

URBAN PLANNING AND  
**ENVIRONMENTAL  
 LAW REPORT**

簡 家 驄 律 師 行 · 城 規 環 保 簡 訊

The efficacy of any system of environmental law depends on the rigour of its enforcement. In this issue, therefore, our feature turns to the question of how Hong Kong courts are punishing environmental offenders. We examine information on environmental prosecutions compiled by the EPD this year and consider whether existing penalties and sentencing practices are adequate to deter environmental offenders.

In the *Caselaw Update* we review a recent case on the law of private nuisance and strict liability, perhaps the first case of its kind ever to have reached the Hong Kong Court of Appeal.

The International section completes the second part of a two-part contribution from our Canadian correspondents on the environmental audit and examines the question of how environmental audits may be protected by professional legal privilege. We also report on a recent determination under the GATT concerning the unsuccessful use of US environmental law to restrict the import of tuna caught by Mexican fishing teams.

With this issue we also enclose information about the American Bar Association's conference on *Trade and the Environment in Pacific Rim Nations* which will be held in Hong Kong 15-17 February 1993.

May we take this opportunity to send our readers season's greetings and best wishes for a happy and prosperous new year.

The Editors

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*Sentencing Environmental Offenders in Hong Kong*

SINCE our July issue we have been bringing you a summary of environmental convictions based on prosecution figures issued by the EPD. With statistics now spanning six months (figures for July, August and September recently came to hand), it seems appropriate to reflect on the enforcement of environmental legislation in Hong Kong.

This is especially timely given the EPD's continuing criticism of Hong Kong magistrates for being 'too soft' with fines for polluters and its recent recommendation that penalties for air pollution offenses should be extended to include prison

sentences. (See *HONG KONG Briefing* in this issue for details.)

In Hong Kong, as in other common law countries, the punishment of environmental offenses forms part of the system of criminal justice and, therefore, the sentencing of environmental offenders must be examined in the light of general theories of punishment. How successful our courts are in achieving sentencing objectives?

Sentencing is supposed to act as a form of deterrence, both general and specific. The is to deter people generally from engaging in a proscribed activity. Littering offenses are an example. General deterrence

may also be designed to target a certain type of offender and deter him from engaging in a proscribed activity. The offence of discharging unlicensed effluent into a water control zone is an example; factory operators are the targeted type of offender.

Specific deterrence, however, is designed to deter individuals from offending, or more often, re-offending. Where, as it has been suggested by EPD representatives in the past, fines for pollution are so low that polluters include them as an operating cost, the system of specific deterrence is failing. Of course, deterrence is a very controversial concept and the experts do not agree that the system of criminal justice actually deters the right people, if it deters anyone at all.

Almost three-quarters of the convictions in the period we are examining (*see* Table) were for first offenses. Convictions for second offenses constituted only 17 percent and for third or more offenses just less than 10 percent. It would be tempting to conclude that, as a general rule, the fines for first offenses were therefore adequate to deter second offenders. Of course, these statistics cannot support (or resist) this conclusion because they do not explain how offenders are selected for prosecution. In fact, the average fines for first offenses, especially for air pollution, are sometimes as little as \$1,000 and usually little more than a few thousand dollars. The maximum fine for air pollution is still only \$20,000. Bearing in mind most defendants are corporate offenders, some even in the public eye, the fines for first offenders do appear to be too small.

Although the highest fines imposed were not paltry for dumping at sea (\$50,000) and discharges into a water control zone (a record \$100,000) they were imposed for a shocking ninth offence and fifth offence respectively. These two cases are therefore exceptional but in those approximately 27 percent of cases of second or more offenses, are the fines simply too small to act as a specific deterrent? A closer examination of the cases seems to support this conclusion.

trates and in different magistracies, particularly it seems from the EPD's prosecution figures, for dumping at sea and discharges into water control zones.

Apart from the increase in maximum penalties in Hong Kong's environmental legislation, the proposal to introduce prison sentences, as anticipated in the **Air Pollution Control (Amendment) Bill**, should be given serious consideration. Moreover, in the absence of

Cumulative Table of Environmental Convictions:  
March to September 1992\*

	Number	First Offence	Second Offence	Third + Offence	Highest Fine
Air	157	119	25	13	\$ 20,000
Dumping at Sea	30	18	5	8	\$ 50,000
Noise	47	32	10	5	\$ 20,000
Waste	1	1	-	-	\$ 2,500
Water	43	34	8	1	\$100,000
Ozone	2	2	-	-	\$ 25,000
Total	280	206	48	27	

\* Not including figures for April 1992.  
Source: EPD, *Anti-Pollution Prosecution Figures*.

