“SHOULD THE PARTIAL DEFENCE OF PROVOCATION TO MURDER BE REFORMED?
IF SO, WHY AND HOW? IF NOT, WHY NOT?”

INTRODUCTION

The partial defence of provocation has long been a source of heated debate and controversy, both on the doctrinal and practical levels. Concerns over the defence’s gendered operation have sparked initiatives for reform in several common law jurisdictions,¹ and even its abolition in others.² Yet, discussions on reforming the defence of provocation in Hong Kong (‘HK’) have been scarce. Drawing on criticisms of the defence from both the legal and academic spheres, this paper argues that the injustices perpetuated by the defence in HK call for its expeditious reform. With reference to efforts of reforming provocation in several common law jurisdictions, this paper further argues that the English experience offers valuable guidance on potential directions that the HK reforms may take. Building on these analyses, the discussion culminates in six recommendations for reforming HK’s provocation regime.

¹ See, for example, Helen Brown, ‘Provocation as a Defence to Murder: To Abolish or to Reform’ (1999) 12 Austl. Feminist L.J. 137.
² For example, England and Wales, Australia (Tasmania, Victoria and Western Australia), and New Zealand.
We begin by considering the law of provocation as it presently applies in HK.

THE LAW OF PROVOCATION IN HONG KONG

Provocation was introduced to provide a concession to human frailty,\(^3\) in the form of a partial (and special)\(^4\) defence to a murder charge. The effect of a successful plea of provocation is the reduction from what would otherwise be a murder conviction, for which a sentence of life imprisonment is statutorily fixed,\(^5\) to the less serious conviction of manslaughter, placing sentencing in the judge’s discretion. Originally a creature of common law,\(^6\) provocation is given a legislative footing in HK in section (‘s’) 4 of the Homicide Ordinance (‘HO’),\(^7\) which provides that

Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be

\(^4\) Provocation is only available where a defendant is charged with murder: R v. Cunningham [1959] 1 QB 288.
\(^5\) Homicide Ordinance (Cap. 339) (HK) s 2.
\(^6\) Provocation was defined in R v. Duffy [1949] 1 All ER 932 as ‘some act or series of acts done by the dead man to [the defendant] which would cause in any reasonable person, and actually causes in [the defendant], a sudden and temporary loss of self-control, rendering [the defendant] so subject to passion as to make him for the moment not master of his mind.’ (emphasis added).
\(^7\) Cap. 339.
left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

While s 4 HO recognizes the defence of provocation in HK, the ingredients of the defence remain governed by the common law. Authorities establish that the test of provocation is twofold. Firstly, it is a question of fact whether the defendant was provoked into losing his self-control and, secondly, it is a question for the jury to decide whether a reasonable man would have reacted to the provocation in the same way as the defendant did.\(^8\) The second question involves two elements: an assessment of the gravity of the provocation, and of whether a person with ordinary powers of self-control (of the same age and sex as the defendant) would or might have done what the defendant did.\(^9\) The defence succeeds only if the jury are sure that the defendant was provoked and that the reasonable man would have acted similarly as the defendant had.\(^10\)

**PROBLEMS WITH THE PARTIAL DEFENCE OF PROVOCATION**

Despite its long standing, provocation has been plagued with criticisms. It has been described as being ‘a confusing mixture of common law rules and

\(^9\) See a restatement of provocation principles in *Ho Hoi Shing v. HKSAR* [2008] 5 HKC 57 [31].
\(^10\) ibid; Reaffirmed in *HKSAR v. Liang Yaoqiang* [2017] 2 HKC 123 [8].
statute’\textsuperscript{11} and a ‘notoriously difficult aspect of criminal law’\textsuperscript{12}. In this section, we reveal the troubling injustices the defence generates by considering its criticisms as expounded by judges and academics. It is instructive to note that because HK’s provocation defence is largely governed by common law, the criticisms examined, although voiced from overseas jurisdictions, nonetheless assist greatly in highlighting the need of reforming HK’s provocation regime.

**The gendered operation of provocation**

The perceived gendered operation of provocation stands as one of its most hotly-debated aspects. The academic literature in this area is rich with vocal criticisms that the defence, being culturally associated with masculinity,\textsuperscript{13} perpetuates gender inequality. For example, it is often argued that provocation reflects only a male standpoint, with the paradigm case being of a man who suddenly loses self-control from anger and kills his provoker immediately after the provocation.\textsuperscript{14} Critics mainly focus on the use of the defence in two contrasting contexts: by men who kill a female intimate partner in response to

\textsuperscript{11} Law Commission, *Murder, Manslaughter and Infanticide* (Law Com No 304) para. 5.3.

