

香港法律改革委员会

研究报告书

有关同性恋行为之法律

(论题二)

有关同性恋行为的法例

一九八零年一月十五日，香港总督麦理浩爵士会同行政局颁令成立香港法律改革委员会，授权其对律政司及首席按察司所提交考虑的香港法律问题进行研究，并提出报告。

一九八零年六月十四日，律政司及首席按察司提交下项问题供本委员会进行研究：

“本港现行有关同性恋行为的法例应否予以修改？若然，应如何修改？”

一九八零年七月五日，本委员会委任一个小组委员会负责研究及考虑此项问题，以便向本委员会提供意见。

一九八二年六月二十八日，小组委员会向本委员会提出报告。本委员会在一九八二年七月至一九八三年四月间召开多次会议，讨论上述问题。

本委员会认为，基于本报告书所列举的理由，本港现行有关同性恋的法例应予修改。

本委员会所提出修改法例的建议，详载本报告书内。

香港法律改革委员会同人谨此呈递有关同性恋行为法例研究报告书。

祈理士（律政司）

罗弼时（首席按察司）

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一九八三年四月十五日

香港法律改革委员会

研究报告书

有关同性恋行为之法例

目录

	卷首页	(i)	
	研究范围	(ii)	
	委员名表	(ii)	
	目录	(iii)	
章数	标题	段数	页数
一	引言	1.1	1
二	本委员会进行工作的方法		4
	本委员会的职责	2.1	4
	法律的作用	2.5	4
三	谁是同性恋者——医学分析		7
	引言	3.1	7
	定义	3.2	7
	流行病学	3.5	7
	同性恋的起因	3.10	8
	精神病理学	3.19	9
	过滤性病毒肝炎	3.20	10
	心理测验	3.25	10
	治疗	3.26	11
	结论	3.27	11
	鸣谢	3.30	11
四	传统中国社会的同性恋问题		12

导言	4.1	12
传统中国社会的同性恋问题	4.2	12
结论	4.11	14
社会制裁	4.12	14
鸣谢	4.13	15
五 现代香港的同性恋问题		16
同性恋行为	5.1	16
同性恋罪行的发生率	5.9	20
官方对同性恋的反应	5.16	21
评论	5.27	26
公务员的聘用	5.36	27
结语	5.41	28
六 香港的法律		29
绪言	6.1	29
一般保护	6.6	29
生命、自由及身体伤害	6.6	29
结婚及离婚	6.8	30
公众行为	6.13	31
公开表演	6.28	35
刊物	6.39	37
特别保护	6.52	39
女性	6.53	39
年龄在二十一岁以下的妇女及儿童	6.62	41
弱智人士	6.65	41
性病	6.71	42
学童	6.73	42
囚犯	6.75	43
军队	6.78	43
“丑恶行为罪”	6.79	44
背景	6.79	44
现时的法律	6.82	44
鸡奸	6.83	45
企图鸡奸及初步罪项	6.84	45
次要当事人的责任	6.87	46

	粗犷行为	6.91	46
	非礼	6.94	47
	摘要	6.95	47
	性罪项——证明及证据	6.98	48
	罪项的检控	6.103	49
七	与东方国家法律的比较		51
	东方国家	7.1	51
	澳洲	7.2	51
	联邦	7.2	51
	各省份	7.3	51
	印度	7.10	52
	日本	7.12	53
	马来西亚	7.15	53
	巴基斯坦	7.17	54
	中华人民共和国	7.18	54
	菲律宾	7.22	55
	新加坡	7.23	56
	南韩	7.26	56
	台湾	7.28	56
	摘要	7.30	57
八	与西方国家法律的比较		58
	西方国家	8.1	58
	加拿大	8.4	58
	英国	8.7	59
	英格兰及威尔士	8.7	59
	北爱尔兰	8.16	64
	苏格兰	8.29	68
	美国	8.56	73
	国际公约	8.64	74
九	本委员会所作的公开征询及在本港进行的研究		77
	电视、电台及报章	9.1	77
	公开呼吁	9.5	77

直接呼吁	9.7	78
雇主	9.13	79
其他团体	9.15	79
区议会	9.18	80
私人晤谈	9.21	80
监狱	9.35	83
警方	9.37	84
麦乐伦事件调查委员会	9.38	84
民意调查	9.41	84
其他事项	9.44	85
海外谘询	9.48	86
资料	9.51	86
摘要	9.52	87
十 修改法例的后果		88
引言	10.1	88
英格兰及威尔士	10.11	89
苏格兰	10.14	90
澳洲	10.16	91
美国	10.17	91
结论	10.24	93
十一 本委员会的论据及结论		95
绪论：本委员会依循的原则	11.1	95
婚姻	11.8	96
二十一岁以下青少年	11.10	96
卖淫、介绍他人卖淫及性交	11.10	96
非礼罪	11.17	98
公众行为	11.21	99
其他重要事项	11.30	100
拐带及贩卖儿童	11.31	100
淫褻性电话	11.32	100
偷窥狂	11.33	101
淫褻刊物及影片	11.34	101
性商店	11.37	101
雇佣	11.38	102

成年人彼此同意而进行的同性恋行为	11.39	102
成年男子彼此同意而私下进行的同性恋行为	11.42	102
赞成保留现行法例的理由	11.42	102
本委员会所持的论据及意见	11.43	103
“私下”	11.51	105
介绍卖淫	11.53	106
可肩负成人责任的年龄	11.55	106
女同性恋	11.56	107
刑罚	11.57	107
监狱	11.58	107
军队	11.59	108
相应引起的事项	11.60	108
本委员会建议范围	11.65	109
十二 本委员会工作摘要	12.1	110
建议摘要	12.12	111

第一章 引言

1.1 根据第(ii)页所载的研究范围，本委员会的职责和任务，是考虑假如修改本港管制同性恋行为的法例，是否符合本港社会整体最佳利益；如果答案是肯定的话，则建议作何修改。这项工作并不容易，因为在许多社会，包括本港社会在内，不少人都对同性恋问题避而不谈。可以肯定的说，凡有人讨论这个题目，他们的看法往往截然不同。

1.2 有些人赞成下列意见：

“以香港或任何其他地区的文化背景来说，一些导致家庭分离的法例，实在不合时宜。创造天地的神不但造人，而且分造男女，并说：‘因此，人要离开父母，与妻子连合，二人成为一体。’（马太福音 19：4-19）为了避免淫乱，又说：‘男子当各有自己的妻子，女子也当有自己的丈夫。’（哥林多前书 7：2）人的性欲是神一手创造的，婚后的性生活是正确、崇高而神圣的（参阅希伯来书 13：14），不但为了繁殖下一代（创世记 1：26-28），更是让男人和他的妻子得到欢愉和快乐（参阅哥林多前书 7：4-5）。同性恋不是性爱，只是性变态——鸡奸。”

（节录自一九八二年二月十七日南华早报署名‘欧洲人’的读者来函。）

1.3 其他人则对那些自认是被不公平地压迫的少数人的感受寄予同情：

“一个人除非完全忠于自己，忠于他人，不然便无法充分享受人生，保持高尚的精神。我现在求神饶恕及同情那些在今日世界中饱受痛苦的同性恋者。我也希望他们知道，他们所做的并不可耻，他们的行为亦非罪行。他们毋须责备自己，自暴自弃。这些年来来的同性恋生活，使我体会到真爱的重要。我永远不会后悔自己所做过的及所牺牲的一切。我清楚自己所走的路。也清楚必须以真诚的态度面对这件事，承受一切可能引起的后果。只要我忠于自己，忠于别人，定能临危不乱，克服万难，消除恐惧……”

我必须彻底忠于自己，必须活得像个人，不折不扣的人……”

（节录自一九八一年十二月一名中国同性恋者的供述。参阅附件十六。）

1.4 在英国未通过一九七六年性罪项法之前，本港管制男同性恋行为的法例与英国并无不同。例如，在本港，成年男子双方同意私下进行鸡奸，即属犯法，可被判终身监禁。在七十年代以前，公开讨论同性恋的言论几绝无仅有。香港大学社会学教授李必治（Mr. Henry Lethbride）在一九七六年所发表的，是本港首次也是唯一有关这个题目的作品。

1.5 报纸偶然会报导某人被法庭控以同性恋罪行的案件，但甚少市民加以留意或发表意见，直至一九七八年八月，一名欧籍男士因犯同性恋罪而被拘捕，且被判罪名成立，才引起人们的注意。该名男子是一位英籍律师，在本港执业多年，当时被控与四名十五岁华裔少年进行鸡奸及粗犷行为。被告认罪，被判入狱三年。他不服上诉，但遭上诉庭驳回。

1.6 警方因拘获该名男子而发现若干证据，皇家香港警察队辖下之刑事侦辑部其中一组，后来称为特别调查小组，奉命根据这些资料调查与同性恋有关的卖淫活动，以及介绍和利用青少年卖淫的非法行为。警方制订若干调查与男同性恋有关罪行的方针，随后并拘捕及检控若干人。

1.7 差不多同时，即一九七九年年中，一群未经正式组织的市民，将一份有四百二十四人签名的请愿书递交政府，请求修改本港法例，使与英国及爱尔兰的法例趋于一致。

1.8 警方原拟拘捕一名人士归案，控以与男妓发生粗犷行为，该人是在警队服务的一名年青苏格兰籍督察，名叫麦乐伦。结果，警方并未将他逮捕，因为当警方在一九八零年一月初进入其寓所进行拘捕时，麦已死亡。不出数日，若干时事评论员开始对麦氏的死因和引致死亡的情况，公开作种种揣测。

1.9 死因裁判官与陪审团对麦氏的死因进行研讯后，裁定其“死因不明”，新闻界对这件事争相报导。陪审团所提出的其中一项建议，是修改本港的法例，“使与英国的法例一致”。越来越多人公开讨论这宗案件及男同性恋问题。

1.10 香港法律改革委员会于一九八零年初成立，律政司和首席按察司起初选作研究对象的题目是商业仲裁、管制同性恋行为的法例及民事诉讼的证据问题。关于第一第二两项题目的资料文件及研究范围，于一九八零年六月十四日法律改革委员会首次会议席上，提交各委员。本委员会随即委出小组委员会去研究这两项问题。小组委员会的成员包括法律改革委员会委员及其他人士。杨铁梁按察司答应出任同性恋问题研究小组委员会的主席。几天之后，他从另一方面接获另一项任命：总督会同行政局下令成立麦乐伦事件调查委员会，报告引致麦乐伦督察死亡的情况，杨氏奉委为该一人委员会的调查专员。

1.11 本委员会指定小组委员会所须执行的任务，主要是搜集真实的资料。小组委员会的成员和职权范围，载于附录一。麦乐伦事件调查委员会所

审阅的证据中，大部份与小组委员会的工作有关，因此，小组委员会须待至一九八一年七月麦乐伦事件调查委员会的工作完毕后，才能完成任务。结果，小组委员会前后用了两年时间才完成各项研究和工作，期间共举行会议十六次，最后于一九八二年六月二十八日向本委员会提交一份非常详尽的报告书，全文近二百页。

1.12 小组委员会及其秘书工作态度认真，一丝不苟，对本委员会的帮助极大。他们有时在十分困难及敏感的情况下进行工作，虽然不欲张扬，但却仍然备受注视。小组委员会能搜集各种不同的事实、数字及取自社会多方面和各阶层的意见，他们的识见和机智实在值得称赞。在小组委员会和所有向他们提供资料的人士协助下，我们相信已掌握足够的资料作为对这项问题进行合乎理性探讨的基础。对小组委员会的协助，我们深表谢忱。本委员会各委员亦曾于一九八二年七月至一九八三年四月间的会议上研究这项问题。杨铁梁按察司虽然已经卸任，不再担任本委员会委员，但却答应继续给予帮助。本委员会的大部份讨论他均有参加。杨氏对这项问题一贯关注及鼎力协助，本委员会谨此表示谢意。

第二章 本委员会进行工作的方法

本委员会的职责

2.1 本委员会深知，如果我们对本身的职责清楚明白，将对了解我们这项研究工作大有帮助。根据本委员会的职权，我们只是受命“考虑……然后提交报告”。本委员会仅属谘询性质，当局并无订下准则，俾所遵循。除当然委员外，本委员会其他成员都是以个人身份，由总督委任，义务出任委员。

2.2 假如本委员会指出下列情形，可能使读者更深了解我们的工作。本委员会不是政府部门，或政府工作小组，也不是为政府制定政策的组织，更不是本港的立法机构。虽然我们设法指出公众利益所在，但却不是市民的代言人，更不是某一部分市民的代言人。此外，本委员会亦非必要为改革而改革。我们也不代表任何政治思想、宗教信仰、或其他特别见解。

2.3 本委员会自觉是关注社会事务市民的一份子，以严肃眼光来探讨某方面的法例。这些法例在实际执行时如何发挥作用？它们能否迎合本港社会的需要？过去有甚么改革建议？修改法例有甚么利弊？改革要付出甚么代价？权衡之下，怎样才能符合公众利益？这些因素都在考虑之列，而在考虑过程中，我们自然要征询大众、个人和政府的意见。但我们不是举行全民投票，或游说他人提出建议。

2.4 本委员会的成员交换意见，以及试图达成一致的结论时，所发表的是个人意见，说明我们相信甚么是正确、明智和可行；我们希望根据本港的情况，为本港的问题寻求解决办法。我们持这个观点去研究受委托的事项，因此，不拟令有关问题的争论更趋激烈。反之，我们着重把原则条分缕析，以及尽力搜罗真实的资料。除本委员会的成员外，任何人均毋须对本报告书‘负责’。至于应否实施本委员会的建议，则是其他人士的问题，这便是所谓人各有责。

法律的作用

2.5 法律与个人道德观的关系，历来是个伤脑筋的问题。有些人士坚持本身的信念，说香港是一个儒家社会，因此政府有责任去制定法律，确立社会的道德标准。本委员会绝对尊重这些人士的意见。就效果而言，这种观念与思想家阿奎那的自然律并无不同。两种见解都旨在为社会建立崇高的价值观。

2.6 在英国法理学上，戴富林大法官（Lord Devlin）是这种见解的主要支持者之一。他认为法律是为保障社会而设，因此，法律不但要保障社会每一个人，使他不致身心受损、堕落及被人利用，并且：

“要保障社会及其体系的思想、政治和道德，否则人民无法共同生活。个人道德和个人对社会的忠心，应该受到同等重视，二者兼备，则社会昌隆，二者缺一，则社会衰亡。”

戴氏认为英国的刑法“自始即顾及道德原则，直至现在仍继续顾及道德原则”。他举出若干基于道德原则而列为刑事罪的行为，如协议自杀、决斗、堕胎，以及成年近亲发生乱伦行为等，纵然有人可能反驳说这类行为并不影响或危害大众，可私下进行而不侵犯他人，且未必与败坏道德或利用他人有关。然而，正如戴氏指出，没有人会冒此大不韪去建议将这类行为从刑事法中剔除，纯粹作为个人道德问题看待（戴富林：《道德的实践》（*The Enforcement of Morals*）（一九六五年），牛津大学出版社）。

2.7 我们曾经抱着实事求是的态度来测验上述观点。我们问自己：究竟法律本身能否抑制兽欲？抑或只能处理这些欲念宣泄后所带来的最显著后果？法律能令我们想到甚么是自由？抑或只能保障人民可表达思想上的自由？法律能否使人类互相尊重、互相关怀？抑或只能管制人类冷漠行为中较无情的一面？法律能否规定我们合乎人道？抑或只能惩罚不人道的行为？

2.8 哈德教授（Professor H.A.L.Hart）怀疑究竟法律是否可能完美，或是否可能为法律作完美的定义（哈德：《法律与道德》（*Law and Morality*）（一九六五年））。从上述问题，可见本委员会对此项怀疑也有同感。我们宁愿采取比较实际的态度去问：法律可以为我们做甚么？因此，我们现在应该要求法律为我们做甚么？

2.9 根据本委员会观察所得，这种态度，与下述现象不谋而合，就是很多香港人认为刑事法例可以在非常实际的事情上保障市民：有了这种保障，我们就可以在这人烟稠密的城市到处走动而有安全感或不致受到骚扰；青少年和弱小者也可受到保护，不致被人利用或沦于道德败坏；我们的家园和努力的成果亦会得到保障；社会也可避免在不知不觉中因贿赂行为或钱财方面的败坏行为而受到影响。

2.10 法律的作用和法治是重要的事。虽然只有少数人对两者的概念感到兴趣，事实上，每一个人在日常生活小节上都受到它们影响。本港社会及工商情况是否稳定，亦系于这两个因素。上述的概念，要求我们在一定程度上尊重和遵守法律，从而确保社会治安良好。两者须保持均衡。过去多年来，本港及其他地区发生的一些突发事件，足以提醒我们未能保持这项均衡对社会所造成的危害。人们是否尊重法律，是保持均衡的一个重要因素。

2.11 本委员会认为必须认识到，除了精神不健全的人外，每个成年人均须对自己的行为负责，包括负法律上的责任。假如我们希望享受社会上的种种利益，包括法律的保障，那么对于应受那些法例约束及应遵守那些法例，就不能随意选择。

2.12 本委员会亦注意到，在本港，“放任主义”一类名词所包含的概念实际分为两方面。第一，当局在处理问题时不采取实用手法而采用顺其自然的方法，即属“放任主义”的表现，也就是说，当局只提供一个架构，使社会得以发展，市民得以追求个人目标，而不会对个人实现目标的方法加以严密的控制，除非是为了保障其他人士而必须这样做。第二，无论根据西方政治思想“放任主义”一词的涵义为何，在香港它似乎都能引起港人的共鸣。

2.13 本委员会在考虑法律的正确作用时，曾讨论法律可能带来的影响。“迫害”是一个常用的名词，但已因误用而失去原有意义。然而，受迫害的感觉则是另一回事，许多自认为属于受压迫的少数人士均有这种感觉。本委员会相信，香港与其他地方一样，很多有同性恋癖好的男子，不认为他们需要受到特别保障。然而，若干曾向我们作供的男同性恋者却给予我们不同的印象。他们之中，部份会有受迫害的感觉。他们的癖好、人们的偏见、被人视为社会上的污点、恐惧就业困难、以致对“法律”的恐惧等，都使他们觉得陷于困境。单凭改变法例，当然不能除去所有弊病，然而，有两点是本委员会肯定的：假如任何法例的现行情况大大助长人类所受的痛苦，以及任何法例无必要而增强压迫感，则我们必须有强大的理由，才能提出保留该等法例。我们不应故意利用法律作为敌视某种行为的工具。

2.14 本委员会认为有必要提出这些意见（可能已是一批不言而喻的道理），因为我们所采用的方法，是基于我们对法律的作用的理解。在考虑有关问题后，以及鉴于香港的情况特殊，我们同意英国胡分顿委员会（Wolfenden Committee）的意见，认为刑事法例的正确作用在于：

“维持公众治安及风纪，保护市民免受侵犯和伤害，充份保障市民，使不致受人利用及沦于堕落，特别是保护那些由于年轻、身心脆弱、缺乏经验、以及在身体和经济方面须特别倚赖别人和需政府照显，因而特别容易受到伤害的人。”

而不是

“为达到上述目的，而进一步干涉市民的私生活，或意图强行规划人们某些特别的行为。”

2.15 因此，本委员会认为，建议保留或撤销某项法例，毋须在法律的范围以内或以外，根据道德标准，对一项行为作出判断。我们强调，不将某种行为视作违法，并不等于将其合法化，更非表示该种行为已获得道德上的认可。

第三章 谁是同性恋者——医学分析

引言

3.1 人类社会，无论原始或先进，差不多都有同性恋行为发生，或许，自有人类以来，便有同性恋。由于同性恋行为牵涉道德、宗教及文化价值观等问题，要采用客观态度，冷静而科学化地加以分析，实在不易。不过，如果要积极地处理同性恋行为所牵涉到的心理社会问题，就必须采取这种客观态度。

定义

3.2 同性恋一词，用简易的日常用语来解释，就是指任何涉及同性性关系的行为。

3.3 同性恋与异性恋行为有时并非明显分立的，而行为形式亦无明确的区分，反过来说，这两种行为是一条连续线上的切点，线两端分别为绝对异性恋及绝对同性恋，中间则为程度不同的双性恋行为。一九四八年，金赛（Kinsey）及其同寅曾根据心理反应结果及公开的同性恋经验，建议将连续线划为七分表：0分表示绝对异性恋；1分表示异性恋行为占优势，间中有同性恋行为；2分表示异性恋行为占优势，但常有同性恋活动；3分表示异性恋和同性恋行为各占一半；4分表示同性恋行为占优势，但常有异性恋活动；5分表示同性恋行为占优势，间中有异性恋行为；6分则表示绝对同性恋者（Kinsey, A.C. Pomeroy, W.B.及 Martin, C.E.合着的《男性性行为》一书，一九四八年由美国费城 W.B. Saunders 出版）。

3.4 其他人则建议 1、2 分的得分者应称为“兼性同性恋者”，3、4 分称为“双性恋者”，而 5、6 分则称为“专性同性恋者”。

流行病学

3.5 大概而言，几乎所有社会都有同性恋之类的活动，但各个社会对同性恋的态度却有很大的差异，因此，对同性恋流行的程度进行科学研究，实在非常困难。

3.6 金赛的研究报告（一九四八年）是以五千多名美国白种男子的访问纪录为根据，所得结论是百分之三十七的男子在青春期至老年的一段期间曾有过公开的同性恋行为，并达到性高潮。一项与同性恋问题有关的统计资料显示，这班男人中有百分之十可称为差不多绝对同性恋者（即他们在十六至五十五岁的一段期间至少有三年可取到金赛计分表上的五分或六分），而百分之四则自青春期以来，一直都是绝对同性恋者。另一项意味深长的结论是，

占百分之十三的被访者在踏入青春期以后，虽然再无公开的同性性接触，但因仍对同性者有情欲的反应，所以可说是有同性恋的倾向。

3.7 到目前为止，金赛的研究仍是最彻底和最详尽的一项调查，欧洲方面也曾数度进行调查，所得结论大都与金赛的很接近。

3.8 金赛等人亦对美国女子作出过类似的研究（一九五三年），结果显示，美国女子比起美国男子来说，是较少发生同性恋行为。不过，染上此癖的女子，未婚的比已婚的多很多。在未婚女子中，有百分之二至六可称为绝对同性恋者，但已婚的就不超过百分之一；换言之，她们在二十至三十五岁之间，每年都取到金赛计分表上的五分或六分。另一方面，她们之中承认曾有过同性恋经验或念头者，约占百分之二十八，其中有达到性高潮经验的占百分之十三。

3.9 各项调查虽然受到很多因素所限制，但从调查结果可见，同性恋这种癖好实在很普遍，即使在极力反对同性恋的社会里也如是。到底为何这么多男女不管道德礼教的阻挠，而要走上同性恋的道路呢？这实在是个令人感到十分费解的一个精神心理问题。

同性恋的起因

3.10 同性恋何以会发生，至今仍未有一致的结论。

3.11 当今解释同性恋起因最具影响力的，就是采用心理分析法。这种心理分析，是把双性概念（人生来就有双性器官，这是基于人类胚胎早期有着雌雄同体的性特征）和建立在心理社会因素之上的成长理论结合起来。根据分析，人类在生理上早有阴阳两性的特征，所以在心理上有双性恋的倾向是正常的事，而在正常的成长过程中，所有人在幼年都会经历同性恋的阶段，但如果在成长后才出现同性恋倾向或行为，根据解释，就是正常的发展在幼年时受到抑制所致，或是由于家庭与父母关系不良而产生性能力丧失的恐惧，于是回复到幼年的同性恋阶段。

3.12 一个较新的见解是异性恋是所有哺乳类动物的正常生理规范，包括人类在内，而同性恋的发生经常是生活不愉快，对异性恋产生恐惧的病态发展。

3.13 随着现代遗传学及内分泌学的发展，医学界不断努力，试图证明同性恋是由于先天性倾向或由于内分泌素所造成。一般来说，由于一接合子性孪生子患上同性恋的机会，较双接合子性孪生子为高，因此以目前对这方面的知识领域来说，实在尚未能摒除潜伏的先天性倾向与后天环境互相影响的可能性。

3.14 对染色体进行的研究，仍未能证明同性恋者跟异性恋者有何分别。有些遗传学家认为同性恋者跟异性恋者比较，出生次序上出现向右移转（这

就是说，同性恋者为同胞兄弟中出生较迟者），表示其中可能存在一些目前仍未能证明的染色体异变。可是，这样的一个假设似无必要。同性恋者出生次序上向右移动，可能只是表示出生较迟的同胞兄弟更易受家庭生活父母偏爱的影响，而这种生活有加强同性恋发展的倾向。

3.15 最近对内泌素进行的研究，显示同性恋者尿内睾丸素和血浆内睾丸素俱较双性恋者和异性恋者为低。此外，大部份绝对同性恋者及“近乎绝对”同性恋者亦与一般人不同，其精子计数结果明显地低得多，且精子发生畸形的频数亦较高。

3.16 此外，还有一项事实使人相信身体的构造可能是若干类同性恋的成因。最近对低等动物进行的一项研究显示胚胎内泌素对成长中胎儿的脑中央——丘脑下部——产生作用，可能对将来成年后的性生活有很大的影响。在胎儿成长的重要时刻，若胚胎内泌素未能发生作用，即使这些动物性器官外表看来没有反常之处，它仍可能对这等动物性生活产生巨大的变化。虽然我们不知道不能在低等动物与灵长类动物之间作比较，但这一点却令人产生疑问，是否一些同性恋者生下来的时候，“在脑的神经体液系统中已潜伏着一种先天因素，这些因素使他们在精神性欲上更易于倾向同性恋——这并不意味着他们会自动或身体构造使他们如此，而只不过是出于社会环境中各种因素刚好同时存在所诱发而已。”

3.17 我们有理由相信一些特殊的生活遭遇亦会使人有同性恋的倾向，例如在监狱内，在私家寄宿学校中，在船舰上——这些性别隔离的情祝下，同性恋行为出现较多。当这些同性恋者遇到异性时，大多数会回复原来的异性恋爱，但有些则没有改变。有些人只要有过同性恋经验，便会继续下去。还有一些理论家指出那些先天倾向未确定的人，很可能在“同性恋”的相聚环境熏陶下模仿学习别人而受到影响；亦有一些人在初次接触女性时受到严重创伤，对“异性怀有恐惧”，因而有同性恋的倾向。

3.18 因此，我们要知道同性恋有不同的类型，不同的成因会有不同的影响。

精神病理学

3.19 我们没有理由假定同性恋和异性恋都有一种特殊的心理动力。事实上，所谓同性恋人格根本并不存在，而同性恋者的个性变幅跟异性恋者的一样大。或许同性恋者较异性恋者发生神经质人格变异会更多。但这种变异不一定是由同性恋本身所导致的。在任何文化环境中，如果同性恋者被视为“古怪”人物，被人讥笑、羞辱、藐视和排斥，而这些生来便有同性恋倾向的人对本身自我形象受损、情绪上缺乏安全感及各种防卫性的个性转变，如果不感到痛苦，这才叫人惊奇。另一方面，很多男女同性恋者工作认真负责，信用好，他们还往往身任要职，过着安定、正常的成年人的生活。从心理动力

学的观点来看，这些同性恋者，除了在性方面另有选择外，跟正常的异性恋者毫无分别。

过滤性病毒肝炎

3.20 过滤性病毒肝炎是一个严重影响公共卫生的问题。男同性恋者、吸毒者、娼妓及其他滥交的人受到传染的机会很高。在气候炎热的国家，发展中国家，包括香港，和欧洲的一些地区，A 型肝炎和 B 型肝炎特别盛行。B 型肝炎对人类的威胁是不容置疑的。它不单是一种急性疾病，严重程度各有不同，而且一旦染上便很难根治，尤其是在出生前或年幼时已染上的儿童。

3.21 在英国，HBsAg (B 型肝炎表面抗原) 带菌者所占人口比率很低 (约为百分之零点二)，但是在非洲和亚洲的大部份地区，这个比率却超过百分之十。而全世界 HBsAg 带菌者总数大约会超过二亿人。香港人口中有百分之九点六是 HBsAg 带菌者，表示这些人曾经患上肝炎。在那些 HBsAg 带菌者比率高的国家，有很多人患上慢性肝病和肝癌。差不多可以肯定 B 型肝炎过滤性病毒与这些肿瘤的病原有关。在 HBsAg 带菌者比率高的国家，例如中国，肝癌是最普遍的肿瘤之一，相信它也是对人类威胁最大的一种肿瘤。

3.22 最容易感染上肝炎的人士，计有接受多次输血的病人、先天或后天免疫性弱的病人、身患恶性病的病人、血液渗透、移植和肿瘤研究单位的病人和工作人员、弱智人士及照顾弱智人士机构的服务人员。过滤性病毒肝炎是医疗护理和实验室研究人员的一种职业病，尤其是外科医师和病理学家。在一些地区，更时常发生带菌的母亲在她的子女未出世前已将 B 型肝炎传染给他们的事例。

3.23 有关男性同性恋者之间 B 型肝炎病毒的确实传播途径，仍未研究出来。现时已知道精液内含有低浓度的 HBsAg，因此，精液中的 B 型肝炎病毒，很可能就透过细微的黏膜伤口，侵入对方体内。不过，假如 B 型肝炎病毒循其他途径侵入人体，病毒的份量可能会更多。

3.24 现时医学界已发现对付 B 型肝炎病毒的疫苗。有些人由于职业、行为或医疗的关系，有很大机会接触该种病毒，对他们来说，这项发现无疑带来莫大的好处。至于是否需要积极推行免疫工作，当然要视乎该种病毒的传染实况而定。假如同性恋者不受排斥，无须秘密行事，他们就较为乐意接受免疫治疗。

心理测验

3.25 如果没有临床观察的纪录，根本没有可能凭着心理测验，测知同性恋者与异性恋者在征状上的差异。同性恋并非一种单纯的临床病症，而同性恋的倾向，与个人内心或人际关系的其他范畴，却又没有关连。

治疗

3.26 就最广义的同性恋问题而言，一切治疗方法，充其量只能取得有限的成效。绝大部份的同性恋者，都不愿意改变他们的性爱方式。法律上的制裁，对同性恋者亦不起作用：法国、瑞典和荷兰容许同性恋活动，而美国则明令禁止，然而这几个国家的同性恋活动都同样普遍并无因此而增加或减少。基于这个原因，英国遂于一九六七年准许成年人私下进行同性恋活动，只要双方同意便可。现时美国也朝着这个趋向发展。美国精神病协会公开赞成这项法律，而关于“政府及市民在就业、房屋、公共住宿、发牌等方面对同性恋者歧视”方面，则表示遗憾。美国现有八个州——科罗拉多、康乃狄克、德拉威、夏威夷、伊利诺、北达科塔、俄亥俄、俄勒岗——已采用这项法例，再者美国法律学院亦已表示赞成。不过，对于引诱儿童或在公众场所行为不检，美国的法律并没有作出让步。这些行为，无论关乎同性恋或异性爱活动，始终属于违法。

结论

3.27 同性恋是一个激动情感的问题。医生亦不能免于偏见，即使是持有个人观点，也属合理。不过，医生在以专业身份诊治病人时，则必须关怀病人的需要，摒除个人偏见。在美国，同性恋已经从官方的精神病症类别中剔除出来不视为是一种精神病。英国方面，一般人也逐渐接受这项决定。同性恋已慢慢地为人接受，且被视为人类性爱活动的一部份。

3.28 社会上每个阶层，或者说每个角落，都有同性恋者存在，但一般人对他们却甚有误解。男性之间的性爱形式有许多种，其中比较普遍的，包括口交和肛门交，或者互相手淫，此外还加上一切情话、爱抚和其他表达爱慕的行为，情形与异性爱关系无异。有些同性恋者，和部份异性爱者一样，对性交并不如何重视。

3.29 有关治疗同性恋的方法，据迹象显示，其效果仅止于暂时性。同性恋者遭遇的问题，大多数直接由于社会人士的误解及随之带来的敌视构成。

鸣谢

3.30 法律小组委员会中一名成员吴达伟医生，于参阅附件三所列资料后撰写本章，本委员会特此致谢。此外，本委员会接获若干名医学界人士来函，对同性恋问题发表意见（见附件八）。另一方面，本委员会亦就本章内容，征询其他在职医学界人士（芳名见附件二）的意见。综合结果，本委员会采纳吴达伟医生之意见。

第四章 传统中国社会的同性恋问题

导言

4.1 同性恋这个题目纵非完全被忽视，也是最少受到科学性研究的问题之一。世界各社会，不论过去或现在，有关同性恋的资料均少之又少。不过，同性恋是人类性行为的一个方式则已为学术性研究所建立，不容置疑。福特（Ford）及比殊（Beech）曾对七十六个社会调查，发现其中百分之六十四的社会，或至少其中某些成员，都认为同性恋是正常或可接受的行为；而其余百分之三十六的社会中，即使同性恋行为是受谴责或禁止的，但也有证据显示这种行为仍然暗中存在，至少其中有些社会是如此的（见福特及比殊着“性行为模式” Ford, C.S. and Beech, F.A., *Patterns of Sexual Behavior*, New York: Harper & Bros., 1951）。金赛博士和他的合作者，在一项对超过五千个美国白人的调查中发现，其中百分之十在十六岁到五十五岁之间，至少有三年时间或多或少是同性恋者，而其中百分之四则终其一生是同性恋者（见金赛等所著“男性性行为” Kinsey, A.C., Pomeroy, W.B., and Martin, C.E., *Sexual Behavior in the Human Male*, Philadelphia: W.B. Saunders, 1948）。金赛报告无疑是直至目前为止一项对人类性行为最透彻与广泛的调查。

传统中国社会的同性恋问题

4.2 传统社会中，有关同性恋的资料十分稀少。要想对传统社会各个阶段的同性恋行为之模式及流行程度，作一全面的社会学分析极为困难。但有一件事是相当肯定的：即在所有主要的文明都存有同性恋。中国传统社会亦非例外。本文拟对传统中国的同性恋现象作一简要的分析。应指出者，传统中国的同性恋现象是独立于其他古代社会的历史现象。

4.3 中国有关同性恋最早的事例，是不易于考证的。但是，有些学者从古代的典籍，如《商书》、《周书》（《逸周书》）的记载中，推测早在商代（公元前一一二二年）及周代（公元前一一二二年至五〇〇年）时，同性恋即已存在，有所谓“美男破老”或“美男破产”之说（见潘光旦“中国文献中同性恋举例”，收入潘光旦译注，《性心理学》，商务印书馆，上海，中华民国三十五年，第三八〇至第四〇五页）。

4.4 在春秋时代（公元前七二二年至四八一年），同性恋的事例在韩非子的《说难篇》中就有载述。《说难篇》中记弥子瑕受宠于卫灵公之故事，说弥子瑕“与君游于果园，食桃而甘，不尽，以其半啗君，君曰，爱我哉！忘其口味，以啗寡人。”世称同性恋为「余桃断袖」之癖，余桃的典故就出于此。战国时代（公元前四〇一年至二二一年）有些君主、权臣常有男子为

「嬖」和「婬童」。《魏策》中所载魏王所宠幸的美男龙阳君即属此类，而中国长久以来即以“龙阳君”为同性恋的代名词。也许有关同性恋的记载最可取信的是司马迁的《史记》和班固的《前汉书》这两部权威性的史着了。从这两部书中，我们相信在前汉（公元前二〇二年至公元九年）时，同性恋是颇为普遍的现象，至少在王室是如此。皇帝如高祖（公元前二〇六年至一九五年），惠帝（公元前一九四年至一八八年），文帝（公元前一七九年至一五七年）及武帝（公元前一四〇年至八十七年）都有男的佞幸宠臣，如籍孺、闾孺、韩嫣、韩说等。其中最著名的是文帝，他的宠幸包括邓通及太监赵谈和北宫伯子。前汉的最后一个皇帝为哀帝（公元前六年至公元二年）有几个受宠爱的男子，最为出名的是董贤。《汉书》说他“为人美丽自喜，哀帝望见，悦其仪貌”，并记述有下面一段话：“尝昼寝，偏籍上袖，上欲起，贤未觉，不欲动贤，乃断袖而起”，断袖与余桃皆为同性恋之雅称，而断袖的典故即由此来。同性恋的现象自前汉之后并未中断，惟在《后汉书》中则无同性恋事例的记录。但到了晋末及六朝，同性恋的事例在史书中又出现。其间事例颇多，梁朝诗人庾信及《陈书》中提到的韩子高皆为同性恋者，似无可疑。稽康（公元二二三年至二六二年）及阮籍（公元二一〇年至二六三年）两位历史人物，世人皆视为同性恋者。

4.5 宋代（公元九六〇年至一二七九年）时候，在大城市里，普遍出现有男子为妓的现象，此虽为法律所禁，但仍不为之绝，此在王室南移后尤然（见胡礼译《元人入侵前的中国日常生活》Jacques Gernet, *Daily Life in China: On the Eve of the Mongol Invasion*, trans. by H.M. Wright, Stanford University Press, 1962, 第 98 至第 99 页）。男妓装饰如女人出没于街市，此一时期或者是同性恋明显化的一个高潮，自此之后则又转为隐秘矣。

4.6 在此应指出者，六朝之后，正史不复有同性恋事例之记载，但是，在一些稗官野史中则仍不乏同性恋之载录。于明（公元一三六八年至一六四四年）、清（公元一六四四年至一九一二年）两代，记述尤多；文坛名士袁枚之《子不语》、《续子不语》、《随园诗话》及纪昀之《阅微草堂》、《如是我闻》皆为较著名者。

4.7 同性恋在清代的小小说中亦可找到。小小说诚不必为真，惟亦足以反映社会生活之某种实情。《红楼梦》在中国小说中最享盛誉，亦间有描写同性恋之事，尽管此在小说中所占笔墨不多。而在李渔之《肉蒲团》中，主角未央生与其童仆之同性恋关系至为明显，诚然，未央生固非纯同性恋者。在小小说中，以男子同性恋为主者厥推陈森之《品花宝鉴》。在《品花宝鉴》中，主人翁皆为男子，且绝大多数为戏子，此一小说充份反映当时戏子及其友朋的生活状态。民间关于戏子与同性恋者关系之说法，与《品花宝鉴》所述者颇多契合。

4.8 在十七世纪，一位隐名作者写了一本叫《断袖篇》的书。此书记述中国历史上五十个著名同性恋的故事。依范古力克（R.H. Van Gulik）之见，这本书是此类书籍中之仅有者（见范着《古代中国性生活》R.H. Van Gulik, *Sexual Life in Ancient China*, Leiden: E.J. Brill, 1961，第 48 页）。

4.9 从中国历史上看，同性恋似为一明显存在的社会现象。不错，我们对各朝各代同性恋之流行的情形，已无从知悉。显然，它因朝代而有异。对中国性生活极具研究的范古力克指出，中国同性恋“在六朝之早期最为盛行，再者则在北宋之期（公元九六〇年至一一二七年）。自此以往直至明末（公元一六四四年），男性同性恋较之多数西方社会则不会更多。”

4.10 同性恋在中国历史上，不止因时期不同而有异，而且在空间的分配上亦有差别。有的地区同性恋情事较多，此或由于贫穷及其他社会因素所致。清代福建同性恋颇为流行，寢成风气，或谓此系由于航船职业之故，缘该地居民与航船者皆迷信：如女子上船，则该船会遭受咀咒而不免倾覆。闽俗契兄契弟之称，流传已久。契字在福建有一特别语意，契弟则意含男子与同性之关系也。

结论

4.11 本文一开始即指出，同性恋是最少受到研究的题目之一，对于传统中国社会之同性恋现象，甚难有确切之论断。但是，广泛的、不同类别的文献有力地显示同性恋是一古老的社会视象。所可肯定者，尽管有迹象显示，中国某些时期中，在文士墨客的笔下，同性恋行为被雅化，而染有浪漫的色调；但同性恋在中国任何朝代都未有如古希腊时代之被理想化者。从事于文化与社会比较研究的学者认为，中国人对于性的态度是相当开放的；性并非可怕，也不以为是罪恶。一般人虽然对同性恋行为感到厌恶，但通常都予以容忍。根本上，同性恋一向被认为乃个人之私事。所以，在中国历史上，社会对于同性恋的容忍是很大的。

社会制裁

4.12 比较地说，或从历史上看，同性恋在传统中国并不如过去西方某些时期那样受到严厉的诟责。在传统中国社会，一个同性恋者所受到的社会制裁恐不外是嘲笑和揶揄。诚然社会视同性恋之不足取，亦不更甚于溺赌与狎妓也。由此以观，传统中国之法律从不以同性恋为对象（男子为妓则属另一回事），盖有以也（即使今日中国之法律亦莫不然）。

鸣谢

4.13 本章乃由新亚书院院长、中文大学社会系系主任金耀基博士，参考附件三所载资料撰写。金博士为本委员会委员之一，其研究心得及高见，本委员会乐于接纳，并视为本委员会的意见，而迄今本委员会亦无接获其他与本章见解相左的资料。金博士惠赐鸿文，本委员会谨此致谢。

第五章 现代香港的同性恋问题

同性恋行为

5.1 本委员会在前章所引述的文学和历史资料，令我们相信在古代中国，一如其他伟大文明古国一样，同性恋的确是存在的，且亦有人进行同性恋活动。其实，第三章所述的医学和社会学研究已足以排除其他结论的可能性。

5.2 常闻人道：在香港，同性恋活动只是西方人的玩意，与华人无关。为此，本委员会认为有必要剖析时下香港的情况，尽可能探求我们这个华洋杂处社会内里的真相。

5.3 本委员会认为第一步工作是研究麦乐伦事件调查委员会所录取的公开证供：

“问：‘彼得’你是否同性恋者？

答：是。

问：你何时开始发觉有这种倾向？

答：是朋友教我的。

问：你当时几多岁？

答：超过十三岁。

问：他教你干什么？

答：我们下班后同到宿舍去睡觉。

问：然后？

答：他拥抱我。当时，我不知究竟发生甚么事。他替我手淫。

问：你朋友有多大年纪？

答：他大约十五、六岁。

问：你当时是否喜欢他这样做呢？

答：我觉得很有趣。我开始喜欢这种玩意。

问：这事件是当你任职酒楼时发生的。你在该处工作时，这类事情是否经常发生？

答：我也有在厨房和厨子们玩在一起。

问：他们有多大年纪？

答：十七、八岁。

问：除了酒楼的职工外，你是否有和其他人发生同性恋关系？

答：有。

问：他们是什么人？

答：外间的朋友。我们在偶然的场合中认识。

问：在甚么地方？

答：公厕。

问：你如何认识他们？

答：他们有时会对你微笑，有些还向你眨眼。我也曾前往启德游乐场等地方。在戏院也可以找到他们，他们都站在戏院后面。

问：你当时年纪有多大？

答：超过十四岁，快要十五岁。

问：直到那时为止，你是否有纵情于其他同性恋活动？

答：我们有时口交。我有时鸡奸人。有时人鸡奸我。

问：你是否指自己出外活跃结交同性恋朋友？

答：我的意思是我出外找寻伙伴。”

（节录自一名名为“彼得”的中国籍男妓于一九八零年十月二十九日向麦乐伦事件调查委员会所作供词，誉本第 152 至第 157 页）。

5.4 本委员会引述上面的供词，并非有意惹人反感，亦不是想突出人生丑恶的一面。我们只想利用这个特殊的例子，说明一个学识浅薄的中国男孩如何从友伴中染上同性恋癖好。有关“彼得”以及向麦乐伦事件调查委员会作供的其他几位男妓的背景和同性恋经历，摘录于附录二十七。他们在供词内，详尽描述男妓之间如何互相向朋友和游客出卖肉体，淫媒如何在浴室控制一群男童作为摇钱树，拉皮条者如何向当局出卖情报和朋友，爱人如何互相告发；有时，毒品是引诱的因素。在供词内，曾有叙述一名男子鞭打男童作乐，每鞭代价二十元。男童亦向顾客榨取礼物金钱。

5.5 一九八一年底，本委员会得蒙皇家香港警察队提供一份有关本港同性恋活动情况的评估报告；综合调查委员会所录取的证供，足证警方评估准确：——

“在过去三年间，特别调查小组一直集中调查本港同性恋活动。在调查过程中，该组人员曾先后会晤不少不同社会阶层的同性恋者。调查结果显示本港同性恋活动颇为普遍，同性恋者中有不同种族，来自不同社会阶层的人士。根据从会晤中所收集的资料，本港有全职或兼职男妓超过一千人，服务对象包括本地及来港旅游的同性恋者。

本地或来港旅游的同性恋者，如要找同道中人，并无多大困难。若干国际刊物胪列同性恋者聚集的场所和其他知名的地方。有些无法抑制性欲的人，在情急之下会前往公厕或酒店厕所找寻

对手。不少同性恋活动是在公厕附近进行。男妓喜欢聚集在公厕附近，与嫖客谈妥价钱后，便与他进行粗犷行为。还有其他地方，例如海滩等，则为同性恋者提供结识和会面的机会。

以淫媒为业者，人数甚少；不过，要区别职业淫媒和业余淫媒，十分困难。原因是不少活跃的同性恋者，不论是男妓或业余爱好者，都会向别人介绍同性恋朋友，有时甚至不收取金钱或报酬，但大多时会收取一些费用。至于职业淫媒，手下控制不少年龄不同的少男，嫖客大多经由朋友介绍，有些则在报章刊登广告，所用字句亦颇为露骨。他们提供各类反常的性服务。很多时候，少男会误信可获得按摩训练或受雇为摄影模特儿，不知不觉受人诱骗进行同性恋活动。

本港有知识或有社会地位的同性恋者，为着满足自己的性欲，很多时候不得不找一位社会地位比他低微的伴侣／男妓。很多男妓与黑社会关系密切，黑社会会员全属冷酷无情，他们只重金钱，这是毋庸赘言的。有不少男妓根本亦好女色，他们纵情于同性恋活动，只不过是唯利是图。因此，敲榨勒索的情况，实难以估计。由于明显的理由，受害者大多不愿向警方举报……本港不少同性恋者享有社会地位，担任的职位性质微妙，他们都可能成为敲榨勒索的最佳目标。”

本委员会从观察所得结论，可作为上文的注脚：假如全港有男妓一千人的推断是正确的话，如果他们每人每星期内在双方同意下进行同性恋活动不足五次，则这类非法活动每年在本港发生超过二十五万宗，差不多没有一宗遭人举报或被警方侦破。

5.6 一九八一年后期，一个写实的电视节目在本港播映。该节目的记者兼策划人陈乐仪先生在策划该节目时所进行的实地调查，对本委员会探求事实真相的工作，很有帮助。我们在本报告书内节录了某次会议的纪录（附件十五），陈先生在会议席上，叙述调查结果如下：

“为电视广播有限公司筹拍这个有关同性恋问题的节目时，他访问了很多人，并探访若干经常有同性恋者出入的地方。他曾经参加他们的社交活动和聚会。这节目制作需时六个月。他发现，他遇到的同性恋者来自社会各阶层：包括公务员、商人、教学界人士、传播界的人士、侍应、文员、艺术家、作家、推销员、专业技术员等。有些来自欧洲，有些来自美洲和亚洲，其他是本港人士。他们的年龄大约由十八岁至三十岁或以上。从心理学家观点而言，他们的心态与异性恋者无异。他们是男性，因此在性方面比女性较易冲动。此外，由于他们不会生儿育女，而且处身于香港这样的社会环境，因此，他们分手的可

能性，比已婚男女为高。他们的行径，与异性恋者并无不同。”

5.7 此外，小组委员会的成员曾访问四名华籍同性恋男子（附件十七），使本委员会对问题有更深入的了解。他们对提出的问题发表意见，其中包括经常提及“同性恋只是西方有而中国无”的问题：

“受访者的答案是，在他们的同性恋圈子里，并无西方人士。圈子的成员包括一名年约四十五岁的医生、两名新闻从业员（一名三十一岁，另一名约二十岁）、以及若干学生，全部为中国人。各同性恋圈子之间的分别，也许就在于他们的成员来自不同的社会阶层。有些同性恋圈子的成员来自经济能力较差的阶层，例如侍应和酒店房间服务员。华籍同性恋者的年龄差别颇大，职业范围亦十分广泛，包括店员及‘行’（大商行）的雇员。”

对于有人认为同性恋者滥交的问题，他们的答案是：

“一般而言，同性恋者并不滥交。个别同性恋者可能滥交，正如个别异性恋者可能滥交一样。一对同性恋人之间的感情关系，通常很深厚。受访者又认为，愈来愈多人误会那些衣着华丽的的士高常客，就是本港的典型同性恋者。”

5.8 上述所有意见倘和李必治先生（Mr. Lethbridge）于一九七六年在香港法律导报一篇文章内所发表的言论作一比较，当能发人深省：

“香港还有另一秘密组织，这个组织也许不及三合会和共济会那么有名。那就是‘同性恋国际联盟’（Homintern）（这个新词似乎是诗人奥登所创），意指由同性恋者组成的团体。现时，本港只有少数人是同性恋者，他们在不为人知的情况下秘密活动……本港的同性恋者行为谨慎；他们不会标奇立异，招摇过市。他们似乎不会佩上同性恋者解放运动徽章到处炫耀，或在皇后大道向青年男士送秋波。”

“……本港的典型欧裔同性恋者可能会与男性朋友玩桥牌，却不会参与同性恋者解放运动。大体而言，占本港人口少数的同性恋者颇为正派，在很多方面都能随俗，并且极为拥护政府。在本港现行法律下，这种现象实在不足为怪。”

“要把同性恋者明确分类，并不容易，但本港的同性恋者仍可分为三类。第一类是那些在公众场所找寻生张熟魏为性伴侣的同性恋者；有些已婚，与普通的异性恋者分别不大。第二类是那些与另一男性同居的同性恋者；如该同性恋者为欧籍人士，则前者通常为一华籍青年。我们可以把这种关系称为“家庭式”同性恋，因为在某些方面，这种关系类似异性婚姻关系；正如

任何婚姻一样，有时其中一方可能与别人发生性关系。这类同性恋关系有时维持一段长时间，但大部分是短期关系；当关系结束时，该欧籍人士通常被迫给予其前度情人一笔可能高达数千港元的“掙煲费”。第三类同性恋者是男妓。没有人敢肯定这类人士是否真正的同性恋者，但鉴于男妓很容易与其他男性发生性关系，他们似乎不可能是隔代遗传的异性恋者。”

（“搅同性恋的家伙：香港的同性恋问题与法例”（The Quare Fellow: Homosexuality and The Law in Hong Kong）；《香港法律导报》（Hong Kong Law Journal）第六期，第二九二、三二一至三二二页）。

同性恋罪行的发生率

5.9 根据我们所得资料，毫无疑问，现时同性恋活动在本港相当普遍，任何社会阶层或种族中，都有发生同性恋的事件。

5.10 本委员会相信，现有统计资料大大低估了同性恋罪行的实际数字。例如，附件二十三及二十四转载的少量统计数字显示，一九八一年举报的1,352宗有伤风化案中，只有63宗属于同性恋性质；同时，692人被控有伤风化罪，但只有54宗是同性恋罪案。

5.11 一般而言，性罪行的统计数字未能正确反映实际情祝，是由于两种截然不同的因素。第一个因素是，很多与性有关的罪案没有“受害人”，犯事双方均同意进行该违法行为，并对结果感到满意，因此，任何一方都不会基于任何理由而向警方举报，或寻求法律帮助。第二个因素是，即使案件中有“受害人”，通常他们也觉得过份尴尬、恶心或恐惧，因而不向家长、朋友或警方报告，另一方面，他们或者担心举报后，事件会张扬。例如，最近在本港进行的罪案受害者统计显示，在所有暴力罪行（包括侵犯妇女的性罪行）案件中，警方接获报告者仅占百分之四十一；有关方面相信，举报数字如此低，是由于上述因素或类似因素所致。

5.12 我们似乎有理由假设，既然发生于异性之间的罪行统计受上述因素影响，则同性恋罪行的统计亦会受同样因素影响。因此，除已公布的统计数字外，我们必须另觅资料，以了解同性恋罪行的真相。

5.13 我们在第5.5段的注脚中提及，涉及男妓的同性恋事件假设每年达二十五万宗。现在让我们再根据假设，进行另一项计算，这项计算与卖淫无关，而是关乎同性恋行为在社会发生的数字。

5.14 金赛博士曾研究美国人的性行为，并计算出在任何男性人口中，有百分之十几乎是绝对同性恋者。如果金赛博士的研究结果适用于香港，那么，一九八一年，本港人口中，约有十八万名年龄由十五岁至五十九岁的男性是同性恋者。如果以十五至三十五岁的未婚男性来作同样的计算，则该组人口

中，约有七万人是同性恋者。如果我们假设上述两组男性中，只有四分之一实际上有同性恋行为，而每人每隔两星期便同一组别的另一男性，在双方同意下作出违反本港刑法的同性恋行为，那么，我们便会发觉，本港每年有 585,000 宗和 227,500 宗同性恋刑事罪案，分别在上述两组男性中发生。当然，上述数字全部出于假设，但亦有人认为，它们未能完全反映本港社会同性恋问题的严重程度。

5.15 不论正确的统计数字为何，本委员会根据各项研究结果，相信本港每年有大量人士蓄意违反上述刑事法例，而按照现时情况，警方极难侦破这些罪案及检控有关的违例人士。稍后我们会研究，漠视法纪的情况如此普遍，会带来甚么不良后果。

官方对同性恋的反应

5.16 本委员会在第一章已依次撮述自一九七八年以来本港发生与同性恋问题有关的事件。至于下文中较详尽的阐述，则以麦乐伦事件调查委员会报告书所载的历史为根据。我们认为所牵涉的问题有两个：警方在侦缉及调查方面的政策；以及当局的公务员叙用政策。当这两个问题碰在一起时，便会产生种种麻烦。

5.17 在侦缉和调查工作方面，一般人相信由于警方只是接获投诉后才有所行动，因此警方于一九七八年以前在调查成年男同性恋者的活动方面只是做了很少的工作。有人更称当时的政策为“只眼开，只眼闭的政策”。此外，亦有谣言广传谓香港有一些地位高的人士，包括法官、商人及律师（包括私人执业或任职政府者）都是有同性恋行为的人士。在麦乐伦事件调查中“彼得”所作的证供，就是一个可以说明这两种信念的例子：“彼得”辩称他供出若干位欧籍公务员顾客的名字，其中一个原因是由于那位向他问话的警务督察所说的话。“彼得”声称该督察曾对他说下列一番的话：

“你们（中国籍男妓）都是受害者，你们是中国人的。不会有任何事情发生在他们（那些顾客）身上的，因为他们是欧籍人士，他们甚至不会被检控，当局只会将他们遣回英国罢了。”

（“彼得”在一九八零年十月三十一日所作供词编译本，见誊本第二六一页。）

5.18 上述情况在一九七八年却有所改变。首先是当局将一名淫辱多名男童的欧籍律师拘捕。其次是揭发数宗案件，显示了介绍青少年卖淫活动及淫辱青少年罪行的猖獗程度。警方对这些案件都作了进一步的调查。在大约同样时间，一名中国籍少年正式投诉谓一名警务人员曾试图非礼他。该名警务人员就是麦乐伦督察。由于该名少年其后返回苏格兰求学，当局因此不能在缺乏该少年作证的情况下控诉麦乐伦，但麦乐伦的雇用合约却遭中止，麦乐

伦遂提出抗议表示无辜，结果上诉得直而获恢复原职；但三年后的调查委员会却发现该名中国籍少年所说乃属事实。

5.19 同时，在一九七九年中，该名被判监禁三年的欧籍律师拟备了一份特赦请愿书，指称当局行动有所偏袒，并谓可以供出多位“地位极高”的同性恋男子的名字。由于上述事件及其他事故，警务处长遂促请香港总督根据警察条例（香港法例第二三二章）第四条就调查同性恋罪行须动用的人力物力发出指示。总督、律政司、布政司及数位高级警务人员经过多次会议后终于订定一项获各方面同意的政策。是项政策载于律政司致警务处长函件中，而该函全文已收录于附件二十八之内。该函谓警方的主要调查目标首先为淫媒，其次方为淫辱青少年或精神不健全的人士。该函除列举其他调查范围外，并提议警方倘得到有关成年人在双方同意下进行同性恋行为的线索（与直接犯罪证据相对而言），通常可毋须展开调查，但如果线索是有关某些类别的人士，则须追查线索，而司法界人士及政府高级公务员是列于这些类别中最后一类者。

5.20 自一九七八年八月起负责追查介绍青少年卖淫非法活动的警察单位此时已获增添人手。该单位须直接向副警务处长负责，而副警务处长则须就调查进展向律政司及总督报告。该单位日后遂演变为特别调查小组（或称SIU）。该组一名成员曾向刑事检控处长提出以下问题：“调查会否因为真的披露若干位知名人物的名字而停止下来？”刑事检控处长的答复如下：“情况并非如此。不论披露那一个人的名字，调查仍会继续下去的。”（麦乐伦事件调查委员会，卷本第11005至11009页）该名警务人员认为这样做会打开了“潘多娜的盒子”；而一些同性恋者及评论者更相信有如此后果：由此时起他们的抨击便针对执行这些政策有关的人士。

5.21 跟着要谈的是方程式的另一部分：警察酌情决定的权力和挑选调查目标的问题。单以特别调查小组而论，我们最好引述麦乐伦事件调查委员会所得的结果：

“订定调查目标一向都是警方的工作，律政司署只是负责提供法律意见。无论基本及一般政策怎样，该次会议的结果是，警方及律政司署日后会互相联络，进行讨论，但警方毋须正式放弃任何权力。在实行方面，由于调查将涉及性质敏感的问题，因此双方会就订定调查目标的范围，进行磋商。至于职权方面，并无迹象显示律政司署有意接管警方的职权，或警方有意放弃‘传统的权利’，只是在实行有关工作时，双方须就个别案件订定调查目标的事宜，进行磋商。虽然这并非惯常做法，但却不失为一实际的解决办法。”

“理论上警方无权挑选案件调查。警察条例第十条(b)款订明警察的职务是采取合法措施防止及侦查罪行。因此，警察的职

责之一是侦查罪行，将犯罪者绳之于法（柯哲保论刑事诉讼程序，证据及答辩，第四十版，第 1311 页 2718 段（Archibald on Criminal Practice, Evidence and Pleading, 40th ed. p. 1311, para. 2718）。）”

“实际上由于警方不可能将所有罪行逐一调查，将所有犯罪者逐一绳之于法，所以只好挑选若干案件调查，这委实是无可避免的。刑事侦缉部总主任简乃善恰当地称这种选择为‘一种方法，以确保警方能够尽量动用人力物力集中应付一项特别问题，免得因分散实力而减低效率。’简言之，选择是警方自觉的决定，当需要警方用人力物力处理的事项繁多，警方乃从一群因警方掌握对他们不利的消息或情报而被列为‘嫌疑者’的人中挑选若干名作为积极调查目标。选择的程度显然因嫌疑者总数与被选为调查目标的人数而异。假如所有嫌疑者均接受调查，选择的问题根本不会出现。然而，警方只能动用有限的人力物力去对付某一类罪案，同一时间内接受积极调查的人数须完全取决于警方所能动用人力物力、有关罪行的严重程度及警方所掌握的资料可靠程度。关于同性恋罪行，简乃善作供时表示‘鉴于此类罪行的范围甚广，而调查小组只不过成立不久，本人认为该小组的调查范围之一当然是近期的同性恋活动。’”

“在只有少数嫌疑者接受调查的情况下，例如有关同性恋罪行的调查，接受调查的人士往往大呼遭受‘迫害’。他们投诉不是因为清白，而是不服因何（假如真的是有原因）被选中而其他他们认为更‘值得’调查的人士却可以逍遥法外。往往有人会指责维持法纪的人员极为偏颇，在选择调查对象时偏袒特权分子或有势力人士。”

“从普罗大众的观点去看，如果他们所认识、相信或怀疑的多数同性恋者并没有受到调查，他们可能对特别调查小组的选择问题感到异常关注。他们的关注是可以理解的，然而他们或许不明白自己所知的，警方却不知道，反之亦然。熟识同性恋活动情形的人士所知道的，调查小组人员未必一定清楚，除非有人向他们提供消息或由他们的情报网侦查出。反过来说，警方却可能掌握一些普罗大众得不到的资料。”

“单就搜集资料而言，本人审阅调查小组所有纪录后，发觉并无任何凭据证明调查小组的调查范围只局限低级或／及中级公务员或任何一类人士。事实上情报纪录的范围颇大，包括各行业各阶层的人士。”

（麦乐伦事件调查委员会报告书第 63 至 65 页第 48，52，53，54，57，58 段）

“及至一九七九年七月，调查小组才重新展开工作，但该小组要待至同年八月二十八日总督府举行会议后，方在八、九月间获增添人手（除恢复原有人数外，另加一名总督察）。证据清楚显示，自一九七九年七月起，该小组的人员忙于再次接见与该五宗案件有关的证人，并从其中一人（绰号‘火星’）获得有关一名政府律师的直接证据。该小组依循此线索追查，终于将该名律师绳之于法。同样地，‘哥连’与麦乐伦并非从一群涉嫌者中‘挑选’出来，而是当该小组搜集情报时，有人向警员刘敏透露他们的名字。既然有可靠的线索出现，该小组的人员当然要执行本身职务，追查到底，而他们的确这样做。并无证据显示该小组特意挑选麦乐伦，或出于任何不正当的动机而调查麦乐伦……”

“从上述分析可见调查小组从开始工作直至调查麦乐伦为止，根本没有机会在一群嫌疑者中随意挑选调查对象。由始至终，该小组都是根据有关五名活跃淫媒的档案及不时发现的可靠线索而采取行动的。单就追查可靠线索而言，该小组只优先调查近来发生的同性恋活动。”

（麦乐伦事件调查委员会报告书第一九七页第 42，43 段）

5.22 此外，在麦乐伦事件调查委员会谓调查期间及工作完成后，有人指责政府的政策对高级公务员有所偏袒（李必治文“潘多娜的盒子：麦乐伦督察之谜”（Pandora's Box: The Inspector MacLennan Enigma）；《香港法律导报》（Hong Kong Law Journal）第十二期（一九八二年）第二十三页）；但从该调查委员会所获得的证供来看，政府的意思则刚刚看相反。为方便参考起见，现将律政司致香港法律导报编辑的一封已发表的信件摘录如下：——

“自然，律政司决定是否起诉，或警方决定是否调查时，绝不会考虑被调查人的社会地位或财富；可是，在指示警方应否追查线索时（所谓线索，即指真实性存疑的指控或提示），则须考虑年资、可信度、是否接触秘密或机密资料、或有关人士是否负责行使重要权力或是否由其本人作出决定等因素。显然，任何人如其行为为社会上众多人士所痛恨者，均有被敲诈的危险，倘该种行为构成刑事罪行，则遭受敲诈的危险程度更大。由于这个缘故以及其他因素，当局将指定须例外处理的各类人士列入，目的是针对，而非维护在政府各部门、法律界及司法界工作的高级职员。如果是较低级的职员，危险性显然较低，所造成的损害也较小。

当上述问题在督宪府展开讨论时，所有在场人士（包括警务处处长及副处长）一致认为——本人肯定他们当时亦明白——

凡涉及政府低级公务员的‘綫索’（相对于证据）虽然毋须追查但对于指向高级公务员的綫索，则须使用另一种方法处理。”

（一九八二年《香港法律导报》社论，第二页）

5.23 现在要谈谈最后一项互相关联的政策——公务员的聘用。根据政府公务员的一般服务合约规定：政府或公务员任何一方如欲终止合约，须给予对方三个月通知，或以薪金代替通知。一九七八年，当局便是引用这一条款来处理麦乐伦督察事件。铨叙司表示：当局通常都会向该名公务员解释考虑引用该条款的原因，同时亦给予该公务员答辩的机会，以示公平。此外，政府亦保留一项根据殖民地规则所赋予的权力：为公众利益起见，政府于认为有需要时可强迫某公务员退休。

5.24 铨叙司在作证时，曾解释公务员叙用政策的背景。一九八零年一月，当局在一名在保安科工作的欧籍公务员被判犯同性恋罪后，重新检讨该项政策、目的是制订一些准则，以便在决定如何处理涉嫌或已证实的公务员同性恋事件时，有所依循。这类检讨，为历来第一次。结果，当局决定，在叙用方面，所有这类个案均应按个别情况处理，同时亦应试图将各种不同的情况，归纳起来，订定一套指标，以便于评估每一个案时，有所帮助（麦乐伦调查：一九八一年一月七日，第三二〇九，三二二四及三二三六页）。

5.25 本委员会在获提示下，曾参阅一九八二年的报章报导。该报导转载一份向政府部门首长发出指示的文件的内容，其大意为：在聘请公务员时，对已知为同性恋的人士，（即犯同性恋罪者或前曾承认有活跃同性恋行为者），不论男女，均不应录用。在职公务员倘犯同性恋罪者，亦应考虑将其解雇。对于已知或涉嫌为同性恋的公务员，部门首长亦须将其个案向当局请示意见。本报告书附件二十九载有该文件的全文。该文件后来获当局承认为铨叙司办事处发出的一份通告。

5.26 此项政策亦受到批评，认为当局对同性恋公务员歧视（参阅附件四有关报章的反应）。除数名被控同性恋罪的公务员被拘捕外，我们并未发现任何事实或资料足以显示香港政府公务员中同性恋问题的严重程度。

评论

5.27 本委员会看不出为甚么金赛博士对人类行为方面的研究成果不应在本港广泛引用。换言之，假如估计本港男同性恋者的人数是介乎 125000 至 250000 之间（占男性人口百分之五至十），而其中绝大部分是中国人，这个估计可算与实际相符。此外，我们假设本港每年有盈千累万的同性恋事件发生，而其中大部分是属于成年人在彼此同意下进行者，这项假设亦属合理。根据目前法例，此等行为全属非法。根据本委员会计算出来的结果，只有极少数是经过调查后破案的。本委员会认为此举实有损法律的名声，同时

亦使本来视尊重法律为理所当然的人变得蔑视法律。假如法律真的如英国大宪章所谓至高无上，无人能及，我们认为社会里便不应有大量本来奉公守法的市民觉得他们应该凌驾于法律之上，可以任意触犯任何法例。本委员会怀疑这种道德上的“精神分裂症”，可能是造成若干同性恋者精神紧张的原因之一。

5.28 市民对本港司法应该具有信心，本委员会认为这一点颇为重要。同样，公务人员亦应受到监察，并应对自己所作的决定负责。执法部门调查罪案应审慎从事，而检控部门在决定应否提出检控时亦应如此。所有司法人员对这种处事态度毫不陌生。由于需要审慎的地方各有不同，因此各部门须按照不同的准则行事。基于这个原因，本委员会认为不宜罗列一切有关准则或应考虑的因素。

5.29 市民当然有权期望这类决定并非出于武断，因为审慎的决定是法治的特征。不过，若干评论家却以当局未能达到这些标准为理由，不断抨击当局在调查及检控同性恋罪行方面所作出的决定。有些涉嫌或被控犯有同性恋罪行的人士声称他们被“挑选”出来，这些批评并非香港仅有，事实上，在很多国家，都有提出同样的批评。本委员会认为某些评论家将法律存在的责任与执行法律或依法检控的责任混为一谈。

5.30 由于此等事项乃关乎我们所最关注的司法问题，故在本文提及。本委员会仔细研读麦乐伦事件调查专员在结论中所提出的调查结果。这些结果充分反映高级公务人员确实尽了一番努力，以求订出合理而合乎人道的政策。虽然如此，评论续有出现。这些因素更令我们相信：目前的法律足以激起某些人士的情绪。本委员会亦觉得，为着司法的利益，当局应将有关政策向调查部门的人员以及可能受到影响的社会人士公布。

5.31 警方本身亦认为这类调查颇为敏感，进行时须小心监督，轻重分明。本委员会亦有同感。据悉，自一九七八年以来，特别调查小组的纪律人员常有变动，最少时只有两人，最多则有二十六人。对于拥有三万名人员的警队而言，这种人力部署是否相称呢？

5.32 明白事理的人士都认为当局应调查淫媒，并将他们绳之于法。警方要办到此点，就不得不先寻找男妓及嫖客，加以查问。要寻找他们，就不得不暗里前往他们经常出入的地方。警方要对付惧怕露面、惧怕检控或惧怕丢职的人士，实在并不容易。同样，社会人士与本委员会均坚决认为当局应调查鸡奸者以及利用药物或其他方法引诱男童作同性恋行为的人，将他们绳之于法。警方要调查及检控他们，就不得不惊动同性恋圈子内其他方面的人。

5.33 事实上，麦乐伦事件调查专员经调查后，发觉若干警务人员在某些调查或行动中动机不当或违反所订准则。本委员会所关注的是怎样去减少同类事情再度发生，确保本港警务人员能善于运用所获赋予的权力。

5.34 本港制度设有多重保障，由来已久：高级警务人员负责审核办案的优先次序，以及属下的工作表现。至于应否提出检控或应否豁免证人不受检控则由另一机构决定。法庭在监察警务人员行为方面任务重大。此外，独立的律师行业不但保障疑犯权利，亦可确保警务人员行为正当。最后，当局甚至可以成立调查委员会。经验证明，上述种种保障通常足以减低那些专业道德胜不过犯错的本性的人士所造成的祸害。从实际角度来看，本委员会怀疑自己能否在这方面作出任何贡献。

5.35 关于警方人力的部署。当然是警务处处长要处理的问题，本委员会无权过问。不过，本委员会在第六章研究的并非单是同性恋行为，而是包括其他性罪行。我们认为在这方面研究所得，亦可用于其他方面。假如当局认为这类调查需要特殊技术及保密，不应交由警区内普通刑事侦缉组负责，那么何不交由现正调查妓女卖淫场所及按摩院的“扫黄组”负责。据悉，淫媒男女俱合，手下有男有女。这些“扫黄组”通常都有男女警务人员。本委员会相信由类似的小组来调查各种卖淫罪行，定必有好处。

公务员的聘用

5.36 虽然契约法、雇佣法及铨叙规例均不在本委员会调查范围之内，但我们觉得这些法例都与讨论中的问题有关。近年来，这个问题引起公众争论，因此我们大胆提出一些有关这些法例的意见。

5.37 显然，公务员对安全保障是特别关注的，而最好不过的就是尽量减低侵害安全的危险。香港有别于其他的国家，行政权极度集中：一切决定都在同一幢大厦中达成，其中有关乎整个社会繁荣的土地用途方面的决定、有关工务投标的决定、牵涉社会安全的有关难民及非法入境的决定、以至有关本港未来前途等敏感政治问题的决定等。我们不以为把有关这些问题的讨论和决定保密是小题大做，亦不以为这样做是因为恐怕事情遭受调查而揭露。这不过是适当的关注而已。我们的结论是灵活变通才是善法，无论理论上是如何的好，一视同仁地引用划一标准并不一定有效。随着雇员年资的增长，安全受到侵害和遭受勒索的危险明显地亦有所增加。

5.38 此外，单从实用观念来看，已有理由把具有“少数性倾向”的人士排除于某类工作之外。由于目前社会人士对同性恋所持态度，当局聘用男女同性恋者可能不利于某方面的工作，例如看管囚犯、在政治部工作或教育年青人等。在这些情祝下，我们认为当局应订立一项政策，宣布不得雇用这类人士或在适当情况下将之解雇，而那些使用公帑的雇主，则更须订立严格的标准。

5.39 无论如何，我们认为（除了我们前时提出的评语外），不管法律如何，男同性恋行为对安全保障造成的危险，并不比其他众人皆欲保密的行为

为小，这些行为包括通奸、酗酒、赌博或有私生子等。同样的，对揭露隐私的威胁，女性所受的压力亦与男性无异。

5.40 因此，我们认为当局须检讨公务员叙用的现行政策。女性因一切与性有关的行为，包括同性恋和异性恋，其在执行公务上受到过度的压力，与男性并无不同，因此当局没有理由采取不同的处理方法。我们认为当局应促请所有申请人和在职人员留意这项政策的存在。从欢察所得，把行为标准订得不切实际地高的政策摘足以造成目前的情况——亦即制造勒索机会，而这点是我们必须改善的。最后，本委员会要强调公平的重要性。所有规则必须切实可行，及为人所熟悉。无论引用或服从规则的人均包括在内。此外，在考虑个别事件时必须引用自然法的原则。

结语

5.41 研究麦乐伦死因的调查委员会是促使我们研究香港同性恋问题的主要因素。该委员会在结论中指出，麦乐伦是因为恐怕他与“彼得”的两性恋行为被揭发而带来耻辱，故而自杀。本章的开首引述“彼得”的几句话，因此此处引别人的几句话来作结，也算公平：

“麦乐伦只是一个平凡的人。倘若这些不幸事件从未发生，他可能会优悠地过活，不为人知。他称不上完人，却也不是社会的渣滓。像常又一样，他有优点，也有缺点。他不是一个特殊的人物，对性的癖好也没有什么特别，很多人也具有同样癖好。”

（一九八一年麦乐伦事件调查委员会报告书第三十二页第 38 段）。

第六章 香港的法律

绪言

6.1 在本章内，本委员会较自由地阐释本会职权范围，不仅审阅“管制”同性恋行为的法例，同时亦检讨“影响”同性恋行为的法例。很多情形下，一般适用的法例，对异性恋和同性恋两种行为不会加以区别，我们研讨若干此等法例，找出其对同性恋行为有何影响，以及是否对社会提供足够保障。本委员会并研究其他关于某类人士如少女等性活动的规定。这些法例在考虑同性性侵犯问题时，可用类推法而切合是项研究。在调查时，本委员会亦希望能评估那些要求我们修改同性恋法例的建议是否对此等法例有所影响，并考虑甚么惩罚才算适当。

6.2 本委员会首先略为评述本港刑法之一般性条文，这些条文为社会每个市民提供保障。由于香港的群体生活以家庭为基础，而有人认为家庭受到同性恋行为所威胁，我们因此论述几项与婚姻及离婚有关的法律观点。其次，我们检讨一些保障市民而管制性方面公开行为的法例，因而考虑到法律怎样对市民，特别是青少年从电影、杂志及电视各方面所看所读所听到的性内容加以管制。我们将上述事项归并为一般保护方面。

6.3 在此之后，我们探讨特殊保护方面，即法律对某几类人士如未满二十一岁的女性及儿童、精神不健全人士、学童、囚犯、军队人员，以至男性，就其性生活各方面提供的特殊保护。为顾及全面起见，我们亦提及性病控制的问题。

6.4 根据经验，特别是从麦乐伦事件调查委员会所得经验，与法律本身差不多同样重要的是执法方式。为此在总结时，本委员会对同性恋罪项的法例和证据规则作出检讨。

6.5 我们在论述法例各项条文时，尽量避开专门名词。不论文内曾否指明，凡我们考虑过的每一条文，皆连同罚则，列表载于附件三十内。

一般保护

生命、自由及身体伤害

6.6 本委员会顾及刑法中有保护市民生命、财产、人身自由以及身体免受伤害的条文，其中大部份适用于一般罪项，每一市民，不论年龄，性别或对性的癖好如何，都受保护。附件三十的附表，载有罚则及有关法例的各条款。