Above all there appears to be no mechanism at present to ensure consistent sentencing in environmental cases. The philosophy of individualised sentencing may be so strong that it is difficult or impossible to say that a magistrate was too soft or too harsh in a particular instance. Of course, this philosophy has not been allowed to become an excuse for inconsistency in sentencing in many types of offenses in Hong Kong, as is clear in the system of 'tariff' sentences. However, environmental sentences are rarely reviewed by the Court of Appeal and 'tariffs' have therefore not been set out. This may explain the apparent inconsistencies between fines imposed by different magis-

trates and in different magistracies, particularly it seems from the EPD's prosecution figures, for dumping at sea and discharges into water control zones. Apart from the increase in maximum penalties in Hong Kong's environmental legislation, the proposal to introduce prison sentences, as anticipated in the **Air Pollution Control (Amendment) Bill**, should be given serious consideration. Moreover, in the absence of sentencing guidelines from above, it is to be hoped that magistracies will develop their own system to apply these penalties rigorously and consistently, particularly to repeat offenders, without necessarily fettering the magistrate's discretion. Ultimately, environmental consciousness must be raised in Hong Kong for the law to work effectively. The EPD has gone to considerable pains to amass and distribute a wealth of information about environmental prosecutions and the mass media could do much more to draw the public's attention to the types and gravity of environmental offenses as well as the identity of the offenders.

## Digest of LEGISLATION

(This digests Legal Supplements to the Gazette Nos. 39/25 September 1992 to 46/13 November 1992.)

### BUILDINGS

**Buildings (Amendment) (No.2) Ordinance 1992** (L.S. No. 1 to GAZETTE No. 42/16 October 1992 p. A638)  
This Ordinance amends the **Buildings Ordinance** (Cap. 123) by adding a new section dealing with procedures for remedial works on dilapidated or defective structures and making similar provisions in respect of drainage works.

### DANGEROUS GOODS

**Dangerous Goods (General) (Amendment) Regulation 1992** (L.S. No. 2 to GAZETTE No. 44/30 October 1992 p. B1205)  
Increases fees payable for licences and permits relating to the manufacture, storage and transport of dangerous goods.

### WASTE

**Waste Disposal Ordinance (Cap. 354) (Application) Notice 1992** (L.S. to GAZETTE No. 46/13 November 1992 p. B1277)  
Appoints 18 November 1992 as the day on which ss. 11 and 16 of the Ordinance shall apply to chemical waste being asbestos, polychlorinated biphenyls or chromium bearing solid tannery waste and s. 17 shall apply to chemical waste containing asbestos or polychlorinated biphenyls.

### WATERWORKS

**Waterworks (Amendment) Bill** (L.S. No. 3 to GAZETTE No. 40/2 OCTOBER 1992 p. C1141)  
This Bill makes minor amendments to the **Waterworks Ordinance** (Cap. 102) concerning the provision of fire

services, charges for communal water supplies and payment for unlawfully diverted water supplies.

## CASELAW Update

**Bulmer Ltd. & K. Fung Industry Co. Ltd. v. ACL Electronics (H.K.) Ltd.**

(Court of Appeal: Hon. Sir Derek Cons, Atg CJ., Kempster, JA. and Bokhary, J. 1992, No. 10 (Civil), unreported, upholding the decision of Liu, J. 1990, No. A7042, 9 November 1990, Supreme Court, unreported.)

(This unreported case is an extremely rare Hong Kong action applying common law principles of nuisance and the doctrine in *Rylands v. Fletcher*. It has been digested for this reason.)

The first and second plaintiffs were the landlord and tenant respectively of fourth floor industrial premises of 7,000 square feet where the second plaintiff carried on the business of clothmaking. The defendant occupied a 900 square feet room on the fifth floor immediately above the plaintiffs' premises.

