

OSHA Review

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President's Message

I am very glad to be chosen as the President of the Society of Registered Safety Officers (SRSO) for 2012-2014. Thanks to all Executive Council's (EC) support and I will try my best endeavour to serve the SRSO.

During my services to SRSO in the past 10 years I noted that the ECs have selflessly devoted lot of time and effort to the SRSO. I do believe and hope that they will continue to support me and the EC. To all members, we also need your support and participation in order that SRSO may survive and have a good prospect and recognition.

In our Executive Council, there are nine members chosen during the election however one EC member had withdrawn due to health issue. Moreover the first runner up has ultimately declined due to busy workload. In this connection, we have only eight members hence this will add burden to our workload and will also have an impact to arranging meetings for the quorum aspect.

In the coming years, we will continue to support the Hong Kong Federation of Occupational Safety & Health Association (HKFOSHA) in order to get recognition and enhance the level of the Registered Safety Officers in the society. The Code of Conduct (COC) is one of the items to be launched by HKFOSHA. We will show our support and effort in promoting this to our members.


I would also like to take a survey of our members if any items that they would like to take part like Seminars, site visits, social gathering etc. In the survey we may also get more information to present the details of our members like title, age, experience etc. Of course it is voluntarily and we will respect the privacy. We have to set up a Task Force to check if there is any contravening to the Privacy Ordinance.

It is very incentive that we get some information that we may get free venue to hold meeting/ seminar and hence may increase the numbers of these activities. As I believe that our members would like us to hold more these activities.

I would like to take this opportunity to call for members to join the Executive Council. If you are interested please call us or send us an e-mail.

Lastly, I do hope that your contribution to the SRSO continue and in line with your support to previous Presidents.

Thanks.



Stephen SIU
President
SRSO

Mr. Rheo Lam 專訪

訪問日期：2012年2月29日

時間：10:00-11:30 上午

訪問對象：Mr. Rheo Lam

訪問者：Mr. Tiger Wong

1. 現時安全主任的工作和角色，比較許多年前的有什麼分別？

在七十年代初，香港那時並沒有大專或大學機構提供職安健的課程，而當時我受聘于政府勞工處的工業經營組 (Industrial Undertakings Unit)，所接受由它提供的六個月在職工業安全訓練是本地為較有系統及較全面化的職安健培訓。七十及八十年代正是香港工業起飛及昌盛時期，這助理工廠督察培訓課程提供較多元化的行業安全培訓包括製衣，塑膠，漂染，建築等等。有理論課程，亦有參觀及實習巡查機會，最寶貴的是可以與經營者及技術人員直接溝通，也就是從有實戰經驗的人學習。現時各大專院校提供的課程都由有學歷導師主教。

在七十年代作為工廠督察是一份相當具趣味性工作，因可以接觸到許多不同範疇及不同行業，並不只局限於建築行業。當時因為法例並沒有要求工廠及工業經營聘請安全主任，所以大部份公司都沒有聘請安全主任，只有一小部份俱規模的建築公司，電子廠，船塢或大機構等有主動聘請安全主任。相對日後因法例規定而要聘請的安全主任，他們是會相對地較少接觸一些其它行業及運作。

到八十年代中后期，政府開始立法要求地盤及某些工業經營聘請註冊安全主任，同時香港工業如製衣，塑膠等開始息微，令到當時有大部分的註冊安全主任都投身於建造業，所以環境



上形成很多註冊安全主任變了都是“獨沽一味”集中於建造業。但近年亦有一部份的服務業，包括餐飲集團，公共交通機構，醫院等都開始關注到職安健的重要性而開始聘請安全主任。

所以我認為安全主任的工作和角色是隨著社會而變遷。

2. 一般安全主任是由僱主直接聘用的，在發揮其工作效能方面可能受到限制，你對這種情況有什麼看法？

僱主出糧與安全主任是不可改變的事實，安全主任聽令于僱主也是與其它職位無異。僱主是希望安全主任幫其解決安全問題及提供可行方案。限制粗略可以分為兩方面：

第一方面：僱主的心態主宰一切，安全主任的建議必先要取得僱主的認同和認受方可以發揮其功效。安全主任的建議可能要花很長的時間及在適當的機遇方可賺取僱主的認同，所以安全主任在其發揮工作效能會受此限制。

第二方面：這與安全主任有未有足夠專業知識和能力有關。安全主任要具備豐富的安全知識及其它有關能力，才可提供合適又可行的意見給僱主，使工作順利及安全完成。只要安全做得好或卓越，是可以為僱主減低成本，亦為安全主任個人添加滿足感及為安全行業認受性帶來積水成河的效應。