6.7 我们论及几点应紧记的原则：蓄意杀人就是谋杀；在法律之前，每个市民的生命价值都是相等；所以法律并不分辨异性恋或同性恋情欲作为犯罪的动机或起因。至于其他罪项如殴打伤害他人身体、绑票、非法禁锢、刑事恐吓或勒索等罪，该原则照样适用。对付淫辱少女或企图淫辱少男的人，这也是现行可用的有效武器。

结婚及离婚

6.8 根据婚姻条例（香港法例第一八一章）第二十九条的规定，任何人士，倘未征得二十一岁以下未成年人的父母或监护人同意而与该未成年人结婚者，即属违法，可被判监禁两年。该条例的含义，是只有达到结婚年龄的男性与女性，始可合法结婚。自一九七二年起，香港法例第一七九章婚姻诉讼条例第二十条即把这含义明确列入。该条声明，若婚嫁双方非属一男一女，婚姻便告无效。对于变性及随之而来的种种问题，如怎样断定男性为男性、女性为女性等，本港仍未能应付（参阅一九八三年二月十一日出版的时代周刊祁扶士（GREAVES）一文）。

6.9 至今本委员会没有接获建议，表示有压力要求准许同性结婚，亦未闻有长期结伴的同性人士要求分配共同财产的声请。鉴于现行法律及社会态度，此点实不足为奇。我们认为，只要不涉及由于实在关系而引起纯粹是道德方面的责任，则按照一般合约法和财产法，对判断这种关系下所形成的受托责任，法律已提供足够依据。

6.10 然而，本委员会亦须对商业性的性关系加以考虑。就现时法律而言，几乎所有男同性恋行为都属违法，男妓与顾客之间的性服务协议，亦因违法而无效。法律有规定任何人不能因做犯法事而追讨报酬。用此，如管制同性恋的法例作任何修改，则对这类协议的执行有若干影响。当然男妓不可能为二百元而提出控诉，但如果他的地位相等于情妇，完全侍奉一名顾客而受报酬，情形又会如何？一方面，我们可以很容易说，此类协议不值得履行，既然违反公共政策，亦应视作不能执行论。另一方面，如男妓在法律上申诉无门，他会向谁求助？他们转而采取恐吓手段或由黑社会出面说项，亦不足为奇。有人向我们提示，妾侍制此古旧风俗以前受到正式承认，而妾侍亦可享有若干财产权；但一九七零年，本港已取缔妾侍地位。我们亦留意到，女性为妾与男性为妾其中一大分别是子女问题。本委员会稍后在 11.8 段会重提此点。

6.11 回看异性间的婚姻，根据婚姻诉讼条例第十一条的规定，离婚的唯一理由是婚姻破裂，无法挽救。要证明此项理由，申请离婚者必须按照该条例第十一甲条，除其他情由外，提出下开为法庭所接纳的事实：答辩人行为不合理，申请人难与共同生活。如果妻子发现丈夫有同性恋癖行，无疑可成为足够理由。（参阅一九六四年夏德对夏德案（律师导报第一〇八辑第三一七页）及一九六四年高发对高发案（律师导报第一〇八辑第四六五页））。

同样地，为丈夫者，如证实妻子有同性恋癖行，理由亦同样成立，虽然女同性恋行为不算违法。本委员会结论认为，修改关于男女性行为的法例，不一定会影响上述离婚理由。

6.12 关于此方面，本委员会认为只须作表面探讨已足。我们相信，在现时法律及舆论情况下，本港不会有太多以指摘对方同性恋为理由的离婚申请。如果婚姻关系受到威胁，包括同性恋在内，本委员会看不到有关离婚的法例可产生甚么作用以抵销这些威胁。我们认为这是人类行为问题多于法律问题。

公众行为

6.13 本委员会相信，管制刊物及公众行为两方面的措施，对社会生活非常重要，值得提出来深入讨论。因此，本委员会现将法例中在上述两方面管制与性有关事物之若干最重要条款摘要说明。

6.14 法例除有不少条款是管制在公众地方游行及举行集会外，亦规定凡违反公安条例（香港法例第二四五章）第十七 B 或第二十五条的规定，在公众地方喧哗或扰乱秩序，或参加非法打斗，即属犯法，可判罚款五千元及监禁十二个月。假如三名或以上人士集体行为不检，以致可能挑拨他人破坏社会安宁者，则可判监禁最高五年（香港法例第二四五章第十八条）。假如三名或以上男子或青年公开表现其同性恋爱意，这种行为亦可能挑拨社会人士破坏社会安宁；但除非所表现的行为极端狂热，否则法庭可能不会判被告有罪。

6.15 根据简易程序治罪条例（香港法例第二二八章）第四条第(3)款的规定，凡在任何公众地方、无掩蔽或其他不适当的地方大小便，即属违法，可被判监禁最高三个月，及罚款五百元。根据另一法例的附属规例规定，任何人士不得在任何街道、大众可看见的公众地方、或大厦厕所以外任何公众地方大小便。此外，任何人士，如无充份理由亦不得容许其所照顾未满十二岁的小孩在上述情形下大小便。上述违例事项，初犯者可被判罚款最高一千元，再犯则最高二千元。（根据公众卫生及市政条例（香港法例第一三二章）第十五条而制订之公众洁净及防止妨碍卫生事物附例第八及第二十三条。）

6.16 一九七八年前，简易程序治罪条例规定妇女不得在公众地方有猥亵行为。该条例第十二条（现已撤销）的有关规定如下：——

“任何妇女，如在公众地方、或公众常到地方，或在公众地方之上或通往公众地方之任何阳台、窗户或入口，兜搭任何人士，或为兜搭任何人士而游荡，以便作不道德行为者，或举止猥亵者，可被判罚款五百元或监禁三个月。”

6.17 在一九七八年，刑事罪（修订）条例（香港法例一九七八年第一号）将性侵犯妇女，及利用妇女及使用楼宇进行非法性目的之条文修订。该等修订条文，其中一部份乃取代当时载于简易程序治罪条例第四条第(24)款及第

十二条的规定。该条例第四条第(24)款的条文，即有关禁止在公众地方作猥亵暴露的规定，则由刑事罪条例第一四八条所取代；而第一四七条亦对诱人作不道德行为之罪项加以规定。然而，有关禁止在公众地方作猥亵行为的条文则予撤销，并无其他条文取代。

6.18 刑事罪条例（香港法例第二〇〇章）第一四八条现规定如下：任何人士，如无合法权力或理由而在公众地方或公众可看见的地方猥亵暴露其身体任何部份，即属违法；此项规定并不适用于未满十二岁而赤身沐浴的小孩。上述罪名的罚则为监禁最高六个月，及罚款一千元，这些罪名对男女两性均适用。所谓暴露身体，如属违反社会人士所公认的良好行为标准者，则视为猥亵；这些标准却有弹性，视乎某一时间的社会观念而有所改变：我们可以拍摄一个全身赤裸在街沟上大小便的小孩而不致触犯法律；但在另一方面，一名发育成熟的十六岁少女裸露胸脯，或一名十八岁青年在街上暴露身体，都可能违反公认的良好行为标准。然而，任何公众行为，在伦敦、三藩市或马尼拉等地的人可以容忍，但在香港的社会却未必能够容忍，这点是非常明显的。本条法例旨在确保，无论人们在家里私下做什么事，但最低限度当其家人到街上行走时，他们不致看到任何与他们所认为正常合理行为相悖的异行。

6.19 刑事罪条例（香港法例第二〇〇章）第一四七条现规定如下：任何人士，如在公众地方或在公众可看见的地方，兜搭作不道德行为，或为兜搭作不道德行为而游荡，即属犯法，可被判罚款一千元及监禁六个月。虽然这条文一般视为适用于妓女或其皮条客，但实际上亦适用于妇女兜搭其他妇女，或男子兜搭其他妇女或男子。因此，只要女同性恋或男同性恋行为被视为不道德，则公开找寻性伴侣，无论其目的是否为谋利，均须受处罚。

6.20 法例并无提及犯罪者或可能成为“顾客”者的年龄，亦无提及地点问题。然而，这两者也许都非常重要。其实可以这样说，无论引诱青年男子或女子，都比引诱思想成熟而具判断力的人士，更应受到指摘。本委员会曾听到对于青年男子被引诱作同性恋行为一事所表示的关注。亦有指出地点问题可能也是非常重要的。在学校外面兜搭和在酒吧林立的街道上兜搭，两者绝不相同。事实上，有人认为在后者的事例中，一些近乎买者自行当心的原则应该适用。假如一个人跑到以这类活动而臭名远播的地区，那么他便不应投诉有人向他兜搭。如果说任何人都都有权跑到所有街道上而不应碰到令人生厌的行为，这种说法本委员会不敢苟同。

6.21 本委员会注意到，上述条文亦可作进一步引用。该条文不但摘用于为兜搭作不道德行为而游荡的罪名，并且在条文的范围扩大后，亦适用于那些在自己家中或在住宅楼宇内公众浴室或厕所偷窥裸体男女的“瞥伯”。

6.22 本委员会现在转而研究发生在某些特别场所内而能影响公众高尚风气的其他问题。根据现行法例，公厕、泳滩及公园通常都属“公众地方”

一词的定义范围内，但为符合若干目的起见，包括有关猥亵罪的法例，营商浴室、公众泳池、公众体育馆、博物馆、图书馆及文娱中心亦视作公众地方。因此，上文提及的若干规定，亦对在上述地点或场所发生的猥亵行为适用。此外，本委员会现对公众卫生及市政条例（香港法例第一三二章）及其附例之若干规定，其中特别与本委员会研究的论题有关者，加以详细说明。

公厕及营商浴室：任何人士，不得在厕所内游荡，或利用厕所作其他非原定的用途。在公厕或公众浴室内，任何人士不得施用暴力或不正当手段，或为达到任何不正当目的，而进入任何已由别人占用的小房，或故意妨碍其他占用该小房人士的隐私权。任何人士，不得进入划定为异性使用的公厕任何部份，但未满五岁而由嫫姆或亲戚陪同下的小孩，则不在此限。上述各罪名的罚则，均为罚款不超过二百五十元。该等规定亦适用于营商浴室。

泳滩：任何人士，不得使用污言秽语，猥亵暴露身体，举止失检或作出任何足以侵扰或阻碍其他使用海滩人士的动作。上述罪名的罚则，均为罚款不超过五百元及监禁十四天。

公众泳池：任何人士，不得举止失检；除在更衣室内者外，不得裸露身体或脱光衣服随处跑动或仅穿少许衣服而致有损公众的高尚风气；任何十四岁以上人士，如未得管理员许可，不得进入划归儿童使用的任何部份，但须照顾小孩者则不在此限。任何八岁以上人士，不得进入为异性而设的更衣室。上述各项罪名的罚则，均为罚款不超过二百五十元及遭管理员逐离现场。

游乐场：任何人士，不得举止失当或衣冠不整。任何人士，不得蓄意骚扰、拦阻或触犯任何适当使用游乐场的其他人士。任何人士，不得使用污言秽语以至扰犯他人。上述各罪的罚则为监禁最高十四天，及罚款五百元。此外，当局有权张贴通告，将某一范围划为儿童游乐场，限制其他人士入内。任何人士，如不遵守通告者，得逐离现场。

6.23 根据应课税品条例（香港法例第一〇九章）及其附属规例的规定，**酒吧**必须领牌方可售酒。牌照由酒牌局负责发给。该局有绝对权力批准或拒绝酒牌之申请，亦可拒绝换领，或规定必须遵守若干条件始予批准，该等条件亦非仅限于在法定表格上印有者。酒牌的条件，规定持牌人不得容许任何人将售酒楼宇或其部份地方作不道德用途，亦不得明知而容许公认之娼妓、惯匪及恶迹昭彰的人在售酒楼宇内集结或逗留，亦不得明知而容许醉酒或其他失检行为出现。持牌人如违反上述条件，则酒牌局有权将酒牌撤销。

6.24 从上述条件来看，酒吧目前显然不能款待男妓或妓女，否则便无法领取酒牌或换牌。纵使有关男同性恋行为的法例有任何修订，对此项规定亦无影响。最近，警方证明一间售酒楼宇常为男同性恋者光顾，并有人在内进行不良及猥亵行为，酒牌局查明后，遂将其酒牌撤销。

6.25 应课税品规例载列若干罪项，包括持牌人不得容许十八岁以下的人士在售酒楼宇饮用烈酒。持牌人不得雇用十五岁以下的人士在售酒楼宇工作。在每日晚上八时至早上六时的一段时间内，不得雇用十八岁以下女性工作。在每日早上六时至晚上八时的一段时间内，如未得酒牌局书面许可，持牌人不得雇用十八岁以下女性工作。违犯上述任何一项罪名，最高可被判罚款五千元及入狱六个月。持牌人纵使并无给予某雇员任何工资、佣金或其他利益，或雇员所提供的服务乃在该持牌售酒楼宇以外地方进行者，该雇员仍得视为受其雇用论。后一规定，似乎等于坦白承认一些酒吧的陋习。该等酒吧习惯雇用女性随侍或陪酒，而该等女雇员有时会离开酒吧，为顾客提供收费性服务。无论有关的法例是否予以修订，我们认为十五岁至十八岁间的女性所获得的保障，亦应予以扩大，使青年男子亦可同样获得保障。最后，有关酒吧的另一项规定为：任何人士，如未获警务处处长发给许可证而在酒吧宣传、上演或进行任何娱乐节目，可被判罚款二千元。该等节目包括音乐会、戏剧、电影、展览异常人士或兽类等。此项规定当然适用于“脱衣舞”、“小电影”或其他色情表演，参加者的年龄性别对此项规定并无影响。

6.26 根据杂类牌照条例（香港法例第一一四章）的规定，按摩院及公众舞厅均须领牌。该等场所如经营不当，则发牌当局有权拒绝发给或换领该等场所的牌照；如为公众利益，发牌当局亦可拒绝发牌予任何人士。据本委员会观察，有关禁止在公众场所进行猥亵行为的规定，对上述场所并不适用。本委员会亦发觉，针对按摩院的法例，并无规定保障隐私权，亦无禁止进行猥亵活动，而对按摩院职员或顾客的年龄亦无加以限制。最后，以目前大众的观感来看，现时必须由同性人士进行按摩的规定，可能被认为近乎积极鼓吹女同性恋或男同性恋行为。本港一些按摩院无疑是历史悠久及作风良好，但其他按摩院显然并非如此，最近因区议会议员投诉，政府已成立一工作小组检讨此等按摩院的经营。目前，按摩院在法律上系视作私人场所。现行禁止男同性恋行为的规定，无论针对鸡奸或粗犷行为，包括手淫在内，对按摩院亦同样适用，此乃由于对管制上述行为而言，是否私下进行，并无关系。但有关法例如作出修订，对容许在按摩院内进行的行为，便有所影响，因为按摩院乃视作私人场所。

6.27 至于公众舞厅方面，法例规定十六岁以下人士不得进入舞厅，十八岁以下的人士不得受雇于舞厅工作：*李富源（译音）对女皇*（一九七八年）香港案件摘录第五二二页；*潘振源（译音）对女皇*（一九八一年）香港案件摘录第五八〇页。持牌人须负责不得容许舞厅内有任何粗言秽语、淫褻舞姿、暴露服装或不雅动作。如违反上述规定，可被判罚款一万元及入狱六个月。上述规定与针对酒吧的规定不同之处，乃有关雇员方面并无划分性别，亦无规定每日分段禁制时间。公众舞厅似乎名不符实，因为根据定义，公众舞厅并不属于公众场所，故此禁制若干猥亵行为的一般规定，对公众舞厅并不适用。

公开表演

6.28 任何人士，无论是否收取报酬，均一般受禁止参与、提供或管理任何淫褻或令人厌恶的公开真人表演，违者最高可被判罚款二万五千元及监禁一年。“真人表演”一词包括单人或多人上演的戏剧、表演、展览、动作、娱乐、陈列或各式各样的演出。真人表演如在公众地方进行，或公众人士或某部份公众人士可以看到之地方，或接受公众人士或某部份公众人士入场参观者，则无论收费与否，均视作公开表演论。

6.29 依照目前的标准衡量，全裸、同性或异性间模仿或真正进行的性行为、口舌性服务等全在被禁之列。一点值得注意的，就是此项禁制不分表演者及观众的性别或年龄，因此在某些情形下，自愿付费入场的观众可能被控协助及教唆他人触犯上述罪项，并可被判相同的刑罚。

6.30 发牌当局有权将任何公众娱乐场所的牌照撤销。任何人士，如在接获撤销牌照通知后仍继续表演，则在继续表演期间内，每日可被判罚款一千元。发牌当局如认为持牌人违反所规定的条件，或持牌楼宇秩序欠佳，或表演有碍观瞻，违反礼教，或故意使公众道德堕落，则发牌当局可将牌照撤销。警司级警务人员如认为需要者，可根据同样理由制止任何表演或暂时封闭任何楼宇。

6.31 综合而言，楼宇必须领牌始可提供公众娱乐，每类表演均须领有许可证；至于某些特别表演，其牌照条件或许可证条件可能对观众的年龄加以限制。同样，该等条件可能规定有关的广告须提出警告，使欲参观的人士预知表演的性质。在一方面，此乃审查的一种形式，另一方面，则为保障各阶层市民的一种办法。成年观众所能接受的，可能年青观众感到厌恶，甚至闺房闹剧亦可能不适合儿童观看。此等表演全部均须受一项先决限制，就是不能故意使公众道德堕落。此乃一项选择题的测验方法，引自英国古旧习惯法的词句，当时曾裁定：

“‘使公众道德堕落’一词指陪审员认为对社会结构会造成破坏的行为”

在奈拉 (*Kneller*) 对刑事检控专员案中〔一九七二年〕全英案件摘录第二辑第八九八页，西门大法官 (Lord Simon) 曾作上述评语。

6.32 按照这个测验，多种涉及性的大胆演出，不论其为男性之间，女性之间抑或两性之间的表演，都在禁止之列。值得注意的是，尽管有人用艺术或文学价值作为借口，亦难以逃避法律追究。有一点仍可争论的，就是即使管制此行为的法例有所修改，明显描绘同性恋行为的演出，是否仍应禁止。

6.33 电影院为公众娱乐场所，受上述牌照规定所管制，不过所管辖之规例则有不同。任何人士，不得在可邀请公众进入或公众可随时出入，或公众

可凭会所或机构会员名义出席的场所，宣传、展示或放映电影，除非每一影片、海报、广告均获批准展示，否则可被判罚款一万元及监禁六个月。电视电影管理专员本身亦是电影检查监督。凡拟在香港放映的每部影片，必须连同有关广告、海报、预告片等呈交该监督，由其指示经总督委出的电检人员，进行检查。

6.34 电检人员可通过或拒绝通过一部影片及其附交资料，或准予通过但须修改、删剪或附有其他条件。如接到要求，电检人员须于七日之内陈述删改等理由。如有上诉，可向电影覆审委员会提出。该会由电影检查监督及六名经总督委出的人士组成。该委员会获赋与电检人员同等权力。是以覆检与重新聆讯的性质相同。任何影片在接到电检处通知书送至放映地点前，均不得放映或宣传。

6.35 任何市民，如基于道德、宗教信仰、教育观点或其他理由，认为某部电影不宜公开上映，可要求布政司将该片交由电影覆审委员会审核。如布政司依从所请，这项程序则视为向电影覆审委员会上诉讼。布政司可饬令该片暂停放映，以待该委员会作出决定。违令放映者，可被判罚款一万元及监禁六个月。

6.36 本委员会详细叙述此一程序，是因为电影检查在香港十分重要。电检规例最令人感兴趣的特色，是并无规定电影可以检查或必须接受检查的理由。本委员会曾请教电影检查监督，知悉公开放映的电影必须遵守三个基本原则：具有一般健康意识和常识，重视舆论，尊重法律及社会制度，尤须注意电影对青少年所产生的影响。因此除非某部电影及其附交资料之公映有不良后果，包括使一般观众震惊、反感，或有伤风化，否则电检处不会贸然禁映。色情镜头，如性器官特写、性变态或反常行为的渲染，或主题单方面强调性的影片，则差不多肯定会被禁映或遭删剪。（节录自一九七三年五月民政司署影视管理处编撰内电影检查标准指南第四、五及十四各段。）

6.37 关于一般公众娱乐场所和电影院两类地方，本委员会发觉，即使在场人士年龄未届许可证或类别所规定的年龄，法律并无特别规定禁止节目或影片上演或放映，唯一可提出起诉的罪项，就是上演节目或放映电影违反牌照、许可证或电检条件的规定。

6.38 虽然严格而言，这个问题不属本委员会职权范围，我们认为，为保护青少年，加以由于甚多家庭，父母整天在外工作，未暇充份看管年轻子女，本委员会谨建议有考虑惩罚放映者或演出者的必要。惩罚理由不是指其“准许或容许”，而是追究其在未成年人之前“放映或表演”。至于权衡可能性后，能证明放映者或演出者不知有未届所定年龄人士在场，及其已采取合理措施，阻止此等人士入场者，则可作为辩护理由。这样便可有效将执行此一规例之责任明确由靠表演或放映赚取金钱的人士肩负，此即指放映者或演出者。

刊物

6.39 除有关发牌予楼宇及电检制度两项外，本委员会将讨论若干对电影和书刊同样适用的法例条交。

6.40 据英国习惯法，串谋妨害公众道德乃属违法。法庭有权酌情判罚款及监禁：参阅“名媛录”一案（一九六二年萧亚（Shaw）对刑事检控专员案上诉案件汇编第二二〇页）。该案裁定一本以登载妓女姓名、地址、专长等广告为主的小册属淫褻刊物。在英国，如在分派各男校之杂志内刊登内容涉及女同性恋、男同性恋、口交等事项者，则属此类串谋行为（一九七二年政府对安狄逊（ANDERSON）案 1 Q.B.304）。这个裁决后来亦在一九七二年奈拉（Kneller）对刑事检控专员案（全英案件摘录第二辑第八九八页）所援引作为依据。该案认为，凡在杂志上刊登广告，征求读者与登报人进行同性恋活动，即属串谋行为。本委员会未悉此种罪项曾否在香港提出检控，但可以预见，倘根据类似萧亚案事实提出检控，当可望成功。

6.41 报章及杂志受香港法例第二六八章刊物管制条例管辖。根据该条例第三条规定，凡承印或出版刊物，其内容之任何部份可诱使他人犯罪者，即属违法，可被判罚款最高一万元及监禁三年。目前此项条文应适用于本委员会在上文所述情况，即刊登广告征求同性恋伴侣或着文夸述同性恋关系。假如同性恋法律有所修改，明显地本条文或会受到影响。我们未详究该条文曾否经常被引用。不过照揣测应属罕有。

6.42 倘本港任何报章发行人或编辑违反刊物管制条例第三条或违反香港法例第一五〇章不良刊物条例，或所犯罪项性质妨碍社会秩序、安全、健康或道德而被判罪名成立者，则如经律政司申请，裁判司可饬令该份本地报章停刊，为期不超过六个月。我们亦未悉以前曾否有人使用此项权力，但对如萧亚案中的报刊，当属适用。

6.43 如总督会同行政局认为某一刊物的输入极可能妨碍社会秩序、安全、健康或道德者，则可禁止其输入。凡出售、兜售、发行或藏有此等违禁刊物，即属违法，可被判罚款一万元及监禁三年。依照本委员会看法，修改同性恋法例虽然可能但不一定必要影响到这方面的执行。我们亦不悉曾否有人使用此项权力。

6.44 曾有人提醒本委员会有关最近一宗根据香港法例第二三一章不良医药广告条例提控的案件。任何人士，如在专业性杂志以外之刊物刊登广告，宣传医治性病良方，根除性放纵所引致之陋习，增强性能力，恢复脑力，或使人返老还童者，可被判罚款二千元。由于该条例未有说明所指的性属何种类，故应对有关男性及其与同性间“性放纵”的广告亦同样管制，并在有关性活动的法例修改后继续受管制。在摘要的较后部份，本委员会将对香港法例第二七五章性病条例加以评论。

6.45 电话、电讯及邮递：任何人士，如利用此等途径传递极令人厌恶之讯息，或属猥亵、淫秽或恶意、或志在滋扰对方或使对方不必要忧虑者，可被判罚款一百元及监禁一个月。明显地，男性打淫亵电话给女性亦受此条文管制，但同时亦适用于女性之间或男性之间的此类电话，并且对致电男性的家庭，恶意诬指该男性为同性恋者，亦一样适用。此等罪行，殊难防范，如非已知打电话者是谁，亦难查明真相。尽管如此，既然本委员会认为此举侵犯他人隐私权，我们对现行刑罚是否足够表示怀疑。我们并关注到一种与此相似但更为严重的情况，即一旦有“传真电话”后，此途径将会有更不当使用。

6.46 任何人士，如寄发、经邮局寄出、或邮购输入任何猥亵、不道德、淫秽、令人反感或诽谤性资料，或输入或传递香港或其他目的地国家所禁止的物件，可被判罚款五百元及监禁六个月。上述规定，载于香港法例第九十八章邮政局条例。该条例适用范围甚广，修改性活动法例，应对其无大影响。

6.47 不良刊物：现时似应对香港法例第一五〇章不良刊物条例各条款予以检讨。在香港，输入或藏有不良书刊物品图利乃属违法。出版此类书刊物品，不论为图利与否，亦属违法，可被判罚款一万元及监禁三年。书刊物品，包括文字记载、影片、声带或录影带、如其包括有或载有猥亵、淫秽或令人厌恶的事物，即视为不良。凡书刊物品，如十六岁以下人士可以阅读或观看到，故事内容渲染暴力或残酷行为、强奸或性变态行为，令人厌恶或恐怖的行为，或可使读者腐化或堕落者，亦视为不良刊物。

6.48 淫亵一义之检验，首见于一九六二年杨金全（译音）及其他人士对政府案（香港案件摘录第六三三页，下文见第六六七页）：

“为断定一帧照片是否猥亵、淫秽、令人厌恶或反感，裁判司必须本着社会良知，视其本人为代表大众对此事的看法。此外，裁判司亦须考虑每帧照片发表时的个别情况和当时环境，而决定其是否猥亵、淫秽、令人厌恶或反感，而毋须理会旁人意见，此等意见无论如何亦不会被接纳为证据。”

6.49 上诉庭在一九七七年古拉贝（*Mirchandani Mohan Gulabrai*）对政府案（香港案件摘录第五二三页）中，曾对这个检验法加以肯定。一间有限公司及其董事及经理，均因发行“Oui”及“Penthouse”杂志事，违反香港法例第一五〇章第四条第(1)款(b)段规定，而判罪名成立。此等杂志乃用印有“只供成人阅读”标志的胶袋包装，公开发售。上诉庭认为：正确检验书刊物品是否不良，应在考虑案情环境后，视社会整体是否认定该书刊物品良与不良。书刊物品本身提供最好的证据，可资证明其为不良或根本无不良成份。上诉庭认为该庭不必将此等书刊与其他刊物比较，亦不必考虑其他司法体系所订立的标准。

6.50 按照香港目前民情舆论，凡内容涉及男女单方性交的刊物，肯定应在被禁之列。一九八二年刑事上诉案第三五五宗韩德生（译音）对政府案，法庭裁定娼妓在报章上刊登的广告，纵然措辞婉约含蓄，亦属不良刊物。凡大胆描绘各类同性恋但未致鸡奸的情欲，亦可能会被裁定为不良一类。

6.51 电视：香港两间电视台受有关规例管制，不能播放内容有违健康意识和高尚风气的节目。然而在适当时间和环境，电视台亦可获准播放真正具艺术或文学价值的作品，甚至一些讨论伦理和社会等严肃问题的节目。电视管理处有权禁止任何节目的播放。

特别保护

6.52 既有上述之一般保护项目，本委员会现对一系列特别罪项作出检讨，其中大部份只适用于某一类人士，但全部都有性成份包涵在内。我们按照下列次序作出考虑：女性、未满二十一岁妇孺，精神不健全者、学童、囚犯、军人及男性。

女性

6.53 有些大众熟悉的法例订定侵犯女性的罪项，例如强奸、乱伦以及与此等罪项有关的企图或串谋罪行。我们虽然不拟在此详细讨论，但已将之列入附件三十的有关附表内。

6.54 非礼女性最高可被判监禁五年。非礼罪中对方同意与否具有关键性：在女性有此愿望时抚摸女性显然不算犯法，但如违对方意愿，便是非礼。所谓非礼行为，是指该行为违反社会一般标准而言。法定有权表示同意年龄是十六岁。十六岁以下即使对方同意，非礼抚摸亦属犯法。

6.55 任何人士，如介绍他人迫奸妇女，或迷奸妇女，可被判监禁十四年。任何男女，如介绍他人诱奸妇女，可被判监禁五年。此等罪项乃特别针对各种形式的贩卖妇女，其中两罪项且适用于上述所指性行为最后在香港以外地区进行的情形。任何人如替“顾客”安排性服务，而该顾客当时可能不知道接客的妇女乃受他人或药物所控制，则该淫媒仍须受上述规定制裁。在法律上，该顾客的行为可能不相等于强奸，但该淫媒仍属违法。

6.56 本港有一项一般罪行，规定任何人士，如为获得有价值报酬，而非法转让人口（不论男女），即属违法，可被判入狱两年，受害人纵使同意，亦不构成辩护理由。特别而言，任何男女，如参与运送妇女进出香港为妓，则无论该妇女是否同意，仍属违法，可被判入狱七年。任何男女，如介绍妇女为妓、介绍妇女离开香港意欲使其加入妓寨，或介绍妇女离开香港通常的居所，意欲使其加入妓寨，亦可被判入狱七年。

6.57 任何男女，如窝藏妇女，意欲使其与男性进行非法性交，或使其卖淫者，可被判入狱十四年。“窝藏”妇女乃指向妇女提供食物、衣服及居所。任何女性，如为谋利而控制妇女，使其卖淫者，可被判入狱五年。任何男性，如明知而全部或部份依靠妓女卖淫为生者，可被判处相同的刑罚。

6.58 任何男女，如非法禁锢妇女于罪恶场所，或使其进行非法性交者，可被判入狱十四年。罪恶场所包括全部或主要为两名或两名以上妇女用作卖淫的楼宇，以及全部或主要用作组织卖淫的楼宇。在上述两种情形下，是否为“全部或主要”及“卖淫”等情事须予以证明。有关“全部或主要”一词的定义，可参看律政司对邓炳荣（译音）案（刑事上诉案一九八一年第四一一宗）；有关“卖淫”一词的定义，可参看一九一八年女皇对狄文基（*De Munck*）案刑事上诉报告第十三辑第一一三页；一九六四年女皇对韦伯（*Webb*）案刑事上诉报告第四十七辑第二六五页，盛文辉（译音）案（刑事上诉案一九八〇年第七六二宗）及 *Archbold* 第 2952 段及 2966 段。

6.59 任何男女，如设置罪恶场所，可被判罚款二万元及入狱七年；而将楼宇租予他人作此用途，或身为住客而容许该楼宇作此用途，则可被判罚款二万元及入狱两年。在谭剑良（译音）案中（刑事上诉案一九八一年第一〇八一宗），首席按察司罗弼时爵士裁定“设置”一词乃指“明知楼宇系用作罪恶场所而维持楼宇，并对该等用途有一定程度的控制权力，虽然上述控制并未达到无间断的积极管理程度。”罗弼时爵士在论及何谓管理或协助管理时说：“依本人意见，如能证明被告在参与经营罪恶场所方面略有重要性，则该被告即视为经已触犯上述罪项论”。

6.60 凡容许任何楼宇作惯常卖淫用途，即属违法，可被判入狱两年及罚款二万元。如设置楼宇或其他建筑物以供妓女住用或作为其常到之处，因而对邻近居民造成滋扰，亦属违法，可被判入狱三个月。最后，习惯法亦有规定，设置淫褻场所或妓院，乃属违法。

6.61 妓女及女同性恋者 虽然本港有多项规定对性事加以管制，但一点值得注意的，就是妇女卖淫并非违法，但如妇女已成年，并自愿沦为妓女，则可能会被控协助及教唆他人触犯若干罪项。如妇女为女同性恋者，亦非违法。私下进行亲昵的女同性恋行为，不会受到惩处，除非有强迫的成份，则属例外。如采纳卖淫一词的传统定义，即“男女间进行任何性买卖”（达宁（*Darling*）法官在一九一八年狄文基（*de Munck*）案（1 K.B. 635 at 637）中用语），则先前所列的大部份规定，对受介绍进行商业性女同性恋行为的妇女，或同性恋妓女，均无保障。本委员会已留意到另外两项与从事卖淫者的公开行为有关的罪行。任何男女，如在公众地方，或在公众可看到之地方，猥亵暴露其身体的任何部份，即属违法，可被判入狱六个月及罚款一千元。任何男女，如兜搭或在街上游荡企图兜搭他人作不道德行为，亦可被判处相同的刑罚。

此等适用于较传统卖淫方式的规定，亦极可能同样适用于女同性恋或男同性恋的行为。

年龄在二十一岁以下的妇女及儿童

6.62 根据法例，任何人士，如违反男女童或青少年家长或监护人的意愿，而诱拐男童或女童（年龄在十四岁以下）、男青年或女青年（年龄在十四岁至十六岁间）或任何未成年未婚少女（年龄在二十一岁以下），即属违法，每罪均可被判入狱两年。根据另一法例，任何人士，如拐带年龄在十四岁以下的男童或女童（或企图盗窃其身上的任何物件），可被判入狱七年。根据第三条法例，任何男女，如违反少女家长的意愿而诱拐年龄在十六岁以下的未婚少女，即属违法，可被判入狱五年。诱拐年龄在十八岁以下的未婚少女，企图使其与男性进行性交者，可被判入狱七年。

6.63 根据一条一般适用的罪名，任何男性不得与未满十六岁的少女（监禁五年）或未满十三岁少女（终身监禁）非法性交。任何男性或女性，如与未满十四岁的男童或女童发生粗犷行为或引逗其发生此等行为者，可被判监禁五年；此项罪名当然与双方是否同意并无关系。

6.64 任何男女，如容许未满十三岁少女使用楼宇进行性交或卖淫，可被判终身监禁；假如该少女未满十六岁，则刑罚为监禁十四年。任何居于须负责职位的男性或女性，如引致或鼓励未满十六岁少女卖淫、与其性交，或对其非礼，可被判监禁五年。任何男性或女性，如介绍未满二十一岁少女在本港或其他地方与男子性交，亦可被判监禁五年。

弱智人士

6.65 上述名词适用于心智发展受障碍或不健全的男女性，包括心智逊常的人。这些人士并无能力过独立生活或保护自己免受利用。

6.66 任何男性或女性，如带走某一心智不健全的妇女，使其脱离监护人，以便其与某一男性性交，可被判监禁七年。任何男性，如与某一心智不健全的妇女进行非法性交，或对其非礼，可被判监禁五年；但如该男性并不知悉或无理由怀疑该名妇女为不健全者，则不在此限。

6.67 任何人士，如介绍某一心智不健全的妇女在本港或其他地方与他人性交，可被判监禁五年。任何人士，如引致或鼓励某一心智不健全的妇女在本港或其他地方卖淫，或容许该名妇女利用楼宇进行性交或卖淫，可被判监禁十年。

6.68 精神健康条例（香港法例第一三六章）第六十五条第(2)款规定：任何人士，如与或企图与任何在精神病医院接受护理或治疗而心智失调的女子，在医院内或在其放假离院期间非法性交，可被判监禁三年及罚款五千元；

假如被告知悉或有理由知悉该女子为正在接受护理或治疗的心智失调者，则不能以获得该女子同意作为辩护理由。

6.69 英格兰及苏格兰的法例均已按英国一九六七年性罪项法第一条第(4)款所规定的方式修订，而该条文亦对英国一九五九年精神健康法第一二八条作出修改，从而规定：上述第一二八条之效力“一如其内凡提及与（心智不健全）妇女非法性交之处，均作为包括与（心智不健全）男性进行鸡奸或粗犷行为”。为实施英国一九六七年性罪行法起见，其第一条第(3)款规定即使任何患严重心智逊常的男性表示同意，亦不得作为辩护。惟该条款另有一项附加条文，规定“任何人士，如能证明并不知悉或并无理由怀疑某一男子为严重心智逊常者，则不会因该名男子未有表示同意的能力而被判有罪”。

6.70 最后，精神健康条例第六十五条第(2)款规定：任何受雇于精神病医院工作的人士，如虐待任何病人，可被判监禁两年及罚款一千元。上述条文字面的意义上虽未有言明，但本委员会相信其内容可包括各种性侵犯在内，作为一种“虐待”形式看待；如本港法例有关性问题的条文有所更改，亦不会影响上述的规定。

性病

6.71 本委员会研究这个问题，是因为所接获的报告，指出同性恋接触曾引起性病。根据性病条例（香港法例第二七五章）的规定，任何医生，如发现病人患性病或与性病有关的疾病，并知悉怀疑引致性病人士的资料，必须将该引致性病人士的姓名向医务卫生署副署长报告。医务卫生署副署长可发出通知书，着令该人士接受身体检查。如未能遵照通知书接受检查者，即属违法，可被罚款一千元及监禁六个月。

6.72 上述条例对任何年龄的人士，不分男女，均属适用，对于任何性关系，亦同样适用。根据该条例规定，患上或传递性病并不作为罪行，而医生亦无受规定透露其病人的身份。有关同性恋的法例如有任何改变，亦不会影响上述法例的施行。本委员会注意到：曾有企图提出控告，要求裁定性病带菌者明知及未有向对方发出警告而与其进行性关系，乃属犯殴打他人罪；但此项控告并不成立：一八八八年女皇对卡拉伦斯（*Clarence*）22 Q.B.D. 23。

学童

6.73 学校并非公众地方，因此，有关管制在公众地方行为的规定对其不适用。本港并无特别为教师或学生所进行的性侵犯规定任何罪名。然而，教师在授课时如企图在性方面影响其学生，可由校方加以制止，或最后由教育署署长加以制止。其次，假如教师对任何男女学生有过份亲热行为，则无疑属职业上行为不当，有理由吊销其教师执照。最后，根据现行法例，所有对男女作出猥亵行为均属违法，可被判监禁。因此，任何教师如违反上述罪名而被判有罪，除依法惩处外，还会遭吊销教师执照。即使法例有所修改，使

若干性活动不再受究治，当局仍能以某一教师不适合为人师表之理由而拒绝其注册。这是教育政策问题，须由教育署署长决定，或最后由总督会同行政局决定。

6.74 本港虽无特别处罚教师非礼学生的规定，但对于任何人士如教师等，由于其所处地位，特别受年青人信任，而本身亦负有重任，法庭通常会因此而加重刑罚。本委员会知悉本港近年来仅检举过六宗属上述情形之案件，其中有两宗涉及同性恋行为。

囚犯

6.75 无论囚犯或监狱人员均须遵守一般法例规定。他们的行为，更受根据监狱条例（香港法例第二三四章）第二十五条而制订的监狱规则所限制。现时管理男女囚犯事务的办法中，并未有任何规定，容许囚犯的丈夫、妻子或朋友探访囚犯而与其进行与性有关之事。同样，根据监狱规则规定，男女囚犯必须分别安置在不同居处，分别看待。

6.76 任何囚犯如违反监狱纪律，可被罚单独囚禁达一个月，并取消应得的利益、工资或减刑。任何囚犯，无论性别，如语言、行动或姿势猥亵，或殴打他人，或企图做上述各项情事，或身为囚犯而触犯刑事罪等，即属违反监狱纪律。显然上述规则禁止所有男女同性恋关系，无论这些关系是双方同意进行，或是被迫进行者。有关此等情事的法例如有任何更改，则仅会在最后一类的监狱违例事项中反映出来；换言之，这些改变就是减少囚犯可触犯的刑事罪项。

6.77 监狱督导员如犯有下开行为：与囚犯过份亲热、不必要而对囚犯使用武力、或当值时行为不检或有妨害纪律行为，即属犯纪律罪。显然督导员和囚犯之间进行任何强迫或同意的性活动，都可根据上述规则惩治。罚则由谴责至撤职查办不等。除非行政政策相应修改，否则法例之一般更改并不对此等规定有所影响。本委员会认为，维持政策不变，理由相当充份。

军队

6.78 纪律部队如海军、陆军等，宪法规定归英国政府负责。对于纯属军队事务，本港法律不甚适用。广泛而言，三军皆在其纪律守则中将同性恋行为列为罪项。本委员会将管制此等及有关事项的条文摘要列入附件三十一内。

“丑恶行为罪”

背景

6.79 香港自一八六五年即采用英国一八六一年侵害人身罪法，有关条文全部引用，不作修改。当时丑恶行为罪只限于禁止鸡奸与兽奸及企图犯此等

“丑恶罪行”，最高刑罚为终身劳役监禁。因此，英国和香港对男性间粗犷行为不加禁止，历时达二十年。

6.80 一八八五年，英国下议院议员以私人名义在下议院提出法案，以管制女性卖淫，并且首次动议修例惩罚男性粗犷行为，这也是首次出现“公开或私下”这一名词。据说该修订是以法国律例为蓝本，但该例实际上向无惩罚此一行为。关于上述动议，辩论相当激烈。结果法案获得通过，男性间粗犷行为便成为罪行。这项规定，载于一八八五年英国刑法修订法第十一条。

6.81 一九〇一年，香港法例作出完全雷同的修订，显然是因有三宗军人分别被控违反自然罪而引起的。第一宗检控发生于一八八〇年。当年一名隶属英国皇家依宁吉灵兵团（Royal Inniskillings Regiment）的年青士兵夏棣（Peter Hardy），“被判企图犯难以宣述的罪名成立，最初被判监禁三年，嗣后又由主审法官施默爵士（Sir John Smale）加重为五年”。一八九七年七月，基劭辛（Keysir Singh）被控企图鸡奸一名华籍男童，被判处五年劳役监禁。第三宗同类性质的控案则发生于一九〇〇年。

现时的法例

6.82 有关同性恋的主要罪项，载于香港法例第二一二章侵害人身罪条例的下逃条款内，名称仍为“丑恶行为罪”：——

鸡奸： “任何人士，如犯鸡奸罪，不论对人畜，均属犯重罪，一经定罪，可被判终身监禁。”（第四十九条）

企图鸡奸及非礼： “任何人士，如企图犯上述丑恶罪行，或殴打他人意图犯上述罪行，或非礼任何男性，即属犯轻罪，可被判监禁十年。”（第五十条(a)款）

同意： “在进行有关非礼十三岁以下男性罪之控诉或公诉时，不得以该男性同意非礼行为作为辩护理由。”（条例第五十二条）

粗犷行为： “任何男性，不论公开或私下，如与另一男性有粗犷行为，或参与作出该行为或介绍或企图介绍任何男性与另一男性进行粗犷行为，均属犯轻罪，一经简易程序审讯定罪，可被判监禁两年。”（条例第五十一条）

鸡奸

6 83 是项罪行包括男性与男性或与女性的肛交（“鸡奸”）：参阅一七一八年 *政府对韦斯文*（*Wiseman*）案（*Fortes Rep. 91*）。此罪行也包括男性或女性与兽畜的任何形式性交（“兽奸”）。有关此罪项，只须证明曾有任何程度的插入即可，而毋须证明曾排出精液：参阅一八三二年 *政府对雷斯庇*

(*Recksepear*) 案 (1 MOOD. C.C. 342) 及香港法例第二一二章侵害人身罪条例第五十三条。犯者不得以对方同意为辩护理由。双方不论属主动或被动均作主犯论罪：见 1 Hale P.C. 670，夏斯伯利 (Halsbury) 第四版第一〇三一段；史密夫与何瑾 (Smith & Hogan) 第四版第四三九页。不过同意是可以作为求情轻判的理由。该等行为，与其他定义中不存有社会因素之罪项一般，无所谓是否公开或私下进行。不过，公开鸡奸行为，无疑会引致刑罚加重。

企图鸡奸及初步罪项

6.84 香港法例第二一二章侵害人身罪条例第五十条明文规定，企图鸡奸亦属犯法。该条并订定此罪的最高刑罚；同时，根据习惯法和香港法例第一章法律释义及通则条例第八十一条的规定，初步形式的罪项（企图、煽动及串谋）不论如何，亦自动负有刑责。因此串谋进行鸡奸或煽动他人鸡奸，也属犯法。法例虽无硬性规定罚则，但不会超逾正式罪项所定的最高刑罚。

6.85 如不论及法律精微意义，初步罪项可有如下定义：

任何人士，如用言语或行动以影响或劝诱他人犯某类罪行，即属犯煽动罪。

任何人士，如与另一人或一人以上同意作犯法行为，即属犯串谋罪。

任何人士，如意欲犯某一罪项而作出一项行动，该行动乃接近完成触犯该罪项者，即属犯企图罪。

上述任何一种情形，不必计较正式罪项是否从未完成（如被煽动者不接受提议），盖初步罪项的责任是由煽动、企图或同意串谋的行动所构成。

6.86 此等初步罪项与本项研究切合，因为除非法例规定将之保留，否则如正式罪行不再视作违法，初步罪行亦不应视作违法。是以如法例作出修订，规定成年男性彼此同意而私下进行的鸡奸行为，不算违法，则 A 君（一名成年男性）向 B 君（另一名成年男性）提议大家同意私下进行鸡奸，则即使此项建议是公开提出，亦不应作煽动论罪。同样，A 君和 B 君大家同意到私人场所进行此事，亦不算串谋；而他们尝试鸡奸但未能竟事，也不算犯企图罪。

次要当事人的责任

6.87 任何人士，如协助、教唆、指导、或介绍他人犯罪，即视为次要当事人，而自动触犯同一罪项；此与上文所述的“企图”罪相同。这项规定原属习惯法，但后来已由刑事诉讼程序条例（香港法例第二二一章）第八十九条制订为法定条文。

6.88 此外，如不论及法律的精微意义，下述词语可作解释如下：——

“协助及教唆”（实际上协助及教唆为一并控告的罪名，且两

词有时亦作同义词处理)：凡在案发现场的人士，如有意提供协助或鼓励而采取任何行动，以协助或鼓励另一人犯罪，即属犯此罪项。

“指导及介绍”（实际上两项罪名均一并处理）：凡于案发前故意采取同样行动，以提供协助或鼓励，即属犯此罪项。指导者及介绍者无须处身于案发现场。

次要责任与例如煽动者或串谋者的责任，其分别如下：除非主犯实际上作出主要罪行，否则次要责任不会成立。上述意见曾引起争论，但一般而言，现已为人接受为正确：参看史密夫与何瑾(Smith & Hogan)合着《刑法》(Criminal Law)第四版，第一三二至第一三六页；威廉士(Glanville Williams)的《刑法课本》(Textbook of Criminal Law)，第三一四至第三一六页。

6.89 根据上文所述，如所犯罪项为鸡奸，则有关次要责任的法例(例如，甲说服乙与丙私下进行鸡奸，而乙及丙均为成年人，并同意进行该行为)会引起直接实际的问题。假如鸡奸罪获得有限度不视作违法，则除非制定法定条文，规定次要当事人仍须继续负责，否则该人不必负法律责任。但假如认为应不视该私人行为作违法，则那些指导及介绍，或协助及教唆的人应如何处置？应否制订法定条文，规定该等人士仍须继续负法律责任？

6.90 在英国，虽然有关行为已有限度不视作违法，但一九六七年性罪项法第四条仍将这项次要责任明确保留，该条之规定如下：——

“(1)任何男性，如介绍另一男性与第三名男性进行鸡奸，虽然根据本法第一条之规定，鸡奸并非违法，但该人仍可被公诉，一经定罪，可被判监禁不超过两年。”

粗犷行为

6.91 上述罪项，并无法定或司法上的全面定义。英国胡分顿委员会在其报告书中称：“根据本委员会所阅览的警方报告书及所得的证据，有关粗犷行为的罪项通常可分下列三种形式：互相手淫、作若干形式的腿部接触、或口部与性器的接触(泄精或不泄精)；上述罪项间中可能以更隐秘的形式表现；异性恋关系的技巧千变万化，而同性恋的关系亦是如此”。

6.92 司法当局已逐渐获得有限度的指导。假如两名男子曾进行粗犷行为，则无须证明彼等曾有肉体接触：一九五零年女皇对孔(Hung)案全英案件摘录第二辑第二九一页。此外，要构成上述粗犷罪名，必须证明双方曾有某种形式的一致行动，及双方均同意进行。一九七七年女皇对皮理斯(Preece)案(Q.B. 370)。然而，“猥亵行为”变为“粗犷行为”，则属于程度上的问题；要识别这两种行为，实际上十分困难。因此，有意见指出，假如“两名男性在某种情况下互相接吻，而这种情况显示该动作违背道德及违反自然者”，则该动作只属猥亵行为，而非粗犷行为：史密夫与何瑾(Smith & Hogan)，

第四版第四四二页。虽然，仅鸡奸一事，通常都足以构成粗犷行为罪，但鸡奸须进一步涉及插入的动作，而粗犷行为则不需有此：一九一四年女皇与巴朗（Barron）案（2 K.B. 570）。

6.93 与鸡奸问题一样，应否保留初步及次要责任问题，亦须加以研究。目前，侵害人身罪条例第五十一条对介绍或企图介绍进行粗犷行为的罪项有明确的规定。在英国，一九六七年性罪行法第四条第(3)款规定如下：——

“根据一九五六年法第十三条的规定，任何男性，如介绍另一男性与前述男性进行粗犷行为并非违法，而由于本法第一条，该行为并不构成上述第十三条所指罪项。”

然而，任何男性，如介绍另一男子与第三名男子进行粗犷行为，则即使根据一九六七年法的规定，该第二名及第三名男子的行为并非罪行，但第一名男子仍属违法：见上述史密夫与何瑾书第四四二页。

非礼

6.94 非礼是指任何恐吓进行或实际进行而使受害人恐惧的有形猥亵行为。无论男女，如对未表同意的男性进行猥亵行为，得被处罚；因此，凡未经同意而对男子进行鸡奸或粗犷行为者，亦作犯非礼罪论。假如受害者未满十四岁，则相同的行为亦可视为与儿童进行粗犷行为论，惟得视乎特有的事实而定。凡未满十四岁的儿童不能同意进行上述罪项，而未满十三岁的男童则不能同意接受非礼行为。除在判处较重刑罚时作为考虑因素外，无论上述行为是否公开或私下进行，都无关宏旨。

摘要

6.95 对成年人间彼此同意私下进行的同性恋行为有所影响的罪项，主要有鸡奸和粗犷行为两类。当局仅对此等罪行的部份初步罪项及次要罪项制定法规。如侵害人身罪条例未有对此等初步及次要罪项的责任予以规定，则该等责任由习惯法及刑事诉讼程序条例处理。

6.96 由于初步及次要罪项责任，通常视乎主要罪项是否有任何责任存在而定，因此，法例如作任何更改，则须研究应否将此等形式之辅助责任立例保留。

6.97 同性恋中暴力非礼所引起的责任，与鸡奸及粗犷行为两罪无关，因此，有关后述行为的法例如有任何改变，亦不会影响暴力非礼行为所引起的责任。本委员会现时要考虑者，为就猥亵行为而言，凡未满十三岁的男童，不能同意接受未至鸡奸或粗犷行为的猥亵行为，然则十三岁之年龄是否适当？

性罪项——证明及证据

6.98 根据少年犯条例（香港法例第二二六章）的规定，年龄在七岁以下的儿童，在法律上被视为无犯罪能力。换言之，年幼儿童不会被判触犯前文所载的任何罪项。有等明知此情形的狡狴之徒，可能会利用小孩作奸犯科。例如，某人利用儿童替男妓或妓女兜揽顾客，则该教唆者已触犯此罪项，而该儿童仅视为无辜的犯罪工具。

6.99 年龄介乎七岁至十四岁间的儿童，虽然技术上视为有犯罪能力，但甚少会被控告。本委员会提出十四岁，只是本身粗略的估计。如某男童对妇女或女童作性骚扰，则除非该男童具有或被推定具有性能力，否则不会被控强奸。因此，企图“强奸”罪可能须改为非礼罪处理。由此看来，如有关的行为未达到“粗犷”程度，则男童向同性所犯的企图“强奸”罪，同样亦只能构成非礼罪。

6.100 假如儿童声称遭人非礼，其证供会难于处理。法庭必须认为该儿童对宣誓的重要性完全明白，方可听取其经宣誓后所作的证供。儿童是否完全明白宣誓的重要性，则视乎个别儿童而定。据本委员会粗略估计，年在十岁以下的儿童甚少作出宣誓证供。一项严格的法例规定，在有关性罪项的案件中，法庭不能依靠小孩未经宣誓的证供而将被告定罪，除非该证供的重要内容获得经宣誓而作的其他证供予以佐证。举例而言，如某儿童声称一男子在公园走近其身旁露体，则除非该男子被捕及认罪，或此事件有另一成年人或较年长的儿童做证，否则该男子不能被判有罪。上述情况确实有困难出现：要证明真实的投诉殊非容易；而此类投诉却很易虚构。

6.101 要证明侵犯心智不正常妇女的性罪项，以及与该等妇女卖淫有关的附带罪项，必须有经宣誓而作的供词佐证。如妇女被测定为心智不正常，则通常不能作宣誓证供。

6.102 如遭性侵犯的受害人有能力作出宣誓证供，则有关佐证的规定便由法官自行决定：法官须向陪审员或法庭提出警告，指明虽可仅依靠投诉人的证据而定罪，但如无佐证，则此举殊非明智。受害人新近所作的证供，可予以接纳，但只能用以证明被告行为常属如此，而不能证明投诉事件的真伪。因此在法律上，此等证供并不属于佐证。在某些问题上，要决定投诉人的可信程度时，例如投诉人声称并无同意等，则上述证供通常有很大关连。

罪项的检控

6.103 律政司（除私人提出的检控外）是唯一有权决定是否提出检控的人员：此乃宪法规定的责任。但在大多数情形下，律政司均授权属下的律师依照其所定方针作出决定。根据法例，在香港发生的若干罪项，均须由律政司授权方可提出检控，不过在大多数情形下，均由刑事检控专员代律政司执行此项权力。

6.104 署理刑事检控专员麦达高（现为按察司）在麦乐伦事件调查委员会作供时指出，决定是否检控同性恋罪项，当局并无特别的政策。每一案件将视乎案情而定。如根据有关证据，将被告定罪比无罪释放的机会较大，则会授权予以检控。一位曾遭当局检控但罪名不成立的律师认为，当局决定是否检控同性恋罪项的标准，与检控其他罪项的标准，并不相同，但麦达高先生对此不表同意。

6.105 本委员会现提述一些因素，可能与下列情事有关：警方能否或应否对该等罪项展开调查、实际犯罪的数目与检控及定罪数目所作的比较。

6.106 在成年人双方同意进行的同性恋案件中，警方通常只在接获投诉后方展开调查；在大多数该等案件中，由于并无“受害者”，故此亦无人投诉，警方亦不会展开调查。纵使有人投诉，亦不易获得证据支持。依照目前的法例，通常而言，同意进行同性恋行为的双方，无论是鸡奸或粗犷行为，均属违法。因此，双方均可能恐怕会被检控而不愿作供或作证。

6.107 根据法例，在性罪项案件中，虽然并无规定不能单靠女投诉人的证供而将被告定罪，但法官必须警告陪审员，使他们知道不能单靠投诉人在重要事实方面并无独立证据予以佐证的证供而将被告定罪，他们在裁定有罪前，必须加倍小心。此项法规是否适用于一切同性恋罪项，则并不明确：一九五六年女皇对白加时（*Burgess*）案刑事上诉报告第四十辑第一四四页。本委员会认为适用于异性恋罪项的考虑因素，亦应同样有效地适用于同性恋罪项。即使如此，在同性恋案件中，如果投诉人为成年人及为当时自愿的共犯，则同样的法规便适用，即法官必须警告陪审员，指出单靠该投诉人的证供而无独立的佐证，则将被告定罪殊非明智。如果被告并不认罪，则鲜有该等独立的佐证。此外，如果投诉人的品格令人怀疑，例如他身为男妓，或可能以前曾被判犯有不诚实的行为，则他的证供将较难使人入信。

6.108 作为一个社会，本港似乎达到以下的情况：在许多案件中，我们知道有人犯罪，但该案并无人受损害，即该案并无传统上所指的受害人。案中的主要指证可能属实：即该人乃同性恋者，但要毫无疑问地确定某项淫褻行为的一切因素存在，则非常困难。我们或许会同意一般人所作的结论，上述情况是近乎对法律及法律程序的一种嘲弄。另一方面，我们亦可总结指出，上述情况只显示如罪行不涉及更严重的情形如使用武力、涉及青年人、含有勒索或利用成份，则规定一切同性恋行为属违法，似非所宜。

第七章 与东方国家法律的比较

东方国家

7.1 我们研究约十个东方国家的法律，以观察该等法律是否对成年人彼此同意而私下进行的同性恋行为加以惩罚。

澳洲

联邦

7.2 由于澳洲宪法并无赋予国会关于这方面刑法的立法权力，所以至今尚无像联邦法律那样施行于全澳洲的同性恋法例。因此各省份在此方面的法例皆不尽同。

各省份

7.3 西澳洲、塔斯马尼亚及昆士兰各省的法例，与英国一九六七年以前的法例相同。南澳洲、维多利亚、澳洲首都直辖区及澳北区已相继修改其同性恋法例。各省份执行法例的方式容有不同，然效果则一，即成年男性彼此同意而进行的同性恋行为不视作违法。

7.4 一九八一年，新南威尔士国会通过刑事罪（性侵犯）修订法，将习惯法下之“强奸”取消，而代之以分等级的“性侵犯”罪。新罪项的条文并无指明有关人士的性别。在新法令内，“性交”的定义包括肛交及口交，以及由他人将其他物体纳入肛门或阴道内。不过，该法令仍保留鸡奸、企图鸡奸及非礼男子等三项罪名，因而造成不规则的情况。男同性恋者在对方同意下进行鸡奸，最高可被判监禁十四年；但如在未得对方同意下进行鸡奸，若作性交论，则最高可被判监禁七年。（一九八二年新南威尔士反歧视委员会“歧视与同性恋报告书”第 5.44 段）。国会议员曾以私人名义多次提出制订法案，企图使成年男子双方同意而进行的同性恋行为不视作违法，但均告失败。

7.5 南澳洲和维多利亚两省除把成年人彼此同意而进行的同性恋行为不视作违法外，并实现刑法上性别中性化规定。一九七五年，南澳洲修改法例，将未经同意而插入男性或女性肛门的性行为加入“强奸”定义内。同时“性交”定义也作出相应的修订。

7.6 维多利亚省一九八〇年刑事罪（性罪项）法，规定男女两性一视同仁。维多利亚议会作出决定，认为关于性方面的法例，不应侵犯人们的私生活。即使非属不得已，亦只限于保障他人免受性利用，特别是那些负责照顾、

监护和拥有权势者所利用。议会在该项法例的总则中，表明立法本意非为容忍不道德行为。

7.7 维多利亚上述法令检讨各类性罪项，制订“性插入”的概念，包括阳具进入他人的阴户、口腔或肛门，或以任何物体（非属身体的一部份）纳入他人的阴户或肛门。在此之前，此等行为虽为刑法所知，但从未统称为“性插入”。这概念令当局能理性地对待这些罪行，纠正将性罪行当作发泄情欲罪恶看待的谬误观念，从而正确地将其归纳入暴力罪行一类。这个分类，最近名为“一九八一年在香港发生的罪案及其受害者”的调查（一九八一年政府统计署），亦予采用。

7.8 维多利亚的法令改写强奸定义。凡在某人的阳具进入另一人的阴户即算强奸的情形下，则强奸的定义包括任何形式的性插入。因此，任何人都可强奸他人，奸人者与被奸者俱不论性别；亦即说，强奸是向他人施暴，强行作性侵犯。此法律观点以前应用在各类性罪项方面时，仅局限于“男性侵犯女性”，例如“与未满十六岁女童性交”，现将改为“性插入未满十六岁人士”从而将男性对男性、女性对女性、女性对男性的侵犯统纳入“性插入”罪项下。这与传统罪项，诸如非礼，粗犷行为等罪确有差异。

7.9 维多利亚的法令，大部份根据维多利亚首长特委的强奸调查小组在一九八〇年所公布的报告书而制订。本委员会认为该报告书堪发人深思，特将该维多利亚法令条文载录于附件三十一，以供对照参考。

印度

7.10 印度刑法第三七七条规定：

“任何人出于自愿与任何男性、女性或兽畜进行违反自然的性交，可被判终身监禁或为期长达十年任一形式的监禁，并可兼判罚款。

释义：凡有插入，即足以构成本条所指性交罪项。”

7.11 印度刑法第三七七条被公认为不独严禁肛交，亦禁止口交，高豪（GOUR）所著：“印度刑法”援引一九二五年江奴（Khonu）案（信地：286）作其论点依据（见该书一九六六年第八版第二五六六页），并节录一段该案的判词：——

“这种行为是否属于性交？如是则分明违反自然，因为性交的自然目的是使人有机会受孕，本案的口交则断无成孕之理。”

该条一向有广泛之解释，后来在一案中，该案被告证实曾将阳具插入阉牛鼻孔，进行性交，因此，被判罪名成立。（*简杜（Khandu）对国王案*，一九三四年，拉合尔，二六一，见高豪书第二五六八页）

日本

7.12 本委员会曾参阅一九五四年修订的日本刑法（英译者：白嘉马 Thomas L. Blackemore），下文引述有关条文：

(一) 第一七四条（公开猥亵行为）：

“凡公开作猥亵行为者，可被判不超逾六个月的强迫劳役，或最高罚款五百日元，或拘禁，或科以轻微罚金。”

(二) 第一七六条（强硬进行猥亵行为）：

“凡以暴力或恐吓手段对已满十三岁的男女进行猥亵行为者，可判处六个月以上七年以下的强迫劳役。与未满十三岁男女进行猥亵行为者，处罚相同。”

(三) 第一七八条（推定为强硬进行猥亵行为及强奸）：

“凡利用或引致他人失去知觉或丧失抗拒能力，借机进行猥亵行为或性交者，按以上两条规定处罚。”

7.13 值得注意的是，日本刑法（不涉及使用武力或作出恐吓）的年限为十三岁。凡与逾十三岁者发生上述行为，则须是在公众场所发生或未经本人同意，方构成罪行。

7.14 由此可见，日本成年男性（法定成年年龄为十三岁）彼此同意私下进行同性恋行为不算犯刑事罪。

马来西亚

7.15 马来西亚刑法（马来西亚法例第四十五章）第三七七条规定，同性恋行为不论私下进行与否，其罚则如下：

“第三七七条违反自然罪：任何人如出于自愿，与任何男性，女性或兽畜进行违反自然性交，可被判监禁，刑期可长达二十年，并可兼判罚款或鞭笞。

释义：凡有插入，即足以构成本条所指性交罪项。”

7.16 此外，该刑法第三七七 A 条亦有如下规定：——

“第三七七 A 条猥亵行为：任何男性，不论公开或私下，如与另一男性或教唆，或介绍，或企图介绍任何男性与另一男性发生粗犷行为，可被判监禁，刑期可长达两年。”

巴基斯坦

7.17 巴基斯坦刑法第三十七条（一九六六年版）有下列规定：

“违反自然罪：任何人士，如自愿与男性、女性或兽畜进行违反自然的性交，可被判终身流放或任一形式监禁，刑期可长达十年，并可兼判罚款。

释义：凡有插入即足以构成本条所指之性交罪项。”

未成年受害者的证供，纵使无佐证，但只要无疑点，即可据以裁定被告有罪。故此在曼舒·胡申（*Muhammad Hussain*）对政府案中（见一九七四年巴基斯坦刑法导报注释二十五），控方以十三岁的受害者的供词作为证供，而法庭则维持原判，裁定被告有罪。此条文似自一九六六年起便有所修订，起码在刑期方面，因为在穆罕默德·胡申（*Manzoor Hussain*）对政府案中（见一九七二年巴基斯坦刑法导报第六八二期）曾提及判鞭笞一事。不过，本委员会无法确定目前第三七七条的措词。

中华人民共和国

7.18 中华人民共和国一九八零年所制定的刑法，并无明令禁止公开或私下进行的任何同性恋活动。然而，在上述刑法中，有关性罪行的条文并不多，似乎亦只限于强奸、非法与未满十四岁女童性交、以及逼良为娼等。至于在现行法例中，该国官方对同性恋行为所采取的实际态度为何，则无法获得资料。

7.19 本委员会亦曾参阅中华人民共和国成立前，中华民国一九三零年所公布的中国刑法（由张肇元及上海工部局法律部翻译成英文）。兹引述该刑法中有关条文如下：——

- (一) 第二百二十四条：“对于男女以强暴、胁迫、药剂、催眠术或他法，至使不能抗拒而为猥亵之行为者，处七以下有期徒刑。对于未满十四岁之男女为猥亵之行为者，亦同”。
- (二) 第二百二十七条：“对于十四岁以上未满十六岁之男女，为猥亵之行为者，处五年以下有期徒刑”。
- (三) 第二百二十八条：“对于因亲属、监护、教养、救济、公务或业务关系服从自己监督之人，利用权势而奸淫或为猥亵之行为者，处五年以下有期徒刑”。
- (四) 第二百三十一条：“意图营利，使人为猥亵之行为者，处（三年以下有期徒刑，得并科五百元以下罚金）。以犯（前项之罪）为常业者，处五年以下有期徒刑，得并科一千元以下罚金”。

(五) 第二百三十三条：“引诱未满十六岁之男女，与他人为猥亵之行为或奸淫者，处五年以下有期徒刑”。

(六) 第二百三十四条：“公然为猥亵之行为者，处拘役或一百元以下罚金”。

7.20 上述条文显示，成年男子彼此同意而私下进行同性恋行为，不属违法；而列为罪行者，均似乎包括下列一项或多项含义：即拒绝同意，或涉及年青人（有法律效力的年龄为十六岁，而少于十四岁则罪行较严重），或出于利用，或该违法行为属公开性质。

7.21 本委员会为研究中华民国立国前之有关法律，亦曾参阅艾拉伯斯特（Ernest Alabaster）所著，一八九九年出版的“中国刑法评论”。该书报导说，奸淫乃属违法，违者杖八十（第三六七页），而对成年人或十二岁以上男孩进行违反自然行为，即使获得其同意，亦视作“较为严重”之奸淫案论，违者双方得各杖一百及枷一月（枷是套在颈上的大型木制刑具，披枷的罪犯，双手扣紧，不能进食，只能向过路者乞讨食物）。至于违反自然罪，艾氏在其书中叙述如下：——

“处理此项罪行的方法，与处理一般不道德行为者无异，且无男女之别。违反自然罪视受者的年龄、是否同意接受该行为等因素，而作不同的考虑。如受者为成年人，或为十二岁以上男孩并同意接受该行为，则视为奸淫论……。如该成年人或该超龄男孩抗拒该行为，则视为强奸罪论，并处以适当刑罚（一般强奸罪处以绞刑；如使用暴力则处以绞刑，不得减赦；如引致死亡，则处以斩首之刑，不得减赦）……。假如该男孩未满十二岁，则所犯罪项视为强奸论，并处以应得之刑罚，而不论该男孩是否同意或抗拒该行为；但假如该男孩曾犯过错，则作别论。至于丑恶罪行则仅作普通惩罚，这点的的确令人感到奇怪。事实上，与一般不道德行为比较，上述罪行可算是给社会带来较轻的损害。”

菲律宾

7.22 小组委员会曾向马尼拉一间具规范的律师行查询，所得的答复如下：“我们曾作研究，证实……在菲律宾，成年人间彼此同意而私下进行同性恋行为，并非刑事罪；但假如涉及未成年人，则根据菲律宾儿童及青少年福利法，将构成腐化未成年人罪名。然而，凡公开进行同性恋行为，则属于严重丑事，可根据修订菲律宾刑事法第二零零条规定处罚；但我国法律并无同性恋活动或关系之罪行。”

新加坡

7.23 新加坡刑法（新加坡法例第一〇三章）第三七七条规定如下：

“第三七七条 违反自然罪：任何人如出于自愿与任何男性，女性或兽畜进行违反自然的性交，可被判终生监禁，或刑期可长达十年的监禁，并可兼判罚款。

释义：凡有插入，即足以构成本条所指性交罪项。”

7.24 此外，刑法第三七七 A 条亦有如下规定：——

“第三七七 A 条 猥亵行为：任何男性，不论公开或私下，如与另一男性或教唆，或介绍，或企图介绍任何男性与另一男性发生粗犷行为，可被判监禁，刑期可长达两年。”

7.25 因此，新加坡似乎仍保留鸡奸及成年男子彼此同意而私下进行同性恋粗犷行为等罪项。

南韩

7.26 韩国刑法（由穆拿（Gerhard O.W. Mueller）翻译成英文）有下列规定：——

- (一) 第二九八条（强硬进行猥亵行为罪）：“凡施用暴力或恐吓手段对他人进行猥亵行为者，判监禁十年以下，或科二万五千圆以下罚金”。
- (二) 第二九零条（推定强奸罪）：“凡乘他人丧失知觉或无抗拒能力……而进行猥亵行为者，其罚则与前罪同”。
- (三) 第三零一条（强奸引致伤亡罪）：“凡采前条手段而触犯第二九七条罪行并引致他人伤亡者，可判终身监禁或监禁五年以上”。
- (四) 第三零二条（奸淫未成年人罪）：“用欺骗或武力威胁手段奸淫未成年或弱智人士或进行猥亵行为者，可判监禁五年以下”。
- (五) 第二四五条（公开猥亵行为罪）：“凡公开进行猥亵行为者；可判监禁一年以下，科一万圆罚金，或拘禁，或科较轻罚金”。

7.27 因此，根据南韩法律，成年男子彼此同意而私下进行同性恋行为，似乎并非违法。

台湾

7.28 台湾现行法规，主要根据一九四九年前所制定的中华民国法规。该法规已于上文简述。除下列一项增订条文（在第二二五条加入）外，各条编

号及内容均绝大部分保留。增订条文为：“对于男女乘其心神丧失或其他类似之情形，不能抗拒，而为猥亵之行为者，处五年以下有期徒刑”。

7.29 因此，本委员会相信，根据台湾法律，成年男子彼此同意而私下进行同性恋行为，不属违法。

摘要

7.30 本委员会研究显示，大多数邻近国家对于成年人彼此同意而私下进行同性恋活动，都采取容忍的态度，不予惩治，其法制特点，是除非同性恋活动涉及暴力，或青少年受侵犯，或涉及压迫、欺诈或利用，或未得对方同意，或在公众地方发生，否则不会加以干预。

7.31 根据本委员会的研究，不论中华人民共和国或一九四九年以前的中华民国，对成年人彼此同意而私下进行同性恋活动，均无明文予以惩治。至于台湾、菲律宾、日本、南韩以及澳洲若干省份，亦无法例惩治这类活动。中国在帝制时代，似乎将同性恋视为罪行，而时至今日，马来西亚、星加坡、巴基斯坦和澳洲若干省份仍将同性恋列为非法。

7.32 本委员会尽力向所研究国家搜集同性恋问题方面法律和道德观念的权威资料。对于澳洲当局所提供的协助，本委员会至为铭感。对于与本港文化结构相近国家的资料，我们特感兴趣。此外，马来西亚法律修订专员以及星加坡副刑事检控处长在答复本委员会的查询时，指出其国家并无就同性恋所牵涉的法律或社会问题，进行任何调查。我们进一步研究后，亦理解缺乏资料的原因。简略来说，从星加坡和马来西亚当局所提供的统计资料，可见在其国家内，经举报的“违反自然”和“粗犷行为”案件每年每国平均不足十二宗。这些国家将来是否打算改革同性恋法律，当然无从预测。不过，在目前来说，同性恋问题在这些国家并未引起关注。

第八章 与西方国家法律的比较

西方国家

8.1 为免超越受委托进行的工作范围，本委员会原拟将研究对象局限于与本港最有直接关系的国家。有人促请本委员会在研究同性恋问题时，应从“全球性革命”着眼，本委员会对此意见有所怀疑。然而，事实上，若干国家也一直检讨及改革作为管制性罪项根据的传统英国法律及习惯法。据悉，英国一九六七年性罪项法之实施情况尚在检讨中，而苏格兰的法例最近亦曾作修订，以便与英国法例趋于一致；此外，一九八二年，国会曾被要求考虑将有关措施推广至北爱尔兰，这已是四年内的第二次。最近，欧洲人权法庭曾审查北爱尔兰的有关法例，将其与欧洲人权公约印证。澳洲若干省份近年亦曾改革有关性行为的法例，详情载于前章。

8.2 因此本委员会亦顺应部份意见，虽然我们主要仍是参照本港特殊的历史背景和地理因素，研究及设法解决本港同性恋问题，不过，如果置较远地区的有关经验不顾，则颇为不智。诚然，这些地区与香港各有不同的文化背景，但在现时来看，彼此所遭遇的问题，共通之处似多于差异的地方；它们在处理这类问题的经验，殊堪借镜。

8.3 在研究推行改革时，如果有关问题主要属于地区性质，则尊重国际意见与否，只属次要；不过，这些意见亦有助于评估我们所提出的建议，看其是否与众不同，抑或早已在其他与本港承受同一法律传统的社会实施。

加拿大

8.4 加拿大刑法是全国各地的统一刑事法律，此乃由于根据联邦宪法，刑事法律应由联邦政府制定，而非由各省份制定。该刑法第一五五条对鸡奸作概括的禁制规定如下：

“任何人士，如进行鸡奸或兽奸，即属违犯可经公诉程序起诉的罪项，可被判入狱十四年。”

8.5 夫妇或有同性恋行为的成年人彼此同意私下进行的鸡奸，则不受上述刑法所禁制。

第一五八条规定：

“(1) 第一五五及第一五七条对下列人士彼此同意私下进行的任何行为，并不适用——

(甲) 夫妇，或

(乙) 双方均属年满二十一岁的人士。

(2) 为执行第(1)款的规定——

(甲) 某项行为如系在公众地方进行，或有超过两人进行或在场者，则不视作私下进行论；及

(乙) 凡有下列情形者，则任何人士均视作不同意进行某项行为论——

(i) 如遭对方以武力、威胁或恐吓伤害身体等手段而被迫同意，或因对方欺诈及误述该行为的性质而被骗同意，或

(ii) 如同意的一方系弱智、精神错乱、白痴或低能的人士，而进行该行为的另一方明知或有理由相信对方乃属此类人士者。”

8.6 因此，成年人彼此同意私下进行的同性恋行为非属违法。在一九七八年，加拿大的法律改革委员会建议将第一五五条有关鸡奸行为的禁制全部撤销，而代以概括规定，以禁制任何“性侵犯”（例如强奸、强迫鸡奸等）。此项建议至今仍未获通过成为法例。

