部門主管李樹堅醫生表示：“……近年有不少患者屬於中年，而且整體患心臟病的人數也上升，患心臟病的人增加，猝死個案也上升” (註 12)。猝死的原因有很多，多數與心臟病有關，最常見是冠心病，其餘的為心臟肌肉毛病，如心臟肥大，心臟肌肉擴張，這些均為心臟結構問題，另一些個案可能是由於突發性心臟韻律不正(註 13)。

3.2 猝死的原因

文獻均認為猝死的原因較複雜，既有個人因素亦有外在環境因素。 個人因素：

3.2.1 心臟隱疾：猝死者可能是先天性心肌肥厚，或是心臟細胞的鈉離子變異，兩者都會引致心律不正常，造成心臟停頓死亡；

3.2.2 腦出血：高血壓人士病發時引至腦出血，出血積存頭內，無法排出，壓迫腦組織因而猝死；

3.2.3 哮喘：哮喘病人在刺激物的侵襲下，突發呼吸道強力收縮，進而猝死；

3.2.4 過敏而引起藥物過敏，造成病人過敏性休克死亡。

3.2.5 葡萄球菌爆發令呼吸道感染，突然病情惡化，病人死於中毒休克；

3.2.6 毒品：某些藥品過量，也易造成猝死(註 14)。

環境因素如下：

3.3 工作壓力

香港已往的十多年間經歷幾次的金融危機，經濟大起大落，香港公私機構的營運模式有所改變以加強競爭力，故僱員工作條件亦改變，如公營機構節省開支將工作外判，外判商為着競爭而將工資下調，工人須長時間工作才能補障繼續被聘用。長時間工作及壓力令不少打工仔透不過氣。

在猝死的課題中，學者認為過勞引起猝死是常見的問題，亦與工時過長有關，但是，隨工作過長外，工作時間適中亦並不是沒有猝死的風險，因為，工作過勞可以令人勞累而死，但工作壓力對員工健康來說亦不容忽視。學者總括僱員在工作中所遇上壓力及風險如下(註 15)：

3.3.1 工作壓力大

在專業內的頂尖人才，背負著工作單位所賦予的使命及工作承擔，故在工作期間內或同行的競爭尤為激烈。這樣的工作模式及態度逐漸變成一種“不斷挑戰自我”的企業文化，因而造成恒常的工作壓力。

3.3.2. 睡眠不足

不少僱員由於日常超時工作，特別是部份在偏遠地區居住的僱員，睡眠已成為他們的奢侈品，利用週末假日睡眠彌補平日睡眠不足已成為僱員難得的享受，但是，這個做法的後果是損失他們社交及聚會的機會，再者，平日所損耗的精神真的可以補眠作彌補嗎？

3.3.3. 職業病

近年來，不少壯年的在職人士在工作中猝死卻是屢見不鮮的事。工作時間長及工作帶來壓力的後果是病患，例如：的士司機及巴士司機通常所遇上的是中央肥胖，因為他們進餐後須立刻返回工作崗位繼續工作，引至百病叢生。所以，醫學界指出「打工仔」經常所患的多是高血壓、血脂高、脂肪肝、體重偏高及胃病等。所以，僱員猝死的變數可以數算是工作時間長、用腦過度、緊張及工作壓力大、飲食不正常及運動量偏低所引致。

3.3.4. 自我增值及不進則退的學習壓力

在香港，不管從事任何行業，公私營機構均鼓勵僱員持續進修，才可以自我增值。而打工仔在這方面的感受及壓力特別明顯。

3.3.5. 追求高效率工作目標

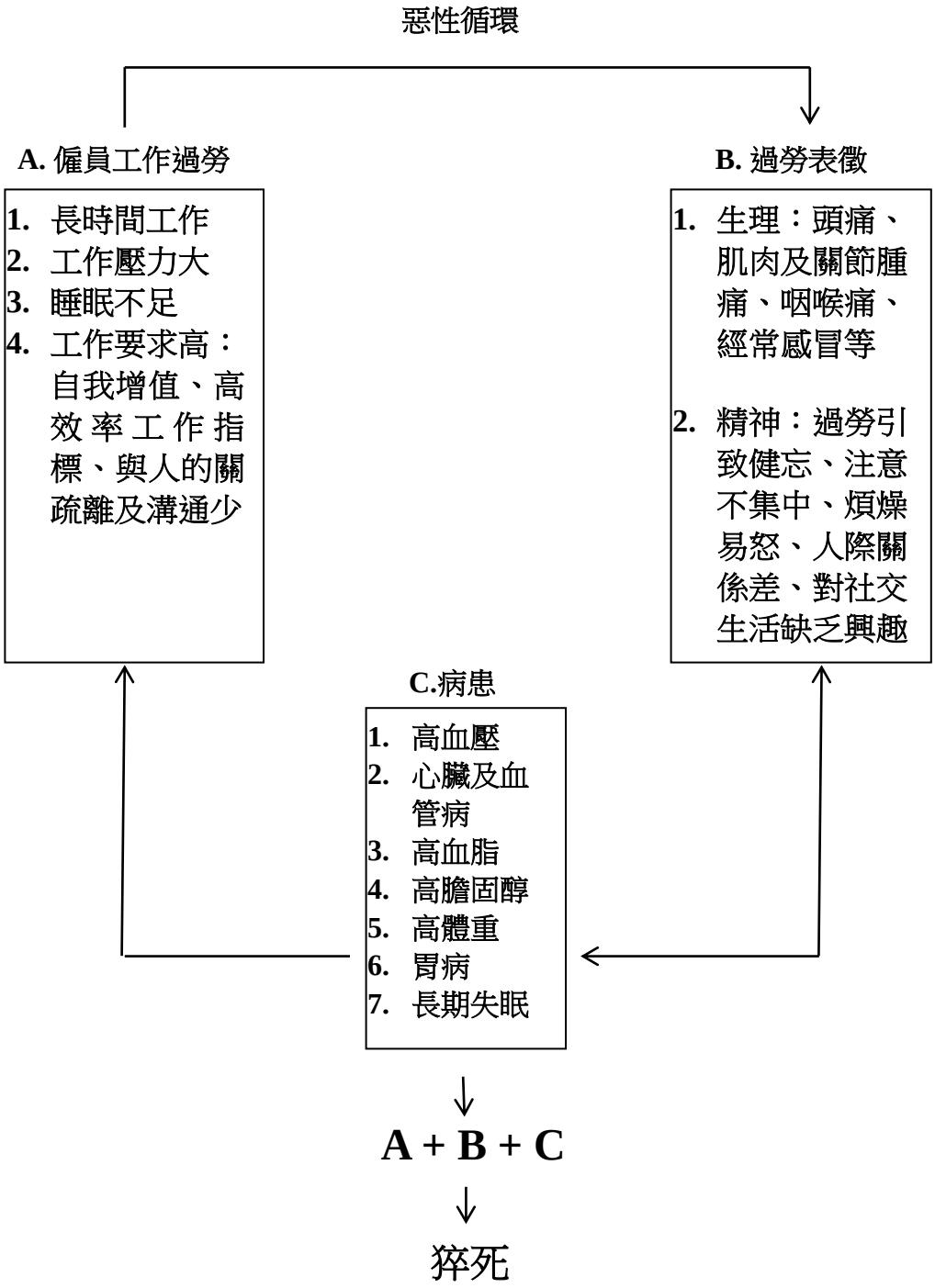
質量保證是現今公私營機構完成工作目標及提高效率的一種工作方式，為追求卓悅，把更高的要求強加在打工仔身上而做成壓力。

