

**THE LAW REFORM COMMISSION  
OF HONG KONG**

**REPORT**

**LAWS GOVERNING HOMOSEXUAL CONDUCT  
(TOPIC 2)**

## **LAWS GOVERNING HOMOSEXUAL CONDUCT**

WHEREAS :

On 15 January 1980, His Excellency the Governor of Hong Kong Sir Murray MacLehose, GBE, KCMG, KCVO in Council directed the establishment of the Law Reform Commission of Hong Kong and appointed it to report upon such of the laws of Hong Kong as may be referred to it for consideration by the Attorney General and the Chief Justice;

On 14 June 1980, the Honourable the Attorney General and the Honourable the Chief Justice referred to this Commission for consideration a Topic in the following terms :

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

On 5 July 1980, the Commission appointed a Sub-committee to research, consider and then advise it upon aspects of the said matter;

On 28 June 1982, the Sub-committee reported to the Commission, and the Commission considered the topic at meetings between July 1982 and April, 1983.

We are agreed that the present laws governing homosexual conduct in Hong Kong should be changed, for reasons set out in our report;

We have made in this report recommendations about the way in which laws should be changed;

NOW THEREFORE DO WE THE UNDERSIGNED MEMBERS OF THE LAW REFORM COMMISSION OF HONG KONG PRESENT OUR REPORT ON LAWS GOVERNING HOMOSEXUAL CONDUCT IN HONG KONG :

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(Attorney General)  
( 祈理士 )

Hon Sir Denys Roberts, KBE  
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Hon Mr Justice Fuad  
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( 韋彼得 )

Dated this 15th day of April 1983.

**THE LAW REFORM COMMISSION  
OF HONG KONG**

**REPORT**

**LAWS GOVERNING HOMOSEXUAL CONDUCT**

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# Chapter I

## Introduction

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1.1 It has been our duty and task under the reference which is reproduced on page (iii) to consider whether or not it would be in the best interests of society as a whole in Hong Kong for any changes to be made in the laws governing homosexual conduct; and if so, what changes we recommend. That task has not been easy, for homosexuality in many societies, including our own, is for many people a taboo subject. Certainly, when it is discussed, views often are widely polarised.

1.2 Some people share the opinion that :

*" It is not the time for this culture or any other to adopt laws that help to disintegrate families. The God of heaven and earth who made man, made him male and female and said "for this cause a man should leave his father and his mother and cleave to his wife" (Mathew 19:4-9). And to prevent fornication he said : "Let each man have his own wife and let each woman have her own husband" (I Corinthians 7:2). The sexual nature of man was created by God himself. And the bed of marriage is right, honourable and godly (see Hebrews 13:4). It is not only for procreation (Genesis 1:26-28), but also for the enjoyment and happiness of a man and his own wife (see I Corinthians 7:4-5). Homosexuality does not lead to sex, but a perversion of sex - sodomy."*

(Extracts from a letter by a European to the Editor, South China Morning Post, 17th February 1982.)

1.3 Yet others have some sympathy with the feelings of those who consider themselves to be, unfairly, an oppressed minority :

*" No man can enjoy his life fully and with a high 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.*

*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 that 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 ...."*

(Extracts from a statement by a Chinese Homosexual, December 1981 see Annexure 16.)

1.4 Laws governing male homosexual conduct in Hong Kong are similar to those in force in England before the Sexual Offences Act 1967 : for example, it is an offence in Hong Kong, punishable by life imprisonment, for consenting adult males in private to commit buggery. Public discussion of homosexuality was virtually non-existent until the 1970's. Mr Henry Lethbridge, Reader in Sociology at the University of Hong Kong, published in 1976 the first and only local work on the subject.

1.5 The occasional press report of cases in the courts where an individual was charged with a homosexual offence attracted little attention or comment, until the arrest and conviction of a European in August 1978. He was an English solicitor who had practised law in Hong Kong for a number of years. He pleaded guilty to charges involving buggery and gross indecency with four Chinese boys aged 15. The Court of Appeal dismissed his appeal against a sentence of imprisonment for three years.

1.6 In the light of evidence discovered as a result of the arrest of this man, a section of the Criminal Investigation Department of the Royal Hong Kong Police Force was charged with investigating homosexual prostitution and the procurement and exploitation of youths. This became known as the Special Investigation Unit. Guidelines were laid down for the investigation of offences of a male homosexual nature. A number of arrests followed and some cases were brought to court.