英国

英格兰及威尔士

背景

8.7 在英格兰，很久以前便已严惩鸡奸者。十三世纪时，教会法例规定将鸡奸者活埋或烧死。一五五三年，国会首次通过法例，规定鸡奸属重罪，其条文与香港相对的条例第四十九条的规定大致相同。刑罚为死刑。直至一八六一年，侵害人身罪法规定鸡奸者可被判终身监禁，而企图鸡奸则可被判十年监禁。一八八五年，国会首次制定有关男性间进行粗犷行为（与香港相对条例第五十一条的规定相同）的法例。从该时开始，“公开或私下”一词便出现。一九五七年，由胡分顿爵士（Sir John Wolfenden）任主席的委员会以大多数票通过，建议成年人彼此同意而私下进行的同性恋行为不再属违法。十年后，国会可能走在舆论之前，在一九六七年通过性罪项法，将委员会建议制定成为法例。

一九六七年性罪项法

8.8 本报告书的附件三十三附有该法令的副本，其中心规定为第一条第(1)款：

“纵使任何法例或习惯法另有规定，凡私下进行同性恋行为者，如彼此同意而双方均年满二十一岁，则不属违法，但须受下条规定限制。”

8.9 有关的法例修订要旨，兹摘录如下——

- (1) “私下”一词之定义为：如超过两人参加或在场，或如该项行为乃在“公厕进行，而该公厕乃市民无论是否需缴费即可进入或获准进入者”，则该项行为亦不视为在私下进行。除上述情形外，私下一事，只作为事实观点看待，依照案情而定：（一九七四年女皇对韦奇士（Reakes）案刑事法律报告第六一五号）。本委员会注意到，该限制并不适用于异性恋行为。
- (2) 有关“同意”一词，法例明确规定：“某人如神智逊常，至一九五九年精神健康所指的程度”，则该人虽表面上同意，法庭亦不接纳此作为理由，但如能证明当时并不知情，亦无理由怀疑该人的神智严重逊常者，则不属有罪。
- (3) 制定特别条款，以保留某类人士须负刑事责任，这些人士包括与精神病患者发生鸡奸或粗犷行为的医院职员、纪律部队人员及商船船员。
- (4) 制定另一项特别条款，规定不论男女，凡倚赖男妓收入为生，或经营同性恋妓寨者，均须负刑事责任。
- (5) 如须证明当事人不表同意，或同性恋活动并非私下进行，或任何一方年龄不足二十一岁，则控方须负举证责任。
- (6) 纵使同性恋不再视为违法，但在若干情况下鸡奸仍须负刑事责任；鸡奸的最高刑罚已予修改。除非获对方同意，否则鸡奸十六岁或以上男性可被判监禁十年。如获对方同意，但其年龄不足二十一岁，而被告年龄则超过二十一岁，则最高可被判监禁五年。如获对方同意，而双方均超过二十一岁，或双方均不足二十一岁，则最高刑罚为监禁两年。

进一步的建议

8.10 英国的社会改革份子对于同性恋问题，仍表关注。后来遂有一个非官方的工作小组成立，其职权范围属一般性，但包括研究有关同性恋法例。一九七五年性法例改革会工作小组报告书（摘录于一九七五年刑事法律评论第三三〇至三三一页）就此问题作结论如下：——

“一九六七年性罪项法局部实施胡分顿报告书（Cmnd. 247，1957）所提出的建议，规定二十一岁以上的成年人彼此同意而私下发生同性恋行为不再视为违法。此外，并对一九五六年的

有关法规作相应修订。不过，这些修订基本上属于消极性质，只令一项范围狭窄的男性同性恋行为脱离刑事罪行的范畴，而丝毫不理会法例基本上已假定同性恋较异性恋为更反社会及更严重的罪行。因此，法律对同性恋和异性恋未能一视同仁。这情况从下列几点可见一斑：——

- (甲) 在法律上，男性须达二十一岁才有权同意与人发生同性恋行为。可是，女性只须达十六岁即有权同意与异性性交，而自一九六九年开始，法定成人年龄已定为十八岁；
- (乙) 构成同性恋行为在“私下”进行的因素，其定义远较异性恋者狭隘（举例来说，双方同意进行的行为，只要有第三者在场，即使在私人楼宇内发生，亦属遵法）；
- (丙) 军队人员，以及在若干情况下包括英国商船船员，私下进行同性恋活动，纵使已下班或正在休假，亦不会因该行为经已合法化而免罪；
- (丁) 该法令之范围，并未扩大至适用于苏格兰及北爱尔兰；
- (戊) 该法令所规定的若干罚则，较异性间犯同等罪项者为严厉；
- (己) 一九六七年性罪项法使同性恋合法化，但第三者介绍他人（即未必为换取报酬而方便他人）进行同性恋活动，仍属违法；
- (庚) 异性间进行鸡奸，即使是夫妇二人彼此同意进行，仍可被判终身监禁。”

报告书继续指出：——

“……因此，有关这方面的法例仍须多方面进一步改革，以符合本报告书第三章所列举的原则。一九六七年法令以及一九五六年法令内规定对同性恋行为与异性恋行为作不同处理的若干条款，理应撤销，而代之以不问参与者性别而公平处理一切性行为的条款。如谓年青男性防同性侵犯所需之法律保护，应较年青女性防异性侵犯者多，实有违常理。本工作小组建议撤销一九五六年法令第十二、第十三及第三十二条，以及一九六七年法令第一（第(4)、第(6)及第(7)款除外）、第二、第三、第四、第五及第六各条。此外，如按照本小组所建议的方针公平处理，则须立法修订习惯法现行若干条款，特别是有关串谋罪以及有关证据的法例（俾能消除容许向陪审团提出有关先天同性恋倾向证据的不正常现象，以免被控犯有同性恋罪者，过

往虽无类似犯罪纪录，亦会因上述证据而被指证为同性恋者。）”

8.11 一九七八年，欧洲人权委员会在研究 *X 对英国案*（3 EHRR 63）时，曾考虑法例将十八岁至二十一岁男性彼此同意而私下进行同性恋活动定为刑事罪，应否视为侵犯个人享有私生活的权利，违背欧洲保护人权及基本自由公约第八条的规定。结果，人权委员会认为：“法例规定十八至二十一岁之间的年青男性彼此同意而私下进行同性恋活动视为刑事罪，乃属侵犯申诉人根据第八条第二段其中一项理由应享个人私生活的权利。”

8.12 人权委员会认为，英国所订定的年龄限制，应按其本身的情况加以检讨，虽然欧洲大多数国家规定年龄达十八岁者即可同意发生同性恋行为，但这并不一定表示英国将年龄定为二十一岁，并非“民主社会所需者”。人权委员会在研究英国的情况后，有以下的意见：——

“151. 法律制度将有权签订契约的法定年龄定为十八岁，是承认达到这个年龄的人士心智成熟，有能力作出重要决定和承担后果。因此，他们如果彼此同意，私下发生同性恋关系，应属合法的私人抉择，不应受刑事法例所干预。

152. 本委员会认为：将年龄限制定为二十一岁，在这个时代来说，特别是与欧洲理事会其他成员国家比较，可算偏高。本委员会并察觉，对于双方同意私下进行的同性恋活动，欧洲目前的趋势是倾向于采取容忍和谅解的态度，而非加以法律制裁。此外，单从英国本身的法律立场来看，本委员会觉得有权投票及进行其他合法交易的法定年龄低于有权表示同意进行同性恋活动的年龄，法例规定似乎有欠一致。

153. 不过，本委员会不能忽视胡分顿委员会曾检讨这个问题，而其建议并获国会通过采用，纳入一九六七年法令内。此外，本委员会亦注意到国会议员在一九七七年曾以私人名义提交法案，促使国会再次考虑这个问题，但该法案未为国会通过。目前，英国刑事法例改革委员会及性罪项政策谘询委员会正对有关问题重新检讨。

154. 此外，辩方政府认为这是一个具有争辩性的敏感问题，年龄在十八至二十一岁之间的少男，如参与同性恋活动，势将饱受社会压力，妨害心理发展，本委员会认为上述见解颇为实际。

155. 因此，本委员会并不认为，辩方政府在寻求一个中庸的解决方法时，曾踰越公约所订的约束。

156. 基于上述意见，本委员会认为将有权表示同意的年龄定为二十一岁，纵然妨碍申诉人的私生活，但为保障其他人士的权利，该项规定乃民主社会所需者，故属合理。”

8.13 一九八〇年，内政部刑事法律修订委员会在其性罪项研究报告书中，曾研究有权表示同意性交年龄的问题。该委员会总结说：“……进行同性恋活动的最低合法年龄，不应超过十八岁……本委员会亦同意，目前以十八岁为成年人年龄的规定，乃厘定进行同性恋行为最低合法年龄的首要考虑因素；正如政策谘询委员会多数委员的意见一样，本委员会大部份成员亦认为，由于十六岁至十八岁年青人的性趋向仍未十分稳定，所以最低合法年龄应订为十八岁。”（第 13 段）。

8.14 该委员会亦审阅英国一九六七年性罪项法第一条第(2)款(a)段。大部份委员认为，“对于公开猥亵行为，不论违犯者属相同性别或不同性别，法律应一视同仁。”（第 131 段）。该委员会认为有两种立法方式可供选择：

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- “(38) (a) 下述情况，可考虑立法规定为罪项：任何人士，在可能为他人所见而又可能引致该等人士极度反感的情形下，与别人性交（与同性或异性）或进行粗犷（或极猥亵）行为。（第 137 及 140 段）。
- (b) 或如该行为可能为‘公众人士’所见而又可能引致该等人士极度反感者。‘公众人士’之定义包括邻近楼宇的居民（第 140 段）。
- (c) 假如采用上述(b)分段的规定，其中‘引致该等人士极度反感’的因素可以删除，而该罪项可界定为在可能为‘公众人士’所见的情形下与别人进行性交或粗犷（或极猥亵）行为。”（第 140 段）。

无论采用何者，必须证明被告知道其行为可能为他人所见或被告罔顾他人可看见其行为之后果（第 141 段）。违犯者可循公诉程序或简易程序被起诉，并可被判处监禁十二个月。（第 142 段）。

- “(39) (a) 假如采用上述第(38)段(a)或(b)分段的办法（如是则须证明该行为可能引致他人极度反感），则须规定，任何人士，如在一般人可到之场所及有他人在场的情形下，单独或与别人进行粗犷（或极猥亵）行为，即属违法。（第 144 段）。
- (b) 假如采用第(38)段(c)分段的规定（如是则无须证明该行为可能引致他人极度反感），倘能明确规定‘公

众人士’一词包括进入会所内的人士，则(a)分段中‘一般人可到之场所’的规定可以删除。

- (40) 除上述两段所拟的罪行外，一如一九六七年性罪项法第一条第(1)款及第(2)款(a)段规定，凡公开进行同性恋活动，或私下而超过两人参与或在场进行同性恋活动（即鸡奸及粗犷行为），应属违法。不过假如该行为‘在家内及私人场合’进行，则可考虑应否放宽第一条第(2)款(a)段的规定。至于异性公开进行性活动，则应依法律委员会所建议的罪项，制订条款予以处理（第 143 段）。
- (41) 男性在大众可进入或容许进入的厕所内，包括厕格内，进行同性恋活动，仍属违法，可循公诉程序或简易程序被起诉，并可被判处监禁十二个月（第 147 段）。”

猥亵展示

8.15 由于社会对性方面的公开展示甚为关注，结果引致英国一九八一年猥亵展示（管制）法之通过，以便对任何公开展示“猥亵物品”之行为加以处罚。至于戏剧表演时之展示，以及画廊或博物馆展览中（以在画廊或博物馆外观看不到为合）的物品，则不在管制之列。该法令并没有为“猥亵”一词下定义，但“物品则包括任何可展示之事物，惟真实人体或其任何部份则例外。”（第一条第(5)款）。

北爱尔兰

背景

8.16 骤眼看来，北爱尔兰的经历与香港的情况似不相干，但本委员会研究两地近年改革法律的提议，却发现以下重大类似之处：两地的立法基础相同、传播界及部份社会人士表现兴趣浓厚、社会因宗教、原则及道德的关系而出现分歧意见。而且在爱尔兰的杜泽安（Dudgeon）事件中，公众人士提出几乎包罗万有的论点，其中特别针对法治，以及讨论一个对民意有反应的政府，对一个非完全自治的社会所应负的责任。本委员会对此亦详加研究。

8.17 北爱尔兰管制同性恋的法律，与英国通过一九六七年法之前的法律相同，因此与香港的法律并无二致。自一九七二年以来，英国国会即直接负责管辖北爱尔兰。一九七八年七月，政府提出同性恋罪项（北爱尔兰）令草案，目的在使北爱尔兰的法律与英国及威尔士趋于一致。草案特别规定，两名二十一岁以上男性彼此同意私下进行同性恋活动，不再属于违法。

8.18 国务大臣于提出这项措施时总结说：

“……简而言之，现时存在两种不同观点。一种以教义的诠释为基础，认为一切同性恋活动均属不道德，因此必须运用刑法

的力量，规定该等活动为罪行，以推行道德生活。另一种观点划分两方面：一方面着眼于私人道德，同性恋者可以（作为一种公民自由权）依照良心行使其私人权利；另一方面是公众利益，国家应该而且必须利用法律，保障儿童、智力迟钝及其他无能力自作有效承诺的人士。

本人曾与宗教团体及其他团体讨论，听取他们同样出于至诚的意见，同时本人明白两种观点背后的信念。除此以外，我们还考虑其他因素。譬如说，有人指出现行的法例难以执行，又说同性恋者害怕行径泄露，以致特别容易遭受勒索，而这种恐惧心理，不仅令同性恋者本身郁郁不欢，其家人和朋友亦不会愉快。

本人一方面参考这些不同观点，但另一方面则认为不应忽略彼此相同的意见。大部份人士认为我们应给予年青人特别保护，又认为法律应公平执行。不仅如此，就是反对改革的人士，对个人权利亦同样拥护和尊重；而赞成改革的人士，对社会公众的利益也同样关怀。因此，社会上的个体，也如政府一样，对这个问题难以订出一个兼顾各方面的良策。”

8.19 一九七九年七月，政府宣布不拟继续研究此问题，理由如下：——

“经广泛谘询之后，发现北爱尔兰人民对改革现行法律之议正反意见分歧，态度强硬。虽然我们无可能确知大部份人民的感受，但事实放得很明白，反对改革建议大有人在（包括范围广泛的宗教和政治意见）……政府亦考虑到……在传统上，制定如该法令草案所涉及事项的法例，一向是由一位议员以私人名义提出，而非由政府主动。因此，政府现时建议不再采取进一步行动……不过假如将来有任何有关发展，政府当会再行考虑该问题。”

杜泽安 (Jeffrey Dudgeon) 事件

8.20 一九八一年十月二十二日，欧洲人权法庭以十五票对四票，裁定北爱尔兰禁止成年男性双方同意而私下进行同性恋行为的法例，违反欧洲保护人权及基本自由公约第八条的规定。

该第八条规定如下：

- “(1) 每个人都有享受私生活、家庭生活、家庭和函件受到尊重的权利。
- (2) 除非为执行法例规定，以及为在民主社会内保障国家安全、公众安全或国家经济利益，防止骚乱或罪案，保障

健康或道德，或保障他人权利及自由，否则该管当局不得干涉任何人士运用上述权利。”

8.21 一九七六年，警方在扫毒行动中，搜查与杜泽安居于同一单位的男子，检获证明杜泽安有同性恋行为的文件，于是把文件带走，并在事后向杜氏查问其同性恋行为。后来刑事检控专员决定不予检控。

8.22 杜泽安向欧洲人权法庭指称，法律容许警方采取该项行动，是干犯其私生活受尊重的权利，而性生活是私生活的一部分。政府向法庭承认该项干预行动，但认为根据第八条的规定，该项行动实属合理，乃“为保障道德”或“保障他人权利及自由”，而须进行者。

8.23 该法庭接纳下述事实，就是在北爱尔兰，“很多有责任感的社会人士都真诚相信修改法律会严重损害社会的道德结构，他们形成一股强大的反对力量。这股力量反映出北爱尔兰要求甚么道德准则，当地社会人士认为必须采取什么措施，才能维持现时普遍奉行的道德标准。”

8.24 但审理该案的法官大多认为：

“受该项遭人非议的法例所影响的公约权利，是保障人性中主要是私下表现的一面。

……政府所持理由虽然中肯，但不足以证明有理由继续执行该项遭人非议的法例，因为该项法例规定，两个有权表示同意的成年男性私下发生同性恋关系，乃属违法。要特别一提的是，虽然北爱尔兰对男性同性恋行为抱有上述道德观念，并担心放宽法例可能导致现行道德标准受到破坏，但除非有更深入理由，否则不应对申诉人的私生活作如此过份的干预。‘不视为违法’并不是‘赞同’的意思，就这点而言，虽然有人担心修改法例可能引起部份社会人士误会，但由于现行法例有很多不合理的地方，这种忧虑并不构成足够理由去维持该等法例。”

8.25 杜泽安又指称，他在性方面受到歧视，有违公约第十四条的规定。因为若论私生活，在现行法例下，他所受的干扰，比英国其他地方的男同性恋者，以及北爱尔兰本身的异性恋者和女同性恋者所受的干扰为大。他特别指出，有权表示同意的年龄应该划一，不应因性关系的形式有别而歧异。审理此案的法官大多认为毋须就这问题作裁决。杜泽安本来共索偿二万元，但法庭亦未有作出有关赔偿的决定。

8.26 来自塞浦路斯的史祁亚法官（Judge Zekia）则提出强烈反对意见，他认为必须维持现行法例，北爱尔兰才能保障道德观念和他人权利：

“基督教和回教都谴责同性恋关系及鸡奸行为。道德观念大部份源于宗教信仰，所有文明国家都惩罚鸡奸、兽奸和其他类似的违反自然行为，直至近年才有所改变。

塞浦路斯现行刑事法，与北爱尔兰在一八六一年和一八八五年通过的法例相似。一九二九年通过的塞浦路斯法例第一五四章刑法第一七一条内容如下：

‘任何人士如(a) 与他人进行违反自然之性交，或
(b) 容许任何男性与其进行违反自然之性交，
即属犯重罪，可被判监禁五年。’

根据第一七三条，任何人士，如企图作出上述违法行为，可被判监禁三年。

虽然一方面，可能有人认为，本人是塞浦路斯，法官而会心存偏见，但另一方面，也可能有人认为，以本人的身份，当更易预见，如塞浦路斯或北爱尔兰撤销或修订法例，以利便同性恋者，则必会引起大众强烈抗议和导致社会混乱。这两个国家，同是宗教思想浓厚，并且坚持有数百年历史的道德标准。”

8.27 美国的华殊法官（Judge Walsh）也同样作出有力的相反意见，认为国家有权，亦更有责任，采纳适当道德原则，立法制裁不道德行为。他说：

“法治要依靠社会共同道德观来施行，因此法律不能漠视社会的共同道德观。如果法律与社会的共同道德观脱节，即使把法律订为至高无上，仍会被蔑视……英国胡分顿委员会作出建议时，主要是……相信法例难以执行，而一旦执行，就会鼓励其他罪恶，例如敲诈等，结果可能弊多于利。这个见解显然并非放之四海而皆准……”

然后，他说出自己所作判决的主要根据：

“性道德只是道德的一环。一个我们无法避而不谈的问题，就是性道德究竟属‘纯粹个人道德’，抑或与社会有不可分割的关系？性的行为，受文化的左右比本能上的需要更大。文化潮流和期望，可能造成一些推动力而被人误以为是出于本能的冲动。在塑造风俗习惯和社会制度的过程中，那些管制性的行为的法定安排和规定，是非常重要的形成因素。”

法律的改变

8.28 一九八二年三月，北爱尔兰事务大臣在下议院称：

“政府已知悉，欧洲人权法庭裁定北爱尔兰的同性恋法例，违反欧洲人权公约第八条的规定。根据该公约，英国政府承诺在任何案件中，如英国为其中一方当事人，则英国将遵守该法庭的判决。因此，政府将采取步骤，使北爱尔兰的同性恋法例与英国其他地方的同性恋法例趋于一致。”

其后英国政府于一九八二年十月二十七日颁布命令第一五三六号（北爱尔兰命令第十九号），把上述政策实施。该令由一九八二年十二月五日起生效。

苏格兰

同性恋问题

8.29 自一九八零年英国刑事审判（苏格兰）法通过后，苏格兰的同性恋法例即与英格兰及威尔士的法例相同。根据该法第八十条第(1)款之规定，“凡私下进行同性恋行为不属违法，但双方必须同意且年满二十一岁。”又第八十条第(2)款所订的规限与英格兰类似，即规定下开情况不视作私下进行论：

- “(a) 超过两人参与或在场；或
- (b) 在公众可以进入或获准进入（不论缴费与否）之厕所进行。”

8.30 在该一九八零年刑事审判（苏格兰）法通过之前，男性之间进行鸡奸乃属刑事罪行。麦当奴（MacDonald）在其著作中解释：“男性之间发生或意图发生违反自然之性关系，乃属罪行”（《刑事法》（Criminal Law）第五版，第一四九页）。戈登法官（Sheriff Gordon）对鸡奸的定义是：“男性之间违反自然的性关系”（《刑事法》（Criminal Law）第二版，第八九四页），并说：“鸡奸仅指男子将阳具插入另一男子之肛门，而插入之程度须与强奸者相同。”（同书，第八九四页）。

8.31 在英格兰，此罪项列入法规，但在苏格兰，则只属习惯法的一项，而只有上段所指之情况始构成罪行。男性若得成年女性同意而与其进行肛交，则不属违法。至于其他“违反自然之关系”（兽奸除外），亦不构成鸡奸。戈登指出，根据美国法律学院的标准刑法，“变态性交”的定义是“无夫妇关系者进行之口交或肛交，或与兽畜进行之任何形式性交”（戈登书，第八三六页），但苏格兰则无相应之划分。

8.32 有关女性同性恋，戈登称：“举例说，直至目前为止，本国并无女性同性恋被检控之纪录。这种行为并不视为刑事罪行，但可称为无耻淫褻行为。一八一一年，女性同性恋被形容为‘本国闻所未闻的无耻罪行’。”（同书，第三十三页）。上述乃戈登引自一宗诽谤案：一八一一年活士（Woods）

及皮利（*Pirie*）对纪雷姆（*Graham*）案（*Mocrieff's Papers*）。目前并无权威性论据说明女性双方同意而进行之同性恋行为抵触苏格兰法律。

8.33 一点值得注意的是，英格兰及威尔士通过一九六七年性罪行法时，当时苏格兰律政司公开声明，任何人士，如其违法之情形在英格兰不被检控者，则在苏格兰亦不会被起诉。其后继任的律政司均维持这项政策，直至一九八零年刑事审判（苏格兰）法规定双方同意而私下进行的同性恋行为不再视作违法止。

猥亵行为

8.34 在苏格兰，若干同性恋行为可能构成“无耻淫亵罪行”。麦当奴认为“所有无耻淫亵行为均属违法。”（第四版，第二二一页）。但麦氏并无提出任何权威性论据，以证明其说法。（戈登在其著作第二版第九〇六页亦指出这一点）。虽然如此，苏格兰高等法院审讯一九三四年麦洛能（*McLaughhlan*）对贝特（*Boyd*）案（*J.C.19*）时亦采纳麦氏的主张。该案涉及多项“下流、猥亵、淫荡行为”，触犯习惯法之规定。控方指控被告“在领有牌照楼宇内……有下流、猥亵、淫荡的行为……抓起他的手，放在你的私处”。被告更被控“将手放在〔他们的〕私处”。后来被告在每类控罪中均有数项裁定罪名成立。

8.35 在麦洛能对贝特案之前，下流淫荡行为只涉及与未届发育期的少年所发生的行为。戈登在其著作的初版及再版均强烈反对麦氏对无耻淫亵行为的概念。但后来法庭在审理一九七八年屈特（*Watt*）对安楠（*Annan*）（*S.L.T.198*）这宗划时代案件时，却维持麦洛能案所用的方法。在屈案中，控方循简易程序控被告“行为无耻淫亵，向或使人向多名人士放映淫亵电影。该片包括描述男女性交、自渎、口交以及违反自然行为、并有喝小便及插洋烛入女性私处等镜头。该片可能刺激起观众堕落、放纵及淫乱的情欲，并败坏国民的道德”。

8.36 辩方律师提出反对，认为控罪不当，理由是根据苏格兰法例，控罪的措词尤其是“被告行为无耻淫亵”等字眼，以及随后的指控并不足以构成罪项。但反对遭法庭驳回，并判被告罪名成立。及后被告上诉。辩方律师在上诉时复辩称控方所指控的罪项，并不存在于苏格兰法例，此外，除非猥亵行为是公开进行，否则不应视作违法。

8.37 金马伦大法官（*Lord Cameron*）在审结此案时指出：“……显然……构成罪行的原因并非行为本身猥亵，而是‘无耻’的性质。问题是：这种‘无耻’性质的内涵究应怎样？就本案所显示的事实而言，要证明猥亵或淫秽行为属违法，则该行为须是指向某人或某些人士，有意或明知而故意使其堕落或沦于邪恶，或可能堕落或趋于邪恶。至于公认为猥亵或淫秽的行为是否违法，则视乎能否证明被告确有犯罪意图，以及视乎案情或有关事实而定。本

席认为毋须试图确切界定此罪项之界限及范围，此举并不切实际，更毋须决定应否单凭案发现场之性质而将原应构成罪项之行为转为仅违反个人道德规范或当时社会道德标准之行为”（第二〇一页）。

8.38 金马伦大法官在判词中回述该次放映究属公开性质抑属私下性质时称：“不论案发现场属于公开性质抑或私下性质，均不足以影响，更不足以决定被指为无耻淫褻行为之罪性……因此本席认为无必要指证发生无耻淫褻行为的地点是属于公众地方，或该行为是属于开展露性质，始属与违犯该项罪名有关。”金马伦大法官续称，在此情况下，地方法官有权认为该电影足以使人堕落或沦于邪恶。

8.39 如此一来，一名教科书作者一句并无实据的说话，便收入苏格兰的刑法。假如根据金马伦大法官的判决而下一个合乎逻辑的结论，则任何人士在比屈案更“私下”的环境发生此种行为，亦似乎难免遭检控。但在一九八一年 *甸纳 (Dean) 对孟斯 (实业) 有限公司 (John Menzies (Holdings) Ltd.) 案 (SLT 50)* 中，控方试图将此类无耻淫褻行为的范畴扩大至适用于法团，却未成功。原因是有限公司不能有犯此罪行的意图，故罪名不能成立。但金马伦大法官的判词却持异议，认为“假如一家公司可以受法律（或可称为法律上的假设）赋予头脑及意志，而可由人在公司法定权限下运用，而在运用该头脑及意志时，须为所作的行动负责；则如所作的行动触犯习惯刑法，本席看不出究竟是根据甚么原则说公司可毋须负刑事责任。至于如何追究责任则属另一回事。所有触犯习惯刑法的不良意图就是犯罪意图。以法律观点来看，不论罪行之性质如何，犯罪者的动机或道德上的堕落情况是一样。因此，假如罪犯蓄意违法，不论犯罪之动机何在，其犯罪意图却可推定。”

8.40 苏格兰当局检举无数售卖或摆卖色情书籍及电影，控以无耻淫褻行为罪名。一九七九年 *罗拔臣 (Robertson) 对史勿夫 (Smith) 案 (SLT (Notes) 51)* 乃检控此类无耻淫褻行为之根据。一九八零年案 *德合 (Tudhope) 对泰来 (Taylor) 案 (SLT (Notes) 54)* 中，法庭裁定被告确有犯罪意图，因被告陈列色情杂志出售，但嘱咐职员不准儿童翻阅。

8.41 前述 *甸纳案* 所奠下的检控限度，经过一九八一年 *德合 (Tudhope) 对巴路 (Barlow) 案 (SLT (Sh. Ct.) 94)* 后更为确定。该案两名零售商的雇员被控售卖色情刊物，但由于雇员对出售货品无权支配，法庭无注裁定他们存有犯罪意图，遂判被告罪名不成立。

8.42 这类检控案件似乎必定涉及被告陈列货品出售，而并非只是拥有货品以作日后销售（一九八一年 *德合 (Tudhope) 对森马威 (Somerville) 案 (SLT 117)*）。然而，“陈列”一词并非必须“摆放于公众可见之地方”，而是指可供售卖（一九八一年 *史葛 (Scott) 对史勿夫 (Smith) 案 (SLT (Notes) 22)*）。

8.43 一九八二年史勿夫 (*Smith*) 对丹尼 (*Downie*) 案 ((Sh. Ct.) 23) 涉及租售色情录影带。法庭认为被告在展售录影带前, 必定看过其说明, 故此裁定被告确有犯罪意图。法庭并认为, 色情物品之所以构成罪行, 并不是因为它可以影响国民的行为, 而是它可以压低目前的道德标准, 法庭应考虑当时的标准而裁定某类事物是否属于色情淫褻。

8.44 鉴于无耻淫褻罪行乃有犯罪意图之罪行, 倘罪行涉及售卖色情物品, 则被告理应清楚杂志或有关物品之内容, 断无可能在鲁莽或疏忽之下犯罪 (一九八一年德合 (*Tudhope*) 对巴路 (*Barlow*) 案 (SLT (Sh. Ct.) 94))。上述德合对泰来案可支持此项见解。由于案中被告禁止儿童接触该杂志, 法庭由此推断被告存有犯罪意图。

8.45 根据苏格兰法律, 若干同性恋行为除可构成无耻淫褻行为外, 亦可构成扰乱公安罪。值得注意的是: 在这方面, 警务人员亦视为市民一分子, 警务人员受惊及受扰的程度亦视为与一般市民相同。这种情况似乎与英国有异。英国一九八二年柏坚 (*Parkin*) 对罗曼 (*Norman*) 案以及一九八二年华伦泰 (*Valentine*) 对李利 (*Lilley*) 案 (3 W.L.R. 523) 显示: 如警务人员是该等行为的唯一目击证人, 则法庭会以另一种准则审裁。在上述两案中, 便衣警员在公厕发现有同性恋行为的迹象, 但鉴于目击证人之身份, 法庭裁定被告之行为并不可能扰乱公安。

8.46 在苏格兰, 扰乱公安罪的范围颇为广泛, 而主要的指控根据是: “被告确实行为不检, 扰乱公安。”此罪当然亦经常包括偷窥罪。大法官汤信 (Clerk Thomson) 在一九四九年拿非利 (*Raffaelli*) 对喜利 (*Heatly*) 案 (J.C.101) 中称: “倘某种行为扰乱公安或破坏大众礼仪, 而当局有理由相信此种行为可能引起国民惊恐或不满或可能诱发公众施加报复者, 则可视为扰乱公安。” (第一〇四页)。时至今日, 此罪项的定义更为广泛。在一九八零年辛基亚 (*Sinclair*) 对安楠 (*Annan*) 案 (SLT (Notes) 55) 中, 控方仅证明受害人感到尴尬, 法庭便裁定被告犯扰乱公安罪。根据此项裁决, 显然所有同性恋行为均有遭受检控之虞。

兽奸

8.47 在苏格兰, 兽奸属刑事罪。麦当奴说: “凡与较低等动物发生违反自然的性关系, 包括企图有此种关系, 均属刑事罪” (第五版第一四九页)。苏格兰法律可能与英格兰法律有所不同, 因为在英格兰, 妇女可被判犯兽奸罪, 而在苏格兰, 情况便不如此明确。在一八四五年麦杰云 (*James McGivern*) 案 (2 Broun 444) 中, 被告的控罪仅为: “与野兽发生性关系”, 但爱理臣 (Alison) 对兽奸的定义却是: 男子与兽畜的关系 (戈登在其书第八九四页亦有提及)。迄今并无妇人兽奸事件呈报。

猥亵展览

8.48 英国一九八一年猥亵展览（管制）法适用于苏格兰，其释义与英格兰及威尔士的释义可以假定不会有重大差异。一九八二年公民政府（苏格兰）法对这个问题有进一步规定。

一九八二年公民政府（苏格兰）法

8.49 一九八二年公民政府（苏格兰）法通过之前，苏格兰各地均有若干仅适用于当地的法例。这些较早期的法例，除其他事项外，还涉及若干与性有关的罪行，包括猥亵露体（一八九二年市镇警察（苏格兰）法第三八〇条第(1)款）及出版或分发猥亵物品（第三八〇条第(3)款）。

8.50 上述一九八二年法令，是根据一个研究公民政府的工作小组的研究结果而制订。该法令第五十一条规定：在任何公众地方或任何公众可看见的地方展示任何猥亵物品（第(11)款），或出版、售卖、或分发、或制造、印刷、拥有或藏有任何猥亵物品（最终目的在售卖或分发），均属违法。若控罪是根据第(1)款提出，则法庭亦可根据一九八一年猥亵展览（管制）法第一条第(1)款将被告定罪。一九八二年的法令第五十一条第(8)款对“物品”一词有广泛的定义，即包括“影片、录音带、录影带、唱片、或其他方式的录影和录音”。

8.51 该法令第五十一条于一九八三年四月一日起生效，虽则其内容并无“猥亵”一词，但如法庭要测定是否猥亵，则可合理假设其方式可能一如一九八二年及一九八三年英格林（*Ingram*）对麦加利（*Macari*）两案（SLT 92 及 SLT 61）所采用者。大致言之，控方必须证明该物品性质特殊，故意产生不良作用，使受此物品影响之人士堕落及沦于邪恶，而该物品之展览、流传或售卖情况，亦足以使人认为其会落入容易受诱堕落者之手。

8.52 第五十二条第(1)款规定：——

“任何人士，如有下列情形者，即属违法——

- (甲) 拍摄，或准许他人拍摄儿童猥亵照片……；
- (乙) 分发或展示此种猥亵照片；
- (丙) 藏有此种猥亵照片，以备自己或由他人分发或展示；或
- (丁) 刊登或使人刊登广告，其内容可能令人意会刊登广告者有此类猥亵照片分发或展示，或意图如此。”

8.53 第五十二条(1)款的用字，与一九七八年保护儿童法第一条第(1)款完全相同，因而将该法例的效力扩大至适用于苏格兰。有一点要注意的就是：一九八二年法令第五十二条第(8)款规定“照片”一词包括影片和电视录影带。

8.54 根据一八九二年市镇警察(苏格兰)法第三八一条第(22)款的规定，为卖淫而游荡，乃属违法。但一九八二年的法令第四十六条则对此点加以澄清，以包括男女妓在内。违例者可予囚禁的规定经已撤销。较早前所讨论的破坏公安罪，继续适用于“路边游荡者”，此即公然寻找街头妓女，对行人造成骚扰，引致惊慌的人。

8.55 该法令第四十五条及附表二规定，经营“性商店”须向地方当局领取牌照，因而建立管制“性商店”的制度。对于“性商店”一词，该法例附表二第二条第(1)款所下的定义是：“任何商用楼宇、车辆或摊档，其业务大部份是售卖、出租、交换、借出、陈列与性有关物品，或示范使用这些物品。”至于“性物品”是指“任何物品，其用途涉及，或目的在刺激或鼓励——

(i) 性活动；或

(ii) 与性活动有关的用劲或抑制动作”，

此外亦包括范围广泛而与性有关的录音录影带（附表二第二条第(3)及(4)两款）。

美国

8.56 在美国，各州得自由制订管制同性恋法例（宪法）。联邦政府极少参与现行有关同性恋权利的改革。例如：现政府同意三军当局禁止同性恋者服役，而联邦平等就业机会和反歧视的法例亦不维护同性恋者。有关同性恋的法律改革似乎都是由各州发起。美国律师、医师和精神病专家等公会的全国委员会，均呼吁撤销余下各州未废止的鸡奸法例，而美国法律学院(American Law Institute)亦建议：一切性行为，若不涉及武力、非成年人与未成年人发生或非公开进行，即不应列入刑事法内。

8.57 美国有二十二个州经已更改有关鸡奸的法例。例如：加利福尼亚州在一九七五年修订有关同性恋行为的刑法。在此之前，鸡奸的定义含糊不清，被订为是“违反自然的无耻罪行”，任何人士如有此种行为，即属犯重罪。法例修订后，成人双方同意私下进行的同性恋活动，即不再视作违法。

8.58 纽约州的管制法规亦已改变，该州的刑法规定：“任何人士，如与他人进行变态性交，即犯彼此同意鸡奸罪”。此类性交的定义是：“两名不属夫妇关系人士的性行为，其中包括阳具与肛门、口与阳具，或口与阴户的接触。”由此可见，非夫妇之间所同意进行的同性恋活动和若干异性恋活动，均在禁止之列。只有五州将有婚姻关系人士自鸡奸刑法中删除。

8.59 上述管制法规，于一九八零年为纽约州最高法庭裁定为违反宪法。法庭所持理由是：联邦最高法院在多次裁决中，曾阐明私生活自由乃宪法权利，这项权利可扩大至包括双方同意的同性恋行为。“个人性行为是一项基

本权利，受隐私权所保障，这是因为性对人体情况有超然重要性，而性行为是人与人之间极亲密的行为，且涉及个人控制自己身体的权利。”

8.60 这种以隐私权为根据的理论值得注意，因为几乎所有这方面的改革理论，都是强调隐私权的。这种改革论调，不可能直接应用于香港。然而，我们稍后亦要考虑国际公约在这方面的影响。麻省最高法院曾裁决：该省不宜惩罚成年人双方同意私下进行的鸡奸行为。此外，各大都市亦已立法，在公共就业、房屋和教育等方面保障同性恋者的权利。总之，有多项改革是由大都市开始进行的。

其他各州

8.61 据悉美国约有二十五个州仍将双方同意私下进行的鸡奸行为列为刑事罪，不过这项规定很少执行。有多个州的法例亦规定男女之间的鸡奸行为属非法。兹举数州为例：在维珍尼亚州，同性或异性之间，不论已婚或未婚，口交或肛交均属刑事罪。这项法例，获得一个联邦法庭裁定为符合宪法，并即时由美国最高法院认可（一九七六年杜尔（Doe）对维珍尼亚州案）。密兹根州规定鸡奸行为，不论同性或异性，均属违法，而佛罗列达州则禁止“淫褻、违反自然的行为”，包括鸡奸在内。至于年龄方面，每州仍有限制，且均禁止公开的性活动。

美国最高法院

8.62 如上段所述，美国最高法院已即时认可（意指并未发表意见或聆听辩论）一项维持维珍尼亚州鸡奸法例的裁决。法院因此不将双方同意私下进行的性行为列入隐私权范围内。有些论者认为，以前有关隐私权的个案，一般来说可视为只限已婚人士在生儿育女范围内应用，显然同性恋行为不能根据这基础而获得维护。法律评论界则认为，隐私权可合理扩大，使同性恋行为亦受到保障。由于美国各州的法律大多数与维珍尼亚的法律大致相同，包括限制已婚人士的性活动，因此报章舆论认为此等法律形同干涉所有成年人的床上生活，并说规范人类行为的法律，如果不能执行，其坏处更甚于完全没有法律。

8.63 杜尔所提出意见的法律意义不大清楚，法院对该问题仍未直接处理，而杜尔的意见可能只不过是一项陈述，认为对高度公众性问题如同性恋方面的改革，不应出自联邦司法机关，而应该由各州立法进行。

国际公约

8.64 一九四八年联合国大会通过人权宣言。为方便讨论起见，本委员会在此列出几项重要条款。划綫是我们加上去的：——

第二条： “本宣言所载的一切权利与自由，人人皆得享受，不分种族、肤色、性别、语言、宗教、政见或其他主张、籍贯或门第、财产、出生或其他身份。

此外，不论是独立、托管、非自治或其他有限主权的国家或地区，均不应因其政治地位、管辖权或国际地位而对该国或该地区的人民有所区别。”

第七条： “在法律之前人人平等，一体享有法律之平等保护，而不受歧视。为免遭受有违本宣言之任何歧视，人人均应得到平等保护……”

第十二条： “任何人之私生活、家庭、住所或函件不容无理侵犯，其声名或信誉亦不容攻击。人人有权受法律保护，免受此种侵犯或攻击。”

第十六条： “(1) 成年男女，均不受种族、国籍或宗教之任何限制，有权婚嫁及成家立室。在婚姻方面，在结合期间及在解除婚约时，男女俱有平等权利。

(2) 家庭是社会的自然及基本群体单位，有权受社会及国家的保护。”

第二十九条： “(2) 人人于行使其权利及自由时，仅应受法律之限制，其唯一目的，应在确认及尊重他人之权利与自由，及符合民主社会中道德、公共秩序及一般福利之首要条件。”

8.65 继人权宣言后，跟着亦有“公民权及政治权国际盟约”。该盟约于一九六六年由联合国大会采用，并于一九七六年生效：

盟约第二条第(1)款及第二十六条转录人权宣言第二条；

第十七条转录人权宣言第十二条；

第十九、二十一及二十二条转录人权宣言第二十九条；及

第二十三条转录人权宣言第十六条。

8.66 该盟约第一条规定：每一缔约国须尊重盟约承认之权利，并确保其每一国民享有该项权利，不分性别，或其他区别。同时，缔约国应负责采取所需步骤进行必要之立法措施，以实施盟约所承认的权利。

8.67 与此同时，“经济社会文化权利国际盟约”亦于一九六六年获采用，并于一九七六年生效。该盟约第七条(c)款规定：缔约国得承认人人享有公平及良好工作条件的权利，以确保工作上人人享有晋升至适当水平的平等机会，除年资及才干外，不必受任何条件限制。

8.68 第十条规定：缔约国得承认：——

(3)……儿童及青年应获得保障，免受经济及社会剥削。倘他们的道德及健康受工作危害，则……应受法律的处罚。

8.69 英国对以上每项公约，均予以签署，亦将其规定应用于香港。本委员会不悉中华人民共和国有否参加此等公约。本委员会详细转载此等规定的内容，因为其对香港寓意重大。欧洲人权公约第八条，与人权宣言第十二条及公民权盟约第十七条类似。此等条款保证隐私权不受干扰的自由。正如我们在 8.24 段所见，杜泽安事件解释性隐私权亦应包括在此项权利之内。因此，倘此项解释正确，则目前本港法律多处干扰成年人双方同意私下进行之性活动，实与公民权盟约第十七条之规定相违。

8.70 在某些方面，香港有关同性恋的法例与此等盟约如此分歧，可以说是侵犯此等条款的规定。本委员会不悉香港有无人根据这一论点而要求发表声明或为一宗同性恋案件辩护。至于提出这些论点能否争取到胜利，本委员会不拟置评。但我们注意到，此等国际盟约不会向个别市民授予起诉权或补救办法；只有国家才可以就此提出诉讼。只要指出本港法律与国际盟约之间显著抵触的地方，已达到本文之目的。本委员会认为同样重要者，是必须紧记此等盟约之明确目标是保障婚姻、妇孺及隐私权。

第九章 本委员会所作的公开征询及在本港进行的研究

电视、电台及报章

9.1 香港有私营及政府电台各一家，每家电台有中、英文节目，每天听众平均合共三百七十四万。电视台有两家，每家有中、英文台各一个，每天黄金时间的观众平均合共三百二十五万。英文日报有三份、中文日报五十五份，日销共约一百五十万份，亦即每千人阅读三百份，而世界各地则平均每千人阅读一百零二份。

9.2 本委员会曾作调查，研究各种传播媒介在一九七八至一九八二年以男性同性恋为题的节目或文章，颇有收获。本委员会侧重“自发性”的一类资料来源，例如把报章所刊出的一部份“读者来函”剪辑起来，当作市民响应本委员会的公开呼吁而寄来的信件处理（参阅附件四）。

9.3 有几件事是值得留意的。首先，英文报章讨论这个问题时所拨出的篇幅及表示关注的程度，无论何时都远超中文报章；这点可能已是意料中事，但仍值得留意。其次，有些大报章在社评表明本身的立场，其意见摘要已录于附件四。概括来说，英文报章赞成在有限度的情况下，不把同性恋行为视作违法。第三点，某些人士曾透过书信、新闻稿或专文抒发意见，有时这些人物的身份颇为举足轻重。例如，一九八〇年七月，前任香港总督麦理浩勋爵接受报界访问时，曾在席上发表个人意见说：“修改该法例总有其好处，尤其是可藉此将本港法律与英国法律的差距消除。关于此事，本人注意到遭检控的人其实颇多都是外籍人士。”（原文请参阅附件四）

9.4 最后，个别报章对此问题的关注时起时伏；这点本无特别之处，不过为公平起见，须在此清楚指出。如用图表表示，可以见到报章关注的几个高峰，是一九七八年一名欧籍人士案件发生、麦乐伦事件审讯、及麦乐伦事件调查委员会聆讯之时；然而，麦乐伦事件告一段落后，报章对于小组委员会的工作及法律改革委员会的进展，均不时提出质询。

公开呼吁

9.5 小组委员会工作第一步，是公开呼吁与直接邀请有关人士与团体发表意见。一九八〇年七月，该委员会在报章公开呼吁，一九八一年九月，又进行第二次呼吁。承蒙各界支持。并提供意见，谨此衷心致谢。

9.6 公开呼吁的格式与结果，载于附件五。要注意的是，衡量这些意见书时，通常无法肯定每份意见具有多少代表性。附件五所载，充其量只可说

是综合多方面意见的摘要，而这些意见都是一些对此问题有主见的人士与团体响应本委员会在传播媒介的公开呼吁而提出的。主动来函提供意见的人士或团体共有二十六个，其中赞成修改法例的有十六个，反对的则有十个。单凭这项事实便妄下定论，实属不智，其理由是显而易见的。

直接呼吁

9.7 关于选定若干团体与人士，直接邀请他们发表意见的问题，小组委员会经详加考虑，且在发端时即已认定，不拟把这项工作当作本港市民意见的全面调查去处理。

9.8 当前要面对的困难是，本委员会相信：很多人对现行的有关法例一无所知，且对同性恋问题有成见，以致对同性恋法例有所反应时，往往掺杂此种意见；不少人根本不想被问及这个问题；在这问题上，很多人至少有两套标准，一套是他们公开发表言论后期望别人凭该言论衡量他们，另一套是他们内心愿意接受的。

9.9 为求集中注意力，让各界就该问题在法律上的含义多提具体意见，本委员会认为提纲挈领地介绍一下现行法例最为理想；这点确已做到，且务求内容深入浅出。由于小组委员会负责研究鸡奸与粗犷行为的问题，故此在介绍时较为侧重这方面的法律条文。

9.10 然而，本委员会对两项疑难感到关注。首先，仅是给市民介绍法例的要点，亦已有渲染之嫌，足以影响他们的反应。因此，我们怀疑法律改革委员会应否一并负起启导任务。其次，根据过往经验，提出明确的建议去让市民批评，比呼吁他们提供一般性的意见更能获得有意义的反应，这是人性使然。不过，提建议仍有其缺点，就是使本委员会感到拘束，因为若没有“向人宣传”之嫌，至少也被认为自行表明意见（事实上，当时本委员会仍未有具体的见解）。

9.11 经过多方考虑，本委员会最终认定应该撮录有关法例的内容，好让市民有机会作出批评，但似乎暂时不宜提出明确的建议以寻求市民的反应。虽然决定权不在本委员会，但本委员会认为将来发表报告书（书中包括本委员会将要作出的具体建议），必可能引起市民的反应，这些反应必然有本委员会所不便发表的意见。

9.12 采用直接呼吁方法，主要目的是在小组委员会藉传播媒介广征市民意见之余，另外加以补充。本委员会决定把公司商号列为一类，“非雇用性”团体则为另一类。在商行方面，希望藉着问卷方式得知它们在用人方针上对同性恋者采取甚么态度；而在“非雇用性”团体方面，则征询其具体意见。无论如何，本委员会均将问卷发予两类机构，同时附上有关书函及现行法例的撮要，文件全部中英对照（参阅附件六）。

雇主

9.13 中英对照的问卷，已为本委员会全体委员通过，其格式可参阅附件七(I)。问卷分发给六百间商行填写。承蒙政府统计处协助，得以编订一个商行名单，将香港商界各行业均包括在内。为了鼓励商行多作反应，本委员会决定把回件保密，做法是商行名号不予公开；因此，榜上有名的行业、及有回件的商号，均不刊载于此。

9.14 问卷答案分析详见于附件七(II)。简略地说，有回件的公司商号共有一百八十一间，占全部受调查商行百分之三十点一六；此等商行均雇有大量员工。以下数点乃从分析得到：——

- * 受调查商行百分之九十五表示，不须求职者透露是否同性恋者；
- * 受调查商行百分之四十一表示，如知悉或认为应征者是同性恋者，即可能不予录用；
- * 受调查商行百分之十九表示，如知悉或认为胜任现职的雇员是同性恋者，即可能将其革职；
- * 受调查商行百分之九十二表示，纵使法例修订后，容许双方同意的成人私下有同性恋行为，公司亦不会更改原有用人方针。

其他团体

9.15 分发予团体的函件乃中英对照，其格式列于附件八(I)。此等团体共有九十一个，名单见附件八(II)；此名单一方面由本委员会搜集，另一方面则承蒙政府民政科协助编制。本委员会虽无意包罗巨细，仍务求联络上大多数关心各阶层人士利益的团体。有回件的团体共二十九个（约占全部百分之三十），其意见书内容则长短不一。除两个团体的意见书外，其余意见书均能个别作摘要，请参阅附件八(III)。

9.16 众团体自然意见纷纭。香港大律师公会及香港律师会理事会均认为，本委员会宜征询个别会员而非两会的整体意见；此点亦言之有理。该等表明立场的团体，往往意见相左，试比较一下圣公会及罗马天主教会的高见，便可见一斑：

- * 徐赞生牧师来函称：
“同性恋行为是难以接受的，圣公会港澳教区同人决不支持当局放宽同性恋法例或使同性恋合法化。”
- * 天主教香港教区胡振中总主教来函谓：
“因此，我们认为，同性或异性的成年人如双方同意而私下进行性活动，不应视为刑事罪行。”

9.17 承蒙香港大学教职员协会及理工学院教职员协会提交属下若干会员的意见书，不胜铭感。香港大学教职员协会更不厌其烦，为本委员会向会员进行问卷调查。本委员会认为，要撮述此等意见书的内容，实难做得妥当，故此理宜原文照录，列于附件九及十。

区议会

9.18 一九八二年一月至三月间，本委员会也曾征询各区议会的意见。在香港，区议会是重要的组织，自根据香港法例第三三六章区议会条例于一九八一年成立以来，现时全港共有十八个。区议会的基本精神，是了解区内各种影响居民起居作息的事情，并将居民的需要与意见反映给政府知道。直至现在为止，总计有民选区议员一百三十二位、委任的非官守议员一百三十五位、及（如来自警务处及运输署等部门的）委任官守议员多位。

9.19 小组委员会征询区议会的意见时承蒙政务总署调派行政人员鼎力襄助，至深感纫。寄给区议会的函件，与发予其他团体者相同（参阅附件八(I)）。结果，共接获十四个区议会的覆函，函中主要提出下述几点意见：——

- 不应修改现行管制同性恋行为的法例，因放宽现行法例，即与本港大多数华人的道德观有抵触；
- 放宽现行法例，无论是不将同性恋行为视作违法或使之合法化，均意味政府鼓励同性恋活动；
- 此举殊非所宜，特别是因为此事会影响年青一代，更可能使家庭破裂及社会结构解体。

9.20 另一方面，若干区议员则持有不同见解，并建议修改现行法例；现归纳其建议如下：——

- 他们认为现行法例过严，如香港法例第二一二章侵害人身罪条例第四十九条规定，犯鸡奸者最高可判终身监禁，即为一例，因此他们认为应向犯者施行一些强制性精神治疗及康复措施，以代替重刑；
- 现行同性恋法例应予修改，以容许相方同意的成年人，在毫无报酬的情况下，绝对私下地进行同性恋活动；
- 凡侵犯未成年人的同性恋罪犯，尤其是以此类勾当谋利者，均仍须判以重刑。

承蒙区议会不吝赐覆，感蒙良深，兹将该等意见，载录于附件十一。

私人晤谈

9.21 调查期间，若干人士及机构表示愿意口头陈述意见，小组委员会于是进行一连串会晤，其结果现简述如下：——

邓勤先生 (Mr. Neil Duncan) 及詹德隆先生

9.22 邓勤先生及詹先生与小组委员会晤谈时，均支持下列主张：——

“无论男性或女性成年人，如彼此同意而私下进行同性恋活动，均不应视作违反法例，但这不一定表示当局宽容或有意鼓励同性恋活动。”

这项主张的内容，原本由一个称为“同性恋法例改革运动”的小团体在一九七九年夏季发表，而邓勤先生及詹先生亦为该团体的成员。该项主张发表后，共有四百二十四名市民投函表示支持。该团体所拟备的文件，最初送交律政司，其后小组委员会亦得以阅览。该团体的“同性恋法例改革建议”，全文见附件十二。

九龙总商会

港九居民联会

旺角区大角咀分区委员会

荔枝角互助委员会

9.23 部份团体初时主动来函表示意见，以上四个团体的代表除来函外，后来更与小组委员会晤谈。有一点值得注意的地方，就是虽然这些团体的所有代表本来都反对修改法例，但在讨论期间，经小组委员会清楚阐释，表示任何修改法例的建议范围将会有限，而事实上亦无意图或计划鼓励同性恋行为之后，其中部份代表的态度显著软化下来。然而，正如附件十三的会议纪录显示，所有代表均对修改法例建议甚有保留。

香港总商会

9.24 本委员会曾去函要求一些团体发表意见，香港总商会即为其一。香港总商会有会员九千二百人，该会对同性恋问题极为关注，甚至邀请法律委员会秘书处的人员向其讲述有关问题。彼此晤谈之后，香港总商会来函概述其立场（参阅附件十四）。

李必治先生 (H.J. Lethbridge)

9.25 香港大学社会系教授李必治先生于一九七六年发表一篇论文，题为“搅同性恋的家伙：香港的同性恋问题与法例”，在香港法律导报刊登。该篇论文详述英国同性恋法例的历史、同性恋癖好的由来，以及同性恋与香港的有关法律。李必治先生为撰写该篇论文，显然曾进行深入的研究和思考。

小组委员会有见及此，于是邀请他发表其当时的观感。以下是李先生作覆的部份内容：——

“一九七六年我在香港法律导报发表那篇论文，是要特地反驳下述论调……只有英国人才会偶尔染上这种反自然的恶习……”

“不过有一点很重要：中国人对‘合法’这个中文名词甚感困惑。这个名词看来好像表示政府有意使同性恋合法化（即是说道德上可以接纳），而实际上我认为其意义仅是把部份同性恋行为不视作违法。两个观念差别甚大。”

本委员会采纳了他这项意见，并已在报告书第二章强调此点。

陈乐仪先生

9.26 一九八一年杪，陈乐仪先生为本港一家电视台制作一辑有关香港同性恋问题的电视纪录片。说来有趣，在这辑纪录片放映前不久，小组委员会已将一项建议列入法律改革委员会的讨论议程。建议的内容，就是洽商一家电视台制作一个重点在于向市民介绍现行法律的节目。此项建议业经法律改革委员会通过。小组委员会观看过陈先生的节目后，邀请其接受访问，并蒙陈先生俯允与小组委员会两名委员，即杨铁梁按察司及周梁淑怡女士，就其作品进行讨论。是次讨论的纪录，业经陈先生审阅认为无误，编入附件十五之内。陈先生其后更将一名有同性恋癖好的华人于观看节目后的投函转交本委员会。由于该函为一名有同性恋癖好的华人的自述，内容着重亲身经历，故本委员会特将该函件列为附件十六。

会晤自认有同性恋癖好的人士

9.27 首先必须说明，小组委员会在会晤若干名自愿发表意见的同性恋者时，已明白到有以下的顾忌：以现时的法律而言，搜集同性恋活动行为的资料，在某些情况下可能令被访者及小组委员会的成员身陷法网。因此，本委员会已向被访者清楚表示，访问内容着重听取意见和讨论，尽量避免涉及同性恋活动经历。所有被访者均接纳这项提议。

9.28 另一方面，律政司曾经表示，为协助小组委员会获得正确的资料，假若情况需要，他会应小组委员会的要求，体谅有关情况，不对任何个人或听取其倾诉的人士进行检控。不过，部份因为麦乐伦事件调查委员会已透露过详尽的资料，本委员会最后决定，就调查的目的而言，实在无须再从这方面深入探索。

四名有同性恋癖好的华人

9.29 透过陈先生的协助，小组委员会会晤了四名有同性恋癖好的华人，听取他们的意见和作讨论，并藉此探讨香港一般同性恋者的心态。四名人士

的年齡为二十三至三十岁不等，来自社会上各个阶层。他们所接触的同性恋团体，全部均由华人组成。他们虽然进行同性恋活动，但都没有向家人透露。他们主张有限度地宽宥同性恋行为，作为改变社会人士态度的第一步，与此同时，当局应限定同意进行同性恋者的年齡，为青少年提供保障。晤谈纪录载于附件十七。

X 先生

9.30 X 先生是一名澳洲人，从事新闻工作，在本港居住已有三年，在此之前，曾在远东居住了大约八年。他是一名同性恋者，曾主动向小组委员会倾诉，并以书面陈述意见（附件十八）。其后他会晤小组委员会的成员，阐述其书面主张。他表示不介意暴露身份，但本委员会认为无须透露其姓名。

一名欧籍同性恋者

9.31 他是一名讲师，受过高深教育。他到过多处地方旅行，又曾在多个国家居住及工作，而该等国家均容许成年人私下进行同性恋活动。他自动提出会晤小组委员会的成员，并在会谈时合理地坚决表示，成年人彼此同意而私下进行的同性恋活动，应予宽宥。他又指出，本港有许多同性恋者基于法律及社会方面的理由，仍然隐瞒活动真相。他知道有若干名具有同性恋癖好的学生，因为难以接受自己的同性恋行为或受到社会压力，心情极度沮丧。

另一名欧籍同性恋者

9.32 秘书处的人员曾与这名商人接触。他三十出头，过去大部份时间住在香港。他是一名同性恋者，并曾因此被检控。他自述其丰富的同性恋经验，涉及的地方包括香港、伦敦、三藩市、菲律宾和泰国。晤谈纪录完成后曾送交其法律顾问审阅，其后交还本委员会。他表示不可透露其姓名，并且不要把他视为同性恋者的发言人。

9.33 简言之，他的意见有些人乍看来会感到新奇。他发表意见的明确目的，在于“预先忠告当局（原文如此），宽宥同性恋者可能带来一些后果。”他预料会出现三种情形：一、不良份子可能乘机藉此图利及压榨华人青年；二、公开进行的同性恋活动会大量增加；三、同性恋者更容易受到检控，尤其涉及未成年伴侣的案件，数量将会大增。

9.34 本委员会将晤谈的全部内容记录收于附件十九之内；这名欧籍人士向本委员会诉说的恐惧及其他事项，分别在第五、第十及第十一章讨论。

监狱

9.35 一些以男性为主的团体，例如军队、惩教中心等，因为环境特殊，假如向本港市民披露这些地方的同性恋事件，未免显得造作。

9.36 不过，由于惩教署署长及其属下人员鼎力协助，本委员会获得不少珍贵资料。他们在喜灵洲和大榄戒毒所举办了一连串小组讨论，共有一百四十四名男戒毒者和三十二名女戒毒者参加。讨论结果，一般认为监狱内不应容许有同性恋活动，假如作出让步，即有厚此薄彼之嫌，因为普通人在狱中并不能享受正常性欲。该批戒毒者又认为本港的惩教中心并没有同性恋活动存在。附件十九详细分析了戒毒者的意见。

警方

9.37 本委员会荷蒙皇家香港警务处多方协助，深表感激。该处所提供有关同性及异性间性罪行的数字，现转载于附件二十三及二十四内。至于警方调查所得的本港同性恋活动概况，则载于第五章。警队各职工会应本委员会要求而发表的意见，则载于附件八(II)。

麦乐伦事件调查委员会

9.38 无论如何，在调查麦乐伦事件期间，由各方证供所显示出的形象并不美好。若干同性恋者曾经警告本委员会，谓当局在调查麦乐伦事件时，强调男妓活动，此举虽属必需，但可能歪曲了本港某几方面的同性恋活动实况。关于此点，本委员会当表赞同。

9.39 有一点必须强调的是：在调查麦乐伦事件中所提出的证供推翻了不少评论者所坚持的两个论点。事实证明，关于华人（尤其是居于本港者）当中并无太多同性恋者的说法，绝非正确。此点实无可反驳。另外，有人认为同性恋是种“西方”的败德行为，西潮东渐，熏染了本港保守而对性事单纯无知的华人。此种说法其实并不正确。

9.40 本委员会无意重复麦乐伦事件调查委员会的工作。不少同性恋者在该次调查中遭受不同形式的痛苦，其中更有一人心灵受重创。又有很多人在作供时因回忆以往有关同性恋的经历而感到痛苦。我们之所以提及该委员会所作的调查是因为该项调查本身，以至对本委员会的工作，均相当重要。本委员会在撰写第五章时亦考虑到在该次调查中公开提出的证供以及调查专员所发表的调查结果，此等资料直接或间接影响本委员会的结论。

民意调查

9.41 本委员会荷蒙本港一间商业电台提供一九八零年九月所进行的调查，并获准刊印调查结果，至深感纫。电台人员在下午五时后拨电话以中文访问五百零九名年逾二十的华籍成年人，提出两项问题：第一是“政府应否继续视同性恋为刑事罪行”，第二是“当局应否修订法例，不将成年人私下进行的同性恋活动视作罪行”，赞成第一项者占百分之七十一，同意第二项

的则占百分之二十七。从统计数字来看，年龄与答案的相互关系极为密切。举例说，二十岁至三十四岁的人士当中，有百分之六十四反对修订法例，另外百分之三十五则表示赞成。至于年逾五十五岁的人士，其中八成反对修订法例，而另外百分之十六则表示赞成。在赞成修订法例的人士当中，超过一半是介乎二十至三十四岁之间。有关此项调查的详情，可参阅附件二十一。

9.42 本委员会又蒙该台供给一九八二年底的调查结果，并获准将之刊印，至深感荷。调查期间，有二千名十五至六十四岁的人士接受长达个半小时的单独访问。接受访问的人士须要回答各类问题，其中百分之六十五认为当局不应放宽有关同性恋的法例。此类调查的有关部分刊载于附件二十二。

9.43 本委员会认为该等调查结果值得关注，但绝非惊人。本委员会亦尝研究须否透过著名的商业机构进行调查，并曾与数间机构联络，承蒙该等机构赐予有关调查方法以及费用预算的高见，至深感蒙。本委员会获得保证，假如真的进行调查，定可获得政府拨款，但经反复斟酌后，认为调查的效果不会太大。既已获得先前的调查结果，加上各界人士在报章杂志对同性恋这个广泛问题所发表的各种意见，以及外界所提交的资料，本委员会便可认定，问题的症结所在：从实际的角度来看，我们身为这个委员会的成员，究竟再需要多少知识才可以对这个问题下一个正确的判断；依我们看，我们已经取得足够的资料，经过差不多三年的研究，现在决意为自己划定最后界线。

其他事项

9.44 本委员会荷蒙多个政府部门协助，提供若干统计数字，深表感激。有关数字刊载于附件二十六。

9.45 据悉一九八一年香港约有一百二十五万户人家。虽然其中一家七口的比率超过一成，但平均一家只有四口。近年来，本港人口男多女少，一九八一年介乎十五至五十九岁的女性约有一百五十万；男性则约有一百八十万，其中五十六万四千名尚未结婚。一九八一年本港人口的平均年龄是二十六岁。一九八二年就读幼稚园、小学或中学的儿童超过一百三十七万，分别由四万零二百名教师教导，其中男教师占一万三千八百名，女教师则占二万六千四百名。自一九七零年以来，教师因触犯性罪行而裁定有罪的案件共有六宗（对象均为教学时接触到的儿童），其中两宗涉及同性恋罪行。此外，自一九七零年以来，只有一宗有关同性恋的指控，但日后并没有进行检控。至今并无任何证据显示女教师涉及同性恋行为。

9.46 一九八二年内，共有六百六十一套电影呈交影视及娱乐事务管理处检查，其中十三套遭禁映，另外两百套经删剪后通过。一套因有同性恋镜头而被删剪。过去四年来，本港八十五间电影院每年平均约有六千六百万观众。一九八二年由香港寄往海外的邮包有九千九百万个，由外地寄入本港的则有九千七百万个。过去五年来，属于商业用途的淫褻物品从海外邮寄进口的案

件，当局只破获一宗，但该案并无涉及同性恋。当局亦曾破获私人性质的淫褻物品邮寄入口的案件，但其中甚少涉及同性恋。同期间，香港海关在搜获淫褻物品后根据不良刊物条例（香港法例第一五零章）而提出检控的案件共四十三宗，有五十四人裁定有罪。搜获的物品当中，有三分之一与同性恋有关。每年由香港海关、民政科或警方根据不良刊物条例提出检控而经法庭裁定有罪的案件约有一百至一百五十宗，估计其中约有十宗涉及同性恋刊物。

9.47 一九八二年，市政总署管辖的公厕有九百二十六个、桑拿浴室六十四个、游泳海滩四十一个、公众泳池十四个，以及游乐场地四百一十八公顷。过去五年来，该署职员从未接获任何有关在上述地方进行同性淫褻活动的报告。目前，持有牌照的按摩院共有七十一个。一九八一年，当局吊销一间按摩院的牌照。一九八二年，则有吊销三个牌照。当局从未接获按摩院内有同性恋行为的报告。当局在一九八一年接获一宗有关按摩院内男女间有淫褻行为的报告。目前持有牌照的舞厅共有四十八间。一九八二年当局接获三宗舞厅内有淫褻行为的报告，但其中并无涉及同性恋行为。过去五年来，政府社会卫生诊所治疗性病 32386 宗，男性占 22766 宗，女性占 9620 宗。其中因男性同性恋而导致性病者只有三十宗。

海外谘询

9.48 海外谘询有好几种形式。第一，苏格兰某个组织来函提出关于同性恋的意见，促请本委员会根据英国法例修改本港的法例。该组织的意见刊载于附件二十五。

9.49 第二，本委员会向多个国家的律师及法律组织查明该等国家的法例，以及有关现行法律及道德观感的资料。查询结果载于第七及第八章，至于接受查询的律师及法律组织的名称则详列于附件二。

9.50 第三，本委员会特别着重估计法例修订后所产生的影响，并曾就此事向外地寻求协助。虽然本委员会着眼于邻近的亚洲国家，但从英美两国得到的协助反而最大（参阅第十章）。

资料

9.51 本委员会曾参考各类不同来源的刊物。由于参考的目的是使本委员会或者使阅读本报告书的人士得悉有关资料，而并非旨在撰写一篇权威性的论文，故此本委员会在挑选资料时力求贵精不贵多。至于刊物名录则详载于附件三。

摘要

9.52 总而言之，本委员会在研究期间获得代表千千万万市民的本港商业机构、社团以及个别人士所提供的意见。搜集事实、意见以及法律资料成为本委员会一项重要工作，这项工作消耗不少人力物力，有时使我们以及与我们通讯的人士失去耐性。在这方面我们承蒙他们多方协助，实深铭感。从我们所得结果看来，相信没有辜负他们一番心血。假如本委员会现时搜集到有关同性恋的重要资料及意见较诸以往在本港所得的为多，相信对同性恋问题的讨论极有帮助，而这些辩论亦不会随着本报告书发表而终止。

第十章 修改法例的后果

引言

10.1 每当有人提出改变现状的建议时，总不免引起对后果的忧虑。假如制订的法例具积极作用，则立法者或可无后顾之忧。新法例如对某些行为加以禁制，我们便觉安心，最低限度这种或那种严重罪行已受控制；这是初步后果。很多时，我们更可以安心说，无论后果如何，总不会比现受制裁的罪行存在时来得更坏。

10.2 但当我们考虑不再将某种行为视作违法时，往往有种冒险的感觉，因为后果无法预料。一般惯常的反应是：害处已知总比未知的好。慎重的人，自然亦会这样想：这种罪恶纵可避免，但接踵而来不知会有甚么更大的罪恶？法例修改后的第二第三步后果会怎样？

10.3 现行法例修改后，情况会如何？本委员会提出这问题时，先已明了社会人士的态度、价值观和行为与成文法之间不断产生的相互影响。有时成文法虽然可以改造这些行为准则，但它往往亦会因社会人士的态度和行为逐渐转变而须作修改。从历史观点来看，法律是跟随人类的态度及行为不断改变。本委员会并非主张成文法应该受制于社会人士的态度或行为，而是主张立法者应时刻留意社会不同的需要，在必要时修改法例，以应所需。

10.4 英国现时的法例，年代久远，例如有关鸡奸的法例，可远溯自中世纪黑暗时代，而有关粗犷行为的，亦有一百多年历史。法例的字句可能未有多大改变，但我们这些受法例规范的人，却在公开行为及私生活方面，以及在思想、态度和法律观点上，不断改变。以上各因素实在是互为因果的，譬如：法例虽禁止某种行为，却不能使该行为朝夕间绝止。同样地，撤销对某种行为的禁制，亦不会使该行为一夜间盛行起来。行为改变的程度，不仅受法例改变的影响，亦视乎社会人士的反应而定。这种反应主要受社会现行的观念和习惯影响。

10.5 对那些存有一定的宗教或精神价值观念的人来说，若干世俗行为的原则必须坚守不移，因此，某种行为若属“罪恶”，则任何未能积极制止该种行为的行动亦近乎“罪恶”，所以有人认为如修改法例不做到这点，便是一个不能接受的结果，我们却认为，根据第二章所提出的原则，法律不必迫人奉行任何精神标准。法律既不能亦不应设法遏止法例修改后对社会道德所带来的不良影响；违反精神标准的行为，只要不妨碍他人的生活，应以精神而非世俗的方法加以制裁。

10.6 在进行研究期间，我们紧记一点，就是本港同性恋生活丑恶的一面，即使并非全部，亦大部分与日常所见利用年青女性得到性满足或谋利的情形

相同。纵使法律给予年青女性的保障远较男性为多，但法庭处理有关虐待、诱奸、暴力对待、绑架，勒索及敲诈少女的案件，却比有关男性的为多。

10.7 记忆所及，过去三年内所发生与同性恋有关的暴力死亡案件仅有两宗。第一宗是麦乐伦畏罪自杀案；第二宗则涉及一名古董商人，案发时，该受害者被其同性恋合伙人洗劫，捆绑、塞口，终于窒息而死。但在同一时期，称为“异性关系影响”而发生在女性身上的暴力罪案却罄竹难书，例如：一名外籍水兵用扫帚柄杀害一名妓女；一名中国籍青年男子为争风吃醋而割去情敌的阳具；一名男子杀害多名少女，进行尸奸，割去死者的性器官，存于瓶内；此外更有不少中国籍少女遭人强奸后，被迫卖淫。

10.8 以上多个例子阐明一点，就是男女双方同意私下进行惯常的性行为虽属合法，但由情欲所引起的罪案却时有发生；在同样情况下进行同性恋行为则属违法。假如同性恋行为与日常异性恋行为一样，享有同等合法地位，后果会是引起更多不幸，抑或减少不幸？更多罪行，抑或全无影响？抑或无可能预料？简而言之，若把成年人双方同意私下进行的同性恋行为，不再视作违法，是否一定导致同性恋罪案的泛滥？本委员会认为这种可能性极小。

10.9 本委员会所关心的，当然并非只是同性恋法例的修改是否会助长罪行？同样重要的是，法例的修订是否会令同性恋者的公开行为的形式有所改变，因而引起社会人士的反感。由于此举而造成社会上不必要的紧张气氛，是修改法例所应避免的后果。

10.10 本委员会有见及此，曾初步参考其他地区的有关法例，但由于邻近亚洲国家的有关法例尚未修改，我们无法从它们的经验借镜。

英格兰及威尔士

10.11 本委员会除研究在本港搜集所得的资料外，并要求一间英国调查公司给予协助，以便取得有关英国于一九六七年修改法例后对社会所造成影响的可靠资料。结果，本委员会无法找到任何直接或全面讨论这个问题的资料。作家罗斯（Gordon Rose）曾经指出“对这个问题进行研究是很困难的，这点人所共知，且亦很少证据证明研究结果确实。”（一九七零年英国犯罪学期刊第三四九页）

10.12 不过，英国内政部研究小组一位成员汪士利（R. Walmsley）曾对按照英国警方数字所编订的统计资料进行分析（载于一九七八年刑事法例检讨第四〇〇〇页）。我们感兴趣的，是他的结论，现转录如下：

“摘要

1. 一九六七年性罪项法规定成年人双方同意而私下进行的同性恋行为合法。自该法令实施后，警方纪录所得，男性间猥

亵行为罪的数字增加了一倍，犯该项罪行而被检控的人士则增加两倍。

2. 在一九六七至一九七一年间，估计检控率（实际提出检控案件与可能提出检控案件两者间的比率）差不多提高了一倍，且均较一九六七年的数字高出很多。
3. 增加的案件中，大部份所知及被检控的罪行，涉及年龄在二十一岁或以上的男性间的猥亵行为（即不一定是鸡奸，亦非私下进行）。
4. 有关已记录在案的事件及检控率方面，不同警区之间有很大差距。
5. 一九六七年以后情况的改变，原因可能有三。首先，同性恋者的态度及行为可能有所改变；社会人士（在举报有关罪行方面）及警方对同性恋者的态度及反应可能有所改变。第三个假设是性罪项法本身导致已记录在案的事件有所增加及检控率提高，因为警方可根据该法例，更有把握对公开作出同性恋行为的人士采取行动，同时该法例制订简易程序审讯，以处理涉及男性间猥亵行为的罪行，使检控工作更容易执行。
6. 至于不同警区间有所差距，可能是由于若干当地因素，包括问题的严重程度、治安人员人手是否足够，以及是否容易将有关案件提堂审理。这实在不足为奇，亦不应因此而批评警方。”

10.13 内政部在一九七九年进行的一项研究显示，一九六七年以来，在英格兰及威尔士，犯同性恋罪行而被定罪的人数增加了三倍。在最近出版的《法律与同性恋》（*Gays and the Law*）一书中，纪保罗（Paul Crane）认为这项增加，与一九六七年性罪项法所制订的简易程序审讯不无关系。

苏格兰

10.14 英联邦采办处向本委员会提供一些与同性恋罪行有关的罪案数字。根据一九八零年刑事审判（苏格兰）法第八十条第(7)款的规定，该等有关行为仍属违法（即成年人双方同意但非私下进行的同性恋行为）：——

<u>年份</u>	<u>被定罪案件数字</u>	<u>向警方举报的罪案数字</u>
1977	4	15
1978	7	17
1979	7	35
1980	11	19
1981	39	82

10.15 如根据这些简陋的资料来作一个确实结论，实非明智。然而，以法例重申苏格兰政府的立场，可能使人们向警方举报的数字，以及警方提交检控当局处理的案件数字，均有所增加。

澳洲

10.16 新南威尔斯反歧视委员会最近进行一项研究。研究结果显示，自从制订法例，准许成年人双方同意私下进行同性恋行为后，在澳洲首都直辖区（Australian Capital Territory），与同性恋罪行有关的检控数字有所减少。此外，研究并发现，自从放宽同性恋法例后，在南澳洲，犯同性恋罪行而被捕的男性较前减少。然而，研究报告书的作者却指出，举报个案数字太少，因而影响统计数字的可靠性。