3. 有意見表示安全主任的水平參差，你對此說法有什麼意見（如有認同的話，你認為箇中原因是什麼？）

首先我需指出註冊並不是有經驗的對等。現時只需要一年安全工作經驗就可註冊成為法例所需的安全主任。一年的工作經驗必未能勝任註冊安全主任的角色和乎合現今僱主的要求和期望。工作經驗不足是安全主任單獨執行工作的重大難題及障礙之一。如有「師父」制度，是可以對初入行的安全主任及安全行業整體有莫大的幫助。

再者，現時流行“Copy and Paste”的風氣對安全主任是有負面影響。例如寫安全守則或安全評估時，如果安全主任只懂得“搬字過紙”把以往別人的作品複製，而未有真正經過思考去剖析該工序及危害，這對安全主任在經驗和知識上的得著來講是害多於利，安全主任的質素也未能進步及實質提升。

4. 你對安全主任的持續專業進修在提升安全主任質數方面有什麼評價？

持續專業進修在提升安全主任方面是有可改善之處：例如現在政府的持續專業進修(CPD Programme)只認可有關於職安健的專業進修。

但政府忽視了其它如“Transferable Skills(可轉移技能)”等方面的重要性，例如溝通技巧，時間管理，組織能力訓練等等，這些可轉移技能,對安全主任的工作來講是十分重要的。故此我想提醒各安全主任，雖然政府短視或因法例詮釋原因，不納入可轉移技能課程在持續專業進修項目內，但我們都要注重它的重要性及對我們工作上所發揮的效能。

現時網上資訊發達，有系統尋找及處理安全資料是對安全主任的工作有絕大的幫助。

5. 林先生是本會前會長，你認為本會應朝著什麼方向發展，可以對會員、行業甚至社會更大的裨益？

我記得我在任時，將很大的資源及努力集中在兩方面。第一方面：註冊安全主協會主要服務註冊安全主任，以提升其專業和資歷以及保障註冊安全主任的利益。第二方面：作為一個專業團體，須和外界及其它行業專業團體多加接觸及往來。我更認為應多加著重第一方面的工作，而且第二方面的工作不能取代第一方面的重要性，否則便失去了成立協會意義。

此外我認為協會可針對職安健行業在社會的形勢去建造一個平台，令到會員更有效地發揮他工作上的角色，如多舉辦講座及參觀等活動，為新入行的安全從業員提供持續學習機會以達到相互溝通交流及邁向專業水準。

另協會本身應邁向爭取註冊安全主任每四年一次的延續註冊「Revalidation」由協會主理及審批。當後更應接辦註冊一事。此乃一長遠目標，但寄語各會長及會員,仍需有起步的一天。

Dinner with Chief Secretary



Mr. Stephen Siu, the President of SRSO had attended the Hong Kong Construction Association Lo Pan Patron's Day Dinner on 27 July 2012. During the event, Mr. Siu had briefly explained the Society of Registered Safety Officers to the Chief Secretary for Administration. Informed her that SRSO is willing to be consulted in giving opinions in safety matters



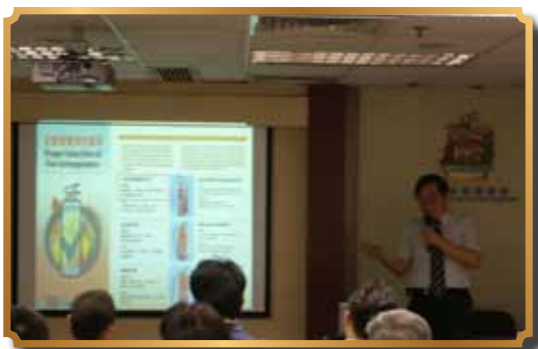
Photograph taken with Mrs Carrie Lam Cheng Yuet-ngor, GBS, JP, Chief Secretary for Administration

Safety Seminar on How Much Do You Know: Relationship between Classification of Fire and Proper Selection of Fire Extinguishers

Jointly organized with HKIE and SRSO on 14 September 2012, venue at HKIE Headquarter Boardroom.

Programme Highlights

To architects and building services professionals, the provision and maintenance of fire extinguishers are simple tasks. Their designs and methods of operation are not sophisticated at all, and the costs for their provision or



Speaker: Mr. Michael Leung, Past President.

Topic on "How Much Do You Know: Relationship Between Classification of Fire And Proper Selection of Fire Extinguishers."



This is a joint event of SRSO and HKIE, members of both organizations attended the seminar ardently.



Mr. Stephen Siu, President of SRSO in accompany with Mr. Michael Leung, Speaker chaired the Q & A section.