\textsuperscript{12} *R v. Campbell* [1997] 1 NZLR 16, at 27.


\textsuperscript{14} See, for example, ibid 432.; The criminal law’s failure to take into account the social reality of women who kill has been the subject of much academic attention: See S.D. Rozelle, ‘Controlling Passion: Adultery and the Provocation Defence’ (2005) 37 Rutgers Law J. 197.
alleged infidelity or separation, and by female defendants who kill an abusive male partner.15

While men and women tend to respond differently when provoked, the defence of provocation, in requiring the defendant to show a ‘sudden’ loss of self-control,16 seems to only acknowledge the typical responses of men. Scholars remark that females do not necessarily react to provocative conduct in the same, spontaneously aggressive manner as men do, but may ‘wait’ lengthy periods, enduring abuse and violence, before they one day react. 17 Consequently, the operation of the defence produces a prejudicial effect against female defendants. As Yeo rightly explains:

The circumstances in which men kill when provoked tend to foster the immediate loss of self-control type of response. In contrast, the circumstances in which women kill when provoked are more likely to result in a slow burn reaction. Yet the law has traditionally only catered for cases involving immediate loss of self-control… For those defendants who have experienced a slow burn reaction, the time-lag between the last

16 A necessary element of provocation since Duffy (n 6).
17 Michael Jackson, Criminal Law in Hong Kong (Hong Kong University Press 2003) 505.
provocative event and the homicidal act runs counter to the legal requirement of suddenness.\textsuperscript{18}

Equally accurately, Bradfield remarks that the narratives often featured in provocation trials ‘recount the familiar story of jealousy, betrayal and infidelity – the story of the jealous husband… [but] does not enable the… retelling of another story… of fear, violence and oppression – the story of the battered wife’.\textsuperscript{19} The reality therefore sees that the bases for raising provocation are sex-segregated.\textsuperscript{20} Sheehy takes the point further by questioning whether psychologically damaged women who appear emotionally detached necessarily show a ‘lack of passion’ so as to disentitle them to the defence.\textsuperscript{21} It seems, then, that provocation not only appears to favor male defendants, but also begs the question of what a ‘crime of passion’ looks like for battered women.\textsuperscript{22} The gendered reality in HK is underscored by recent provocation cases from HK,\textsuperscript{23} all involving male defendants.

\textsuperscript{18} Yeo (n 13) 436.
\textsuperscript{21} Elizabeth Sheehy, Defending Battered Women on Trial: Lesson from the Transcripts (UBC Press 2014) 271.
\textsuperscript{22} ibid.
These observations together underline the manifestly gendered manner in which provocation operates. The oppressed female who kills her male partner out of a cumulative slow-burn reaction is significantly less likely to successfully raise the defence of provocation. This disadvantage against abused women highlights the degree to which the standard at the heart of the defence – a sudden loss of self-control – is profoundly rooted in experiences of male rage, and thus ill-suited to mitigate killings by abused women. Understandably, this has led even feminist scholars to argue for reform, to better accommodate experiences of battered women. As we shall see, the gender bias inherent in the defence has also been a major impetus for law reform in multiple jurisdictions.

**Whether provocation arguable for battered women remains uncertain**

Furthermore, despite developments allowing a defendant’s personal history to be considered in assessing the gravity of the provocation, it is still uncertain whether the defence may be successfully pleaded by battered women. In *R v. Ahluwalia*, a case involving a battered female defendant, the English Court of Appeal accepted in *obiter* that provocation should no longer require a sudden and temporary loss of self-control, but should recognize the defendant’s ‘slow burn’ reaction to a history of violence and abuse – a welcome change.

---

26 [1992] 4 All ER 889.
However, despite the Court ordering a retrial of her case, Ahluwalia’s plea of guilty to manslaughter at the retrial was accepted not on the basis of provocation, but diminished responsibility. The uncertainty over battered women’s prospects of successfully raising provocation was later confirmed in *Luc Thiet Thuan v. R*\(^{27}\) with the Privy Council’s observation that whether principles of ‘cumulative provocation’ may be applied to cases of battered women ‘must await a case in which the point arises for decision’. In *HKSAR v. Li Yinying*,\(^{28}\) a female defendant argued on appeal that the trial judge failed to adequately direct the jury on the issue of cumulative provocation. Unfortunately, however, her appeal was dismissed. Such a stagnant state of affairs, coupled with the gender inequality that provocation generates, strongly indicate that reform should be expeditiously pursued.

