

Medico-Legal Death Investigation Systems – Hong Kong

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ABSTRACT

The medico-legal investigation system in Hong Kong is a derivative of the British Coroner's system. Local needs led to some modifications that are different. Hong Kong introduced a schedule of twenty circumstances where death is reportable to the Coroner.

Keywords: Meeting next-of-kin; reportable deaths; waiver of autopsies.

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HISTORICAL BACKGROUND

Hong Kong was ruled by the British from 1841. As the British authority established its hold and control, the laws of Britain were effectively replicated in Hong Kong. Similarly beginning with the Coroners Act 1887, the HK Coroners Ordinance was promulgated. The introduction of this Coroners Ordinance in 1888 to Hong Kong was unwelcome by the local Chinese population who still held a huge suspicion on the merits of Western medicine. It did not help that along with the introduction of the Coroners Ordinance was the introduction of the practice of a post-mortem examination. This resistance remained until the outbreak of bubonic plague in Hong Kong in 1894. Where a death was suspected to be due to plague, personal items and even lodgings had to be sanitized and, in some instances, burnt. A post-mortem examination showing that death was not due to plague became a useful and practical way of saving precious personal belongings. Hence, slowly the practice of post-mortem examination took root in Hong Kong. Subsequent new Coroners Acts were followed by new Coroners Ordinance in Hong Kong, the last version being Hong Kong Coroners Ordinance 1989.

LEGAL REFORM

The Hong Kong Law Reform Commission initiated a review and reform of the work of the Coroner in Hong Kong, publishing its recommendations in the late 1980's¹. Despite the general acceptance of the recommendations, the proposal did not see enactment until the handover of Hong Kong to China in 1997. A new Coroners Ordinance 1997 was passed and came into effect in 1998. This Ordinance remains in effect to this day. Several key changes were made and are:-

- A. The creation of a Schedule of Reportable Deaths
- B. The duty to report such deaths should be imposed on the police, the Registrar of Births and Deaths and the doctor certifying the death.
- C. The publication of an annual report³.

Significantly, the proposal for the Coroner's office to have its own independent team of death investigators was rejected and this investigative role remains with the Hong Kong Police Force.

CURRENT LEGISLATION

This is the Coroners Ordinance, Cap 504 Laws of Hong Kong. Under this legislation the Coroners are appointed judicial officers empowered under the Ordinance to:-

- a. Investigate deaths
- b. Order autopsies
- c. Issue burial or cremation orders
- d. Provide causes of death after an investigation to the Registrar of Death
- e. Hold inquests and issue riders if appropriate

SCHEDULE OF REPORTABLE DEATHS

There are twenty circumstances of death that are reportable to the Coroner and it is included under Part 1 Schedule 1 of the Coroners Ordinance Cap 504 Laws of Hong Kong² (Fig. 1). Failure to report a death is punishable by a fine or even a short prison sentence although no such penalty had been ordered to date.

Appendix I – The 20 Categories of Reportable Deaths

- Death the medical cause of which is uncertain
- Sudden / unattended death, except where a person has been diagnosed before death with a terminal illness
- Death caused by an accident or injury
- Death caused by crime
- Death caused by an anaesthetic or under the influence of a general anaesthetic or which occurred within 24 hours of the administering of anaesthetic
- Death caused by a surgical operation or within 48 hours after a surgical operation
- Death caused by an occupational disease or directly / indirectly connected with present or previous occupation
- Still birth
- Maternal death
- Deaths caused by septicaemia with unknown primary cause
- Suicide
- Death in official custody
- Where death occurred during discharge of duty of an officer having statutory powers of arrest or detention
- Death in the premises of a Government department any public officer of which has statutory powers of arrest or detention
- Death of certain mental patients (as defined by law) in a hospital or in a mental hospital
- Death in a private care home
- Death caused by homicide
- Death caused by a drug or poison
- Death caused by ill-treatment, starvation or neglect
- Death which occurred outside Hong Kong where the body of the person is brought into Hong Kong.

Figure 1: Twenty circumstances of death which are reportable to the Coroner

MEDICOLEGAL INVESTIGATION

All deaths are reported to the Coroner either by registered medical practitioners or the Hong Kong Police who are first responders to persons who have died outside a hospital. Very rarely, they may be reported to the Coroner by the Registrar of Births and Deaths upon receiving a questionable medical certificate of the cause of death. Reportable deaths in hospitals will be managed by anatomical pathologists whereas deaths outside hospitals will be managed by forensic pathologists.

Interviews with the next-of-kin are held for every reportable death in Hong Kong. This practice originated from one of necessity as medical doctors were fluent in the local dialects and could converse with the next-of-kin without the need of translators but were also fluent in English and can report to the Coroner the essential information and findings. This interview has continued to this day and has proven to be a great opportunity to discuss the circumstances of death as well as the views of the next-of-kin towards an autopsy as well as their preferences for burial or cremations. In 2022, cremations are preferred and represent over 90% for all deaths in Hong Kong.

ATTITUDES TOWARDS AUTOPSIES

In most cases, next-of-kin do not want an autopsy. This is particularly true for elderly deceased individuals with histories of chronic illnesses. Next-of-kin are now entitled to file an application for waiver of the autopsy requirement to the Coroner. The role of the attending pathologist is to provide the Coroner with relevant medical histories and findings as well as a professional recommendation for or against an autopsy. Specifically, the pathologist is asked to inform the Coroner if a “plausible” cause of death can be found without an autopsy. The Coroner will then have to consider the preliminary findings of the police and decide on the need for an autopsy. Increasingly, next-of-kin have taken to requesting to have an audience with the Coroner to express their personal views to him/her. This has become possible because following the return of Hong Kong to China, most judicial officers are now fluently bilingual. It has however meant that the workload on the Coroner has increased because such meetings are time consuming and emotionally taxing.

