

# Break the silence

**Grenville Cross** says it is unacceptable that, 15 months after the ICAC began investigating Donald Tsang's alleged improprieties, the former chief executive's fate still isn't known

**"Justice delayed is justice denied,"** says a legal maxim. If a criminal case is delayed, a trial may be stayed – if the delay has caused prejudice; while a convicted defendant may receive a reduced sentence because of the trauma he or she has faced. Suspects, therefore, must know their fate within a reasonable time, and not be left in suspense.

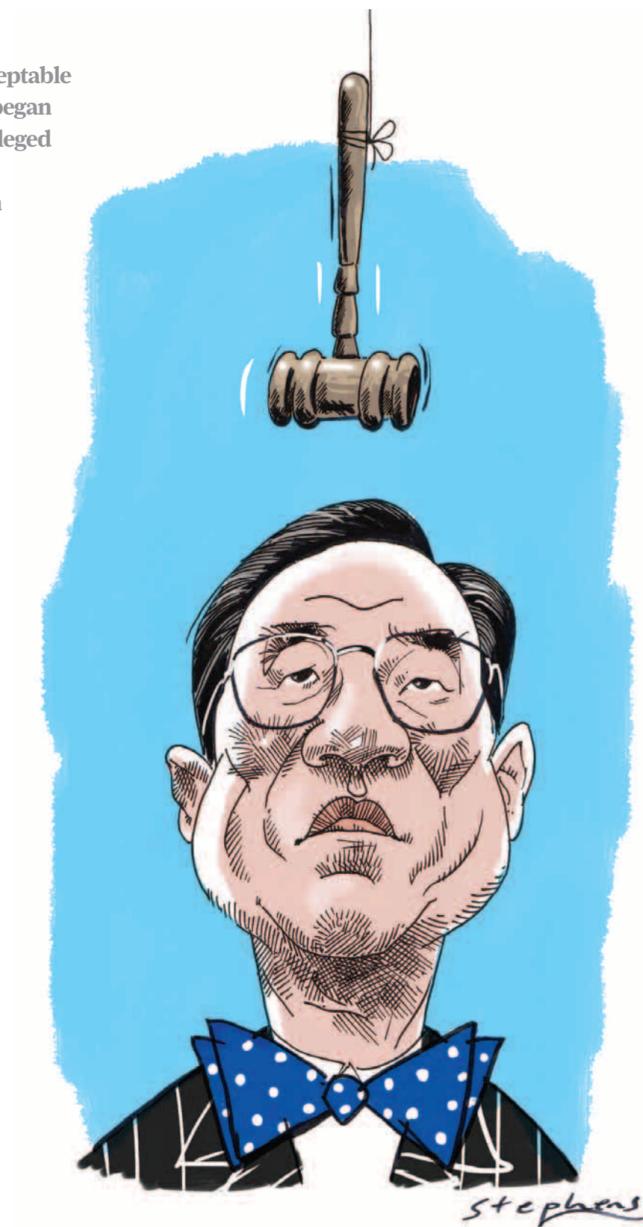
Although the former chief executive, Donald Tsang Yam-kuen, was referred to the Independent Commission Against Corruption on February 25 last year, for allegedly improper associations with tycoons and extravagant living, 15 months later the case is still outstanding – and Tsang is entitled to be put out of his misery.

After all, experienced investigators are handling the case and the evidence seems relatively straightforward, which makes the delay all the more surprising. There could of course be more to the allegations than has been reported, but Tsang and the public need to know what is happening. It is, however, no ordinary case, as events have shown.

Firstly, once the investigation started, then secretary for justice Wong Yan-lung, as chief prosecutor, declined to announce his withdrawal from the case, notwithstanding that he was Tsang's legal adviser. His input into the case, until he left office four months later, may never be known. What is known is that his successor, Rimsy Yuen Kwok-keung, did not follow his example and, once allegations of impropriety against the current chief executive, Leung Chun-ying, were lodged with the ICAC in January, he promptly handed responsibility to the director of public prosecutions who had "no connection with the persons involved in the cases".

