



Author : Dr. LILY K.B. FENN,
LL.B., MAv., LL.D. (Hon.);
Solicitor (Hong Kong; England & Wales),
Solicitor and Barrister (Australian Capital Territory),
Solicitor and Advocate (Singapore);
PPL (Aeroplanes) and PPL (Helicopter).



AIRCRAFT ACCIDENT INVESTIGATION

HUMAN FACTORS & LEGAL CHALLENGE

It is a great pleasure and honour of our law firm to sponsor and publish this book written by our Senior Partner for raising funds for the Hong Kong Air Cadet Corps, which is a charitable organisation in Hong Kong dedicated to the promotion and fostering of aviation culture, knowledge and skills, and to help develop amongst the youth, by example and inspiration, the qualities of discipline, leadership and good moral character since 1971. The funds shall be used for the establishment of a helicopter operation base and a camping site for the Corps.

The learned author intends to provide guidance to lawyers practising in the private sector, be they acting for the airlines, pilots, victims of accidents or their personal representatives, and to assist aircraft manufacturers, Airport Authorities, regulators and other relevant government departments, insurance companies and accident inspectors to tackle and understand aircraft accident investigation and to identify human failure or human factors in the causation, with the view to prevent a similar accident in the future, or to establish liability.

This book attempts to generalise from the aviation situations and generate a heuristic template which could be applied to any type of accident/incident investigation leading you to the root of the contributing factors and causation.

Given the vast experience, knowledge and expertise of the learned author in both civil litigation and aviation, this book provides a valuable bridge between the legal and aviation disciplines.

We are proud to be sponsor and the publisher of this book for such a meaningful cause as a prelude to the celebration of the 25th Anniversary of the learned author's legal practice in Hong Kong in the year 2009.

LILY FENN & PARTNERS,
Solicitors and Notaries,
Hong Kong Special Administration Region
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AIRCRAFT ACCIDENT INVESTIGATION HUMAN FACTORS & LEGAL CHALLENGE

ABSTRACT

From the case studies on various important aircraft accident investigation reports both in New Zealand and Hong Kong, this publication suggests that they are deficient and inadequate in a number of ways. As a consequence, they may be challenged either on merit or procedure, or both.

In this study, various analytical human factors tools are examined and considered in relation to their potential contribution to challenging the merits of investigative reports. In addition, the legal aspects of these reports are also examined to determine how extant legislation and common law could be applied to challenge the reports on the basis of law and procedure.

It is demonstrated in the analysis how aircraft accident investigation and the reports that are compiled can be challenged on different fronts. Procedural irregularities, such as inadequate opportunity given to those adversely affected to be heard, acting beyond the terms of reference of a public inquiry, or the lack of independence of the investigation itself, may give rise to a cause of action to have the report quashed completely or partially. Those whose reputation is adversely affected may challenge the findings and conclusions in the Board of Review by calling independent experts to attend the hearing to challenge the opinion given by the Chief Inspector. Parties to Court proceedings may seek discovery or disclosure of the records or information collected in the investigation and ask the Court to rule on the causation of the accident in personal injury cases.



KEY POINTS:

- First Publication in Hong Kong to Bridge Legal and Aviation Disciplines
- Practical Application of Human Factors Analysis Tools
- Heuristic Template Applicable to Any Accident
- Methods to Challenge Findings on Merits, Law and Procedure
- Succinct Analysis of Legal Position
- Assist Establishment of Liability
- Limited Edition (500 luxurious copies) with hard covers, thread-sewn, acid-free paper, accented on all 6 surfaces with gold foils
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READERSHIP:

- Lawyers
- Pilots, airlines, aircraft manufacturers
- Accident investigators, insurance companies
- Safety officers, risk management personnel



Among the different channels or methods of investigation, the Chief Inspector's reports are most vulnerable to challenge given the legal position in Hong Kong and the lack of statutory non-disclosure protection of the records, information and evidence gathered, and the compellability of the Inspectors to give evidence in Court.

Aircraft accident investigation reports may, at best, be used or taken as a piece of evidence setting out the factual information of the accident, and as an expert opinion of the probable cause thereof in subsequent civil proceedings in establishing the causation of the accident and liability in common law negligence in personal injury or fatal accident cases. Those reports are by no means conclusive or binding on the parties or the Court in civil proceedings, and issue estoppel does not arise.

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ABOUT THE AUTHOR

Dr. Lily Fenn is the senior partner of Lily Fenn & Partners, Solicitors and Notaries of the Hong Kong Special Administrative Region, and Head of their Litigation Department.

Lily acquired her Bachelor of Laws degree in the University of Hong Kong in 1981 and was qualified as a Solicitor of the Supreme Court of Hong Kong (as it then was) in 1984, and has been practising in the private sector since then. Subsequently, she was further admitted as a Solicitor in England and Wales (1988), Solicitor and Barrister of the Australian Capital Territory (1989), and Solicitor and Advocate of the Republic of Singapore (1991).

In the legal profession, Lily is one of those very few legal practitioners with rare experience and expertise in handling appeals to the Privy Council of the United Kingdom and the Court of Final Appeal in Hong Kong in complex litigation involving substantial amounts or of great general and public importance. She is a frequent speaker at law seminars and Continuing Professional Development courses accredited by The Law Society of Hong Kong for the professional training of lawyers and Trainee Solicitors.

Lily is also a keen aviator. She started to learn flying fixed-wing aircraft in 1995 and obtained a Private Pilot Licence (Aeroplanes) in 1996. In 2002, Lily further acquired a Private Pilot Licence (Helicopter) in Australia. Currently, she is type-rated on eight types of aircraft, namely, Cessna 152 and 172, Partenavia PN68 (twin-engine), Robinson helicopters R22 and R44, Bell 206 JetRanger (turbine), Eurocopter EC120B (turbine) and Eurocopter AS350B2 (turbine).

To further advance her knowledge in aviation, Lily enrolled with Massey University (New Zealand) in its Master of Aviation degree course (MAv) in 2003. It covers International Air and Space Law, Air Safety and Aircraft Accident Investigation, Management of Aviation Regulatory and Safety Systems, Aviation Strategic Management, Aviation Research Methods, Human Factors for Professional Aviation and the like. She graduated in 2008. The topic of this book is derived from and based on her Thesis and researches conducted in the course.

Given her knowledge, experience and expertise in law and aviation, Lily and her law firm provide professional legal advice and services in handling applications to the Air Transport Licensing Authority for scheduled flight route licensing, and to the Civil Aviation Department for Air Operator's Certificate and deal with all related regulations and requirements, sale and purchase of aircraft, aircraft financing and leasing, registration, security and enforcement, aircraft accident investigations, advising on aviation offences, aviation related claims and Court proceedings. Lily set up the Aviation Department in Lily Fenn & Partners to provide advice to the fast growing aviation industry in Hong Kong and Mainland China.

Lily was granted a Doctor of Laws (Hon.) degree by Armstrong University in California, and the World Outstanding Chinese Award in 2007 in recognition of her achievements. She is a Liveryman of the Guild of Air Pilots and Air Navigators of the City of London in the United Kingdom, Specialist Flight Lieutenant of the Hong Kong Air Cadet Corps, Vice-President of the Hong Kong Helicopter Club Limited and director of GAPAN (Hong Kong Region) Youth Flying Scholarship Limited.



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