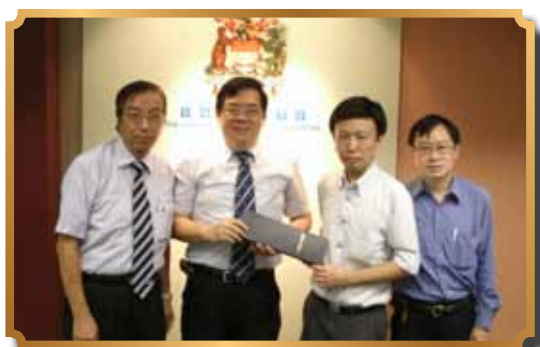
maintenance are extremely low when compared to other fire services installations in the building. Hence their proper selection has often overlooked or compromised.

To the fire engineering professionals, the least academic requirements are being asked for in the licensing of the class of fire installation contractors responsible for the installation and maintenance of fire extinguishers (Class 3 under the law). All one needs is the ability to read and write.

On the other hand, there are lots of incidents in which fire extinguishers did not function as effectively as they were intended to be. As the first line of defence, a proper fire extinguisher is very critical for life safety and in preventing a small fire from developing into a catastrophic one. An improper fire extinguisher is worse than no fire extinguisher at all, because the incumbent will risk his life in attacking a fire with a substandard tool.

Worse still, the licensing examination for Class 3 fire services installation contractor has been considered one of the most difficult public examinations. The passing rate, roughly calculated from the number of new licensees published in the Government Gazette, has consistently been only a few percent and in some years, like as recently as 2011, is almost zero. What has gone wrong?

The speaker addressed the problem on the proper selection of fire extinguishers from the perspective of a proper understanding of the classification of fire, as well as to dispel some myths on the knowledge of the choice of fire extinguishers.



HKIE presents souvenir to speaker.

An Interesting High Court Magistracy Appeal Case

by Leung Chiu Ming, Michael

Introduction

The High Court Magistracy Appeal Case HKSAR v Shun Tak Properties Ltd. ("Shun Tak") HCMA 1014/2006 recorded in [2007] HK CFI 68 and [2009] 3 HKLRD 299 has presented some interesting insights into the statutory duty of the owner of a commercial building towards the maintenance of a gondola which is owned by this property owner and used by a cleaning contractor. In this case, the gondola was used by an outside contractor Pollution and Protection Services Ltd. ("PPS") for external curtain wall cleaning.

The Admitted Facts of the Case

Shun Tak is the owner of Shun Tak Centre, a commercial cum office building, where the Hong Kong-Macau Ferry Piers are situated. The facades of Shun Tak Centre are curtain-walls which require regular cleaning. To facilitate such cleaning, gondolas owned by Shun Tak and suspended from the top of the building are installed. PPS is the contractor responsible for cleaning the curtain-walls using these gondolas. One day in 2005 while 2 PPS workers were on board one of the gondolas performing cleaning duty at the 38-39th level, the eastern luffing jib of the gondola failed and dipped down, while the western jib remained normal and functioning, thus tilting the gondola to one end and causing injuries to the workers. The cause of the failure of the eastern luffing jib was due to the thinning of the screw threads of the gearbox of this jib due to the lack of oil lubrication resulting in excessive wear and tear of the threads.

Shun Tak admitted that Shun Tak Centre was an industrial undertaking. Its main defence was that since 2003, it had consigned reputable maintenance contractors BESO and Score Success to maintain and repair the gondola by professional registered engineers. The contractual obligations included weekly, monthly and yearly examination in accordance with the requirements of the Factories and Industrial Undertakings (Suspended Working Platform) Regulations. The manufacturer's diagrams and technical data relating to the gondola were

also supplied to the maintenance contractors. Shun Tak had also adopted a system requiring the maintenance contractors to report any defects, and as a consequence to initiate repair to rectify the defects. There was no record of the gearboxes of the gondola having been replaced. Hence, Shun Tak considered itself should have discharged its statutory duty under s. 18(1) of the Factories and Industrial Undertakings Ordinance with all reasonable, practicable, adequate or reasonably practicable safety steps being taken. However, the magistrate applied the test laid down in *R v Fong Chin-yue* [1995] 1 HKC 21 and concluded that the offence in question was one of strict liability, in that "passive reliance on a maintenance contractor to make reports on defects as and when they were found came nowhere near discharging the statutory responsibility to ensure the gondola was in a proper state of maintenance," and deduced that Shun Tak did not have good and sufficient reason to believe that the gondola had been properly maintained. Without such belief, "the common law due diligence defence" cannot be established by Shun Tak.