美国

10.17 一些来信的人所最担心会发生的事情，以多方面仍属西方思想观念熔炉的美国来说，其实已层出不穷，而且亦极其公开。过去十年来，在美国纽约、波士顿、芝加哥及三藩市所发生的公开同性恋行为，在当地人心目中，已是司空见惯，但在本港则匪夷所思，绝非一般市民所能容忍。以下的一段文字，摘录自一九七九年四月二十三日时代周刊的封面专题报导——“同性之恋，其乐何如？”，当可举例说明美国现今的情况：

“走进芝加哥北部新镇地区，便很快留意到该市的新面貌：身穿窄牛仔裤、头梳短发的男子，成双成对；林肯公园内观看排球赛的观众，全部是男性，密歇根湖边漫步、沐浴在春风里的人，也全部是男性。在过去数年，新镇已成为芝加哥第一个公开同性恋活动中心，初步后果与十年前所预测的一样：去年夏天，区内年青流氓，深夜联群结队，浪荡街头，高呼反同性恋口号，并将数名夜归男子围殴。”……

“不过，其后发生的事，如果是数年前，无论在芝加哥或美国其他主要城市发生，都会令人觉得不可思议。当地一份同性恋周刊《同性恋者生活杂志》，为了阻止殴打事件发生，便组织多队巡逻队进行街道巡逻，属区内居民组织的‘正派’志愿人士，甚至芝加哥警察，亦给他们一臂之力……”

“在新镇发生的事情，可说是代表美国国内的一种风气，这种风气，正逐渐将属美国少数人口的同性恋者的生活改变过来。男女同性恋者不像以往，再无须偷偷摸摸过日子了。他们盘踞大都市内一些地区，经营酒吧生意，甚至在保守的小市镇内成立教会。又因有感于大部份同性恋者仍不敢将其癖好公开，遂于全国各地设立联会，藉此向该等人士提供辅导和友情。他们

努力追求自由开放的生活，但离成功的日子尚远，因为一如在新镇一样，全国各地的同性恋者仍然备受猜疑，受人敌视，亦不时受到暴力对待。不过，他们已逐渐被人接纳，甚至获得异性恋者的同情；很多异性恋者根本还未知道应如何对待他们。总之，今日所发生的事，在昨天，对同性恋者或非同性恋者来说，都是绝无可能发生的。”

10.18 美国伊利诺州一份调查报告书指出，自从该州通过准许鸡奸的法例后，检举兜搭行为的数字即见上升。报告书的作者认为，这是由于警方加强对付公开同性恋行为所致（根尼逊（Gunnison）：《美国同性恋运动》（*The Homophile Movement in America*））。

10.19 我们又参考过一篇文章，题目是“法例准许成年人双方同意进行同性恋行为后在美国七州所见的后果”（作者：佳思、赖特、加勒特及威尔逊，《同性恋期刊》一九七六年第一(四)期第四一九页（Geis, Wright, Garrett and Wilson, 1976, *Journal of Homosexuality*, Volume 1(4), page 419））。文章的作者自称：“这篇文章是报导一项调查结果；接受调查的人士计有警方人员、检察官以及各同性恋组织成员，他们来自美国七个州，而当地的法例，已规定成年人双方同意私下进行同性恋行为不属违法。虽然甚多人作出悲观的预测，但从接受调查人士所作的答复来看，该法例自通过后，别的后果不谈，单就同性恋者与未成年人进行同性恋行为、同性恋者使用暴力以及他们私下进行同性恋行为的次数等方面，均未受任何影响。此外，法例放宽后，同性恋者的问题，多少获得解决，而警方亦可腾出较多时间，进行一般人认为更严重罪案的调查工作。

10.20 该次调查是用问卷方式进行；七十个警察部门，四十个检察当局（分属人口逾五万的城市四十个地区）及四十七个同性恋组织，均获派发问卷。其中作覆的警察部门共有十七个，检察当局十三个及同性恋组织六个。很明显，以任何标准来说，这是一个很小的抽样调查。文章的作者亦承认该项调查有不足之处，所以解释说，他们目的不在全面调查，而在探求官方人员及熟悉此方面情形者对法例放宽后的看法。

10.21 调查的主要发现是，百分之八十八的警方人员，百分之九十的检察官及百分之七十三的同性恋者均认为同性恋者使用暴力的事件，并未有因此而增加。其次，百分之八十的检察官、百分之九十六的同性恋者及百分之六十九的警方人员指出，在法例更改后，未成年人牵涉入同性恋事件并不比以前普遍。百分之七十一的检察官、百分之六十三的同性恋者及百分之五十四的警方人员相信，私下进行同性恋行为的事件，并无显著增加。

10.22 此外，半数作覆的人认为，“同性恋”酒吧数目已见增加；占百分之二十六的检察官及百分之五十九的警方人员指出，在公众场所兜搭的事件亦告增加；几近一半作覆的人说，社会人士对同性恋者的非议已见减少；百

分之七十五的同性恋者认为，现时同性恋者被拘之数 and 先前一样，只不过他们现在是根据“公安”法令被检控，但对此点表示赞同的检察官和警方人员，却只有百分之十强。最后，占百分之五十的警方人员指出，放宽私下进行同性恋行为之法例通过后，可让他们腾出更多时间来应付更严重的罪案。

10.23 作者在总结时指出，答复问卷的人一致相信，法例准许私下进行同性恋行为以后，先前所惧怕的不良后果，并没有出现。作者又引用荷兰一项调查为例。该项调查显示，荷兰法例准许私下进行同性恋活动以后，同性恋罪案数字，并未因此而有所增减。

结论

10.24 本委员会为撰写本章而搜罗的资料，很明显有其不足之处。探求人们在法例修订后行为有何改变的研究，常因下面几个因素而有所困扰：有些国家，无论在放宽同性恋法例前后，均无指明公开猥亵罪案或非礼案犯法者或受害者的性别或年龄的习惯；无论同性恋行为属违法与否，各地均有不同的侦查和检控政策，且不予公开。因此将各地情形比较，是否以类比类实在不得而知。本港和外国都缺乏可靠的统计资料，而本港处境特殊，即使把各国社会的不同经验加以引申，直接用于本港，亦不会有多大裨益。具体地说，本委员会没法找到有关法例修订后如何影响以华人为主的社会的资料。

10.25 纵使或有这些研究资料，本委员会或许会作过高的要求。我们或许会要求研究者用各地不同处境的经验，代入我们所熟悉的本地习俗与社会观念，而为我们预卜将来变化如何。

10.26 本委员会承蒙本港各界支持，提交意见书，我们已在第九章表示谢意。部份提出意见的人士谈及他们预料或恐惧法例修改后给社会带来的后果。本委员会亦详加考虑一些警告，特别是关于：更多同性恋者将会公开活动、同性恋者俱乐部会日益增加，不法之徒亦会吸纳年青人加入卖淫组织，并用恐吓手段进行敲诈等（参阅第 9.33 段或其他各段）。但有一点意见我们觉得颇为牵强，就是有人认为修改法例后，会引致成年男同性恋者与未成年同性伴侣发生关系时被检控。事实上，即使是异性恋者的成年男性，亦须留意其女性伴侣的年龄。

10.27 坦白地说，本委员会审阅这样多外国与本地的研究结果后，仍无法确实预测到修改法例后会引致甚么后果。我们知道，如在这方面寻求不到确实的结论，实难令实事求是的市民感到满意。唯一能向他们交代的是，本委员会已把各方面认为可能发生的后果，一一认真考虑，这些意见有助于我们达成结论和作出具体建议。本委员会所提出的建议，可能产生广泛的影响，而其中较为明显的害处，我们已尽力设法防避，这方面的意见将在下章介绍。但实际上，法例修订的后果或大或小，其引致行为上或其他方面改变的程度，均受下列因素相互作用所影响：

社会人士对本委员会所提出建议的反应；
政府方面的反应，包括侦查和检控政策方面；
有同性恋倾向的男性及女性公开和私下的行为反应；
社会人士对同性恋者公开行为的反应；
社会对同性恋行为的制裁力量；
包庇和卖淫集团的反应；
司法部门未来判处刑罚的政策；
雇主的态度及其雇用方针；
娱乐和旅游事业的反应。

未来的变化可能很大，本委员会无法预测将来的情况究竟如何，深感遗憾；我们委实没有预知未来的本领。

第十一章 本委员会的论据及总结

绪论：本委员会依循的原则

11.1 本委员会为此主题下的各项问题寻找答案时，不但尽量采取实事求是的态度，而且还探索若干原则，俾往后有所遵循。由于“管制同性恋行为”的法例类目繁多，其中包括惩治纯属同性恋活动的罪项如男性间进行粗犷行为的法例，以至保障儿童和青少年、监管在公共场所和禁闭地方（例如监狱）行为、管制色情刊物的法例等，所以，本委员会的研究范围十分广泛。

11.2 本委员会所採用的若干原则，从先前数章的论述中可见一斑。法律的功用是本委员会研究的焦点。本委员会认为，就管制同性恋行为而言，法律主要是保护易受他人危害的人士，如青少年和弱智人士，免受别人利用以及在性方面流于堕落；此外，法律亦照顾那些反对公开猥亵行为或引起大多数人反感行为的市民。本委员会绝不同意濫借自由之名而削弱上述两项重要的保护功能，反而认为在可能范围内还须予以加强。因此，如任何人所作的行为侵害他人，或有损他人或使他人极感厌恶，本委员会相信在此情况下，法律便须采取预防行动。

11.3 本委员会体会到，在我们社会中，家庭是重要的一环。凡涉及家庭群体生活的法例，均应以保存和巩固家庭组织为首要目标。为保护青少年，使他们能在正常环境下长大，纵使采取最严厉的措施，亦不为过。为达致上述目标，我们有时不免较为现实，须从两个俱非理想的对立办法中，两害相衡取其轻。

11.4 在进行工作的过程中，本委员会察觉青年人，不论男女，在性方面所受的影响和面对的危险均有相同之处。现行法例已为年青女性提供保护，甚至连她们本身的欲望亦予顾及，因为法例规定，某个年龄以下的少女，虽然出于自愿，但与她们发生性行为仍属违法。本委员会因此认为在可能情况下，青少年和弱智人士，不论性别，均应获得同样的法律保护，才属适当合理。

11.5 本委员会深觉在本港社会最重要者在于确保法律和司法制度受到市民尊重。因为只有这样，社会的结构组织才能坚强维系。可是在这方面，存在的矛盾所产生的压力亦不少。有些平日大力维护法律的人士，在很多情况下，却知法犯法，本委员会对这种现象感到关注，同时亦担心现行的法律制度可能仓滋长勒索、黑社会活动及利用青少年作为谋利工具等非法勾当。不过，如果修改法例，本委员会却恐怕因此而造成一小部分人会公开作出引起大多数人反感的行为，从而使法律尊严受损。对于美国所体验到的不良影

响，本委员会引以为鉴，而特别是本港同性恋者的意见，对本委员会亦有警惕作用。该等意见摘录于第 9.32 至第 9.34 段。

11.6 从第三、第四及第五章所载的证据，本委员会相信，在本港社会各个不同阶层中，无论是何种族，都有一小部分人先天有同性恋的倾向。这群人为数不少，他们天赋的特性根本无法改变。我们亦知悉不少这类人的不幸遭遇：麦乐伦督察自杀事件可算是一个极端的例子；不过，本委员会认为附件十六所载一名华藉同性恋者的自白较具代表性。本委员会觉得，如果个人癖好或个人感情的表达，并无对他人造成伤害，而法律却横加禁制，从而不必要的增加不幸，则此等法例并不合理。在某些范畴内，如无必要为他人提供保障，则法例不必负起道德制裁的功用。

11.7 本委员会根据上述的观点，提出以下建议。

婚姻

11.8 本委员会认为，有关结婚及离婚的法例，毋须因有男女同性恋行为而进行修订。本委员会特别作出总结认为，并且建议不应修订法例容许同一性别的人结婚。

11.9 本委员会曾研究同性之间长期维持的性关系（即第 6.9 及 6.10 段所论述者），应否获得法律保障。本委员会总结认为，并且建议：作为公共政策，同性恋关系不应获得法律承认，使其与不为法律承认之异性关系处于同等地位，及协助遏止卖淫活动。

二十一岁以下青少年

卖淫、介绍他人卖淫及性交

11.10 保护青少年究竟有何善法？本委员会所关注的主要是在同性恋方面。本委员会认为，男童和少男均应获得适当的保护，免在性方面遭人利用和侵犯。麦乐伦督察死因调查中所收集的证供，亦可见不少男童和少男受人如此利用的事例，充份显示他们须有法律保护。我们发觉，法律对女童和少女提供保护，却完全没有适用于男童和少男的类似法例规定，实令人诧异。刑事罪条例（香港法例第二〇〇章）第十二部制订广泛的法规保护少女和女童，其中包括规定惩治违犯下列罪项的人：

- 使用恐吓手段介绍女童或少女与人性交；
- 与十三岁以下女童性交（终身监禁），或与十六岁以下少女或精神不健全女子性交（监禁五年）；
- 在违反少女父母之意愿下，以任何理由拐带十六岁以下之未婚少女，使其脱离父母；

- 在上述情况下拐带十八岁以下少女，以达成性交目的；
- 窝藏或控制女子，以达成卖淫目的；
- 介绍女子当娼；
- 介绍二十一岁以下女子或精神不健全女子与第三者性交；
- 引致或鼓励精神不健全女子卖淫；
- 身为楼宇业主或住用人，引诱或明知而容许十六岁以下少女在该楼宇内卖淫。

11.11 对于唆使或引导少男卖淫之人，却未有类似的法例加以惩治。此外，基于第 6.61 段所述理由，任何人士只要局部倚赖妓女收入为生者即属违法，但如果倚赖年青男妓的收入过活，却可逍遥法外。法律对男童和少男不加照顾，是否因为假设他们较女童更能照顾自己？又或认为他们都是定力较强，足以抵抗男性或女性的诱惑？抑或社会人士不敢面对现实，宁愿相信男士不会遭受性侵犯？真正理由可能是最初制订保护女子的法例时，同性恋及男妓并不构成问题，不过麦乐伦督察死因调查的结果，已证明情况今非昔比。

11.12 本委员会原则上建议，前述为女性提供的保护，亦应适用于少男。不过，问题是保护女性的法例，大多将性交定为构成罪行的因素，可是，男性间的同性恋行为，虽对受害者造成同样伤害，却未被视作与性交相同。因此，如要为男童和少男提供保护，则有关法例内的罪项应另订定义，以便惩罚藉着同性恋行为唆使、引诱或侵犯男童和少男，或引致他们参与同性卖淫活动的不法之徒。

11.13 解决问题的第一个办法，本委员会建议在刑事罪条例及其他有关条例内，“卖淫”一词的定义应包括男性卖淫在内，使各项有关制裁他人利用年青女性作为谋利工具的法则，亦可用以对付靠男妓谋生的人。

11.14 第二个问题，是现时规定与女性“性交”可构成罪行的法例，如何同样引用以保护男童及少男。第八章所载由英国威廉士教授（Prof. Glanville Williams）建议并经维多利亚省及其他澳洲省份采用的方法，本委员会亦曾予以考虑，但基于种种理由，这些方法目前不宜在本港实施。

11.15 本委员会认为，有肉体接触的同性恋行为和无肉体接触的同性恋行为应有所区别。与未成年少女性交或与男童发生肉体接触，和只以淫邪的态度与他们交谈，两者当然大有差别。本委员会研究此问题后，建议第 11.10 段所载刑事罪条例第十二部有关“非法性交”的条款，应照现时条文重订，但范围则包括同性肉体接触及异性性交，该等规定对男女同样适用。

11.16 本委员会并建议，上文所载有关诱拐某一年龄以下少女脱离家庭控制的法例条款，亦应适用于同一年龄的男童，因为男童被诱离家的情形纵属

罕见，但可能性亦会存在。上述各项建议的副作用，是对女性同性恋活动加以惩治，虽然这类情形甚少发生。

非礼罪

11.17 在法律上说，有性动机的接吻和触摸亦作非礼论。不过，如得对方同意，则不属非礼，罪名亦不会成立。刑事罪条例（香港法例第二〇〇章）和侵害人身罪条例（香港法例第二一二章）分别将非礼女性和非礼男性列为不同罪项。不论男女，均可被判犯向同性或异性非礼的罪名。根据法例规定，在上述罪项中为受害者的儿童，如不足某一指定年龄，虽则同意进行，在法律上来说亦不能否定非礼罪名。所谓指定年龄，在女子来说是十六岁，男子则为十三岁。因此，如能说服对方同意，任何年龄的男女如向超过上述指定年龄的男女非礼（未至鸡奸或粗犷行为），则不属违法。非礼女性最高可被判监禁五年，非礼男性则为十年。

11.18 儿童由于年少无知，缺乏经验，思想未成熟，未能作出明智判断，所以本委员会认为设法防止儿童在性方面受人教唆引诱，实属适当，且亦有此必要。本委员会在考虑各项因素后，建议非礼罪应予保留，但须包括指所有在未得对方同意而作出的非礼行为，包括对青少年所作出的行为，这是由于青少年年轻，在法律上是被视为无表示同意能力者；此外，非礼男性和非礼女性的罚则应予划一。本委员会认为监禁五年的罚则较为合理，且亦能配合我们所讨论的其他罪项的罚则。

11.19 提出上述建议后，本委员会跟着考虑，在同性和异性非礼事件中，要达到什么年龄才能有权表示同意。同性非礼和异性非礼事件当然明显有别，但却不应独立考虑。就同性非礼来说，本委员会认为纵使同性恋行为不视作违法，但在目前阶段，基于稍后再予阐释的理由，倘将男性有权表示同意的年龄定在二十一岁以下，本港社会势难接受。

11.20 在考虑异性非礼行为时，所采取的态度应有所不同，绝大部分儿童在长大后都会爱慕异性。在成长过程中，一些未至于性交的性接触如接吻等行为，实合乎自然。对于这类异性恋行为，法律不应加以干预；假如将有权表示同意年龄定得过高，即会使一些清白的行为变成犯罪行为。不过，如将年龄定得过低，则不能阻吓成年人对青少年进行引诱，尤以引诱同性者为然。有关异性非礼的法例，将有权表示同意年龄订得男女相差甚大，本委员会亦认为不合理，亦不合逻辑。因此，本委员会建议有权对异性恋行为表示同意的年龄应定为十六岁，男女双方均同。本委员会虽然提出上述建议，仍认为有需要在稍后阶段对成年男女在互相同意下进行同性接触的行为，加以研究。

公众行为

11.21 本委员会认为，基于前述理由，在公众人士常到的地方作出可能令社会上沉默的大多数市民憎恶的行为，则禁止这类行为仍属首要之务。本委员会察觉，在这方面，目前法例对于保障家庭和社区生活显然有不足之处，因此建议加强法例的规定。法例如果容许在公众地方作出令成年人憎恶的行为，已属不宜，但这些行为如果发生在儿童身上或儿童在场时发生，则更难容忍。

11.22 关于管制公众行为方面，行为不检的最高刑罚为罚款五千元及监禁十二个月，猥亵暴露身体为罚款一千元及监禁六个月，在公厕内作出猥亵行为则只罚款二百五十元。

11.23 本委员会察觉，本港法例除规定上述以及本报告书其他章节所载的个别罪项外，并无一条有关猥亵行为的概括性罪项。本委员会对此深表关注。由于法例并无制订此罪项，因此，如果一名男子在游乐场内引诱儿童，倘不至于粗犷行为、非礼或猥亵暴露身体，则只能根据游乐场附例最高判处该男子罚款五百元及监禁一个月。

11.24 本委员会认为必须制定法例，使儿童和家庭成员在公众地方获得更佳保护，以及阻吓不法之徒在公厕、泳滩、泳池或其他公众地方引诱、偷窥或侵犯青少年，或作出其他有性动机的行为以致令一般市民感到憎恶。因此，本委员会建议新订一条猥亵行为罪项，其罚则应与行为不检相同，即罚款五千元及监禁十二个月。新订罪项须含义广泛，足以取代现行有关猥亵暴露身体、在公众地方大小便等罪项，以及根据公众卫生及市政条例（香港法例第一三二章）而制订的规则所指有关猥亵行为的大多数罪项。法庭可根据案情严重性，诸如地点、在场人士年龄，受害程度等因素，以决定刑罚的轻重。同为猥亵行为，在学童放学时在校门外发生者所应判处的刑罚，当然应比只有成年人在场的地方所发生者为重。

11.25 此外，泳池、泳滩和儿童游乐场的管理员显然未获赋与博物馆、图书馆、公厕和浴室管理员相同的权力，以便把似将违犯法纪的人，包括可能会犯猥亵罪的人，驱逐离场。本委员会相信驱逐行动是保护青少年的有效预防措施。因此，本委员会建议修订根据公众卫生及市政条例（香港法例第一三二章）而制订的附例，授权公众泳滩、泳池及游乐场的管理员，在适当时候有权饬令某人离场，不服从者可被判罚款一千元及监禁一个月。

11.26 我们发觉，关于公众行为的罪项是否适用于学校，有人仍存有疑问，因为学校通常并不视为公众地方。本委员会相信所有男女学童都应受到保护，以免在课室或厕所内受到同学或师长一些较显著，较令人厌恶的性侵害。因此，我们建议考虑将有关猥亵行为之罪项，扩大至包括学校以内之行为在内。

11.27 有关酒吧的问题，本委员会曾详加考虑。据闻本港若干酒吧有同性恋者和男妓流连其间。这类酒吧，与一般有异性活动进行的酒吧比较，为数甚少。不知内情而误入的顾客，难免感到十分尴尬。有待解决的问题有二：一是与酒吧持牌人有关，二是如何对付男妓。

11.28 首先，就男妓来说，正如本委员会指出，游荡或兜搭作不道德行为等罪名，似包括同性恋行为在内。但该等酒吧并不属法例所指的公众地方，因此，本委员会建议，将香港法例第二〇〇章刑事罪条例第一四七条所载有关兜搭作不道德行为罪之规定，扩大至包括公众常到的地方，如大厦内的公有部分、公开营业的酒楼餐厅、酒吧、跳舞场所等地方，刑罚为最高罚款二千元及监禁六个月。为避免引起疑点，本委员会建议修订有关不道德行为的定义，使该词明确包括同性恋行为在内。

11.29 其次，如证据确凿，持牌人可被控协助及教唆娼妓罪名。但很多时要提出证明并不容易，因此须采用另一种制裁。倘若发牌规例或根据香港法例第一〇九章有税品条例而发给的牌照所载“娼妓”一词，系包括男妓在内，或经修订后包括男妓在内，而本委员会亦建议作此修改，则如持牌人容许该等人士经常流连于其所经营的场所，将属违反牌照规定。我们知道现时部分酒吧持牌人容许妓女进入酒吧内，因此，我们觉得问题的症结乃在法律的执行，最终制裁是吊销牌照。原则上，本委员会认为即使事属可行，亦不对“女子酒吧”和“同性恋酒吧”有所区别。

其他重要事项

11.30 我们现拟一谈本委员会在工作过程中所遇的一些问题。由于它们与本委员会职权范围关系不大，我们未有作全面研究，而只建议当局加以检讨。

拐带及贩卖儿童

11.31 目前，遗弃、贩卖和拐带儿童分别列为三类不同的罪项。有人认为这三类罪项应归纳处理。无论如何，为保护儿童，阻吓可能会对青少年作性侵犯者，本委员会认为贩卖儿童（香港法例第二一二章侵害人身罪条例第四十四条）、拐带儿童（香港法例第二一三章保护妇孺条例第二及第二十六条）以及遗弃儿童（香港法例第二一二章侵害人身罪条例第二十六条）等罪项的罚则应予提高。

淫褻性电话

11.32 据悉市民接获淫褻性电话的次数日有增加。本委员会知道这些电话对成年人会造成骚扰，同时也明白会对接听电话的儿童造成损害。基于第 6.45 段所列举的理由，我们建议当局采取措施，防范这类事件发生，特别是须提高刑罚（现时为最高罚款一百元或监禁一个月）。

偷窺狂

11.33 本委员会知悉，过去两年来，本港人口稠密的屋邨的浴室或睡房，经常有被人窥秘的情形出现，令人非常讨厌。最近，一名警伯自浴室外偷看时，亦不慎由高处堕下。目前没有法例足以有效处理这个问题，因此，当局须考虑采用什么有效方法予以解决。

淫褻刊物及影片

11.34 本委员会感到关注的另一问题，是很多人利用色情图利，例如私下拍制照片或影片，然后公开发售，这些便成为市面的不良色情书刊物品和色情录影带。一直以来，立法机构的政策主要是针对此等物品的出售，而不是此等物品的制作。本委员会建议有关当局应从速考虑是否要对促成、经营、安排或参与色情物品制作这类活动的人士加以处罚。此外，当局亦须考虑；授权法庭根据售出或将会售出的色情物品数目、获利或将会获利的多寡、参与这些活动者的年龄，特别是那些与同性恋活动有关的，从而确定罪项的严重程度。

11.35 本委员会对色情刊物的输入，亦表关注。我们看到一些英美及各地的期刊，发觉其中一部分是确实为同性恋者传达他们有共同兴趣的消息，如文字评论等，其他则图文并茂介绍色情玩意。本委员会对儿童可以随便买到书中推销的物品，表示关心。

11.36 本委员会明白书刊杂志及录影带进口商所面对的困难。鉴于一般人对什么是不良，或什么是淫褻，会有极不同及主观的看法，进口商实在很难知道他们进口的货品是否与法律有抵触。虽然本委员会知悉数年前已曾讨论这个问题，但现在建议有关当局考虑采取措施，让真正的进口商在输入有关书刊物品前，能够先向一个比如说由社会人士组成的委员会谘询，并由委员会裁定应否入口。这程序将有助当局取缔大量在本港市面出售而年青人亦可买到的极度不良刊物及色情录影带。这个制度可使进口商厉行自律，他们可将书刊物品进口及分发而冒被检控的危险；但殷实商人如有怀疑，则可向审查员征询。审查员除有权禁止有关书刊物品进口外，还可规定条件始批准进口，例如将内容删剪，或只限向成年人出售等。

性商店

11.37 虽然性商店在本港目前并不构成问题，但我们提醒有关当局，性商店在东西方国家的一些大城市现正逐渐增多，其作为色情场所的危险性亦越来越大，青年人极易受诱堕落。这种事情预防胜于治疗，因此，本委员会认为当局应对情况不断检讨。

雇佣

11.38 本委员会认为，如果在有限度情况下，将男同性恋行为不视作违法，则一些现时可引致刑事起诉及可特别藉以将某些政府雇员解雇的罪项，亦可撤销。要是现行政策不作改变，则有同性恋癖好的政府雇员受到勒索，政府机密外泄的危险，在若干程度上将继续存在。如果本委员会的其他建议获得接纳，我们认为值得按照第 5.36 至 5.40 各段所提出的方法，检讨现行公务员雇用政策。正如我们曾经强调，自然法的原则将有助我们对个别情况作出考虑。

成年人彼此同意而进行的同性恋行为

11.39 有关男女同性恋行为的法例，本委员会故意留至现在始行讨论。倘若我们所作的建议能够付诸实施，则所有未经对方同意而进行的性行为，均属违法，而任何人士，如明知或可合理怀疑某人（不论男女）年龄不足十六岁，而与其进行性接触，亦属违法。

11.40 因此，本委员会订出须向自己发问的问题如下：“十六岁以上男女彼此同意而进行的甚么同性恋行为应受处罚？”，或“青年男女既有现行的保障，加上本委员会先前建议给予更多的保障，使其免受利用或受暴力对待，则应容许性别相同人士彼此同意而进行什么性行为？应达到什么年龄才可进行？”

11.41 读者很容易发觉，这些问题所涉及的范围，较若干舆论界向我们所力陈以及本委员会一开始即据以考虑的“一切同性恋合法化”问题狭窄得多。本委员会相信我们所拟的问题，是本委员会研究问题方法的一个既公平又符合逻辑的结果。我们一开始就提出下列问题：“甚么人应受法律保护，和应保护免受甚么侵犯？”我们的结论是，青年人必须受到保护。但年纪较长的又怎样？

成年男子彼此同意而私下进行的同性恋行为

赞成保留现行法例的理由

11.42 为上述问题作答前，本委员会先将各界向我们提出赞成保留法例内现有规定的理由及意见，逐一列出，作为对本委员会及其他人士的提示。这些意见所涉及的范围，都与“同性恋合法化”这个广泛的问题有关，而不是本委员会现在所考虑的较狭窄一面：

- (a) 中国传统道德观念是不容忍同性恋的。
- (b) 同性恋及同性恋行为是西方人特有的，中国人不好此道。
- (c) 本港华人社会认为同性恋是难以接受的。

- (d) 同性恋破坏社会结构：它引进对社会习俗有损的不健康倾向和不道德行为；威胁婚姻制度；对青年人有不良影响。
- (e) 人类生来是异性恋的。同性恋违反自然，因此不可以容忍。
- (f) 人类生来是异性恋的。同性恋违反自然，因此是一种病态。
- (g) 性交的主要作用在繁殖后代。任何性行为若与此目的不符都是违反上天和人类的罪恶行为，因此须受法律制裁。
- (h) 本港市民大多数赞成检举同性恋行为。法律应顾及这点。
- (i) 每个正常人都是有性欲的。但除了同性恋行为外，还有其他方法可以使性欲得到正常的发泄。
- (j) 修订现行法例，使与英国法例趋于一致，可看作是外国人掌权的政府强把外来观念加诸中国人的做法。

本委员会所持的论据及意见

11.43 本委员会认为，有关同性恋问题的意见，其中反映发表意见的人对事实真相缺乏认识，未能正确观察事物和对别人宽大。本委员会认为男女同性恋者都是人类一份子，他们占本港人口一个颇大的比例。根据保守的估计，同性恋者人数在二十五万以上，甚或多达五十万人。他们当中有各行各业和不同国籍的人，不单有中国人，其他人种也有。

11.44 正如我们所解释，本港很有理由禁止青年人或弱能人士有机会被性活动影响，因为这些人不是正常的性冲动未形成，就是未能完全对性冲动控制自如。我们没有理由为了使成年同性恋者得到他们认为应得的内心平静，而让那些未有自由成熟判断力的人成为他们的牺牲品。

11.45 本委员会上文所提的建议，说明我们一向最感关切的，就是必须设法保护青年人和意志薄弱的人，一如妇女，免受其他男女利用。同时，亦设法保护市民及其家人免受令人反感的公开性行为打扰。同样，这些建议也显示，我们无意协助创造赚钱的市场，使有犯罪倾向的人可从经营满足性欲的生意中谋利，不论是涉及同性恋或异性恋活动。

11.46 另一方面，本委员会认为，对于思想成熟和有判断力的成年人私下进行的行为，须作不同的考虑。在本港，像很多其他国家一样，同性恋者被强烈认为是社会的一种耻辱。但是我们觉得在法律上不应因此而对他们有歧视，同样地，法律亦不应给予他们任何特权。对于同性恋者与其他成年人彼此同意而私下进行的行为，我们必须以适用于其他类似情况的法律尺度衡量。在法律之前，他们应该得到平等的待遇，而不应挑出来受如某些人所建议的不公平对待。

11.47 本委员会在上文曾提及，在私底下，人人有权随自己的好恶而生活，只要他人不会因此受到影响即可。本委员会再次强调这个观念，因为它是本委员会的基本论据。

11.48 第一，这项权利是习惯法的基础，因为私生活自由，是法律所保障，只要法例无明令对某一方面的权利加以侵犯或剥夺，则我们可自由享用。第二，本委员会相信，隐私权是香港极宝贵之事物，在这里生活工作的绝大部分人士，无不珍之重之。虽则本港伦理观念中西混杂，但本委员会相信，在广义上这种尊重个人隐私的观念，普遍存在本港家庭生活和商业活动的各方面。第三，一九四八年的联合国人权宣言，正式确立全人类均得享有隐私权的观念。至于对此类权利予以实质承认的欧洲公约和联合国公约，英国均有签署，因此联合国公约是适用于香港。在公约内，“隐私权”一词包括性方面的隐私权。第四，英国国会最近不但基于一般原则，将苏格兰在这方面的法律修订，使与英格兰法律趋于一致，而且亦修订北爱尔兰的法律，藉以实施欧洲人权法庭（European Court of Human Rights）的裁决。该法庭所作的裁决为：根据欧洲人权公约，北爱尔兰有义务特别保障成年人在性方面的隐私权。根据国际公民权与政治权盟约（International Covenant on Civil and Political Rights），香港亦有此项义务。最后，有限度保障性方面的隐私权，即限于成年人双方同意私下进行的，似乎是中国近代法律的标准规定。因此，香港若漠视这点，无异是与英国法律和中国法律背道而驰，亦有违国际协议。既然本港并非有极大需要保留这种差异，而本委员会亦未能证明有此需要，则香港实不宜独树一帜。

11.49 此外尚有其他次要的论据和因素，足以支持本委员会的主张，我们亦曾予考虑，现列举于下：

- (甲) 既然许多文化（包括中国文化）均有同性恋存在，几千年来未尝消灭，故这项行为非西方所独有而香港独无；
- (乙) 在一些邻近国家如中国和菲律宾，成年人彼此同意私下进行的同性恋行为虽然不受到法律惩处，但由于受密切的家庭关系和社会风气约束，因此亦无证据显示道德因而败坏或崩溃。本委员会相信，即使将现行法例修订，类似的社会风气仍会在本港保持，使家庭关系继续保持密切，从而阻窒不必要的同性恋行为；
- (丙) 绝大部分医生认为，同性恋非属一类精神病。本委员会认为有一点必须确立的，就是同性恋之所以不正常，是因为社会上大部份人都是异性恋者。其实，只有少数人特有的情形，例如出色的运动技能、超卓的学术成就、先天耳聋或失明，甚或使用左手等，亦同样可算是不正

常。本委员会并不承认同性恋是一种病，但即使是病态，迄今尚无科学鉴定的治疗法，更不用说可予治愈；

- (丁) 只要同性恋是成年人彼此同意而私下理智地进行，便属私事，不像抢劫或杀人事件，会损害他人。因此，这类同性恋活动，不应作为刑事罪处理。属于私人道德事项，通常不宜立法管制，更何况禁制同性恋活动的法例并不易执行。因为若要充分执行法例，警方便要进入相当多本属奉公守法市民的私人住所，此等行动，徒令法律受到藐视。因此，同性恋活动，不宜由法律强制禁止；
- (戊) 本委员会相信，绝大部份成年同性恋者，除同性恋外，在其他方面都是奉公守法的，因此无理由指责他们扰乱社会秩序。然而，现行规定却制造犯更严重罪行的机会，例如勒索、贪污或贿赂。可是，一点不容忽视的，就是社会所强烈反对的非刑事犯罪行为，仍可成为勒索的借口，虽然程度上来得较轻；
- (己) 人们私下进行的许多活动，例如通奸、奸淫以及赌博等，亦可算是不道德的行为，但却不是刑事罪。其实，异性通奸有时较成年人彼此同意私下进行的同性恋行为所造成的损害更为严重，因为前者可能损及儿童的幸福；
- (庚) 如果同性恋行为因为妨碍繁殖，上渎神灵，下乖人性，便须视为罪行，则其他类似行为，例如节育以至手淫等活动，按理亦应同样作为刑事罪处理。

11.50 综合上述各点和较早前所提的各项建议，本委员会的结论和建议是：法律不应禁止同性别成年人彼此同意而私下进行性活动。这个建议在付诸实行之前，还有多个问题待解答，例如：“私下”一词应有什么含意或定义？同性恋所涉及的淫媒业又如何？可肩负成人责任的年龄应定为几岁？此等违法事项的刑罚如何才算适当？女性同性恋问题又应如何处理？

“私下”

11.51 本委员会注意到，英国法律仍然规定、成年男性彼此同意而进行同性恋行为时，如在场人数超逾两名，仍属违法；按照法例定义，该项行为即非属私下进行。我们要考虑同一规定是否亦适合香港。当然在道理上可以说，法律一旦容许成年人彼此同意而私下进行活动，就不应故意规定在场人数；类似的异性活动，并无这种限制。

11.52 较早前本委员会曾指出我们的顾虑，恐防少数人士的公开行为会令大多数人反感，因而使法律和政府当局的尊严受损。假若本委员会的建议付诸实行，则一点令我们特别关心的，就是关于私人俱乐部和类似组织方面。

我们不欲看到新订法例中“私下”一词为有同性恋倾向人士所利用而逃过新法例的精神，虽则由于不可预见的法例漏洞，他们仍受新订的法例管制。我们较早前的建议，原意是使小部份有特殊性倾向的人士，不致在不影响他人的情况下被禁进行自己天性的活动。然而我们此举并非要将同性恋行为与异性恋行为绝对相等看待——男女共舞，不会使人看来不顺眼，但同性共舞，却会令许多人反感。要将我们这两个目标调和，唯一方法是小心从事。因此，我们建议：“私下”一词的定义，应只限于不超逾两人的场合；但亦建议：这个定义应根据实行后所得经验而加以检讨，因为在建议施行后两三年，实情便会显露出来。

介绍卖淫

11.53 明显地，本委员会建议法律不应再禁止某一形式的彼此同意而进行的同性恋行为，所持论据隐含下述意思：大部份与该项私下活动有关的各种形式初步和次要责任，例如：串谋或意图等罪名，在该等情形下不应存在，而本委员会亦建议如是处理。

11.54 本委员会相信，现行保护未满二十一岁妇女免为淫媒介绍进行性交的法例，如香港法例第二〇〇章刑事罪条例第一三二条所载的各项规定，是对付从事此业者的有用武器。在第 11.12 至第 11.16 段本委员会曾建议法律的保护应予扩大，以防止未满二十一岁的年青男性被介绍向异性或同性卖淫。鉴于本港现行情况和社会一般舆论，本委员会主张上述年龄限制仍应为二十一岁。等到施行数年后当局累积经验，或可将这年龄限制降低而不致有危险。

可肩负成人责任年龄

11.55 至此，我们要研究男女同性恋活动的“有权表示同意年龄”。本委员会当然知道，任何人士与未满十六岁的女子性交，即属违法；换言之，女子与异性进行性活动的有权表示同意年龄为十六岁；此外，我们亦曾建议，同一年龄限制也适用于男性。本委员会现时要考虑的是：男同性恋活动和女同性恋活动的同意年龄应否定为二十一岁或以下。若定为二十一岁，可确保这方面的建议与有关介绍卖淫的建议互相一致。该年龄是香港现时成年人年龄，达到这个年纪的男性及女性，不论性倾向，在未实际合法投入这种性活动之前，都应可运用他们较成熟和理智的判断力。本委员会深知，社会的性道德观念正在转变。但虽然有此事实及有女性有权表示同意年龄为十六岁的规定，本委员会仍然相信，本港许多男女非至结婚或年逾二十一岁，不会有与异性性交的真实经验。本委员会宁冒过份小心之嫌，及所提建议显然与异性性活动的建议不一致，我们仍作出下述结论和建议：男性同性恋活动的有权表示同意年龄，应定为二十一岁。由于此项规定，年龄在二十一岁以上而非以下的男子，彼此同意而私下进行的行为如鸡奸、粗犷行为或非礼，即不再视为刑事罪。正如本委员会在上文所指出，不视作违法并不表示在道德上

予以赞同，更谈不上加以鼓励。本委员会在提出前述建议时亦指出，根据经验，男子的年龄定为二十一岁可能过高，应予检讨；即使如此，本委员会在现阶段仍主张以审慎态度提出建议。

女同性恋

11.56 由于前述建议，我们必须考虑其对女同性恋的影响。一般而言，十六岁以上妇女进行同性恋活动不算犯法，只要是双方同意并私下进行即可。我们曾建议，二十一岁以下男性的类似行为不应不视作违法。因此，我们是否亦应规定年在十六与二十一之间女性的同性恋活动亦属非法？主要基于现实理由，我们认为不应如此。我们当然知道这个立场与我们寻求在法律上平等对待男女行为的前题有矛盾。我们亦有理由，就是现时不算犯法的事，除非能证明确有需要，否则我们不欲订为违法。我们一向集中研究男同性恋的问题，对女同性恋问题，则并无深入研究，是以难于作出结论。因此我们建议，当局应经常检讨有关情况，到有此必要时，才采取立法行动。

刑罚

11.57 鸡奸目前最高刑罚为终身监禁，而男性间粗犷行为则为两年监禁。本委员会的建议即使实施，下述事项仍属违法：非私下与任何男性有鸡奸及粗犷行为；与未满二十一岁男子有鸡奸或粗犷行为；非彼此同意的鸡奸行为；鸡奸动物或被动物鸡奸；企图或串谋进行这些罪行；协助、教唆、指导或介绍他人进行这些罪行。我们相信，这些罪行严重程度各有不同，不独相互比较如此，即使与异性性行为罪项比较亦然，故当局应检讨有关刑罚，从而反映其间的差别。我们认为以不针对每一项罪行提出详尽适当的刑罚为佳，因为此举部份须视法律草拟时对这些罪行所下的正确定义和所作的分类，及与其他类似罪行的关系而定。职是之故，本委员会建议律政司先行检讨整个问题，然后制订一套完整合理而切合本港情况的刑罚。

监狱

11.58 本委员会在上文所提建议，对监狱机构会有影响。但本委员会相信，特别管制在监狱机构内行为的法规，不必作相应之修订。假如有监狱人员犯性罪行而受害人是囚犯，则法庭可考虑该员滥用职权而视案情轻重决定刑罚。因此，本委员会认为不必特别修订现行法例。其次，基于保安和纪律理由，监狱机构对职员行为要求远较外间严格，若干事件，虽未严重至刑事罪，仍须加以制裁。有鉴于此，又鉴于并无证据证明本港监狱机构现时有同性恋事件，故本委员会仅建议有关当局考虑应否将新订的猥亵行为罪引用于监狱机构。

军队

11.59 有关军队人员在这方面的活动，并非本港法律所能管制。因此本委员会不拟提出任何建议。本委员会即使有建议，军队人员事实上仍须遵照“旧有”规定。本委员会接受在特殊情况下管制行为应基于不同因素之原则，而此方面问题，最宜由有关当局处理——就军队而言，即为英国政府。

相应引起的事项

11.60 本委员会现须考虑几件可能受我们建议影响的事项。第一，所建议用于管制成年男性彼此同意而私下进行的同性恋活动的法例，是否应同样适用于异性鸡奸行为，抑或与女性进行的鸡奸行为应予以禁止。现时，香港法例第二一二章侵害人身罪条例第四十九条规定：凡将阳具插入他人的肛门，不论被插入者为男性或女性，甚或为其妻室，且得其同意，均视为鸡奸，违者可判终身监禁。

11.61 本委员会认为，上文所述各项防止利用青年卖淫和武力逼使他人就范的措施，大致上已给予妇女足够保护。如法律果如本委员会所相信，仅在个人私下的行为侵犯他人时，才扮演保护者的角色，则某条禁止少数生理成熟女性私下愿意做的事的法例，便不应再存在。将之撤销，只不过恢复极少数个人的自由，使他们在有限的范围内，得以随自己的意愿来行事。这个范围，本委员会认为是异性恋活动的一部份而非同性恋活动。我们深知，我们的建议可能看来不合理，因为男子鸡奸年青人可能犯法，而鸡奸妇人却可能合法。然而我们认为，此两项行为的性质，其实是可以有效地区分的，例如丈夫与同意这样做的妻子之间，这项行为便属于异性性行为。遇有这些情形，法律不应急于干扰双方同意进行的活动。

11.62 虽然如此，本委员会认为，法律保护年轻女性免受此类行为侵害，是正确而适当，纵使其本人同意亦不例外。本委员会已作出结论，就年青男性而言，同性恋行为的有权表示同意年龄应定为二十一岁，亦即本港成人年龄。然而，法律准许彼此同意的异性性行为，年龄却为十六岁。鉴于这些因素，加上社会一般人趋于性早熟和早婚，本委员会认为，男性获得足十六岁女性同意而私下进行鸡奸活动，应不算犯法。我们这项建议的后果是：法律除对介绍卖淫和卖淫管制外，对十六岁以上一男对一女彼此完全同意私下进行的性行为，不必予以追究。

11.63 其次，本委员会知悉，所提出的主要建议会稍为减少罪案数目，因而对引渡和移民两类法例会产生有限度的影响。然而本委员会并不相信此点在实质上会引起困难，故决定不提出任何与此有关的建议。

11.64 最后本委员会知道，游客是男妓和淫媒的一项主要收益来源。在我们的建议长期生效以后，我们相信，经过一段时间，香港对同性恋游客的吸

引力使会显著减弱，而为此目的而来香港的游客，亦会逐渐减少。我们确信，为游客本身之保障起见，如能明智审慎地向他们提供有关本港一般保护年青男女的法律常识，警醒他们免干法纪，肯定会有帮助。此举最宜由酒店业人士和伴游公司进行，因为游客最可能向他们求助。鉴于这些情况，本委员会认为毋须提出任何建议。

本委员会建议范围

11.65 本委员会各项主要建议之目的，在规范公开场合的行为，藉以维持公共秩序，及确保年青男性不会因年轻无知、好奇心驱使，为人所逼或引诱而在性事方面遭人利用，或为人怂恿离开家庭或从事卖淫。这些目的达致后，相信立法免除二十一岁或以上的成年男性因私下与性别相同、年龄相若、思想相近的人进行个人性活动而受惩罚，当不会有危险。这项建议所带来的影响，就是鸡奸、非礼和粗犷行为等罪名，即不能再加诸此类人身上。虽然如此，任何这类未经彼此同意的行为、非私下进行的行为，及与未满二十一岁男性进行之行为，仍属违法。

11.66 本委员会相信，如本委员会大部份建议付诸实施，则在其后数年内密切监察社会所出现的反应和行为模式，特别是违法情事的发生，当会有其作用，甚或确有此需要。然后当局可根据观察所得进行检讨，包括考虑按照施行新法例后的经验，同性恋有权表示同意年龄应定为多少岁才属适当等。本委员会认为这项检讨宜于三年后进行。

第十二章 本委员会工作摘要

第一章：引言

12.1 本委员会指出不同人士对同性恋有迥异的看法，并概要说明一九七八年及其后有关问题怎样在香港一一浮现。本委员会对鼎力襄助本会工作的各界人士谨表谢忱，特别是法律改革小组委员会主席杨铁梁按察司，他应本会要求，周详研究此一主题，并提交报告书。

第二章：本委员会进行工作的方法

12.2 本委员会根据所理解情祝，述明法律改革委员会所正确担当的角色，通过研究寻求事实真相，阐明原则，并顺应民情，就众所关注的情事，找出修改法例的利弊所在。本委员会亦探讨法律对这种行为的正确立场，并作出结论，认为社会秩序与纯洁风气必须保持，而那些易遭人利用、侵犯及易受诱堕落的人士亦应受保护。但除此之外，法律不应将某一独特道德观点强加于人，亦不应干预市民私生活。本委员会谨此指出，我们不把此种行为视作违法，断不能解释为道德上我们予以认可。

第三章：谁是同性恋者——医学分析

12.3 一位顾问医生在本章论述同性恋的定义及其性质，提及关于该问题曾进行的医学及社会学上研究。据研究显示：男性大约有百分之十是先天性的绝对同性恋者，科学上原因未详，至今尚无一种堪称成功的治疗方法。

第四章：传统中国社会的同性恋问题

12.4 在本章，一位著名学者从中国文史卷帙中进行研究，证实同性恋行为在中国历代都有发生。

第五章：现代香港的同性恋问题

12.5 本委员会曾就现代香港同性恋的存在及影响两项问题进行研究。本章除述及研究结果外，并详述本委员会从若干同性恋者口中获知的事情，以及列举有关男妓的证据。本委员会的结论是：本港男同性恋者的人数众多，几达二十五万人，他们包括不同种族或国籍的人士。本委员会进一步估计，香港每年发生的非法同性恋案件盈千累万，其中大部份未有向当局举报，亦未为当局发现，这情形委实有损法律的尊严。

第六章：香港的法律

12.6 本章摘要列出本港有关同性恋行为及有关管制不良公众行为的法例。我们发现保护少女免受性侵犯的法例，远较保护少男者多。本委员会特别列举有关同性恋罪行法例制订的历史及其条文内容。

第七章：与东方国家法律的比较

12.7 本委员会对香港邻近地区的十个国家如何处理同性恋问题的法律加以研究，结果，发现多数法律对于彼此同意而私下进行的同性恋行为，均予容许，只有少数法律惩罚这种行为。另一特别事实，就是自一九一零年以来，中国法律从未对成年人间彼此同意而私下进行的同性恋行为加以惩罚。

第八章：与西方国家法律的比较

12.8 本章列举若干西方国家如何处理同性恋问题的法律。本委员会知悉英格兰及威尔士的法律已于一九六七年修订，容许成年人间彼此同意而私下进行同性恋行为；苏格兰及北爱尔兰的法律亦分别于一九八零年及一九八二年作出类似修订。此外，本委员会知悉联合国大会所通过的人权宣言，已成为一项国际公约，并于一九七六年付诸实施。该公约亦适用于本港。公约内容乃保护隐私权，保障成年人间彼此同意而私下进行性行为的自由，免受干扰。

第九章：本委员会所作的公开征询及在本港进行的研究

12.9 本章记述各次征询的过程，并转述被征询人士及向本委员会赐教人士的意见。本委员会曾晤见社团代表以及若干中国男同性恋者，谈话内容，本章亦有记述。本委员会曾向六百间商行、二百间私人机构、以及各区议会发出问卷，并举行两次商业性意见调查，调查所得结果，本章亦有提及。

第十章：修订法例的后果

12.10 本委员会尽可能考虑一旦修订有关法例，可能会带来甚么后果。至于社会价值观念的改变，以及法例相应产生的反应，两者间的相互影响，本委员会亦有讨论。本委员会须强调一点，就是有关的法例经修订后，纵使规定某一行为不视作违法，亦不表示承认该项行为符合道德标准。本委员会指出，强烈的社会制裁对阻吓不受欢迎的行为，能产生重要作用。

第十一章：本委员会的论据及总结

12.11 本委员会建议，法例的内容如涉及家庭群体生活，则该法例的主要目的，须致力维持及加强此种生活。本委员会认为，确保法律及执行能受市民尊重，此点甚为重要。若干现行法例可能助长勒索、黑社会活动、以及利用青少年为谋利工具，本委员会对此事甚为关注。本委员会认为，在某些范畴内，如无必要保障他人免受某类行为影响，则法例不必负起道德制裁的功用；但如该项行为足以伤害他人或使大众感到厌恶，则法例即须加以制裁。本委员会总结指出，为保障容易受侵害的人士，包括青少年及弱智人士，免受他人利用或变成性堕落，并保障一般市民，免受大多数人士认为淫褻或厌恶的公开行为所影响，则须采用若干实用的方法，加强有关法例的规定。

建议摘要

12.12 经本委员会三年来之研究及讨论，并考虑多方面的因素及论点，本委员会决定提出数项修改本法例的建议，现将各项建议撮要如下：

婚姻

12.13 本委员会建议不修订有关结婚及离婚的法例。具体而言，本委员会建议对同性之间的性关系在法律上不予认可，本委员会同时建议对同性之间带有商业交易性质的长期性关系在法律上不予认可。（第 11.8 段及第 11.9 段）

未满廿一岁之青少年

12.14 本委员会建议男性应如女性同样受现行法例保障，以免被利用为商业卖淫工具；少男应与少女获得同等之保障，以防止他们受到教唆而卖淫；有关处罚违反女童父母意愿而拐带未满十六岁女童，使之脱离父母之法例，应扩大至适用于相同年龄之男童；心智不健全之男性应如心智不健全之女性同样受现行法例保障，以防止他们受到性侵犯。（第 11.12 段及第 11.16 段）

12.15 本委员会建议为实行上述建议起见，政府应将刑事罪条例内“卖淫”一词之定义，扩展至包括同性恋卖淫活动；并将现时保障年青女性之条例中提及“非法性交”一词之定义，扩展至包括“同性肉体接触”。（第 11.13 段及第 11.15 段）

12.16 本委员会建议保留非礼男性或女性之罪行，最高刑罚应为监禁五年；至于在同性之间发生之非礼行为，如受害人未满二十一岁，则即使该非礼行为系在受害人同意下发生，从事该非礼行为者仍属犯法。至于在异性之间发生之非礼行为，如受害人未满十六岁，则即使该非礼行为系在受害人同意之下发生，从事该非礼行为者仍属犯法。（第 11.18 段至第 11.20 段）

公众行为

12.17 本委员会建议，由于猥亵性公众行为，包括同性恋行为，系违反社会一般道德标准，因此应加强保障市民大众，以免他们成为该等行为的受害者。

本委员会因此建议制定一项名为“猥亵行为”之罪行，其最高刑罚为监禁十二个月及罚款五千元。（第 11.24 段）

12.18 本委员会建议政府授权游泳池、海滩及儿童游乐场之工作人员，于适当情况下命令可能即将触犯法例，包括猥亵罪行之人士离开。（第 11.25 段）

12.19 本委员会建议制定法例，禁止男妓在公共场所内作不道德目的之兜客。（第 11.28 段）

12.20 本委员会建议修订酒吧等场所根据有税品条例(香港法例第一零九章)申请领牌之条件,以禁止持牌人容许男妓及妓女经常进出该等场所,否则吊销其牌照。(第 11.29 段)

12.21 本委员会建议考虑禁止任何人士在学校及监狱等场所从事猥亵行为。(第 11.26 段及第 11.58 段)

成年人双方同意进行之同性恋活动

12.22 本委员会建议对于年逾二十一岁之男性双方同意私下进行之同性恋活动,法律不予追究。(第 11.50 段、第 11.52 段及第 11.55 段)

12.23 本委员会建议,由于上述第 12.22 段建议若干行为不视作违法,因此,凡同意、企图、串谋……从事该等行为者,不属违法,但教唆未满二十一岁人士受同性恋侵犯之罪行仍应予以保留。(第 11.53 段及第 11.54 段)

一般事项

12.24 本委员会建议将新法例之刑罚与现行及类似法例之刑罚同时加以检讨,以便制订合理及一致的刑罚标准。

12.25 本委员会建议,如本委员会之建议获采纳执行,则当局应按照经验对情况之发展加以监察及检讨。(第 11.66 段)

LIST OF ANNEXURES

	<i>Page</i>
1	Sub-Committee :
	(I) Membership A1
	(II) Terms of Reference A2
2	Acknowledgements A3
3	List of Materials A7
4	The Press A22
5	Public Appeal:
	(I) The Form A32
	(II) The Responses A32
6	Summary of the Laws in Hong Kong relating to Homosexuality A38
7	(I) Form of Questionnaire to Business Houses A40
	(II) Analysis of Results A48
8	(I) Form of letter to Organisations A54
	(II) List of Organisations A56
	(III) Analysis of Results A58
9	Hong Kong University Academic Staff Association - Survey of Members A67
10	Hong Kong Polytechnic Staff Association - Survey of Members A86
11	Views of District Boards and Fight Crime Committees
	(I) List of District Boards A90
	(II) Extracts of Replies A91
12	"Movement for Homosexual Law Reform" - Proposals A96
13	Notes of Meeting with Representatives of Kowloon Chamber of Commerce, Hong Kong Residents Society and Others A100
14	Letter from Hong Kong General Chamber of Commerce A103
15	Notes of Meeting with Mr George Chang A104
16	Statement of a Chinese Homosexual A106
17	Notes of Meeting with 4 young Chinese Homosexuals A112
18	Statement by Mr. W A115
19	Submissions by a Homosexual A127
20	Views of Inmates of Drug Addiction Treatment Centres A130

		<i>Page</i>
21	Survey of Public Opinion (1980)	A138
22	Survey of Public Opinion (1982)	A147
23	Reported Offences relating to Homosexuality	A150
24	Details of Court Cases from 1979 to 1981	A151
25	Submission by Scottish Organisation	A155
26	Schedule of Miscellaneous Statistics	A156
27	Summary of Evidence given publicly by Male Prostitutes before The Commission of Inquiry into the death of Inspector John MacLennan	A163
28	Letter of 31 August 1979 from the Attorney General	A167
29	Civil Service Circular on Employment	A169
30	Laws in Hong Kong	A171
31	Miscellaneous Legal Provisions	A183
32	Crimes (Sexual Offences) Act, 1980 (Victoria)	A191
33	Sexual Offences Act, 1967 (England and Wales)	A210

LAW REFORM COMMISSION

**Sub-committee on Laws
concerning Homosexuality**

Membership

Chairman :	Hon Mr Justice T.L. Yang	– Commission Member Justice of Appeal and Chief Justice's Representative (June 1980 – June 1982)
	Hon J.C. Griffiths, QC	– Attorney-General and Chairman of Law Reform Commission (Retired in November 1981)
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Secretaries :	Mr Andrew Hodge (June 1980 - June 1981)	– Attorney General's Chambers
	Mr Jonathan Daw (June 1981 - June 1982)	– Attorney General's Chambers

Terms of Reference

The Commission set the following Terms of Reference for the Sub-committee :-

- "(1) *Comparative Law*
 - (a) *A comparison of the laws in other parts of the region and of the world, especially countries which contain a Chinese component in the population.*
 - (b) *A comparison between the legal and moral attitude of the countries studied.*
 - (c) *An investigation, in those countries where the law has been changed, of the social consequences of the change.*
- (2) *In Hong Kong, the incidence of unlawful or undesirable activity attaching to the exploitation of homosexuality, e.g. Blackmail, Triad involvement, Prostitution.*
- (3) *The incidence of reported offences in Hong Kong, with reference to charges, convictions and sentences.*
- (4) *Whether any lessons can be learned from a study of the incidence of homosexual behaviour, if any, in predominantly male communities.*
- (5) *A study of medical views on the cause, expression, consequences and (if relevant) treatment of homosexuality.*
- (6) *Public Participation*
 - (a) *Invite the views of interested persons and organizations both by public appeal and by direct invitation to selected organizations and individuals.*
 - (b) *Recommend to the Commission a method by which, if necessary, individuals with personal experience of homosexuality whom the Commission wish to invite to give evidence may do so in safety.*
 - (c) *Recommend to the Commission, if it were desired to conduct a survey of public opinion, the best methods of so doing in Hong Kong."*

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Commercial Radio Opinion Survey Service

Diocese of Hong Kong and Macau

Hong Kong Adventist Hospital

Hong Kong Chinese Women's Club

Hong Kong General Chamber of Commerce

Hong Kong Medical Association

Hong Kong Polytechnic Staff Association

Hong Kong University Staff Association

Hong Kong and Kowloon Residents Society

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Mongkok District Fight Crime Committee

North District Board

North District Fight Crime Committee

Sai Kung District Board

Sai Kung District Fight Crime Committee

Sham Shui Po District Board

Southern District Board

Southern District Fight Crime Committee

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THE EAST

AUSTRALIA

Articles and Comments

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12. Extradition (Hong Kong) Ordinance Cap. 236
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14. Immigration Ordinance Cap. 115
15. International Organisations and Diplomatic Privileges Ordinance Cap. 190
16. Interpretation and General Clauses Ordinance Cap. 1
17. Juvenile Offenders Ordinance Cap. 226

18. Library By-laws Cap. 132
19. Marriage Ordinance Cap. 181
20. Matrimonial Causes Ordinance Cap. 179
21. Medical Clinics Ordinance Cap. 343
22. Medical Registration Ordinance Cap. 161
23. Mental Health Ordinance Cap. 136
24. Midwives Registration Ordinance Cap. 162
25. Miscellaneous Licences Ordinance Cap. 114
26. Museum By-laws Cap. 132
27. Nurses Registration Ordinance Cap. 164
28. Objectionable Publications Ordinance Cap. 150
29. Offences Against the Person Ordinance Cap. 212
30. Places of Public Entertainment Regulations Cap. 172
31. Pleasure Grounds By-laws Cap. 132
32. Post Office Ordinance Cap. 98
33. Prevention of Cruelty to Animals Ordinance Cap. 169
34. Prisons Ordinance Cap. 234
35. Prisons Regulations Cap. 234
36. Protection of Women & Juveniles Ordinance Cap. 213
37. Public Cleansing and Prevention of Nuisance By-laws Cap. 132
38. Public Convenience (Conduct & Behaviour) By-laws Cap. 132
39. Public Funeral Hall By-laws Cap. 132
40. Public Health & Urban Services Ordinance Cap. 132
41. Public Order Ordinance Cap. 245
42. Public Swimming Pool By-laws Cap. 132
43. Royal Hong Kong Regiment Ordinance Cap. 199
44. Societies Ordinance Cap. 151

45. Stadia By-laws Cap. 132
46. Summary Offences Ordinance Cap. 228
47. Supplementary Medical Professions Ordinance Cap. 359
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Legislation

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(14.11.81)

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(1) Set Back for Homosexual Law Reformists (25.4.79)

(2) Movement Pushes for Homosexual Changes (6.7.79)

(3) Decision Soon On Sex Law (28.3.80)

(4) Governor In Favour of Changing Law (12.6.80)

(5) No Gay Law in China (14.7.80)

(6) East Is East and West Is West On Sex Law (14.7.80)

(7) Pro-Gay Speakers Win Debate (17.8.80)

(8) Repeal Gay Law Says Social Worker (24.8.80)

(9) Reformers Seek Views On Sex Law (14.11.81)

(10) Police Refuse To Comment On Report (15.1.82)

(11) Gay Views Sought By Law Group (16.1.82)

(12) Sacked Gay Has No Redress (12.2.82)

(13) People Don't Know How Rough It Is for Gays (25.2.82)

(14) Ulster To Get U.K. Gay Law (26.2.82)

(15) Board Members Object To Legal Homosexuals (3.3.82)

(16) Consenting Adults Law Proposal Gets Mixed Votes (5.4.82)

(17) Sex Law Report Stays On Fence (14.7.82)

(18) Review of Gay Laws : More Data Sought (7.8.82)

(D) Kung Sheung Daily News

(14.11.81)

- (E) Ming Pao
(14.11.81)
- (F) News Evening Post
How Homosexual Persons Are Treated in China
(13.11.78)
- (G) Observer
(25.4.82)
- (H) Oriental Daily News
(14.11.81)
- (I) South China Morning Post
- (1) Anti-Homosexuality Laws Blasted As 'Wicked' (14.7.79)
 - (2) Review of Homosexual Laws (19.3.80)
 - (3) Is This The Witch-Hunt of the Century (20.3.80)
 - (4) My Life As a Hong Kong Homosexual (6.4.80)
 - (5) Police Probe Triad Links, Blackmail in Local Gay World (6.4.80)
 - (6) A.G. : No Discussion Yet On Homosexual Law Reform (16.6.80)
 - (7) How Sex Laws Will Be Studied (17.7.80)
 - (8) It's Legal, But Armies Don't Like Gays (28.8.80)
 - (9) SIU Vice Raids Net 30 Suspects (18.9.80)
 - (10) Locals Snub Sex Law Reform : Poll (20.10.80)
 - (11) Hong Kong Terrorizes Gays Writers (2.7.81)
 - (12) No Surprise At Gay News Claim (3.7.81)
 - (13) Law Body Studies Gays in China (9.8.81)
 - (14) Council Agrees On A Gay European Age of Consent (3.10.81)
 - (15) Call for Public Views (14.11.81)
 - (16) Gay Laws : Reform Body 'Toothless' (19.1.82)
 - (17) Gay Law Probe Backed by Bar (20.1.82)
 - (18) Top Secret Circular on Gays (1.2.82)

- (19) 600 Firms Quizzed Over 'Gay' Policy (2.2.82)
- (20) Policy Leak Won't Lead to Graft (3.2.82)
- (21) Leak May Stop Gays Helping to Reform Law (3.2.82)
- (22) Public Sex Habits 'New Intelligence' (6.2.82)
- (23) Districts Stay Quiet On Gay Law Issue (13.2.82)
- (24) Homosexual Comparisons (20.2.82)
- (25) U.K. To Act On Irish Gays (26.2.82)
- (26) Law Reform Commission Not Getting Much Help (5.3.82)
- (27) Homosexuality Not 'A Fad' (8.3.82)
- (28) Maggie Lets Homosexuals In From The Cold (22.5.82)
- (29) Gay Probe Will Stick To Facts (27.5.82)
- (30) Sex Laws Report Completed (3.7.82)
- (31) Report On Gays Under Study (11.7.82)
- (32) 'Gays' Society' Will Be Harmful (7.8.82)
- (33) Arrest Sparks Gays' Fears (1.2.83)
- (34) Club Raid Police Lied To Patrons (4.2.83)
- (35) Homosexuals Wage War (4.2.83)
- (36) Traders Oppose Gays' Campaign for Boycott (8.2.83)

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To Be Gay in Hong Kong (12.12.80)

(K) Wah Kiu Yat Po

(14.11.81)

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(14.11.81)

II. LETTERS TO EDITORS

(A) Express

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(B) Hong Kong Standard

(1) 12.3.80

(2) 30.1.82

(3) 5.3.82

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(1) 14.8.80

(D) Sing Tao Wan Pao

(1) 15.8.80

(5) 11.9.80

(2) 23.8.80

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(3) 27.8.80

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(8) 17.4.82

(E) South China Morning Post

(1) 24.6.79

(12) 16.8.80

(2) 13.7.79

(13) 21.1.81

(3) 15.3.80

(14) 7.2.82

(4) 25.3.80

(15) 16.2.82

(5) 6.4.80

(16) 17.2.82

(6) 26.5.80

(17) 21.2.82

(7) 27.5.80

(18) 24.2.82

(8) 24.7.80

(19) 7.3.82

(9) 31.7.80

(20) 24.3.82

(10) 1.8.80

(21) 26.7.82

(11) 12.8.80

(22) 7.2.83

(F) Wah Kiu Yat Po

(1) 23.9.80

(2) 12.4.82

III. EDITORIALS

(A) Hong Kong Star

"Law Reform" (17.7.80)

(B) Ming Pao Daily

"Homosexuality Between Adults Shouldn't Be An Offence" (14.7.80)

(C) South China Morning Post

"Day of Reckoning for Homosexuals" (2.2.82)

IV. EXTRACT OF HIS EXCELLENCY THE GOVERNOR'S PRESS CONFERENCE ON 11 JULY 1980

H.E. —

"I don't intend to answer a lot of questions about this case because it is there now for Judge Yang to answer. But there is one thing that he won't answer which I'm sure you are interested in which is the question of the law on homosexuality and the discrepancy between the law in the United Kingdom and the law here. And needless to say if it comes to acting on this law I will act, as Governor-in-Council, on the advice of the Executive Council which will in turn rely very largely on the recommendations of the Law Reform Commission. But I'm perfectly entitled to express a personal point of view about this and my own feeling is that there would be some benefit in amending the law, particularly in the elimination of the discrepancy between Hong Kong and United Kingdom law, and I have regard to the fact that a fair proportion of the people prosecuted have in fact been expatriates. Now every society has to decide for itself what things it disapproves of which is dealt with by law and what would be dealt with by the social sanctions of society. And I think we would all be agreed that whatever views we take on homosexuality that procurers of young boys should be dealt with by law, not by social sanctions. Secondly, that use of juveniles for homosexual purposes should be dealt with by law, not by social sanctions and this is the case in the United Kingdom.

Now what happens to consenting adults is rather a different matter and it is a matter for each community to decide for itself. But in the present situation I'm conscious of the fact that people prosecuted for homosexual offences, the vast majority of which include offences with young people which would have been prosecuted in the United Kingdom just the same as here, are gaining sympathy with the public by saying the law is different in the United Kingdom with the implication that in the United Kingdom they would be treated differently. Whereas in fact they would be treated in exactly the same way. Now I would see some advantage in amendment of the law if it were to eliminate this spurious sympathy which is created for them. Of course, there are many other factors too which the Law Reform Commission will have to take into account by which I eventually will be guided. But I did want to make this point too."

'South China Morning Post'

Editorial, 2 February 1982

Day of reckoning for homosexuals

The confidential circular issued last month to heads of department by the Secretary of the Civil Service, Mr Martin Rowlands, on the subject of employment of homosexuals, comes as both a surprise and a cause for dismay. A surprise, because while purporting to be a restatement of "existing policy and procedures" it ignores the fact that the subject is being studied by a committee of the Law Reform Commission. Are we to assume that the circular anticipates the outcome?

It is a cause for dismay because it seems to go well beyond existing policy and procedures in singling out not only convicted or "known" homosexuals but suspected ones as well, of either sex. This seems to give considerable leeway to directors who way wish to get rid of people who give the slightest suspicion of homosexuality.

It puts judgment into the hands of people who have really no basis to make an assessment and who must perforce rely on the testimony of people who in some cases are likely to be untrustworthy. It puts unwarranted fear and concern into serving officers who do a conscientious and efficient job but who through no fault of their own deviate from the norm.

It is understandable that the Government is anxious to avoid employing security risks, but homosexuals are not the only vulnerable people - made so, incidentally, by an archaic law. It applies equally to those who indulge in any illicit relationship, including surreptitious extra-marital relations, though in today's social climate a relatively small minority would view that as a heinous offence, likely though it is to generate a certain amount of gossip.

It may be wondered whether the Government has ever made it a condition of employment that a suspected homosexual should not be engaged, or whether the prospective employee has to make a declaration to the effect that he has never indulged in homosexual activities. If not, it would seem that the Government is in breach of its contract of employment by invoking a policy that has not been explicitly stated at the time of engagement.

To what extent is its policy on homosexuals consistent with that of the private sector, or indeed the large body of subvented services, agencies, schools, universities, hospitals and the arts? A final question is why should the circular be treated as "confidential" – do not those concerned have a right to know about their future in the civil service? Little wonder it was leaked to the media.

Ming Pao Daily, 16.7.1980

(Translation of Ming Pao Daily News editorial, July 14, 1980)

HOMOSEXUALITY BETWEEN ADULTS SHOULDN'T BE AN OFFENCE

Homosexuality between adults by mutual consent has always not been treated as against the law in the Chinese society. And this is in line with the principle of law. The law serves to safeguard a nation's security, the public interests of a society and sees to it that the rights and freedoms of individuals are not violated by others. The law does not intend to interfere with private affairs provided the conducting of these affairs do not infringe the rights of others. Homosexuality by mutual consent between adults does not constitute a violation against the security of a nation public interests of a society or the rights or freedoms of other individuals. It is hard to visualize that laws should have been made in many countries in the West prohibiting homosexuality between adults by mutual consent. The prohibition constitutes an infringement of individual freedom and goes against the Western concept of showing respect to individual rights.

Examples of homosexuality abounded in China's history. While homosexuality is not regarded as a good thing neither is it treated as an abominable crime. Emperor Wen Ti of Han (179-143 B.C.) was an unusually good emperor yet he had homosexual relations with Deng Tung, wellknown for his handsomeness and wealth. The Emperor authorized Deng to issue brass coins and Deng turned so rich that the word "Deng" was later taken as a symbol of wealth. The law of Qing (1644-1912) did not allow officials to visit a brothel, and the ban indirectly encouraged officials to have homosexual relations with males, especially those who sang in opera. A popular novel "Ping Hua Pao Jian" gives detailed accounts of love between men. Tien Chun-han, a chief character described in the novel, was in fact Pi Chiu-fan himself, who was minister of war, governor-general of Hunan and Guangdong and the compiler of a history book "Follow-up to Zhe Tse Tung". Others seem to taken the high official's behaviour for granted.

In the province of Quandong, homosexuality between females seems quite popular. Lesbianism is practised with such thoroughness that they make the vow of not to marry a man. It is known that many domestic servants of the older generation in Hong Kong are lesbians and the authorities have never had anyone of them prosecuted. Law should be equally applicable to both sexes, but in the case of homosexuality the law seem to be not in line with the principle of being fair to all.

Opposition to homosexuality between males in the West seems to stem from the Bible, in which it was said that a city where men were fond of having homosexual relations was set to fire by God. Jews in the old days were against homosexuality for reasons which might have something to do with their struggle for existence. Before the emergence of Christianity, homosexuality was not banned in the Roman Empire, where emperors, aristocrats and soldiers indulged in the act.

In Britain the law has been amended to make homosexuality by mutual consent not an offence. In Hong Kong it is often described as "legalizing homosexuality" which implies encouragement to the act. A better way to call it should be "homosexuality between adults is not an offence." Homosexuality does no harm to the society; it is at least far less harmful to the society than drug addiction is. In Hong Kong taking narcotics is not an offence as it is a personal act; possession of narcotics is an offence.

The Governor said last week that the law on homosexuality in Hong Kong should be amended to make it closer to the law in Britain. We believe the law should be amended to deprive unscrupulous persons of an opportunity to commit blackmail or acts of

nuisance. Sexual assault on a juvenile male will continue to be an offence, whether the other party agrees to it or not. It would be the same as molesting a young girl by a man. For the question involved is not whether personal freedom has been violated; it is for the purpose of protecting a defenceless person. It goes without saying that two males engaged in a homosexual act in a public place should be charged for disturbing public order.

The Star

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Law reform

WE suppose it is good news that the Law Reform Commission is paying special attention to the laws on homosexuality.

A special sub-committee chaired by Mr Justice Yang, the commissioner who is to probe the MacLennan affair, will gather evidence for the full commission to decide whether male "gays" should be freed from the criminal fringe.

The laws obviously need changing, for they are the kind of laws that create crime rather than prevent it.

How many respectable citizens have been exposed to blackmail, how many lives ruined, how many youngsters corrupted who perhaps would not have been corrupted had these laws not exposed them to the greed of gangsters?

And, whether he killed himself or was murdered, whether he was a homosexual or not, Inspector John MacLennan would surely still be alive but for our homosexual laws.

The Governor said last week he favoured the laws being brought into line with those in Britain, under which homosexuality between consenting adults is legal, but youths are protected from corruption.

This was his personal view, he said, and he would be guided by the Law Reform Commission's recommendations.

But one wonders what sort of job the Commission will do, for there are several aspects of it that do not inspire confidence, not least of which is that it is headed by the Attorney General, Mr John Griffiths.

Though Mr Griffiths says the public should trust him, and despite the Governor's description of him last week as "a brilliant lawyer", he has certainly won lasting fame for the way he has bungled the MacLennan affair.

The Commission itself was recently criticised in an editorial in the Hongkong Law Journal, which said it did not have wide enough powers, was not required to make its proposals public, and was "basically an advisory committee that could be abolished at the stroke of a pen".

"... There is a danger that it will be seen to be merely legitimating what are in effect Government reforms."

The editorial also doubted whether a part-time commission such as this would be able to accomplish much, and suggested appointing two full-time commissioners with their own research officers and secretarial staff.

Another doubtful aspect is that the homosexuality sub-committee is to recommend to the commission the best way of testing public opinion on the issue.

We are interested to see what they decide is a good method. The "public opinion" the Government takes account of usually has little in common with what Hongkong people really think.

PUBLIC APPEAL

I. THE FORM

PRESS RELEASE - JULY 1980

The Law Reform Commission announced today that its sub-committee considering the laws relating to homosexuality (under the chairmanship of Hon Mr Justice Yang) welcomes further representations from members of the public. Hon Mr Justice Yang emphasized that the role of the sub-committee is fact-finding rather than decision-making. To this end, the sub-committee has already researched a number of areas such as present law and practice and current attitudes in neighbouring Asian countries, incidence of homosexuality in Hong Kong as revealed by available statistical data, and psychological and sociological issues. In the furtherance of its work, the sub-committee thanks those members of the public who have already sent in written views, and appeals once more to anyone who has views which they wish to be considered to write to the Secretary, Law Reform Commission Sub-committee on Homosexuality, Attorney General's Chambers, Central Government Offices, 2nd Floor, Lower Albert Road, Hong Kong.