1.7 At about the same time, in mid-1979, an informal gathering of individuals collected 424 signatures on a petition requesting that Hong Kong's law be brought into line with that in England and Wales, and this was sent to the Government.

1.8 One of those who was to have been arrested by the police and charged with acts of gross indecency with male prostitutes was a young Scottish Inspector with the Royal Hong Kong Police Force. His name was John MacLennan. The arrest did not take place, because when the police entered his flat early in January 1980 to do so, he was dead. Within days, a number of commentators began to speculate publicly about the cause and circumstances of his death.

1.9 An Inquest into the death conducted by a coroner and jury in a blaze of publicity returned an open verdict. One of the jury's

recommendations was that the law in Hong Kong should be "brought into line with that of England". Public discussion of the case, and of the issue of male homosexuality, intensified.

1.10 In early 1980 the Law Reform Commission of Hong Kong was formed. The initial topics chosen by the Attorney General and the Chief Justice for consideration were Commercial Arbitration, Laws governing Homosexual Conduct, and Evidence in Civil Proceedings. The first two were presented by way of background papers and Notices of Reference to the inaugural meeting of the Commission on 14 June 1980. Sub-committees to study both projects were appointed, a number of Commission members together with other persons serving upon them. Mr Justice Yang kindly agreed to chair that upon Homosexuality. Within days he received another appointment from a different quarter : he became the Commissioner of a Public Inquiry ordered by the Governor in Council to Report on the circumstances surrounding the death of Inspector MacLennan.

1.11 The Sub-committee had been given specific tasks by the Commission, predominantly of a fact-finding nature. The membership and terms of reference of the Sub-committee are set out in Appendix 1. Significant portions of the evidence placed before the Commission of Inquiry were relevant to the work of the Sub-committee which could not complete its task until the Commission had finished, in July 1981. In the event, the researches and work of the Sub-committee spanned two years. It met on sixteen occasions and tendered to us a most comprehensive report of nearly two hundred pages on 28 June 1982.

1.12 We have been greatly assisted by the thorough and conscientious efforts of our Sub-committee and its secretary; their work was carried out at times in difficult and sensitive circumstances, and in the glare of publicity not of their seeking. It is a tribute to their common-sense and tact that they have been able to compile a wide range of facts, figures and opinions from many different sources and sections in our community. With their help, for which we wish expressly to thank them, and the help of all those individuals who responded to them, we believe that a sound basis has been provided for a rational discussion of this Topic. We have ourselves considered the Topic in Commission meetings between July 1982 and April 1983. Mr Justice Yang, though having retired as a Commission member, kindly agreed to continue to help us, and attended most of our deliberations; we thank him for his continued interest in the Topic, and his assistnace.

## **Chapter II**

### **Our approach**

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#### **The role of this Commission**

2.1 We have been conscious that a clear conception of our role will be helpful to an understanding of our work on this project. By our constitution, we are required simply "to consider .... and to report". Our role is advisory only. No guidelines are laid down. Our ex-officio members apart, we all serve as volunteers in our personal capacities, by individual appointment from His Excellency the Governor.

2.2 Perhaps it may be useful if we declare what we are not. We are not a department of Government or a Government working party; nor are we policy makers for the Government, or legislators for Hong Kong. Although we seek to reflect the public interest, we are not somehow spokesmen for the people, still less for a section of them. We are not committed to change for its own sake. We do not represent any political, religious or other particular viewpoint.

2.3 We see our role as interested members of the community looking critically at an area of the law. How does it work in practice? Does it meet the needs of the community in Hong Kong? What proposals for change have there been? What are the merits and demerits of change? What is the price of change? What does the public interest seem to us on balance to require? These are some of the factors we take into account. Naturally we seek to inform ourselves of any widely held public, private or official views. However we are not in the business of conducting referenda or lobbying for proposals.

2.4 As we exchange views with each other and seek a consensus on conclusions, we speak for ourselves, for what we believe is right and sensible and practical : we seek the Hong Kong answer to the Hong Kong problem. Applying these thoughts to the matter before us we have not sought to intensify the debate. Instead we have concentrated on isolating areas of principle, on collecting as much factual material as we could. Our reports "bind" nobody except ourselves. It is for others to choose whether our recommendations should be followed : they have their role, we have ours.