For the optimum operation of printing machinery in this room, the defendant maintained an airconditioned environment of between 18°C and 20°C. In the summer months this resulted in a cooling of the concrete slab floor separating the plaintiffs' and the defendant's premises and caused condensation on the ceiling of the plaintiffs' premises leading to damage to concrete and rusting of the steel reinforcement rods.

The plaintiffs claimed \$19,500 damages in respect of repairs undertaken in the ceiling. No further damages or remedies were sought due to the defendant's imminent removal from

the fifth floor premises.

The plaintiffs claim was based on the rule in *Rylands v. Fletcher*, or in the alternative, on private nuisance. In defence, the defendant argued that the airconditioned room was not an 'unnatural use' and in any event, cold air had not been 'brought onto' the premises.

The defendant argued that the use of airconditioning was reasonable enjoyment by a manufacturer in an industrial estate and also, that there may have been other equally probable causes for the condensation which the plaintiffs failed to eliminate but on the expert evidence presented this was rejected.

Judgment at the trial was for the plaintiffs. Liu J. observed that the appropriate test 'would seem to be whether the agent causing damage is "naturally on the land from which it escapes"'. Applying this test, he found that cold air is not naturally on the land but collected or converted from the air space above or around.

This interpretation of *Rylands v. Fletcher* appears to have been upheld *obiter* by Kempster, JA. and Bokhary, J. Cons, Atg. CJ. dissenting. With due respect, this interpretation of the tort appears to contradict a long line of authority which treats many artificial uses of land as quite natural in modern society. It is also a startling conclusion given the ubiquity of airconditioning in a tropical metropolis like Hong Kong.

Regrettably, no reference was made to the decision of the Privy Council in *Rickards v. Lothian* (1913) which helped to resolve the ambiguity in the

concept of 'natural use' in *Rylands v. Fletcher*.

Liu, J. also found as a matter of fact that the cold air had 'escaped' to some degree into the plaintiffs' premises and it was therefore not necessary to consider the more difficult question of whether the penetration of cold itself constituted an escape.

Overall, the Court of Appeal adopted the safer passage to find for the plaintiffs in private nuisance. It is much clearer that condensation caused by intense cold is not something a neighbour could reasonably be expected to endure and was thus an unreasonable enjoyment of airconditioning which would otherwise be considered a reasonable and natural activity in a city like Hong Kong.

## HONG KONG Briefing

### ENVIRONMENT AND PUBLIC HEALTH

THE COUNTRY PARKS Board has approved the use of 18 hectares of Clearwater Bay Country Park as part of an urgently required landfill. LegCo approved the \$3.3 billion South East New Territories (SENT) landfill plan but had not been informed that it included country park land. There was no public consultation exercise even though this area of the park will not be open to the public for 10-15 years. Villagers from 3 settlements in the landfill area will be re-located. (SCMP 22 & 23 September & 30 October 1992)

INERT BUILDING WASTE is to be diverted away from landfills and towards urban reclamation areas because of

shortage of space. Under the new arrangements builders are responsible for separating inert waste from decomposable material. (SCMP 23 September 1992)

A GREEN HOUSEKEEPING POLICY has been introduced in the Administration. Every Government Department is to have a Green Officer and a limited number of environmental impact assessment reports are to be distributed to libraries. (SCMP 30 October 1992)

AN ECOLOGICAL MAP giving detailed computerised information concerning vegetation, animal species and geological formations is a new Government Information Service available to developers. It is under trial by China Light and Power who are using it to help plan realignment of power lines. (SCMP 14 October & 4 November 1992)

MAI PO MARSHES may be added to the list of wetlands of international importance under the 'Ramsar' convention, to which both China and Hong Kong are now parties. (SCMP 4 November 1992) Meanwhile the Town Planning Board has endorsed proposals to create two buffer zones around the marshes to limit development so as to protect their special ecological value. (SCMP 9 October 1992)

BLACK POINT power transmission network is being scrutinised for possible health hazards. Epcorn is looking at research reports on, amongst other things, electromagnetic fields around pylons and leukaemia in children. (SCMP 14 October 1992)

TOBACCO CONTROL MEASURES including no

smoking signs in restaurants, a ban on tobacco sales to the under 18's and a ban on advertising are the subject of a public consultation document issued by the Government in October. (SCMP 16 October 1992)