II. THE RESPONSES

EXTRACTS FROM LETTERS RECEIVED

THOSE AGAINST ANY CHANGE

- (1) From YIP Luk-sum, N.T. :

"Homosexuality should not be legalized

Homosexuality is obscene and is a kind of psychological abnormality."

- (2) From MAN Yuen-wan, Kowloon :

"As a Christian, I firmly believe that God still rules the society of mankind.

God will punish any society that goes astray. I am a member of this society. If something as "sinful" as homosexuality is given legal status, it will bring calamity to Hong Kong and eventually to me. Thus I am opposed to "legalising homosexuality" to the utmost extent."

- (3) From TANG Ho-yin :

"I sincerely hope that you would seriously consider dropping the issue of legalizing homosexuality in Hong Kong."

"I write again to stress that it is totally undesirable to legalize homosexuality which is entirely contrary to the customs and life style of the Chinese community in Hong Kong."

"A Call To Object Resolutely the Legalization of Homosexuality.

I think the proposed amendments should not be implemented."

"A few shameless crooks, regarding that the world is not chaotic enough, suggest that homosexuality should be legalized. This is something which goes against the Tao and reason."

"Legalization of homosexuality will be regarded as a grave insult to Chinese culture and tradition."

(4) From HUI Yeung-shing, President of Hong Kong & Kowloon Residents' Society :

"Our Society held an executive and supervisory committee meeting on the 18th inst. to discuss the legalization of homosexuality. Members of the Society object resolutely to it."

(5) From CHAU Joye, Executive Chairman of Kowloon Chamber of Commerce :

"Subject : Objection to Legalizing Homosexuality

Reasons : (A) It is against the view of the majority who respect our excellent traditional Chinese moral concepts.

(B) Once it is legalized, such an evil practice which is rare in our community will spread.

(C) Such an unhealthy concept, once legalized, will have bad effect on the thinking of our next generation and they will become demoralised."

"The legalization of homosexuality is contrary to the opinion of the vast majority.

Homosexuality should not be legalized in response to the depraved customs of other places and the wishes of a small minority.

If this unhealthy concept is legalized, it will have a profound effect on the thoughts of the younger generation, leading to degeneration of the people and defilement of Hong Kong."

(6) From Regina TONG :

"A vampire sucks blood from someone else who later becomes vampire as well.

Homosexuality is something as horrible as the above story but it is not a story at all.

I sincerely hope the Law Reform Commission will not legalise homosexuality."

(7) From General Association of Kowloon District Association :

"Homosexual activities must not be legalized.

Homosexual activities are dirty and condemnable. Legalization of such activities would bring a great insult to us.

Homosexuality may be very common in Britain, but it is definitely not common in Hong Kong. Even if it is, it is still wrong to legalize activities that are in clear breach of our morals."

(8) From three Christian Lawyers :

"We express our concern over the trend of separating law from morality.

We express our concern because when the law is allowed to drift farther and farther away from the moral standard that are laid down by our Lord, society as a whole will suffer.

Heterosexual relationship is the only normal relationship which we believe will work to the improvement of our family ties and to the benefit of society as a whole. It is time that Christians should voice out their disapproval on any intended refusal by the Government to enforce the moral principles which it is supposed to do on behalf of all members of the public. It may be the case that the sentence on homosexuals should be changed by reducing the penalty but it is definitely wrong to take out those offences relating to homosexuality, whether it be with the consent and whether it be in private or not. In the premises, we sincerely wish that the Law Reform Commission should consider the opinion of the public and not to follow the United Kingdom example by taking out such offences from the criminal codes."

(9) From POON Cheung, Chairman, Mongkok District Tai Kok Tsui Area Committee :

"Homosexuality is a vice.

After careful deliberation and consultation of public opinions, we are all of the opinion that homosexuality should not be legalized."

(10) From CHAN Cho-chak, Tung Koon, China :

"The proposal was immoral and degrading. The authorities must not be persuaded to legalise homosexuality or the majority people would find it quite intolerable."

THOSE IN FAVOUR OF SOME CHANGE

(11) From Perice :

"Psychologically I hate the females. Their coquettish ways are horrible. I like only males because males can communicate and understand each other easily. However, none of my friends knows that I am a "gay" because I have never shown it or have been ashamed to show it. I am afraid I

may lose my friends, lose all people. That is why I am looking forward to homosexuality being legalized."

(12) From YIP Ming-sum :

"Personally, I feel that homosexuality is tolerable so long as it is not performed in public. However, if it is seen by others then it is illegal."

(13) From A Female Homosexual :

"I am a female who is in support of legalizing female homosexuality.

In addition, I feel that male homosexuality is not as appropriate as female homosexuality. Apart from anything else, it looks awkward for males to walk hand in hand along the street and it slightly contradicts morality."

(14) From CHAN Hon-hung :

"I was born a homosexual. Since I became aware of myself, I have been very much interested in people of the same sex and showing no interest in the opposite sex - that has been my ego.

According to the laws of Hong Kong, "homosexuality is illegal". I cannot bear this kind of discrimination and it is hard to make people understand my inward pain.

My only wish is that the homosexuals in Hong Kong can have equal status with those who are not."

(15) From CHAU Hoi-ying :

"I am a female student at the age of sixteen.

Although I am not in favour of homosexuality, I have no objection to anyone having a homosexual inclination psychologically or physically. My viewpoints are entirely based on humanism and the spirit of a liberal country."

(16) From An Ordinary Citizen :

"As an ordinary citizen, I agree with H.E. the Governor that homosexuality is a social issue and that the existing legislation needs to be amended.

I also agree with the H.E. that legalization of homosexuality should be based on the principle of voluntary actions between two adults in private."

(17) From Anonymous :

"Laws are made to protect the rights and freedom of the people. Laws forbidding homosexual activities infringe upon the freedom of

the homosexuals but protect nobody because the activities of the homosexuals could do other people no harm. So, why don't we do away with those laws?

The moralists say that homosexuality deviates from Chinese national traits and characteristics. But do we really have to live in the way our ancestors did? The answer should obviously be "no" or we will still be living in the stone age. Our duty as descendants is to preserve what is worth preserving and not everything that has been passed down to us."

(18) From 164 Social Workers and Students :

"We are of the opinion that law should not interfere with people's private affairs. We should have freedom to enjoy ourselves.

We suggest that legalization of homosexuality should apply to people over the age of 21."

(19) From TAM Kwong-tou, Kowloon :

"The society is very unjust to prejudice against the homosexuals. It forces the homosexuals into forlornness, deprives them of love, describes them in very scornful terms as if they are grave sinners who deserve to live a sorrowful and lonely life. I therefore make this appeal to Government in the hope that H.E. the Governor and beloved Members of the Legislative Council would have sympathy on homosexuals and consider implementing reasonable measures to enable them to lead a happy life in society."

(20) From Tai Tung :

"I am always at a loss to understand why a homosexual person deserved such a punishment. I am not addicted to homosexuality, it is just a psychological and physical need which I cannot do without.

Homosexuality should be applied to both man and woman.

As human being is created by nature, all his behaviour and conduct are natural. Man can only explore, he cannot create. It is ridiculous to treat murder, contraception and abortion etc. as natural while homosexuality is taken as abnormal.

We cannot establish that homosexuality is a kind of illness."

(21) From An Undergraduate :

"I agree with law reform in Hong Kong on homosexuality law, and I support that homosexuality can become lawful."

(22) From A Homosexual :

"Although 99% of the Hong Kong population is Chinese, a lot of Chinese people have a tendency towards homosexuality. Even after homosexuality is legalised, their private life would not affect other people and it will not affect their working ability."

(23) From Mrs. Elsie Elliott, CBE :

"Surely the problem lies in moral attitudes, not the alleged criminal tendencies of homosexuals. The only way to deal with the matter is to cancel the law, and introduce a new law that ignores the moral question but takes strong measures against houses of prostitution for male or female minors."

(24) From A Non-Homosexual :

"Traditional conservative views, existing legal restrictions and various other causes have led the majority of the public to prejudice and misunderstand homosexuality. What is more annoying is that there are people who for their own interest, do their best to vilify homosexuals and turn them into ugly and queer things so as to gain the public's favour. However, they themselves only have half baked knowledge about homosexuality. Apart from lamenting their bad fortune, the poor victims can do nothing about this. On the other hand, the public becomes more biased against the homosexuals and dislikes them more."

(25) From Mo Meng U :

"I believe that no person, whether it be male or female is able to stifle or control, natural tendency, impulses and sexual preference.

I really think that the existing local law relating to homosexual acts by adult males should either be abolished or modified to bring it in line with the prevalent homosexual laws existing in advanced thinking countries, thereby allaying fear and apprehension and to uphold the code of human rights."

(26) From Anonymous :

"Homosexuality is also one aspect of human nature and even though homosexuals form just the minority of the community, the majority should not reject them and should not state that the existence of the minority is illegal.

'Homosexuality is immoral!'

This is ridiculous. Why is homosexuality immoral? What is the criteria for morality? Morality is not merely and not really the viewpoints of a Chinese moralist, a church leader or a ruler. What people considered to be extremely immoral a hundred years ago can be treated as ordinary.

Prohibition of homosexual activities brings only a psychological burden. The burden is a guilty feeling after masturbation. In the past, masturbation was strongly opposed to on the ground that it was harmful to health. But no matter how hard some people tried they still cannot do without masturbation. On the other hand, to have a guilty feeling is to be tortured psychologically and is harmful to health."

**SUMMARY OF THE LAWS IN HONG KONG RELATING
TO HOMOSEXUALITY**

1. "Abominable" Offences

The offences against the Person Ordinance (Cap. 212) provides penalties for what it describes as "abominable offences".

(i) Section 49 provides that any person who is convicted of buggery, committed either with mankind or with any animal, shall be guilty of an offence and shall be liable to a maximum penalty of imprisonment for life.

This offence may take place in private or in public. Buggery consists of anal intercourse by man with man or in the same manner by man with woman. Consent is irrelevant : both parties are equally guilty. It includes sexual intercourse in any manner by man or woman with an animal. Consent is irrelevant. In all cases, penetration is sufficient without proof of emission.

(ii) Section 50 prohibits any attempt to commit buggery, or any assault with intent to commit it, or any indecent assault upon any male. This offence is punishable by a maximum penalty of imprisonment for 10 years. The offender may be male or female and the offence may be committed in private or public.

(iii) Pursuant to Section 51, any male person who, in public or private, commits or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of an offence punishable by a maximum penalty of imprisonment for two years.

By its terms, this offence may be committed only by males, upon males. It is not restricted to public activity. Consent is irrelevant. In the course of the usual homosexual relationship between two men, almost all sexual contact between them is thus prohibited. Each would be equally guilty.

2. Children

Apart from the protection, in public and in private, afforded by a number of statutes generally, children under 14 are specifically protected from acts of gross indecency, or from incitement to perform such acts. The child's consent is no defence.



香港有关同性恋之法例简介

(一) 「鸡奸及兽奸」罪

侵害人身罪条例（香港法例第二一二章）对「鸡奸及兽奸」罪订定罚则。

(1) 该条例之第四十九条规定，人与同一性别之人性交为触犯鸡奸罪，人与兽性交为触犯兽奸罪，违者最高可被判终身监禁。

上述性交行为不论私下或公开进行，皆属违法。男人与男人或男人与女人以肛门交合为鸡奸。是否经双方同意并无关系，双方同属有罪，且罪行之轻重完全相同。凡人（不论男女）与兽性交，不论以何种方式进行，皆称为兽奸，是否经双方同意亦无关系。鸡奸罪或兽奸罪，只须进入，即可构成，无须证明曾射精。

(2) 条例第五十条禁止任何人士企图犯鸡奸或兽奸罪，或意图犯该等罪名而先进行殴打，或向男子非礼。违犯该条款者最高可遭监禁十年。凡有鸡奸或兽奸行为者，不论男女，亦不论系私下或公开进行，皆属违法。

(3) 根据条例第五十一条之规定，任何男人，不论私下或公开，与、或参与、或介绍、或企图介绍任何男人与另一男人进行任何猥亵行为，即属违法，最高可遭监禁两年。

根据其条文，该条款所指之罪行，乃男人与男人间所犯之罪行，且不限于公开进行始属犯罪，是否双方同意亦无关系。一般而言，两男相恋而进行之一切性接触均为法律所不容，两者所犯罪项无轻重之分。

(二) 儿童

法例中载有若干一般性之法定条款保护儿童，使不致在该方面受到私下或公开之骚扰，又特别禁止对十四岁以下儿童进行猥亵行为或诱使该等儿童进行该等行为。获得儿童本身同意不能作为辩护理由。

FORM OF QUESTIONNAIRE TO BUSINESS HOUSES

**THE LAW REFORM
COMMISSION OF HONG KONG**
法律改革委员会
政府合署（中座）



**ATTORNEYGENERAL'S
CHAMBERS
CENTRAL GOVERNMENT
OFFICES,
(MAIN WING),
HONG KONG.**

Dear Sirs,

Laws on Homosexuality

Under powers granted by the Governor in Council the Chief Justice and the Attorney General have jointly referred to the Law Reform Commission for consideration the following question :-

"Should the present laws governing homosexual conduct in Hong Kong be changed and, if so, in what way?"

In this connection, the Commission seeks the cooperation of local business undertakings with a view to ascertaining the climate of opinion touching on the above question.

I am therefore instructed to forward to you the attached questionnaire and to invite you by your appropriate officer to complete the same. Naturally, your reply will be treated with complete confidentiality.

Attached to this letter for your information is a brief summary of the current law in Hong Kong relating to homosexuality.

Kindly return the completed questionnaire to the Secretary, Law Reform Commission, c/o Attorney General's Chambers, Central Government Offices, (Main Wing), Hong Kong, if possible within three weeks.

Yours sincerely,

(A.S. Hodge)
Secretary



QUESTIONNAIRE

1. Please state briefly the nature of the business conducted by your company or firm (e.g. banking, trading, etc.)
.....
.....
.....
2. The total number of persons employed by the company or firm is, comprising males and females.
3. Does your company or firm require applicants for jobs to disclose :-
 - (1) Whether they have been previously convicted of any criminal offence? Yes/No*
 - (2) Whether they are homosexuals? Yes/No*
 - (3) If the answer to (2) is 'Yes', whether :
 - (a) this applies equally to males and females? Yes/No*
 - (b) this applies only to males? Yes/No*
4. If it is known or believed by your company or firm that an otherwise suitable applicant for a job is a homosexual, does this make it likely that :-
 - (1) The application will be rejected? Yes/No*
 - (2) The application will be rejected only if an otherwise equally suitable or a more suitable applicant is available? Yes/No*
 - (3) Such knowledge will be regarded as relevant to hiring the applicant? Yes/No*
 - (4) The applicant will only be offered a job if such job is at a low level in your undertaking's structure? Yes/No*
 - (5) The applicant would be subject to additional or special scrutiny before being hired? Yes/No*
5. If your company or firm has a policy on hiring homosexuals which is not reflected in question 4 above, please state such policy briefly :-
.....
.....
.....
.....

6. (1) Have there been any actual instances known to you when an otherwise suitable applicant has been refused employment by the company or firm because he or she is known or believed to be a homosexual? Yes/No*
- (2) If 'Yes' please state approximately how many instances
- (3) And please state how many instances involving :-
 males females

7. If an otherwise suitable employee of your company or firm is discovered or believed to be a homosexual is this likely :-
- (1) To result in such employment being terminated by the company or firm? Yes/No*
- (2) To effect adversely the employee's prospects of promotion or advancement? Yes/No*
- (3) To have some other effect on the employment of such employee? If so, briefly describe such effects :

8. Have there been any actual instances when an otherwise suitable employee of your company or firm has, because of being a homosexual,
- (1) had his or her employment terminated? Yes/No*
- (2) had his or her promotion or advancement refused or delayed? Yes/No*

9. If 'Yes' to 8(1) or (2) above, please state briefly :-
- (1) Approximately how many instances?
- (2) And how many instances involving males and females :-
 males
 females

10. If your company or firm has any policy or policies regarding homosexuals not reflected in this questionnaire, please state such policy or policies :-

11. If you wish to clarify any response given, please do so below :-

12. Does your company or firm wish to make any further comments to the Commission (whether orally or in writing) on the reform of the law on homosexuality? Yes/No*

13. (a) If the law in Hong Kong was changed so as to allow homosexual acts in private between consenting adults would any of the answers you have given above (relating to your company's/firm's present policy) be different? Yes/No*

(b) If so, please specify which answers would be different, and why :-
.....
.....

14. The position or title of the person completing this questionnaire is as follows (e.g. director, partner, personnel management officer, etc.) :-
.....
.....

*Please delete as appropriate.

Please return completed questionnaire to :-

Secretary
Law Reform Commission
c/o Attorney General's Chambers
Central Government Offices
(Main Wing)
Hong Kong

THE LAW REFORM
COMMISSION OF HONG KONG
法律改革委员会
政府合署（中座）



ATTORNEYGENERAL'S
CHAMBERS
CENTRAL GOVERNMENT
OFFICES,
(MAIN WING),
HONG KONG.

LRC/SERV/PERS 1

有關同性戀之法例

敬啟者：

會考慮：

有鑒于首席按察司已聯同律政司根据总督会同行政局授予之权力，将下列问题交本委员会考虑：

香港有关同性戀行为之现行法例，是否有修改之需要？若有，则应如何修改？

因此，本委员会亟望获得本港各大企业与商号之协助，俾能知悉一般市民对该问题之意见。兹附上问卷乙份，希 贵宝号选定适当人员，尽量于三周内填妥掷回，不胜感激。所填一切资料，本委员会自当绝对保密。

填妥之问卷，请寄香港中区政府合署律政司署转法律改革委员会秘书收。有劳之处，谨此致谢。此致

法律改革委员会秘书 贺德治

一九八 年 月 日



问卷

1. 请简述 贵公司／宝号所经营业务之性质（如银行业、贸易等）。
.....
.....
.....
2. 贵公司／宝号共有雇员.....人，男性占.....人，女性占.....人。
3. 贵公司／宝号有否规定前来求职者披露：
 - (1) 曾否在任何刑事案中遭定罪？ 有规定／无规定*
 - (2) 是否同性恋者？ 有规定／无规定*
 - (3) 倘(2)之答案为「有规定」，则——
 - (甲) 是否对男女求职者皆有同样之规定？ 是／否*
 - (乙) 是否仅对男性求职者有此规定？ 是／否*
4. 倘 贵公司／宝号遇有一各方面条件皆合适之求职者，惟知悉或认为该人系同性恋者， 贵公司／宝号会否——
 - (1) 因此而拒绝雇用该人？ 会／不会*
 - (2) 仅在另有同样合适或更合适之人选时方拒绝雇用该人？ 会／不会*
 - (3) 认为知悉求职者是否同性恋者系对雇用该人与否有关？ 会／不会*
 - (4) 仅在所求职位系属低微者方予雇用？ 会／不会*
 - (5) 对该求职者另行彻查或特别彻查方予雇用？ 会／不会*
5. 倘 贵公司／宝号有雇用同性恋者之政策，而该政策未有在上面第4栏显示，请将之简述于下：
.....
.....
.....
.....

6. (1) 就 台端所知， 贵公司／宝号实际上曾否因知悉或认为某前来求职者患有同性恋，故虽则该人在其他各方面皆符合雇用条件，亦未予录用？ 曾／不曾*
- (2) 倘(1)之答案为「曾」，则请在此注明约若干次。次
- (3) 并注明男女性各占若干次。 男性：次
女性：次
7. 倘 贵公司／宝号雇有一位合适之雇员，惟其后发现或认为该人系同性恋者， 贵公司／宝号会否因此而——
- (1) 将之解雇？ 会／不会*
- (2) 削减或取消该雇员之晋升或发展机会？ 会／不会*
- (3) 对该雇员之雇用采取其他行动？若会，请将有关行动简述于下：
.....
.....
.....
8. 贵公司／宝号实际上曾否将各方面条件合适但患有同性恋之雇员——
- (1) 辞退？ 曾／不曾*
- (2) 之晋升或发展机会取消或延迟？ 曾／不曾*
9. 倘上面 8(1)或 8(2)之答案为「曾」，则请简述：
- (1) 约若干次？次
- (2) 男女性雇员各占若干次？ 男性：次
女性：次
10. 倘 贵公司／宝号有任何关于同性恋者之政策，而该／该等政策未有在上文显示，请将之述明于下：
.....
.....
.....
.....
11. 倘欲对上述任何答案加以阐释，请用下列空位：
.....
.....
.....
.....
12. 贵公司／宝号对有关同性恋法例之改革，有否其他意见欲向法律改革委员会发表（不论以口头或书面方式）？ 有／无*

13. (a) 倘香港修改其法例，容许互相同意之成年人私下进行同性恋行为，上文有关贵公司／宝号之现行政策之答案会否因而有所改变？ 会／不会*

(b) 倘答案为「会」，则请说明何者会有所改变及理由何在？

.....
.....

14. 填写本问卷者之职位或衔头为（如董事、股东、人事管理主任等）：

.....
.....

*请将不适用者删去。

填妥之问卷请寄香港中区政府合署法律改革委员会秘书收。

ANALYSIS OF RESULTS
ANSWERS TO KEY QUESTIONS IN
L.R.C. QUESTIONNAIRE TO COMPANIES/FIRMS

Notes :

1. 30% of companies/firms replied to questionnaire
2. Hence figures below are no more than indicators
3. All figures are percentages (%)
4. It is interesting to note that size of company/ firm does not affect employment policy

		<u>Firms employing under 50 persons</u>	<u>Firms employing 50 - 499 persons</u>	<u>Firms employing over 500 persons</u>	<u>Total (i.e. all firms)</u>		
Q. 3(2)	Does your company or firm require applicants for jobs to disclose whether they are homosexuals?	Yes	7½%	12½%	2½%	Yes	5%
		No	92½%	87½%	97½%	No	95%
Q. 4(1)	If it is known or believed by your company/firm that an otherwise suitable applicant for a job is a homosexual does this make it likely that the application will be rejected?	Yes	42½%	42%	36%	Yes	41%
		No	45%	54%	53%	No	52%
		No comment	12½%	4%	11%	No comment	7%
Q. 7	If an otherwise suitable employee of your company/firm is discovered or believed to be homosexual, is this likely :						

		<u>Firms employing under 50 persons</u>		<u>Firms</u> <u>employing 50</u> <u>- 499 persons</u>	<u>Firms employing</u> <u>over 500 persons</u>	<u>Total</u> <u>(i.e. all firms)</u>	
(1)	to result in such employment being terminated by the company / firm?	Yes	12%	26%	9%	Yes	19%
		No	72%	65%	66%	No	67%
		No comment	16%	9%	25%	No comment	14%
(2)	to affect adversely the employee's prospects of promotion or advancement?	Yes	35%	27%	16%	Yes	26%
		No	55%	55%	59%	No	56%
		No comment	10%	18%	25%	No comment	18%
Q. 13	If the law in Hong Kong was changed so as to allow homosexual acts in private between consenting adults, would any of the answers you have given (relating to your company's/firm's present policy) be different?	Yes	5%	4%	2%	Yes	4%
		No	92½%	94%	87%	No	92%
		No comment	2½%	2%	11%	No comment	4%

SPECIFIC ANSWERS FROM COMPANIES/FIRMS

Q.5 : If your company or firm has a policy on hiring homosexuals which is not reflected in question 4 above, please state such policy briefly :

A. Firms with under 50 employees

- (1) Our company certainly would not employ anyone with homosexual tendencies.
- (2) Our firm would not employ a person who is overly effeminate.
- (3) The company would not interfere with the private life of the employee but certainly would not allow the staff to commit any immoral or indecent acts in public.
- (4) Our company would not knowingly employ an homosexual.

B. Firms with 50 - 499 employees

- (1) Sexual habits of employees in their private lives is not a consideration provided it does not interfere with their work.
- (2) Any overt homosexual would not be employed to deal with the travelling public.
- (3) Staff with homosexual tendency would be checked against so as not to give rise to any offence.
- (4) The homosexual will not be allowed to solicit with the customers, guests or clients, otherwise not very relevant.

C. Firms with over 500 employees

- (1) The company would not knowingly employ a homosexual. However, a homosexual employee would not be discharged unless such homosexual activities affect the execution of his duties.
- (2) The company is quite reluctant to employ expatriate males because there is likelihood that some of them are homosexuals and the legal as well as social situation in Hong Kong being different from their country of origin would cause embarrassment and difficulties both to them and to the company.
- (3) Homosexuals will not be employed.

Q.7(c): If an otherwise suitable employee of your company or firm is discovered or believed to be a homosexual is this likely to have some other effect on the employment of such employee? If so, briefly describe such effects :

A. Firms with under 50 employees

- (1) It would certainly affect his employment and promotion if he is found guilty in a court of law.
- (2) Special attention will be paid to him/her to prevent him/her to have an affair with the other employees.
- (3) The company is concerned only if this affects the quality of his work.
- (4) Termination of service solely depends on performance.

B. Firms with 50 - 499 employees

- (1) Disciplinary action would be taken against the homosexual if he/she affects the morale of the other employees.
- (2) If he is convicted and imprisoned, he would obviously lose his job.
- (3) Such employee shall be asked to resign.
- (4) If discovered a homosexual, he would be in an embarrassing situation and would have a difficult relation with his colleagues.
- (5) Any unusual behaviour of employee would affect his employment.

C. Firms with over 500 employees

- (1) He shall be under management close watch.
- (2) His transfer to other departments and hotels will be restricted.
- (3) He will be kept away from customers.
- (4) Any action on him would depend on whether his personal behaviour would adversely affect his colleagues.
- (5) There would be no action if his personal behaviour does not affect the company's reputation and image.
- (6) There is no other effect unless his behaviour affects the other employees; then disciplinary action would be taken.
- (7) Homosexuals are subject to dismissal.

Q.10 : If your company or firm has any policy or policies regarding homosexuals not reflected in this questionnaire, please state such policy or policies :

A. Firms with under 50 employees

- (1) Our company strongly objects to the legalization of homosexuality and strongly forbids the occurrence of homosexual acts amongst the employees.
- (2) The company would not interfere unless something unusual occurs and would guard against homosexuals trying to employ their friends.

- (3) Homosexuality is of no concern unless this affects his performance in the execution of his work assigned to him.
- (4) The present law on homosexuality is harsh and unrealistic. A person with homosexual inclination should be treated with sympathy and understanding.
- (5) Such behaviour should not be treated as a crime, but rather a moral eccentricity.
- (6) Our firm would not question the private life of the staff unless it affects the morale and the work in the office.
- (7) If found homosexual, employment will be terminated with one month's notice.

B. Firms with 50 - 499 employees

- (1) Employment will be terminated if the homosexuals make advances, molest or trouble another.
- (2) Sexual association should not be taken into account. The law in Hong Kong on this subject is out-of-date.
- (3) The personal life style of members of staff are of no concern so long as these do not affect their work.
- (4) Homosexuality is considered a crime and a shame. Stricter law should be imposed.
- (5) If the tendency has an adverse effect on the staff relationship, then it is possible that the company would terminate his employment.
- (6) Our company would not take homosexuals, but they could be tolerated so long as their activities do not interfere with the performance of their job.
- (7) The company would avoid to employ such persons.
- (8) Homosexuality is a grave breach of the Chinese customs and moral standard and should be convicted in court.
- (9) They should be paid off rightaway.
- (10) There should be no discrimination whatsoever.
- (11) Such behaviour is irrelevant provided that conduct of the person is irreproachable and does not cause embarrassment or any disturbance within the company.
- (12) In the opinion of most Chinese, homosexuality is disgusting and grossly immoral.
- (13) The effect on employment depends on the reaction on the other staff.
- (14) Hong Kong law is now out of date and should be amended to come into line with that of U.K. so that it is fair and practical to the homosexuals.

- (15) although any abnormal behaviour may be described as a disease which can be explained in social, psychological and clinical terms, there must exist strong constraints and effective control on behaviour which is anti-social or contrary to public morality.

We agree, therefore, that the existing laws should stay with some modifications only where the present provision and punishment are too severe. Homosexual conduct takes place between two consenting adults in private should not be regarded as an offence. In any case, detection will be almost impossible unless there is complication involving a third party. The penalty of life imprisonment as currently provided in section 49 of Cap. 212 is far too severe and leads to subsequent blackmail by one party to another who has more to lose. Buggery or attempted buggery using force, whether in private or in public, should be treated similarly as rape or attempted rape. Children must continue to be protected by law from any act of gross indecency.

- (16) In as much as this is an area where views are expressed on whether or not a change in the law is desirable we are of a negative view. The undesirable results of changing the law can be clearly seen in a number of countries and go far beyond the actual offence itself.

C. Firms with over 500 employees

- (1) Homosexuals should be treated fairly along with the other employees. However, if they have been accused of a homosexual act against a junior, then the company would not employ them.
- (2) The individual concerned, the person's position within the company and the circumstances leading to that discovery or belief would have a bearing on that person's continued employment and/or prospects.
- (3) If only 'believed' to be, no action. If 'discovered' to be, in circumstances likely to bring the company into disrepute, employment would be terminated.
- (4) A feminine 'male' would not be appointed.
- (5) He will be immediately dismissed if found committing immoral conduct, indecency, touting or soliciting for purpose of prostitution.
- (6) Immediate dismissal if such behaviour is found amongst the staff.
- (7) The company policy is not to engage anyone who is known or gives the company an impression that he is or may be a homosexual.
- (8) Any one with homosexual tendency would be dismissed if his behaviour would affect the other employees.

THE LAW REFORM
COMMISSION OF HONG
KONG
法律改革委员会
政府合署（中座）



ATTORNEY GENERAL'S
CHAMBERS
CENTRAL GOVERNMENT
OFFICES,
(MAIN WING),
HONG KONG.

FORM OF LETTER TO ORGANISATIONS

Dear Sirs,

Laws on Homosexuality

Under powers granted by the Governor in Council, the Chief Justice and the Attorney General have jointly referred to the Law Reform Commission for consideration the following question :-

Should the present laws governing homosexual conduct in Hong Kong be changed and, if so, in what way?

A sub-committee has been set up to perform certain specific tasks to assist the Full Commission. Amongst these is the need to invite the views of interested organisations in Hong Kong on this question. Attached to this letter is a brief summary of the current law in Hong Kong relating to homosexuality and we should be grateful if you would give us the views of your organisation on the question of changing the law. It would be useful for the committee if your reply could indicate briefly the reasoning behind the views that your organisation takes on this question. Naturally, any reply you may care to give will be treated with complete confidentiality.

We should appreciate a reply to this letter if possible within three weeks. Please send your letter to

The Secretary,
Law Reform Commission,
c/o Attorney General's Chambers
Central Government Offices (Main Wing),
Hong Kong.

We await your views on the above with interest.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A.S. Hodge'.

(A.S. Hodge)
Secretary

THE LAW REFORM
COMMISSION OF HONG KONG
法律改革委员会
政府合署（中座）



ATTORNEYGENERAL'S
CHAMBERS
CENTRAL GOVERNMENT
OFFICES,
(MAIN WING),
HONG KONG.

LRC/SERV/PERS 2

有關同性戀之法例

敬啟者：

考慮：

有鑒于首席按察司已聯同律政司根据总督会同行政局授予之权力，将下列问题交本委员会考虑：

香港有关同性戀行为之现行法例，是否有修改之需要？若有，则应如何修改？

本委员会乃成立一小组委员会，专责进行若干项指定之任务，其中包括向本港各大组织征求有关该问题之意见。兹附上有關同性戀之本港现行法例简介乙份，希 贵组织阅后尽量于三周内来函通知本人该等法例是否有修改之需要，并请简述原因何在，不胜感激。来函所述一切，本会自当严守秘密。有劳之处，谨此致谢。

来函请寄：香港中区政府合署中座律政司署转法律改革委员会秘书收。

此致

法律改革委员会秘书

贺德治

一九八一年 月 日

LIST OF ORGANIZATIONS CONSULTED DIRECTLY

(Those who responded are marked *)

Anglican Church Diocese of H.K.*	Family Planning Association of Hong Kong*
Association of Expatriate Civil Servants*	Foreign Correspondents' Club
Association of Lecturers at College of Education	Heung Yee Kuk
Baptist College Students' Union	Hong Kong Association of University Women
Baptist Convention of Hong Kong	H.K. Bar Association*
Caritas Hong Kong*	Hong Kong British Forces
Chinese Civil Servants' Association	H.K. Buddhist Association
Chinese Christian Church	Hong Kong Chinese Women's Club*
The Chinese General Chamber of Commerce	H.K. Christian Industrial Committee
Chinese Manufacturers Association	H.K. Council of Social Service
Chinese University of Hong Kong (CU) Students Union	Hong Kong Council of Women
CU Teachers' Association	H.K. Educational Bodies Joint Secretaries
CU Vice Chancellor	Hong Kong Federation of Catholic Students
Chu Hai College Chinese Literature & History Students' Union	Hong Kong Federation of Industries
Chung Sing Benevolent Society	Hong Kong Federation of Students
Commerical Radio Hong Kong	Hong Kong Fire Brigade Staff Union
Education Action Group	Hong Kong Fire Services General Staff's Union
Educators' Social Action Council	Hong Kong Fire Services Dept. Staff General's Association

Hong Kong Fire Services Dept., Ambulance Union	Lions Clubs International District 303
Hong Kong General Chamber of Commerce	The Lok Sin Tong Benevolent Society
The Hong Kong Girl Guides Association	Methodist Church Hong Kong
Hong Kong Junior Chamber of Commerce	Newspaper Society*
Hong Kong & Kowloon Joint Kaifong Research Council	Po Leung Kuk
Hong Kong & Kowloon Kaifong Association	Radio Television Hong Kong (RTHK)
Hong Kong Law Society*	Rediffusion Television (RTV)
Hong Kong Medical Council*	Rotary International District 345
Hong Kong Observers	Royal Hong Kong Police Force (RHKPF) Superintendent Association
Hong Kong Polytechnic Staff Association*	RHKPF Local Inspectors Associations
Hong Kong Polytechnic Students' Union	RHKPF Expatriate Inspectors Association*
Hong Kong Professional Teachers' Union	RHKPF Junior Police Officers Association
Hong Kong Social Workers' General Union	Senior Non-Expatriate Officers' Association
Hong Kong Tourist Association*	Scout Association of Hong Kong*
Hong Kong University (HKU) Students' Union	Shue Yan College
HKU Teachers' Association*	Society for Community Organisation
HKU Vice Chancellor	Television Broadcasts Limited (HK-TVB)
Incorporated Trustees of the Islamic Community Fund of H.K.	Tung Wah Group of Hospitals*
Journalists' Association	Urban Council
Kowloon General Chamber of Commerce	Volunteer Workers' Association Young
Lingnan College Students' Union	Workers' Confederation
	Y's Men International, H.K.
	Zonta International

ANALYSIS OF RESULTS

Resume of Replies to Law Reform Commission's
Letter to Organisations Requesting Views

"Should the present laws governing homosexual
conduct in Hong Kong be changed and if so, in what way?"

"The Bar Association has no corporate view on this matter."

(Martin C.M. Lee, Esq., QC
Chairman, The Hong Kong Bar Association)

"This question lies outside the terms of reference of the Association."

(A.F. Giles, Esq.,
Chairman, Expatriate Inspectors' Association,
Royal H.K. Police)

"The majority of the staff considered that the existing laws and penalties on homosexuality should remain unchanged, whilst the minority felt that the present law governing homosexual conduct should be changed in a way that adult committing the act in private and with mutual consent should not be construed as an offence."

(Correctional Services Department)

"It is not appropriate for the council of the Law Society to give any comments on the matter."

(J.R. Wimbush, Esq.,
President, The Law Society
of Hong Kong)

"The sexual activities of consenting adults in private is an area of personal ethical choice. In this area, it is inappropriate to require the law to enforce community mores, individual moral idea or socially approved behaviour. To attempt to do so brings the law itself into contempt. The law governing homosexual conduct (in Hong Kong) should be changed along the lines indicated above without discrimination between male and female in the use of the word 'homosexual'."

(Dr Peter J. Preston
via Secretary, Supplementary Medical
Professions Council)

"As I understand it, criminal laws are there to protect society and any relaxation of these laws would put society at greater risk and so I see no reason to change them now."

While by no means condoning the offence of homosexuality I believe that the idea of changing the relevant laws may be more of an academic exercise than of much practical assistance to the people of Hong Kong."

(Rev. Sr. M. Aquinas
Ruttonjee Sanatorium)

"I feel that the law on homosexuality needs to be changed.

The term 'abominable offence' seems best restricted to public activity of forcible nature, and not to behaviour carried out in private between consenting adults. In this way minors are still protected."

(Mrs Peggy Lam
of The Family Planning Association of Hong
Kong)

N.B. The comments made by Mrs Lam are her own personal view and not that of the Association.

"I do not agree that there should be laxity on the law relating to homosexuality in Hong Kong. The fact that homosexuality is legalised tends to lead to corruption of young boys on a large scale.

From the medical point of view, it is an "abominable" practice. Homosexuality is known to cause 50% viral hepatitis B and a large number of Kaposi's sarcoma in California. Other infections like syphilis, gonorrhoea and amebiasis, etc. are also prevalent. If homosexuality is allowed in Hong Kong, there would be a degeneration of morals in the population resulting in a propagation of these diseases."

(Professor G.B. Ong,
Department of Surgery, Hong Kong University
via Secretary, Medical Council, H.K.)

"Nearly all Chinese people spurn homosexual conduct. They consider it a disreputable and sinful act and even feel disgusted at discussing it. As a leading welfare institution administered by Chinese people and for the Chinese people, we strongly object the toleration of homosexual conduct in Hong Kong, where about 98% of the residents are Chinese.

Furthermore, we are of the opinion that the existing legislation relating to homosexuality is appropriate and should not be relaxed."

(LUI Che-woo Esq.,
Chairman, Board of Directors,
Tung Wah Group of Hospitals)

"The views that follow are my personal views

I think that the present laws relating to acts between adults in private are unnecessarily harsh I would suggest that attempts to legislate on moral issues are generally doomed to failure."

"On the other hand, as far as children are concerned, I think that the present law is adequate and can see no good reason to make any changes "

(W.H.P. Lewis, Esq., Ph D., MRC Pat, Head,
Institute of Medical & Health Care, Hong Kong
Polytechnic)

"I wish to submit the following comments :-

- (1) There is need for the present laws to be changed.
- (2) "Abominable" is not an appropriate word to describe homosexuality.
- (3) Imprison of life for a person convicted of buggery is too severe, especially when taken place in private (Section 49).
- (4) Imprisonment for 10 years is also too severe for attempt to commit buggery (Section 50).
- (5) If Section 51 were to stand, it should not be limited to males upon males and not females upon females.
- (6) Protection of children under 14 years from gross indecency is appropriate."

(Dr Henry F.K. Li, OBE, O.ST. J.)

**"THE HONG KONG MEDICAL ASSOCIATION REPORT
OF AD HOC COMMITTEE ON PRESENT LAW
RELATING TO HOMOSEXUAL CONDUCT**

Changes Recommended

- (i) The word "abominable" should be dropped as it serves no useful purpose and only reflects a prejudicial attitude.
- (ii) That homosexual acts occurring in private between adults with mutual consent should not be punishable by law. The word "adult" should be defined as a person aged 21 or above. It is felt that the words "private" and "consent" should be clearly defined in the law so that there will be no abuse. The representative of the British Medical Association (Hong Kong Branch) indicated that as far as Council of British Medical Association (Hong Kong Branch) is concerned, buggery, as distinct from other homosexual acts should still remain as punishable by law even if it occurs in private between adults with mutual consent.
- (iii) The punishment for buggery without consent should be the same as punishment for rape.
- (iv) The punishment for indecent assault in homosexual acts should be the same as the punishment for indecent assault on females.

These recommendations on the change of the present law on homosexual conduct should in no way be taken to imply that either the Hong Kong Medical Association or the British Medical Association (Hong Kong Branch) condones homosexual activities."

(Dr K.H. Lee
Hon Secretary, The Hong Kong
Medical Association)

"Personal Opinion :

The laws are too strict and that they should be changed as soon as possible.

SECTION 49 Imprisonment for life is too heavy a sentence for such an offence. Consenting adults committing the act in the privacy of their own home should not come under this law.

SECTION 50 If the attempted act is between two consenting adults in private, it should not be considered an offence.

SECTION 51 This section of the law should be altered to allow relationship between homosexual males in private but not in public.

CHILDREN Care should be taken to maintain the protection of children and young persons who may be enticed or persuaded into committing such acts.

The age limit for protection should be raised from 14 to 18 years of age."

(sd.) Elsie White (Mrs)
Queen Elizabeth Hospital

"On behalf of this hospital I don't think we should change the present laws governing homosexual conduct in Hong Kong."

(sd.) Barbara Choi M.P.H.
Vice President, Hong Kong
Adventist Hospital

"The majority of professional social work staff saw the issue as a moral one rather than a criminal one, if only two willing parties are involved. However, although it should not be a criminal act, it should not be encouraged as homosexuality has many social repercussions especially if one or both of the parties are married."

(Mrs Grace Wan,
Director, St. James Settlement)

"We are of the opinion that the criminal law on homosexual activity should deal only with those cases where it leads to :

- (a) corruption of youth
- (b) Offences against public decency
- (c) exploitation for the purpose of gain

We therefore suggest that sexual activity performed in private between consenting adult homosexuals or heterosexuals should not be a criminal offence.

It would be undesirable if the suggested changes were to give the impression that homosexual conduct is an acceptable mode of life in the public mind, against which there are no social or moral objections. In referring to it, the term depenalisation would seem to be preferable to legalisation or even decriminalisation."

(M.C. Ma, Esq.,
Administrative Secretary,
Caritas - Hong Kong)

"Comments made in relation to the above include

- the matter is very personal and difficult to justify from the legal point of view if only adults involved.
- protection of children from sexual abuse is important.
- this is a personal matter and as long as it does not disturb other people then it's quite alright.
- 'sexual perversion' hard to define and so long as the adults involved consent to their own behaviour, it should not require legislation.
- concern that people could be wrongly accused of homosexuality (reference to government departmental circular). In addition, it is quite usual for young people to have a 'homosexual phase' and while this may not lead to sexual activity, this fact of accepted normal development needs to be considered in relation to legislation.

The above is not the official view of this agency."

(Thomas J. Mulvey, Esq.,
Director, Hong Kong Family
Welfare Society)

"The present laws governing homosexual conduct in Hong Kong should be upheld."

(Mrs Marina C.H. Ho,
Chairman, The H.K. Chinese
Women's Club)

"The Scout Association of Hong Kong considers that the present laws governing homosexual conduct in Hong Kong should not be relaxed in any manner.

Indeed, the Association would prefer to see all young people under 16 (and not under 14) specifically protected from acts of gross indecency or from incitement to perform such acts."

(H.C. Ma, Esq.,
Chief Commissioner, The Scout
Association of Hong Kong)

"1. I am writing in response to your Circular No. 1/82.

I take it the purpose of any law is to protect society or the individual in society.

It follows that there is no place in the law for a purely moral issue, i.e. one where the question of protection of anybody does not arise.

Indeed, if resources are expended in prosecuting a law which is a purely moral issue then the result could actually be counter productive, by occupying resources that could otherwise have been used for prosecuting laws that do protect people. In other words, it is a waste of tax payers' money.

This is especially true if the moral issue, by being a subject of the law, gives rise to other crimes such as blackmail or corruption, that would not otherwise exist.

My opinion is therefore that all laws or parts of laws which are purely moral issues should be replaced and the issues left to the moralists.

I presume confidentiality will be respected within the AECS.

Yours faithfully,

2. I refer to your circular to AECS members requesting views on the laws of homosexuality for submission to the Law Reform Commission.

I find the law as it stands in Hong Kong at the moment abominable. The sooner the law is changed in line with that in most civilised western countries whereby free association between consenting adults in private is no offence whatsoever, the better.

I also feel that AECS should raise the issue of the ill starred 'leaked' circular on homosexuals in government employment. A strong point should be made that this goes beyond the laws, in request names of known female homosexuals, the association of which never has been a crime. The fact that with enlightened law, there would be no security risk whatsoever, should be emphasised. It would appear from your attached summary of the relevant law that the age of consent in Hong Kong is 14! I find it amazing the society here should be outraged at homosexuality but find this acceptable.

I hope my views may be of interest.

Yours faithfully,

3. With reference to your circular No. 1/82, I consider that the laws of Hong Kong should be amended to reflect those of the United Kingdom in so far as homosexual behaviour taking place between consenting adults in private should not be treated as an offence.

Yours faithfully,

4. I agree with the above letter. (No. 3)

5.

A. 1) History is full of h/s activity in both male and female.

2) Many such people though initially repulsed, find themselves of the type.

- 3) There is no evidence or even tendency that child molestation by h/s occur more frequently than adult males with children of opposite sex. Therefore, in my view :
- B.
- 1) These unfortunate people should not be further humiliated, and h/s relations between consenting adults IN PRIVATE should not be illegal.
 - 2) The efforts of 'Gay' persons to make h/s socially acceptable should be strongly resisted and suitably strong fines and sentences maintained for any 'public' offences."

(Members of Association of
Expatriate Civil Servants)

"The general consensus (among the staff of the company) is that homosexuality practised between consenting adults should not be treated as a crime."

(W.K. Sulke, Esq., OBE, JP)

"I abhor all unnatural sex acts and would not care to associate with any habitual homosexual person. On the other hand, I cannot view such persons as criminals so long as their "offensive" acts are conducted in private and with consent and do not involve any minor."

(B.J. Fludder, JP (Q'ld),
Touche Ross & Co.
Chartered Accountants
Certified Public Accountants)

"We believe that morality is the foundation of law and that in turn morality is determined by the values upheld by a community. Therefore, our laws on homosexuality should be in accord with the values of our community.

On general social considerations, we believe that there are reasons against homosexuality. Firstly, society originates from the institution of the family; but homosexuality is antithetical to this institution. Secondly, the government is actively engaged in efforts towards community building in response to our society's present rapid social change and economic growth; but homosexuality is at variance with community building. Thirdly, our governmental institution is British, and the established church in Great Britain is Protestant; but homosexuality is not accepted in Christian theology. Fourthly, the overwhelming majority of inhabitants in Hong Kong are Chinese, and although Chinese traditional culture is undergoing rapid erosion, the traditional Chinese values are still Confucian; but homosexuality is not found among Confucian values.

As to defence for homosexuality, we are not convinced that because homosexuality is a personal matter it should not be prohibited by law. While we concede that sublimated homosexuality would have no adverse effect on other persons, the expression of homosexual desires would have undesirable effects on others. Some believe that homosexuality is unobjectionable provided that such acts are engaged in between consenting parties. But it would be very difficult to differentiate between consent and victimization. This difficulty would in turn create difficulties for the enforcement of law. Some believe that homosexual acts conducted in private should not be outlawed, but this definition still does not solve the basic question just raised on law enforcement.

On the other hand, we believe that homosexuality inclined persons should be given every assistance to rid themselves of their addiction, just as we rehabilitate other socially

handicapped persons. As to legal protection, we believe that any unscrupulous person who blackmails or harasses others for alleged homosexuality should be severely penalised by law, irrespective of whether the blackmailed or harassed party could be successfully proved for contravention of homosexual laws."

(Chinese Manufacturers'
Association of Hong Kong)

"Homosexual conduct is undesirable and we, of the Chinese Anglican Church of Hong Kong & Macau, will not endorse any law aimed at relaxing or legalising it.

Homosexuality has already been seen by many as a kind of sickness or psychological problem and not just a mere crime. We would like to see some more positive approaches taken in the forms of medical or psychological treatment."

(Rev. Louis Tsui
Diocesan Secretary,
Diocese of Hong Kong & Macao)

"The Holy Scripture and the on-going tradition of Christianity make it clear that homosexual acts (as distinguished from homosexuality as a state of condition) are immoral. This teaching was reaffirmed by the Roman Catholic Church as late as 29 December 1975.

However in accepting this teaching one is not thereby committed to support legislation making all such conduct a criminal offence. We are of the opinion that the criminal law on homosexual activity should deal only with those cases where it leads to :-

- (a) corruption of youth;
- (b) offences against public decency; and
- (c) exploitation for the purpose of gain.

We therefore suggest that sexual activity performed in private between consenting adult homosexuals or heterosexuals should not be a criminal offence.

It would be undesirable if the suggested changes were to create the impression in the public mind that homosexual conduct is an acceptable mode of life against which there are no social or moral objections. In referring to it, the term depenalization would seem to be preferable to legalisation or even decriminalization "

(The most Rev. Bishop John B. Wu,
Catholic Bishop of Hong Kong)

"Homosexuality acts between consenting adults should not be the subject of prosecution

We believe that there is no difference between the practice of homosexuality in Chinese and Western societies."

(R.G. Hutcheon, Esq.,
Editor, S.C.M. Post)

"This Association has no special views on the question of changing the law in this instance."

(J.H. Pain, Esq.,
Executive Director,
Hong Kong Tourist Association)



香港
大学
教职
员会

HONG KONG UNIVERSITY STAFF ASSOCIATION -
SURVEY OF MEMBERS

ACADEMIC STAFF ASSOCIATION
UNIVERSITY OF HONG KONG

17th March, 1982.

The Secretary,
Law Reform Commission,
c/o Attorney General's Chambers,
Central Government Offices (Main Wing),
Hong Kong.

Dear Mr. Hodge,

Laws on Homosexuality: Questionnaire Results

I have already sent you a copy of the questionnaire which we distributed to our members.

Of 648 questionnaires sent out, 197 (30.4%) were returned. This is a high response rate for a mailed questionnaire, but of course it must be noted that the total number of responses came from only approximately one-third of our members.

In the questionnaire we set out five statements and asked the respondent to indicate which statement was closest to his or her own view. The following breakdown shows the number and percentage of respondents favouring each statement.

Statement	1	25	(12.7%)
"	2	79	(40.1%)
"	3	87	(44.2%)
"	4	4	(2.0%)
"	5	2	(1.0%)
		<hr/>	
		197	
		<hr/> <hr/>	

We also invited respondents to offer additional comments if they wished. In all 55 additional comments, varying from one line to several pages, were received, and these are enclosed under statement headings. A dot in the left hand margin indicates the beginning of each comment.

I hope that the results of our survey, particularly the comments from respondents will be of some interest to your Commission.

Yours sincerely,

Murray Groves
Chairman
Academic Staff Association



香港
大学
教职
员
会

ACADEMIC STAFF ASSOCIATION
UNIVERSITY OF HONG KONG

20th February, 1982.

To: All members of the A.S.A.

Subject: Law Reform Commission, Laws on Homosexuality

We have received the attached documents from the Secretary of the Law Reform Commission, namely, a letter asking for this Association's views on changing the present laws governing homosexual conduct in Hong Kong, and summaries of the present relevant laws of Hong Kong in English and in Chinese.

The Committee of the A.S.A. does not feel it is in a position to give the Law Reform Commission the "views" of our "organization", since it is not a matter on which as an organization we have ever formulated our views, and it might be argued that it is not a matter on which our constitution authorizes us to formulate a corporate view, except insofar as the issue could conceivably at some time or other arise in connection with the employment of one or more of our members.

At the same time, the A.S.A. Committee appreciates the wish of the Law Reform Commission to obtain views from all sectors of the community, including university staff.

We therefore invite members to return the attached reply form, on which they are invited to express their views, on or before Monday 8th March. You may return the forms anonymously; there is, no need to sign them or put your name on them (unless you have a particular wish to do so). We hope that, on an issue of current community concern, members will make an effort to respond.

We shall send a summary of the responses to section 1 of the reply form, plus all the individual responses we receive to section 2 of the reply form, to the Secretary of the Law Reform Commission.

Please return the reply forms to

Mr. N.J.A. Jepson,
Secretary, A.S.A.,
c/- Dept. of Prosthetic Dentistry.

Murray Groves
Chairman
Academic Staff Association

University of Hong Kong
Academic Staff Association

LAWS ON HOMOSEXUALITY: REPLY FORM

1. Please place a tick in the box beside the one statement among the following statements that most closely approximates to your own view:

- I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed.
- Without condoning homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly.
- I have no objection to homosexual conduct and believe that the law should freely permit any sexual acts, whether heterosexual or homosexual, between consenting adults in private.
- I have an opinion quite different from any of those expressed above. Please specify:-
- I have no opinion.

2. If you wish to accept the Law Reform Commission's invitation to indicate the reasoning behind your views, please do so in the space below and overleaf (or in a separate document if you need more space):-

1. "I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed."

- * Homosexuality is against the Law of with Nature. Living things only mate the opposite sex. Anal intercourse occurs in nature only if the male happens to find the wrong 'hole' accidentally.
- * All homosexuals should be psychiatrically assessed! They are abnormal and should be treated appropriately.
- * Although I have every sympathy with such people (males or females), I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed, except to raise the age of protection for children (males or females) up to at least 16 when they should be stronger to counter physical violence and resist lure of any sort.

All the furore for changes, as I can observe, has been in the English press - the Chinese press and the local Chinese I meet on a day-to-day basis are either indifferent (i.e. see no point for changing), embarrassed (that such behaviour, although tolerable and perhaps cry out for therapy, etc. should actually be the subject for public condonement), cynical (they see that since the foreigners are seen to be all for it, Hong Kong as a gweilos' paradise would in all probability be forced to accept this 'advancement', 'enlightenment') or feel simply distasteful (on individual and societal basis).

A recent attempt of mine to briefly point to the fact that the indigenous population (or at least sections of it) do feel differently (nothing abusive, or racist, or anything detailed) but just pointing out to the deep-down feelings and reactions of several parents, was suppressed - i.e. by the Editor of Readers' Correspondence of the S.C.M.P., although every condition for eligibility to the column was complied with. This makes one really wonder.

Genuine feelings are not allowed to express themselves and one seems to be caught between appearing unsympathetic (unenlightened, whatever it means) or hypocritical by determined supporters for changes FOR THIS COMMUNITY.

Thirdly, as far as I can follow some of the arguments put up for changes, one was based on the fact that PEOPLE WHO CAN'T HELP THEMSELVES SHOULD NOT BE PROSECUTED (-: fallacies :-

- a) that it is society's fault, anything but the offenders' fault (is this established? how about those who do it for kicks?)
- b) who ever heard of criminals or offenders being pardoned simply because they cannot help themselves? or heard other offences being urged to become perfectly legal behaviour and trends simply because the offenders cannot 'help' themselves?

The sensible thing, surely, is to adopt one or some of the following measures :

- i) reduce the penalty
- ii) reinforce rehabilitation of offenders

- iii) 'preventive' studies and other preventive measures (presumably, to strengthen family ties, and more effective parenting education, etc.?)

Not changing any laws will not do away with particular categories of crime which they sought to 'punish', but neither will the undesirable behaviour vanish just because one does away with laws. If the persons who support changes in such laws guarantee that there will not be a concomitant increase in child abuse (male children being sexually abused, or lured etc.) for the local community, then I may be persuaded to support it also. Is there any sociological studies comparing or establishing that there is no positive correlation? To a concerned parent, the argument that existing laws are inadequate to extinguish female child abuse (from people practising heterosexualism) is no sound basis for amending laws which may not guarantee de facto that male children will not similarly be abused. I find it all very frustrating, to speak the truth.

- * Homosexuals spread diseases, particularly virus hepatitis B. This, in conjunction with some other factors or alone, gives rise to liver cancer which is a fatal disease. If only consenting adults will thus be developing cancer, I can't care less but they tend to spread the disease by other means. This is an encouragement to corrupt young boys.
2. "Without condoning homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly."
-

- * Adult to be eighteen years old.
- * I feel that the present law can be used to put unfair pressure on individuals and is out of date.
- * Section 51 should stand with the sole deletion of the word 'private'.
- * Personally I find the thought of homosexuality distasteful but appreciate that what consenting adults do in private is their own affair, providing it does not affect anyone else.

I do not think homosexual organizations should be allowed to set up shop in Hong Kong (or anywhere else for that matter) because of the influence it might have on younger people.

I also think that the Government should discourage single sex education and take steps to changing existing boys or girls schools to co-educational establishments, and not create environments which encourage homosexuality.

I fear for the younger generation; if homosexuality is tolerated, will homosexuals want more freedom of movement after the law is modified? And I shudder to think if homosexuals go one step beyond the law as they apparently do at present. These are genuine fears but should not be allowed to cloud the issue. After all, you can lead a horse to water, but you can't make him drink (willingly that is).

Laws on indecency, sexual assault, etc. concerning homosexuals presumably will remain at least as rigid as the heterosexual equivalents, but I think visual indications of homosexual behaviour, such as two men locked in a passionate embrace, should not be allowed in public.

I am married, father of two children, Chinese but Western born, and about 50% or more western educated. I am conservative regarding matters like marriage and open display of affection, but consider myself fairly liberal in most other matters.

- * The law is based on a combination of attitudes - traditional, hypocritical, sexist and others – which are inappropriate as a basis for Law. The Law encourages blackmail, malice and misuse by unscrupulous police. It is very difficult to believe that any rational body could conceive of it as being ethical to proscribe behaviour in private where there is mutual consent.
- * Provided adults are defined as over 18 years.
- * To subject any non-violent sexual act to legal proscription is to identify that act as a particularly substantial basis for blackmail, corruption or, in some circumstances, for serious breaches of 'security'. To remove such proscription is to minimise this effect and, at the same time, 'allows' the private exercise of sexual preference as a matter over which the law chooses to have no interest.
- * What about the law on buggery with animals? I think the animals should be protected, as they have no choice in the matter; therefore the laws on this should stay or be stated separately.

I think what adults (humans) do in private is entirely up to them if no cruelty is involved. It is quite wrong to say that private sexual behaviour should conform to any set pattern. You may as well have a law saying men and women should only copulate in the missionary position! However, I would like the law to protect children against adult homosexuals, and procuring of boys should still be illegal (as in Britain, I think). I hope animals will be protected too, because they usually are forced into sexual acts and are even killed sometimes, as a result, I believe.

I did not tick the third box because I cannot say I do not object to homosexual behaviour in general. It is a negative trend in society and if developed too far might destroy the family unit. Where would the next generation come from if all men were homosexuals? No children in the world - how sad that would be! Perhaps I'm stating the obvious.

- *
 1. In my opinion the present law encourages blackmail and assault by innuendo, against which there is little recourse.
 2. The recent attempts to apply the law in Hong Kong have brought the law itself into disrespect. This aspect of relations between two consenting adults in an ethical-moral matter is not one for the Law.
 3. The Law has a clear and straightforward role in protecting minors and those judged incapable of giving consent from seduction or exploitation.
- *
 1. The State has enough to do without concerning itself with innocuous sexual activities.
 2. The law as it stands dates from a society when State and Church authority were indistinguishable. This is no longer the case. The law is an expression of a narrow interpretation of certain Biblical passages.

- * Laws which cannot be effectively enforced are unjust. Selective enforcement both looks like persecution and may well be that. Such a situation breeds disrespect for the legal system and Government.
- * Adults to be 21 or over.
- * A) A distinction must be drawn between acts committed in public and those committed in private between consenting adults.
- B) The present law discriminates unfairly against males.
- C) Penalties for procuring and committing homosexual acts (all acts, buggery or otherwise) should be reasonably comparable.
- * The current laws on "abominable" offences ought to be repealed, thus bringing Hong Kong into alignment with other Chinese jurisdictions (Taiwan and China). Laws protecting minors, punishing rape and fixing penalties for public indecency should be retained.

Rights of minorities ought not to be decided by majority vote. This community, like many others, is manifestly hypocritical and inconsistent in its public views and private behaviour. It vastly underestimates the numbers of and contributions of its homosexual community.

Homosexuality among consenting adults is a "victimless crime". Enforcing the current law or threats to do so, seriously affects the well-being of otherwise law-abiding and productive homosexuals to the detriment of the community.

TRANSLATION NOTE : In the media constant, references are made to "legalizing" homosexuality, rather than "de-criminalising" this behaviour. In Chinese, there is no difference between "legalizing" and "legitimizing" the behaviour. One character, he fa (合法) stands for both English-language meanings. Thus to talk about "legalizing", homosexuality has the connotation of encouraging it by making it legitimate in Chinese. Perhaps it is more accurate to use the words "de-criminalize" in both Chinese and English. This distinction is significant.

- * The homosexual act should not involve payment.
- From religious, biological, social and family considerations I believe that heterosexual relationships are normal. However, unless other offences such as intimidation, blackmail, public procurement, financial incentives or violation of minors is involved, I don't think homosexual acts should be regarded as criminal activities. More emphasis should be given to counselling and treatment of what I would regard as an illness.
- * I believe there should be consistency in the law of the land, and therefore if the law forbids homosexual relationships it should also uphold the sanctity of marriage by including adultery and fornication in the legislature.
 - * Homosexual activities are not biological norm. Thus, they should be strictly private and not be advertised.
 - * Considering the custom and tradition of our present society, it may be early to make such change now. This may not be the appropriate time.

- * ... Consenting adults in private only should not be subject to legal penalties
3. "I have no objection to homosexual conduct and believe that the law should freely permit any sexual acts, whether heterosexual or homosexual, between consenting adults in private."
-

- * I believe that sexual acts of any nature between two consenting adults in private should not be subject to any penalties. In the case of homosexual acts, I believe that certain people are born with the inclinations and should not be penalised for something that they cannot or do not wish to stop. I feel the law at present is a violation of personal freedom.

- * A victimless crime is the language most civilised societies in the 1980's employ.

It is imprudent to put a name to any political or social mien in Hong Kong; therefore I regretfully decline to do so.

- * I believe that it is a basic human right that individuals should be free to express their sexuality and to enjoy sexual relationships with those of a similar mind without any interference from the law except to protect minors and to preserve public order and decency.

- * It is my view that the law of the land should not be concerned with private morality, and that what consenting adults choose to do in private should be their own business.

The security arguments fail once conduct is legal (that is, liability to blackmail becomes less important).

It is not true that homosexuals seek to corrupt young people; paederasts are a different class of person and may be hetero- as well as homosexual.

It is completely unsatisfactory to have a law which is not strictly applied (one suggestion is that we should keep but not implement the law). This simply brings respect for the whole of the law to a low level.

As to the argument that it is out of keeping with the views of the Chinese community - the law was a U.K. import;

Mainland China, as far as I can ascertain, has no such law. To de-criminalize private conduct is not a licence to 'do it in the street and frighten the horses'. To legalize is not the same as to approve.

The change of the law in England in 1967 was fiercely opposed, but is now an accepted fact. The change I noticed in homosexual friends was really marked - a lessening of anxiety. It is never easy to belong to a minority which deviates from the accepted norm, but a change in the law will be a compassionate act which will at least make life easier for people who cannot help that they react differently from the rest of us in this one way.

- * The current law against homosexuality

(1) is impossible to enforce, and futile law derogates from the authority of all law;

- (2) permits the waste of resources and encourages corruption, these being the inevitable consequences of attempting to enforce the unenforceable;
 - (3) enhances the prospects of otherwise law-abiding citizens being blackmailed;
 - (4) is itself an evil (in that it is capable of causing great human misery and restriction on free choice) and thus must be justified, whereas no compensating benefit can be discovered;
 - (5) being an attempt to regulate consensual conduct which involves no genuine harm to anyone, is an intolerable invasion of individual freedom;
 - (6) can only be supported by a moral claim which is vicious, anti-human and unnecessary for the maintenance of decent social life in this community;
 - (7) is sexist, there being no good reason for discriminating between men and women in this respect.
- * The above responses relate only to section 49 but some reference should be made to sections 50 (assault) and 51 (soliciting). I believe assault by one person on another, whether sexual or not, should still be the concern of the criminal law. As to soliciting and prostitution, both sexes should be treated alike in this matter, and thus perhaps this whole area should be reviewed as well.
 - * Also I would like to see the repeal of sections 49 and 50 of the Persons Ordinance.
 - * This is not the 'reasoning behind my views' but since the law of England has been extended to Scotland and N. Ireland, it makes less sense for a colony ruled by English Law to be so out of step.
 - * Broadly my position is that indicated; however:
 1. I might well object to certain homosexual (or heterosexual) conduct, but do not consider it my business.
 2. Similarly, the law should have no interest in such matters; so I (pedantically) object to the implications of 'freely permit'.
 - * The reasoning behind my non-objection owes its development to my education at a University which has for its motto : Dominus Illuminatio Mea !
 - *
 1. I believe that it is an unwarranted intrusion upon the liberty of the individual to legislate in respect of sexual behaviour in circumstances where mature judgement is in issue and where there is no encroachment into public domain.
 2. I believe that it is wrong to victimise any group of individuals on the basis of their sexual proclivities so long as consensual acts between adults in private are involved.
 3. I believe it is wrong by maintaining the present laws to attribute virtue to blind myth and popular prejudice on the part of the uninformed.
 4. I believe that the possibilities for blackmail would be significantly reduced.

5. I believe that, from a mental health point of view, the decriminalization of homosexual acts under the Wolfenden formula would have very positive benefits to individuals in the homosexual community.

- * between consenting adults in private, insofar as those acts do not involve the commission of some other offence!

"Without condoning homosexual conduct" : does this phrase mean "It is not the case that I condone homosexual conduct" or "I disapprove of homosexual conduct"? If the former, it might cover "I have no objection to homosexual conduct", since one who has no objection to it is one who neither condones nor does not condone it - i.e. it is not the case that he condones it.

- * There are two reasons why I consider the present law should be expunged from statute. The first is that any law which seeks to prevent, or to punish acts committed in private, is a largely unenforceable law. And unenforceable laws are, ipso facto, bad laws. For they can be enforced solely through denying privacy, and this means gross intrusion whenever there purports to be reason for suspicion, or it means expecting, quite improbably, self-incrimination by one or other party. And this is largely unworkable : because it is, it will lead, necessarily, to injustice. Most who are guilty will go unpunished, some will not. Such things do bring the law into disrepute. The cost to society of ensuring just enforcement is so great, in terms of surveillance on a scale which we can neither afford nor tolerate, that a law of this sort must be repealed. Laws enforcing what are called 'public morals' have a place, if any, when and only when the 'morals' in question are so completely of the fabric of a society that conduct at odds with them is, in effect, unthinkable. This is not now the case.

My second reason, however, runs deeper than the simple matter of legislative good sense. It is a moral reason. Whilst I recognize the moral propriety of legislation protecting from harm those who cannot protect themselves; and allowing here for a generous interpretation of 'harm', I have yet to be convinced that the actual practice of sexual activity of whatsoever kind between consenting adults, provided both or all parties are in full possession of unimpaired faculties, could ever be harmful to anyone, no matter how helpless, so long as the activity itself is in private. The only counter-argument, that what is at issue is the moral fabric of society as a whole, and that damage to that is what occasions necessary harm to all, rests upon organicist theories of society which are at the least contentious. And in any event the moral fabric of a society, if there is such a thing that is not merely whatever aggregate of individual moral practices and beliefs holds in a given time and place, is not to be confused with a legal code. For a legal code, whatever else it must be, must certainly be such as to accommodate great diversity of beliefs if it is not to take us backwards to a period of intolerant repression, for which there is no justification. For it is surely a matter of great and proper satisfaction that over the last three centuries the law has been seen, if sometimes with more hope than justification, as the bulwark of individual liberty. If moral disapproval is strong, then that which is disapproved will be practised by few, and always with some unhappy sense of guilt. Let that be enough for those whose conception of morality is so intolerant and uncharitable. Finally, one cannot enforce morality in any case. Perhaps an outward show can be required, though I have given reasons for doubting this in this case. But the inner belief cannot. At the moment, and in this regard, the law is a fool. Let it cease to be so.

- * No reason, of any plausibility whatever, has ever been presented which suggests that homosexual conduct is in any way wrong. Therefore, it is wrong that homosexual conduct is illegal.

.... between consenting adults in private. Public references should be avoided - even in the media, through a code of acceptable local practice? i.e. quietly mind your own business and don't stir up trouble - it is bad joss!

- * My objections to the provisions of the Laws of Hong Kong which make homosexual acts between consenting adults in private criminal may be summarized as follows :
 - (a) I can see no reason, moral or social, why the law should concern itself with the private sexual behaviour of consenting adults.
 - (b) In view of the fact that consenting adults in Hong Kong, both Chinese and expatriate, do engage in homosexual acts in private despite the law, the provisions of the law cause them unnecessary suffering through fear of prosecution, fear of blackmail, fear of dismissal from their employment, etc.
 - (c) Enforcement of the law unnecessarily wastes the time of a wide array of public servants paid with the taxpayer's money - from the Governor and the Attorney-General down through the judiciary and police force. The obsessive concern of such public servants with homosexuality, as witnessed by the MacLennan case and the recent circular from the Secretary for the Civil Service to Civil Service heads, has been unedifying, to say the least.
 - (d) The argument (often advanced) that changes in the law would offend Chinese opinion, and that therefore it is best to "let sleeping dogs lie", seems to me totally fallacious. No satisfactory evidence as to the state of Chinese opinion has been adduced. In any case, "sleeping dogs" have not been allowed to "lie": there is abundant evidence that the Attorney-General, the police, and now most recently the Secretary for the Civil Service, have been instigating action against homosexuals, and so long as laws which declare homosexual acts to be criminal remain on the statute book, any of these people or indeed anyone else in the community could institute action against homosexuals which might cause them suffering, or even ruin, at any time.
- * I do not believe that sexual acts between consenting adults in private should be subject to legislation, or legal penalties. Such law is an intrusion in a private aspect of life and an intrusion on individual freedom.
- * Please forward this opinion to L.R.C.

If homosexual conduct is seen to be offensive, then one could regard masturbation (defined in Oxford Advanced Learner's Dictionary - Hornby, as "provide sexual excitement by manual or other stimulation of the genital organs"), especially use of 'other' stimulants, as equally offensive, and imprison the whole of Hong Kong for past and present offences.

- * 1. Laws prohibiting homosexual conduct between consenting adults in private are largely unenforced because they are largely unenforceable. As such they are a mockery of the law and they bring the whole administration of justice into disrepute.
- 2. "The state has no business in the bedrooms of the nation." - Rt.Hon. Pierre Elliot Trudeau, M.P., to the House of Commons, Ottawa, ca. 1968.

- * In addition I think the age for protecting children should be raised to 16. "Children" and "adults" - children with children should be untouched by the law as what kids do with kids in schools, locker rooms, etc. is natural and part of the growth process.
- * It is not against the law for sexual acts to take place between women, therefore the law at present discriminates against men. It is my view that there should be equal rights for all persons over 18 years of age in choice of sexual activity with other adult humans.
- * I do not believe that it is appropriate for the law to be able to prohibit any aspect of private behaviour which causes no harm to any individual. The standard reasons given for the prohibition of homosexuality include :
 - the Bible specifically condemns it;
 - homosexuals are more 'perverted' and are involved in more sexually-directed crime than heterosexuals;
 - homosexuals actively solicit and corrupt young people and convert them to homosexuality.

The first of these reasons has no real relevance in the law. The Christian religion is a minority in Hong Kong but certain Christian people are very vociferous in their condemnation of matters which I personally feel are personal decisions, such as abortion and homosexuality. The second and third reasons, while commonly used and often prefaced in letters to the editor with statements like "It is a known fact that ...," have not ever been supported by investigation.

The law as it stands at the moment is not consistent with that in most of the Western world. It places a large number of people in the position of committing criminal acts on a daily basis, and provides a situation which is open to blackmail and corruption. I do not consider the homosexuals I know to be criminals. Just because their innate preference is for a partner of the same sex is no reason for the law or their fellow man to condemn them.

- * The law should not interfere with sexual acts between consenting adults in private. It is as simple as that.

I am a Chinese, and to our local Chinese "Moral Majority" who said the law should not change because Chinese are moral beings and traditional Chinese society do not accept homosexuality, I'd say : traditional Chinese society deliberately castrate some males to be eunuch and bind the feet of young girls. Will these Chinese "Moral Majority" chaps castrate themselves and bind the feet of their own daughters please.

- * Clearly everyone has among the basic human rights the rights to his own thoughts, feelings and emotions. It seems to me that the basic human rights include the rights to one's own sexual feelings. No one can choose to be a homosexual, a bisexual or a heterosexual; one's sexuality is a God-given fact of life. To outlaw homosexual acts is as cruel and inhumane as to outlaw sexual contact between a man and his wife or a youth and his girlfriend. We are prone to think of anything sexual as "dirty" or "immoral", but sexuality is a part of human nature after all, and everyone whether homosexual, bisexual or heterosexual should be permitted these basic satisfactions.

It is very alarming to me that so many people in Hong Kong seem to regard homosexuals as immoral and perverted - and criminal to the extent of requiring a

special branch of the Police Department to seek them out. It is time we faced the fact that homosexuals are not unthinkable creatures on the fringes of society but are rather the very people around us : no doubt they include some of our colleagues and students at the University, as well as doctors, lawyers, judges, government servants, bus drivers, factory workers, business leaders, and indeed people from all levels of society. We may not always know exactly who they are, but this is itself a sad fact and owes in large measure I believe to the perverse and misguided laws in Hong Kong on this subject which may well force even some of our closest friends and colleagues to live in fear and to hide some of their most basic feelings. This is an outrage. The sooner Government grants basic human rights to all its subjects, the better.

It is sometimes said that Hong Kong's laws on homosexuality cannot be repealed because the "Chinese community" does not favour repeal. On the contrary, it seems to me that most Chinese are not against repeal, but either favour repeal (whether they are willing to say so or not) or have no strong views on the subject at all. The self-appointed spokesmen of the "Chinese community" who speak out so stridently against repeal should be judged by the merits or demerits of their arguments rather than the weight of their office; most of these arguments that I have heard, such as that homosexuality is a mental illness, that it is against yin and yang, that it is alien to Chinese culture, or alien to Christian thinking, etc. are based on ignorance or prejudice, or both. In any case, the question of law reform should not be treated as a popularity contest; it is a human rights issue, and Government must take responsibility to lead and bring Hong Kong's laws up to a civilized modern standard. Was Lincoln wrong in emancipating the black slaves against community wishes?

One last point. I would normally sign my name to an Academic Staff Association matter, but in this case I feel I cannot. During the MacLennan affair, it became clear that virtually anyone favouring law reform becomes immediately "suspected" as a homosexual in the eyes of the Police; and the recent Civil Service Circular makes it clear that even "suspected" homosexuality is grounds for investigation, review of employment contract, and possible dismissal. Under these draconian conditions - reminiscent of McCarthyite America or even Nazi Germany in kind if not intensity - only the exceptionally courageous will speak out by name in favour of law repeal. Although thankfully not part of the Civil Service, the University is a little too close to it for comfort; why should I or anyone else here risk his privacy and that of his family by speaking out by name? Given the government's manifest homophobia and penchant for witch-hunting, truly open enquiry on this issue becomes impossible, and the work of the Law Reform Commission becomes something of a travesty, in my opinion. Our community is a lot further from enlightenment than we think.