#### **The role of the law**

2.5 The relationship between the law and individual morality has had a vexed history. We respect without reservation those who have urged upon us their own conviction that Hong Kong is a Confucian society, and that

the role of Government is therefore to set by law the moral tone for the community. The conception is not dissimilar in its effects from the Aquinian view of natural law. Both seek to achieve in society an admirable value-system.

2.6 One of the principal proponents of the thesis in English jurisprudence is Lord Devlin. He argues that as the law exists for the protection of society it must not only protect the individual from injury, corruption and exploitation but, he suggests, it :

*"must protect also the institutions and the community of ideas, political and moral, without which people cannot live together. Society cannot ignore the morality of the individual any more than it can his loyalty; it flourishes on both and without either it dies".*

He claims that the criminal law of England not only "has from the very first concerned itself with moral principles but continues to concern itself with moral principles". Among the offences to which he pointed as having been brought within the criminal law on the basis of moral principle, notwithstanding that it could be argued that they do not affect or endanger the public, were, suicide pacts, duelling, abortion and incest between close adult relatives. These are acts which can be performed in private and without offence to others, and which need not involve corruption or exploitation. Yet, as he pointed out, no one has gone so far as to suggest that they should all be left outside the criminal law and be regarded purely as matters of private morality : (P. Devlin : The Enforcement of Morals (1965) : OUP).

2.7 To test these views in a practical way we have asked ourselves whether the law, of itself, can curb animal desires, or whether it can deal only with the most obvious effects of the expression of those desires? Can the law make us think about freedom, or can it merely provide protection for the expression of freedom of thought? Can the law make mankind respect and care for each other, or can it regulate only the more callous manifestations of our disregard? Can the law require us to be humane, or can it simply punish acts of inhumanity?

2.8 These questions express the reservations we share with Professor Hart about the possibility of the perfect law, or of the perfect definition of law (H.A.L. Hart : Law and Morality : 1965). We prefer to adopt a more functional approach : What can law do for us? What should we therefore now ask the law to do for us?

2.9 Consistent with this approach we have observed that many people in Hong Kong regard the criminal law as a source of protection in a very practical sense : protection enabling us to go about our crowded city in safety and peace; protection for our young and the weak against exploitation or moral corruption; protection for our homes and the fruits of our hard work; protection against the insidious effects in society of bribery and financial corruption.

2.10 The role of the law and the rule of law are important matters, for though few would express much interest in the concepts, all of us in fact are affected by them in the minutiae of our daily lives. Hong Kong's social and working stability depends upon them. The concepts demand a degree of respect and obedience for the law, which in turn secures good public order. There have been abrupt reminders in past years, both here and abroad, of the dangers to society when this balance falls out of equilibrium. An important ingredient weighing in that balance is the maintenance of respect for the law.

2.11 It is also important, we believe, to recognise that all adults, save where there is mental incapacity, are responsible for their own actions, and must be held accountable in law for them. It seems to us that, if we wish to enjoy the benefits of living in a community, including the protection of its laws, then we cannot be selective about which laws should apply to us, or which laws we should obey.

2.12 We noticed, too, that the concept embodied in terms such as "laissez-faire" has two very real dimensions in Hong Kong. First, in so far as the administration has adopted a philosophical as opposed to a pragmatic approach to problems, this has been it : the provision of the framework within which society may grow and the individual pursue his fulfilment, rather than detailed control of how the individual achieves his goals, unless the protection of others demands it. Second, whatever the connotations of the term in Western political thought, it seems to have struck a responsive chord in the Hong Kong community.

2.13 In considering the proper purpose of the law we discussed the effects which law may bring about. Persecution is a word too often used, its meaning debased by spurious application. A sense of persecution is a different thing; it affects many who believe themselves to be an oppressed minority. We do not doubt that in Hong Kong, as elsewhere, many homosexual men feel no need for any particular protection. Equally, from some of the homosexual men who gave evidence to us, we gained a different impression. Some of them felt that sense of persecution, of being imprisoned by their propensities, by prejudice, by social stigma, by fears over employment; by fear of "The Law". Merely changing the law does not, of course, remove every ill. Of two things, however, are we convinced : in so far as the current state of any law contributes substantially to human misery, in so far as any law unnecessarily reinforces a sense of oppression, it would require considerable justification for us to advise its retention. The law should not wittingly become an instrument of ill-will.