EPD'S AIR POLICY chief criticised magistrates for being too lenient in imposing the \$20,000 maximum fine for air pollution. The criticism arose from a fine of \$9,000 imposed on a fourth offender in September. Out of 26 convictions that month, only one was fined the maximum allowed by law. (SCMP 21 October 1992) Despite the fact that the maximum fine was increased 400 percent in 1990 air polluters are still not being deterred and EPD therefore supported the introduction of prison sentences proposed in the Air Pollution Control (Amendment) Bill 1992. (SCMP 16 September 1992)

AIR QUALITY IN SEPTEMBER deteriorated as wind levels dropped and high concentrations of nitrogen dioxide accumulated but exceeded the air quality objectives on one day only. (SCMP 13 October 1992)

WATER QUALITY continued to improve in October, assisted by dry and warm weather. 29 out of 45 beaches earned a grade one and 12 earned a grade two. (SCMP 30 October 1992)

### PLANNING AND LAND USE

14,020 WALLED CITY residents have received between them \$2.1 billion in compensation for property, business loss and removal costs. There are still, however, over 100 former

residents and business owners who are seeking higher payments. (SCMP 28 September 1992)

**AMBITIOUS DEMOLITION PLANS** for the Walled City (*see* September issue) have been shelved in favour of conventional mechanical methods which will save around \$10 million. The \$40 million contract has been awarded to Express Builders/Cleveland Wrecking Joint Venture. The site will be turned into a park featuring a museum containing relics from the Walled City and should be completed by mid-1995. (SCMP 6 November 1992)

**A NEW SHALOTUNG GOLF COURSE** proposal has been made which includes a donation of land to the Pat Sin Leung Country Park. Under these new plans the 41 hectare 9-hole golf course and housing development will take place on land adjacent to the country park and environmentalists fear that it will have a detrimental effect on the ecology of the area, despite claims by the developers that the scheme is more 'environmentally conscious' than the earlier proposals (*see* July issue). No decision will be made until February when the 12-month environmental impact statement will have been completed. (SCMP 2 November 1992) There will be no public consultation exercise on these plans. (SCMP 13 October 1992)

**SKYRAIL** proposals have been rejected by an Urban Council working party because they fail to placate fears of encroachment on council facilities and unacceptable noise, vibration and visual effects. The scheme was approved in principle by ExCo in October 1990 and has been reworked to meet earlier

objections to its route and design. The Government has yet to decide whether to enter into more detailed negotiations with Kowloon Sky Railway Company to explore the objections further. (SCMP 18 September 1992)

**COMPENSATION** under the Roads (Works, Use and Compensation) Ordinance has not been paid to any of the retailers effected by the construction of the Hillside Escalator. It seems that those who applied were not entitled to compensation and those who were entitled did not apply. (SCMP 17 October 1992)

**A LIGHT RAIL LINK** between Ma On Shan and Kowloon, with six to seven stations, has been proposed to solve transportation problems of its projected 200,000 residents. The route is to be decided early next year and the project will take about 6 years to complete. (SCMP 31 October 1992)

**THE LAND FUND** has reached \$33.7 billion, \$5.9 billion of which is accumulated earnings. (SCMP 4 November 1992)

**A PUBLIC WORKS PROGRAMME** worth \$78 billion was outlined in the Governor's policy speech. It includes works on the environment, civil engineering, ports, transport and water works and contracts will range from \$150 million to \$1.1 billion. (SCMP 7 & 9 October 1992)

### 'PADS' UPDATE

**THE DEADLOCK** over financing of the Airport continues (*see* September issue). At the Joint Liaison Group Airport Committee meeting in Septem-

ber Britain suggested that the \$40 billion in land premiums produced by developments along the airport railway be reinvested in the airport and rail link (SCMP 23 September 1992) so as to avoid the need for callable equity (SCMP 24 September 1992) but this also met with Chinese opposition. (SCMP 17 October 1992) The Governor has suggested that Hong Kong fund the project alone if agreement cannot be reached (SCMP 23 September, 12, 13, 16 & 24 October 1992) and has given assurances that the eight core projects other than the airport and its rail link will be unaffected (SCMP 15 October 1992). Britain is now looking more favourably on the Chinese proposal to go ahead with the site formation project even though no overall agreement has been reached on financing, particularly as the bid by the Nishimatsu led Airport Platform Contractors Joint Venture for \$9 billion expires at the end of November. (SCMP 2 November 1992)

