

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

政府總部
運輸及房屋局
運輸科
香港花園道美利大廈



Transport and
Housing Bureau
Government Secretariat

Transport Branch
Murray Building, Garden Road,
Hong Kong.

電話 Tel. No.: 2189 2014

傳真 Fax No.: 2104 7274

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30 April 2008

Mr Andy Lau
Clerk to Bills Committee
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road
Central, Hong Kong
(Fax 2121 0420)

Dear Mr Lau,

**Bills Committee on
Road Traffic Legislation (Amendment) Bill 2008**

At the meeting of the Bills Committee on 22 April 2008, the Administration was requested to provide a copy of the judgment of the case *Lau Shu Wing*, HCMA 1124/1998, which is referred to in the case of *HKSAR and Wong Man* (HCMA 1088/2006) attached at Annex B to LC Paper No. CB(1)1272/07-08(02).

A copy of the judgment of the case *Lau Shu Wing*, HCMA 1124/1998 is attached at the **Annex** (only English version is available). We wish to point out that this case was heard some ten years ago, before the tightening of the prescribed limit of the level of alcohol concentration which took effect in October 1999. The High Court Judge in this case commented that it was not wrong in principle for the magistrate to consider the level of alcohol in the breath of the offender in handing down the sentence on the period of disqualification. The same principle has been reaffirmed and further elaborated in the two cases, *HKSAR and Tse Wai Lun* (HCMA 401/2004) and *HKSAR and Wong Man* (HCMA 1088/2006), heard in 2004 and 2007 respectively, as annexed to LC Paper No. CB(1)1272/07-08(02).

Yours sincerely,

(Rosanna Law)
for Secretary for Transport and Housing

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