- * I think it is no business of the law at all whatever consenting adults are doing in private.
- * The present laws governing homosexual conduct are unjust and unwise. They have embarrassed and, if left unchanged, will continue to embarrass the Hong Kong Government. This is largely the Government's own fault for its altered attitude to enforcement of these laws in the late 1970s led directly to the MacLennan affair and thus turned homosexuality into an issue. It is not an issue that will go away. Several points arise.
 1. Should the State have the power to punish two consenting adults for a sexual act committed in private? Where in such a case, is the victim? Who has been harmed? How has society suffered?
 2. Any legislation which seeks to prevent homosexual acts will always be very difficult to enforce. A homosexual act may be seen as a 'crime against nature'

but to the homosexual it is entirely natural. The homosexual will disregard such legislation, as happens in Hong Kong. This brings the Law itself into disrepute ('the Law is an ass', etc.) and that is not healthy.

3. Most homosexuals are not ordinarily criminal. The laws, as they stand, turn them into criminals. Surely, it would be a sensible and just policy to decriminalize homosexual acts between consenting adults conducted in private? The present laws give rise to doubts, suspicion, and fear amongst homosexuals. This is not just.
 4. The present laws do, however, provide scope for the criminal element in society, often at the expense of homosexuals. Here one thinks of the activities of Triad societies and, in particular, of blackmail.
 5. It is sometimes claimed that homosexuals in Government employ are a security risk, presumably on the grounds that they render themselves liable to blackmail. Does not a married heterosexual engaged in, say, an illicit 'affair' similarly put himself at risk? If sexual acts between consenting adults in private were to be decriminalized then security risks would be greatly reduced.
 6. It is sometimes argued that any change in the present laws will put minors at risk. As the Wolfenden Report observed, those homosexuals who prefer relations with adults rarely have dealings with minors, and it is scarcely probable that they will abandon practices which would be permitted if the laws were changed to adopt new ones which presumably would continue to be criminal.
 7. Surely in Hong Kong, with its many serious and pressing problems, the police have better things to do than pursue homosexuals who are otherwise law-abiding citizens? This is the view taken, one gathers, by a number of Hong Kong policemen. Furthermore, the present laws appear to give altogether too much scope to 'over zealous' police officers, as was made abundantly clear during the course of the MacLennan Inquiry. There is a widespread suspicion that the Hong Kong Police is a law unto itself. The present laws on homosexuality allow policemen too much discretion.
 8. Reference was made above to the doubts, suspicion, and fear amongst homosexuals. There can be no more eloquent testimony to this sorry state of affairs than the great difficulty that the Sub-committee on homosexual law reform has apparently had in persuading any practising homosexual to come forward and testify.
 9. As money is what really counts in Hong Kong it has been left until last. Would the Government have had to pay out \$16 million for the MacLennan Inquiry but for the present laws? Would the average tax-payer regard this as money well-spent?
- * Law should not interfere with the acts of two or more consenting adults who know what they are doing.

Homosexual behaviour through rape, seduction, blackmail or by fraud, etc. should still be punishable but this is already covered by other laws which apply equally to heterosexual behaviour.

Homosexuality is not a problem. The present law makes it a problem.

For thousands of years the Chinese have left control of homosexual behaviour to social attitudes, which change from time to time. Laws against homosexual behaviour were rarely made and much more rarely enforced.

Can't see the reason why male homosexual behaviour is punishable while female homosexual behaviour is not!

- * The starting point of any discussion concerning the extent of governmental interference in the liberty of individual citizens to do as they please is the presumption in favour of liberty : restrictions of individual liberty, whether by direct criminal prohibition or by some other legal instrument always need some special justification. That is to say, other things being equal, it is always preferable that individuals be left free to make their own choices and that undesirable conduct be discouraged by such non-coercive measures as education, exhortation, taxation (on undesirable conduct) or provision of positive incentives such as economic subsidies or rewards (for alternative to undesirable conduct).

Under what conditions and for what reasons can the presumption in favour of liberty be overridden?

It is well-established that the prevention of harm to others (the 'harm principle') is always a relevant reason for coercion, though it is arguable that the State may also be justified, at least in some circumstances, in prohibiting (1) "immoralities" even when they harm no one but their perpetrators (the principle of legal moralism); (2) actions that hurt or endanger the actor himself (the principle of legal moralism); or (3) conduct that is offensive though not harmful to others (the offence principle).

Such liberty-limiting principles, however, are best understood as stating neither necessary nor sufficient conditions for justified coercion but rather specifications of the kind of reasons that are relevant or acceptable in support of proposed coercion, though in a given case they may not be conclusive. Even the prevention of harm to others - while always counting in favour of proposals to restrict liberty - might in a given case not count enough to outweigh the presumption against interference or it might be outweighed by the prospect of practical difficulties in enforcing the law, excessive costs and forfeiture of privacy.

Applying the above liberty-limiting principles to the existing proscription of homosexuality in Hong Kong, the following propositions emerge :

1. No distinguishable harm to others can be attributed to homosexuality which may justify its prohibition.
 - Tendency of homosexuals to molest children?

This argument is based on a confusion between homosexuality and pedophilia. The latter, a tendency on the part of an adult to find sexual satisfaction in relations with children, is not peculiar to homosexuals; homosexuals have no particular inclination, as a group, to seek out young boys - no more, at any rate, than their heterosexual counterparts. Liberalised legislation may 'bring the homosexuals into the open' but there is no convincing evidence that it would encourage homosexuals to engage in wide-spread pedophilia, and it would not reduce the penalties for pedophilia in any case.

- Dangers of putting homosexuals into positions of trust with youngsters?

There is no justification for keeping homosexuals out of positions of trust where young boys are concerned more than prohibiting heterosexuals from serving as teachers or counsellors where young girls are concerned. In either case, the issue is not so much the homosexual or heterosexual propensities of the individual concerned as his proclivity to engage in sexual relations with under-age persons. There is at the same time considerable evidence that some homosexuals have made excellent teachers.

- Susceptibility to blackmail?

Homosexuals are not unique in their vulnerability to blackmail and extortion (heterosexuals, particularly those who are married, are at least as vulnerable as homosexuals and similarly people who are prone to become drunk or gamblers). It is also arguable that if we remove the criminal sanctions against homosexuals the latter would be less likely to succumb to blackmail.

- Destruction of the family, one of society's most fundamental institutions?

No evidence to support the suggestion that the legitimization of homosexuality would lead to widespread breakdown in family life or to a failure on the part of many people to establish normal marriages and families.

The argument rests on an unsubstantiated assumption that tens of thousands of people are eagerly awaiting the passage of legislation that would enable them to break away from the shackles of their heterosexuality so that they could do what they really want to do, namely, enter into relations with other men. Even if we accept that some men with strong inclinations towards homosexual relations - who may have married because of social or business pressure - might be prepared to give up their families if the sanctions were lifted, we still have to weigh the harm that might come to people because of the existence of such sanctions against the hurt to some people as a result of their elimination.

Clearly the potential damage to families that could potentially be affected should not be exaggerated, given that other factors enter into a person's decision to break up his family and that some of these marriages are probably very unhappy anyway.

- General moral breakdown?

There is no evidence that homosexuality constitutes a threat to the moral foundations of the community. Indeed it is arguable that in view of the demoralising and corrupting methods employed by the police in tracking down homosexuals and affecting their arrest, the legalisation of homosexuality would bolster the moral foundations of the society.

2. On the other hand, some side-effects of the laws proscribing homosexuality are invariably harmful:

Laws against homosexuality may lead to the iniquities of selective enforcement and to enhanced opportunities for blackmail and private revenge. The pursuit of homosexuals also diverts the police attention and effort that

could be employed more usefully against crimes of violent aggression, fraud and corruption which are the overriding concerns of our metropolitan society.

3. Harm to oneself?

Such harm, if any, is the result of society's attitude towards the homosexuals' peculiar form of erotic behaviour rather than direct result of that behaviour itself.

Indeed, it is submitted that if society would reduce its condemnation of homosexual behaviour, at least by removing the penalties that it imposes upon those who are caught, the conditions of homosexuals would be greatly ameliorated.

4. Immoral?

Firstly, moral views, even if generally and strongly held by society, should not be enforced by law simply because they are generally and strongly held (otherwise why distinguish religious, political, racial or social views so held?).

Secondly, it is questionable whether any assertion of public revulsion concerning homosexuals in Hong Kong can stand up on examination. In particular, three factors deserve consideration : (1) the proportion of the community who disapprove of the practice; (2) the strength of their disapproval (will they riot or attack those who practice it if it is legalised?) and (3) the qualitative nature of the majority and minority groups (a strong majority of cultivated opinion may be significant even if it is but a minority of public opinion).

Thirdly, even if one concludes that the feelings of disgust or revulsion towards homosexuality are prevalent in the Hong Kong community this is only one factor to be considered and no more than that. It can never replace careful investigation of the social consequences of the conduct and criminal prohibition. As was stated by Graham Hughes : 'the legislator cannot be wiser than he is, but he does not have to be as stupid as the stomach of the man in the street'.

5. Offensive?

Clearly whether the behaviour is heterosexual or homosexual the public has a right not to be exposed to its manifestations if there is a general consensus that such manifestations are offensive (subject to the standards of universality and reasonable avoidability and generally balanced by due regard for liberty and privacy).

This may constitute a reason for supporting liberalisation of the law which is confined to the demand that prohibition of private relations between consenting adults be relaxed.

6. Efficacy of the law :

It is fairly clear that imprisonment is ineffectual in helping to reorient people with homosexual tendencies (if cure is the aim, how much sense does it make to send a homosexual to a place where his only companions are males deprived of every sexual outlet but masturbation and homosexuality?; perhaps it would

be a better idea to send him to a place where he would be surrounded by girls specially trained in the art of arousing men who tend not to be particularly interested in women).

7. Cost :

The expenditure of wealth and human resources required for the enforcement of rules on sexual conduct is too great for the benefits that might accrue from such enforcement. On the other hand, the benefits of removing the proscription of homosexuality are clear: the police would be free to fight dangerous criminals and to maintain order in the community; the courts would be relieved of part of their crushing burden; prisons would be emptied of those whose offences are basically petty and of no great or immediate social consequences; and a great many people would be relieved of the constant fear that they might be arrested for forms of behaviour that they consider to be completely harmless.

4. "I have an opinion quite different from any of those expressed above."

- * I think all convicted homosexuals should be deported - there are too many people bugging about in Hong Kong.
- * I feel the penalty for such acts between consenting adults seems too harsh, especially section 49.
- * I cannot tick box (2) since the use of the word "condoning" implies acknowledgement of an offence. It would, however, be correct for me to say :

"Without expressing an opinion one way or another on the morality or otherwise of homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly."

1. I do not see why males should be discriminated against in the matter of homosexual conduct, since lesbianism is not illegal.+
 2. I do not think the law should prescribe for private morality.
 3. The present system encourages blackmail, and must lead to a great deal of personal unhappiness.
- + This is the practical effect, though I recognize that one of the technical offences is supposed to be buggery rather than homosexuality.
- * Homosexuality should be prohibited by law, but the existing penalties are too severe.

**HONG KONG POLYTECHNIC STAFF ASSOCIATION -
SURVEY OF MEMBERS**

**HONG KONG POLYTECHNIC STAFF ASSOCIATION
co HONG KONG POLYTECHNIC
YUK CHOI ROAD, HUNGHOM
KOWLOON**

TEL. 3-638344

22nd March 1982

Secretary
Law Reform Commission of H.K.
Attorney General's Chambers
Central Government Offices
(Main Wing)
Hong Kong

(Attn: Mr. A.S. Hodge)

Dear Secretary,

With reference to my previous letter of 18th January 1982, I am pleased to enclose some views expressed on the question of the Laws of homosexuality by some members of the Polytechnic Staff Association. I wish to emphasise that these comments do not represent the official view of the Association, but are simply a collection of ideas submitted by several members. I hope this will be of assistance to you.

Yours faithfully,

J.K. Dockerill
Secretary, P.S.A.

JKD/fh

Views from some staff members.

"Should the present laws governing homosexual conduct in H.K. be changed and, if so, in what way?"

1. Law is antiquated - about time it was changed. What people do in private should be their own business.
2. A law is a restriction of a person's liberty which can only be justified if it serves the protection of somebody else's superior rights (preferably those of a person unable to defend these rights him/herself). As such a purpose cannot be detected in the present legislation the whole lot should be considered null and void from the beginning and, consequently, all records concerning such matters should be destroyed.
3. Yes, it should be changed, at least to prevent blackmail.
4. The law as it stands today should be abolished. In sexual matters between adults consent is highly irrelevant. The present law is clearly leading to oppression, blackmail, police interference in people's private lives etc. The attached letter 9-2-82 S.C.M.P. puts the matter clearly.
5. The law as it stands should be abolished. Homosexuality is not wrong, nor a perversion. It is a biological fact. Therefore we cannot legislate it out of existence. The current law is inhuman, and encourages unpleasant prying into private lives and is potentially harmful both to the individual and to society. What is happening just now smacks of a witch hunt.
6. The law as it stands should be revised to allow for greater individual freedom of choice. The S.C.M.P. article expresses my sentiments on this issue.
7. The law as it stands should be rescinded. No evil/crime/wrongness has ever been attributed to homosexuality, as such. What exactly is the present law trying to effect? Letter on Sunday 7-2-82 to S.C.M.P. by Lee Chi Chung expresses my sentiments. The area of homosexuality does in no way come under legal ruling.
8. The law should be changed to allow homosexual activities between consenting adults. Adequate safeguards should be provided to protect children. The state has no right to interfere in these matters.
9. The law as it stands should be abolished and revised to allow homosexual acts which will require precise definition between consenting adults in private. Homosexuality is only an alternative pattern of sexual behaviour and attitudes which has been in existence in all societies for thousands of years. No evidence has ever been produced to prove that such behaviour per se has ever led to the social, moral, financial, educational or political de-stabilisation of any society. On the contrary, homosexuals have been recognised leaders in politics, music, theatre and in many other fields of the Arts and Sciences. Laws discriminating against homosexuals, therefore, are based on false premises and misconceived moral judgements.
10. I am in complete agreement with the above. People should not be condemned for propensities over which they have no control. Conduct which harms neither the individual nor society as a whole should not be subject to sanctions.
11. I agree with the above. It is a personal matter and one over which people may have no control. Others have no right to judge their behaviour, provided no harm is done to others, particularly children.

12. I agree with the first clause and I don't think the 2nd clause is necessary because both the heterosexuals and homosexuals could be child molesters. If we find it difficult to respect people's different sexual preference, we should at least tolerate it.
13. I believe that homosexual acts between consenting parties should not be a punishable offence. I therefore think that the existing law should be changed at least as a first step towards eliminating discrimination of homosexuals.
14. Any human being should be allowed the right to pursue happiness in the way he sees it fit, provided, in so doing, he does not harm others. The present laws on homosexuality interfere with this right unnecessarily. The laws therefore should be abolished.
15. While this issue does not concern me personally - as I believe, it does not concern colleagues to whom this Memo has been circulated - I feel that the laws relating to homosexual conduct in Hong Kong should be changed to make them more humanely acceptable. Perhaps, the laws could be brought into line with those in England where homosexual conduct between consenting adults in private is not considered to be a criminal offence. In any event the expression of views on this issue would be rendered considerably easier if such conduct were not viewed as a criminal offence punishable by 'a maximum penalty of imprisonment for life.'
16. I agree with the above that this conduct should not be viewed as a criminal offence, but I do not agree that laws should be changed and brought into line with those in U.K. as this might imply societies' approval/acceptance of such "abominable acts." The maximum protection should, however, be given to children.
17. I also believe that HK laws relevant to homosexual conduct should be brought into line with those of UK - blackmail and the protection of children were both fully debated when the UK law was changed.
18. Yes, laws should be changed, but should only be limited to consenting adults above 21 years of age.
19. Homosexual activities, be they between males or between females, should not be prohibited by law if they are carried out in private by adults and cause no offence to others not involved in them and with the parties' consent. Buggery between males or between male and female carried out in private and with the parties' consent should not be penalised.
20. I strongly support a change in the law to remove the offences involving Homosexuality except in the cases of children (which could be covered by child abuse laws anyway). I would also suggest that given the disclosure of the Government memo on this issue re the employment of staff that the P.S.A. requests on undertaking from the Poly. Director that no victimisation of current staff or the policy towards new staff is in force or is proposed.
21. The law should be brought into line with British laws on homosexuality.
22. As far as I am aware the BRITISH law is objective and seems acceptable. Perhaps it could be followed in H.K.
23. I think the law on homosexuality should be brought into line with U.K. law so that homosexual practices between consenting adults is not an offence. There are two reasons for this.

- (a) the law as it stands lacks any demonstrable basis in terms of the harm done to society by homosexuality.
- (b) the existence of the law puts all homosexuals at risk of blackmail and persecution and is therefore a cause of social harm.
24. "Abominable" offences
- 'Out-of-date" law. Who cares? As long as not performing in public & agreeable to both parties.
25. 1. When there is force, or either partner (human, that is) is under age an appropriate penalty should be imposed.
2. What people do in their own home should be no concern of the law provided no harm is done to any person and provided no public nuisance is created.
26. I feel very strongly that what takes place between CONSENTING ADULTS in private, is entirely their own business and should not involve the law.
- How can something be regarded as an offence that is practised quite commonly, and to no harm to themselves, by a section of the population? Any sexual offences practised on children or non-consenting adults must of course be heavily punishable; and ideally avoidable. The laws which cover such protection and punishment are necessary, but the law which invades the privacy of any section of the adult population is irrelevant and shameful.
27. In my opinion:
The law should be changed to be brought in line with the present British law.
Special suggestions:
- (1) Buggery with anyone should be legalized providing it is with consent. Without consent, penalties should be brought in line with those on rape.
- (2) As (1) above. 'Indecent assault' should be punishable regardless of age and sex.
- (3) If buggery is legalized, 'procuration' would cease to exist as a crime.
- I'd prefer not to sign if it really doesn't make any difference. If signing will improve the chances of getting the law changed, I would sign.
28. Changed in favour of allowing adults the right to choose partner/s for homo/hetero-sexual relationships.
29. Animals and children NO - but normally the "penalty" should be help not imprisonment.
Consenting adults, in private, YES.
30. The law should be brought in line with the present British law.
31. Hong Kong's law on homosexuality should be reconsidered in relation to other reforms in other countries over the last decade - e.g. England.

VIEWS OF DISTRICT BOARDS AND FIGHT CRIME COMMITTEES

The following responded to a Law Reform Commission letter requesting views :-

Yau Ma Tei District Fight Crime Committee

Mongkok District Fight Crime Committee

Kowloon City District Board

Sai Kung District Board

Sai Kung District Fight Crime Committee

Southern District Board

Southern District Fight Crime Committee

North District Board

North District Fight Crime Committee

Islands District Board

Sham Shui Po District Board

Wanchai District Fight Crime Committee

Tsuen Wan District Board and Area Committees of Tsuen Wan, Kwai Chung and Tsing Yi

Tuen Mun District Fight Crime Committee and Tai Hing Estate Local Affairs Committee

**EXTRACTS FROM REPLIES FROM
DISTRICT BOARDS AND FIGHT CRIME COMMITTEES**

1. General Assessment

Of all the replies from Local District Boards and Fight Crime Committees, the predominant view was that the existing law on homosexual conduct should not be changed because liberalization of the present legislation would offend the moral sense of the majority of the Chinese population in Hong Kong. Relaxation of, either by way of decriminalizing or legalizing, homosexual activities would imply that the government encourages such activities. This would be most undesirable especially in view of the effect on the younger generation and might lead to family disorganization and social disintegration. On the other hand, a number of the Board members held a more radical view and proposed amendments to the present legislation. Their proposals can be summarized as follows :-

- (1) The present law, especially the maximum penalty of imprisonment for life under S.49, is considered too harsh and the heavy penalty should be replaced by applying some sort of mandatory psychiatric treatment and rehabilitative measures.
- (2) The existing law on homosexuality should be amended to allow homosexual conduct in total privacy by adults with mutual agreement and consent of both parties and without involvement of any kind of reward.
- (3) Heavy sentences should still be imposed on homosexual offences involving children, especially on those who benefit from trading in such activities.

2. Summary of Specific Views

Yau Ma Tei District Fight Crime Committee
Mong Kok District Fight Crime Committee

Views expressed by unofficial members of the committees are summarised as follows :

- (i) Homosexuality is regarded by the Chinese as abnormal behaviour and should not be legalised. Existing laws relating to homosexuality should remain save some minor modifications.
- (ii) The maximum penalty of imprisonment for life for the offence of buggery (under S.49 of the Offences Against the Person Ordinance (Cap. 212) seems too harsh.
- (iii) In passing sentence on a person convicted of buggery, two elements - consent and use of force - should be given due consideration; and
- (iv) Heavy sentences should be passed on anyone convicted of homosexual offences involving children.

Kowloon City District Board

Six Board members spoke at the meeting, with the majority favouring maintenance of the status quo.

One member, solicitor by profession, did suggest that the law should be changed because it interferes with individual's freedom of action.

Sai Kung District Board

While the majority of the unofficial members viewed that the legislation should not be amended to make allowance for homosexual conduct and felt that to discuss this subject openly was shameful, the remaining three unofficial members held different views. These members agreed on amendments to allow homosexual conduct in total privacy by adults with mutual agreement and consent of both parties, and without involvement of any kind of reward. They felt that the present legislation on homosexual conduct was too strict. It was also suggested that consideration should be given to lifting the heavy penalty currently in force and applying some sort of mandatory psychiatric treatment to the parties involved. One member remarked that the word "abominable" was incorrectly chosen to describe this kind of conduct as this might cast a wrong impression on such conduct.

Sai Kung District Fight Crime Committee

In principle, the Meeting was of the opinion that homosexuality should not be encouraged. Members felt that homosexuality would be likely to lead to family disorganization which, in long term, would lead to social disintegration. While heavy penalties might serve as a deterrent, members considered that imprisonment for life might be too harsh.

Some members held the view that the imposition of penalties to prevent people from committing homosexual acts might interfere with personal freedom.

Apart from penalty, it was suggested that some rehabilitative measures such as referral to probation officers or psychiatrists should also be considered.

Southern District Board

While the majority of the members do not favour changing the law on homosexuality as it stands, some members suggested that the maximum penalty for homosexual acts between consenting adults should be reduced.

Southern District Fight Crime Committee

Members of the Committee felt that the Chinese were traditionally more conservative in their outlook and any move to liberalize the law on homosexuality in Hong Kong would most likely be opposed. They also agreed that children should continue to be protected by law from any form of homosexual activities, and that the law should remain very harsh towards those who benefit from trading in such activities.

There was, however, a divergence of views on whether the existing law should be relaxed. Some took the view that the maximum penalty of imprisonment for life for person convicted of buggery under Section 49 of the Offences Against Persons Ordinance (Cap. 212) was unduly harsh. It was suggested that if homosexual activities were between consenting adults in private premises, these should not be regarded as criminal activities.

On the other hand, some took the view that any relaxation of the present law might result in an increase of homosexual activities and was therefore undesirable.

North District Board

Dr Pang Hok-tuen said that if homosexual behaviour is legalised it would enable people with this behaviour problem to be assisted, rather than punished. He felt that punishment, for example by imprisonment, is pointless and inappropriate in most cases, although criminality should be retained where prostitution or minors are involved, or where homosexual behaviour takes place in public or without the consent of those involved.

Dr Chan Chee-chung felt that homosexuality is unnatural and that legalisation would encourage it. He did consider, however, that psychiatric treatment and counselling would be a more constructive approach than imposing penalties.

Mr Cheung Yan-lung said that in his view the legalisation of homosexuality would offend the moral sense of the majority of the Chinese population in Hong Kong. He also agreed, however, that psychiatric treatment of homosexual offenders is preferable to punishment by imprisonment.

North District Fight Crime Committee

Unofficial members unanimously agreed that homosexuality should not be legalised in Hong Kong for the following reasons :-

- (a) homosexual behaviour was a mental sickness and legalisation was not a means to cure it;
- (b) legalising homosexuality would only encourage more people to practice it. This would aggravate the problem even further instead of solving it; and
- (c) legalisation would certainly offend the moral sense of the majority of the Chinese population in Hong Kong.

Unofficial members also unanimously agreed that a maximum penalty of life imprisonment for buggery was too heavy.

Islands District Board

Strong views against homosexuality were unanimous among the unofficial members.

Sham Shui Po District Board

Only three members commented on the issue and they were all against any change to the existing laws as in their view homosexual conduct should not be tolerated in Hong Kong, which is basically a Chinese community.

Wanchai District Fight Crime Committee

Mr LO Yick-sun viewed that abominable homosexual conduct, carried out by consent of both parties, should not be regarded as an offence, but members held that this might encourage more homosexual acts. Mr HO Choi-chiu however felt that homosexuality was still a serious offence, and the law should not be amended to allow for any leniency in punishment.

As regards penalties, members suggested :

- (1) Para 1(i), under Section 49, conviction of buggery liable to life imprisonment - members considered the penalty too harsh and suggested it be relaxed; and
- (2) Para 1(iii), pursuant to Section 51, any male person convicted of an act of gross indecency with another male person, should be liable to a maximum penalty of 10 years instead of 2 years as stipulated.

Tsuen Wan District Board and Area Committees
of Tsuen Wan, Kwai Chung and Tsing Yi

The discussions were centred on two themes:-

- (a) given the local circumstances in Hong Kong, whether homosexuality should be legalised; and
- (b) again, given the circumstances in Hong Kong, whether the laws governing homosexuality in Hong Kong should be changed.

The views of the majority of the members of the meeting on (a) was that homosexuality is totally unacceptable in Hong Kong which is primarily a Chinese community, and as homosexual conduct is unnatural and is contrary to Chinese traditions and concepts of morality, homosexuality should be totally banned. Only one member who is a doctor by profession favoured legalising homosexuality as he believed, by legalising homosexuality, the spread of venereal diseases could be better controlled.

The views on (b) were more divided:-

- (a) some feel that the existing laws on homosexuality should not be changed as it has been working reasonably satisfactorily for years;
- (b) some feel that the maximum penalty of life imprisonment appears to be too severe for offences of this nature and perhaps the maximum penalty could be reduced, to say 10 years;
- (c) penalty could be more severe for offences committed in public than those in private;
- (d) some are of the opinion that offences committed in private between consenting adults should not be regarded as criminal, as Hong Kong is after all a free society; and
- (e) the laws should not discriminate against any sex. There should be provisions in the laws to impose a higher penalty on any person who procures or attempts to procure the commission by a male person of any act of gross indecency with another male; this is an effort made to prohibit male prostitution.

Tuen Mun District Board, the Tuen Mun
District Fight Crime Committee, and the
Tai Hing Estate Local Affairs Committee

A wide range of views are collated as follows :

- (a) Professionals, e.g. doctors, industrialists etc. view that homosexual relationship is basically private and personal and can be allowed between consenting adults as long as interests of other parties are not jeopardized.
- (b) Aged locals, representatives of religious bodies and school principals strongly object this sort of behaviour which is deemed contradictory to the Chinese culture; they are satisfied with the existing legislation and penalty and can tolerate no relaxation in this respect.
- (c) It is a general consensus that the ceiling age for protection of children should be raised from 14 to 16.

MOVEMENT FOR HOMOSEXUAL LAW REFORM

Proposals for Homosexual Law Reform

Introduction

We request Government to consider amending the 'Offences against the Person' Act so as to render homosexual acts between consenting adult males in private no longer a criminal offence.

We propose this because the present law is

- i) not enforced
- ii) generally unenforceable
- iii) discriminatory
- iv) conducive to other crimes

Our proposal only relates to sexual acts performed

- i) in private
- ii) where both parties are adult
- iii) where there is no coercion

We would support the retention of the existing laws and penalties with regard to offences involving minors, public indecency, and coercion or assault. These laws protect society, whereas, we contend, the law with regard to consenting adults in private does not.

The existing law

The present law with regard to homosexual acts is contained in sections 49 to 53 of the Offences against the Person Ordinance of 1971. It provides for life imprisonment for the acts of sodomy and bestiality (not distinguishing, in the case of sodomy, the act between consenting persons from that where there is no consent).

It provides for imprisonment of up to ten years for attempts to commit the above acts or for assault with intent to commit the above acts or for any indecent assault on a male person.

It provides for imprisonment of two years for the commission of, or attempted commission of acts of gross indecency (not defined) with another male person, in public or in private.

We have no quarrel with the law relating to assault (non-consent), nor with the law relating to public indecent behaviour. We therefore make no reference to the existing laws with regard to soliciting, loitering etc., which offences are not the subject of this proposal.

The law dealing with homosexual activities was first introduced in Hong Kong by the Colonial Government and the legislation was modelled on the law in England. Subsequent amendments have also followed similar amendments to the English law, though Hong Kong has not followed the provisions of the Sexual Offences Act of 1967, which rendered private acts between consenting male adults legal in the United Kingdom.

At this point we should mention that, until the Colonial Government introduced a special category of 'homosexual offence', there was no existing, local law on the subject. Historically

China seems to have been less concerned with regard to homosexual activities, provided they did not infringe or impose on public safety, decency and the smooth operating of society.

It is ironic in the circumstances that the present law is sometimes defended on the grounds that 'Chinese opinion' would not favour a change. The law was introduced by the colonial authority: the law in England has since been amended to make homosexual conduct between adult consenting males in private no longer an offence. Furthermore such conduct is not a criminal offence in the Peoples Republic of China. It is a diminishing minority of countries which have any legislation with regard to such conduct.

The law is not enforced

It is now over three years since any prosecution has been brought with regard to homosexual activity between consenting adult males in private, and even longer since any charges have been made on the initiative of the Crown. The law is simply not being enforced. We do not refer here to cases involving coercion, minors or public indecency, which would remain offences under our proposal.

There is surely no justification for retaining on the statute books a law which is not enforced. We argue below that the law is also unenforceable and indeed is harmful to the public interest.

There is, we believe, no other law which is retained but is not enforced. The existence of such a non-enforced law surely undermines the law itself as a whole. If certain 'offences' are really regarded as criminal, then it is difficult to understand why no prosecutions are brought. It is further difficult to understand the non-enforcement if the 'offences' are deemed to merit such penalties as life imprisonment.

However the severity of the penalties is not our concern, but rather that laws which are not enforced should not be retained. Our proposal would simply bring the law into line with current practice. It may be argued 'Why change the law if nobody enforces it anyway?' The answer is that the law itself is undermined by not being enforced, that it could not be properly enforced anyway, and that its continued existence leads to more real problems both for homosexuals and for the public good.

The law is unenforceable

For the law to be enforced in a credible way would require access by the police to the private dwellings of a relatively large number of law-abiding citizens. It is not known how many male adult homosexuals there may be in Hong Kong. Furthermore homosexual acts may be committed occasionally by people whose principal inclination is heterosexual.

The number of homosexuals is not germane to our proposal. If the law can be shown to be unenforced, largely unenforceable, discriminatory and conducive to other crimes, it is not relevant whether we are considering a minority of 1,000, 10,000 or 100,000. However, if statistics from other countries are remotely significant it is likely that something between 2% and 4% of the adult male population has, at some time, engaged in a homosexual act such as would now render him liable to criminal prosecution.

It follows that a substantial minority exists who are, at present, subject in theory to criminal investigation. The existence of such 'crime' which is not even investigated, let alone prosecuted, demonstrates the general unenforcibility of the present law. Given the large number of 'real' crimes that require action, it would simply be impractical to assign manpower to investigate people's domestic bedroom habits.

More importantly, and we lay great stress on this, it would be improper, and an infringement of individual freedom and privacy to attempt to investigate the private conduct of otherwise law-abiding citizens in this way.

The largely unenforceable nature of the law means that such offences as are brought to the attention of the authorities are likely to be either public (in which case they would remain offences under our proposal) or the result of a 'tip-off' from a person with a grievance against the offender. We refer later to blackmail and corruption in this connection.

The law is discriminatory

First the law is discriminatory against male as opposed to female homosexuals. Activities between consenting adult female homosexuals are not, and never have been, a criminal offence in Hong Kong. There is, we believe, no other law which discriminates between the sexes in this way, other than offences which can only be committed by one sex, e.g. rape of a female by a male. This is unjustifiable.

More fundamentally the law discriminates against male homosexuals as opposed to the heterosexual majority solely by virtue of their preference for the emotional and sexual partnership of their own sex.

We are not here concerned with attitudes towards homosexual activity. Many who support our proposal would concur with the view that a normal fulfilled and happy heterosexual pattern of behaviour is the desideratum.

However there are many things which may be disapproved of, including, for example adultery and fornication, which, are not, however, criminal offences, though heterosexual adultery doubtless is more harmful than homosexual conduct between consenting adults in private, in that there is an injured third party.

The homosexual condition is abnormal, in that the majority of the population is heterosexual. So, however, are such 'minority' conditions as athletic or academic brilliance, blindness, speech-impediments, being left-handed (once thought of as requiring remedial treatment), or earning more than \$100,000 a year. The issue is not whether a condition accords to the norm but whether, in the context of this proposal, the expression, in private, of that condition should be prosecutable by law.

There is surely no other sphere of activity where the law may intervene when there are no injured parties, no infringement of public safety, decency or property rights, and where the parties concerned have committed no offence other than to be different from the majority. This is discrimination which is as unnecessary as it is undesirable.

The law is conducive to other crimes

The existence of a law which is neither enforced nor generally enforceable provides considerable opportunities for the dishonest person to engage in blackmail and corruption.

At present the discreet homosexual in Hong Kong can live a respectable and law-abiding existence, knowing that, even if his mode of life is known to others, he will not run the risk of prosecutions, providing he does not otherwise break the law. However, someone who wished to blackmail him, or pursue corrupt activities without interference, would have a singular opportunity by threatening to expose the homosexuals activities to the authorities.

We concede that this would still remain an undesirable possibility following an amendment to the law, as there will remain for many a stigma attached to the condition of homosexuality.

However, the removal of the possibility of legal prosecution, with the possibility of imprisonment for up to life would reduce the opportunities for the corrupt and the blackmailer. It would also end the iniquitous situation whereby the forces of law were required to take action against otherwise law-abiding citizens at the instigation of informers of sometimes questionable repute. That the law chooses not to take action on its own initiative has already been demonstrated.

A related matter which has been brought to our attention, particularly by religious, social and psychological workers, is that there are cases where a homosexual may have certain problems (perhaps, but not necessarily, associated with his homosexuality), need advice and help, but be unable or unwilling to seek such help, as he would, in the course of doing so, need to confess to what is, at present, a criminal offence involving possible imprisonment. We have been much impressed by this unfortunate state of affairs.

General

We do not see the male homosexual as an actual or potential criminal by virtue of his condition. The vast majority are ordinary, law-abiding members of the community. To associate the average homosexual with the few unlawful people who are rightly charged in connection with activities involving minors, coercion or public indecency, is as wrong as to judge the majority of heterosexual males according to those involved in pornography, rape, adultery and so forth. It is with this law-abiding majority of homosexuals that we are concerned. There has always been, and probably always will be in all societies, a minority of the population, male and female, who are homosexually inclined. Our argument is that they should be subject to the law in exactly the same way as the heterosexual majority. That they should be prosecutable for any offences involving coercion, violence, assault, public indecency, and engaging in prostitution.

It is now widely accepted that homosexuality is not a disease or a condition necessarily requiring treatment. It is simply a minority condition, and it is not a proper function of the law to, in theory, persecute this minority. That the law does not do so, cannot generally do so, and, it seems evident, does not wish to do so, renders a change in the law desirable.

Proposal

- a) That the law of Hong Kong be amended to accord with present practice, and that homosexual acts between consenting adult males in private be no longer a criminal offence.
- b) That the existing law and penalties with regard to homosexual acts involving coercion, minors and public indecency be retained.
- c) That the law be amended for an initial period of five years, at the end of which the matter be further considered.

It is well appreciated that Government has many other matters to consider of an equally or more urgent nature. Should it be necessary we would understand there may be a need for our proposal to be considered in principle, pending time for the necessary legislation. We would, however, urge Government to respond to our proposal which would remove from the statute book a law which does not serve the public interest in any way, and which constitutes an unnecessary and undesirable situation in our community.

In support of our proposal we are forwarding to you 424 signatures of individuals who wish to associate themselves with our proposal.

NOTES OF MEETING WITH REPRESENTATIVES
OF KOWLOON CHAMBER OF COMMERCE,
HONG KONG & KOWLOON RESIDENTS' SOCIETY
AND OTHERS

Meeting held on 9 January 1982
at Hon. Mr. Justice Yang's Chambers

Present :	Hon. Mr. Justice T.L. Yang	–	Chairman
	Dr. Ambrose King)	
	Hon. Mrs. Selina Chow, JP)	
	Mr. Robert Ribeiro)	Members of
	Dr. George Ou Ta Wei)	Sub-committee
	Mr. T.C. Bridgman)	
	Mr. Lam Wah Hui)	
	Mr. Jonathan Daw	–	Secretary
	Mr. C.C. Cheung		Attorney General's Chambers
	Mr. Tang Ho Yin		Mutual Aid Committee, Lai Chi Kok
	Mr. Shek King Man		Hong Kong & Kowloon Residents' Society
	Mr Ha Yu Man		Mongkok District, Tai Kok Tsui Area
	Mr. Anthony Wong		Kowloon Chamber of Commerce
	Mr. Wong Cham		Kowloon Chamber of Commerce

1. Justice Yang thanked the guests for volunteering to give submissions to the Sub-committee.
2. Mr. Wong Cham started by saying that over 95% of Hong Kong's population are Chinese and there is no law in Chinese history legalising homosexuality. In Cantonese, the nickname "gays" connotes despicable implications as criminals of murder and assault. He knew of no place in the world other than the U.K. where homosexuality is permitted by law. He said he had been to the States and learnt that a soldier was dismissed for being a homosexual. He circulated a copy of an article he wrote in Wah Kiu Yat Pao expressing his views on this subject.
3. Mr. Wong went on to explain how bad it could be to practise homosexuality. In the animal kingdom, he said, homosexual behaviour is against nature. He queried why in Hong Kong we have to engage ourselves in such discussions as to legalise homosexuality. He thought it was not necessary at all.
4. Mr. Wong voiced disagreement to the argument that if somebody is practising homosexuality, it should be legalised. By the same logic, he said, because of many robberies nowadays, should we consider approving of such a crime. He thus objected to legalising homosexuality personally and on behalf of his organization.
5. Hon. Selina Chow proposed and Justice Yang agreed and undertook to explain the present state of the law regarding homosexuality to the guests.

6. Mr. Anthony Wong pointed out that there are a lot of differences between Hong Kong and the U.K., both geographically and historically. Here we have over 95% Chinese and according to the Chinese customs and practice, homosexuality should be prohibited.
7. Mr. Shek used Chinese philosophy of "tin (sky)" and "tei (ground)", "yim" and "yeung" to illustrate his points that homosexuality should not be permitted at all. He further said that if it is allowed, it would lead to family break-down and social confusion.
8. Mr. Ha opined that in Hong Kong, even if homosexuality is legalised, it will have very little effect on the public at large. However, when children of our society are brought up in a mixture of European and Chinese standards of education, they would be adversely influenced and may take it as a custom to practice homosexuality.
9. Mr. Ha agreed with Mr. Wong Cham that this topic should not be discussed in Hong Kong at all. He had brought this issue up with his friends and committee members and nobody opposed his views. He therefore petitioned to all those concerned with the making of the law to heed to public opinions and not to discuss this matter any further.
10. Mr. Anthony Wong said in their committee meetings, all members were surprised in learning that the issue was being raised. He explained that in Hong Kong where the bulk of the population came from China, there is only a very, very small percentage of the citizens who are homosexuals. As he saw it, any law should be for the good of the public but in Chinese society, this issue is very embarrassing and disgusting. It should never have been raised at all. If homosexuality is legalised, it would only lead to confusion. He considered it a waste of time and money.
11. Mr. Tang took it as representing his Mutual Aid Committee and his Confucian organization. He opined that this matter should not be discussed at all. Those who raised this issue did not know what is right or wrong. Quoting a Menscius saying, he condemned all those foolish persons. According to Chinese philosophy, homosexuality has adverse effects on the physiology and psychology of the people. In Taiwan and Mainland China, he said, homosexuals were made criminals of law.
12. Justice Yang pointed out that in China, there is no written law concerning the issue of homosexuality. Mr. Tang said that there is indeed no need for legislation in Hong Kong or else it would break the close political tie with China. He then continued in arguing that the law should not be changed because there was only a small proportion of the population practising it. In conclusion, he opposed any legislation legalising homosexuality.
13. Disagreeing with Mr. Shek's argument, Mr. Wong Cham said they cannot interfere with the rights of Europeans to legalise their laws on homosexuality but in their Chinese society, they should not be compelled to accept European law as suitable to them.
14. Hon. Mrs. Chow explained the loopholes in the law on homosexuality, with particular emphasis on the issues of two consenting men practising it in private and on the cases of blackmail and criminal intimidation.
15. Dr. King said that they are not encouraging homosexuals by reviewing the law but rather, they are looking at the issues of the law which are not satisfactory.

16. Justice Yang advised that in China, there is no legislation to put homosexual to jail but in Hong Kong, we have the law to this effect.
17. Mr. Wong Cham agreed that the public misunderstood the work of the Sub-committee and thought it was encouraging homosexuality. The guests all shared the same view that homosexuality should be condemned but the present state of the law is not satisfactory.
18. Hon. Mrs. Chow and Dr. King both explained that the Sub-committee is only looking at a very small area of the law. Mr. Wong Cham and the others accepted this point.
19. In replying to Mr. Anthony Wong's question, Justice Yang said from past statistics, there were very little cases concerning homosexuality. Mr. Wong felt it not essential to change the law at present for a small group when there are so many urgent matters for the majority. However, Hon. Mrs. Chow found it expedient to have two or more areas of law reform carrying out at the same time.
20. Dr. Ou expressed his views on the issues from the angles of medical and psychological aspects. Mr. Anthony Wong and the others seemed agreeable to the argument that by its nature, the subject should include not only social problems but also medical complications.
21. Hon. Mrs. Chow brought the meeting's attention to a documentary compiled by TVB on the subject of homosexuality released about a month ago on television. Mr. Wong Cham said he was interviewed by a TVB reporter several months ago but he did not talk much because MacLennan's inquiry was being conducted at that time. All present agreed that the documentary was well presented and the views expressed by the editor were objective and sensible.
22. Justice Yang was concerned that even if the law on homosexuality is changed, the public would not accept its practice as normal and all the guests agreed to this point.
23. Hon. Mrs. Chow quoted the analogy of bigamy and said that the change in law should take into account social trends. Justice Yang said that the argument at present should be centred on taking away the illegality rather than legalising homosexuality.
24. Dr. Ou mentioned some medical cases whereby persons indulging in homosexuality would develop psychological diseases if they are in constant fear of being penalised by the law. Justice Yang agreed with Mr. Wong Cham and the others that the judge would take into account the accused's medical records when considering the sentence imposed on homosexuals.
25. Finally, it was agreed in the meeting that the law would only affect a very small portion of the population and that while it is simple to recommend changes in the law, there will be complicated political and social issues that will follow.
26. In conclusion, Justice Yang outlined the fact-finding role of the Sub-committee and assured the guests that their views would be reflected in the report to the Commission. At a later stage, he said, the Commission would discuss the matter in depth and decide what should, or should not, be done.

(C.C. Cheung)
11.1.82

EXTRACT FROM LETTER
FROM HONG KONG GENERAL CHAMBER OF COMMERCE
TO LAW REFORM COMMISSION

"As you will have realized from the discussion that took place, members feel that the matter is basically one on which the individual will make up his own mind and that the implications for employers, as far as can be determined, are not particularly serious. The majority of companies would seem not to have any particular expressed policy regarding employment of homosexuals, with the important exception that if homosexual behaviour was found to be disrupting staff relationships and was in any other way causing embarrassment to an employer, action is likely to be taken just as it would with regard to any other form of disciplinary offence or undesirable behaviour. By and large, members seem not to find that the employment of homosexuals creates any overt problems.

The previous paragraph refers to the situation as it exists at present, under which homosexual behaviour is a legal offence. The Committees feel that should it eventually be decided that a change in the law is desirable, any amendment in legislation should be drafted so as to discourage what might be termed 'the flaunting of conspicuous homosexual behaviour'.

The Chamber feels that it would be difficult to obtain any meaningful expression of opinion by carrying out any form of survey among its member companies, and that this would not probably establish much beyond what I have reported above.

Thank you for giving us the opportunity to comment on this issue. We hope that this view, even if it is somewhat negative, is of some help to you.

Yours sincerely,

Assistant Director
Administration"

NOTES OF MEETING WITH MR GEORGE CHANG

Meeting between T.L. Yang, Selina Chow and
George Chang of TVB on Tuesday, 24 November
1981 from about 10:30 a.m. to about 12:30 p.m.

During the meeting, several ideas were discussed. T.L. Yang and Selina Chow are particularly grateful to George Chang for seeing them and spending so much time with them. He was sincere, frank and open. The following is a summary of what he said.

"In preparing for the TVB programme on homosexuality, he had interviewed many people and visited a number of places frequented by homosexuals. He had attended their social gatherings as well as meetings. It took him six months to produce the programme. He found that the homosexuals he encountered came from all levels of society : there were civil servants, business men, people from the teaching profession, people working for the media, waiters, clerical staff, artists, writers, salesmen, technical experts, etc. Some were from Europe, some from American countries and Asian countries, others being local. The age group was between about 18 to 30 or above. From a psychological point of view, their mentality was the same as heterosexuals. Being men, they are more easily sexually aroused than a woman. Also procreation being impossible, and coupled with the conditions of a community such as Hong Kong, the chances of their breaking up a union are greater than that of a marriage between a man and a woman. The code of behaviour does not differ from that of heterosexuals."

2. The homosexuals seen by George Chang are not particularly concerned about the state of the law, for they are already taking part in homosexual activities anyway. The threat of blackmail (e.g., in the case of civil servants) does not appear to be a strong reason for amending the law, for non-criminal conduct, e.g. adultery, may nevertheless be the subject of blackmail. George Chang feels that the problem should be approached from a psychological and anthropological point of view.

3. Many factors, and not any single one, contribute to a person being a homosexual. There is, in the case of a few, an important element of will or decision making. In many cases, a person may, at some point of time, make a conscious decision to be a homosexual or to shun homosexuality and lead a happy heterosexual life. This paragraph applies to a few only.

4. George Chang says : "I think for a gay person, the process of 'coming out', of recognizing one's own sexual preference can happen at an early age, 14 or 15, or it can happen when a person is 18, 20, 25 or even after 40. For someone who cannot cope with his or her own sexual preference, that is, if he or she is faced with such a choice, then such a person is a closet homosexual who is very sensitive to his environment; and the slightest disapproval may be looked at by this person as oppressive. For a gay person, the moment of decision making or the coming out process, may take a very long time. For someone to be able to say, 'yes, I'm gay', means that that person is prepared for the worst and he is willing to face all the resulting consequences."

5. Dr Nan-lun Ng of the Department of Psychiatry, HKU, and Dr Linda Koo, Medical Anthropologist, Faculty of Medicine, HKU were interviewed by George Chang and he thinks we might approach them. Dr Choy Yuen-wan (蔡元云) of 'Breakthrough' may also be contacted. They have encountered homosexuals in their counselling service.

6. This paper has been seen by George Chang.

(T. L. Yang)

STATEMENT OF A CHINESE HOMOSEXUAL

(Translation)

Foreword

Late in the night of 6.11.81, TVB broadcast a programme called 'The Homosexuals'. It has stirred up the emotions and thoughts of a group of people who have been forced to conceal their identities. It is believed that in the near future, homosexuals who have buried confusions and conflicts deep in their hearts for years will, as a result of the programme, voice their feelings to society.

A number of people have always said that homosexuality is a sickness unique to white people, and the above special programme is the first programme about local Chinese homosexuals ever produced in Hong Kong. It is a selfish and unjust society in which homosexuality is banned by the law. However, there are still people who have spoken out for homosexuals and produced for them a special programme in a sincere and honest way. Their kindness is like sunshine in winter, warm and tender.

Traditional conservative views, existing legal restrictions and various other causes have led the majority of the public to prejudice and misunderstanding about homosexuality. What is more annoying is that there are people who for their own interest, do their best to vilify homosexuals and turn them into ugly and unnatural things so as to gain the public's favour. However, they themselves have only limited knowledge about homosexuality. Apart from lamenting their bad fortune, the poor victims can do nothing about this. On the other hand, the public becomes more biased against homosexuals and dislikes them more. But just like a fairy tale, when the worst time of despair and sadness has come, the sage brings hope to the wounded and the weak. Social dignitaries who appeared in the TV programme used their reasoning and conscience to comment on the behaviour and psychology of homosexuals. With knowledge and love, they did justice to these disadvantaged persons. At the same time, the programme gave the victims who lived in darkness a chance to reveal their inner world. Should the world have more wise and kind men like them it would be less ugly and the oppressed could gradually stand erect.

Every homosexual has his own story and reasons for being willing to play the role of such a social outcast. I, as a member of this minority, have long wanted to make a confession to my family and friends. However, I am a man of little virtue and ability. Up to the present, I am still withholding the truth from my family. This is the saddest thing in my whole life. Now, since the others were bold enough to appear on television I do not think that it matters much in telling my own past experiences. It shows my support to friends who appeared on television and it can be a tribute to the special programme.

Starting from the age of 11 or 12

Homosexuals' admiration and affection for the same sex comes from the heart. To them, these feelings are natural and normal. They are real physical and psychological feelings which they cannot control. So long as homosexuals do not do anything harmful to others, there is really nothing wrong with their feelings and actions. I found that I was attracted by the same sex as early as 11 or 12 years old. At first, I was scared, thinking that I was the only queer man in the world. After 20, I gradually came to know friends similar to me. I found that they were all mentally balanced, some with high intelligence and good morals. I began to experience deeply this hidden world. The gains, losses, happiness, anger, sorrow and joy experienced are the same as those in the kaleidoscopic world of a heterosexual.

Causes leading to suicide and nervous breakdown

In a medical book, I found the definition of homosexuality : 'Homosexuality is an innate state of mind. We now begin to know its causes. Pathologically speaking, homosexuality is similar to colour blindness, left-handedness or heterotaxy'. So homosexuality is not a 'psychological perversion'. It can only be called a form of 'sexual imbalance' and this imbalance is only one of the many styles of sexual life. So long as a homosexual is healthy in thinking and mentality, his sexual inclinations will not harm himself or others. However, the society in which a homosexual lives and his family do not allow him to satisfy his physical and psychological needs. The homosexual has to act a false part to cater for society and others. This psychological and mental burden which is unnatural and irrational can gradually force a normal person into the obscure world of insanity. And there is the danger that this will eventually lead him to suicide or nervous breakdown.

I became economically independent when I was 14. The independent life gave me a strong will. Though I did not tell the world and my family about myself (of course, there was no need to), heterosexual friends who were close to me knew about me, understood me and accepted me. I was glad that I had more of my real self and more freedom, both in daily and mental life, than my homosexual friends. The only shortcoming was that I had to make some compromise in my job and cover up my true nature. However, this small burden was not heavy enough to lead me to suicide or nervous breakdown. I was fortunate.

The impact of spiritual and sexual desires

Most homosexuals have their own stories and background : lack of family love in childhood, lack of good friends in adulthood, failures in studies and career, crowded and noisy living conditions, and emptiness in mental life. All these can make one seek desperately for physical contact with another person. It is not a sin as it aims at releasing one's burning desire and anaesthetizing the emptiness at heart. Love and desire are not evils in themselves. As long as deception and oppression are not involved and the other party does not get hurt, restrictions and curbs should not be imposed on sex and its various forms. Love and desire should be given the greatest degree of openness and freedom, and the secrets of one's bedroom should also be given strict protection by the law.

When I was 18, I fell in love secretly with a boy (not a gay) who was 2 years younger. I had not come out then and I did not know how to find gay friends. It was the first time in my life that sparks of fire leapt from the depth of my heart. I lost myself and I unilaterally gave him all my love. Of course, I did not achieve anything. I well perceived that it might end up in a tragedy but my passion grew stronger day by day. My behaviour and actions towards him also became more excited and crazy. Eventually, he was so scared that he ran off every time he saw me. Very late on a certain night, I could no longer control my burning desire. I was in a state as if I were hung in mid-air by my physical and psychological needs. Recklessly, I climbed out the window, ignoring the danger of falling down, I climbed along the drain-pipe towards his sleeping room

Married life with homosexuals or heterosexuals

Homosexuals can never be like heterosexuals. They cannot take the correct road of life, i.e., friendship followed by love and then proceed in unity to marriage. Since homosexuals cannot build a family of their own so even those in love lack responsibility, perseverance and faithfulness. As a result, they do not have a serious and reasonable attitude about sex and love. However, this is not an absolute phenomenon. On the other side, we can also find examples of faithful, dedicated, profound and noble love. The examples may not be many, but they do exist.

Sometimes, a homosexual, under the pressure of society and family, is forced to pick a girl at random and marry her. Unless he is bisexual and his married life can satisfy his psychological and physical needs, he will certainly lead a double life after marriage so as to satisfy his real needs. Such a marriage which is held to cater for the public's interest will not save him from his 'sorrow'. The marriage will only turn into a foolish and ridiculous tragedy which does harm to all parties involved.

In a gay party held in the spring festival of 1974, I found 'him'. Those days were filled with sunshine and freshness which I will never forget. Our love naturally bore fruit. I declared to all my gay friends that my lonely life as a bachelor had ended and I would start another chapter in my life. However, we are only an ordinary pair. In the past few years, we have not experienced any serious difficulties or problems. The pressure of life has reduced our togetherness into something simple and unexciting. Lately, I have even found that we now seldom succeed in achieving harmony and unity, both spiritually and physically. I know that these shortcomings are natural in any love affairs. They are something we have to face. How can life be always perfect? I do not mind all these. The important things are we still treasure our days together; we still find life together harmonious and happy; and we still love and are concerned about each other. I do not care about storms in the outside world and I deeply believe that our love will be like a stream in a secluded valley, ever flowing and ever refreshing

A loner isolated from the people

Under the current social circumstances, homosexuals will naturally and voluntarily abandon their old friends and relatives. On the other hand, they will try their best to avoid new friends and colleagues. Why do they become so unsociable? They are also human beings. They need assistance, love, friendship and concern just like others. But they will become lonelier year by year, getting more and more isolated from others. Others may think that they are unsociable but they are actually forced to suppress their feelings and retreat to seclusion and concealment.

Sometimes, a homosexual may suddenly lose control of himself and open his heart to others. He will tell his family and friends what he really likes or whom he loves. This will allow him to enjoy freely for a moment the pleasure of being honest with others. However, the real world does not permit him to do so. He will end up by being rejected, isolated and insulted by others. So he has to submit to reality. In order to protect himself, he drops off old friends and avoids making new ones.

This sorrowful self-isolation can make some homosexuals very pessimistic. They feel that fate and circumstances are against them and they can do nothing about it. The only escape is evasion. So they live helplessly in loneliness and contradictions, bearing with them the 'masterpiece' that mother nature has bestowed on them. Their hearts are thus permanently filled with unnamed sadness and lonely feelings.

As a gay, 1975 was the year I had my biggest test. I was recruited by one of the disciplinary forces and had a high-paid job. I thought that I could get rid of poverty and gradually achieve success in my career. However, one's character determines one's role in life. I was defeated by the challenge of 'human relations'.

My colleagues were all men of mettle and masculinity. As a team of seven or eight, we worked together and after work we ate, went out and had fun together. But sadly for me, what they did and talked about every day, mostly directed to gambling, girls and family business, were a world apart from my own likings and personal interests. As time went by, I found myself increasingly estranged from these people and the gulf separating us widened as

they were getting more acquainted with each other in a family way. The more often I tried to shy from them, the greater would be their curiosity about me. This in turn added to my eagerness to keep to myself lest my true self be unwittingly revealed. I was beginning to feel the pinch of the shackles that were unnecessarily brought to bear on my mind. In a bid to make life easier, I had once thought of putting on the mask of pretending to be heterosexual, making myself behave just like one of them and sharing the fun sanctioned by the world. But I was well aware in that event I could hardly stand up to the pricks of my conscience for indulging in lies and self-deception.

Realizing that I could never accommodate myself to others who had done precious little to accept me either, the only course left open to me was to accept whatever "fair" judgment others would pass on me. And the verdict read "Guilty. You're fired!" Nevertheless, I was prepared to pay this price as long as I could be true to myself. I was not going to relinquish my own belief just for the sake of keeping a good job. I would rather face others' rejection and condemnation than say what other people say. I must be faithful to myself and live for my own sake.

Personality unsound and feelings immature

Many homosexuals are treading a lonely and melancholy path that will ultimately lead to a solitary life. These hapless people must nevertheless face up to the facts of life. Who will choose to forsake the happiness of a family life that is acceptable to all and that can be cherished openly without compunction? To homosexuals, however, the leopard can never change its spots. Finding a life-long companion from among one's own sex is as difficult as finding an oasis in the desert. That is why most of them have spent long periods, or even a lifetime, living in their own solitary world.

For these people, the feeling of loss and loneliness will grow with their age. Those who are still bachelors beyond the age of 30, in particular, will feel they owe something to their families and friends. So, many have acquired the habit of frequenting bars, discotheques and the like, and immersing themselves in gambling and other pleasures. Living in a dream world gives them the pleasures of the moment, however, ephemeral they may be. Yet, their inner life is still abject despair and privation. Losing interest in other useful pastimes, they have abandoned themselves to despair.

I first came out in 1973 when I got acquainted with friends having the same tastes through newspaper advertisements soliciting friends. From then onwards, I discovered many places where friends sharing similar tastes got together. Over the years, I came to know many gay people and understand them in depth.

Gay people are on the whole good-natured and seldom do harm to others. However, one thing is regrettable. That is, too many just do not bother to observe the proprieties and behave properly to others. They can be friends one day but complete strangers the next. With others there is no spiritual communication. This is particularly the case with those who are afraid of people. As regards their relationships with the other sex, they often act with naivety and childishness and appear sadly immature and inadequate when it comes to love. They are pessimistic and defeatist in love affairs.

Gay people give one the impression that they do not have a sound personality or a mature frame of mind. One of the reasons why they cannot keep on good terms with even their own people is the enormous pressure exerted by the law, the community, and the family. It gives them a sense of guilt. As they feel they belong to a different breed, they will at first repel their own selves and then alienate themselves from others. This self-imposed estrangement will gradually spread to other members within the same circle. They will no

longer be enterprising and energetic, and will eventually be devoid of any feelings as though their senses are completely numb.

Breaking through the spiritual shackles

Different people have different values and attitudes. There should be no definite and commonly imposed norms as long as our behaviour does not cause harm to others. A conservative society makes room for only one track and people have to follow the ways it approves. Anyone who takes a different course will be liable to be denounced, rejected and branded as "abnormal". It is hoped that Hong Kong will rid itself of such conservative thinking and that its people will no longer adhere to what they consider as "normal" standards of morality.

As a matter of fact, homosexuality need not be judged in moral terms or be subject to legal sanction. The question of homosexuality is not one of morality or law. To be honest, human and conscientious is what morality and laws are about; to be otherwise is not moral and lawful. What matters most is whether one is benevolent and affectionate to others and whether one has respect for life. One should be judged by one's personality and conduct, and not by whether one is a homosexual or a heterosexual.

I am very glad that I have now found a job that really suits me. I have found inner peace and a happiness though it is not a high-paid job. Now I no longer have to put on a mask and delude myself in order to accommodate myself to others. I can choose freely those colleagues who understand, accept and sympathize with me and have a spiritual dialogue with them. I have worked here for five years and have decided to regard this as a life-long career. I do not mind leading a simple life if only I can live unfettered spiritually in return.

I have recently got acquainted with a group of friends who have a stronger will. We spend a lot of time together on artistic and cultural pursuits. Though we are only a small group, we are sure that we can set a good example and bring new hope to other homosexuals. I am strongly convinced that the community will one day break away from the old and decadent conventions and adopt a rational approach in making its own judgment. Let us hope that one day everyone will have the freedom to love and do as they like and due respect will be given to what people say and feel. Only then will life be full and gratifying to us.

Epilogue

No man can enjoy his life fully and with a pure soul unless he is entirely sincere to himself and others. I now pray to God to forgive and sympathize with the homosexuals who have suffered immensely in the present-day world. I also hope that they will know it is not a shame to do what they do and their deeds are no crime. They need not reproach and reject themselves. We should equip ourselves with new knowledge and new concepts if we are to adapt ourselves to this part of the world where much significance is attached to freedom, democracy and human rights. The shortcomings and weaknesses of the past should be erased with the lapse of time. Today, we can manage to rid ourselves, little by little, of the shackles that come from within and without and face the world with an entirely new look. We should show the world the sincere, healthy and beautiful side of us. We should tell the world of our grievances and sufferings, as well as our ideals, aspirations and longings

All these years of homosexual life have enabled me to appreciate the importance of a genuine love. Never will I repent of what I have done and sacrificed. I am fully aware of the path I have been treading. I also know all too well that I have to face up to it with sincerity and bear whatever consequences may arise. As long as I am faithful to myself and others, I am sure that I will, undaunted in the face of perils, surmount all difficulties and dispel all fears

I must be faithful to myself through and through. I must live like a man, every
bit a man

NOTES OF MEETING WITH 4 YOUNG HOMOSEXUALS

Meeting held on 6.2.1982 at
Mr. Justice Yang's Chambers

1. Members of the Sub-committee met interviewees, all Chinese males, who had voluntarily come forward as homosexuals wishing to express views and provide assistance to the Commission. It was agreed that their names would not be noted but that they would be known as Mr. A, Mr. B, Mr. C, and Mr. D respectively.

2. The interviewees gave the Sub-committee personal particulars as follows :-

(1) Mr. A

Presently aged 27 and single. He was born and raised in Hong Kong, attending a well-known Anglican school. He went abroad at the age of 17 for university studies and returned to Hong Kong where he has worked for 4 to 5 years as an accountant. His family are in Hong Kong, his parents not having had a high level of education. He does not consider himself religious but would loosely describe himself as Buddhist.

(2) Mr. B

Presently 30 years of age. He was born and educated in Hong Kong to secondary level and presently works with an import/export company owned or operated by foreign interests. He lives at home with his parents and six brothers and sisters. He describes his family as having a left-wing background but says that he has personally rejected such left-wing leanings.

(3) Mr. C

Presently 30 years old and single. He comes from a working class family with 8 children. His mother is now deceased and the other children are all married. He was educated in Hong Kong to secondary level. In 1967 he moved away from his family and is now living with a friend. He regards himself and this friend as a gay couple and they are recognised by others as such a couple. His friend is under pressure to get married and this worries Mr C. Mr C himself is not under any pressure to get married. He says that he first felt attracted to males when he was a young teenager and regarded them as beautiful.

(4) Mr. D

Presently aged 23. He was brought up in Hong Kong and studied in a co-educational secondary and post-secondary college. He comes from a middle-class family of 3 children. His mother had a Eurasian father. Mr D regards her as more westernised and it was his mother who chiefly brought him up. Neither his family nor his fellow students know of Mr D's homosexual inclinations. Only certain old friends are aware of such inclinations.

3. The interviewees described the existence of circles of Chinese friends who are homosexuals. Such circles tend to be exclusively homosexual since members of such circles often do not wish their families or colleagues at work to know of their homosexual inclinations.

4. The interviewees generally felt that knowledge on the part of family, friends and colleagues at work would cause rejection and numerous difficulties. Mr A for instance stated that if his father knew of his homosexuality, he would be rejected from the family and that if people at work found out, there was a risk of dismissal. Mr A however had never come across a case of a person actually being dismissed by reason of homosexuality. All the interviewees stated that they felt considerable pressure constantly from the need not to be "found out". We were told that as result of such pressure, homosexual friends have been known to adopt the appearance of heterosexuality, in some cases getting married and having children.

5. The existence of criminal sanctions was said to enhance of reinforce such social pressures. The interviewees expressed the view that such criminal laws relegated homosexuals to 2nd Class citizens. Mr B said : "I do not regard myself as different from others. To have to go to prison because one is gay is oppressive."

6. When asked what would result from a change in the law, the interviewees expressed the view that such change would be a first step towards changing social attitudes towards homosexuality. At the same time, all the interviewees acknowledged that a change in the law would not by itself change social attitudes and that it would not result in homosexuals openly declaring their homosexuality. It was also felt that a change in the law would remove an obstacle to careers or promotion in employment. None of the interviewees thought that a change in the law would lead to public displays of homosexual behaviour since social pressures would continue to inhibit such displays.

7. Certain points of view against any change in the law were then put to the interviewees for their reactions, including the following :-

- (1) That homosexuality is a western manifestation and alien to Chinese culture. The response was that in the gay circles in which the interviewees moved, there were no westerners. Members of such circles included a doctor aged about 45, 2 journalists aged 31 and about 20 and also some students, all being Chinese. Various homosexual circles differed perhaps by their members belonging to different social classes. Some such circles involved members of lower economic groups such as waiters and hotel room attendants. Chinese homosexuals also span a large age range and various occupations, including shopkeepers and employees of the "Hongks". The interviewees all rejected as incorrect any suggestion that there were no historical precedents in China.
- (2) That homosexuals were promiscuous and that a change in the law would tend to encourage such promiscuity. The response was that general promiscuity is not the case. Individuals may be promiscuous just as heterosexuals may individually be promiscuous. Deep emotional ties often develop between a homosexual couple. The interviewees also thought that there was a tendency to mistake flamboyant frequenters of discotheques as being representative of the homosexuality community in Hong Kong.
- (3) That a change in the law would encourage individuals, particularly young persons to become homosexuals. The response was that this was unfounded.

8. All the interviewees agreed that a minimum legal age of consent would be important and right. They did not have any strong views as to what age the law should adopt but felt that any change towards decriminalisation would be an improvement.

9. Decriminalisation was further supported by the interviewees on the grounds that criminal punishments are pointless and do not rehabilitate. Decriminalisation would also lessen risks of blackmail and remove inhibitions among homosexuals from dealing with the authorities. Such inhibitions exist in collateral matters, for instance, a homosexual might be inhibited from reporting a theft for fear of investigations showing that he was a homosexual and therefore exposing him to a criminal prosecution.

10. When asked about the impact of the MacLennan Inquiry, the interviewees felt that generally homosexuals regarded the case as a scandal, giving the public a misleading image of homosexuals by focusing on the activities of male prostitutes.

11. The interviewees expressed concern about the recently published Civil Service Branch Memo on employment of homosexuals in the Civil Service. They expressed the view that Government should take a coherent and positive step to decriminalise the law, stressing its present oppressive effect on homosexuals.

(R. Ribeiro)

STATEMENT BY MR W.

PART ONE

A Personal Statement

I am a homosexual. From the earliest stirrings of sexual awareness, I knew I was attracted to other males. To me, my sexual orientation is perfectly normal. It evolved spontaneously, unconsciously, naturally. I would not change it, even if that were possible. In my adolescence, I made the discovery that males are divided between those -- the larger in numbers -- who are attracted to females, and those who are like myself. I soon learned how to make contact with other homosexuals, and so began an active sex life.

I am a criminal. In Hong Kong, each time I give physical expression to these natural instincts, I break the law. I do not feel constrained by that law. I break it often, as often as my heterosexual brother responds to his natural urges.

Furthermore, I am a convicted criminal. I have been brought before a Hong Kong court on a charge that could not be made in many other countries because the "offence" does not exist in their legal codes, and because places where homosexuals may meet discreetly are not subject to police investigation, and commercial establishments catering to a homosexual clientele are not prohibited.

Obviously, the first paragraph of Part Two which follows is based on personal experience. I know exactly how the law is enforced in Hong Kong because it happened to me. But I use this first-hand knowledge only to illustrate a general point of view, which I have striven to express in a wholly objective way.

I state categorically that this submission is not made in a spirit of rancour or resentment due to the humiliation of arrest, appearance in court and exposure in the newspapers. Every view stated in these pages has been held and articulated since long before the traumas of those events.

I am employed by a company that rates me according to my professional abilities. My superiors are all heterosexuals and to my knowledge were unaware of my orientation until my arrest. They then assured me unhesitatingly and unequivocally that the quality of my work was the sole criterion by which they judged my value to the firm. In other countries, I might take that for granted; in Hong Kong, I have reason to be deeply grateful.

I have been a resident of Hong Kong since May 1980. To those who say this is insufficient time to absorb the cultural complexities of the issue, I add that I have lived in the Far East since 1969, except for 19 months in London and seven months in Paris. I speak two Asian languages. Specifically, I have lived, apart from Hong Kong, in Japan (three years, eight months), Thailand (three years, ten months) and the Philippines (five months). I have been many times to Singapore and Malaysia. I have visited, mostly in connection with my work, Taiwan, South Korea, Indonesia, Burma, Vietnam, Cambodia, Laos, Bangladesh and India.

Of Chinese history and culture, I have read widely. My daily work involves me constantly with Chinese social issues, politics and economics. I understand a good deal about Chinese mores and customs. I am familiar with Chinese moral attitudes. I am personally acquainted with a great many Chinese people, many of them homosexual.

PART TWO

A statement to the heterosexuals of Hong Kong, made on behalf of a hundred thousand homosexuals

Preamble

If the law in Hong Kong - written in English - is to be changed, it will be changed by legislators who think and deliberate in English. Obviously, they are more likely to be swayed by cogent arguments presented in that language. Yet the vast majority of homosexuals in Hong Kong have little or no command of it. That is why I presume to speak for them. After all, the ones who eventually reach a decision - many of them expatriate - will doubtless claim to be acting on behalf of the Chinese people of Hong Kong.

But discrimination by heterosexuals against homosexuals transcends cultural condemnation. It has to do with human rights. So the core issues in this statement, though seen here in the Chinese context, would be just as valid if made on behalf of Russian, Iranian or South African homosexuals, all of whom have to contend with homophobic laws.

A statement to the heterosexuals of Hong Kong, made on behalf of a hundred thousand homosexuals who dare not speak

If you claim your laws are just, these things you may not do.

You may not send your police to spy in the obscure places where we meet. You may not force us to lurk furtively in dark alleys by denying us decent places to gather. You may not have your police leap from their hiding places, seize us, haul us handcuffed before our neighbours. You may not bring us before a magistrate and charge us with behaving according to our natural instincts. You may not wave our underwear in court and deliberate for hours on the origin of specks of spittle. You may not publish all this in the newspapers. You may not assign us a criminal record for the rest of our lives.

Of course, we do not expect you to approve of our sexual orientation. We understand that you outnumber us twenty to one and that the rules of social behaviour are your rules. We know that equality is too much to ask for. We don't expect that. Only justice before the law.

These things you may do, cruel and devoid of compassion though they may be. You may cast out the son you bore and raised when at puberty he turns by nature to his own sex. You may strike a beloved brother from the family tree when the dreaded secret is out. You may, if you want, remove a bachelor uncle's urn from the family tomb when the truth is posthumously revealed. You may spurn your homosexual neighbour, forbid your family to speak to him. You may shun the society of homosexual colleagues. You may mutter about the abomination of homosexuality, declare it to be disgusting, despicable, filthy. You may decline to mention the very word; you may vomit at the thought of it. But you may not arrest us, if you say you are just.

Not a single one of us determined for ourselves our sexuality, any more than you did. Our sexual orientation arose in us spontaneously, naturally, just like yours. To punish us for being what we are is manifestly unjust, to hunt us down is unconscionable.

We understand that we have no say in deciding what is morally acceptable in society. We know it is a heterosexual-governed world, that Chinese culture, which homosexuals cherish in most of its aspects, just like you, has no place for us. But we declare that our rights as human beings must take precedence over society's condemnation when what we do is by mutual consent, when there is no victim, when the only injury is to your sensibilities. We don't know why you

are so consumed with fear and loathing of something you will never see. We won't flaunt our sexuality at you, but we deny that you, the majority, have the right to persecute and punish us, no matter how much the practice is endorsed by historical precedence.

Certain things have long traditions in Chinese culture but are wrong by every law of humanity and decency. One may not drown unwanted baby girls. One may not castrate boys for service as eunuchs. One may not keep slaves. One may not cripple infant girls by binding their feet. And one may not punish homosexuals.

PART THREE

How many homosexuals are there in Hong Kong?

The fact that no one has conducted sociologically valid surveys on the distribution of the two sexualities in Hong Kong is not the same as saying we lack reliable indications. There is convincing evidence gathered elsewhere, especially in the United States - a multi-cultural society - that sexual orientation is consistent among the various races. Indeed, the dualism is apparently so biologically natural that it has been studied among many species of our mammalian order.

In the absence of reliably gathered statistics, it is much more reasonable to assume that residents of Hong Kong conform to the general global pattern rather than to make unsubstantiated claims that the distribution of the two sexual orientations is different in this small territory from what it is elsewhere.

Of all the many surveys conducted in the United States from the time of the Kinsey Report on, none place the incidence of homosexuality at much less than one in 20, or around 4% - 5% of the population. This figure refers to exclusive homosexuals, excluding bisexuals and heterosexuals who may have had a couple of homosexual experiences. Some findings, it is true, place the figure much higher - up to 10% - but this is due not so much to inconsistency as to what should be defined as homosexual.

Taking the lowest, most conservative figure, some 4% of Hong Kong's males citizens would be homosexuals. This amounts to 110,000 people.

Many, perhaps the majority of male homosexuals in Hong Kong over the age of 30 are married, because an intensely family-oriented society makes a social misfit of the man who disregards his parents' desire for him to marry and have children.

Being homosexual does not preclude having sex with women, though few if any homosexuals would be interested in doing so unless there were pressing reasons such as marriage. Similarly, heterosexuals can have homosexual relations, though there would have to be special circumstances, the inaccessibility of women being the most common.

The degree to which one culture or another is prepared to tolerate occasional discreet homosexual experiences by heterosexual men varies greatly. In some societies, this is regarded as little more than an amusing and quickly forgotten adventure repeated rarely again if at all. A man who slept a couple of times in his youth with a male friend would not be considered a bisexual by any reasonable definition. Heterosexuals are always in charge of setting these standards because of their numerical domination. Anglo-Saxon societies, the United Kingdom for example, are among the most homophobic. Yet in the United States, which has a long history of unrelenting persecution of homosexuals, the Kinsey Report, and all subsequent studies has shown that about one heterosexual male in every three has had a homosexual experience.

Chinese culture, we are told, is also very homophobic. It is difficult to imagine any people more consumed with loathing and intolerance of homosexuals than American heterosexual men, but if Chinese were twice as phobic, it would mean that one in six has had at least one homosexual experience, perhaps in adolescence. This amounts to nearly half a million Hong Kong men.

PART FOUR

Some factors that should be carefully considered by any body of men and women whose task it is to define, regulate and enact legislation governing homosexual conduct.