**Achieving formal but not substantive equality**

The fact that provocation remains largely a male defence means that this area of law is yet to achieve substantive equality.\(^{29}\) While as a matter of formality the defence is available to anyone charged with murder, the same cannot be said as a matter of substance. Substantive equality, as a legal concept, seeks to accommodate the varied needs and experiences of subordinated

\(27\) [1997] AC 131, at 681; See also *HKSAR v. Coady (No. 2)* [2000] 3 HKC 570, 586.

\(28\) [2009] HKCU 27.

\(29\) Grant and Parkes (n 24) 468.
groups.\textsuperscript{30} It requires that the law take into account and respond to the effects of a rule on both men and women, better assuring that justice for all is achieved.\textsuperscript{31} Provocation’s gendered operation clearly suggests that progress is yet to be made before the social realities of battered women killers are catered for. In a jurisdiction where equality before the law takes on such prime importance as to warrant constitutional enshrinement,\textsuperscript{32} it is curious why efforts to reform a law whose operation is inherently gendered have remained dilatory. In view of the injustices caused by the provocation defence and the primacy of achieving equality for all, the need for reforming HK’s law of provocation cannot be made clearer.

\textit{Uncertainties in applying the reasonable person test}

Quite apart from provocation’s gendered character, its objective limb, the reasonable person (‘RP’) test, is another of its oft-criticized aspects. Section 4 HO requires the jury to consider the effect that the provocation would have on a ‘reasonable man’. This is a very vague description, rendering it difficult for judges to portray the fictitious character of the ‘reasonable man’ to juries.\textsuperscript{33} It is also conceptually complex, demanding juries to make normative assessments as

\textsuperscript{30} Forell (n 20) 29.
\textsuperscript{32} Basic Law of the HKSAR, Article 25.
\textsuperscript{33} Amanda Clough, ‘Loss of Self-Control as a Defence: The Key to Replacing Provocation’ (2010) 74 JCL 118, 124.
to what ought to constitute legally permissible types of provocation,\textsuperscript{34} while proceeding on an ‘unwarranted assumption’\textsuperscript{35} that even reasonable men sometimes kill when provoked.

According to Lord Diplock, the RP is an ordinary person of either sex, not exceptionally excitable or pugnacious but possessed of such powers of self-control as everyone is entitled to expect that his fellow citizens will exercise.\textsuperscript{36} In \textit{DPP v. Camplin},\textsuperscript{37} the RP was creatively but unhelpfully referred to as being ‘like an elephant’ in that he/she is hard to describe but easy to recognize. To complicate matters, there exist judicial inconsistencies over which of the defendant’s characteristics may be attributed to the RP. While \textit{Camplin} only attributed the defendant’s age and sex, \textit{R v. Smith (Morgan)}\textsuperscript{38} allowed personal and mental characteristics to be considered in assessing both the gravity of the provocation and the defendant’s capacity for self-control. Later, in \textit{AG for Jersey v. Holley},\textsuperscript{39} personal characteristics were also attributed, but only for assessing the provocation’s gravity. Such nuances over the RP’s identity and character cause at least some confusion\textsuperscript{40} as to how the test ought to be applied definitively, a question which remains to be addressed in the HK reforms.

\textsuperscript{34} Grant and Parkes (n 24) 459.
\textsuperscript{36} \textit{DPP v. Camplin} [1978] AC 705, 717.
\textsuperscript{37} ibid.
\textsuperscript{38} [2000] 4 All ER 289.
\textsuperscript{39} [2005] 3 All ER 371.
\textsuperscript{40} See \textit{HKSAR v. Poon Man Sum} [2015] HKCU 948, where an erroneous direction as to the RP’s characteristics served as a successful ground of appeal against conviction.
DIRECTIONS FOR REFORM: LESSONS FROM OTHER JURISDICTIONS

In considering how HK’s provocation law ought to be reformed, it is helpful to refer to other common law jurisdictions in which the defence has undergone revisions. Doing so will provide an informed view of possible directions that the HK reforms may take.