2.14 We have felt it necessary to make these (possibly self-evident) observations because our perception of the role of the law is fundamental to our approach. Having considered these matters, in the particular circumstances of Hong Kong, we agree with the Wolfenden Committee that the proper function of the criminal law is :

*"to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official, or economic dependence",*

but not

*"to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes we have outlined".*

2.15           It follows that, in our view, a recommendation to retain or repeal a particular law does not entail a moral judgment on conduct within or without that law. We stress that to decriminalise conduct is not to legitimise it, still less to confer a moral blessing.

## **Chapter III**

### **Who is homosexual? A medical view**

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#### **Introduction**

3.1 Homosexual behaviour occurs in most, if not all, human societies, advanced as well as primitive, and is probably as old as humanity. Because it is a subject in which moral and religious issues and cultural value systems are deeply implicated, it is difficult to approach it with dispassionate scientific objectivity. Nevertheless, such objectivity is essential if the psychosocial problems involved in such behaviour are to be dealt with constructively.

#### **Definition**

3.2 Homosexuality can be defined in simple operational terms as any behaviour involving sexual relations with a member of the same sex.

3.3 Homosexual and heterosexual behaviours are not always discrete or clearly differentiated patterns. Rather, they are points on a continuum that ranges from exclusive heterosexuality to exclusive homosexuality, with various gradations of bisexual patterns in between. Kinsey and his associates (1948) have suggested a 7 - point scale for this continuum, based on both psychological reactions and overt experience : 0 on the scale denotes exclusively heterosexual; 1 predominantly heterosexual, only incidentally homosexual; 2 predominantly heterosexual, but more than incidentally homosexual; 3 equally heterosexual and homosexual; 4 predominantly homosexual, but more than incidentally heterosexual; 5 predominantly homosexual, only incidentally heterosexual; and 6 exclusively homosexual. (Kinsey, A.C., Pomeroy, W.B. and Martin, C.E.: Sexual Behaviour in Human Male; Philadelphia, W.B. Saunders, 1948).

3.4 Others have suggested the terms "facultative homosexual" for people who are 1 and 2 on the scale, "bisexual" for those who rate 3 and 4, and "obligatory homosexual" for those who rate 5 and 6.

#### **Epidemiology**

3.5 Homosexual activities of some kind probably occur in almost all societies, but the attitudes of different societies towards such practices vary widely. These variant societal attitudes towards homosexual behaviour make the scientific study of its prevalence extremely difficult.

3.6 The Kinsey study (1948), based on interviews with more than 5,000 white American men, concluded that 37% of the men have had at least some overt homosexual experience to the point of orgasm between adolescence and old age. A more relevant statistic is the finding that 10% of the men are more or less exclusively homosexual (i.e. on the Kinsey scale they rate 5 or 6 for at least three years between the ages of 16 and 55) and 4% of them are exclusively homosexual throughout their lives from adolescence onwards. Another meaningful finding was that about 13% of the sample revealed a potentiality for homosexual behaviour, in that they reacted erotically to other males, despite the fact that they had no overt homosexual contacts after the onset of adolescence.

3.7 The Kinsey study is the most thorough and extensive survey done to date. A number of European surveys have been made, most of which are in approximate agreement with the Kinsey findings.

3.8 Comparable studies of American women by the Kinsey group (1953) revealed a lower incidence of homosexuality among them, as compared with men, although the figures were substantially higher for unmarried women than for married ones. Between 2% and 6% of the unmarried women in the sample but less than 1% of the married ones had been more or less exclusively homosexual i.e. on the Kinsey scale they rated 5 or 6 in each of the years between 20 and 35. On the other hand about 28% of the women in the study reported some homosexual experiences or arousal in the course of their lives, 13% of them to the point of orgasm.

3.9 It is clear from the various surveys, despite their considerable limitations, that the propensity for homosexual reactivity is rather widespread, even in a society which strongly discourages it. The psychiatrically intriguing question is why so substantial a number of men and women become preferentially motivated towards such behaviour in spite of the powerful cultural taboos against it.