3.3.6. 與人溝通機會少

為了追求卓悅，不少僱員均整天埋頭工作，盡量減少與其他同事或其他人的閒敍機會，盡快把手上的工作完成，以作自保。為求準時完成工作，大多數僱員均借助機器的協助如電腦，電子郵件或短訊。他們過著是刻板式的生活及盡量減少與其他人相處的時間，久而久之，這樣對他們身心健康均無好處。

以上所說，過勞死的病因是「積勞成疾」而死的看法並不過份。過勞死是指長期慢性疲勞而引致病患，工作繼續過勞令他們的病患繼續加劇，最後在工作期間受不住壓力下誘發病症猝死。故此，因為過勞猝死的人往往患有病症，病症的原因往往由工作壓力所至。只可能是他們不知道或不為意，任由過勞蓄累，在工作壓力下而病發，進而突然惡化死亡。由過勞至病患，因病發而猝死的流程如下：

圖一：猝死成因流程圖



資料來源: 區榮光，香港樹仁大學社會工作學系，2011 年

當僱員過勞(A)了一段時間後，他們會現過勞的表徵(B): 在生理方面，他們會因工作壓力引致頭痛、肌肉腫痛、咽喉痛及關節病等；在精神方面，所表現的精神狀態往往因過勞而健忘，注意力不集中、煩燥易怒、人際關係差，對社交活動及人際關係缺乏興趣，久而久之，身體上出現病患(C)，病患的情況嚴重，工作表現越見吃力及過勞現象(A)，而過勞的表徵更為明顯(B)，若工作的要求持續引致僱員極到疲累(A)，病患亦因而更為嚴重(c)，表徵更顯著(B)，病患及工作勞累形成惡性循環，最後在工作要求高及病發下猝死。

第四章

調查及問卷設計

4.1.調查性質

本調查為一定量資料及數字搜集，希望瞭解受訪在職人士的健康情況、對在職猝死員工權益的瞭解及將在職猝死的賠償、僱主及自僱人士須購買在職猝死的保險納人法例的看法。

4.2 調查目的

4.1.1 探討在職人士所受壓力及所患的長期病關係;
4.1.2 瞭解僱主預防員工在職猝死的措施及保障;
4.1.3 瞭解受訪者對僱員在職受傷及猝死賠償的看法

4.2.調查對象

本調查設定的對象為 18 至 65 歲受僱、自僱及作為僱主的香港居民。

4.3.評估方法

2011 年 9 月，本調查採用橫向的設計分析，共訪問 584 名受僱、自僱及作為僱主的香港居民，以問卷的方法，進行研究調查，反映他們的健康、對在職猝死的賠償及自身權益的瞭解及看法。因此，本調查試圖運用統計方法，來收集及分析受訪對象的資料。調查的進行是透過樹仁大學的學生，在香港不同區域：巴士總站、街上及工商業區，以街頭訪問形式在受訪者同意下，用問卷形式向受訪者進行調查。由於路過的受訪者在時間上有所限制，故問卷亦因此需要盡量簡化。

4.4.問卷設計

問卷主要搜集對五方面的情況，包括：

第一部分：受訪者的健康情況。
第二部分：受訪者的工作情況。
第三部分：受訪者對在職猝死及勞工權益的瞭解。
第四部分：受訪者在職猝死及勞工權益及自身保障的看法。
第五部分：受訪者個人資料。

4.5.資料搜集

584 名受訪者透過一份標準化的結構問卷(Structured Questionnaire)作為資料搜集的工具，調查時期為 2011 年 9 月初開始，10 月尾完結。

4.6.資料分析方法

問卷主要由五部分組成，除第五部分有關個人資料及背景外，其餘四部分主要是調查對其健康、工作情況、對在職猝死及勞工權益的瞭解及自身保障的看法。所有資料均編碼後由社會科學統計分析軟件 Statistical Package for Social Service(SPSS)作出分析，受訪者背景資料作數據式描述，就著各範疇作相互間聯繫分析，找尋之間的互相關係，將他們個人背景及對勞工權益瞭解及看法，找各相互的關係。

4.7.研究倫理

所有受訪問人士都被充分通知調查目的及資料處理辦法，一切收集的資料都注編碼，並嚴格保密處理。

4.8.限制

調查人士均是路過當地，他們大多受著時間限制，訪問時間不得太長。

第五章

資料分析

5.1 受訪者健康情況

表一、健康情況

程度	人數	%
很好	60	10.3%
幾好	208	35.6%
一般	210	36.0%
不太好	94	16.1%
很不好	12	2.1%
總數	**584**	**100%**

N=584

被訪者當中約 18.2%表示健康不太好或很不好。

表二、 患長期病

	人數	%
有	167	28.6%
沒有	415	71.1%
總數	582	100%

N=582

被訪者當中約有 28.6%患有長期病。

表三、 患長期病類別

病症	人數	%
心臟病	15	2.6%
糖尿病	34	5.8%
肝病	4	0.7%
胃病	19	3.3%
癌症	1	0.2%
高血壓	57	9.8%
胆固醇過高	31	5.3%
腎病	5	0.9%
肌肉/神經痛	31	5.3%
哮喘	14	2.4%
其他	15	2.6%

表三顯示出受訪者中詳細的患病情況：被訪者中，2.6%有心臟病，9.8%有高血壓，5.8%有糖尿病，5.3%有胆固醇過高，約 1%有肝病，約 1%有腎病，3.3%有胃病，5.3%有肌肉/神經痛，0.2%有癌症，2.4%有哮喘。最常見的長期疾病是高血壓，糖尿病，胆固醇過高及肌肉/神經痛。

表四、長期病病況

病症	嚴重	頗嚴重	普通	輕微	極輕微	人數
1. 心臟病	0 (0%)	4 (26.7%)	8 (53.3%)	3 20.0%)	0 (0%)	15
2. 高血壓	4 (6.7%)	15 (25.0%)	31 (51.7%)	7 (11.7%)	3 (53.0%)	60
3. 糖尿病	3 (8.6%)	10 (28.6%)	15 (42.9%)	7 (20.0%)	0 (0%)	35
4. 胆固醇過高	7 (23.3%)	7 (23.3%)	14 (46.7%)	1 (3.3%)	1 (3.3%)	30
5. 肝病	0 (0%)	3 (50.0%)	2 (33.3%)	1 (16.7%)	0 (0%)	6
6. 腎病	0 (0%)	0 (0%)	3 (60.0%)	2 (40.0%)	0 (0%)	5
7. 胃病	1 (4.8%)	5 (23.8%)	9 (42.9%)	3 (14.3%)	3 (14.3%)	21
8. 肌肉/神經痛	4 (12.5%)	10 (31.3%)	10 (31.3%)	6 (18.8%)	2 (6.3%)	32
9. 癌症	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (100%)	1
10.哮喘	1 (7.7%)	1 (7.7%)	5 (38.5%)	3 (23.1%)	3 (23.1%)	13
11.其他	5 (33.3%)	4 (26.7%)	5 (33.3%)	1 (6.7%)	0 (0%)	15

