

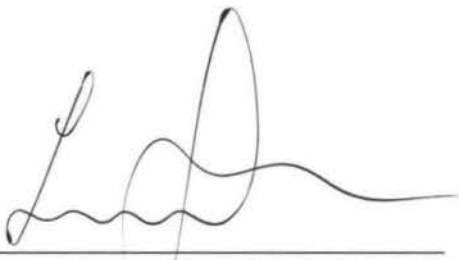
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# AIRCRAFT ACCIDENT INVESTIGATION

## Human Factors & Legal Challenge

by

Lily K.B. Fenn

A handwritten signature in black ink, consisting of a large, stylized 'L' followed by a series of loops and a long horizontal tail. The signature is positioned above a solid horizontal line.

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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 study 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.

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.