## **Causes**

3.10 As yet there is no universally agreed explanation of the occurrence of homosexuality.

3.11 Psychoanalytical explanations, which have been the most influential contemporary ones, have combined the concept of bisexuality (the conception of organic bisexuality based on the apparent hermaphroditic characteristics of the early human embryo) with a developmental theory based on psychosocial factors. The view is that there is a normal psychic bisexuality, based on a biological bisexual predisposition in all human beings, and that all persons go through a homoerotic phase in childhood in the regular course of development. According to this view, if homosexuality develops in later life, it is the result of an arrest of normal development or else of regression as a result of castration anxiety mobilised by pathogenic family relationships.

3.12 A more recent view argues that heterosexuality is the biological norm in all mammals, including humans, and that the development of homosexuality is always a pathological consequence of fears of heterosexual functioning that have been produced by unfavourable life experiences.

3.13 With the development of modern genetics and endocrinology, many efforts have been directed towards attempting to demonstrate either a genetic predisposition or a hormonal basis for homosexual behaviour. At this stage of knowledge, the possibility of a hidden genetic predisposition interacting with subsequent environmental experiences cannot be ruled out, in view of the generally higher incidence of homosexual concordance in monozygotic as compared with dizygotic twins.

3.14 Chromosomal studies have thus far been unable to differentiate homosexuals from heterosexuals. Some geneticists have suggested that the shift to the right in birth orders of homosexuals as compared with heterosexuals (that is, they are born later in the sibship) may be indicative of some as yet undemonstrable chromosomal abnormality. However, such a postulate may not be necessary. The shift to the right may simply indicate that later siblings are more apt to be exposed to the kind of intrafamilial experience that tends to increase the susceptibility to the development of homosexual patterns.

3.15 Recent hormonal studies have shown that both urinary and plasma testosterone levels in homosexuals are lower than in bisexuals and heterosexuals. In addition, a high proportion of the exclusive and near-exclusive homosexuals have markedly lower sperm counts and a higher frequency of malformed sperm than controls.

3.16 Another fact that lends some persuasiveness to the possibility that there may be an innate constitutional factor in at least some forms of homosexuality is the recent research in lower animals indicating that action of foetal-hormones on the brain centre, the hypothalamus, in the developing embryo may play an important role in subsequent adult sexual functioning. A failure of the foetal-hormones to function at the critical period may have important effects in these animals even though there may be no abnormalities in their external sexual anatomy. While one must be careful not to draw parallels from such lower animals to primates, nevertheless it raises the question of whether or not some homosexuals may be born with a "hidden predisposition perhaps lurking in the neurohumoral system of the brain that makes them more vulnerable to differentiate a psychosexual identity as a homosexual - not in any automatic or mechanistic sense, but only if the social environment happens to provide the right confluence of circumstances."

3.17 There is reason to believe that certain life experiences can also contribute to the development of homosexuality, e.g. homosexual behaviour occurs with increased frequency in situations of sexual segregation such as prisons, private boarding schools and ships. Most of the individuals concerned revert to heterosexual lives when the opposite sex becomes

available again, but there is also known to be a carry-over effect for some people; some individuals acquire a taste for homosexual behaviour and continue to engage in it. Other theorists have pointed to the probable effects of imitation learning when individuals of borderline predisposition are immersed in a "gay" subculture; it is also likely that "heterophobia" resulting from traumatic initial experiences with women is influential in some cases.

3.18 It is necessary to think in terms of several kinds of homosexuals, the various causal factors being weighted differently for each.

## **Psychopathology**

3.19 There is no reason to assume that there is a specific psychodynamic structure to homosexuality any more than there is to heterosexuality. There is no homosexual personality as such, and there is just as wide a range of variation among homosexual personalities as there is among heterosexuals. It may well be that there is a higher incidence of neurotic personality distortion among homosexuals than among heterosexuals, but this distortion is not necessarily attributable to the homosexuality itself. In a culture in which being homosexual is labelled as being "queer" and means being subjected to ridicule, humiliation, contempt and rejection, it would be remarkable indeed if most persons who found themselves growing up with such yearnings did not suffer from an impaired self-image, feelings of emotional insecurity, and various defensive personality consequences. On the other hand, many homosexuals, both male and female, function responsibly and honourably, often in positions of the highest trust, and live emotionally stable, mature, and well adjusted lives, psychodynamically indistinguishable from well adjusted heterosexuals, except for their alternative sexual preferences.