表四顯示受訪者病況的嚴重程度：15 名有心臟病的被訪者中，53.3%的病況普通，而 27%的病況頗嚴重。

60 名有高血壓的被訪者中，31.7%的病況嚴重或頗嚴重，而 51.7%的病況普通。
35 名有糖尿病的被訪者中，8.6%的病況嚴重，而 28.6%的病況頗嚴重。
30 名有胆固醇過高的被訪者中，46.6%的病況嚴重或頗嚴重，而 46.7%的病況普通。
6 名有肝病的被訪者中，50%的病況頗嚴重，而 33.3%的病況普通。
5 名有腎病的被訪者中，6 成的病況普通。
21 名有胃病的被訪者中，28.6%的病況嚴重或頗嚴重，而另外 42.9%的病況普通。
32 名有肌肉/神經痛的被訪者中，43.8%的病況嚴重或頗嚴重，而 31.3%的病況普通。

有癌症的被訪者病況極輕微。
13 名有哮喘的被訪者中，60%的病況嚴重或頗嚴重，而 33.3%的病況普通。

表五. 有否定期見醫生及檢查

時期	人數	%
定期有	67	37.9%
經常有	28	15.8%
有時有	47	26.6%
甚少	25	14.1%
沒有	10	5.6%
總數	177	100%

N=177

差不多 54%患有長期疾病的被訪者需要定期或經常見醫生及檢查。

5.2 受訪者工作情況

表六. 工作量

程度	人數	%
非常重	35	6.0%
頗重	179	30.8%
一般	258	44.3%
不太重	94	16.2%
不重	16	2.7%
總數	582	100%

N=582

差不多 37%的被訪者感到工作量頗重或非常重。

表七. 工作中受的壓力

程度	人數	%
總是/每日都有	57	9.8%
經常有	136	23.4%
有時有	248	42.6%
甚少	96	16.5%
沒有	45	7.7%
總數	582	100%

N=582

約 42.6%的被訪者有時感受到工作有壓力，23.4%經常感受到壓力，另外有

9.8%的被訪者總是/每日都感受壓力。

表八. 能否忍受得到工作所帶給你的壓力

程度	人數	%
完全忍受不了	5	0.9%
經常忍受不了	48	8.9%
有時忍受不了	228	42.5%
甚少忍受不了	171	31.8%
忍受得來	85	15.8%
總數	537	100%

N=537

差不多半數的被訪者不能忍受工作所帶來的壓力。約 42.5%的被訪者有時忍受不了工作所帶來的壓力，而 9.8%的被訪者經常或完全忍受不了工作所帶來的壓力。

5.3 受訪者有否長期病患

表九. 病癥

病癥	非常嚴重	頗為嚴重	普通	輕微	極輕微	沒有
1. 心絞痛	0 (0%)	9 (1.5%)	20 (3.4%)	27 (4.6%)	115 (19.7%)	413 (87.8%)
2. 頭暈	6 (1.0%)	26 (4.5%)	94 (16.1%)	72 (12.3%)	89 (15.2%)	297 (50.8%)
3. 頭痛	11 (1.9%)	48 (8.2%)	114 (19.5%)	71 (12.2%)	78 (13.4%)	262 (44.9%)
4. 心悸/心跳加快	0 (0%)	24 (4.1%)	50 (8.6%)	55 (9.4%)	94 (16.1%)	261 (61.8%)
5. 惡心/胸前不適	3 (0.5%)	17 (2.9%)	23 (3.9%)	38 (6.5%)	101 (17.3%)	402 (68.8%)
6. 呼吸困難	0 (0%)	9 (1.5%)	28 (4.8%)	33 (5.7%)	114 (19.5%)	400 (68.5%)
7. 氣喘	1 (0.2%)	10 (1.7%)	39 (6.7%)	40 (6.8%)	113 (19.3%)	381 (65.3%)
8. 手腳發抖/發麻	0 (0%)	10 (1.7%)	51 (8.7%)	53 (9.1%)	123 (21.1%)	347 (59.4%)

表九顯示受訪者出現各種可能引致猝死的病癥的詳細情況：

約 22%的被訪者於工作時曾遇過心絞痛，當中 約 1.5%頗為嚴重。
約 49%的被訪者於工作時曾遇過頭暈，當中 5.5%非常或頗為嚴重。
約 55%的被訪者於工作時曾遇過頭痛，當中 約 10%非常或頗為嚴重。
約 38%的被訪者於工作時曾遇過心悸/心跳加快，當中約 4 %頗為嚴重。
約 31%的被訪者於工作時曾遇過惡心/胸前不適，當中 3.4 %非常或頗為嚴重。
約 31%的被訪者於工作時曾遇過呼吸困難，當中 1.5%頗為嚴重。
約 35%的被訪者於工作時曾遇過氣喘，當中 2 %非常或頗為嚴重。
約 40%的被訪者於工作時曾遇過手腳發抖/發麻，當中約 2 %非常或頗為嚴重。

5.4 勞工權益的認識及意向

表十. 若工人在工作期間猝死，他們的家屬會否在工業傷亡條例下得到賠償

意向	人數	%
會	222	38.3%
不會	75	12.9%
不知道	283	48.8%
總數	580	100%

N=580

38.3%的被訪者錯誤地認為若工人在工作期間猝死，他們的家屬會在工業傷亡條例下得到賠償，而只有 12.9%被訪者正確地指出的間猝死，他們的家屬會在工業傷亡條例下得到賠償。

表十一. 若工人在工作期間猝死，是因工作壓力或環境導致，他們的家屬應否在工業傷亡條例下得到賠償

意向	人數	%
應該	482	82.7%
不應該	27	4.6%
不知道	73	12.5%
其他	1	0.2%
總數	583	100%

N=583

83%的被訪者認為若工人在工作期間猝死，是因工作壓力或環境導致，他們的家屬應該在工業傷亡條例下得到賠償，而只有 4.6%指出不應該。

表十二. 應該在工業傷亡條例下得到賠償的原因(可選多項)

意向	人數	%
照顧工人是政府的責任	110	22.4%
工人因工猝死	215	43.8%
這是僱主照顧工人的責任	182	37.1%
其他	3	0.6%
總數	491	100.0%

N=491

44%認為應該在工業傷亡條例下得到賠償的原因是工人因工猝死，37%是因為這是僱主照顧工人的責任，另外，22.4%是因為照顧工人是政府的責任。

表十三. 不應該在工業傷亡條例下得到賠償的原因

意向	人數	%
工人有必要自我照顧，工作應量力而為	6	18.2%
工人突然猝死，不是任何人的責任	12	36.4%
工人猝死是意外	13	39.4%
其他	2	6.1%
總數	33	100%

N=33

39%認為不應該在工業傷亡條例下得到賠償的原因是工人猝死是意外，36.4%是因為照顧工人是政府工人突然猝死，不是任何人的責任，另外，18%是因為工人有必要自我照顧，工作應量力而為。

表十四. 勸喻僱主及自僱人士購買額外人身保險(TERM LIFE INSURANCE TO HK EMPLOYEES)

意向	人數	%
非常不同意	15	2.6%
不同意	35	6.1%
沒意見	88	15.3%
同意	299	52.0%
非常同意	138	24.0%
總數	575	100%

N=575

76%的被訪者同意或非常同意香港政府應勸喻僱主及自僱人士購買額外人身保險，而只有 8.7%不同意或非常不同意。

表十四.(一) 病況與 勸喻僱主及自僱人士購買額外人身保險(TERM LIFE INSURANCE TO HK EMPLOYEES)