**CONTRACTORS** are feeling the effects of the delay on the airport projects and are cutting tender prices in order to compete for non-airport work, which itself has decreased (SCMP 18 October 1992)

**DESIGN CONSULTANCIES** worth \$600 million will be awarded by the PAA by February 1993. They include consultancies for the permanent utilities, storm water sewerage and the runway and an estimated 200 people will as a result join the PAA staff in Central Plaza. Local consultants, or consortia with local elements will be given preference in awarding the contracts. (SCMP 30 September 1992)

**THE KAP SHUI MAN BRIDGE** design-construct

contract has been awarded to the lowest bidder, Kumagai Gumi Hongkong for a fixed-price lump-sum tender of \$1.64 billion which is well-below the Government estimate. (SCMP 17 October 1992)

FISHERMEN on Cheung Chau may now register as potential recipients of compensation for loss of earnings as a result of the dumping of mud at the gazetted site south of the island. Projections indicate that 75 million metric tonnes of mud will be dumped there by the end of this year, with 73% coming from the airport project. These areas are spawning and nursery grounds and the detrimental effects on marine life are felt outside of the gazetted area. (SCMP 24 October 1992)

A POLLUTION WATCHDOG, funded by the new airport co-ordination office, has been set up to monitor the reclamation, the West Kowloon Expressway and the airport railway projects. It is a trial run for other similar offices to monitor other intensive airport-related projects. (SCMP 28 September 1992)

## Diary

(See DIGEST OF LEGISLATION for details.)

18 November: ss. 11, 15 and 17 of the **Waste Disposal Ordinance (Cap. 354)** came into effect with respect to certain types of chemical waste. **Waste Disposal Ordinance (Cap. 354) (Application) Notice 1992.**

## REGIONAL AND INTERNATIONAL

### CANADA

*(On 8 September 1992 a Memorandum of Understanding on Environmental Collaboration was signed between the Department of the Environment of Canada and the Planning, Environment and Lands Branch of Hong Kong. The eight-article MOU provides for the exchange of information and research on environmental issues and cooperative activities, including EIA procedures and experience, public awareness, waste management policies and infrastructure, clean technology and atmospheric pollution. In the spirit of this agreement we hope to continue to bring Hong Kong readers further reports of Canadian environmental law and legal issues. Ed.)*

### Environmental Audits and Confidentiality

(This is the second of two articles on environmental audits in Canada which should also be a useful reference on the question of how best to ensure that environmental audits attract legal professional privilege in Hong Kong.)

Many businesses have recognised the benefits of carrying out, on a regular basis, an environmental audit to assess and monitor compliance with environmental laws and regulations, as well as internal corporate policies concerning the environment. In the last issue we discussed the reasons for carrying out an environmental audit. Now we will focus on whether and to what extent the results of an environmental audit can be kept confidential.

Carrying out an environmental audit serves to identify and record in writing a company's non-compliance with environmental laws. It assumes that the company will act on the identified problems and put in place corrective measures. But what if such measures are too expensive to be implemented immediately? What if the audit discloses serious non-compli-

ance which cannot be remedied without a complete overhaul of a facility? *Will the environmental audit be admissible as evidence in proceedings against the company?* Many companies carrying out environmental audits are concerned that they take steps to protect, as best they can, an environmental audit from being used as evidence in a subsequent investigation or proceeding.

There is no general rule or principle that environmental audits undertaken as part of corporate due diligence will be privileged. In fact, the Ministry of the Environment has indicated that it will not hesitate to request the production of and use against a company information generated through an environmental audit. Here we will outline the best means to achieve the goal of protecting the confidentiality of an environmental audit by invoking solicitor-client privilege.

The law recognises that a document which is subject to solicitor-client privilege will ordinarily be exempt from the requirement of disclosure in the course of an investigation, prosecution or other proceeding. Solicitor-client privilege attaches to documents which are prepared for the principal purpose of obtaining legal advice. It is not sufficient that documents be marked 'Privileged and Confidential'; the true nature of the documents and their role in the solicitor-client relationship would be considered by any court called upon to assess a claim of privilege.