Secondly, last November, a spokesman for the Prosecutions Division, with dreadful timing, announced that there was no pressing need for Hong Kong to have an independent DPP as the existing system was working well. Although this will have played well with ministers, it jarred with those who felt the system should be depoliticised, particularly as Tsang and other senior officials were all facing possible prosecution. In 2011, at least five government ministers had escaped prosecution, for undisclosed reasons, for having allegedly illegal structures on their properties, and this lamentable precedent has done little to inspire public confidence in the proper disposal of Tsang's case.

Thirdly, although the ICAC's former director of operations, Daniel Li Ming-



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chak – who was due to retire in April 2012 – was retained until July 31 last year to enable him to complete the Tsang investigation, the case is still outstanding. If Li completed his task before he retired, why has there been a deafening silence since? Independent legal advice has to be obtained, but this cannot begin to explain a delay of this magnitude. The impression of deliberate foot-dragging, or worse, is inescapable.

Fourthly, although Tsang himself indicated in March that the case was still alive, when he said it would be inappropriate of him to join the Chinese People's Political Consultative Conference until matters were settled, he revealed nothing of its actual progress, presumably because he did not know.

Fifthly, after the news broke recently of the alleged misuse of public money by the ICAC's former commissioner, Timothy Tong Hin-ming, some people noted that Tong was a Tsang appointee. Fears were also expressed that the scandal could weaken the ICAC at a time of crisis, with numerous high-profile cases on the boil. Although Tong had properly recused himself from the Tsang investigation, the crisis now engulfing him has inevitably raised questions about the prevailing culture at the top of the ICAC.

After all, the allegations concerning Tong and Tsang are not dissimilar, involving extravagance and a disregard of proprieties, and the inordinate delay in Tsang's case may fuel suspicions that matters are not being appropriately pursued. Something must be done therefore to reassure the public, and soon.

The ICAC commissioner, Simon Peh Yun-lu, reports to the chief executive and Leung must ascertain if Peh is on top of his game. A progress report should be sought and reasons given for the delay. If the cause of the delay lies not with the ICAC but with the department of justice, Leung must ask the justice secretary to expedite the legal advice. For their part, Peh and Yuen should be prepared to bang heads together in their own departments, if that will get things moving. If the chairman of the ICAC's operations review committee, Michael Sze Cho-cheung, can also galvanise things internally, so much the better.

While a sensitive or complicated case must not be rushed or prejudiced, there has been ample time for a full investigation and legal advice. If a decision has been taken on Tsang's case, as seems likely, there can be no basis for withholding it, even if it is controversial.

If Tsang is to be prosecuted, he should be charged, and taken to court. If not, he should be informed, and the reasons made public. Either way, Tsang must be told his fate, as basic justice requires.

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## Poor equality

**Louisa Mitchell** says our great social achievement of educating more girls is being threatened, along with their bright future, by rising youth poverty

University students have just about finished their exams. Those few weeks of sleepless nights, caffeine overdoses, fast food and unwashed clothes worn again are over and the long wait for the results is beginning.

Roughly the same proportion of young women as men will have gone through the agonising past few weeks. Women constitute just over half of all students in Hong Kong's public universities today.

One of Hong Kong's greatest social achievements of the past few decades has been the turnaround in girls' education.

A recent study for Civic Exchange and The Women's Foundation, titled "The Changing Faces of Hong Kong", shows that 70 per cent of women aged 60 or over in 2011 had either no education or had only been to primary school, whereas only two per cent of women in their 20s were in that position (That's still two per cent too many, however).

The study also shows that 53 per cent of women in their 20s in 2011 achieved a post-secondary education (degree or non-degree). In 1991, that figure was 18 per cent.

Improved levels of educational attainment are a critical factor in improving women's and girls' lives. The recent study also shows that women in their 20s have achieved equality of earnings with men, before marriage, family responsibilities and other limitations when they reach their 30s start to create a gap.