意向	有長期病患	沒有長期病患
非常不同意	4 (2.4%)	11 (2.7%)
不同意	9 (5.4%)	26 (6.4%)
沒意見	22 (13.3%)	65 (15.9%)
同意	67 (40.4%)	232 (56.9%)
非常同意	64 (38.6%)	74 (18.1%)
總數	166 (100%)	408 (100%)
		P<0.001

N=166

長期病患者比非病患者顯著較多同意勸喻僱主及自僱人士購買額外人身保險。長期病患者當中 38.6%非常同意勸喻僱主及自僱人士購買額外人身保險，而非病患者當中只有 18.1%非常同意。

表十五. 修改法例，把在職因工猝死的工人納入工業傷亡法例保障

意向	人數	%
非常不同意	8	1.4%
不同意	9	1.6%
沒意見	61	11.7%
同意	281	48.9%
非常同意	210	36.5%
總數	575	100%

N=575

85.4%的被訪者同意或非常同意香港政府應修改法例，把在職因工猝死的工人納入工業傷亡法例保障，而只有 3%不同意或非常不同意。

表十五.(一) 病況與修改法例，把在職因工猝死的工人納入工業傷亡法例保障

意向	有長期病患	沒有長期病患
非常不同意	3 (1.8%)	5 (1.2%)
不同意	4 (2.4%)	5 (1.2%)
沒意見	14 (8.4%)	53 (13.1%)
同意	63 (37.7%)	217 (53.4%)
非常同意	83 (49.7%)	126 (31.0%)
總數	167 (100%)	406 (100%)
		P<0.001

長期病患者比非病患者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。長期病患者當中約 50%非常同意修改法例，而非病患者當中只有約 31%非常同意。

表十五.(二) 教育程度與修改法例，把在職因工猝死的工人納入工業傷亡法例保障

意向	中三或以下	中四至中七	大專或以上
非常不同意	3 (1.7%)	1 (0.4%)	4 (2.4%)
不同意	3 (1.7%)	4 (1.7%)	2 (1.2%)
沒意見	13 (7.3%)	29 (12.6%)	25 (15.2%)
同意	79 (44.4%)	105 (45.5%)	95 (57.9%)
非常同意	80 (44.9%)	92 (39.8%)	38 (23.2%)
總數	178 (100%)	231 (100%)	164 (100%)
			P<0.01

教育程度較低的被訪者比教育程度較高的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。中學或以下教育程度的被訪者當中約 45%非常同意修改法例，而大專或以上的被訪者當中只有約 24%非常同意。

表十五.(三) 工作量與 修改法例，把在職因工猝死的工人納入工業傷亡法例保障

意向	不重/不太重	一般	頗重/非常重
非常不同意	0 (0%)	5 (2.0%)	3 (1.4%)
不同意	2 1.8%	4 (1.6%)	3 (1.4%)
沒意見	17 (15.5%)	35 (13.8%)	15 (7.1%)
同意	62 (56.4%)	121 (47.8%)	97 (46.2%)
非常同意	29 (26.4%)	88 (34.8%)	92 (43.8%)
總數	110 (100%)	253 (100%)	210 (100%)
			P<0.05

工作量較重的被訪者比工作量較輕的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。工作量頗重/非常重的被訪者當中約 44%非常同意修改法例，而工作量不重/不太重的被訪者當中只有約 26%非常同意。

5.5 被訪者背景

表十六. 性別

性別	人數	%
男	279	48.4%
女	298	51.6%
總數	577	100%

N=577

被訪者男女約各佔一半。48.4%的被訪者是男性，而 51.6%的被訪者是女性

表十七. 年齡

年齡	人數	%
18 以下	1	0.2%
18-25	158	27.2%
26-35	132	22.8%
36-45	120	20.7%
46-55	125	21.6%
56-65	43	7.4%
65 以上	1	0.2%
總數	580	100%

N=580

被訪者來自不同的年齡群組，而最多人介乎 18-25 歲，26 至 35 歲及 46 至 55 歲，各佔 27.2%，20.7%及 21.6%。

表十八. 教育程度

教育程度	人數	%
沒受過教育	7	1.2%
小學 (小一 至小六)	61	10.5%
中一至中三	111	19.1%
中四至中五	163	28.0%
中六至中七	72	12.4%
大專 (IVE, 社區學院等)	82	14.1%
大學學位	77	13.2%
大學以上	8	1.4%
其他	1	0.2%
總數	582	100%

N=582

被訪者中包含不同學歷人士，而高中、初中及大專教育程度的被訪者各佔 28.0%，19.1% 及 14.1%。

表十九. 工作行業

職業	人數	%
製造業	19	3.5%
建造業	51	9.3%
批發、零售、進出口貿易	101	18.5%
飲食及酒店業	83	15.2%
運輸、倉庫及通訊業	79	14.4%
金融、保險、地產及商用服務業	123	22.5%
社區服務、社會服務及個人服務業	77	14.1%
公務員	14	2.6%
總數	547	100%

N=547

被訪者來自不同的行業，而較多來自批發、零售、進出口貿易，及金融、保險、地產及商用服務業，各佔 18.5% 及 22.5%。

表二十. 工作嘅職位

職位	人數	%
非技術工人	131	23.8%
小販	4	0.7%
文員	109	19.8%
服務工作及商店銷售人員	151	27.5%
技術工人 (機台及機器操作員及裝配員)	62	11.3%
中層管理人員或高級文員	42	7.6%
輔助專業人員	18	3.3%
高級管理人員(經理及行政人員)	4	0.7%
專業人員	24	4.4%
東主	5	0.9%
總數	550	100%

N=550

被訪者主要來自基層，主要從事 服務工作及商店銷售人員，非技術工人及文員及，各佔 27.5%，23.8% 及 19.8%。

表二十一. 家庭收入

收入	人數	%
$3,999 或以下	2	0.4%
$4,000 - $5,999	4	0.8%
$6,000 – $7,999	13	2.5%
$8,000 - $9,999	42	8.0%
$10,000 – $14,999	109	20.9%
$15,000 - $19,999	118	22.6%
$20,000 - $24,999	88	16.9%
$25,000 - $29,999	65	12.5%
$30,000 - $34,999	27	5.2%
$35,000 - $39,999	24	4.6%
$40,000 - $44,999	17	3.3%
$45,000 - $49,999	2	0.4%
$50,000 - $54,999	7	1.3%
$55,000 - $59,999	2	0.4%
$60,000 - $79,999	2	0.4%
總數	522	100%

N=522

約 55%的被訪者家庭收入少於$20,000，當中 22.6%收入介乎$15,000 至$19,999，亦有 20.9%的收入介乎$10,000 至$14,999。

第六章

討論

6.1 受訪者資料

是次調查共訪問了 584 名在職人士, 286 名男性(48.9%)及 298 名女性(51%), 36 歲或以上的佔 51.5%, 18 至 35 歲的佔 51.3%。 在受教育程度方面, 小學程度的佔(10.5%)； 中一至中三(19.1%)； 中四至中五(28%)；大專至大學程度(28.9%)。在職業方面, (18.5%)從事批發、零售及貿易工作； (15.2%)為餐飲及酒店業；(14.4%)運輸、倉庫及酒店；(22.5%)金融、保險及地產業。在職位方面, (27.5%)服務工作及商店銷售人員； (11.3%)非技術工人；(19.8%)文員; (12%)技術工人。 他們的工資集中在$10,000 至$14,999(20.9%); $15,000 至 19,999 (22.6%)及$20,000 至 24,999(16.9%)。