In order to claim privilege for an audit report and its supporting documentation, legal counsel must generate, direct and receive information in the course of the audit for the

purpose of providing the company with legal advice. Any audit should therefore be initiated in the context of a client's request for legal advice from legal counsel. The confidentiality of all documentation generated in the course of the audit should be maintained, since any privilege which could be asserted will be lost if there has been distribution of the communication beyond the client and its legal counsel. Communications with outside experts may also fall within the protection of solicitor-client privilege where experts have been retained by legal counsel and communications have occurred through legal counsel in the context of generating information for the purpose of providing legal advice.

Where information is collected or generated specifically for the purpose of an environmental audit, all employees who are involved in the process should be informed that its ultimate purpose is to provide information required to obtain legal advice respecting environmental compliance. Such employees should be instructed to keep strictly confidential all data collected or generated for the purpose of the audit. Any data prepared for any other purpose (such as the ordinary reporting or recording requirements of the company) will clearly not be covered by a claim for solicitor-client privilege, even where such information is renewed, and possibly relied upon, in the course of an environmental audit.

Where a company wishes to invoke solicitor-client privilege with respect to a corporate environmental audit, the following six steps are suggested:

**1. Written Retainer of Legal Counsel:** the company

should retain legal counsel in writing and request a legal opinion with respect to its compliance with current environmental laws and regulations;

**2. Design of the Audit:** legal counsel should be involved in determining the scope and extent of the audit and the information to be generated to provide an opinion;

**3. Confidentiality:** all communications and documentation in respect of the environmental audit should be kept confidential and documents generated in the course of the audit should be marked 'Confidential: For the Use of Counsel';

**4. Segregation of Documents:** all documentation generated for the purpose of the audit should be circulated to only a limited number of corporate personnel on a strict 'need to know' basis, segregated from other corporate materials and maintained in a single location under the control of a designated officer. Such officer should consult with legal counsel before responding to any request for production of such documentation;

**5. Experts:** any consultants retained to carry out work in the course of the audit should be engaged directly by legal counsel and their opinions and other written reports should be communicated to legal counsel; and

**6. Legal Opinion:** at the conclusion of the environmental audit, legal counsel should provide a written opinion respecting compliance.

While Canadian courts have

yet to address the issue of legal professional privilege in environmental audits, it is suggested that by following the above procedures, there is a reasonably good possibility of successfully claiming solicitor-client privilege for reports generated in the course of an environmental audit.

*Katherine van Rensburg*

*UNITED STATES OF AMERICA*

**United States - Restrictions on Imports of Tuna**

(GATT dispute settlement panel report, 3 Sept. 1991)

The US restricted imports of Mexican tuna because Mexican tuna fishing techniques resulted in rates of incidental mortality of dolphins which violated provisions of the **Marine Mammals Protection Act**. Mexico applied to the Council of the General Agreement on Tariffs and Trade (GATT) to determine whether the US restrictions on tuna were in conformity with the GATT. The panel found that the US restrictions violated prohibitions in the GATT in respect of quantitative restrictions (art. XI), discriminatory administration (art. XIII) and the requirement to accord national treatment to imported goods (art. III).

This decision has important consequences for states participating in the GATT who attempt to enforce their environmental laws and policies through trade sanctions. Although the decision has been criticised as environmentally insensitive and unsound, until the GATT gives principles which allow such trade embargoes in conformity with the GATT, measures such as those used by the US will remain in breach of the GATT. See: No. DS21/R, 30 ILM 1594 (1991); 86 Am. J. Int'l L. 142 (1992).

Comparative Table of Environmental Convictions: July, August and September 1992

	Number	First Offence	Second Offence	Third + Offence	Highest Fine
Air	25	16	5	1+4th,10th,11th	\$ 13,500
	23	18	5	-	\$ 12,000
	26	20	3	1+4th,5th	\$ 20,000
Dumping at Sea	6	4	1	7th	\$ 4,000
	-	-	-	-	-
	5	3	2	-	\$ 5,000
Noise*	8	6	2	-	\$ 10,000
	2	-	-	2	\$ 10,000
	8	4	4	-	\$ 15,000
Water	13	11	1	5th	\$100,000
	9	8	1	-	\$ 10,000
	7	3	4	-	\$ 30,000
Total	52	37	9	6	
	34	26	6	2	
	46	30	13	3	

Figures read from July to September from top to bottom.

\* These figures do not include convictions for domestic noise nuisance or noise from public places. Source: EPD, Anti-Pollution Prosecution Figures (August, September & October 1992).