1. Minorities in Hong Kong
2. The injustice of singling out the homosexual minority for punishment
3. The absurdity of policing sexuality
4. The irrelevance of determining "causes" of homosexuality
5. The social effects of abolishing Hong Kong's laws against homosexual acts
6. The ridiculousness of heterosexuals determining rules and regulations for homosexual behaviour
7. The pre-cultural aspect of homosexuality
8. Chinese attitudes to homosexuality
9. Homosexuality and employment
10. Homosexuals and the Armed Forces
11. Homosexuals and the "security risk"
12. The myth of pederasty
13. Homosexuals and the teaching profession
14. The "age of consent"
15. Withholding of truth from children
16. The prevalence of misconceptions about homosexuality
17. Negatively loaded terminology
18. Monogamy and promiscuity
- 4.01 Minorities in Hong Kong

There are many minorities in Hong Kong. Some are racial (Indians, Vietnamese ...); some linguistic (Shanghainese, Chiu Chow ...); some religious (Muslims, Roman Catholics). Many minorities are biological. Homosexuals form just one of these.

Some others: lefthandedness, (about 10% of the population), blood group AB (7%), IQ over 140 (1%), diabetics, blonds, physically handicapped, very short people, very obese people

No one chooses to be placed in any of these minority categories, nor, indeed, to be grouped with the majority. No one is heterosexual by choice. Certainly no one can decide to be a genius or to select the race or religion of his parents.

On a population base of 5,250,000, it can be calculated that there are in the colony approximately

525,000	left-handed people
367,500	people with blood group AB
236,250	homosexuals
52,500	people with IQs over 140
45,000	people of ethnic Indian origin
35,000	Muslims

None of these people belongs to any of these minorities by choice. Yet only homosexuals are subject to punishment for being what they are.

NOTE: Sources for these statistics are: the Government (population, religion); Department of Psychology, University of Hong Kong (left-handedness, or laterality, a highly complex issue for which the figure quoted is a rough approximation, and intelligence); the Red Cross Blood Transfusion Service; the Indian Chamber of Commerce.

4.02 The injustice of singling out the homosexual minority for punishment

About one person in every 20 in Hong Kong is homosexual. Well over 100,000 are male and subject to punishment if it can be proved that they have acted sexually according to the dictates of natural urges. Not one of these people determined for himself his own orientation, any more than heterosexuals did, yet the law provides for the punishment of so many. This is manifestly unjust. It is made more so by the fact that no legal proscriptions against homosexuality among women exist. Most societies, whatever their cultural attitude towards homosexuality - and this can range from half-hearted acceptance to rank intolerance - have never enacted laws against homosexuality; among those that have, most have since modified or rescinded those laws. No society that subjects biological minorities to punishment can claim to be a just one.

4.03 The absurdity of policing sexuality

The sheer magnitude of the task of investigating the sexual inclinations of a whole population is of course beyond the capabilities of the authorities, and naturally, they do not try. Police therefore restrict themselves to clandestine observation of places where homosexuals are known to gather in secret and make a token number of arrests. This partial and arbitrary enforcement reduces the risks of detection, but by its very selectiveness is made all the more untenable in terms of either logic or justice. If a law is worth having, surely it should be consistently enforced; if not, surely it should be scrapped. It might be said of any law of prohibition that the essence of whatever justice it may have is its universal application. But this, in the case of homosexuality, is patently and obviously impossible. Some random statistics highlight the absurdity. Taking the widely accepted minimum 4%-5% for the incidence of homosexuality, there would be 100 homosexuals on a peak-hour MTR train, 5 on a tunnel bus - any of

whom might be on the way to engage in illegal sexual activity. There would be 2,600 homosexuals at a crowded race meeting at Happy Valley. A big public-housing cruciform building would contain 370 homosexuals. There would be 400 homosexuals at Hong Kong University, 2,500 living in Wan Fu Estate. As all the sex activity of all these people is plainly labelled criminal by the law, the police ought, in order to be fair and consistent, attempt to identify these people and gather evidence for their conviction. If they are not prepared to do that, the law should be abolished.

NOTE: Sources of statistics: MTRC, KMB, Royal Hong Kong Jockey Club, Housing Department, Government Year Book.

4.04 The irrelevance of determining the "causes" of homosexuality

It is futile to attempt to convert a heterosexual into a homosexual. His basic orientation towards females was established so early in his infancy as to make his orientation irreversible. At puberty, its physical manifestations emerge spontaneously. So it is with homosexuals. Whether sexuality is determined by genetic factors by environmental influences, or simply by the development of individual personality makes little difference as it cannot be altered. Ascribing "causes" therefore becomes nothing more than an exercise in academic curiosity, and certainly of no value to the legislator.

4.05 The social effects of abolishing Hong Kong's laws against homosexuality

Chinese have a finely honed sense of decorum. Chinese heterosexuals do, and so do Chinese homosexuals. It is inconceivable that legislation would make the slightest difference to the unwritten rules of social behaviour or of what is appropriate comportment in public.

4.06 The ridiculousness of heterosexuals determining rules and regulations for homosexual behaviour

Everyone would instantly find it implausible, laughable even, for an assembly of homosexual legislators, however wise, learned and respected they may be, to sit in solemn deliberation - of what heterosexuals may or may not do, to whom, when and where. It is surely no less absurd for a body of men and women almost entirely composed of heterosexuals to determine or define the perimeters of homosexual behaviour.

4.07 The pre-cultural aspect of homosexuality

It is beyond dispute that there were practising homosexuals, functioning in much the same way as they do today, in China countless millennia before the emergence of the Chinese civilisation (or of any other civilisation). Homosexuality flourished before there was a Confucius, a Lao Tze, a Buddha, a Moses, a Jesus or a Mohammed to condemn it; before there was writing to comment on it, before there was speech to name it. For the Hong Kong authorities to believe they can stop it is self-evidently ridiculous.

4.08 Chinese attitudes to homosexuality

Much has been said or written, a good deal of it by non-Chinese, about the Chinese heterosexual's supposed aversion to his homosexual brother or neighbour. Certainly, given the weight of heterosexual influence in shaping society's values, the Chinese, like the British, are "homophobic". But is a verifiable fact that the great majority of

Chinese heterosexuals do not want to know about it, to discuss it, to make judgements or to be forced to make judgements about it. This is quite unlike British heterosexuals, who are ready and apt to voice distaste for homosexuals. Besides, most discussions of Chinese cultural attitudes to the subject ignore the view of the vast number of Chinese homosexuals, who, by way of comparison, outnumber British heterosexuals, both in Hong Kong, and in the entire body of human beings. In point of fact, the Chinese traditionally do not, like the English, enact formal legislation to ban or regulate homosexuality. Chinese heterosexuals simply do not want to hear about it, do not want the conversation forced upon them, do not want a judgement or decision demanded of them. If forced to say, against their will, yes or no, most may well opt to say no, but this is a far cry from a popular demand for banning homosexuality. Chinese society frowns on many other aspects of behaviour - drunkenness for example - but does not call for laws that punish people simply for being drunk. Conversely, Chinese society in Hong Kong readily accommodates behaviour the British feel an overwhelming need to control, gambling being a good example. The difference is that the British tend to ban what they frown on, by law, while the Chinese merely frown.

4.09 Homosexuality and employment

There is nothing to indicate that unemployment in Hong Kong is higher among homosexuals than among heterosexuals. In other words, homosexuals already have jobs. It's just that it is not usually known which employees are homosexual. The fact that they cannot be differentiated shows that they do their work as well as heterosexuals, and that there can be no reason for discrimination in employment except blind prejudice. The dismissal of a worker from employment because it is discovered that he is homosexual is cruel and unjust and would not be permitted in a society which operates on the principle of fairness.

Governments, even ones not elected by the people, have a responsibility to be fair in hiring public servants. Not to employ a homosexual in a government job solely because of his orientation is manifestly unfair.

Public corporations have a duty to their shareholders, a proportion of whom are homosexual. A just society would not permit employment discrimination by publicly listed companies, whose activities are carefully monitored by the authorities to ensure fairness in many other ways.

A homosexual police officer does the same job as his heterosexual colleague - no better, no worse. If the law against homosexual acts were abolished, there could be no possible reason for excluding homosexuals from the police force.

4.10 Homosexuals and the Armed Forces

Since few Hong Kong Chinese are attracted to the military life, this issue is not as important as it is elsewhere - in Britain, for example, where there is institutionalised discrimination against homosexuals in the armed forces, a discrimination enshrined in the law.

Heterosexuals who worry that all soldiers may not be like themselves should ponder the irrefutable fact one soldier in every 20 in a conscripted army is - by definition of a universal draft - a homosexual. This must necessarily have been true of the armies of Napoleon, Genghis Khan or Chiang Kai-shek, as well as troops on both sides in the First and Second World Wars and in the ships of the Royal Navy. They were heroes or cowards like any other soldier, they killed the enemy, won medals, dug trenches or latrines. In every conscripted battalion of 1,000 men, there must be 40 homosexuals.

Fear of homosexuals in the armed forces is therefore obviously irrational. Homosexuals have enough problems foisted on them without having to worry about the irrational fears of heterosexuals.

All heterosexual men have lived all their lives in close proximity to homosexuals - at school, in sporting teams, in places of employment, in neighbourhoods. Why not the army, too? The notion of a homosexual soldier proposing to have sexual relations with someone patently not interested is clearly absurd, and likely to occur only to a homophobic heterosexual. If such a bizarre suggestion should be made, the heterosexual soldier simply says no - in much the same way he spurns an unwanted offer of friendship or religious proselytizing.

What remains is aversion. This is the same as aversion to Jewish soldiers, to black soldiers, to Methodist soldiers, to left-handed soldiers.

4.11 Homosexuals and the "security risk"

If a homosexual, freely and without attaching any special significance to it, acknowledges his orientation to people who know him, what possible reason could there be for blackmail? If a heterosexual has some secret about himself he dreads becoming publicly known, then that person is a security risk. So is the homosexual who pretends that he is not.

4.12 The myth of pederasty

A very, very tiny proportion of heterosexuals is attracted to pre-pubescent children. A similarly tiny proportion of homosexuals is so attracted. It is so obvious as to be not worth further discussion that the law must protect children. A larger, but still small proportion of both heterosexuals and homosexuals is attracted to post-pubescent adolescents. A large number of people are sexually attracted to young women or men, but the majority of adults are attracted to other adults. Being attracted, is of course, not the same as proposing sex, no matter whether the object of the attraction is sixteen or sixty. Homosexuals do not molest children, disturbed people do. The belief some heterosexuals have that a majority of homosexuals is interested in boys is one of the many profound ignorances that have arisen in Hong Kong, because heterosexuals have avoided opportunities to become informed about homosexuality.

4.13 Homosexuals and the teaching profession

Every school in Hong Kong with more than 20 teachers must have homosexuals working as teachers. Every classroom has, on the average, one, two or three pupils or students who are homosexuals, or who will become so upon sexual maturity. This is true of all schools, always has been and will be no matter what decision is made about the law in Hong Kong. Whether they knew it or not at the time, every adult person with a full education has been taught by homosexuals. Homosexual teachers do not teach homosexuality; they teach reading, mathematics, history, science. It makes no difference to the heterosexual-to-be that the male or female teacher he admires and respects is a homosexual. It will not affect the natural sexual instincts that will spontaneously manifest themselves during and after puberty. One's sexuality is not determined by modelling oneself after an admired teacher. Homosexual teachers, though possibly not personally interested in having a family of their own, have no possible motive, even if it could be done, to influence young people to refute the family life. After all, they have parents and brothers and sisters of their own, and most Chinese have strong family ties. There is no logical reason for denying a teaching career any more than any other profession to the homosexual.

4.14 The "age of consent"

Soon after puberty, every person in Hong Kong, or China or the world develops sexual desires of his or her own, entirely independent of any adult he or she may have known. Most male adolescents develop a healthy interest in girls; about one in 20 male adolescents develops a healthy interest in boys. How they cope with those inclinations is a matter for the community, a religion, the family or the individual to determine. It is not a matter for the law. Heterosexual activity before marriage may be condoned or proscribed; few societies have avenues for accommodating homosexuality. But even these powerful cultural influences cannot change a sexual orientation. How much less can a law?

When an older person is involved with a younger in a sexual relationship, the contentious issue of age of consent arises and automatically involves the law. An arbitrary delineation has to be made, even though social and sexual maturity - among both males and females - varies greatly from individual to individual. Nature's own answer to the question of what is the appropriate age of consent is puberty, or time when a person can experience sexual arousal and gratification. Nature's answer is clearly unacceptable. When determining this issue, wise legislators would certainly first separate the legal sanction from the social or moral one. When deciding the age of consent fair and just legislators would make it the same for heterosexuals and homosexuals. The law in England which permits a homosexual boy to begin a legal sex life five years after a heterosexual boy or a homosexual girl is patently unjust.

4.15 Withholding of truth from children

There are about 250 million homosexuals in the world. This exceeds the number of Americans, is twice the population of Japan, is five times as many as there are Britons, fifty times the number of residents of Hong Kong. To label so many millions of people "abnormal" is patently absurd on grounds of logic. To deny that they exist is more than absurd - it is a lie. Yet the truth is deliberately withheld from both heterosexual and homosexual children in Hong Kong. Heterosexuals often enter adolescence in the mistaken belief that theirs is the only commonly practised form of sexuality; young homosexuals are often ignorant of the fact that there are thousands of others in the community around them who have sexual urges just like their own. Regardless of whether society approves of the facts or not, withholding of truth is immoral by every accepted system of value judgements. Educating children about the facts is not putting a stamp of approval on them. Children can be taught intolerance for homosexuals - that is a value judgement - but they may not be told that they do not exist. Ideally, children would be taught that there are two normal sexualities, one of them considerably more common than the other.

4.16 The prevalence of misconceptions about homosexuality

A lot of heterosexuals are - to use some distasteful terms - "cissies", "Mummy's boys", "womanish", "effeminate". Heterosexual men work as ladies' hairdressers, interior decorators, dress designers, ballet dancers. A great many homosexuals are rugged sportsmen, aggressive, belligerent people, construction workers, truck drivers. It may be true that a lifetime of negative reinforcement about themselves passed on by a heterosexual-dominated society leads a small number of homosexuals to adopt extreme airs - exaggerated masculinity is one well-known attitude said to be adopted by homosexuals, effeminacy another. These are stereotypes readily recognised by heterosexuals, who are largely ignorant of the vast number of homosexuals around them - ignorant because they are physically and socially no different from themselves.

Being different may be considered in some societies sufficient justification for despising, but not in enlightened societies. Being different can never be a crime, because of the inherent nature of justice. It is ironic that unpleasant social behaviour like aggressiveness and deceitfulness is often better tolerated than harmless oddities of behaviour related to sexual identity (such as effeminacy or extreme masculinity) and practised by a tiny minority.

4.17 Negatively loaded terminology

Most words for homosexuals or homosexual acts in the heterosexual lexicon are loaded with hatred. In Hong Kong, all such legal terminology is in English : buggery, sodomy, gross indecency etc. It is a fact that there is nothing that homosexuals do that heterosexuals don't do too, but when they do it, it is called "making love", when homosexuals do it, it is "gross indecency". The mere use of this terminology in itself reinforces negative attitudes towards a large section of the community.

4.18 Monogamy and promiscuity

Heterosexual legislators charged with the task of regulating homosexual behaviour should not expect a mirror image of their own sexuality. Society has rules - rules which vary considerably from one culture to another - about what is acceptable, appropriate or even mandatory in the conducting of heterosexual relationships. No such rules exist for the homosexual, whose relationships, being outlawed, are conducted according to patterns of behaviour that have existed on a simple level for thousands of years, since before the emergency of today's heterosexual-governed cultures, the Chinese and the British among them.

Homosexual behaviour is closer to basic human nature, closer to the relationships heterosexuals would have if their conduct were not closely monitored by cultural regulations and prohibitions developed over many centuries.

Monogamous or promiscuous inclinations are part of this basic human nature. They have little to do with sexual orientation. Rather, it is the fundamental difference between male and female sexual responses that governs monogamy and promiscuity. It is a fact beyond dispute that male arousal and gratification can be accomplished much more speedily than the average female arousal. In fact, it is not uncommon for men to experience spontaneous sexual desire merely by contemplating sexual intercourse, even with a stranger. Women, on the other hand, are much more likely, even in the absence of cultural or religious obstacles, to want to become well acquainted with a partner and to proceed gradually. This is true whether it stems from cultural conditioning or from fundamental biological differences. It naturally follows that when both partners are male, sex can be accomplished faster, more frequently, with more partners and fewer constraints. For heterosexual men such conditions fall into the realm of sexual fantasy since a corresponding number of similarly inclined women do not exist. Thus the opportunity for a more frequent change of sex partner is available to homosexual men, though the desire may be present in both orientations.

This is not to say that all homosexuals, any more than all heterosexual men are inclined to promiscuity. Many homosexual couples have stable, long-lasting and contented relationships. Some, indeed, last a lifetime. Probably the least promiscuity of all occurs among homosexual women. The difference between homosexual and heterosexual men in this regard is that society never drew up a set of rules for homosexual relationships, while heterosexuals have great social pressure to preserve their duly sanctioned relationships, even when a mutual attraction has run its course.

Some heterosexuals are given to saying that homosexual relationships are more akin to primeval behaviour while their own is the conduct arising from civilisation. Yet these same people are likely to voice the common (and erroneous) belief that homosexuals are "artistic" or "sensitive".

No homosexual would presume to draw up rules of conduct for heterosexuals. Heterosexuals whose assigned task is to define and regulate homosexual behaviour should take into consideration these similarities between heterosexual and homosexual men, and the differences between men and women.

PART FIVE

Some specific recommendations on changing Hong Kong's laws on homosexuality

1. Modification of existing laws
2. Enactment of new laws

Modification of existing laws

1. That the law or laws which make homosexual acts among males illegal be repealed in their entirety, not merely "liberalised"

that it thereby become not lawful for a homosexual to be arrested, brought to trial and if convicted punished for engaging in homosexual activity

that homosexuality be thereby deemed to be on exactly the same footing in the eyes of the law as heterosexuality - all the while taking cognizance of the fact that abolition of legal prohibition does not preclude social or cultural condemnation of homosexuals by heterosexuals.

2. That there be no exceptions to these rights under the law; that no provision be made for the exclusion of homosexuals from the armed services or the merchant marine.
3. That the "age of consent" be exactly the same for heterosexuals and homosexuals, and, ideally, for males and females.

Enactment of new laws

1. That people responsible for hiring personnel in government departments or agencies be not allowed to deny employment to any person solely on the grounds that that person is a homosexual

that opportunities for career advancement be in no way impeded in the public service merely because of sexual orientation

that careers in the Royal Hong Kong Police Force, the teaching profession, the medical service and the judiciary be not excluded from this provision, providing social decorum is kept

that the so-called "security risk" be deemed not applicable to any government servant who openly acknowledges his or her sexual orientation.

2. That any company registered on any of the four stock exchanges or the united Stock Exchange of Hong Kong be required by law to be non-discriminatory in their hiring practices

that it be illegal for a public company to dismiss an employee or retard his or her career solely on the grounds that that person is a homosexual.

3. That bars, clubs or other places of entertainment catering to a homosexual clientele be permitted to open for business

that these establishments be subject to exactly the same operating rules and regulations as heterosexual establishments, and visited by the police no more frequently.

SUBMISSIONS BY A HOMOSEXUAL

The Interviewee

European. Age early 30s. Occupation - businessman. Born in Hong Kong and brought up to a large extent in Hong Kong. Fluent speaker in English and Cantonese. Member of the gay community of Hong Kong many years. Has University degree in psychology. Many Chinese and European acquaintances, some friends, both straight and gay. Experience of the effect of Hong Kong homosexuality laws having been prosecuted for such offences. Extensive experience of gay communities overseas - San Francisco, London, Philippines, Thailand, etc.

Views

Interviewee came in not to offer a solution to the problem but to forewarn the Government of the consequences that may ensue upon "decriminalisation". Believes in gay human rights and civil rights, but also respects human rights of all people in general including those who might be exploited by the "decriminalisation". Interviewee's views do not necessarily reflect those of the gay community of Hong Kong.

1. The Interviewee expressed serious concern as to the consequences in Hong Kong of any "decriminalisation", even to limited extent of "2 consenting adults in private", which for the purposes of the interview was taken as being the maximum extent of any change in the existing law in Hong Kong.

2. The Interviewee foresees the following consequences :

(a) "Decriminalisation" may be used by Chinese racketeers as an opportunity to exploit. Current state of the law imposes constraints not simply on homosexuals but, paradoxically, on the seeking to exploit homosexuals. At present, with every aspect of homosexuality activity illegal, even the young adult who would otherwise be employed by the racketeer to ensnare a gay "victim" (with a view to extortion) is regarded by the racketeer as a high risk since his activity is in itself illegal. Consequently, to "legalise" such activity is to provide the racketeers with a licence to direct and manipulate the homosexual activities of young adults under a cloak of legality. There will be no shortage of available young (Chinese) adults eager to offer their services to racketeers. With the basic legal constraints removed, vice rings related to all aspects of homosexual activity will flourish. Young adult male homosexuals, of whom there are many from very poor families, will opt for the financial rewards of male prostitution in the belief (rightly or wrongly) that the law in Hong Kong now condones such behaviour.

(b) The level of overt gay activities will rise dramatically. Gay fishball stalls and mahjong parlours in Hong Kong will be managed and financed with one aim - to cash in on the apparent "liberalisation" of the law, with a view to establishing Hong Kong as the Asian centre for the homosexual tourist trade. It is inevitable that those promoting Hong Kong in this new business venture will be the very same racketeers who will run the vice rings referred to above.

(c) Homosexuals may, in the event of decriminalisation of the type envisaged, be exposed to greater danger of prosecution. At present, with all homosexual activity illegal, most gays are necessarily discreet and cautious. For the most part, they have learned to live with the law and arrange their lives accordingly. The Interviewee fears that the introduction of an age of consent may serve to provide opportunities for arbitrary "under-age" prosecutions against gays who have lowered their guard in the genuine belief that their 19 or 20 year old "partner" is, in fact, 21.

(d) Correspondingly, on past experience in Hong Kong, there is a serious risk that enforcement authorities will view the age of consent principle as a mandate to apply the law strictly in relation to under-age conduct. Whilst strict action against pederasts is of course fully justified, the Interviewee feels that different considerations should apply vis-a-vis 18, 19 and 20 year olds.

3. Other points made by interviewee :

(a) Current publicity on the gay issue is highly damaging to prospects of satisfactory reform (i.e. avoidance of consequences referred to at 2(a) and (d) above).

(b) State of relative peace exists in gay community at present. No evidence of police harrassment. Although potential for harrassment will remain so long as law is in its present form, such potential is considerably less of an evil to the gay community and to society generally than are the consequences referred to at 2(a) and (d) above.

(c) Estimate that prevalence of homosexuality in Hong Kong is greater than elsewhere, given Hong Kong's overcrowded conditions. Could be as high as 12% of the population. This estimate not based on any factual survey - simply a personal view from someone with intimate knowledge of the gay community in Hong Kong.

(d) If the question of reform of homosexuality laws could be approached exclusively from point of view of principle, answer would clearly be that present laws are harsh, oppressive and discriminatory. But in Hong Kong such an approach, which ignores the practical realities of life, may produce more problems than it would solve.

(e) Those charged with deciding whether or not to change the law would find a study of the gay community in such places as San Francisco, London (particularly Chinatown) and Taiwan instructive. (The Commission's research has already revealed that besides China and Taiwan in this region, Malaysia and Singapore (both domains where the British writ once ran), also have laws concerning homosexual acts.) Valuable insights would be gained regarding the less desirable effects of "decriminalisation", should there be doubt as to the accuracy for Hong Kong of the consequences predicted at 2(a) to 2(d) above.

(f) If "decriminalisation" comes about, there must be counter-balancing measures to deter procurers, etc. For these measures to be effective deterrents to determined vice-operators, penalties must be very stiff.

(g) If "decriminalisation" does not come about in the immediate future, those responsible for law enforcement should adopt a "tactful" policy that should be carried out by intelligent police officers with "diplomatic" abilities and not just recruited at random. These officers should be reminded that over-zealous investigation of suspected homosexuals would be inconsistent with the intention of the Legislature to bring the law in Hong Kong into line with various other jurisdictions at such time as circumstances properly allow.

(h) Publicity has made many young gay Chinese come "out of the closet" much sooner than they otherwise would have. While not undesirable per se, it has been noticeable from other members of gay community that young gays are going out with other young gays (16 and 17 etc.). I am told that this is more evidenced in roller skating rinks, video games centres, pool parlours, some discos, and in local Chinese gangs not necessarily affiliated with triads.

(i) The Interviewee believes that gays should be allowed to have proper and decent meeting places as opposed to toilets which are repugnant to the respectable element of

gay community as places to encounter other gays. Hong Kong is one of the few places in the world where some elements of the gay community have to resort to such places for that purpose.

(j) Homosexuality is being well accepted and tolerated by young Chinese today and they do not, even if straight, harass gay people as hitherto.

(k) Interviewee believes the quality of a gay community would not benefit from the vices imposed upon them as predicted in 2(a) and (b) above, and sees the suggestion in para 3(i) as a highly desirable alternative.

(l) The Interviewee foresees the general crime rate (theft blackmail, etc.) rising consequentially. Crimes committed by female prostitutes can be foreseen to be the same as male prostitutes. The law presently leads both to more serious prosecution - buggery (life sentence, etc.). Although theft still exists, it will rise dramatically as gays would still be reluctant to expose themselves due to social pressure. "Decriminalisation" would then give the dishonest prostitute an advantage.

(m) The Government may well benefit from the experiences and knowledge of members of the gay community and may consider appointing some as "unofficial advisers".

VIEWS OF INMATES
OF DRUG ADDICTION TREATMENT CENTRES

A total of 16-group discussion sessions were conducted by after-care staff on the subject of "Homosexuality" and altogether 144 male inmates from two male drug addiction treatment centres participated.

110 participants or 76.39% objected to the legalization of homosexuality. Their reasons they gave can be summed up as :-

- (1) Homosexual practice is an abnormal and deviant social behaviour contradictory to the traditional Chinese moral code and is therefore socially and morally unacceptable.
- (2) Heterosexuality is the natural and logical sex behaviour; homosexuality is an unnatural and psychologically abnormal conduct.
- (3) The legalization of homosexuality will mean the official endorsement or acceptance of such practice by the community. This may result in a degradation of the moral standard in society and may also have an undesirable influence on the younger generation who may be induced to experiment with such act because of curiosity, even if the legalization does not cover youngsters.
- (4) Homosexual practice is dirty, disgusting and shameful.

Only 34 participants or 23.61% are in favour of legalization of homosexuality. Their grounds are :-

- (1) It will cause no harm to the society if homosexual practice is carried out in private between two consenting adults provided that such practice is not to be publicized and there are provisions for the protection of minors.
- (2) If two homosexuals really love each other and their relationship does not affect any third party, then the private 'love affair' between the two should not be treated as an offence even though the great majority of the population might not be in favour of such practice.
- (3) The homosexuals will no longer be subject to blackmail.

The background data of those who are in favour or against the legalization of homosexuality are given in the attached table.

Other feedbacks from the discussion are :-

- (1) In Hong Kong, homosexual practice is very much limited to the local European community, it is comparatively rare among the local Chinese population and is non-existent in penal institutions.
- (2) While some 23.61% of the participants are in favour of legalization of homosexuality, there is practically no one who advocates tolerance of homosexuality in a prison setting where offenders are normally deprived of

their sexual needs. To allow homosexuals the advantage to have sexual relationship with their fellow inmates is not fair to the others in the prison population who must achieve their sexual gratification by masturbation. However, there are suggestions that the question of providing opportunities for long term prisoners to have sexual relationship with their wives/girl friends should be considered.

<u>Age Grouping</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Under 21	2	11	13
21 – 24	10	14	24
25 – 29	7	28	35
30 – 34	3	19	22
35 – 39	4	7	11
40 – 44	1	6	7
45 – 49	4	8	12
50 – 54	2	8	10
55 – 59	1	7	8
60 and over	–	2	2
	Total	34	110
		Mean age = 31.91	Mean age = 33.63

<u>Educational Attainment Years of Formal Education</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Nil	5	17	22
1 year	1	5	6
2 years	1	4	5
3 years	3	18	21
4 years	2	4	6
5 years	3	11	14
6 years	10	33	43
7 – 9 years	6	15	21
10 – 12 years	3	3	6
	34	110	144
		Average years of formal education = 5.15	Average years of formal Education = 4.40

The difference in the mean age and the average years of formal education between those two groups is not statistically significant.

<u>Marital Status</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Single	22	77	99
Married	11	27	38
Divorced	1	3	4
Separated	–	2	2
Co-habiting	–	1	1
Total	<u>34</u>	<u>110</u>	<u>144</u>

<u>Employment Category</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Unemployed	1	23	24
Farmers, Fisherfolk and Related Workers	–	4	4
Workers in Services, Sport and Recreation Occupations	4	31	35
Workers in Transport and Communication Occupations	1	1	2
Sales Workers	4	8	12
Craftsmen, Production - Process Workers and Labourers	21	43	64
Artists, Draughtsmen and Technicians	3	–	3
Total	<u>34</u>	<u>110</u>	<u>144</u>

It is noted that the majority or 61.8% of the group in favour of legalization of homosexuality are employed as craftsmen, production-process workers or labourers while only 39.1% of the group not in favour of the legalization are employed in such trade.

Five discussion sessions were conducted by the staff of Tai Lam Centre for Women on the subject of 'Homosexuality' and altogether 32 female inmates from the drug addiction treatment section of Tai Lam Centre for Women took part in the discussion.

12 participants or 37.5% are not in support of legalization of homosexuality, and the reasons given by them are as follows :-

- (1) Homosexual practice is a kind of deviant, unnatural and disgusting behaviour, as well as a taboo in the Chinese culture of today. Legalization could well ruin the morality of the society. This socially unacceptable behaviour should be banned by law.
- (2) Legalization of homosexuality could also have an adverse effect on the normal family structure and bring harmful effects to the offsprings.
- (3) Homosexuals will not be able to bear any children. Even if they adopt a child, it will not be possible for them to provide a normal family environment for the healthy growth of the child.

19 participants or 59.38% are in favour of legalization of homosexuality and they gave the following reasons :-

- (1) If homosexual practice is carried out in private between two consenting adults, and does not bring any harm to any third person, it should not be treated as an offence.
- (2) Where a heterosexual relationship is denied, threatening, insecure or heartbreaking, homosexual behaviour can be more rewarding and gratifying.
- (3) Sexual drive is an instinct and everyone should have his or her own choice as to how to satisfy such sexual desire. If two homosexuals really love each other, their relationship should not be interfered with by any third party.
- (4) Since homosexuality is known to have been existing among a minority group, then, why not have it legalized and relieve the minds of the homosexuals?
- (5) Homosexual can be viewed as an effective measure of birth control.

One participant or 3.12% abstained from expressing whether she was for or against the legalization of homosexuality.

The background data of those who are in favour or against the legalization of homosexuality are given in the attached table.

Other feedbacks from the discussions are :-

- (1) Homosexual behaviour is more common among the dancing hostesses, especially among those who have experienced highly unpleasant or unhappy relationship with the opposite sex in the past. Many dancing hostesses have been deserted or deceived by their boyfriends or husbands, and some of them may have suffered from a painful or repulsive heterosexual experience with their customers.
- (2) Homosexual behaviour is described as a personal affair between people of the same sex who have the same interest and who endeavour to establish an intimate and stable relationship with each other for the fulfilment of their emotional need for love. Lesbians place greater emphasis on interpersonal relationship and less on the actual sexual act. What they are looking for are primarily care, affection and devotion and they feel that the female touch spells more beauty, gentleness, understanding and concern, and the relationship between two females can be more gratifying and rewarding.

- (3) Although the majority of the participants are in favour of the legalization of homosexuality, there is no indication that they manifest lesbian inclinations themselves. Their favourable attitude towards homosexuality seems to be more due to their sympathy with their ballroom sisters, rather than due to their own desire to practise homosexuality.
- (4) The group members are unanimously not in favour of the practice of homosexual behaviour in the prison setting. They claim that the prison provides a relatively narrow living circle for the inmates, and they usually do not have the same freedom to choose their own friends as in the outside world. Inmates are denied normal sexual relationships with males. If lesbians are allowed to have sexual relationship, it constitutes a privilege other inmates do not have and it is thus unfair to the latter. Consequently, if homosexuality were permitted in the prisons, many inmates would most likely be forced, tempted or pressed by circumstances to become homosexuals. Besides, they believe that the practice of homosexuality would create more tension in prison life. As the homosexuals are particularly jealous persons, the prevalence of such behaviour in prisons would most certainly bring about more frictions, disputes and problems among the inmates.

<u>Age Grouping</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Under 21	1	1	2
21 – 24	7	3	10
25 – 29	5	3	8
30 – 34	4	2	6
35 – 39	–	–	0
40 – 44	1	–	1
45 – 49	–	1	1
50 – 59	1	2	3
60 and over	–	–	0
Total	19	12	31
	Mean age = 27.53	Mean age = 31.25	

<u>Educational attainment : Years of Formal Education</u>	<u>In favour of Legalization of Homosexuality</u>	<u>Against</u>	<u>Total</u>
Nil	3	4	7
1 year	1	–	1
2 years	2	2	4
3 years	3	–	3
4 years	1	2	3
5 years	4	1	5
6 years	3	–	3
7 – 9 years	2	2	4
10 – 12 years	–	1	1
Total	19	12	31
	Average years of formal education = 3.74	Average years of formal education = 3.67	

The difference in the mean age and the average years of formal education between these two groups is not statistically significant.

<u>Marital Status</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Single	4	3	7
Married	–	–	–
Divorced	–	–	–
Separated	4	1	5
Co-habiting	11	8	19
Total	<u>19</u>	<u>12</u>	<u>31</u>

<u>Occupation on Admission</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Drug Peddler	2	–	2
Pick-pocket	2	–	2
Dance-hostess or Prostitute	14	9	23
Unemployed	1	3	4
Total	<u>19</u>	<u>12</u>	<u>31</u>

No significant difference exists between the two groups in respect of the occupation of the group members. The great majority of them are employed as dance-hostesses or prostitutes.

COMMERCIAL RADIO OPINION SURVEY SERVICE

Chinese public opinion in Hong Kong does not favour a change in the law on homosexuality. That is the finding of a public opinion survey released today by Commercial Radio.

The CR Opinion Survey Service (CROSS) reports that 7 out of 10 Chinese adults think that homosexual behaviour should continue to be treated as a criminal offence.

Most of those who oppose a change in the law say that homosexuality is contrary to Chinese morals.

CROSS asked Chinese men and women over the age of 20 whether they thought homosexuality should continue to be treated as a criminal offence or whether legislation should be amended so that adult homosexual behaviour in private would not be regarded as an offence.

The interviews were carried out for CROSS by Survey Research Hong Kong Ltd., a leading independent research organization, which also organised the sample and analysed the results. The study is the first of a series to be commissioned by Commercial Radio.

The CROSS study reveals that men are less tolerant on this issue than women. While 74% of men said homosexual behaviour should continue to be a criminal offence the figure for women was lower at 67%.

Among Chinese adults in Hong Kong opinions also vary with age. Only 16% of those over 55 think the law should be changed. Twice as many between the ages of 20 and 34 favour a more lenient view of private homosexual behaviour between adults.

People opposed to a change in the law were asked to give their reasons. The most frequent reasons are related to Chinese morals. 29% say homosexuality is unacceptable to Chinese traditions, ethics or morals, 18% say it is indecent, unacceptable or "far out" and 8% mention that conservative Chinese thinking differs from Western ideas.

Some base their opinions on the abnormality of homosexual behaviour, saying it is against nature while others make the point that homosexuals of the same sex cannot get married or give birth to children. A slightly smaller group oppose any change in the law on the grounds that homosexuality is a bad moral influence on society and has a bad impact on the family.

The CROSS study shows that men and women differ in their reasons for opposing amendment of the law. Men tend to be more concerned with the traditional and moral aspect and to stress the difference between Chinese and Western thinking. Women tend to be more concerned with the abnormality of homosexual behaviour and its effect on marriage and family life.

CROSS also asked the 27% who thought that the law should be amended to give their reasons.

Most of them say they think homosexual behaviour in private between adults should not be a criminal offence because it is a private matter which has no effect on society or does no harm. 24% say it is a matter of personal freedom.

Of the women who think the law should be amended, 70% argue that it is a personal matter with no harmful effects on society. By comparison, only 43% of men give that as their reason for amending the law.

A small number of people think the law should be changed because there is a new generation in Hong Kong, with new ideas and that Hong Kong is becoming westernised. This opinion is held more strongly among people in the older age group, 55 and above.

Only a small number (1%) of those in favour of amending the law felt that this should be done to bring Hong Kong law in line with that in Britain. This view was confined to men in the 20 to 34 age group.

Commenting on the CROSS study a spokesman for Commercial Radio said today that it is the first of a series in which trends and issues of public interest will be explored.

"As a public broadcasting organization" he said, "we are vitally interested in the state of public opinion on social and related issues. We also believe that valid statistical sounding of public opinion on these issues is important for the community at large and for organizations, including Government, which have to make decisions on these issues.

"We shall continue to publish CROSS studies as a public service and will make the detailed findings available to responsible organizations for further research."

The CROSS study is based on 509 telephone interviews. Survey Research Hong Kong Limited selected households by the probability sampling method using the telephone directory as a sampling frame. The results were weighted up to population value using Government population figures.

INTRODUCTION

Research Objectives

1. HK Commercial Broadcasting Co. Ltd. has commissioned SRH to conduct a telephone survey among 509 Chinese adults aged 20 and over. The research was designed to look into :
 - (i) The opinions of Hong Kong Chinese adults towards the homosexuality issue.
 - (ii) Their intention to emigrate in the next few years and in 1997 when China takes over the New Territories.

Fieldwork

2. Fieldwork was conducted from 19-20 September 1980. They were carried out in the evenings in order to maximize the number of contacts.
3. Households were selected for interview by probability sampling method using the telephone directory as sampling frame. For each household selected, the interviewer would first establish the total number of adults in the household, then use a random number table to select one for full interview.

Weighting

4. Using the Government population figures, the result of this survey has been weighted up to population value.

FINDINGS

Preferred Form of Treatment for Homosexual Activities

5. The vast majority of Chinese adults (7 out of 10) think the government should continue to treat homosexuality as a criminal offence. On the other hand, there is a sizable portion (27%) of the population who feel that the legislation should be amended so that adult's homosexual activities going on in private places would not be regarded as an offence.

(From Table 1)

6. A significant relationship exists between the people's age and opinions towards the subject, that is, the younger the person, the more likely that he/she prefers not treating homosexuality as a criminal offence. In fact, more than half of those who choose to amend the legislation are aged 20-34. On the other hand, one should realize that even among the 20-34, their majority (64%) is still in favour of treating homosexuality as criminal offence.

(From Table 1)

7. It is also interesting to note that men are less tolerant than women about the issue.

	<u>TOTAL</u>	<u>SEX</u>		<u>AGE</u>		
		<u>Men</u>	<u>Women</u>	<u>20-34</u>	<u>35-54</u>	<u>55+</u>
All adults aged 20 and over	2,743	1,420	1,323	1,234	894	615
	%	%	%	%	%	%
Continue to treat homosexuality as a criminal offence	71	74	67	64	74	80
Amend legislation so that adult's homosexual activities going on in private places would not be regarded as an offence	27	25	30	35	24	16
Neutral/Don't know	2	1	3	1	1	4

(From Table 1)

Reasons for Choice of Treatment

8. Those who favour treating homosexuality as a criminal offense have 3 main types of reasons :-

- (i) Homosexuality is contrary to Chinese morals
 - e.g. Unacceptable to Chinese traditions/ethics/morals 29%
 - Indecent/unacceptable/wrong/far out 18%
 - Conservative Chinese thinking differs from Western ideas 8%

- (ii) Contrary to Mature
 - e.g. Homosexuals are psychologically imbalanced/abnormal 17%
 - Against nature/illogical/abnormal 17%
 - Homosexuals cannot be together/get married/have children 9%

- (iii) Bad influence on society
 - e.g. Has bad moral influence on society 14%
 - Has bad impacts on family/causes physical/medical harm 4%

(From Table 3)

9. The majority of those who prefer to amend the legislation share a common point of view homosexuals are entitled to enjoy their personal freedom and interests. For example :

- A personal matter - no effects/harm on society - should not be controlled 57%
- A matter of personal freedom 24%
- Some people's likes 16%

(From Table 2)

s.2256 PUBLIC OPINION POLL											TABLE 1	
PREFERRED FORM OF TREATMENT FOR HOMOSEXUAL ACTIVITIES (Q.1a)												
(TOTAL, ANALYSIS BY SEX, AGE, AND SEX WITHIN AGE)												
	TOTAL	SEX		AGE			20-34		35-54		55+	
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
ALL ADULTS AGED 20+ ABOVE	2743 100.	1420 100.	1323 100.	1234 100.	894 100.	615 100.	668 100.	566 100.	479 100.	415 100.	273 100.	342 100.
CONTINUE TO BE TREATED AS A CRIMINAL OFFENSE	1943 71.	1052 74.	891 67.	787 64.	666 74.	490 80.	441 66.	346 61.	380 79.	286 69.	231 85.	259 76.
AMEND LEGISLATION SO THAT ADULT'S HOMOSEXUAL ACTIVITIES GOING ON IN PRIVATE AREA WOULD NOT BE REGARDED AS AN OFFENCE	747 27.	356 23.	391 30.	430 35.	218 24.	99 16.	215 32.	215 38.	99 21.	119 29.	42 15.	57 17.
NEUTRAL/DK	53 2.	12 1.	41 3.	17 1.	10 1.	26 4.	12 2.	5 1.		10 2.		26 8.

REASONS FOR AMENDING LEGISLATION SO THAT ADULT'S HOMOSEXUAL ACTIVITIES GOING ON IN PRIVATE AREA WOULD NOT BE REGARDED AS AN OFFENSE (Q.1b)												
(TOTAL, ANALYSIS BY SEX, AGE, AND SEX WITHIN AGE)												
	TOTAL	SEX		AGE			20-34		35-54		55+	
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
ADULTS WHO THINK THE LEGISLATION SHOULD BE AMENDED	747 100.	356 100.	391 100.	430 100.	218 100.	99 100.	215 100.	215 100.	99 100.	119 100.	42 100.	57 100.
A PERSONAL MATTER - NO EFFECTS/HARM ON SOCIETY - SHOULD NOT BE CONTROLLED	426 57.	154 43.	272 70.	258 60.	130 60.	38 38.	107 50.	151 70.	35 35.	95 80.	12 29.	26 %
A MATTER OF PERSONAL FREEDOM	177 24.	89 25.	88 23.	96 22.	64 29.	17 17.	42 20.	54 25.	35 35.	29 24.	12 29.	5 9.
A MATTER OF HUMAN RIGHTS	45 6.	30 8.	15 4.	23 5.	11 5.	11 11.	18 8.	5 2.	6 6.	5 4.	6 14.	5 9.
SOME PEOPLE'S LIKES	121 16.	42 12.	79 20.	62 14.	37 17.	22 22.	18 8.	44 20.	18 18.	19 16.	6 14.	16 28.
A BIOLOGICAL/PSYCHOLOGICAL PROBLEM/NEED OF HOMOSEXUALS	47 6.	18 5.	29 7.	35 8.	6 3.	6 6.	6 3.	29 13.	5 6.	-	6 14.	-
SHOULD NOT INTERFERE WITH HOMOSEXUALS WHO ARE ADULTS/HAVE REACHED A CERTAIN AGE	35 5.	30 8.	5 1.	23 5.	6 3.	6 6.	18 8.	5 2.	6 6.	-	6 14.	-
TOO SERIOUS TO TREAT HOMOSEXUALITY AS A CRIMINAL	43 6.	18 5.	25 6.	33 8.	-	10 10.	18 8.	15 7.	-	-	-	10 18.
OFFENSE												
UNFAIR TO HOMOSEXUALS	21 3.	6 2.	15 4.	16 4.	-	5 5.	6 3.	10 5.	-	-	-	5 9.
PERMITTED BY BRITAIN'S LEGISLATION, SHOULD AMEND HK'S LEGISLATION TO SAME	6 1.	6 2.	-	6 1.	-	-	6 3.	-	-	-	-	-
NOT ILLEGAL FOR HOMOSEXUAL ACTIVITIES TO GO ON IN PRIVATE PLACES	87 12.	48 13.	39 10.	56 13.	31 14.	-	36 17.	20 9.	12 12.	19 16.	-	-
PERMISSIVE WITH CONSENT OF PERSONS INVOLVED	60 8.	30 8.	30 8.	32 7.	22 10.	6 6.	12 6.	20 9.	12 12.	10 8.	6 14.	-
PERMISSIVE AS NO OTHER ILLEGAL ACTS OCCUR	26 3.	6 2.	20 5.	16 4.	10 5.	-	6 3.	10 5.	-	10. 8.	-	-
SHOULD NOT USE VIOLENCE TO SOLVE A LONG EXISTING ISSUE	17 2.	12 3.	5 1.	11 3.	-	6 6.	6 3.	5 2.	-	-	6 14.	-
COMMON IN OTHER COUNTRIES	12 2.	12 3.	-	6 1.	-	6 6.	6 3.	-	-	-	6 14.	-
NEW GENERATION/ IDEAS/HK IS WESTERNIZED	33 4.	18 5.	15 4.	11 3.	6 3.	16 16.	6 3.	5 2.	6 6.	-	6 14.	10 18.
OTHERS	50 7.	30 8.	20 5.	34 8.	16 7.	-	24 11.	10 5.	6 6.	10 8.	-	-
DK	26 3.	6 2.	20 5.	5 1.	11 5.	10 10.	-	5 2.	6 6.	5 4.	-	10 18.

S.2256 PUBLIC OPINION POLL												TABLE 3	
REASONS FOR TREATING HOMOSEXUALITY AS A CRIMINAL OFFENCE (Q.1b)													
(TOTAL, ANALYSIS, BY SEX, AGE, AND SEX WITHIN AGE)													
	TOTAL	SEX		AGE			20-34		35-54		35+		
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
ADULTS WHO PREFER HOMOSEXUALITY TO BE TREATED AS A CRIMINAL OFFENSE	1943	1052	891	787	666	490	441	346	380	286	231	259	
	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	
UNACCEPTABLE TO CHINESE TRADITION/ETHICS/MORALS	572	385	187	236	156	180	173	63	99	57	113	67.	
	29.	37.	21.	30.	23.	37.	39.	18.	26.	20.	49.	26.	
UNACCEPTABLE TO RELIGION	38	18	20	17	16	5	12	5	6	10	-	5	
	2.	2.	2.	2.	2.	1.	3.	1.	2	3.	-	2.	
HOMOSEXUALS CANNOT BE TOGETHER/ GET MARRIED/ HAVE CHILDREN	166	77	89	47	72	47	18	29	53	19	6	41	
	9.	7.	10.	6.	11.	10.	4.	8.	14.	7.	3.	16.	
CONSERVATIVE CHINESE THINKING DIFFERS FROM WESTERN IDEAS	146	98	48	51	78	17	22	29.	64	14	12	5	
	8.	9.	5.	6.	12.	3.	5.	8.	17.	5.	5.	2.	
DOES NOT AND SHOULD NOT EXIST AMONG CHINESE	78	53	25	22	34	22	12	10	29	5	12	10	
	4.	5.	3.	3.	5.	4.	3.	3.	8.	2.	5.	4.	
HAS BAD MORAL INFLUENCE ON SOCIETY	269	141	128	104.	87	78	36	68	58	29	47	31	
	14.	13.	14.	13.	13.	16.	8.	20.	15.	10.	20.	12.	
PREVENT CHILDREN FROM LEARNING AND IMITATING	47	18	29	11	26	10	6	5	12	14	-	10	
	2.	2.	3.	1.	4.	2.	1.	1.	3.	5.	-	4.	
HUSBANDS AND WIVES HAVING HOMOSEXUAL DESIRES CAUSES	5	-	5	-	5	-	-	-	-	5	-	-	
	*	-	1.	-	1.	-	-	-	-	2.	-	-	
DISRESPECT BETWEEN THE TWO BAD IMPACTS OF FAMILY/CAUSES	75	36	39	33	36	6	18	15	12	24	6	-	
PHYSICAL/MENTAL HARM	4.	3.	4.	4.	5.	1	4.	4.	3.	8.	3.	-	
SHOULD NOT ENCOURAGE HOMOSEXUAL ACTIVITIES	17	12	5	17	-	-	12	5	-	-	-	-	
	1.	1.	1.	2.	-	-	3.	1.	-	-	-	-	
AGAINST NATURE/ILLOGICAL/ ABNORMAL	332	155	177	123	105	104	60	63	53	52	42	62	
	17.	15.	20.	16.	16.	21.	14.	18.	14.	18.	18.	24.	
HOMOSEXUALS ARE PSYCHOLOGICALLY IMBALANCED/ABNORMAL	330	178	152	150	124	56	72	78	76	48	30	26	
	17.	17.	17.	19.	19.	11.	16.	23.	20.	17.	13.	10.	
DIRTY BEHAVIOUR IS UNACCEPTABLE/ SHAMEFUL/UNETHICAL	339	201	138	142	130	67	83	59	82	48	36	31	
	17.	19.	15.	18.	20.	14.	19.	17.	22.	17.	16.	12.	
INDECENT/UNACCEPTABLE/WRONG/FAR OUT	343	154	189	108	121	114	54	54	64	57	36	78	
	18.	15.	21.	14.	18.	23.	12.	16.	17.	20.	16.	30.	
IMPOSSIBLE/RIDICULOUS	129	70	59	48	31	50	24	24	12	19	34	16	
	7.	7.	7.	6.	5.	10.	5.	7.	3.	7.	15.	6.	
OTHERS	6	6	-	6	-	-	6	-	-	-	-	-	
	*	1.	-	1.	-	-	1.	-	-	-	-	-	
DK	84	24	60	44	24	16	24	20	-	24	-	16	
	4.	2.	7.	6.	4.	3.	5.	6.	-	8.	-	6.	

SURVEY OF PUBLIC OPINION (1982)

Hong Kong Lifestyles Study

Methodology

The survey was carried out by a private research company, AGB McNair Hong Kong Ltd. The purpose of the study was to provide a more complete understanding of what people are like in Hong Kong.

The survey covered a random sample of 2017 people aged between 15 and 64 living in Hong Kong Island, Kowloon and New Territories. The fieldwork was carried out between 1 April to 30 June 1982 and face-to-face interviews were conducted with randomly selected respondents.

The survey contained over 100 questions of which those annexed were the only ones relating to moral attitudes or homosexuality. No preliminary information on the existing law on homosexuality was given to interviewees. The questions were in both Chinese and English and it is understood that the Chinese translation did not stress the word "not" in question 7 as the English version did.

Selected findings from the Lifestyle Study
carried out in April - June 1982

<u>Statements</u>	<u>% of Respondents</u>			<u>Total</u>
	<u>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>	
1. I cannot respect a girl who gets pregnant before marriage	30%	19%	51%	100%
2. Abortion laws should be liberalised	37%	27%	36%	100%
3. People have too little respect for traditional values these days	69%	17%	14%	100%
4. There is too much emphasis on sex these days	51%	31%	18%	100%
5. I think making it easier for people to get a divorce is a bad thing	39%	33%	28%	100%
6. Premarital sex is all right	27%	28%	45%	100%
7. Homosexual laws should NOT be relaxed	65%	20%	15%	100%
8. I worry about loss of face	45%	17%	38%	100%

Homosexual Laws should not be Relaxed

% of Respondents

	<u>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>	<u>Total</u>
Overall	65%	20%	15%	100%
<u>Age</u>				
Under 25	64%	19%	17%	100%
25-39	69%	18%	13%	100%
40-54	65%	20%	15%	100%
55 or above	56%	25%	19%	100%
<u>Sex</u>				
Male	66%	19%	15%	100%
Female	63%	21%	16%	100%
<u>Housing</u>				
Private	65%	20%	15%	100%
Public	65%	20%	15%	100%
Temporary	61%	23%	16%	100%
<u>Marital Status</u>				
Single	65%	20%	15%	100%
Ever married	65%	20%	15%	100%
<u>Household Income</u>				
Under \$2000	64%	25%	11%	100%
\$2000 to \$3999	67%	18%	15%	100%
\$4000 to \$5999	63%	21%	16%	100%
\$6000 to \$9999	66%	16%	18%	100%
\$10000 or over	60%	23%	17%	100%
<u>Residence in Hong Kong</u>				
Less than 7 years	68%	24%	8%	100%
7 years or more	64%	20%	16%	100%

REPORTED OFFENCES RELATING TO HOMOSEXUALITY

The statistics which follow have been compiled with the assistance of the Police Force and the Registrar, Supreme Court. Specific details relating to cases prior to 1979 cannot be supplied by the Police due to the cross referencing system in use at that time. However Annexure 24 contains of all relevant cases dealt with by the courts since 1979. The Chart below contains data relating to the number of reported unnatural offences for the years 1971 - 1982 together with a breakdown of these offences into sub-categories.

Chart

A. Number of Reported Unnatural Offences 1971 - 1982

<u>Year</u>	<u>No. of cases reported</u>	<u>No. of persons prosecuted</u>
1971	7	3
1972	2	1
1973	14	7
1974	21	13
1975	17	13
1976	40	35
1977	27	14
1978	44	40
1979	52	42
1980	80	70
1981	63	54
1982	31	18

B. Unnatural Offences breakdown by Sub-Categories 1979 - 1982

<u>Offences</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Indecent Assault on male	11	64	22	8
Buggery	11	3	5	12
Gross Indecency	28	12	27	11
Other Miscellaneous	2	1	9	-
Bestiality	-	-	-	-
	—	—	—	—
	52	80	63	31
	—	—	—	—

DETAILS OF COURT CASES INVOLVING
HOMOSEXUAL CONDUCT FROM 1979 TO 1981
(AS SUPPLIED BY ROYAL HONG KONG POLICE FORCE)

<u>A.</u>	<u>Buggery</u>	<u>Sentence</u>
	2 defendants	D. 1 12 months imprisonment D. 2 6 months imprisonment
	2 defendants	9 months imprisonment each <u>suspended</u> for 2 years
	2 defendants (aged 15 years)	To Detention Centre
	1 defendant (4 charges)	3 years on each charge (concurrent)
	1 defendant (incitement to commit Buggery)	1 year imprisonment
	1 defendant	Absconded while on bail
	1 defendant (aged 14 years)	Training Centre
<u>B.</u>	<u>Gross Indecency</u>	
	2 defendants	Bound over \$500 for one year each
	2 defendants	Bound over \$500 for 18 months each
	2 defendants	Bound over \$800 for 18 months each
	1 defendant (5 charges)	Sentence 4 months each count concurrent
	1 defendant	Bound over for 12 months at \$2,000 and pay costs \$400; no conviction recorded
	1 defendant (attempt to procure the commission of an act of gross indecency)	Bound over \$300 for one year
	2 defendants	Fined \$250 each
	1 defendant	Fined \$200
	3 defendants	Fined \$500 each
	2 defendants	Fined \$500 each
	1 defendant (soliciting for an immoral purpose)	Fined \$500

2 defendants	D.1 1 month imprisonment D.2 on probation for 18 months
2 defendants	Fined \$250 each
1 defendant	Fined \$500 Costs \$500
2 defendants (2 charges)	D.1 Bound over \$500 for 12 months Costs \$500 D.2 Fined \$250
2 defendants	Bound over \$500 for 12 months costs \$1,250 No conviction recorded
1 defendant	1 month imprisonment <u>suspended</u> 1 year
2 defendants	Each bound over \$500 for 1 year
2 defendants	Bound over \$500 for 12 months each
1 defendant (3 charges)	18 months on each charge (all concurrent)
1 defendant (8 charges) (procuring an act of gross indecency)	Convicted – 18 months on each charge (all concurrent)
1 defendant (3 charges)	A – Fined \$500 B – 13 weeks imprisonment C – 6 months imprisonment <u>suspended</u> for 2 years
1 defendant (3 charges)	Unconditionally discharged. No conviction recorded. \$600 costs.
1 defendant (16 charges) one defendant	18 months imprisonment on each charge (concurrent)
1 defendant (10 charges) (Procuring an act of gross indecency)	4 charges - not guilty; 6 charges guilty 1 year imprisonment.
2 defendants	D. 1 On probation for 12 months (no conviction recorded) D. 2 Bound over \$350 for 12 months
2 defendants	D. 1 Fined \$200 D. 2 Fined \$250

2 defendant	Both bound over \$500 for 6 months (no conviction recorded)
1 defendant	1 month imprisonment <u>suspended</u> for 12 months
1 defendant	Conditional discharge. Bound over \$500 for 2 years and to pay costs of \$1,000.
1 defendant	Bound over \$500 for 1 year
1 defendant	Bound over \$500 for 2 years. Costs \$500
1 defendant	Bound over \$500 for 2 years. Costs \$500
1 defendant	Fined \$500
1 defendant	Fined \$250
1 defendant	Bound over \$500 for 18 month
2 defendants (2 charges)	Both bound over \$500 for 1 year
1 defendant	Fined \$300
1 defendant	Fined \$500
1 defendant	Fined \$500

C. Indecent Assault

Sentence

(1 defendant in each case)

Indecent assault on male	Fined \$500
"	6 months imprisonment <u>suspended</u> for 12 months
"	5 months imprisonment each concurrent
(2 charges)	Bound over \$500 for 2 years
"	Bound over \$500 for 2 years
"	On probation for one year
"	Bound over \$300 for 12 months
"	Fined \$500
"	On probation for 12 months

"	On probation for 12 months
(2 charges)	
"	6 months imprisonment
(2 charges)	
"	Bound over \$500 for 1 year
"	Bound over \$500 for 1 year
"	Fined \$500
"	1 month imprisonment on each charge concurrent.
(2 charges)	\$500 costs
"	6 months imprisonment
(2 charges)	
"	Bound over \$1,000 for 12 months
"	\$500 costs
"	Bound over \$500 for 12 months
"	Bound over \$100 for 12 months
"	Bound over \$1,000 for 2 years.
"	Costs \$500
"	12 months probation
"	3 months imprisonment <u>suspended</u> one year
Indecent assault on a child under 14	3 months in prison <u>suspended</u> for 18 months
"	To Detention Centre
"	Probation for 18 months. No conviction recorded.
"	3 months imprisonment <u>suspended</u> 2 years
"	20 days imprisonment

SUBMISSION BY SCOTTISH ORGANIZATION

"I write to submit evidence to your Committee, as Honorary President of the Scottish Homosexual Rights Group, and more specifically, as a Consultant Psychiatrist with many years' experience in both general and forensic psychiatry. The most widely held psychiatric view today is that homosexuality is not an illness, nor are homosexuals sick people.

Oppressive social attitudes which are still found in many cultures can give rise to loneliness, isolation, feelings of rejection which in turn can precipitate neurotic or psychotic - particularly depressive - breakdown, and potential suicide. Homosexual men have to cope with the additional stress of the law, which makes homosexual behaviour a crime. The resultant emotional conflict comprising both fear and guilt can be a strong determinant factor in mental illness among male homosexuals.

The legal aspect, however, is one which can and should be relieved by a change in the law, making homosexual behaviour between adult consenting males no longer a crime.

(sd.) Keith R.H. Wardrop
M.B. Ch.B., F.R.C. PSYCH., D.P.M.
Lanarkshire, Scotland."

"We urge the Special Committee which is looking into the law of the Colony to recommend that the law on age of consent is changed so that the same age - 16 - applies to all men and women, heterosexual or homosexual.

Philip Lightowlers
National Secretary
For and on behalf of the
National Executive Committee
Meeting of 2 August 1980,
Scottish Homosexual Rights
Group"

SCHEDULE OF MISCELLANEOUS STATISTICS

I. POPULATION

(1)	Total population as at December 1982	:	5,287,800
(2)	Breakdown of population by sex -		
	(i) Male	:	2,752,300
	(ii) Female	:	2,535,500
(3)	Estimated number of non-Hong Kong citizens (1982) -		
	(i) British (excluding Armed Forces)	:	21,900
	(ii) Filipino	:	20,000
	(iii) Indian	:	14,400
	(iv) American	:	12,400
	(v) Malaysian	:	9,100
	(vi) Thai	:	9,000
	(vii) Australian	:	7,900
	(viii) Portuguese	:	7,400
	(ix) Pakistani	:	7,400
	(x) Japanese	:	7,100
	(xi) Canadian	:	5,000
	(xii) Singaporean	:	4,500
	(xiii) Indonesian	:	3,700
	(xiv) German	:	2,100
	(xv) Korean	:	2,100
	(xvi) French	:	1,500
	(xvii) Dutch	:	1,200

- (4) Place of origin of Chinese population -
- (i) Born in Hong Kong : 57%
 - (ii) Born in overseas Chinese communities : 41%
- (5) Number of illegal immigrants repatriated to China in 1982 : 8,680
- (6) Number of Vietnamese refugees in camps : 12,616
- (7) Population density per square kilometre : 4,923

(8) Age distribution :

	<u>under 15</u>	<u>15 - 64</u>
1972	34%	60%
1982	24%	68%

(Source : Hong Kong Yearbook, 1983)

II. RELIGION

(1) Breakdown of population by religious affiliation -

- (i) Buddhist/Taoist/Confucian : Exact figure unknown, but a significant majority
- (ii) Roman Catholic : 250,000
- (iii) Protestant : 200,000
- (iv) Muslim : 30,000
- (v) Hindu : 10,000

(2) Number of Buddhist and Taoist temples : 350

(Source : Hong Kong Yearbook, 1983)

III. FAMILY

- (1) Number of households : 1,155,900
- (2) Number of marriages –

	(i)	1976	:	39,600
	(ii)	1982	:	53,993
(3) Number of divorces –				
	(i)	1976	:	1,000
	(ii)	1982	:	3,120
(4)	Number of births		:	86,036

(Source : Hong Kong Yearbook, 1983)

IV. THE POST OFFICE

Number of packets mailed in 1982 : 96 million

(Source : Postmaster General)

V. CINEMA

(1)	Average annual cinema audience		:	66 million
(2)	Number of cinemas		:	85
(3)	Number of films submitted for review by Television & Entertainment Licensing Authority in 1982		:	661
(4)	Number of films refused licence in 1982		:	13
(5)	Number of films passed in 1982 after cuts made		:	200
(6)	Number of films cut because of overt homosexual scenes		:	1

(Source : Commissioner for Television & Entertainment Licensing)

VI. URBAN SERVICES FACILITIES

A.	(1)	Public toilets	:	926
	(2)	Commercial public bath houses	:	64
	(3)	Bathing beaches	:	41

(4)	Public swimming pools	:	14
(5)	Pleasure grounds	:	418 hectares
(6)	Stadia	:	9
(7)	Gardens of Remembrance	:	6
(8)	Public libraries	:	27
(9)	Museums	:	3
(10)	Civic centres	:	8
(11)	Indoor game halls	:	9
B.	Number of reports of homosexual offences in above localities received by Urban Services Department in the last 5 years	:	0

(Source : Urban Services Department)

VII. VENEREAL DISEASE

(1)	Number of cases reported in the last 5 years	:	32,386
(1)	Breakdown by sex –		
	(i) male	:	22,766
	(ii) female	:	9,620
(3)	Number of cases found to be due to male : homosexual contacts	:	30
(4)	Number of cases found to be due to female : homosexual contacts	:	0

(Source : Medical & Health Department)

VIII. CUSTOMS AND EXCISE

Seizures under the Objectionable Publications Ordinance by Customs and Excise Department

<u>Year</u>	<u>No. of cases Prosecuted</u>	<u>No. of persons Convicted</u>	<u>Total fine/ imprisonment</u>
1980	1	2	\$ 15,500
1981	14	17	\$164,500
1982	28	35	\$ 73,520

(and 11 months' imprisonment)

Note	:	(a)	largest single fine	:	\$53,000
		(b)	longest sentence of imprisonment	:	8 months

(Source : Commissioner for Customs & Excise)

IX. EDUCATION

(1)	Number of schools in 1982	:	2,350
(2)	Total enrolment as at September 1982	:	1,371,497
	(i) Kindergarten	:	205,200
	(ii) Primary	:	547,512
	(iii) Secondary	:	518,721
	(iv) Others	:	100,064
(3)	Number of students studying overseas	:	over 12,000
(4)	Total number of teachers	-	
	(i) male	:	13,800
	(ii) female	:	26,400
(5)	Number of teachers convicted of sexual offences since 1970	:	6
(6)	Number of teachers convicted of homosexual offences since 1970	:	2
(7)	Number of allegations of sexual offences since 1970 not leading to prosecution	:	1

(Source : Education Department)

X. PUBLIC DANCE HALLS

- (1) Total number as at February 1983 : 48
- (2) Most commonly reported breaches of licence conditions :
- (i) Employment of assistants without approval;
 - (ii) Employment of under-aged assistants;
 - (iii) Incomplete register of employees;
 - (iv) Consumption of liquor without a valid licence;
 - (v) substandard seating arrangements.
- (3) Number of licence cancellations or revocations : 16
- (4) Most common grounds for licence cancellation or revocation :
- (i) Transfer of operation/management without permission of Authority;
 - (ii) Keeping a disorderly house and failing to observe licence conditions;
 - (iii) Keeping a vice establishment.
- (5) Number of reported incidents of indecent behaviour in licensed premises : 3
- (6) Number of reported incidents of homosexual indecent behaviour in licensed premises : 0

(Source : Television & Entertainment Licensing Authority)

XI. MESSAGE PARLOURS

- (1) Number of premises licensed : 71
- (2) Types of premises -

- (i) Beauty salons : 17
 - (ii) Private clubs : 14
 - (iii) Premises issued a Massage Establishment Licence : 40
- (3) Number of licence revocations -
- (i) 1981 : 1
 - (ii) 1982 : 3
- (4) Number of reported incidents of use of premises by under-aged persons : 0
- (5) Number of reported incidents of indecent behaviour of a homosexual nature : 0

(Source : Licensing Office,
Royal Hong Kong Police Force)

XII. TELEVISION

Average Weekday Audience Size at Peak Hours

Time	ATV Chinese	TVB Jade	ATV English	TVB Pearl
1900-2000	578,750	1,988,585	16,205	2,315
2000-2100	381,975	2,335,835	6,945	20,835
2100-2200	307,895	2,146,005	23,150	34,725
2200-2300	682,430	1,365,850	25,465	67,135
2300-0000	219,925	490,780	6,945	46,300

Based on week ending 7 November 1982

(Source : Television & Entertainment
Licensing Authority)

**Summary of Evidence given publicly by male prostitutes
before the Commission of Inquiry into the death
of Inspector John MacLennan**

PETER

Personal Background

Peter was born in Hong Kong on the 17th July 1957. He is Chinese. He left school when he was thirteen, having reached Primary IV level. He left school because he was a below-average student. He is able to read Chinese, but not English. He speaks a little English.

After leaving school Peter commenced working as a dim sum seller in a tea house. Later he worked in the kitchen of the same establishment. About a year after starting work Peter changed his employment and became a factory worker. He subsequently worked in other factories before becoming a construction worker. His employment history shows that he remained in each job for between a few months and a year. When he was seventeen Peter became unemployed and it was not until he was twenty that he obtained further employment in a dyeing factory. Between then and the time he gave evidence before the Commission of Inquiry in October 1980 Peter also worked as a security guard and spent substantial periods unemployed.

Peter's Homosexuality

Peter's first homosexual experiences occurred when he was thirteen at the time of his first employment. At that stage he slept in a dormitory with a fellow worker who was aged about sixteen.

This person made advances to Peter who permitted himself to be masturbated. At first, Peter says, he "didn't know what it was all about", but soon began to enjoy mutual masturbation with his male friend.

Later these activities extended to other kitchen workers at the tea house where Peter was working. As a result of these contacts Peter came to know that homosexuals frequent public lavatories and parks and he sometimes encountered chance meetings at such locations which subsequently resulted in homosexual liaisons. He also found that he was able to make homosexual contacts amongst males loitering at the back of picture theatres.

By the time Peter was fourteen he had graduated to oral sex and active and passive buggery with his homosexual acquaintances. He actively sought homosexual partners with whom he had relationships which varied from a single encounter to many meetings over long periods.

In 1975 Peter became a male prostitute. By 1978 he had moved into an apartment house in Tsimshatsui which was the area in which he was principally working as a male prostitute. He acquired customers through introductions and at homosexual haunts which he came to know of in the Tsimshatsui area. His customers included Europeans and Asians, many of whom were tourists.

When Peter commenced his career as a male prostitute in 1975 the minimum price he would normally accept for his services on any one occasion was \$100. Occasionally, if he found his client young and good looking, he was prepared to accept less. By October 1980 the minimum price Peter was prepared to accept for his services was \$200 from tourists or

sometimes less from regular local clients he found handsome and whose company he enjoyed. Normally, he negotiates the price with his clients before returning to their hotel rooms or homes.

LULO

Personal Background

Lulo is a Chinese male who was born in Hong Kong on the 30th October 1949. He left school at the age of seventeen when he was in Form 2. He was, as a result of his education, able to speak and write a little English at the time he left school.

At the time he ceased attending school Lulo left home and started living with his cousins. He commenced working in an electronic factory assembling radios and remained in that job for about two years. From the time he left that employment until November 1980, when he gave evidence before the Commission of Inquiry, Lulo earned a living as a male prostitute.

Lulo's Homosexuality

Lulo was not unwittingly introduced to homosexual practices by an older man. He recalls having a keen interest in boys from early in his school career, although he did not indulge in homosexual activities until he was about twenty. His first homosexual encounter was with a European whom he met in a Tsimshatsui lavatory. This person watched Lulo for a short time and then began to talk with him. They arranged to meet later the same day when they booked a room in a guest house in Tsimshatsui. There mutual masturbation took place and Lulo was paid \$100 for his services. It was as a result of this incident that Lulo realised his attraction sexually to other men and the income he could earn from homosexual prostitution. As a result, he left his job and rented a room in Tsimshatsui. He came to know that certain bars and the Star Ferry Concourse in that area were places where he could make homosexual contacts and he began successfully plying his trade.

Lulo learned to effect a feminine way of walking and to smile at prospective customers. He found this to be a successful way of attracting customers in the street. He made it a practice to negotiate a price with each prospective customer before going to the customer's hotel or to a guest house where a room could be rented.

Normally, Lulo earned about \$200 from each customer and this was irrespective of the services he rendered. He indulged in all aspects of homosexual practice from masturbation to active and passive buggery. His customers have always been tourists and non-Chinese local residents. He indulges in homosexual acts with local Chinese, but does not accept payment on such occasions.

In relation to some of his local customers, Lulo often visits their homes in order to provide his services. Sometimes he exchanges telephone numbers with his local customers in order that further meetings can be arranged.

MICHAEL

Personal Background

Michael was born in Mainland China in 1943. He received four years of primary education in China and has a limited ability to read Chinese characters. In 1960 he came to Hong Kong and obtained employment in a weaving factory. He worked in that job for between four and five years. After that he worked in a metal factory for two years and then in a

garment factory for about ten years. At the time he gave evidence before the Commission of Inquiry in November 1980 he was employed in an hotel.

Michael's Homosexuality

Michael first realised he was a homosexual when he was very young. He did not, however, engage in homosexual activities until after he arrived in Hong Kong. His first experience of that nature was a chance meeting, when he was in his mid-twenties, with a homosexual who was about ten years older than he was. Although no homosexual acts took place between them this person told Michael that there were homosexuals who frequented the Tsimshatsui area. He mentioned that the Star Ferry Concourse and outside the Ambassador Hotel were popular meeting places for homosexuals.

As a result, Michael went to the Star Ferry Concourse a short time afterwards and came into contact with the homosexuals who frequented the area. He realized that male prostitutes were operating in the area and, although he did not start actively seeking out customers, his first homosexual relationship was with a European tourist who paid him \$100 for his services. On that occasion the tourist started talking to him in the lobby of the Hong Kong Hotel and they agreed to go to his hotel room together. Oral sex and masturbation took place on that occasion and Michael was paid \$100, although money had not been mentioned before the payment was made to him.

Most of Michael's homosexual liaisons are with tourists. He says that he seldom negotiates a price for his services in advance, but accepts such money as is offered to him. He is prepared to indulge in oral sex, masturbation and active buggery, but not in passive buggery. He does not engage in homosexual acts with the other male prostitutes he knows because he regards them as friends and therefore prefers not to do so. Some of his customers are local people.

BOBBY

Personal Background

Bobby is Chinese and was born in Hong Kong on the 10th November 1959. He is the ninth of eleven children in his family. Bobby was educated to Form I level and left school at the age of sixteen. He can speak and read Chinese proficiently and has a very limited knowledge of English.

Bobby's Homosexuality

Bobby realised he was a homosexual when still at school. He had his first homosexual experiences with a school friend when he was in Form I. Those experiences involved mutual masturbation.

During 1977 Bobby met several of the male prostitutes who were active in the Tsimshatsui area. Soon after that he was introduced by one of his male prostitute friends to a European living in Hong Kong in order that he could be paid for performing homosexual acts with him. On that occasion he was paid \$50. Since then Bobby has regularly performed homosexual acts for financial reward. Most of his customers are non-Chinese tourists. He also has customers, both Chinese and non-Chinese, who live in Hong Kong.

Bobby generally receives between \$100 and \$300 for his services. If he has been introduced to a customer by another male prostitute Bobby pays him a portion of his earnings. Such amounts vary depending upon the proportion he is asked to pay.

Bobby is prepared to provide all forms of homosexual services including active and passive buggery.

JEFF

Personal Background

Jeff was born in Hong Kong on the 19th February 1954. He has three younger brothers and three younger sisters. Jeff left school at the age of thirteen, having attained an education of Primary V level.

Between the time he left school and gave evidence before the Commission of Inquiry in December 1980 Jeff was employed as a mason. In December 1980 he was earning \$120 per day in that employment.

Jeff's Homosexuality

Jeff's first experience of male prostitution was in mid 1977. On that occasion he was in the vicinity of the Star Ferry Concourse in Kowloon at about 1 a.m. He was approached by a foreign tourist who asked him if he had a place to sleep. Jeff replied that he did not and he agreed to accompany the tourist to his room in the Hong Kong Hotel. There he participated in masturbation and oral sex with the tourist and they spent the night together. Jeff left the room the following morning after being given \$100 by the tourist. Jeff says that he then realized the amount of money he could make in male prostitution and after that time he often went to the Star Ferry Concourse in Kowloon for the purpose of meeting customers. Most of Jeff's customers are tourists, although he has some local patrons who are mainly Europeans.

Jeff became acquainted with the other male prostitutes working in the Tsimshatsui area. One of them introduced Jeff to a European living in Hong Kong who indulged in flagellation. This person hit his subjects with a rattan cane and was prepared to pay his "victims" \$20 for each stroke of the cane. Jeff agreed to be beaten by this person and was taken to his flat by the male prostitute who introduced them to each other. Jeff and his customer removed their clothing and over a period of about ten minutes Jeff was hit with a cane ten times by him. Whilst doing this the European masturbated himself. After completing his performance the European turned on a lamp to inspect the results of his efforts and showed Jeff a photograph of an earlier flogging he had inflicted on another male. He then paid Jeff \$200 and the other male prostitute \$50 for having introduced Jeff to him.