從以上資料分析, 受訪者大多數是中下階段的在職人士,在訪問中, 大約三成受訪者表示他們患有長期病,在 167(28.6%)名患長期病的受訪者中, 其中 57 名(9.8%)是高血壓, 15 名(2.6%)為心臟病, 34 名(5.8%)為糖尿病, 34 名(5.8%)胆固醇過高等, 這都是對他們的健康有潛在的風險。

6.2 受訪者在工作中遇上的壓力

超過三成(37%)受訪者表示他們的工作量頗重或非常重, 其中四成(42.6%)受訪者認為他們有時會感到工作壓力, 二成(23.1%)表示他們經常有/總是有工作壓力, 再加上以上第 1 點所指出的近三成受訪者患有長期病,這表示圍繞著三成 584 名受訪者中, 174 個受訪者很容易因工作壓力而引致病發。

6.3 受訪者在工作時出現病發徵狀

而且, 在 587 名回答問題的受訪者中, 55%(322 名)受訪者曾遇上頭痛, 其中 10%(59 名)受訪者表示情況非常嚴重; 49.2%(287 名)頭暈, 當中 5.5%(37 名)表示情況非常嚴重, 40.6%(237 名)手腳發抖, 1.7%(10 名)表示非常嚴重, 38.2%(223 名)心跳加快, 4.1%(24 名)非常嚴重; 34.7%(203 名)氣喘,(11 名)的情況非常嚴重; 31.5%(184 名)呼吸困難, 當中(9 名) 表示情況頗嚴重;29.2%(171 名)心絞痛, 當中 1.5%(9 名) 表示情況非常嚴重。

以上資料顯示,584 名回答問題的受訪者中,超過一半(55%)表示他們最少在工

作期間出現頭痛的徵狀, 其次 11 名及 48 名受訪者的頭痛分別至非常及頗嚴重的程度。在心跳加快方面，當中 32 人次表示病徵達非常及頗嚴重的程度, 24 名受訪者表示徵狀已達非常及頗嚴重的程度。

以上所提及的，21 人次及 153 人次在 8 項病症中分別表示他們的病情非常嚴重及頗嚴重，若筆者認為非常嚴重的受訪者隨時有病發的危險，而頗嚴重的受訪者若繼續在工作中過勞，將會構成危險，這樣說並不過份，且不容忽視。

6.4 受訪者對在職猝死勞工保障的認識及態度

在訪問中, 一半(283 名) 48.8%受訪者不知道若在工作期間猝死並不列入勞工保障; 38.3%(222 名) 受訪在職受訪者認為工作期間猝死是有勞工保障的, 但真實的個案卻相反。這顯示出, 在 580 名受訪者中, 505 名(87.1%)對在職期間猝死勞工保障問題缺乏認識。

當訪問員對受訪者在職人士澄清他們的情況後, (82.7%)482 名受訪者均認為若在工作期間猝死,死因亦是工作壓力或環境導致, 他們的家屬應該在工業傷亡條例下得到賠償, 主要原因是(43.5%)215 名受訪者認為是因工作猝死; (22.4%)110 名受訪者認為照顧工人是政府的責任, (39.8%)162 名受訪者認為是僱主照顧工人的責任。

這可想而知，若 583 名受訪在職人士清楚知道自身的勞工保障時，超過八成(82.7%)均認為他們應受到工業傷亡條例所保障。

在調查中，只有 27 名（4.6%）受訪者認為工人一旦在職期間因工猝死，是不應該受保障的，13 名(2.2%)認為是死於意外，12 名(2%)認為沒有人應負責任，6 名(1%)認為工人應自我照顧。

6.5 受訪者對政府應否修例保障在職人士工作期間猝死的意見

超過八成四（84.4%）同意及非常同意政府應該修例，把在職因工猝死的工人納入工業傷亡法例保障，另外，政府應規定僱主及自僱人士購買額外人身保險的佔（76%），共 437 人。這顯示出，在職人士清楚自身的勞工保障的情況後，他們均認為有關方面應加強他們在職的保障，若因工猝死，有關方面包括政府及僱主，應對僱員負起應有的責任

在整個調查中，三成受訪者在職但另一方面是有病患，受訪者患心血管病的, 並不是想像中那麼普遍, 但是, 受訪者患與心臟病有關的血壓高卻與其他病症比較下佔最高百份比, 其次是糖尿病及高膽固醇。在訪問中, 絕大多數的受訪者均不清楚一旦在工作時猝死，他們因猝死的賠償並不納入勞工權益內；然而；當他們

清楚情況後，他們均認為政府應修例，把在職猝死的賠償納入勞工權益內，而且，受訪者亦贊成僱主及自僱人士均須購買有關在職猝死保險，對僱員及自身提高保障。這顯示，僱員均非常關心自身的勞工權益。

6.6 不同程度的工作量、不同教育程度及患有長期病患的受訪對政府應修例，喻僱主及僱員應買保險以防猝死及將猝死包括在勞工法例之內的看法

在調查中，工作量較重的被訪者比工作量較輕的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。工作量頗重/非常重的被訪者當中約 44%非常同意修改法例，而工作量不重/不太重的被訪者當中只有約 26%非常同意。這顯示出，受訪者自身認為工作量頗非常重的，也希望獲得多點保障。

在教育程度方面，教育程度較低的被訪者比教育程度較高的被訪者顯著較多同意修改法例，把在職因工猝死的工人納入工業傷亡法例保障。中學或以下教育程度的被訪者當中約 45%非常同意修改法例，而大專或以上的被訪者當中只有約 24%非常同意。當然，教育程度越低的人士，他們越大機會選取勞力工作，在較艱難的工作情況下，他們希望多點勞工保障也不足為奇。

長期病患者比非病患者顯著較多同意勸喻僱主及自僱人士購買額外人身保險。長期病患者當中, 38.6%非常同意勸喻僱主及自僱人士購買額外人身保險，而非病患者當中只有 18.1%非常同意。這意味著患長期病的受訪者，希望在工作中多點勞工保障。

第七章

建議

7.1 在職期間猝死的僱員是工傷，應該受勞工法例所保障

本調查報告第三章所指出，猝死的原因絕大多數是由於工作壓力大，長時間工作及工作環境差的惡性循環而引起的，亦和現時僱員補償條例(Chapter 282 Laws of Hong Kong)“因工受傷”(in the course of employment)的定義十分相近，只要法例稍為伸展便可以把猝死包括在內。

在現今的僱員補償條例下，工傷分兩大類，一是突然性的意外，例如，高空墮下和跌倒受傷；另外一類是長時間的工作勞損，例如：網球手和腱肖炎等。我們建議香港政府修例把猝死歸入第三類，保障不幸猝死的僱員。

7.2 在工作期間猝死的自僱人士、承判商和商人(有商業登記證以下簡稱 BR)也應該立法保障

由於香港是一直沿用英國普通法的地方，香港的勞工法例亦應參照英國的普通法和案例。在辨別僱員和自僱人士方面，亦應參照英國多年前的案例，以修改現時法例未能及時追上瞬息萬變的香港發展。很多基層勞工被逼轉為自僱人士，甚至當上董事一職(註 16)，但他們實質的工作和一般僱員的工作無異，如地盤工人和環保回收工人，失去勞工法例的保障。

另外一些中小企業的小老板和承建商，生意亦不容易做。養活一間公司和員工，並不容易，他們承受工作壓力亦不少，家庭環境亦未必一定富裕。當他們因工作而猝死之時，他們的家庭經濟亦陷於困境。

