

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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立法會秘書處
法案委員會秘書
劉國昌先生
(傳真: 2121 0420)

劉先生,

《2008 年道路交通法例(修訂)條例草案》委員會

在二零零八年四月二十二日法案委員會會議上，委員要求當局提供 *Lau Shu Wing*, HCMA 1124/1998 一案判詞的副本；該份判詞曾於 *HKSAR and Wong Man* (HCMA 1088/2006) 一案中有所提述。而 *HKSAR and Wong Man* 一案的副本已載於立法會 CB(1)1272/07-08(02)號文件附件 B。

隨函附上 *Lau Shu Wing*, HCMA 1124/1998 一案判詞的副本(見附件，只有英文本)。我們希望指出，該案約於十年前審理，當時血液中酒精濃度訂明限制尚未收緊；較前嚴格的限制於一九九九年十月生效。審理該案的高等法院法官認為，裁判官在判處取消駕駛資格期限時把違例者呼氣樣本的酒精濃度列為考慮因素，原則上並無錯誤。在分別於二零零四和二零零七年審理的 *HKSAR and Tse Wai Lun* (HCMA 401/2004) 和 *HKSAR and Wong Man* (HCMA 1088/2006) 兩宗案件中，這項原則再度獲得確認及進一步闡釋。兩宗案件的判詞副本已載於立法會 CB(1)1272/07-08(02)號文件附件。

運輸及房屋局局長

(羅淑佩

代行)

二零零八年四月三十日

HCMA1124/98

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
(Appellate Jurisdiction)
MAGISTRACY APPEAL NO. 1124 OF 1998

BETWEEN

HKSAR

Respondent

and

LAU SHU WING

Appellant

Before Stock J. in Court

Date of hearing : 8th December 1998

Date of judgment : 8th December 1998

J U D G M E N T

At about 11 p.m. on 18th September 1998, the appellant was driving his vehicle along a slip road to the Island Eastern Corridor and he was involved in a collision with two other vehicles. He was subjected to a breath test which was positive, showing 87 micrograms of alcohol in 100 millilitres of breath. At the police station there was another test, referred to as an evidential breath test, which revealed 76 micrograms of alcohol in 100 millilitres of breath, that is more than twice the permitted level, which is 35 micrograms, and so he was charged with driving with an alcohol concentration above the prescribed limit.

He pleaded guilty before the magistrate who fined him \$7,000 and disqualified him from driving for 18 months. The magistrate made an assumption in his favour that he was blameless in the accident.

In imposing that length of disqualification, the magistrate was motivated largely by the fact that the concentration of alcohol was very high — as I say, more than twice the permitted level. The magistrate noted that the appellant was a man of no previous convictions, but also that there was no special reason to explain his driving with such a high alcohol level, the appellant having put forward the fact that he had been entertaining that evening.

It is said that the sentence is too severe given, in particular, that the drinking in fact led to no danger and was not said to be bad.

My attention is drawn to the fact that as a matter of statistics and known practice, first offenders who plead guilty to offences of this kind are normally fined and suspended from driving for 12 months, and in his appeal against the period of disqualification, the appellant's counsel suggested that that is the appropriate suspension which ought to have been imposed in this case.

But in my judgment, the magistrate is perfectly entitled to take a more serious view the higher the level of alcohol in the breath, and where it is over two times the permitted level, it would be surprising if the disqualification were not higher than 12 months, regardless whether an accident has been occasioned and regardless whether the driver has caused an accident.

I am not in the circumstances prepared to say that the period of disqualification was either manifestly excessive or wrong in principle and this appeal is dismissed.

(F. Stock)
Judge of the Court of First Instance,
High Court

Mr Wesley Wong, SADPP (Ag), of Department of Justice, for the HKSAR

Mr J.Cheung, inst'd by M/s Gary Mak, Dennis Wong & Chang,
for the Appellant