The autopsy rate for reportable deaths has slowly but steadily declined (Table 1).

Table 1: No. of deaths, public inquests and autopsies conducted (1981-2020)

Year	Total Annual Deaths	Reportable Deaths (% of Total)	No. of autopsies (% of reportable deaths)	No. of public inquests (% of reportable deaths)
1981*	24978	5854 (23.4)	n/a	245 (4.2)
1986*	26030	5777 (22.2)	n/a	224 (3.9)
1990 [@]	29021	6949 (23.9)	4986 (71.8)	n/a
1995 [@]	30894	7214 (23.4)	5260 (72.9)	n/a
2000 [#]	33907	7852 (23.2)	4685 (59.7)	184 (2.3)
2005 [#]	38683	9506 (24.6)	3951 (41.6)	189 (1.9)
2010 [#]	42705	9999 (23.4)	4261 (42.6)	172 (1.7)
2015 [#]	46757	10767 (23%)	3419 (31.8)	100 (0.93)
2020 [#]	50853	12680 (24.9)	3184 (25.1)	74 (0.58)

*Data from Law Reform Report, [@]data from Coroners Annual Report, [#]data from Coroners Annual Report.

AUTOPSIES

All medico-legal autopsies are performed by pathologists in Hong Kong at public mortuaries or hospital mortuaries. Medico-legal autopsies are free-of-charge, paid for by the public purse. Any additional tests including histology, microbiology, virology, and even molecular biology are free and performed as indicated and at the discretion of the pathologist concerned. Toxicology is performed on selected cases and the analysis provided again free of charge by the Forensic Division of the Government Laboratory.

AUTOPSY REPORTS

The Coroners Ordinance dictates that the autopsy report on reportable deaths can only be released to the Coroner with a copy going to the Commissioner of Police. The Coroner has the discretion to then release the report to interested parties.

INQUESTS

Open public inquests are held in only a small percentage of cases (Table 1). Such inquests are mandatory for all deaths under custody where it is also held together with a jury. For all inquests, the hearing is open to the public and press. Parties may be represented by lawyers at their own expense. In Hong Kong, inquests can be quite lengthy.

VERDICTS

The Coroner’s Inquest in Hong Kong is styled as an inquiry with fact finding as its primary goal and is legally obliged

to warn against self-incrimination by witnesses. Verdicts commonly include:-

- a. Death due to natural cause
- b. Death due to an accident
- c. Death due to suicide
- d. Death due to unlawful killing
- e. Death due to justifiable killing
- f. Open verdict

Where the inquest verdict is death due to unlawful killing, there is no naming of an individual and the case will be referred to the Department of Justice for consideration of criminal proceedings.

In many cases where the death may be ruled to be due to natural causes or an accident, the parties are free to use the evidence obtained through the inquest for further civil proceedings or in cases involving healthcare professionals for disciplinary hearings.

Figure 2 shows the flow as a death works its way through the Coroner’s procedures.

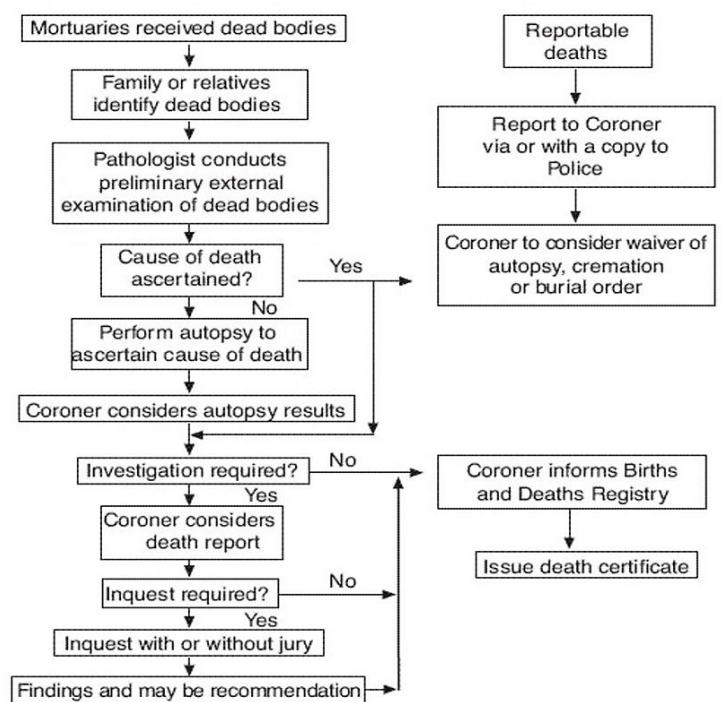


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THE FUTURE

Hong Kong is just at the verge of introducing the use of post-mortem CT imaging at one of its public mortuaries. It remains to be seen what the impact will be. It is likely that this will lead to a further decline in the traditional autopsy.

REFERENCES

1. Law Reform Commission. *Report on Coroners (Topic 14)*. Available from: <https://www.hkreform.gov.hk/en/docs/rcoroners-e.pdf>.
2. Hong Kong e-Legislation. *Coroners Ordinance Cap 504*. Available from: <https://www.elegislation.gov.hk/hk/cap504>.
3. Hong Kong Judiciary. *Coroners Annual Reports*. Available from: https://www.judiciary.hk/en/publications/publications2.html#con_report