再者，政府正鼓勵年輕人士創業，這些年輕人正正用了他們的所有積蓄或向政府和親友借貸，才能一展其創業夢想。若不幸在此期間猝死，他們並不能獲得任何賠償。

因此，我們建議政府可考慮從每年徵收商業登記費所得的收益之中，撥出一個百分比，成立一個基金作支付上述三類人士的猝死補償。

為使上述基金能夠用得其所，幫助到貧困的家庭，我們建議有關單位可對死者及其家屬實施一種恩恤性的補償和需要接受資產審查(Means Test)，這與申請綜援、法援和公屋一樣的資產審查相類似，但條例可以略為放寬一些，因屬恩恤性

質。此舉，可以鼓勵更多人依法納稅。

7.3 在工作期間猝死的自僱人士承判商和商人(無商業登記證)應修例給予保障

因為某些原因，一些自僱人士、承判商和中小企商人，未能及時或没有領取商業登記證，例如：新開業的商人和的士司機，這些人士可以在其他的法例立法作出保障，例如：自僱人士、承判商和中小企商人若因工猝死，政府可修例，把這些人士列入意外賠償的類別。因工作而駕車猝死的商人和司機，可以在不論過失交通意外傷亡援助計劃中獲得賠償，因為駕車的司機於換領駕駛執照時，已經支付一些金錢給予上述援助金。

7.4 政府修例為僱員有可能在職猝死提供保險賠償

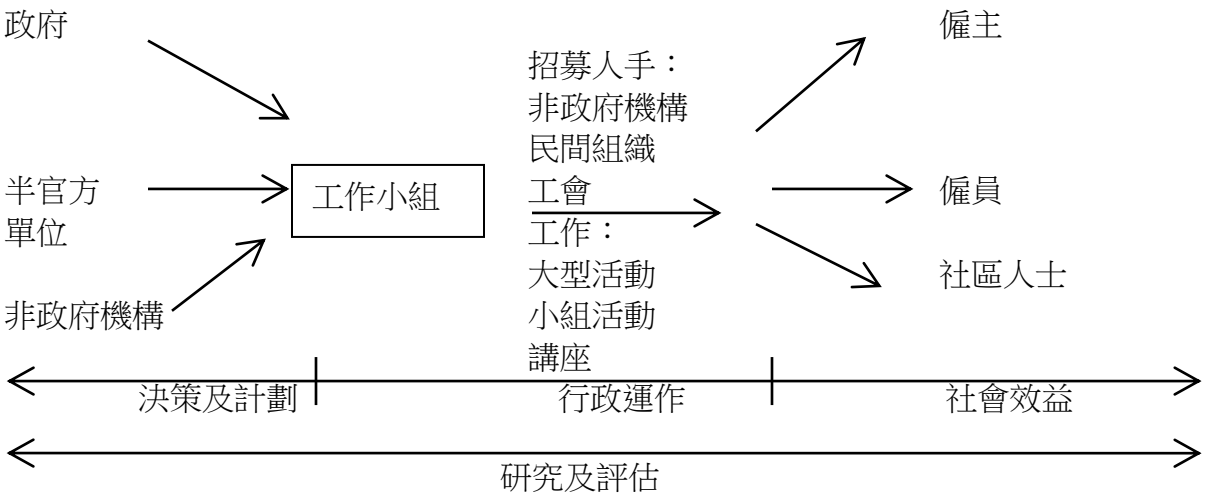
在香港，猝死的個案每年正在增加，隨著猝死人數增加，在職猝死的人士數目亦相應增加。然而，在職猝死的意外並不包括在勞工保障的範圍內，故不少的遇事者身後蕭條，境況悲涼。

在問卷中，絕大多數受訪者均認為僱員猝死或過勞死是因工所致。政府可以修改勞工條例，將在職猝死的意外列入勞工保險。換句話說，僱主有必要把在職猝死加入勞工保險內，僱員一旦發生猝死意外，亦可以得到賠償。政府亦可以作出相應行動，鼓勵僱主為僱員買保險，為僱員遇上猝死意外而提供保障。政府亦可鼓勵僱主為僱員提供猝死保險的安全保障，例如：在商業登記稅或利得稅中扣除僱主為僱員所支付在職猝死的保險金額。令僱主樂意為僱員提供安全網。

7.5 有關單位倡導大眾關注在職猝死問題的嚴重性

在職猝死人士數字在香港逐年上升，市民大眾亦應該知道問題的嚴重性，對猝死問題提高警覺。香港勞動人口質素包括工人健康情況，對香港經濟繁榮起決定性作用。政府在領導整個香港發展的同時亦應關注到打工仔自身健康的發展。有關單位應制訂策略，為僱主、僱員及市民提供促進他們自身安全的指引，防治僱員過勞至生病的情況，如：政府倡導這課題可以引用在社區網絡教育模式作介入如下：

圖二、社區網絡教育模式



資料來源：Au, K.W. Working with Community Groups. Hong Kong Shue Yan University, 2006.

7.5.1 工作小組：政府部門、半官方單位及非政府機構組成幫助在職猝死的工作小組

7.5.2 招募人手：工作小組招募有關非政府機構，為工人及僱主提供社區教育服務，透過教育，令他們瞭解到在職猝死 / 過勞死的嚴重性。小組的工作主要是以外展服務如大型活動、小組及講座方法等介入問題，令僱主及僱員瞭解到長時間工作及工作壓力生活下對僱員健康的害處。

7.5.3 社會效益：對僱員來說，他們以個人的勞力賺取報酬，透過計劃，亦不致賠上個人健康及生命。若計劃在社區全面地推行，僱員因健全的工作制度不斷改善工作表現，這種正面的風氣繼續在社區展現出來，當越來越多僱員掌握着這種觀念的時候，漸漸地在社區形成一股力量，感染整個社區，在社區內形成一種健康風氣，令整個社區的僱員的健康生活質素得以改善。對僱主來說，僱員身心及身體健康不論對公司的形象及效益均有正面 的效應，對僱員及工作單位長遠來說都會有健全地發展。