England and Wales

Provocation was abolished in 2010 in England and Wales and replaced with the statutory defence of ‘loss of control’.41 The new defence resembles provocation, but was enacted to ‘better cater for the unique circumstances within which battered women kill, while also providing a provision that excludes defendants who kill an intimate partner in response to alleged sexual infidelity’.42 To raise the defence, a defendant must have lost self-control in response to a ‘qualifying trigger’, and must show that a person of the

41 Coroners and Justice Act 2009 (CJA 2009) (UK) ss 54-56.
42 Fitz-Gibbon (n 15) 280.
defendant’s age and sex, with a normal degree of tolerance and self-restraint in the defendant’s circumstances, might have reacted in the same or similar way.\(^{43}\)

The loss of self-control need not be sudden.\(^{44}\) Notably, a loss of self-control results from a ‘qualifying trigger’ where it is attributable to the defendant’s fear of serious violence from the victim,\(^{45}\) opening up the defence to battered women who kill their abusers. More generally, the defence applies where the loss of self-control was attributable to words or conduct (or both) of extremely grave character which caused the defendant to feel a justifiable sense of being seriously wronged.\(^{46}\) The new defence therefore retains loss of self-control as its hallmark feature, while restricting the circumstances in which it may be raised.

**Australia**

Every Australian state has implemented some level of reform to the law of provocation, be it through a restriction or abolitionist approach.\(^{47}\) This has resulted in enforcement of divergent statutory regimes throughout the territory, three of which are examined below.

---

\(^{43}\) CJA 2009, s 54(1).
\(^{44}\) ibid, s 54(2).
\(^{45}\) ibid, s 55(3).
\(^{46}\) ibid, s 55(4).
\(^{47}\) Kate Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence: A Comparative Perspective* (Palgrave 2014) 92.
New South Wales (‘NSW’)

Like England and Wales, NSW has abolished provocation following concerns over its male-centric operation, in addition to fears that the defence may be unjustly used in contexts of homosexual non-violent sexual advances. In 2014, NSW introduced a new partial defence of ‘extreme provocation’. The defence requires a defendant to lose self-control in response to the deceased’s conduct, which must constitute an indictable offence punishable by at least five years’ imprisonment, and must also have caused an ordinary person to lose self-control as the defendant did. Interestingly, the term ‘extreme’ is merely a descriptor of the defence, and does not import any specific test or requirement.

Queensland

Queensland has restricted the scope of the defence to exclude spousal homicides. Provocation cannot be raised (save in ‘exceptional’ circumstances) where the provocative act was based on anything done to end or change the relationship, or to indicate that the relationship should change. This limitation is partly due to the high number of intimate partner homicides per year in

---

49 Crimes Act 1990 (NSW) ss 23(2) and 4.
50 Fitz-Gibbon (n 48) 779.
51 Criminal Code 1899 (Queensland) s 304(3)(c).
Queensland. Also, it is expressly provided that words alone cannot constitute 
provocation, other than in ‘extreme’ cases. Battered women who kill are 
specifically catered for by the defence of ‘killing for preservation in an abusive 
domestic relationship’, which reduces to manslaughter killings where the 
deceased had a history of domestic violence against the defendant, who 
reasonably believed that the killing was necessary to protect herself. Curiously, however, neither defence makes reference to the orthodox RP test.

Victoria

The abolition of provocation in Victoria took place in 2005 in response, 
again, to criticisms of the gender bias inherent in the defence. It was also 
recognized that the defence promoted a culture of victim-blaming, and that the 
legal test was conceptually difficult to apply. For provoked killings, the Law 
Commission recommends that factors decreasing a person’s culpability for 
intentional killing should be taken into account at sentencing rather than form 
a separate partial defence to murder.

---

52 74 intimate partner homicides occurred in 2005-06 (on average more than one per week): Queensland Law Reform Commission, A review of the excuse of accident and the defence of provocation (Report No 64, 2008) para. 12.6.
53 (n 51) s 304(2).
54 ibid, s 304B.
56 ibid.
57 ibid, para. 2.32.
Canada

Canadian reforms of provocation resemble those in NSW, although the defence was revised rather than abolished. In Canada, defendants raising provocation must surmount the orthodox common law threshold. That is, killing ‘in the heat of passion caused by sudden provocation’. In addition, only conduct of the victim that would constitute an indictable offence and is of such nature as to deprive an ordinary person of self-control can amount to provocation. This is a much higher standard compared to the pre-reform defence, which only required a ‘wrongful act or insult’. By restricting the contexts in which provocation can be raised, it was intended that defendants in ‘honor killing’ and spousal killing cases will no longer be able to raise it. This change was brought about following several unmeritorious cases of provocation, and concerns over abuse of the defence by men who kill their female intimate partners.