The median monthly employment earnings for women and men in their 20s in 2011 was HK\$10,000 when foreign domestic helpers are excluded. (The previous column in this series discussed the uncomfortable fact that earnings equality has been achieved at the expense of domestic helpers.)

However, inflation-adjusted earnings analysis shows that real earnings for men and women in their 20s have actually declined over the past decade from just over HK\$11,000 in 2001 to HK\$10,000 in 2011. They are worse off today than in 2001.

And they are only marginally better off than 20 years ago, with real earnings at just over HK\$9,000 in 1991.

So we have a situation where women's educational attainment levels have improved dramatically, but young people's real earnings have stagnated.

In addition, the proportion of young men and women aged 25-34 who are living with their parents has increased as they marry later and property prices escalate.

Parents work hard to put their children through university, in the hope that they will have a bright future, but youth poverty is increasing. Career prospects are narrow in a society with little job diversity and there are limited options to share in the proceeds of economic growth.

If this continues, those few weeks of revision, instant noodles and dirty clothes will not seem like a hardship compared to the disappointment of real life.

It is a tremendous step forward for Hong Kong's women that the education gap and the earnings gap for young people starting out in their 20s has closed, but it will be wasted if we allow our young people to suffer the consequences of growing youth poverty.

Louisa Mitchell is an independent social policy researcher. This article is part of a series on women and gender issues, developed in collaboration with The Women's Foundation

## Heartless treatment of Lamma ferry victims' families shames government

The release of a detailed report by an independent commission into last October's Lamma ferry disaster should have brought the saga to a close, but the handling of the aftermath by the government has been disappointing.

It has infuriated many, especially the families of the victims. They were particularly angered by the fact that Director of Marine Francis Liu Hon-por apparently knew nothing of the department's "systemic failings" which had contributed to the tragedy in which 39 people died when two vessels collided. And to add salt to the wounds, Liu didn't even make a public apology to the families. Their anger is understandable.

The families wrote to Chief Executive Leung Chun-ying, questioning the professionalism of some officers in the Marine Department and demanded that the government hold the department responsible. But, in return, all they got was a lukewarm bureaucratic response from the chief executive's private secretary, that sounded like a carbon copy of an earlier press release. Leung didn't bother to write to the families himself.

The letter followed the official line that the Marine Department attaches great importance to the views and recommendations of the commission of inquiry in its report, and will follow them up in a full and earnest manner, etc, etc. How callous. The government has disregarded the feelings of its people, preferring to protect its own kind at the expense of the public good.

Some have speculated that the government's refusal to apologise for the incident is to

**Albert Cheng** says lack of an apology and the internal inquiry into Marine Department's failings show that officials are protecting their own



avoid opening the floodgates to damages claims. But the government is not an individual or a commercial entity. It would be understandable if the administration were to shoulder the blame if one of its departments had made mistakes. And it could certainly afford any payouts that were ordered, especially as it is willing

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to spend millions of dollars every year on public firework displays during festive times.

By refusing to own up to its mistakes and compensate families of the deceased, the administration looks callous and cruel. It is certainly not the people-focused, caring government that it perceives itself to be.

Furthermore, the ongoing internal investigation pledged by the government following the inquiry's report is nothing more than self-preservation, with its own people investigating its own people. How independent and

reliable can such an inquiry be? One thing is for sure – we will never get to the bottom of things this way.

The deputy director of marine, Ivan Tung Hon-ming, has been assigned to head the internal inquiry. Yet, senior marine staff will not be questioned unless new information comes to light, according to Secretary for Transport and Housing Professor Anthony Cheung Bing-leung. That means Liu, and for that matter Tung, will not be investigated, as simple as that.

I have reservations about any internal investigations, but at least the inquiry by the Independent Commission Against Corruption into alleged overspending of public funds by its former commissioner, Timothy Tong Hin-ming, appears to be better managed.

In order to appear whiter than white, the justice secretary issued a directive requiring ICAC investigators to fulfil three requirements: they should not have attended any functions or activities organised by Tong; they should have no direct or indirect personal association with him outside work duties; and there should be no practical or perceived conflict of interest in the course of investigation.