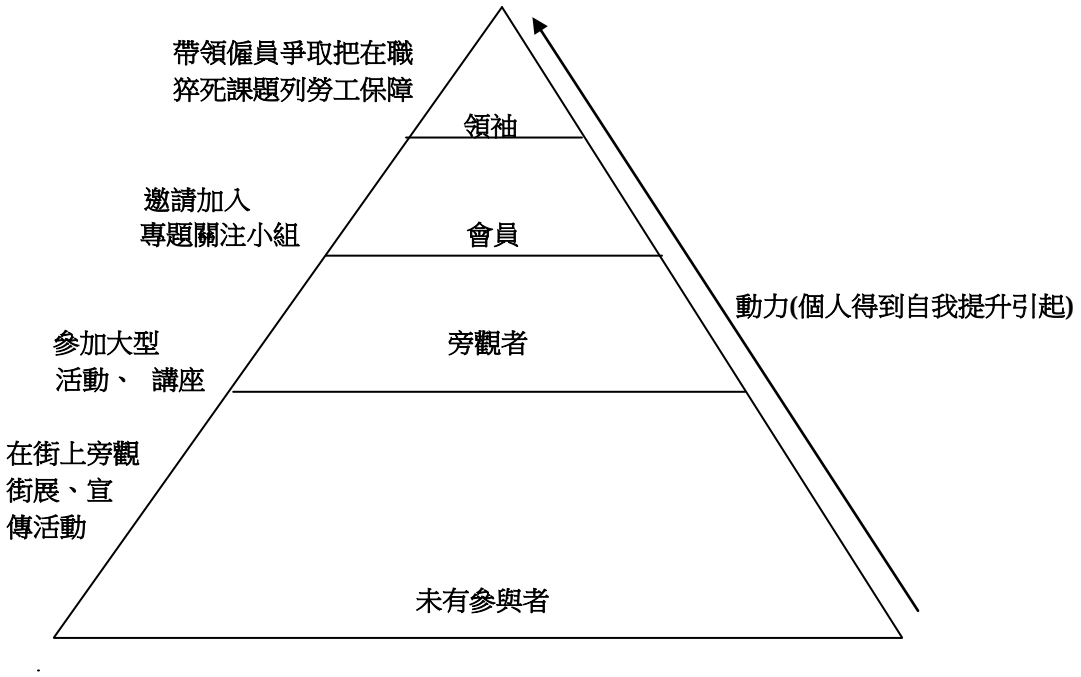
7.6 向社區人士包括僱員及自僱人士推廣健康教育

筆者在調查中發現，大多數的受訪者均不知道在職猝死 / 過勞死是否列入勞工賠償。這顯示出，當受訪者特別是僱員對自身的權益並不瞭解下，他們對個人身體工作負荷及工作壓力的比重的警覺性有可能較低，但是，在職猝死這個課題牽涉到僱員的健康及勞工權益，僱員甚至僱主對這方面的知情權是不

可或缺的。

我們建議有關當局對社區內的自僱人士加強宣傳教育，以不同活動的形式，讓社區人士在不同的場合認知到，長時間工作、工作壓力及猝死的互動關係，對課題多加認識。透過活動如街站、展覽及街頭健康檢查為介入點，增加自僱人士，如：營業車司機、自由工作者及三行工人等，對這個課題提高警覺性。筆者建議的模式如下：

圖二：公民教育社區工作模式



資料來源：Au, K.W. Working with Community Groups. Hong Kong Shue Yan University, 2006.

7.6.1 未有參與者

未有參與者是指一般對勞工法例及課題較疏離人士，例如：自僱人士。他們對在職猝死及勞工權益的認知不深。若有關單位希望把訊息帶給自僱人士，可考慮運用街頭展覽及健康檢查形式，將猝死及勞工權益的有關訊息，傳給區內的人士，包括受僱及自僱人士，有關單位可扮演傳送訊息的角色，令坊眾瞭解猝死的因由及工作壓力對勞工的影響。

7.6.2 參觀者

在活動舉行期間，有關團體可邀請參加者及對課題有興趣的在職人士繼續參加與課題相關的小組活動，將他們納入為活動參加者，定期通訊。

7.6.3 會員

透過區內活動，他們可以關注到該課題的發展，例如：倡導在職人士一旦猝死納入勞工條例課題的進展，令他們感受到受僱人士付出勞力及生存的價值，是可以值著努力而有所改變，在本調查中，不少受僱者對在職猝死應納入勞工法例的課題有較強的理據，小組除動員他們為骨幹外，亦可透過這個倡導的形式，繼續吸納區內區外的在職人士加入行列。

7.6.4 領袖

在調查中，我們不難看到受訪者及受僱人士希望政府修例，把在職猝死課題納入勞工保障中。有關單位可為這群對課題及相關活動熱衷的人士，多加培訓。在社區內，他們除幫助正受工作壓力困擾的僱員外，更為在職猝死的情形納入勞工保障出力，如游說政府及倡導該課題，令不幸的僱員得到應有賠償。

總括來說，區內人士可在猝死課題中扮演重要角色，對問題有所關注。筆者相信他們都是僱員的一份子，他們對自身的權益會有一定程度的關心。當僱員對自身的處境有一定的瞭解及認識後，他們將會為自己的權益爭取勞工保障，以身體力行的形式把課題列入勞工保障而出力，為僱員及香港整體的企業運作提供健全的發展。

7.7 為僱主及僱員發展一套適當的價值觀訓練

僱主希望員工能全心全力為他們的企業服務，最好僱員勿跟跟計較地為公司忠誠地付出他們所有的努力，從而取得雙贏的結果，從僱主的角度出發，這個態度是無可致疑的，但是，若這些訓練有素及忠誠為企業付出努力的員工，因在企業長時間工作及巨大的工作壓力下發病甚至死亡，最終得不償失的都是該企業，損失一名忠心為公司付出的員工，長遠來說在公司的成本效益方面是虧蝕的。另外，不少打工仔甘願日以計夜及時完成事工，長時間在巨大的工作及人事壓力下工作，希望終有一天望到自身前途出現曙光，但是，久而久之，因長時間工作及巨大壓力下工作出現病患，最後病發而性命受損，對打工仔來說是得不償失的。所以，政府或相關的非政府機構，可為僱主及僱員提供一套適當的價值觀訓練，例如：僱主應理解到員工因過勞出現不測，長遠來說是妨礙投資的，所以他們應調整他們的企業文化，從為公司賣命的信念，轉為創造企業與員工雙贏局面，此外，他們要守法，法律規定每日、週及月工作時間上限；鼓勵員工適時休假，不要以責任制，令員工不斷加班完成事工，為員

工定期安排身體檢查，令他們健全地在工作中發展(註 17)。

在員工方面，有關單位亦應教育員工在工作表現方面量力而為，凡事不要安排太緊密，最後損失的只是自身及公司；工作以外，應有適當的睡眠；注意飲食及個人習慣，工作雖忙，但亦要忙中偷閒及定期做檢查，令自身有愉快的生活(註 18)。

當僱主及僱員分別忙於營運及工作之同時，雙方均可以運用正確的工作價值觀分辨做法的對錯，為自身所面對的困難及處事態度，作出適當的判斷及修正。

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註 5 ： 陳錦康，工業傷亡權益會，電話訪問，2011 年 9 月 27 日

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註 18　：　聯合晚報，《**過勞死之症狀與預防 VS 認定標準**》，2006 年 11 月 19 日。

圖表：

附件一

香港樹仁大學

職安培訓復生會

合辦

在職期間猝死及工業傷亡條例調查

你好！我係香港樹仁大學社會工作學系嘅學生，依家我地同職安培訓復生會合作，進行一項研究，以收集市民對猝死及工業傷亡條例嘅意見。想阻你幾分鐘時間，多謝你嘅合作。呢份問卷係以不記名嘅形式進行。另外，問卷資料只供研究用途，你所提供嘅個人資料將會絕對保密。

你是否在職人士?

1. □ 是　　2. □ 否 (問卷完結)

(1) 你覺得你的健康情况是怎樣的?

1.□ 很好　2. □ 幾好　3. □ 一般　4. □ 不太好　5. □ 很不好

(2) 你有否患長期病?

1.□ 有　　2. □沒有 (請跳答到第 6 題)

(3) 你患的是那種長期病?(可選多項)

1. □ 心臟病　　2. □ 高血壓
3. □ 糖尿病　　4. □ 胆固醇過高
5. □ 肝病　　6. □ 腎病
7. □ 胃病　　8. □ 肌肉/神經痛
9. □ 癌症　　10. □ 哮喘
11. □ 其他（請註明:_____

(4) 你患病情怎樣?

長期病症	嚴重	不太嚴重	普通	輕微	極輕微
1. 心臟病	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
2. 高血壓	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
3. 糖尿病	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
4. 胆固醇過高	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
5. 肝病	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
6. 腎病	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
7. 胃病	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
8. 肌肉/神經痛	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
9. 癌症	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
10. 哮喘	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
11. 其他（請註明: ____ ）	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐

(5) 有否定期見醫生及檢查?