By early 1979 Jeff ceased working as a male prostitute. At that time he had met another older European male who also lived in Hong Kong. Jeff often slept in this person's flat in Tsimshatsui and Jeff describes their relationship as being that of father and son. It was this person who advised Jeff to cease working as a male prostitute and Jeff accepted this advice because he feared "getting into trouble" if he continued.

LETTER DATED 31 AUGUST 1979
FROM THE HON. ATTORNEY GENERAL OF HONG KONG
TO THE COMMISSIONER OF POLICE
(SOMETIMES REFERRED TO AS THE SIU CHARTER)

Operation Rockcorry

"I have read the resume CID report of 20 August 1979 and understand that the Police wish to have guidance upon what resources to devote to Operation Rockcorry.

A distinction can be made between direct evidence of criminal activity, and information or 'leads' which if time and manpower were devoted to them might enable the acquisition of such evidence. In general, where there is evidence in the possession of the police of the commission of any serious crime, it is their duty to lay that before the Attorney General's Chambers for a decision as to what action to take. But where there are only 'leads', then it is a matter of judgment in each individual case whether these should be followed up, or whether diverting police resources to do so would detract from the suppression of other sorts of crime having a higher priority in the prevailing circumstances, and hence not be in the wider public interest.

There being so much other crime with which to deal, including violent crime, illegal immigration and triad activities, and police resources obviously not being limitless, it is out of the question to devote sufficient resources to following up every allegation of homosexuality. The Police will therefore have to proceed in homosexual cases with a degree of selectivity. I realize what a difficult position this puts them in and I hope it may be helpful therefore if I set out some priorities.

Against this background, so far as homosexual crime is concerned, the primary target should be those who profit from homosexuality through procuring. These are important targets since triad connections, protection, and use of 'muscle' are all likely to be involved.

The second targets should be homosexuals who abuse young boys (say of the age of 18 and under) or other persons under mental or other disability - as opposed to indulging in homosexual activities - with consenting adults.

The third targets should be homosexuals against whom credible evidence emerges during other investigations; by credible evidence I mean the direct evidence of persons directly concerned or with personal knowledge of what occurred, as opposed to hearsay, gossip or mere suspicion.

Fourthly, if specific complaints of homosexual practices are made by members of the public to the Police, then of course they must be acted upon in the normal way.

In the investigations of the cases referred to above, I expect that leads pointing to practising homosexuals will be bound to crop up. Such leads should generally only be followed up either if they assist in the prosecution of a procurer, or if the abuse of young persons is suspected to have occurred. I consider in the context of the present situation with regard to crime in Hong Kong and the need to choose those areas of crime in which the limited police resources should be deployed, that it is not necessary to follow up suspicions of homosexuality unless they come within the criteria I have described above.

An exception to the above guidance in relation to consenting adults should be made in the case of credible 'leads' against either members of the Judiciary or of the Attorney General's Chambers or of other lawyers in active practice in the Courts or of the Police. Assuming such leads to be credible, then these should be followed up because it is unacceptable to have those charged with the enforcement of the law themselves to be deliberately breaking it. Each such lead must of course be individually assessed and common sense applied in judging its credibility. Hong Kong seems to breed rumours and wild allegations (as indeed has already been shown in some instances in Rockcorry itself) and it would cause unnecessary public alarm and be a waste of resources if every incredible allegation was pursued, or if allegations were further pursued once they were shown not to be credible.

It is I suppose possible that leads may appear pointing at very senior police officers or, similarly, members of my chambers. These should be reported to me personally at once and I will decide the manner in which the enquiries should proceed - to do otherwise would place more junior police officers in a difficult and invidious position.

Lastly, it may be that credible leads appear pointing at senior members of the Government service. In deciding whether or not to pursue them, such cases must be considered on an individual basis, bearing in mind the position of the suspect in government and all the other circumstances.

I have appointed Mr. Neil Macdougall, the Assistant Director of Public Prosecutions and Mr. Warwick Reid, Senior Crown Counsel, to be available for consultation about any legal aspects of Operation Rockcorry where the police feel they need advice. I am also personally available should any matter arise where either yourself or the leader of the Rockcorry team feel it would be helpful to consult me. I would wish also to be kept informed of the general progress of the Rockcorry investigation, and told at an early stage of any leads which are being followed up and which point at senior members of the Government, the police, or the Judiciary.

With regard to Operation Rockcorry, I do not think a much larger deployment of Police manpower than that currently engaged is justified, although it may be that some temporary reinforcement in the form of either supervision or additional subordinate staff is necessary to dispose of the current enquiries. This of course is a matter for the Commissioner of Police.

I hope that Operation Rockcorry and the series of prosecutions resulting from it, including that of the prime target Molo Choy, and the continuation of operations along the lines and at the level of activity I have suggested above, should have a deterrent effect on the practice of homosexual crime in Hong Kong.

However, it is possible that evidence may emerge that the amount of homosexuality alleged to exist within the community and Government services is leading to corruption and blackmail in the present state of the law. In this case, we would have to consider either amending the law or deploying more Police manpower to decrease homosexuality. But in default of such evidence, and with Police resources stretched to deal with the upsurge in crime and illegal immigration, I do not think action in excess of that which I have outlined above is justified."

(Reprinted from Report of the Commission of Inquiry into Inspector MacLennan's Case 1981, pages 62 and 63)

CIVIL SERVICE CIRCULAR ON EMPLOYMENT

5th January 1982

Secretariat Confidential Circular No. 106/82

Employment of Homosexuals in the Civil Service

Now that the report of the Commission of Inquiry into the death of Inspector MacLennan has been published, it is thought that Heads of Department will wish to have some guidance as a reminder on the employment of homosexuals in the civil service, and specifically on the exercise of their delegated powers of appointment and termination of service. This circular therefore defines the existing policy and procedures which Heads of Department may find helpful.

2. A "known homosexual" is someone (of either sex) who has been convicted of a homosexual offence or who has formally acknowledged being a practising homosexual.
3. No known homosexual should be appointed to the Hong Kong civil service, irrespective of rank or grade. Where a candidate for appointment is a suspected homosexual, the case should be referred to the Secretary for the Civil Service.
4. Where a serving officer has been convicted of a homosexual offence, consideration should be given by his Head of Department to terminating his service in accordance with established civil service practice.
5. Where it comes to the notice of a Head of Department that a serving officer is a known or suspected homosexual, the case should be referred automatically to the Secretary for the Civil Service for advice.
6. Dealing with cases involving known or suspected homosexuals is never easy and Heads of Department are invited to seek advice from the staff of Civil Service Branch.
7. Any queries on this circular should be addressed to the Deputy Secretary for the Civil Service (Staff Management) (Tel. No. 5-95531).

MARTIN ROWLANDS
Secretary for the Civil Service

To : Branch Secretaries
and Heads of Department

LAWS IN HONG KONG

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 to 6.7	<u>THE FAMILY</u>			
	<u>LIFE</u>	Murder	Death	S.2 of Offences Against Persons Ordinance Cap. 212
		Manslaughter	Life Imprisonment	S.7, Cap. 212
		Infanticide	Life Imprisonment	S.47C, Cap. 212
		Abortion	7 years	S.46, Cap. 212
		Procuring Abortion	Life Imprisonment	S.46, Cap. 212
		Child Destruction	Life Imprisonment	S.47B, Cap. 212
		Concealing Birth	2 years	S.48, Cap. 212
		Assisting Suicide	14 years	S.33B, Cap. 212
		Aiding and Abetting		S.82 of Interpretation and General Clauses Ordinance Cap. 1
		Counselling and Procuring		"
		Conspiracy		Common Law
		Misprison of Felony		Common Law
	Assisting a Fugitive		Common Law	

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 – 6.7	<u>BODILY INJURY</u>	Attempts to Murder	Life Imprisonment	SS. 10-14, Cap. 212
		Shooting) – with) intent	Life Imprisonment	S.17, Cap. 212
		Wounding)		
		Administering Poison so as to Endanger Life	10 years	S.22, Cap. 212
		Causing Bodily Injury by Gun-Powder or Acid	Life Imprisonment	SS. 28, 29, Cap. 212
		Attempting to Choke or Strangle to Assist Another Offence	Life Imprisonment	SS. 20, 21, Cap. 212
		Assault with intent to cause acts to be done	5 years Imprisonment	SS. 25, 27 of Crimes Ordinance Cap. 200
		Wounding or poisoning	3 years Imprisonment	SS. 19, 23, Cap. 212
		Assault Occasioning actual bodily harm	3 years	S. 39, Cap. 212
		Common assault	1 year	S. 40, Cap. 212
		Incest	7 years	S. 47, Cap. 200
		Abandoning a Child	3 years	S. 26, Cap. 212
		Child Abuse	2 years,	S. 27, Cap. 212
6.6 – 6.7	<u>LIBERTY</u>	Kidnapping	Life Imprisonment	S. 42, Cap. 212
		Unlawful Transfer or Possession of Person for Money	2 years	S. 44, Cap. 212

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 – 6.7	<u>FEAR</u>	Letters threatening Murder	10 years	S.15, Cap. 212
		Threats to Destroy property	10 years	SS. 61, 63, Cap. 200
		Blackmail	14 years	S.23 of Theft Ordinance Cap. 210
		Criminal Intimidation	5 years	SS. 24, 27, Cap. 200
		Professing Membership of Triad Society	5 years & \$5,000	SS. 19, 20 of Societies Ordinance Cap. 151
		Criminal Libel	2 years plus fine	SS. 5, 6 of Defamation Ordinance, Cap. 21
		Public Mischief-publishing false information	5 years & \$50,000	S. 30 of Public Order Ordinance Cap. 245
		Sending false or menacing message by telephone	1 month \$100	S. 20 of Summary Offences Ordinance Cap. 228
6.6 – 6.7	<u>PROPERTY</u>	Arson or Destroying Property with intent	Life Imprisonment	SS. 60, 63, Cap. 200
		Criminal Damage	10 years	SS. 60, 63, Cap. 200
		Aggravated Burglary	Life Imprisonment	S. 12, Cap. 210
		Burglary	14 years	S. 11, Cap. 210
		Robbery	Life Imprisonment	S. 10, Cap. 210
		Theft	10 years	S. 9, Cap. 210

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.8	<u>MARRIAGE</u>	Marrying minor under 21, without consent of parent (Grounds for Nullity) (Grounds for Divorce)	2 years	S.29 of Marriage Ordinance Cap. 181 S.20, Cap. 181 SS.11 and 11A of Matrimonial Causes Ordinance Cap. 179
6.14	<u>PUBLIC BEHAVIOUR</u>	Disorderly conduct Fighting in Public Unlawful Assembly Obeying a call of nature in public	12 months & \$5000 12 months & \$5000 5 years 3 months & \$500	S.17B, Cap. 245 S.25, Cap. 245 S.18, Cap. 245 S.4(3), Cap. 228
6.15		Calls of nature in public or in buildings Permitting child under 12 to obey call of nature in public	\$1000 (first offence) \$1000 (first offence)	By-laws 8 and 23 of Public Cleansing & Prevention of Nuisance By-laws S.15, Public Health & Urban Services Ordinance Cap. 132
6.16		Indecent exposure	6 months & \$1000	S.148, Cap. 200
6.17		Loitering and soliciting for immoral purpose Loitering without explanation Loitering with obstruction Loitering causing fear	6 months & \$1000 6 months & \$2000 6 months 2 years	S.147, Cap. 200 S.160, Cap. 200 S.160, Cap. 200 ibid

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.20	<u>PUBLIC LAVATORIES</u>	Indecency	\$250	By-laws 5, 7, 10 of Public Convenience (Conduct & Behaviour) By-laws; S.35, Cap. 132
6.20	<u>COMMERCIAL BATH- HOUSES</u>	Indecency (Refusal of admission or removal of persons from public lavatories and bath-houses)	\$500 & 1 month	By-laws 13, 18 of Commercial Bath-house By-laws; S.35, Cap. 132 SS. 37, 38, Cap. 132
6.20	<u>BATHING BEACHES</u>	Indecency	\$500 & 14 days	By-laws 5, 15, 16 of Bathing Beach By-laws; S.109, Cap. 132
6.20	<u>PUBLIC SWIMMING POOLS</u>	Indecency	\$250	By-laws 4, 6, 7, 13 of Public Swimming Pool By-laws; SS. 42, 149, Cap. 132
6.20	<u>PLEASURE GROUNDS</u>	Indecency	\$500 & 14 days	By-laws 7, 21, 22, 24, 30 and 32, Pleasure Grounds By-laws; S.109, Cap. 132
6.21	<u>BARS</u>	(Power to grant licences) (Licence conditions) (Form 2)		R. 17, Dutiable Commodities (Liquor) Regulations; S.6, Dutiable Commodities Ord. Cap. 109 R. 21, Schedule to Dutiable Commodities (Liquor) Regulations

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.25	<u>PUBLIC DANCE HALLS</u>	Under-age drinking	6 months & \$5000	R. 28, 30
		Under-age employment	6 months & \$5000	R. 29, 30
		Entertainment without licence	\$2000	R. 27, 30
		Failure to observe conditions of licence	\$10,000 & 6 months	S. 4, Cap. 114
6.26	<u>PUBLIC PERFORMANCES</u>	Failure to keep register		RR. 7, 9, 17, 60, 61, 63, 68
		Employment of those under 18	\$10,000 & 6 months	Miscellaneous Licences Regulations
		Licence permitting indecency		
		Live shows	\$25,000 & 1 year	S. 12A, Cap. 228
		Keeping a place of public entertainment without licence	\$10,000 & 6 months	SS. 2, 4, Places Public Entertainment Ordinance Cap. 172
		Public entertainment in breach of licence	\$1,000 & 6 months	R. 166, 171, Places of Public Entertainment Regulation 5
		Presenting public entertainment without a permit, or in breach of conditions of permit	\$10,000 & 6 months	S. 8, Cap. 172
		Continuing performance after notice of cancellation of licence	\$1,000 per day	R. 173, Places of Public Entertainment

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.37	<u>PUBLICA-</u> <u>TIONS</u>	Closure of performance or premises		RR. 173, 174
		Exhibition of films in cinemas without approval	\$10,000 & 6 months	S. 5, Cap. 172
		Exhibition of films without notification of censor's decision	\$10,000 & 6 months	R. 5, Film Censorship Regulations; S.7, Cap. 172
		Exhibition of films contrary to order by Chief Secretary	\$10,000 & 6 months	R. 11, Film Censorship Regulations
		Conspiracy to corrupt Public Morals		Common Law
		Publishing material tending to induce Commission of Offence	\$10,000 & 3 years	SS. 3, 20, Control of Publications Ordinance Cap. 268
		Contravening an order for suppression of Local Newspaper	\$10,000 & 3 years	S. 4, Cap. 268
		Contravening the Governor's Prohibition of Importation of Newspaper	\$10,000 & 3 years	S. 5, Cap. 268
		Possession of Prohibited Newspaper	\$10,000 & 3 years	S. 5(3), Cap. 268
Advertising treatment for Venereal Disease and Sexual Virility	\$5,000 & 1 year	S. 3, Undesirable Medical Advertisement Ordinance Cap. 231		

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.49	<u>TELEVISION</u>	Indecent message by telephone	\$100 & 1 month	S. 20, Cap. 228
		Posting obscene, immoral indecent or offensive material	\$500 & 6 months	SS. 32, 38, Post Office Ordinance Cap. 98
		Importation, possession for gain or publication of objectionable articles	\$100,000 & 3 years	S. 4, Objectionable Publications Ordinance Cap. 150
		Television station Broadcasting in breach of Prohibition ordered by Television Authority	\$10,000 & 6 months	S. 35, Television Ordinance Cap. 52
		(Television Authority may issue codes of practice)		SS. 4, 34, 37, Cap. 52
		(All film material to be submitted to panel of censors established under the Film Censorship Regulations)		S. 32, Cap. 52
		(Licensee to supply to Television Authority on demand any material intended for broadcasting)		S. 33, Cap. 52
		Broadcasting any programme prohibited by the Television Authority	\$10,000 & 6 months	S. 35, Cap. 52

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.53	<u>WOMEN</u>	Failure to comply with regulations e.g. to exclude certain material in programmes	\$50,000	RR. 4, 6, Television (Standards of Programmes) Regulations, SS. 27, Cap. 52
		Unlawful Intercourse by threats	14 years	S. 119, Cap. 200
		Unlawful Intercourse by drugs	14 years	S. 121, Cap. 200
		Unlawful Intercourse by fraud	5 years	S. 120, Cap. 200
		(Alternative Verdicts)		S. 149, Cap. 200
6.54		Indecent Assault upon woman	5 years	S. 122, Cap. 200
		Transferring a person for money	2 years	S. 44, Cap. 212
		Transferring a woman for prostitution	7 years	S. 129, Cap. 200
6.55		Procuring a woman into prostitution	7 years	S. 131, Cap. 200
		Harbouring a woman for prostitution	14 years	S. 130, Cap. 200
		Woman exercising control for prostitution	5 years	S. 138, Cap. 200
6.56		Man living on earnings of prostitution	5 years	S. 137, Cap. 200
		Woman detained in vice establishment	14 years	S. 134, Cap. 200

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.57		Keeping a vice establishment	7 years & \$20,000	S. 117 and S. 139, Cap. 200
		Letting premises for vice establishment	2 years & \$20,000	S. 143, Cap. 200
		Tenant permitting use of premises for vice establishment	2 years & \$20,000	S. 144, Cap. 200
6.58		Permitting premises to be used for habitual Prostitution	2 years & \$20,000	S. 145, Cap. 200
		Keeping a house for occupation by Prostitutes	3 months & \$500	S. 8(c), Cap. 228
6.60		Keeping a disorderly house		Common Law
		Indecent exposure by man or woman	6 months & \$1,000	S. 148, Cap. 200
6.61	<u>WOMEN UNDER 21</u>	Soliciting and loitering for immoral purpose	6 months & \$1,000	S. 147, Cap. 200
		Abduction	2 years	SS. 2, 26, 29, Protection of Women & Juveniles Ord. Cap. 213 S. 2, Juvenile Offenders Ordinance Cap. 226
		Stealing a child under 14	7 years	S. 43, Cap. 212
		Abduction of girl under 16	5 years	S. 126, Cap. 200
		Abduction of girl under 18 for sexual intercourse	7 years	S. 127, Cap. 200

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.62		Indecent Assault - No consent by girl under 16	5 years	S. 122, Cap. 200
		Incest with daughter under 16	Life Imprisonment	
		Incest with daughter under 13	Life Imprisonment	S. 47, Cap. 200
		Unlawful sexual intercourse with girl under 16	5 years	S. 124, Cap. 200
		Unlawful sexual intercourse with girl under 13	Life Imprisonment	S. 123, Cap. 200
6.63		Gross Indecency towards child under 14	5 years	S. 146, Cap. 200
		Permitting girl under 13 to resort to premises for prostitution	Life Imprisonment	S. 140, Cap. 200
		Permitting girl under 16 to resort to premises for prostitution	14 years	S. 141, Cap. 200
		Guardian encouraging prostitution of girl under 16	5 years	S. 135, Cap. 200
		Procuring girl under 21 to have sexual intercourse	5 years	S. 132, Cap. 200
6.65	<u>MENTAL DEFECTIVES</u>	(Definition of Mental Defective)		S. 117, Cap. 200

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.66		Taking out of possession of guardian	7 years	S. 128, Cap. 200
		Unlawful sexual intercourse	5 years	S. 125, Cap. 200
		Indecent assault	5 years	S. 122, Cap. 200
		Procuring sexual intercourse	5 years	S. 133, Cap. 200
		Causing Prostitution	10 years	S. 126, Cap. 200
		Permitting resort to premises for intercourse or Prostitution	10 years	S. 142, Cap. 200
		(Definition of Mentally Disordered Person)		S. 2, Mental Health Ordinance Cap. 136
		(Inquiry ordered for person of unsound mind)		S. 7, Cap. 136
6.67		Unlawful sexual intercourse with female patient of mental hospital	3 years & \$5,000	S. 65(2), Cap. 136
6.69		Ill-treatment of Patients by Staff of Mental Hospital	2 years & \$1,000	S. 65(1), Cap. 136
6.75	<u>PRISONERS</u>	Offences against prison discipline	1. Separate Confinement for any period not exceeding 28 days 2. Forfeiture of remission not exceeding 1 month	RR. 61(e), (f), (q), (w), 63, Prison Rules; S. 25, Cap. 243

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.76	<u>ARMED FORCES</u>	Disciplinary Offences by Prison Officers (Application of the U.K. Army Act 1955 in relation to administration, Discipline, trial and punishment of staff etc. to Hong Kong)	3. Forfeiture of privileges up to 3 months 4. Deprivation of earnings Dismissal, fine, reduction in rank, stoppage of increment etc	R. 239 (h)(iii), (j), (n); Prison Rules, S. 25, Cap. 243 S. 17, Royal Hong Kong Regiment Ordinance Cap. 199
6.81	<u>THE ABOMINABLE MAN</u>	Buggery Attempted buggery Gross Indecency	Life Imprisonment 10 years 2 years	S. 49, Cap. 212 S. 50(a), Cap. 212 S. 51, Cap. 212
6.83	<u>INCHOATE OFFENCES</u>		Not exceeding the maximum of the full offence	S. 81, Cap. 1
6.86	<u>SECONDARY PARTIES</u>		Same as the full offence	S. 89, Criminal Procedure Ordinance Cap. 221

MISCELLANEOUS LEGAL PROVISIONS

I. ROYAL FORCES

(a) THE NAVY

The Naval Discipline Act 1957 provides by s.37 that :-

"Every person subject to this Act who is guilty of any disgraceful conduct of an indecent kind shall be liable to dismissal with disgrace from Her Majesty's service or any less punishment authorised by this Act."

2. The definition covers homosexual conduct and the provisions of s.1(1) of the Sexual Offences Act 1967 do not prevent such an act from being an offence under the Naval Discipline Act (s.1(5) of the Sexual Offences Act 1967). A similar proviso in respect of Scots law is found in s.80(5) of the Criminal Justice (Scotland) Act 1980.

3. In addition to s.37 of the Naval Discipline Act, s.42 of that Act provides that "any person subject to this Act who is guilty by any civil offence (that is to say any act or omission which is punishable by the law of England or would be so punishable if committed in England) shall be liable on conviction under this Act " and proceeds to specify the range of penalties.

4. Under s.8 of the Sexual Offences Act 1967, where the offence is gross indecency, leave of the Director of Public Prosecutions is necessary before proceedings are instituted if at the time of the commission of the offence any one of the men concerned was under the age of 21. It was held in Secretary of State for Defence v. Warn [1968] 2 All E.R. 300 that even in respect of courts-martial the authorisation of the Director of Public Prosecutions had to be obtained. Similarly, despite the fact that s.52(1) of the Naval Discipline Act sets a time limit of 3 years for the commencement of proceedings for an offence under the Act, it was remarked per curiam in Warn that the 12 month time limit imposed by s.7(1) of the Sexual Offences Act 1967 applied equally to court martial proceedings.

5. Not only do the provisions of the Naval Discipline Act apply to all officers on the active list and all ratings (s.111) but also to colonial naval forces (s.115) and "to persons embarked as passengers on board Her Majesty's ships or aircraft" (s.117). Where naval forces are on active service, the Naval Discipline Act extends to :-

- "(a) any person employed in the service of that body of those forces;
- (b) any person employed in the service of any portion or member of that body of those forces; or
- (c) any person who accompanies that body of those forces or any portion thereof" (s.118(1)).

6. This extends the application of s.37 to civilians in the 3 categories given.

7. By s.126 of the 1957 Act, certain provisions are made for enabling the Act to be applied to the colonies. In fact, since the provisions of the Act attach to classes of persons rather than a particular location s.126 has little relevance to s.37.

8. As far as homosexuality on merchant ships is concerned, s.2(1) of the Sexual Offences Act 1967 retains the pre-1967 Act offences "provided that the act charged is done on a United Kingdom merchant ship, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other United Kingdom ship". A "United Kingdom merchant ship" is defined in s.1(3) as being a ship registered in the United Kingdom habitually used, or used at the time of the act charged for the purposes of carrying passengers or goods for reward. The sanctions of s.2 of the Sexual Offences Act 1967 apply to merchant seamen on or off duty provided the offence is committed aboard the ship of which at least one of the parties is a crew member. The wording of s.2 requires 2 merchant seamen to be involved before an offence is committed. No penalty arises under the section if one merchant seaman indulges in homosexual conduct not otherwise criminal with another who is not a merchant seaman.

9. For the purposes of homosexual offences it would seem that merchant seamen serving in ships requisitioned by the Royal Navy would come under the strictures of s.37 and s.42 of the Naval Discipline Act as serving on one of "Her Majesty's Ships" within the definition given in s.132(1) of that Act as including "ships and vessels, other than Her Majesty's ships, engaged in the naval service of Her Majesty, whether belonging to Her Majesty or not".

(b) THE ARMY

10. The provisions of s.66 of the Army Act 1955 regarding "disgraceful conduct" state that :-

"Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act."

11. As with the navy legislation, s.1(5) of the Sexual Offences Act 1967 excludes from the ambit of s.1(1) of that Act any act which would be an offence under the Army Act and the Scottish position under s.80(5) of the Criminal Justice (Scotland) Act is identical.

12. Under s.70 of the Army Act any person who is subject to military law and commits a civil offence, whether in the United Kingdom or elsewhere, is guilty of an offence under s.70. The meaning of "civil offence" is the same as that adopted in s.42 of the Naval Discipline Act 1957. The effect of s.70 is that any act or omission which, if committed in England would be punishable by law may become an offence punishable under the Army Act even though the offence was committed abroad. The term "civil offence" is defined in terms of the law of England and it is to be presumed that an offence under the law of Scotland or Northern Ireland which was not an offence under English law would avoid the application of s.70.

13. Apart from regular members of the Army, the 1955 Act applies to, inter alia, "every person not otherwise subject to military law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under the command of an officer holding a land forces commission or a commission in the Territorial Army" (s.205(i)(j)). In addition, the Act applies to any person employed by any part of the regular forces on active service (s.209(i)).

14. S.17 of the Royal Hong Kong Regiment Ordinance (Cap. 199) specifically provides that the Army Act shall apply in relation to the administration, discipline, trial and punishment of those on the permanent staff at all times and to the remaining officers and members of the Regiment when on active service.

15. Both the Naval Discipline Act and the Army Act apply to members of the regular forces even when off duty or on leave.

(c) THE AIR FORCE

16. The provisions of the United Kingdom Air Force Act 1955 apply "in relation to any territory under Her Majesty's protection, ... as it applies in relation to a colony" (section 215(1)) to officers and airmen of the Royal Airforce at all times and to those in the Royal Auxiliary Air Force when on duty (section 205). It applies also to every person not otherwise subject to air-force law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under the command of an officer holding an air force commission.

17. Where a colony raises an air force under its law, that law may make provisions relating to the members of that air force "so as to have effect as well when they are outside as when they are within the limits of the colony" (section 207). The 1955 Act also applies to civilians where they are employed in a part of the air force which is on active service (section 209).

18. As with the Naval Discipline Act and the Army Act, so with the Air Force Act which provides by section 66 that any person "who is guilty of disgraceful conduct of a cruel indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding 2 years". The limited decriminalisation of homosexuality introduced by the Sexual Offences Act 1967 does not affect the Air Force Act (section 1(5) of the Sexual Offences Act 1967).

19. Section 70(1) of the Air Force Act makes provision similar to that found in the Army Act and Naval Discipline Act and states that "any person subject to air force law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section". The term "civil offence" is defined "as any act or omission punishable by the law of England" (section 70(2)).

20. It might be argued that section 64 of the 1955 Act which creates the offence of "scandalous conduct" might cover homosexual conduct. The section applies only to officers and provides that any officer "who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall on conviction by court-martial be cashiered".

II. EXTRADITION

21. "Extradition is the formal surrender by one country to another ... of an individual accused or convicted of a serious criminal offence committed outside the territory of the extraditing country and within the jurisdiction of the requesting country which, being competent by its own law to try and punish him demands the fugitive's surrender" (Halsbury's Laws of England, 4th Edition, Volume 18, paragraph 201).

22. A distinction can be drawn between extradition and deportation (which is the process whereby the competent authorities require a person to leave and prohibit him from returning to a territory) or return of persons denied admission to a territory (which is the administrative act whereby such persons are returned to the territories whence they came). Extradition can also be distinguished from the exclusion of a person from a state under provisions such as the Prevention of Terrorism (Temporary Provisions) Act 1976 which enables the Secretary of State to exclude persons concerned in terrorism designed to influence public opinion or government policy with respect to affairs in Northern Ireland. Similarly, procedures exist whereby deserters or absentees from visiting forces may be returned to the custody of the relevant country's service authorities (Visiting Forces Act 1952 sections 1 and 13).

23. As far as extradition itself is concerned, the United Kingdom position may be divided into extraditions involving foreign states and those involving Commonwealth countries, United Kingdom dependencies and the Republic of Ireland. The former are governed by the Extradition Acts of 1870 and 1873 and the latter by the Fugitive Offenders Act 1967. While there may be procedural variations between the two classes of extradition, the basic requirements are similar - the offence for which the requesting country wishes to extradite the criminal from the United Kingdom must be one recognised by the law of the United Kingdom as a criminal offence. The United Kingdom will not allow extradition where the offence is political or it is likely that the offender will be tried for offences other than the one for which extradition is granted.

24. The Extradition (Hong Kong) Ordinance (Cap. 236) brings into force in Hong Kong the provisions of the U.K. Extradition Acts of 1870 and 1873 with certain minor amendments. Conversely, the Extradition Ordinance has been incorporated into the U.K. Extradition Acts by virtue of an Order in Council made under s.18 of the Extradition Act 1870 (Order in Council of March 20, 1877). Under s.2 of the Extradition Act 1870 when an Order in Council is made applying the Act to a foreign state the provisions of the Act extend to every British possession, unless the Order in Council specifically provides otherwise. Thus, any agreement reached by the United Kingdom with a foreign state regarding extradition will automatically affect Hong Kong unless the enabling Order in Council specifies otherwise.

25. The 1870 and 1873 Acts list in Schedules the extradition crimes for which extradition from the U.K. (and hence Hong Kong) will be granted. These include any indictable offence under the Offences Against the Person Act 1861 and the Sexual Offences Act 1956 or their successors. These are the Acts providing criminal sanction for homosexual conduct. The offence for which extradition is sought must be one of these offences and must not fall within certain exceptions given in s.3 of the 1870 Act.

26. The offence must be an indictable one. In that respect, reference must be made to the Criminal Law Act 1977. Section 64(1)(a) defines indictable offence as "an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way". Schedule 3 of the 1977 Act lists offences triable either way and includes s.13 of the Sexual Offences Act 1956 (indecent assault on a woman) and s.4(1) of the Sexual Offences Act 1967 (procuring others to commit homosexual acts).

27. Section 25 of the Magistrates' Courts Act 1952 provides that where an offence may incur imprisonment exceeding 3 months, the accused may elect to be tried by a jury. Taken in conjunction with section 64 of the Criminal Law Act 1977, this means that such offences may be termed indictable offences.

28. Accordingly, buggery (other than between consenting males in private) under s.12 of the Sexual Offences Act 1956 is an indictable offence by virtue of s.3(1) of the Sexual Offences Act 1967; indecent assault on a woman (s.14 of the 1956 Act) or a man (s.15 of the 1956 Act) are indictable (Second Schedule of the 1956 Act); assault with intent to commit buggery (s.16 of the 1956 Act) is indictable (Second Schedule of the 1956 Act); and living on the earnings of male prostitution (s.5 of the 1967 Act) is indictable (by that section).

29. The Extradition Acts of 1870 and 1873 govern extraditions involving foreign countries but where a designated Commonwealth country, another dependency, the United Kingdom or the Republic of Ireland is concerned the provisions of the Fugitive Offenders Act 1967 apply. This Act makes a distinction between extradition to designated Commonwealth countries and United Kingdom dependencies. In the case of the former, the requesting country must show that the offence is one which is listed in Schedule 1 of the 1967 Act. This restriction does not apply to United Kingdom dependencies, of which Hong Kong is one in terms of the

definition given in s.2(2) of the Act. A dependency need only show that the offence is one which is punishable before a superior court by 12 months' imprisonment or more. In the case of both Commonwealth countries and dependencies, the requesting territory must show that the offence constitutes an offence under United Kingdom law in corresponding circumstances.

30. Under the Offences Against the Person Ordinance (Cap. 212) buggery and bestiality (life imprisonment under s.49); attempts to commit or assaults with intent to commit buggery (10 years under s.50); and acts of gross indecency between males (2 years under s.51) all come within the definition of relevant offence under s.3(1)(b) of the Fugitive Offenders' Act 1967 which defines "relevant offence" as one punishable with 12 or more months' imprisonment on conviction by or before a superior court.

31. Under s.17 the provisions of the Fugitive Offenders Act may be extended to any colony and the Act has been so extended to Hong Kong (S.I. 1967/1911, 1968/1975, 1975/2163). The 1967 Act is therefore part of the local law of Hong Kong and its provisions apply.

32. S.3(4) states that : "references in this section to the law of any country (including the United Kingdom) include references to the law of any part of that country". Accordingly, it would seem that in the period between decriminalisation of certain aspects of homosexuality in England and Wales and the later similar decriminalisation in Scotland, persons committing homosexual offences not criminal in England but criminal in Scotland could have been extradited to Hong Kong from either jurisdiction.

33. As with proceedings under the Extradition Acts, the requesting country must satisfy the court at the committal proceedings that there is evidence to justify the trial of the fugitive offender if the offence had been committed within the court's jurisdiction or, where the person is alleged to be unlawfully at large after conviction of the offence, that he had been so convicted and appeared to be at large (s.7(5)).

34. The Hong Kong provisions relating to extradition are to be found primarily in the Chinese Extradition Ordinance (Cap. 235) and the Extradition (Hong Kong) Ordinance (Cap. 236). The former Ordinance is concerned only with the position of Chinese nationals. The definition of "Chinese authority" contained in s.2 (added in 1927) is "any person declared by the Governor to be or to represent the person or persons actually exercising authority in any province or other territory which, in the opinion of the Governor, forms or at any time has formed part of the Republic of China", a definition wide enough to cover both Macau and Taiwan. We understand that the Chinese Extradition Ordinance has never been used and that the People's Republic of China has made no similar provision.

35. The Chinese Extradition Ordinance lists in the First Schedule a number of extradition crimes. The list includes any indictable offence under the Offences Against the Person Ordinance (Cap. 212), which itself contains the provisions relating to homosexuality.

36. Where a requisition for the surrender of a fugitive criminal is made to the Governor by a Chinese authority, the Governor may require a magistrate to issue a warrant for the fugitive criminal's apprehension (s.6). When brought before the magistrate, matters proceed much as in the case of normal committal proceedings (s.9) and the magistrate must order the prisoner to be discharged if the evidence adduced would have been insufficient to justify the magistrate in committing the fugitive criminal for trial in the Supreme Court if the crime of which he is accused had been committed in Hong Kong (s.10).

37. If a prima facie case is made out before the magistrate the prisoner is committed to prison (s.10) but the Governor retains discretion as to whether or not to order his release to the requesting Chinese authority. The fugitive criminal shall not in any case be

released where the offence is political or unless an undertaking is given by the Chinese authority that the fugitive will not be detained or tried in China for any offence other than the one for which he is being extradited without first being returned (or having the opportunity of returning) to "Her Majesty's dominions" (s.4).

38. From the foregoing it may be seen that an order for extradition will not be made unless the offence of which the fugitive is said to be guilty by the requesting country is also an offence in the country requested. The provisions of s.3(4) in the Fugitive Offenders Act 1967 mean that until Northern Ireland amended its law to accord with that in the rest of the United Kingdom extradition for homosexual conduct lay between Hong Kong and the United Kingdom. This is no longer the case. Further, amendment by Hong Kong to remove any of the sexual offences under the Offences Against the Person Ordinance would automatically remove the possibility of extradition to any other country for those offences without the need for any further legislative action.

III. DIPLOMATIC IMMUNITY

39. The Diplomatic Privileges Act 1964 incorporated certain articles of the Vienna Convention on Diplomatic Relations into the law of the United Kingdom (s.2(1)). Chief among these are Article 22, which makes the premises of the mission inviolable; Article 30, which declares that a diplomatic agent shall not be liable to any form of arrest or detention; Article 30, which gives to the diplomatic agent's private residence the same inviolability as is enjoyed under Article 22 by the mission; Article 31, which states that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State; and Article 37 which extends the privileges and immunities of Articles 29 to 36 to the household of the diplomatic agent. Article 1 defines "diplomatic agent" as the head of a mission or a member of the diplomatic staff of the mission.

40. Section 6 of the International Organisations and Diplomatic Privileges Ordinance (Cap. 190) applies the law in England to Hong Kong by stating that "the law and custom relating to the immunities and privileges as to person, property or servants of sovereigns, diplomatic agents or the representatives of foreign powers for the time being in force in England shall, in so far as the same is applicable mutatis mutandis, have effect and be enforced in the Colony".

41. Cap. 190 empowers the Governor to grant privileges and immunities to international organisations and makes specific reference to the officers of the Commonwealth Secretariat and judges and suitors in the International Court of Justice. Section 7(3) makes it clear that the Commonwealth Secretariat may waive their privileges or immunities in respect of any person but there is not specific provision for this in the Ordinance in relation to other organisations. However, Article 32 in Schedule I of the Diplomatic Privileges Act 1964 enables immunity from jurisdiction to be waived in the case of diplomatic agents.

42. The effect of these provisions would seem to be that, unless diplomatic immunity were waived, acts contrary to the criminal law of Hong Kong would not be subject to prosecution if committed by a person enjoying immunity, or in the mission or residence of such a person.

IV. IMMIGRATION

43. The provisions of the Immigration Ordinance (Cap. 115) cover not only the rights of entry of individuals to Hong Kong but also powers of deportation.

44. Section 7 states that a person may not land in Hong Kong without the permission of an immigration officer unless he is one of a class of individuals under section 8 or a member of an aircraft crew (section 9(1)). Those permitted to land under section 8(1) are :-

- (a) Hong Kong belongers (British subjects born, naturalised or registered in Hong Kong under the British Nationality Act);
- (b) resident United Kingdom belongers (United Kingdom citizens who have been continuously resident in Hong Kong for 7 years); and
- (c) Chinese residents (immigrants wholly or partly of Chinese race who have been continuously resident in Hong Kong for 7 years).

45. These last 2 categories' rights of entry are subject to the proviso that if a deportation order is in force against such a person, rights of entry cease during the currency of the order (section 20(6)). Apart from the unrestricted right of entry enjoyed by the 3 categories above, servicemen may also land in Hong Kong without permission (section 10(1)). This right does not extend to servicemen locally engaged.

46. In all other cases, the immigration authorities may examine would-be entrants (section 4(1)) and refuse permission to land (section 11(1)) or impose "such ... conditions of stay as an immigration officer or immigration assistant thinks fit" (section 11(2)(b)). No further guidance is given as to what conditions may be appropriate or what facts may justify refusal to land. In the absence of such specification it is to be presumed that it would be within the powers of an immigration officer to refuse a convicted homosexual permission to land or to allow him to land but impose conditions. A convicted homosexual who was a member of one of the categories listed in section 8(1) would have an absolute right of entry, subject to section 20(6).

47. Section 18(1) empowers an immigration officer to remove from Hong Kong persons refused permission to land. A removal order may be made under section 19(1) by the Governor against a person if it appears to the Governor that that person is "an undesirable immigrant who has been ordinarily resident in Hong Kong for less than 3 years" but such an order shall not be made against a United Kingdom belonger "except after consideration by the Governor of the report of a Deportation Tribunal ... unless the Governor certifies that the departure of the immigrant from Hong Kong is necessary in the interest of the security of Hong Kong or for political reasons affecting the relations of Her Majesty's Government in the United Kingdom with another country" (section 19(3)). It is possible that a homosexual might be regarded as an undesirable immigrant under section 19(1) and that a Deportation Tribunal might uphold such a finding under sub-section (3).

48. Section 20(1) provides that a deportation order may be made against an immigrant (other than Chinese resident, a U.K. belonger or a resident U.K. belonger) where the immigrant has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than 2 years, or the Governor in Council "deems it to be conducive to the public good". The offences under sections 49, 50 and 51 of the Offences Against the Person Ordinance (Cap. 212) are therefore all crimes for which deportation could be ordered.

49. Deportation orders may even be made against Chinese residents or United Kingdom belongers where a court so recommends and a report by a Deportation Tribunal has been considered by the Governor in Council. A deportation order may also be made against Chinese residents or United Kingdom belongers where the Governor certifies "that the case concerns the security of Hong Kong or the relations of Her Majesty's Government in the United Kingdom with another country" (section 20(3)). Both these procedures for deportation only arise where the Chinese resident or Hong Kong belonger has been found guilty in Hong Kong

of an offence punishable with imprisonment for not less than 2 years or the Governor in Council "deems it to be conducive to the public good" (section 20(2)(b)).

50. Even resident United Kingdom belongers are not safe from deportation for under section 20(4) the Governor in Council may make a deportation order if it is deemed "to be conducive to the public good on the ground that the departure of such person from Hong Kong is necessary in the interest of the security of Hong Kong or for political reasons affecting the relations of Her Majesty's Government in the United Kingdom with another country". It is difficult to imagine circumstances in which the nature of a person's sexuality would fall within the ambit of this sub-section but it is possible to conceive of a court recommending deportation of a convicted homosexual Chinese resident or United Kingdom belonger under section 20(3).



ANNO VICESIMO NONO
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

Crimes (Sexual Offences) Act 1980

No. 9509

An Act to amend the Law relating to Sexual Offences, to amend the *Crimes Act 1958*, the *Evidence Act 1958*, the *Vagrancy Act 1966*, the *Summary Offences Act 1966*, the *Magistrates' Courts Act 1971* and the *Magistrates (Summary Proceedings) Act 1975*, and for other purposes.

[Assented to 23 December 1980]

WHEREAS it is desirable for the law to protect all persons from sexual assaults and other acts of sexual coercion: Preamble.

And whereas it is desirable for the law to protect persons from sexual exploitation, especially exploitation by persons in positions of care, supervision and authority:

And whereas it is undesirable for the laws relating to sexual behaviour to invade the privacy of the people of Victoria more than is necessary to afford them such protection:

And whereas it is desirable for the law to protect and otherwise treat men and women so far as possible in the same manner:

And whereas there are certain obsolete rules of law which it is desirable to abolish or modify:

And whereas the Parliament does not intend by this Act to condone immorality:

31081/80 - Price 85 cents

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Crimes (Sexual Offences) Act* 1980. Short title.
- (2) In this Act the *Crimes Act* 1958 is called the Principal Act. Principal Act
No. 6231. Reprinted
to Act No. 9073.
Subsequently
amended by
Nos. 9155,
9228, 9230,
9242, 9323,
9407 and 9427.
- (3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement
2. (1) The provisions of the Principal Act as in force immediately prior to the commencement of this Act apply to and with respect to offences against the Principal Act as so in force committed or alleged to have been committed before the commencement of this Act. Transitional
provisions.
- (2) The provisions of the Principal Act as amended by this Act apply to and with respect to offences against the Principal Act as so amended committed or alleged to have been committed on or after the commencement of this Act.
3. (1) In the Table in section 1 of the Principal Act, under Part I, Division 1, for the expression "(8) Rape and Similar Offences. Defilement of Women. Abduction ss. 44-62." there are substituted the following expressions: Amendment of
No. 6231, s. 1.
 - "(8) Sexual Assaults ss. 44-46.
 - (8A) Sexual Offences against Young Persons ss. 47-50.
 - (8B) Acts of Sexual Penetration with Intellectually Defective Persons s. 51.
 - (8C) Incest ss. 52-53.
 - (8D) Procurement, Abduction, & c. ss. 54-56.
 - (8E) Unnatural Offences s. 58.
 - (8F) Prostitution, &c. ss. 59-61.
 - (8G) Abrogation of Obsolete Rules of Law s. 62.
- (2) In the Table in section 1 of the Principal Act, under Part I, Division 1, the expressions "(13) Unnatural and Indecent Offences ss. 68 and 69." and "(14) Carnal Knowledge s. 70." are repealed.

4. In section 2A of the Principal Act—

(a) after the expression "2A." there is inserted the expression Interpretation.
"(1)";

(b) after the definition of "Aircraft" there are inserted the following definitions:

' "Brothel" means premises to which people of both sexes, "Brothel."
or of either sex, resort for the purpose of
prostitution.

"Drug of Addiction" means a drug mentioned in Schedule "Drug of addiction."
of 8 to the *Poisons Act* 1962, heroin within the
meaning of that Act or a specified drug within the
meaning of that Act.;

(c) after the definition of "Motor car" there are inserted the following definitions:

"Prostitute" means a male or female prostitute and "Prostitute",
"prostitution" means prostitution of a male or "prostitution."
female person.

"Rape" includes the introduction (to any extent) in "Rape"
circumstances where the introduction of the penis
of a person into a vagina of another person would be
rape, of—

(a) the penis of a person into the anus or mouth
of another person (whether male or
female); or

(b) an object (not being part of the body)
manipulated by a person (whether male or
female) into the vagina or anus of another
person (whether male or female)—

and in no case where rape is charged is it necessary
to prove the emission of semen.;

(d) at the end of the section there are inserted the following sub-sections:

"(2) For the purposes of this Act, an act of
sexual penetration is—

(a) the introduction (to any extent) of the penis
of a person into the vagina, anus or mouth
of another person of either sex, whether or
not there is emission of semen; or

(b) the introduction (to any extent) of an object (not being part of the body) manipulated by a person of either sex into the vagina or anus of another person of either sex, otherwise than as part of some generally accepted medical treatment.

(3) For the purposes of this Act, both—

(a) a person who introduces his penis or an object into the vagina, anus or mouth of another person; and

(b) the other person—

shall be deemed to take part in an act of sexual penetration."

5. For sub-division (8) of Division 1 of Part I. of the Principal Act there are substituted the following sub-divisions:

'(8) Sexual Assaults

44. (1) A person who indecently assaults another person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Indecent assault.

(2) A person who indecently assaults another person is, if there are aggravating circumstances, guilty of the indictable offence of indecent assault with aggravating circumstances and liable to imprisonment for a term of not more than ten years. Indecent assault with aggravating circumstances.

(3) Where a person is charged with an indecent assault, whether with or without aggravating circumstances, committed upon a person under the age of sixteen years, the consent of the person under sixteen is no defence to the charge unless, at the time the offence is alleged to have been committed— Consent where victim under sixteen.

(a) the accused was, or believed on reasonable grounds that he was, married to the person;

(b) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or

(c) the accused was not more than two years older than the person.

45. (1) A person who commits rape is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years. Rape.

(2) A person who attempts to commit rape, or assaults another person with intent to commit rape, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Attempt, &c.

(3) A person who commits rape is, if there are aggravating circumstances, guilty of the indictable offence of rape with aggravating circumstances and liable to imprisonment for not more than twenty years. Rape with aggravating circumstances.

(4) A person who attempts to commit rape, or assaults another person with intent to commit rape, is, if there are aggravating circumstances, guilty of an indictable offence and liable to imprisonment for a term of not more than ten years. Attempt, &c.

46. (1) Where a person rapes another, attempts to rape another, assaults another with intent to rape or indecently assaults another, there are aggravating circumstances if, but only if— Aggravating circumstances.

- (a) immediately before or during or immediately after the commission of the offence, and at or in the vicinity of the place where the offence was committed, the offender inflicts serious personal violence upon the victim or another person;
- (b) the offender has with him an offensive weapon;
- (c) immediately before or during or immediately after the commission of the offence the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
- (d) the offender is aided or abetted by another person who is present immediately before or during or immediately after the commission of the offence at or in the vicinity of the place where the offence is or was committed.

(2) In paragraph (b) of sub-section (1) "offensive weapon" means an offensive weapon, firearm, imitation firearm, explosive or imitation explosive within the meaning of section 77 (1).

(3) Where a person is found guilty of rape, an attempt to rape, assault with intent to commit rape or indecent assault, evidence may be given that the person has previously been convicted (under this Act, a previous enactment or at common law) of— Where offender previously convicted of certain offences.

- (a) rape (with or without aggravating circumstances);
- (b) rape with mitigating circumstances;
- (c) an attempt to rape (with or without aggravating circumstances);
- (d) assault with intent to rape (with or without aggravating circumstances); or
- (e) indecent assault (with or without aggravating circumstances).

(4) Where the trial judge is satisfied that a person who at the trial before him was found guilty of rape, an attempt to rape, assault with intent to

rape or indecent assault has previously been convicted of an offence mentioned in paragraph (a), (b), (c), (d) or (e) of sub-section (3), he may direct that the entry made upon the record in respect of the offence of which the person was found guilty at the trial before him shall show that, by virtue of this sub-section, the person is guilty of the offence with aggravating circumstances.

(5) A person in respect of whom an entry is made upon the record under sub-section (4) shall for all purposes be deemed to have been found guilty of—

- (a) rape with aggravating circumstances;
- (b) an attempt to commit rape with aggravating circumstances;
- (c) assault with intent to commit rape with aggravating circumstances; or
- (d) indecent assault with aggravating circumstances—

as the case may be.

(8A) *Sexual Offences against Young Persons*

47. (1) A person who takes part in an act of sexual penetration with a child under the age of ten years is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Act of sexual penetration with child under ten.

(2) A person who attempts to take part in an act of sexual penetration with a child under the age of ten years, or who assaults a child under the age of ten years with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Attempt, &c.

(3) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the child.

Consent no defence.

48. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years but under the age of sixteen years and to whom the first- mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than ten years.

Act of sexual penetration with person aged between ten and sixteen.

(2) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years but under the age of sixteen years and to whom the first-mentioned person is not married, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than five years.

Attempt, &c.

(3) Notwithstanding anything to the contrary in sub-section (1) or (2), where a person commits an offence against either of those sub-sections and the person with or upon whom it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment—

Sentence where victim under offender's care.

- (a) in the case of an offence against sub-section (1), for a term of not more than fifteen years; and
- (b) in the case of an offence against sub-section (2), for a term of not more than seven years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless at the time the offence is alleged to have been committed—

Effect of consent.

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section committed with or upon a person of or above the age of twelve years shall be commenced more than twelve months after its commission.

Time limit for certain prosecutions.

49. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of 16 years but under the age of 18 years and to whom the first-mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than two years.

Act of sexual penetration with person between 16 and 18.

(2) A person who attempts to take part in an act of sexual penetration with such a person, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than one year.

(3) Notwithstanding anything to the contrary in sub-section (1), where a person commits an offence against that sub-section and the person with or upon whom it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment for a term of not more than three years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless, at the time the offence is alleged to have been committed—

- (a) the accused believed on reasonable grounds that the person was of or above the age of 18 years;
- (b) the person had previously willingly taken part in an act of sexual penetration with a person other than the accused; or

- (c) the accused was not more than five years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section shall be commenced more than 12 months after the commission of the offence.

50. (1) A person who in public or in private—

Gross indecency
with person
under sixteen.

- (a) commits, or is in any way a party to the commission of, an act of gross indecency by, with or in the presence of a person under the age of sixteen years; or
- (b) procures, incites or attempts to procure the commission of an act of gross indecency by, with or in the presence of a person under the age of sixteen years—

is guilty of an indictable offence and, subject to sub-section (2), liable to imprisonment for a term of not more than two years.

(2) Notwithstanding anything to the contrary in sub-section (1), where a person is convicted of an offence against that sub-section and—

- (a) the person under the age of sixteen years was, either generally or at the time of the commission of the offence, under the care, supervision or authority of the offender; or
- (b) the offender has previously been convicted (under this section or under a corresponding previous enactment) of an offence of gross indecency with or in relation to a person under the age of sixteen years—

the offender is liable to imprisonment for a term of not more than three years.

(3) It is no defence to a charge under this section that the person under the age of sixteen years consented to the conduct alleged to constitute the offence unless at the time of the alleged conduct—

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(4) It is a defence to a charge under this section if, at the time of the conduct alleged to constitute the offence the accused was, or believed on reasonable grounds that he was, married to the person under the age of sixteen years.

(5) No prosecution for an offence against this section shall be commenced without the consent of the Attorney-General.

(8B) *Acts of Sexual Penetration with Intellectually Handicapped Persons*

51. (1) A person who is employed in any institution within the meaning of the *Mental Health Act 1959*, or in any benevolent asylum or charitable institution, who—

Act of sexual penetration with intellectually handicapped person.

- (a) takes part, or attempts to take part, in an act of sexual penetration with a person who is under care, treatment, supervision or control in any such institution or asylum as a person who is mentally ill or intellectually defective; or
- (b) assaults such a person with intent to take part in an act of sexual penetration—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person who has the care or charge of any person being a patient or mentally ill or intellectually defective and who—

- (a) takes part, or attempts to take part in an act of sexual penetration with the person of whom he has the care or charge; or
- (b) assaults the person of whom he has the care or charge with intent to take part in an act of sexual penetration—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(3) In sub-sections (1) and (2) the expressions "patient", "mentally ill" and "intellectually defective" have the same meanings as they have in the *Mental Health Act 1959*.

"Patient", "mentally ill", "intellectually defective."

(4) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the person with or upon whom the offence is alleged to have been committed unless, at the time of the conduct alleged to constitute the offence, the accused was, or believed on reasonable grounds that he was, married to the person.

Effect of consent.

(5) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.

(8c) *Incest*

52. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his child or other lineal descendant or his step-child is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Parent and child.

(2) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his child or other lineal descendant or his step-child, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Attempt, &c.

(3) A person of or above the age of eighteen years who permits a person whom he knows to be his father or mother or other lineal ancestor or his step-father or step-mother to take part in an act of sexual penetration with him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Child, &c. who consents.

(4) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his sister, half-sister, brother or half-brother is guilty of an indictable offence and liable to imprisonment for a term of not more than seven years.

Brother and sister, &c.

(5) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his sister, half-sister, brother or half-brother, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Attempt, &c.

(6) Consent is no defence to a charge under this section.

Consent no defence.

(7) No prosecution of a person under the age of sixteen years for an offence against sub-section (4) or (5) shall be commenced without the consent of the Attorney-General.

53. (1) Where a person is charged under section 52 it shall be a sufficient defence if he proves that he engaged in the conduct alleged to constitute the offence under the coercion of the person with or upon whom the offence is alleged to have been committed.

Coercion.

(2) In all proceedings under section 52, the person charged shall, unless he adduces evidence to the contrary, be presumed to know that he and the person with or upon whom the offence is alleged to have been committed are related in the manner charged.

Proof of knowledge of relationship.

(3) In all proceedings under section 52 it shall, unless the accused adduces evidence to the contrary, be presumed that persons who are reputed to be related to each other in a particular way are in fact related to each other in that way.

Proof of relationship.

(8D) *Procuration, Abduction, &c.*

54. (1) A person who—

Procuring persons by threats, or fraud.

(a) by threats or intimidation procures or attempts to procure any person to take part in an act of sexual penetration outside marriage; or

(b) by any false pretence, false representation or other fraudulent means procures or attempts to procure any

person to take part in an act of sexual penetration outside marriage—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

55. (1) A person who—

Administration of drugs, &c.

- (a) administers any drug, matter or thing to another person; or
- (b) causes any drug, matter or thing to be taken by another person—

with intent to render the person incapable of resistance and thereby enable himself or a third person to take part in an act of sexual penetration outside marriage with the other person is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

(2) A person shall not be convicted of an offence against this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

56. A person who takes away another person by force, or detains another person against his will— Abduction and detention.

- (a) with intent to marry the other person;
- (b) with intent to take part in an act of sexual penetration with the other person;
- (c) with intent that the other person should marry a third person; or
- (d) with intent that the other person should take part in an act of sexual penetration with a third person—

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

57. A person who, with intent that another person under the age of eighteen years should take part in an act of sexual penetration outside marriage with him or any third person or generally takes the other person, or causes the other person to be taken, out of the possession and against the will of his father, mother or other person having the lawful charge of him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Abduction from possession of parent, &c.

(8E) *Unnatural Offences.*

58. (1) A person who commits an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Bestiality.

(2) A person who attempts to commit an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than two years.

(3) An act of bestiality is any of the following:

- (a) Buggery committed by a man upon an animal of either sex;
- (b) Buggery committed by an animal upon a man or woman;
- (c) Penetration of the vagina of a female animal by the penis of a man; and
- (d) Penetration of the vagina of a woman by the penis of a male animal.

(4) The law relating to buggery is as prescribed by this Act and no prosecution shall be instituted for any offence of buggery unless it is for an offence against this Act.

(8F) *Prostitution, &c.*

59. (1) A person who procures or attempts to procure— Procuration.

- (a) a person under the age of eighteen years to take part in an act of sexual penetration outside marriage with a third person in any part of the world;
- (b) any other person to take part in an act of sexual penetration outside marriage with a person under the age of eighteen years;
- (c) a person to become a prostitute in any part of the world; or
- (d) a person who is not an inmate of a brothel to become an inmate of a brothel in any part of the world—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) No person shall be convicted of an offence under this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

60. A person who, being the owner or occupier of any premises or managing or acting or assisting in the management of any premises, induces or knowingly allows any unmarried person under the age of eighteen years to enter or remain upon the premises for the purposes of taking part in an act of sexual penetration is guilty of an indictable offence and— Householder permitting penetration of young persons.

- (a) if the other person is under the age of thirteen years, liable to imprisonment for a term of not more than ten years; or
- (b) if the other person is of or above the age of thirteen years but under the age of eighteen years, liable to imprisonment for a term of not more than five years.

61. (1) A person who detains any other person against his will—

Unlawful detention for purposes of sexual penetration.

- (a) in or upon any premises with intent that the other person may take part in an act of sexual penetration outside marriage with the first-mentioned person or any third person or generally; or
- (b) in any brothel—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if, with intent that the other person should remain in or upon those premises, the first-mentioned person—

Acts deemed to constitute detention.

- (a) withholds from the other person any of the other person's clothing or other property; or
- (b) having lent or otherwise supplied the other person with clothing, threatens the other person with legal proceedings if the other person takes away the clothing.

(3) Where a person has detained another person contrary to sub-section (1), no civil or criminal proceedings shall be taken against the other person for taking away or being found in possession of such clothing as was necessary to enable him to leave the premises in or upon which he was detained.

(4) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if—

- (a) knowing or believing that the other person is addicted to a drug of addiction; and
- (b) with intent to induce the other person to remain in or upon the premises—

he withholds or threatens to withhold from the other person supplies of a drug of addiction.

(8G) Abrogation of Obsolete Rules of Law

62. (1) The rule of law whereby a male person under the age law of fourteen years is conclusively presumed to be impotent is hereby abrogated.

Abrogation of obsolete rules law.

(2) Where a married person is living separately and apart from his spouse the existence of the marriage shall not constitute, or raise any

presumption of, consent by one to an act of sexual penetration with the other or to an indecent assault (with or without aggravating circumstances) by the other.

(3) Where a person is accused of a sexual offence, no rule of law or practice shall require the judge before whom the accused is tried to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the person with or upon whom the offence is alleged to have been committed, but nothing in this sub-section restricts the operation of any enactment requiring that the evidence of a witness be corroborated.!

Corroboration.

6. Sub-divisions (13) and (14) of Division 1 of Part I. of the Principal Act are repealed.

Repeal of No. 6321, ss. 68, 69 & 70.

7. (1) For section 359A of the Principal Act there is substituted the following section:

"359A. (1) Subject to this section, but notwithstanding anything else to the contrary in this or any other Act or any rule of law, where—

Time limit on certain prosecutions.

(a) a person is, after a preliminary examination before a magistrates' court, directed to be tried for an alleged offence against section 45; or

(b) a person is charged on indictment or presentment with an alleged offence against section 45 without a preliminary examination of him having previously been held before a magistrates' court in respect of the alleged offence—

the trial of the person for the alleged offence shall not be commenced more than three months after the person is directed to be tried or the charge is made (as the case may be).

(2) A Judge of the Supreme Court may if he thinks fit at any time and notwithstanding that the period fixed by sub-section (1) has expired grant an extension of the period, being an extension for a period not exceeding three months.

(3) More than one extension of time may be granted under sub-section (2) in relation to the commencement of the trial of an accused."

(2) An extension of time may be granted under section 359A (2) of the Principal Act as amended by this Act in respect of the commencement of the trial of a person who, immediately before the commencement of this Act, was, by virtue of section 359A of the Principal Act as then in force, unable to be tried for an offence of rape, attempted rape or assault with intent to rape.

Transitional provision.

8. For section 425 of the Principal Act there is substituted the following section:

"425. (1) Where on the trial of a person charged with rape the jury are not satisfied that he is guilty of rape or of an attempt to commit rape but are satisfied that he is guilty of—

Alternative verdicts for certain charges of sexual offences.

(a) assault with intent to commit rape;

- (b) indecent assault;
- (c) assault of a child under the age of ten years with intent to take part in an act of sexual penetration;
- (d) assault of a person who is of or above the age of ten years but under the age of sixteen years and to whom the accused is not married with intent to take part in an act of sexual penetration;
- (e) assault occasioning actual bodily harm; or
- (f) common assault–

the jury may acquit the accused of rape and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(2) Where on the trial of a person charged with rape with aggravating circumstances the jury are not satisfied that he is guilty of rape with aggravating circumstances or of an attempt to commit rape with aggravating circumstances but are satisfied that he is guilty of–

- (a) assault with intent to commit rape with aggravating circumstances;
- (b) indecent assault with aggravating circumstances; or
- (c) any offence of which he may be found guilty on a charge of rape–

the jury may acquit the accused of rape with aggravating circumstances and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(3) Where on the trial of a person charged with having taken part in an act of sexual penetration with a child under the age of ten years the jury are not satisfied that he is guilty thereof or of an attempt to take part in an act of sexual penetration with such a child but are satisfied that he is guilty of–

- (a) assault with intent to take part in an act of sexual penetration with such a child;
- (b) indecent assault;
- (c) assault occasioning actual bodily harm; or
- (d) common assault–

the jury may acquit the accused of the charge and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(4) Where on the trial of a person charged with having taken part in an act of sexual penetration with a person of or above the age of ten years and under the age of sixteen years and to whom the first-mentioned person is not married the jury are not satisfied that he is guilty thereof or of an attempt to take part in an act of sexual penetration with such a person but are satisfied that he is guilty of—

- (a) assault with intent to take part in an act of sexual penetration with such a person;
- (b) indecent assault;
- (c) assault occasioning actual bodily harm; or
- (d) common assault—

the jury may acquit the accused of the charge and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(5) Where on the trial of a person charged with an offence against section 52 the jury are not satisfied that he is guilty of the offence charged or of an attempt to commit the offence charged, but are satisfied that he is guilty of—

- (a) indecent assault;
- (b) assault with intent to commit the offence charged;
- (c) assault occasioning actual bodily harm; or
- (d) common assault—

the jury may acquit the accused of the offence charged and find him guilty of whichever of those other offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(6) Nothing in this section restricts the operation of sections 421 and 422."

9. Section 47A of the *Magistrates (Summary Proceedings) Act 1975* is amended as follows:

- (a) For the expression "47A. Notwithstanding" there is substituted the expression "47A. (1) Notwithstanding";
- (b) After the words "whether or not the examination relates to any other charge against the same or any other person" there are inserted the words "and whether or not it is alleged that there are aggravating circumstances"; and
- (c) At the end of the section there is inserted the following sub-section:

Amendment of
No. 8731,
s. 47A.
Preliminary
examination for
certain offences.

"(2) Where a stipendiary magistrate orders pursuant to Rule (10) that an accused shall not stand trial for an offence, the order shall have effect according to its tenor."

10. In section 37A (1) of the *Evidence Act* 1958, after the words "whether or not the examination or proceedings relates or relate to any other charges against the same or any other person" there are inserted the words "and whether or not it is alleged that there are aggravating circumstances".

Amendment of No. 6246, s. 37A. Special rules of evidence in certain cases. Amendment of No. 7405. Offensive behaviour.

11. (1) In section 17 (1) of the *Summary Offences Act* 1966, for the expression—

"Penalty: \$100 or imprisonment for two months."—
there is substituted the expression—

"Penalty: \$1000 or imprisonment for two months;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months."

(2) For sections 18 and 18A of the *Summary Offences Act* 1966 and the heading immediately preceding those sections there are substituted the following sections and heading:

"Soliciting in Public Places.

18. Any person who—

(a) for the purpose of prostitution solicits or accosts any person in a public place or loiters in a public place; or

Soliciting, loitering, &c. for prostitution

(b) in a public place solicits for immoral sexual purposes—

is guilty of an offence.

Penalty: \$500 or imprisonment for one month;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months.

18A. A person who—

(a) loiters in or frequents any public place for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself for pecuniary reward with the first-mentioned person or any third person;

(b) in any public place invites or solicits any person to prostitute himself for pecuniary reward with the first-mentioned person or any third person; or Inviting prostitution.

(c) loiters in or frequents any public place for the purpose of, or with the intention of, being accosted by or on behalf of a prostitute—

is guilty of an offence.

Penalty: \$500 or imprisonment for one month;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months.

18B. In sections 18, 18A and 20 (1) a reference to a prostitute and a reference to prostitution include respectively a reference to a male or female prostitute and a reference to the prostitution of a male or female person. “Prostitute.”

18C. (1) A person who solicits or otherwise actively encourages another person to take part in an act of sexual penetration or gross indecency with him or another person or generally is, if— Soliciting, &c., certain acts.

(a) the second-mentioned person is under the age of eighteen years; and

(b) the second-mentioned person is, either generally or at the time of the solicitation or encouragement, under the care, supervision or authority of the first-mentioned person—

guilty of an offence.

Penalty: \$5000 or imprisonment for one year.

(2) In sub-section (1), the words "take part in an act of sexual penetration" shall be interpreted in the same way as they would be interpreted if they appeared in the *Crimes Act 1958*."

12. The *Vagrancy Act 1966* is amended as follows:

Amendment of No. 7393, ss. 10, 12. Living on earnings of prostitution. Suppression of brothels.

(a) In section 10 (2) (b), for the words "her prostitution" there are substituted the words "the prostitute to prostitute himself";

(b) In section 12 (1) (a), for the word "woman" there is substituted the word "person"; and

(c) After section 12 there is inserted the following section:

"12A. (1) In sections 10, 11 and 12 a reference to a prostitute and a reference to prostitution include respectively a reference to a male or female prostitute and a reference to the prostitution of a male or female person. “Prostitute”, “Brothel”, &c.

(2) For the purposes of sections 11 and 12, premises shall be treated as a brothel, bawdy-house or disorderly house if resorted to by people of both sexes, or of either sex, for the purpose of engaging in prostitution."

13. In section 69 (1) (g) of the *Magistrates' Courts Act* 1971, for the expression "section 55" there is substituted the expression "section 44 (1)".

Amendment of
No. 8184,
s. 69(1).
Offences triable
summarily.

By Authority: F. D. ATKINSON, Government Printer, Melbourne



Sexual Offences Act 1967

1967 CHAPTER 60

An Act to amend the law of England and Wales relating to homosexual acts.
[27th July 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. -(1) Notwithstanding any statutory or common law provision, but subject to the provisions of the next following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.

Amendment of law relating to homosexual acts in private.

(2) An act which would otherwise be treated for the purposes of this Act as being done in private shall not be so treated if done—

- (a) when more than two persons take part or are present; or
- (b) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(3) A man who is suffering from severe subnormality within the meaning of the Mental Health Act 1959 cannot in law give any consent which, by virtue of subsection (1) of this section, would prevent a homosexual act from being an offence, but a person shall not be convicted, on account of the incapacity of such a man to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that man to be suffering from severe subnormality.

1959 c. 72.

(4) Section 128 of the Mental Health Act 1959 (prohibition on men on the staff of a hospital, or otherwise having responsibility for mental patients, having sexual intercourse with women patients) shall have effect as if any reference therein to having unlawful sexual intercourse with a woman included a reference to committing buggery or an act of gross indecency with another man.

(5) Subsection (1) of this section shall not prevent an act from being an offence (other than a civil offence) under any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

1955 c. 18.
1955 c. 19.
1957 c. 53.

(6) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of twenty-one years.

(7) For the purposes of this section a man shall be treated as doing a homosexual act if, and only if, he commits buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.

2. –(1) It shall continue to be–

Homosexual
acts on
merchant
ships.

- (a) an offence under section 12 of the Act of 1956 and at common law for a man to commit buggery with another man in circumstances in which by reason of the provisions of section 1 of this Act it would not be an offence (apart from this section); and
- (b) an offence under section 13 of that Act for a man to commit an act of gross indecency with another man, or to be party to the commission by a man of such an act, in such circumstances as aforesaid,

provided that the act charged is done on a United Kingdom merchant ship, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other United Kingdom merchant ship.

(2) Section 11 of the Criminal Justice Act 1925 (venue in indictable offences) shall apply to an act which is an offence by virtue of this section as if it were an offence when done on land.

(3) In this section–

"member of the crew" in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in that ship;

"United Kingdom merchant ship" means a ship registered in the United Kingdom habitually used or used at the time of the act charged for the purposes of carrying passengers or goods for reward.

3. –(1) The maximum punishment which may be imposed on conviction on indictment of a man for buggery with another man of or over the age of sixteen shall, instead of being imprisonment for life as prescribed by paragraph 3 of Schedule 2 to the Act of 1956, be–

Revised
punishments for
homosexual
acts.

- (a) imprisonment for a term of ten years except where the other man consented thereto; and

- (b) in the said excepted case, imprisonment for a term of five years if the accused is of or over the age of twenty-one and the other man is under that age, but otherwise two years;

and the maximum punishment prescribed by that paragraph for an attempt to commit buggery with another man (ten years) shall not apply where that other man is of or over the age of sixteen.

(2) The maximum punishment which may be imposed on conviction on indictment of a man of or over the age of twenty-one of committing an act of gross indecency with another man under that age or of being a party to or procuring or attempting to procure the commission by a man under that age of such an act with another man shall, instead of being imprisonment for a term of two years as prescribed by paragraph 16 of the said Schedule 2, be imprisonment for a term of five years.

(3) References in this section to a person's age, in relation to any offence, are references to his age at the time of the commission of the offence.

(4) Accordingly the said Schedule 2 shall be amended as follows: –

- (a) in paragraph 3(a) for the word "Life" there shall be substituted the words "If with a boy under the age of sixteen or with a woman or an animal, life; otherwise the relevant punishment prescribed by section 3 of the Sexual Offences Act 1967";
- (b) in paragraph 3(b) for the words "Ten years" there shall be substituted the words "If with a boy under the age of sixteen or with a woman or an animal, ten years";
- (c) in paragraph 16(a) for the words "Two years" there shall be substituted the words "If by a man of or over the age of twenty-one with a man under that age, five years; otherwise two years";
- (d) in paragraph 16(b) for the words "Two years" there shall be substituted the words "If the attempt is by a man of or over the age of twenty-one to procure a man under that age to commit an act of gross indecency with another man, five years; otherwise two years".

4. –(1) A man who procures another man to commit with a third man an act of buggery which by reason of section 1 of this Act is not an offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years. Procuring others to commit homosexual acts.

(2) The Act of 1952 shall have effect as if offences under the foregoing subsection were included among those specified in paragraphs 1 to 18 of Schedule 1 to that Act (indictable offences triable summarily with the consent of the accused).

(3) It shall not be an offence under section 13 of the Act of 1956 for a man to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of section 1 of this Act is not an offence under the said section 13.

5. –(1) A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be liable–

Living on earnings of male prostitution.

- (a) on summary conviction to imprisonment for a term not exceeding six months; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.

(2) A person accused of an offence under this section cannot claim to be tried on indictment under section 25 of the Act of 1952 (right of accused to trial by jury for summary offences punishable with more than three months imprisonment).

(3) Anyone may arrest without a warrant a person found committing an offence under this section.

6. Premises shall be treated for purposes of sections 33 to 35 of the Act of 1956 as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.

Premises resorted to for homosexual practices.

7. –(1) No proceedings for an offence to which this section applies shall be commenced after the expiration of twelve months from the date on which that offence was committed.

Time limit on prosecutions.

(2) This section applies to–

- (a) any offence under section 13 of the Act of 1956 (gross indecency between men);
- (b) any offence under section 32 of that Act (soliciting and importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act;
- (c) any offence of buggery by a man with another man not amounting to an assault on that other man and not being an offence by a man with a boy under the age of sixteen.

8. No proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions against any man for the offence of buggery with, or gross indecency with, another man, for attempting to commit either offence, or for aiding, abetting, counselling, procuring or commanding its commission where either of those men was at the time of its commission under the age of twenty-one:

Provided that this section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any such offence, or the remand in custody or on bail of a person charged with any such offence.

Restriction on prosecutions.

9. —(1) A man charged before a magistrates' court with an offence under section 32 of the Act of 1956 (soliciting and importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act shall be entitled to claim under section 25 of the Act of 1952 to be tried by a jury; and accordingly—

Choice of mode of trial for certain offences.

- (a) in the said section 25 (as amended by Schedule 3 to the Act of 1956) for the words "section 30, 31 or 32 of the Sexual Offences Act 1956" there shall be substituted the words "section 30 or 31 of the Sexual Offences Act 1956 or an offence under section 32 of that Act where the immoral purpose is other than the commission of a homosexual act";
- (b) in paragraph 32 of Schedule 2 to the Act of 1956 (offences under the said section 32), in column 4 before the words "The accused" there shall be inserted the words "Except as provided by section 9 of the Sexual Offences Act 1967".

1956 c. 69.

(2) The Act of 1952 shall have effect as if offences under section 13 of the Act of 1956 (gross indecency between men) were included among those specified in paragraphs 1 to 18 of Schedule 1 to the Act of 1952 (indictable offences triable summarily with the consent of the accused); and paragraph 16(a) and (b) of Schedule 2 to the Act of 1956 shall have effect subject to section 19 of the Act of 1952 (summary trial of indictable offences specified in the said Schedule 1).

10. —(1) Except as provided by the following provisions of this section, sections 1, 3, and 4 of this Act shall have effect in relation to acts done before the passing of this Act as they apply in relation to acts done after its passing.

Past offences.

(2) Except as provided by the next following subsection, this Act shall not have effect in relation to any act which is, or apart from this Act would be, an offence where the defendant to an indictment for that offence has been committed for trial before the passing of this Act or, as the case may be, a court-martial for the trial of that offence has been ordered or convened before the passing of this Act.

(3) The foregoing provisions of this section shall not operate to increase the punishment for any offence committed before the passing of this Act.

11. —(1) This Act may be cited as the Sexual Offences Act 1967 and the Act of 1956 and this Act may be cited as the Sexual Offences Acts 1956 and 1967.

Short title, citation, interpretation, saving and extent.

(2) In this Act "the Act of 1952" means the Magistrates' Courts Act 1952 and "the Act of 1956" means the Sexual Offences Act 1956.

1952 c. 55.
1956 c. 69.

(3) Section 46 of the Act of 1956 (interpretation of "man", "boy" and other expressions) shall apply for the purposes of the provisions of this Act as it applies for the purposes of the provisions of that Act.

(4) References in this Act to any enactment shall, except in so far as the context otherwise requires, be construed as references to that enactment as amended or applied by or under any subsequent enactment including this Act.

(5) This Act shall not extend to Scotland or Northern Ireland.