DISCUSSION

This jurisdictional comparison shows not only that reform has been actively pursued in countries abroad. Perhaps worryingly for HK, it also reveals

58 Criminal Code (Canada) Article 232(1).
59 ibid. Article 232(2).
60 R v. Tran 2010 SCC 58; R v. Pappas 2013 SCC 56; R v. Cairney 2013 SCC 55.
61 Fitz-Gibbon (n 48) 787.
that injustices caused by the operation of provocation have been the subject of international concern. Although the reforms differ in their approaches, their underlying goal is consistent – to ensure that the defence is not abused by men who kill in unmeritorious circumstances, and to better cater for women who kill abusive partners in domestic contexts. Having regard to the problems of the provocation defence in HK, aligning the HK reforms with these twin goals will ensure that HK’s law of provocation is effectively and meaningfully reviewed.

Looking at the provocation regimes of England and Wales, Australia, and Canada as a whole, it is the view of this writer that the English experience offers the most value for HK’s reforms ahead. The Australian and Canadian reforms, while effective in reducing gender bias and abuse of the defence in unmeritorious cases, appear to be overly restrictive in limiting the definition of provocation to conduct amounting to a serious indictable offence and, in the case of Queensland, removing the RP test altogether.

On the other hand, England’s new partial statutory defence of ‘loss of control’ (‘the English defence’) seems to offer a viable solution addressing the gendered operation of provocation, the uncertainties of the objective test, and the provocation’s general inability to align with substantive equality. A closer look at the defence itself and relevant scholarly commentary will illustrate this point.
Firstly, the dispensation with the traditional ‘sudden’ requirement in losing self-control is a major step forward in minimizing the gender bias inherent in the defence’s current form in HK. Although s 4 HO does not codify the ‘sudden’ element, it has long been considered a necessary element of provocation following the seminal case of *R v. Duffy*.\(^{62}\) As reflected in the Specimen Directions in Jury Trials (‘specimen directions’),\(^{63}\) juries in HK are directed that provocation in the legal sense entails a sudden and temporary loss of self-control. As earlier discussed, this standard does little to cater for the social realities of battered women killers. The English defence, however, targets specifically this problem. Omitting the ‘sudden’ requirement, the new defence avoids the problems faced in previous cases where battered women were typically excluded while jealous men who killed a female partner were often able to successfully raise it.\(^{64}\) The change has been praised as a ‘welcome development’\(^{65}\) and an ‘improvement’\(^{66}\) on the previous law. In view of the decision in *Ahluwalia*\(^{67}\) recognizing the concept of ‘cumulative’ provocation, abolishing the orthodox ‘sudden’ requirement will be an equally welcome change for HK.

---

\(^{62}\) (n 6).

\(^{63}\) ‘Specimen Directions in Jury Trials’(Hong Kong Judicial Institute, 2013) para. 51.2.

\(^{64}\) Stanley Yeo, ‘English Reform of Provocation and Diminished Responsibility’ (2010) Sing. JLS 177.

\(^{65}\) Clough (n 33) 123.


\(^{67}\) (n 26).
Secondly, the English defence provides ‘a much more coherent explanation as to the reasonable person’. 68 This is achieved through express legislative wording that a person of the defendant’s ‘sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of [the defendant], might have reacted in the same or in a similar way’. 69 In contrast to s 4 HO referring only to the vague character of the ‘reasonable man’, the English defence, by providing a conceptually precise and linguistically clear description of the ‘reasonable person’, eliminates uncertainties over the identity of the character created by years of judicial interpretation. Instead of resorting to common law, judges in England now have a much easier task in portraying the RP to legally untrained jurors. Engraving the objective assessment of provoke into statute also reduces the chances of inconsistent interpretations of the RP test by lawyers and judges.