## **Viral hepatitis**

3.20 Viral hepatitis is a major public health problem. High rates of infection occur in homosexual men, drug addicts, prostitutes and other promiscuous persons. Hepatitis A and hepatitis B are hyperendemic in countries with hot climates, in the developing countries, including Hong Kong, and also in some regions in Europe. The importance of hepatitis B cannot be exaggerated. Apart from the acute illness, which varies in severity, the infection may persist, especially in children infected perinatally or early in life.

3.21 In Britain, the HBsAg (hepatitis B surface antigen) carrier rate is low (about 0.2%), but in large areas of Africa and Asia, it is over 10%, and the total number of HBsAg carriers in the world has been estimated at over 200 million. Currently in Hong Kong, 9.6% of the population are carriers of HBsAg, an indication of previous exposure. Those countries with a high HBsAg carrier rate have a high incidence of HBsAg-positive chronic liver disease and hepatocellular carcinoma. Almost certainly the hepatitis B virus is concerned in the aetiology of these tumours. Hepatocellular carcinoma is one of the

most common tumours in countries with a high HBsAg carrier rate, such as China, and is probably one of the most common tumours affecting mankind.

3.22 Groups at high risk of infection include patients requiring multiple transfusions, patients with natural or acquired immune deficiency and patients with malignant disease; patients and staff of haemodialysis, transplant and oncology units; and residents and staff of institutions for the mentally handicapped. Viral hepatitis is an occupational hazard among health care and laboratory personnel, especially surgeons and pathologists. Perinatal transmission of hepatitis B from carrier mothers to their infants occurs frequently in some regions.

3.23 The exact mechanism of transmission of hepatitis B virus between homosexual men is not known. Most probably hepatitis B virus in semen is inoculated into the partner through minor mucosal lesions - HBsAg is known to be present in semen at low concentration. When hepatitis B is spread by other mechanisms, however, the inoculum of virus may be larger.

3.24 Vaccines against hepatitis B virus have been developed. They would have the greatest potential benefit in those groups who by their occupation, behaviour, or medical treatment have a high risk of exposure. The need for active immunisation is, of course, dictated by epidemiological data. If homosexuals are not ostracised and driven underground, they may well accept immunisation more readily.

## **Psychological tests**

3.25 There are no psychological tests that pathognomonically differentiate homosexuals from heterosexuals in the absence of a clinical history. Homosexuality is not a single clinical entity and there is no correlation between a homosexual orientation and other aspects of a person's intrapsychic or interpersonal functioning.

## **Treatment**

3.26 At best, all therapeutic approaches are of limited value in relation to the problem of homosexuality in its broadest aspects. The large majority of homosexuals do not seek to change their sexual patterns. Legal sanctions against homosexual behaviour have not proved effective: homosexuality is no more common in France, Sweden and the Netherlands, where it is not a crime, than in the United States, where it is. Recognising this fact, England, in 1967, legalised homosexual behaviour between consenting adults in private. There is beginning a trend in this direction in the United States also. The American Psychiatric Association is officially on record as favouring such legislation and deploring "all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation, and licensing". Eight States - Colorado, Connecticut, Delaware, Hawaii, Illinois, North Dakota, Ohio and Oregon - have already

adopted such legislation, and the American Law Institute has gone on record as being in favour of it. Such laws do not condone the seduction of minors or violations of reasonable standards of public decency; such behaviour, whether homosexual or heterosexual, remains illegal.

## **Conclusion**

3.27 Homosexuality is an emotive issue. Doctors are not immune to prejudice and rightly hold personal opinions. However, they must be able to respond to the needs of the patient and should be free from personal bias when acting in a professional capacity. Homosexuality has now been taken off the official register of psychiatric illnesses in the United States. Gradually the general view in Britain has begun to endorse this decision. Homosexuality is slowly becoming recognised and accepted as part of human sexuality.

3.28 There are many misconceptions about homosexuals who exist in all walks of life; indeed everywhere. Specific sexual activity between man and man is variable. Preferences include oral and anal contact, or mutual masturbation, associated with a variable degree of talking, fondling, and affectionate behaviour, as with heterosexual relations. For some homosexuals, as for some heterosexuals, sexual activity is not all that important.

