

Thursday, May 5, 1994

Press Release

Law Reform Commission publishes report on
Incitement, Conspiracy and Attempt

The Law Reform Commission today (Thursday) published its final report on the preliminary offences of incitement, conspiracy and attempt.

The report is the result of the Commission's reference on codification of the criminal law. It concentrates on the three offences which are referred to by lawyers as "preliminary" in that they precede the commission of the completed offence.

The Secretary of the Commission, Mr Stuart Stoker, said that the Commission's recommendations were intended to bring Hong Kong's law up to date with developments in England and Wales which had been found to work well in practice.

The Commission's main recommendations include:

- * The defence of impossibility should be removed in relation to the offences of incitement, conspiracy and attempt. The Commission argue that persons inciting a crime, conspiring or attempting to commit a crime are still a danger to society, even though the factual context renders it impossible to complete the crime.
- * The common law rule that a person cannot conspire with his or her spouse should be preserved. The Commission consider this rule has the merit of maintaining the stability of marriage by avoiding interference with the confidential relationship of husband and wife.
- * For the offence of conspiracy, the common law exemptions where the other party is a person under the age of criminal responsibility or is the intended victim of a crime should be retained. Given that a conspiracy always involves at least two criminal parties, it does not seem logical that one party should be held criminally liable whereas the other party is not liable because of young age or because he is the intended victim.
- * The offence of corrupting public morals, whether it exists solely as a conspiracy or in respect of an individual acting alone, should be abolished. The Commission also recommend the abolition of the offence of outraging public decency. The Commission point out that these offences are "of extreme and uncertain width" and are too subjective.

Mr Stoker said the Commission recommended the adoption of provisions based on the English Criminal Law Act 1977, dealing with conspiracy; the Criminal Attempts Act 1981, dealing with attempts; and clause 47 of the draft criminal Code prepared by the English Law Commission, which deals with incitement.

In exploring models for reform, English sources were preferred because of the similarity between the common law of Hong Kong and that of England. Those consulted by the Commission on its draft proposals had expressed clear preference for using English models, Mr Stoker said.

The Commission published a draft report on the subject in November 1991 for public consultation.

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Note to editors: a copy of the Law Reform Commission's report on the preliminary offences of incitement, conspiracy and attempt, together with the report's executive summary, will be boxed in GIS later today (Thursday).