The Marine Department's internal inquiry certainly pales by comparison in terms of transparency, level of authority, and degree of impartiality.

One important factor that shouldn't be overlooked is that the focus of the investigation is not only limited to the two vessels involved, but more than 300 vessels that have been examined by the department; their safety standards and seaworthiness are now in doubt.

The professionalism of those involved in dealing with all these vessels has been called into question. Everyone in the Marine Department is somehow involved, to varying degrees, so it's definitely inappropriate for it to conduct its own investigation.

Simply put, the government has been unsympathetic to the families of victims and irresponsible in its handling of the aftermath of the tragedy. Thus far, only the captains of the two boats are facing criminal charges. The government has shielded the Marine Department from being accountable for the tragedy, despite the fact that it has failed abysmally in upholding its role as inspector, regulator and prosecutor.

With this heartless behaviour, it's no wonder the government's approval rating has plummeted to a new low of less than 30 per cent in the latest findings, while public disapproval levels have shot up to a new high of more than 50 per cent.

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## US should tread carefully, and mind with whom it mixes

**Lau Nai-keung** says HK's political reform is none of America's business

Stephen Young, the outgoing US consul general of Hong Kong and Macau, is considered a sensitive figure here because of his alleged association with "colour" revolutions, particularly the Tulip Revolution in Kyrgyzstan, where he served as ambassador. Young's high-profile and outspoken style has also raised eyebrows in Hong Kong diplomatic circles, gaining him some official rebuttals from Beijing. Just before he steps down, he could not refrain from commenting last week on Hong Kong's constitutional development. This time, the reprimand was swift and severe, and from both here and Beijing, which cited the Vienna Convention regarding diplomatic behaviour, which forbids diplomats from interfering in the internal affairs of host states.

The message is crystal clear: this is none of America's business. The hidden signal is also easy to decipher: Hong Kong's sovereignty and governance are part and parcel of China's core interest and are therefore untouchable. Both the US State Department and Young's successor, Clifford Hart, another sensitive figure with his military and national security background, should take heed. The consequences of any serious misjudgment, either on the Chinese or American side, would be felt around the world.

Let's go back to the early 1980s, when the British initiated negotiations with China about Hong Kong's political future. At the time, China was considered

poor and weak, and a majority of Hongkongers feared for China's future, believing that another Cultural Revolution could erupt at any time. As a result, the British seriously misjudged China's determination to regain sovereignty over Hong Kong.

Today, some people seem to think that with the media and the legal system on their side, and with dissident politicians leading a horde of brainless "red guards", they can force the central government to concede to their demands and ultimately

**There is no upside to this ... the vital interests of two powers are at stake**

seize power through the chief executive election, leaving China with nothing but symbolic sovereignty. Failing that, they would initiate "Occupy Central 2.0" and precipitate another "Tiananmen incident" to bring the central government to its knees, or at least inflict great damage on the country and this city.

These desperados simply hate China and don't want to be Chinese, and as such they refuse to understand the country and its history. They should at least try to learn something about what happened during the long

and drawn-out Sino-British negotiations that extended later into the Joint Liaison Group. Reading something about President Xi Jinping (习近平) might help, too.

In a nutshell, never underestimate China's determination when it comes to matters of sovereignty and national integrity. It is not just a matter of face; to every self-respecting Chinese, and there are more of them every day, this is the truth. No government can be seen short-selling China.

Looking at the present situation, it's clear that the dissidents will test the will of the central government, but it will be at their own risk. And God help the innocent adolescents who do not know what they are doing and what the price of their actions will be. It is immoral for the dissidents to intentionally drag secondary-school children into their political plot. As for the Americans, it is really in their best interests to poke at the core interest of a country with a population four times as big as theirs, and for a suicidal campaign organised by rank amateurs? There is no upside to this, and the vital interests of two powers are at stake.

Finally, here's some advice for the next US consul general, for what it's worth: never associate with the bad or the stupid. And stay well away from those with both attributes.

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