3.29 In so far as treatment of homosexuality is concerned, there is little evidence that it has anything but a temporary influence. Most problems homosexuals encounter result directly from society's misconceptions and consequent hostility concerning homosexuals.

## **Acknowledgement**

3.30 We are grateful to Dr. George Ou, a member of our sub-committee who prepared this section of our report having regard to the materials set out in Annexure 3. In addition we received comments about the general issue from a number of members of the medical profession (see Annexure 8), and we sought comparative experience by way of comments specifically about this paper from a number of other medical practitioners who are listed in Annexure 2. With respect, we accept and adopt Dr. Ou's opinions as our own.

## Chapter IV

### Homosexuality in traditional China

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#### Introduction

4.1 Homosexuality is one of the least researched, if not entirely neglected, topics. Data available on homosexual behaviour of the world's societies, past or present, are meagre. Nevertheless, the fact that homosexuality is a form of human sexual expression has been established by scholarly works beyond doubt. In a study of 76 societies, Ford and Beech found that in 64 per cent of them, homosexual activities were considered either normal or socially acceptable, at least for certain members of the community. Their study further noted that even among the 36 per cent of societies in which homosexual practices were either condemned or prohibited, there was evidence, at least in some, that such practices continued to take place secretly : (Ford, C.S., and Beech, F.A. :Patterns of Sexual Behaviour: N.Y. : Harper & Bros. 1951). Kinsey and his associates in their survey of more than 5,000 white American males in the U.S.A., found that 10 per cent were more or less exclusively homosexual for at least three years between the ages of 16 and 55, and 4 per cent were exclusively homosexual throughout their lives. Without question, the Kinsey Report is the most thorough and extensive survey done to-date.

#### Homosexuality throughout history

4.2 As to homosexuality in historical societies, sources are very scarce; it is extremely difficult to obtain comprehensive sociological analysis of the patterns and degree of prevalence of homosexual behaviour of different historical societies at different periods. But one thing is quite certain : homosexuality did exist in almost all major civilizations. And traditional China is no exception. Hereunder is a brief account of the phenomena of homosexuality of traditional China which existed independently from other historical societies.

4.3 The earliest incidents concerning homosexuality in China are difficult to verify. However, a body of ancient Chinese literature, such as the Book of Shang ( 商書 ) and the Book of Chou ( 周書 ), have led some scholars to believe that homosexuality existed as early as in Shang (1122 B.C.) and Chou (1122 - 500 B.C.). [Pan Kwong-tan ( 潘光旦 ), "Cases of Homosexuality in the Chinese Documents and Literatures" in Psychology of Sex by Pan Kwong-tan : Shanghai : The Commercial Press 1947, pp. 380 - 408].

4.4 During the Spring and Autumn period (722 - 481 B.C.), incidents of homosexuality were also reported in Han Fei Tzu (韓非子) and other sources. Han Fei Tzu carries a story that a male favourite of King Wei took one bite of a peach, and finding it sweet, gave the remainder to the King. "Peach remainder," yu tao (餘桃), like another famous term, "cut sleeve," became a euphemism for homosexuality in Chinese literature. Again, in the Warring State period (401 - 221 B.C.), it was not uncommon for some rulers to have favourites (pi: 嬖) both male and female, and some powerful ministers kept young boys as catamites (變童: luen-tung). Some pi obviously served homosexual purposes, and one of them, Lung-yang Chun (龍陽君) made his name synonymous with catamite. Probably the most authentic records about homosexuality can be found in the two most celebrated official history books, namely Records of the Historian (史記) by Ssu-ma Chien (司馬遷) and History of the Former Han Dynasty (前漢書) by Pan Ku (班固). From these two great history books, we tend to be convinced that during the Former Han Dynasty (202 B.C. - 9 A.D.), homosexuality was a fairly common phenomenon, at least in the imperial court. Emperors such as Kao-tsu (高祖 206 - 195 B.C.) Hui-ti (惠帝 194 - 188 B.C.), Wen-ti (文帝 179 - 157 B.C.) and Wu-ti (武帝 140 - 87 B.C.) all had their male favourites. The most notorious of them was Wen-ti, whose intimate companions included Teng Tung (鄧通) and the eunuchs Chao Tan (趙談) and Pei-Kung Po-Tzu (北宮伯子). The last emperor of the Former Han Dynasty, Ai-ti (哀帝 6 B.C. - 2 A.D.) had a number of boy lovers, the best known of whom was Tung Hsien (董賢), who figures in the widely cited "cut sleeves" incident. According to this story, the Emperor was sharing a bed with Tung who fell asleep lying across the Emperor's sleeve. When the Emperor was forced to arise to attend to his imperial duties, he took his sword and cut off his sleeve rather than disturb the sleep of his favourite. Subsequently, "cut sleeve", as mentioned above, became a euphemism for homosexuality in Chinese literature. Homosexuality did not cease to exist with the break-up of the Former Han Dynasty. However, in the History of the Latter Han Dynasty (後漢書), no explicit incidents of homosexuality were recorded. Only until the latter part of Chin (晉) Dynasty and the Six Dynasties (or the Liu Ch'ao) period did stories of homosexuality re-appear in the formal official history books. Known figures, such as Yü Hsin (庾信) and Han Chih K'o (韓子高) were recorded beyond doubt as homosexuals.