In addition, the English defence addresses confusions relating to the characteristics with which the reasonable person may be informed. It does this by expressly providing that the jury may consider all of the defendant’s circumstances other than those whose only relevance to the defendant’s conduct is that they bear on his/her general capacity for tolerance or self-restraint. 70

---

68 Clough (n 33) 124.
69 CJA 2009, s 54(1)(c). (emphasis added).
70 CJA 2009, s 54(3).
This codifies the position set out in *Holley*,71 which remains good law in HK. Importantly, the phrase ‘in the circumstances of [the defendant]’ found in the English defence resonates fittingly with the legal position recently laid down by the Court of Final Appeal in *HKSAR v. Liang Yaoqiang*.72 There, Fok PJ held that for the purposes of assessing the provocation’s gravity, one must take the reasonable man who was affected by that provocation to be ‘a person similarly placed to the defendant’,73 and a person ‘having the history, experiences, background, features, and attributes of the defendant relevant to the provocation’.74 His Lordship further held that the proper approach to reading the phrase ‘the gravity of the provocation’ was to treat those words *as if they were embodied in statute* and to construe them literally, assessing the gravity of the provocation by reference to the position in which the defendant found himself in.75 This is precisely what the English defence achieves by adopting the word ‘circumstances’76 rather than ‘characteristics’, the effect of which is to allow evidence of prior history to be considered. This enables the jury to holistically assess the provocation’s gravity, and whether the defendant’s conduct satisfies the statutory test of objectivity. It is in these ways that the English defence remedies the problematic state of provocation law at it today stands in HK.

---

71 (n 39).
72 [2017] 2 HKC 123.
73 ibid [46].
74 ibid [47].
75 ibid [53]. (emphasis added).
76 CJA 2009, s 54(1)(c).
RECOMMENDATIONS FOR THE WAY FORWARD

Building on the above discussion, this paper concludes with a non-exhaustive list of six suggestions as to how HK’s law of provocation ought to be reformed.

Firstly, it is recommended that a new ‘loss of control’ defence be legislated to replace provocation. Aligning HK’s defence with that of England’s gives HK the benefit of referring to English authorities on the same law. Retaining loss of control as the essential feature of the defence also prevents opening the floodgates to unmeritorious cases.

Secondly, it is recommended that HK adopt the English position and restrict the defence to cases of killings out of fear of serious violence, and/or circumstances of an extremely grave character causing the defendant to have a justifiable sense of being seriously wronged. Such wording would be wide enough to cover killings by battered women, and potentially instances of provocation that HK courts have seen.77

---

77 For example, *HKSAR v. Leung Yuk Ping* [2018] HKCU 2292 (Foul language directed against defendant); *HKSAR v. Wong Fung* [2017] HKCU 3052 (Taunts about defendant’s sexual incapacity); *HKSAR v. Yau Kit Keung* [2010] 6 HKC 473 (Threats made during heated exchange by defendant’s mistress that she, the mistress, would kill the defendant’s wife and sons).
Thirdly, it is recommended that the requirement for a ‘sudden’ loss of self-control be abolished, and that the new legislation expressly states so. To this extent, the specimen directions on provocation will also need to be amended.

Fourthly, it is recommended that, for the sole purposes of the new defence, the RP be made a character of legislation rather than common law. The precise legislative wording will be a matter of law drafting. Otherwise, the English RP, being one with a ‘normal degree of tolerance and self-restraint’ seems to be a suitable candidate.

Fifthly, it is recommended that there be a provision stating that all of the defendant’s circumstances may be considered by the jury in the objective assessment, save from those that impact his/her general capacity for self-restraint. This will effectively be a legislation of Fok PJ’s authoritative characterization of the RP as ‘a person similarly placed’ to the defendant. Again, linguistic technicalities will be a matter for drafting, but the English defence provides valuable guidance in terms of legislative wording.

---

78 (n 76).
79 Liang (n 72) [46].
80 (n 70).
Sixthly, it is recommended that gender-sensitive language be excluded from the new defence. At present, s 4 HO makes reference to the ‘reasonable man’ losing ‘his’ self-control. To minimize gender bias at the level of legislative wording, gender-neutral terms such as ‘reasonable person’ and ‘the defendant’ may be more suitable.

CONCLUSION

This paper has exposed a desperate need for reforming the partial defence of provocation in HK. As we have seen, the defence’s gendered operation, together with the uncertainties associated with its RP test, render it incapable of achieving substantive equality and operational clarity. In considering options for reform, the English experience offers a viable and authoritative model to which HK may refer. Although the road to successful law reform is often a long and arduous one (with HK’s being no exception), it is hoped that prompt action will be taken to reform the defence of provocation in HK. Doing so not only shows that HK is cognizant of updating an obsolete and controversial law, but more importantly, that it is committed to maintaining the best standards of equality in its rule of law.