1. ☐定期有　　2. ☐ 經常有　　3. ☐ 有時有　　4. ☐甚少　　5. ☐ 冇
6. ☐其他，請註明: (_____)

(6) 你的工作量重嗎?

1. ☐ 非常重　　2. ☐ 頗重　　3. ☐ 一般　　4. ☐ 不太重　　5. ☐ 不重

(7) 你有否在工作中受壓力?

1. ☐ 總是/每日都有　　2. ☐ 經常有　　3. ☐ 有時有　　4. ☐ 甚少
5. ☐ 沒有（請跳答到第 9 題）

(8) 你忍受得到工作所帶給你的壓力嗎?

1. ☐完全忍受不了　　2. ☐經常忍受不了　3. ☐ 有時忍受不了　4. ☐甚少忍受不了
5. ☐忍受得來

(9) 你工作期有否遇過以下情況？

病癥		非常嚴重	頗為嚴重	普通	輕微	極輕微
1. 心絞痛		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
2. 頭暈		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
3. 頭痛		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
4. 心悸/心跳加快		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
5. 惡心/胸前不適		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
6. 呼吸困難		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
7. 氣喘		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
8. 手腳發抖/發麻		1 ☐	2 ☐	3 ☐	4 ☐	5 ☐

(10) 以你所知，若工人在工作期間猝死，他們的家屬會否在工業傷亡條例下得到賠償嗎？

1 ☐ 會　　2 ☐ 不會　　3 ☐ 唔知道　　4 ☐ 其他（請註明:_____）

(11) 以你認為，若工人在工作期間猝死，是因工作壓力或環境導致，他們的家屬應否在工業傷亡條例下得到賠償？

1.☐ 應該 （請回答第 12 題）	2 ☐ 不應該 （請回答第 13 題）	3 ☐唔知道	4. ☐ 其他 （請註明:_____ ）

(12) 若工人在工作期間猝死，是因工作壓力或環境導致，他們的家屬應該在工業傷亡條例下得到賠償的原因是：

1. ☐ 照顧工人是政府的責任		
2. ☐ 工人因工猝死		
3. ☐ 這是僱主照顧工人的責任		
4. ☐ 其他（請註明:_____）		

(13) 若工人在工作期間猝死，是因工作壓力或環境導致，他們的家屬不應該在工業傷亡條例下得到賠償的原因是：

1. ☐ 工人有必要自我照顧，工作應量力而為		
2. ☐ 工人突然猝死，不是任何人的責任		
3. ☐ 工人猝死是意外		
4. ☐ 其他（請註明:_____）		

(14) 針對工人在工作期間猝死，你是否同意香港政府：

	非常不同意	不同意	冇意見	同意	非常同意
	1	2	3	4	5
14.1 勸喻僱主及自僱人士購買額外人身保險(TERM LIFE INSURANCE TO HK EMPLOYEES)	☐	☐	☐	☐	☐
14.2 修改法例，把在職因工猝死的工人納入工業傷亡法例保障	☐	☐	☐	☐	☐

14.3 你仲有冇其他意見，請註明：_____

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(15) 性別： 1 ☐ 男 2 ☐ 女

(16) 請問你幾多歲：

1. ☐ 18 以下
2. ☐ 18-25
3. ☐ 26-35
4. ☐ 36-45
5. ☐ 46-55
6. ☐ 56-65
7. ☐ 65 以上

(17) 請問你現時居住係邊一區

1. ☐ 東區
2. ☐ 灣仔
3. ☐ 中西區
4. ☐ 南區
5. ☐ 油尖旺
6. ☐ 深水埗
7. ☐ 九龍城
8. ☐ 黃大仙
9. ☐ 觀塘
10. ☐ 葵青
11. ☐ 荃灣
12. ☐ 元朗
13. ☐ 屯門
14. ☐ 北區
15. ☐ 大埔

16. ☐ 沙田　　17. ☐ 西貢　　18. ☐ 離島

(18) 請問你現時係邊一區工作

1. ☐ 東區　　2. ☐ 灣仔　　3. ☐ 中西區
4. ☐ 南區　　5. ☐ 油尖旺　　6. ☐ 深水埗
7. ☐ 九龍城　　8. ☐ 黃大仙　　9. ☐ 觀塘
10. ☐ 葵青　　11. ☐ 荃灣　　12. ☐ 元朗
13. ☐ 屯門　　14. ☐ 北區　　15. ☐ 大埔
16. ☐ 沙田　　17. ☐ 西貢　　18. ☐ 離島

(19) 請問你讀書讀到邊個程度?

1. ☐ 沒受過教育　　2. ☐ 小學（小一 至小六）
3. ☐ 中一至中三　　4. ☐ 中四至中五
5. ☐ 中六至中七　　6. ☐ 大專（IVE, 社區學院等）
7. ☐ 大學學位　　8. ☐ 大學以上
9. ☐ 其他（請註明:_____）

(20) 請問你現時工作嘅行業?

1. ☐ 製造業
2. ☐ 建造業
3. ☐ 批發、零售、進出口貿易
4. ☐ 飲食及酒店業
5. ☐ 運輸、倉庫及通訊業
6. ☐ 金融、保險、地產及商用服務業
7. ☐ 社區服務、社會服務及個人服務業
8. ☐ 公務員
9. ☐ 拒答
10. ☐ 其他行業　（請註明:_____）

(21) 請問你現時工作嘅職位?

1. ☐ 非技術工人　　2. ☐ 小販
3. ☐ 初級文員　　4. ☐ 技術工人
5. ☐ 中層管理人員或高級文員　　6. ☐ 初級專業人士
7. ☐ 高級管理人員　　8. ☐ 東主
9. ☐ 高級專業人員　　10. ☐ 其他職位(請註明:_____)

11. ☐ 拒答

(22) 請問你每月家庭嘅收入大概有幾多?

1. ☐ $3,999 或以下
2. ☐ $4,000 - $5,999
3. ☐ $6,000 - $7,999
4. ☐ $8,000 - $9,999
5. ☐ $10,000 - $14,999
6. ☐ $15,000 - $19,999
7. ☐ $20,000 - $24,999
8. ☐ $25,000 - $29,999
9. ☐ $30,000 - $34,999
10. ☐ $35,000 - $39,999
11. ☐ $40,000 - $44,999
12. ☐ $45,000 - $49,999
13. ☐ $50,000 - $54,999
14. ☐ $55,000 - $59,999
15. ☐ $60,000 - $79,999
16. ☐ $80,000 - $99,999
17. ☐ $100,000 或以上
18. ☐ 拒答

問卷完- 多謝合作!

附件二

鳴謝

在職期間猝死及工業傷亡權益調查得以順利推行，實有賴以下人士、各機構、團體及義工鼎力支持和協助，特此鳴謝（排名不分先後）：

- 香港樹仁大學所有提供協助的工作人員

- 職安培訓復生會所有提供協助的工作人員及會友

研究工作小組

顧問　：　唐文標律師

研究員　：　區榮光博士 崔志暉博士

研究小組成員　：　梁嘉敏同學 敖梁愛同學 詹淑儀同學 王華欣同學
莊欣欣同學 姚凱鍶同學 徐惠文同學 鄭彩霞同學
李楚翹同學 朱淑婷同學

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