**ABBREVIATIONS**

- APCO Air Pollution Control Ordinance
- CFCs Chlorofluorocarbons
- EC European Community
- EPCOM Environmental Pollution Advisory Committee
- EPD Environmental Protection Department
- EXCO Executive Council
- FEER Far Eastern Economic Review
- JLG Joint Liaison Group
- LDC Land Development Corporation
- LEGCO Legislative Council
- LS Legal Supplement
- NCO Noise Control Ordinance
- NT New Territories
- PAA Provisional Airport Authority
- PADS Port and Airport Development Strategy
- SCMP South China Morning Post
- SMP Sunday Morning Post
- WDO Waste Disposal Ordinance
- WPCO Water Pollution Control Ordinance

This report does not constitute advice of a legal nature. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors or omissions. Further information, inquiries and advice in respect of this report should be directed to:

**HONG KONG**

**CANADA**

**UNITED KINGDOM**

**FRED KAN & CO.**  
Solicitors & Notaries

**Smith, Lyons, Torrance, Stevenson & Mayer**  
Barristers & Solicitors

**IRWIN MITCHELL**  
S O L I C I T O R S

Suite 1218, 2 Pacific Place  
Queensway, Hong Kong  
Telephone: (852) 868 0870  
Facsimile: (852) 523 6707

Suite 1506-8  
Chinachem Golden Plaza  
77 Mody Road  
Tsim Sha Tsui East,  
Kowloon  
Telephone: (852) 301 1700  
Facsimile: (852) 311 3224

Suite 6200, Scotia Plaza  
40 King Street West  
Toronto, Canada M5H 3Z7  
Telephone: (416) 369 7200  
Facsimile: (416) 369 7250

World Trade Centre  
Suite 550-999 Canada Place  
Vancouver, Canada V6C 3C8  
Telephone: (604) 662 8082  
Facsimile: (604) 685 8542

St. Peter's House  
Hartshead  
Sheffield S1 2EL  
United Kingdom  
Telephone: (742) 767 777  
Facsimile: (742) 753306

190 Corporation Street  
Birmingham B4 6QD  
Telephone: (21) 212 1828  
Facsimile: (21) 212 2265



U R B A N P L A N N I N G A N D  
**ENVIRONMENTAL  
 LAW REPORT**

簡 家 驄 律 師 行 · 城 規 環 保 簡 訊

This issue features a review of *Environment Hong Kong 1992*, the Environmental Protection Department's annual review of Hong Kong environmental regulation. This is the only comprehensive statement on Hong Kong's environment and what the government is doing (or not doing) to improve it. Between the lines there is an increasing degree of transparency about Hong Kong's pollution problems and the fact that government action has thusfar failed to address many of them effectively. The *Review* is divided into six major topics which, apart from summarising the year's events in air, noise, waste and water pollution, include chapters on environmental planning and assessment as well as on efforts to promote environmental education and awareness.

The International section has a contribution from our Canadian correspondents on the environmental audit and the lawyer's role in the audit process. The Hong Kong Government hopes to encourage more companies to do regular environmental audits and the Canadian experience is therefore very relevant. We hope also to bring you news of developments from regional correspondents in future issues.

On page eight we have compiled a table of environmental prosecution statistics based on figures for June supplied by EPD. We hope that this will remain a regular feature of the *Report*.

The Editors

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***Environment Hong Kong 1992:***  
*A Review of 1991*

**FOLLOWERS** of the fortunes of Hong Kong's environment have for years found essential reading in the Environmental Protection Department's annual reviews. For here is the only comprehensive statement on Hong Kong's environment and what the government is doing (or not doing) to improve it. Between the inevitable pages of self-congratulation one expects to find in the publication of a government department distributed to the public at a giveaway price, there is an increasing degree of transparency about Hong Kong's pollution problems and the fact

that government action has thusfar failed to address many of them effectively.

*Environment Hong Kong 1992: A Review of 1991* is no exception. It is a clear and comprehensive review replete with tables, figures and photographs as well as sometimes frank views about what has gone wrong with Hong Kong's environment. Of course, as with all government publications, do not expect to find the whole truth without reading carefully between the lines.

The *Review* is divided into six major topics which, apart from summarising the year's events in air, noise, waste and water pollution, include chapters on environmental planning and