Another two points of challenge submitted by Shun Tak in the appeal related to firstly the existence of query whether the eastern luffing jib's failure is really the result of a lack of proper maintenance. Hinted by the fact that the western jib was functioning normally, the cause of the failure of the eastern gear box should have been due to an abnormality rather than a lack of proper maintenance. Secondly, Shun Tak purported that the magistrate was wrong to require the periodical dismantling of the gearbox of the gondola to inspect the internal parts when there was no such professional or statutory requirement or manufacturer's recommendation to do so. These two points will not be addressed in this article.

Client vs Proprietor of an Industrial Undertaking

There are other points of interest in this case to a safety practitioner, other than the bones of contention mentioned above. In the first place, the owner of a commercial building hiring a cleaning contractor to

perform external cleaning of its curtain wall usually takes on the role of a client, not the proprietor of an industrial undertaking. Although under section 2 of the Factories and Industrial Undertakings Ordinance, external cleaning is considered as maintenance of a building and hence construction work, and that then definition of an industrial undertaking includes any construction work, the proprietor of an industrial undertaking should be the one who has management and control of the business carried on in such an industrial undertaking. In this case, the business should be the cleaning operation that construed the industrial undertaking, not the business operations inside the Shun Tak Centre itself. So, whether Shun Tak or PPS has the final management and control of this business should be subject to much debate. If the culprit of the industrial undertaking is the construction work so construed through the external cleaning work, then the contractor of the cleaning operation, viz. PPS, should be prosecuted instead, while Shun Tak's role remains as the client. In addition, Shun Tak was prosecuted as the "owner" of the gondola for failure to discharge the duties imposed on such owner under section 4 of the Factories and Industrial Undertakings (Suspended Working Platform) Regulation. Technically speaking, yes, Shun Tak can be considered as the owner because the gondola is the property of Shun Tak, not PPS. Yet, the definition of the "owner" of a gondola under the Factories and Industrial Undertakings (Suspended Working Platform) Regulation has been extended under section 3 of this set of Regulation to include "the contractor who has control over the way any construction work which involves the use of the suspended working platform is carried out and, in the case of a construction site, includes the contractor responsible for the construction site." By way of this extension of definition, the ownership of the gondola can be passed on to PPS. Since the Factories and Industrial Undertakings (Suspended Working Platform) Regulation is a subsidiary regulation of the Factories and Industrial Undertaking Ordinance, which is applicable only to the proprietor of an industrial undertaking and not the owner of an equipment installed in a commercial building unless this commercial building becomes an industrial undertaking and at the same time the owner of this equipment is also the proprietor of the said industrial undertaking, the whole argument again boils down to whether the management and control of the said works, in this case cleaning works, inside this industrial undertaking, viz. the Shun Tak Centre,

lies with Shun Tak or PPS, and if the former, whether it can be construed as the proprietor of this industrial undertaking. Finally, even Shun Tak's role is a client and not the proprietor of an industrial undertaking similar to many other building owners, whether Shun Tak still owes PPS's injured workers a duty of care under section 7 of the Occupational Safety and Health Ordinance in that as an occupier of the premises (Shun Tak Centre) and having exclusive management and control of the gondola, Shun Tak failed to ensure that "any plant or substances kept at the premises are, so far as reasonably practicable, safe and without risks to health." A major difference between this requirement and the provision under the Factories and Industrial Undertakings (Suspended Working Platform) Regulation is that the OSHO section 7 accepts "reasonably practicability" as a defence while the Factories and Industrial Undertaking (Suspended Working Platform) Regulation calls for strict liability.

Conclusion

The three points brought out above, viz. proprietorship of an IU vs client's role; ownership of the gondola; and occupier's general duty liability vs proprietor's strict liability, had not been tested in court in this case, and hence whether this case can be generalized to all building owners is still at doubt, though high court rulings are meant to be binding on subsequent legal considerations in similar cases. However, this case has rung the bell against the current thinking that the owner of a building is absolutely clean-handed in health and safety through hiring professional maintenance contractor and professional cleaning contractor to undertake work on their behalf. Works can be contracted out, not the legal liability in the protection of human life. Building owners still need to be vigilant in ensuring the safety of their equipment on loan for use by their contractors. Next time, if you are the client and your contractor worker wishes to borrow your equipment, such as a ladder, for use, check and ensure that the ladder is safe before lending it out.

N.B. Safety practitioners interested in reading the case can access it on-line by inputting the judgment case no. HCMA 1014/2006 into the judgment search box of the Website www.judiciary.gov.hk

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