4.5 During the Sung Dynasty (960 - 1279 A.D.), a number of men made a living in big cities, such as Kaifeng, Hangchow, as male prostitutes. Although male prostitution was punishable by the law, it was still quite prevalent, particularly after the court had moved to the south. They often walked the streets, dressed and made up like women. This period was probably the high point of overt homosexuality, after which it became much more discreet.

4.6 At this juncture, one point is worth mentioning. After the Six Dynasties (or the Liu Ch'ao period) no homosexual stories were reported in the formal history books. However, materials on homosexuality were

commonly found in less creditable works, such as personal memoirs or semi-official history books. This was especially true during the Ming (1368 - 1644) and Ching (1644 - 1912) Dynasties. In the works of famous scholars or literary figures, such as Yuan Mei (袁枚) and Chi Yun (紀昀), stories of homosexuality were conspicuously found.

4.7 Homosexuality could also be found in novels of the Ching Dynasty. Novels, though not necessarily factual, might reflect some realities of social life. The Dreams of the Red Chamber (紅樓夢), the most famous Chinese novel, does include incidents of male homosexuality, although their presentations were more or less casual and did not form the main part of the story. In the Prayer Cushion of the Flesh (or Jou-pu-tuan 肉蒲團) by Li Yu (李漁), the hero, Wei Yang-sheng (未映生) had a homosexual relationship with his younger servant. True, Wei Yang-sheng should better be described a bisexual, instead of a homosexual. The most famous male homosexual novel is probably the Pin Hua Pao Chien ("Precious Mirror for Gazing at Flowers" 品花寶鑑) by Chen Shen (陳森). All the characters in the novel were men, most of them actors, and their relationships reflected the life of actors and their friends at that time. This novel seems to confirm the widely-held view that acting and male homosexuality had a long association in China. It was believed that homosexuality was more or less a norm among actors.

4.8 In the seventeenth century, an anonymous author wrote a treatise entitled Tuan Hsiu Pien (Records of the Cut-Sleeve 斷袖篇). This treatise records fifty notorious cases of homosexual incidents from Chinese history. According to R.H. Van Gulik, it is the only one of its kind. [R.H. Van Gulik : Sexual Life in Ancient China (Leiden : E.J. Brill 1961, p. 48)].

4.9 Throughout Chinese history, homosexuality seems to have existed openly as a social phenomenon. Indeed, there is no way to tell how prevalent homosexuality was in different dynasties. It certainly varied from one dynasty to another. Van Gulik, an authority on Chinese sexual life, notes that homosexuality "flourished especially in the early part of the Liu Ch'ao period, and again during the Northern Sung Dynasty (960 - 1127 A.D.). From then onward till the end of the Ming Dynasty (1644 A.D.), male homosexuality was of no more frequent occurrence than in most other normal western civilizations."

4.10 Homosexuality not only was unevenly prevalent in different periods of Chinese history, it also has a differential rate of spacial distribution. Certain areas in China seemed to be associated with homosexuality more than others, perhaps because of poverty or other social factors. One area that acquired a reputation for homosexuality was Fukien. This has been explained as resulting from the shipping industry there and the superstition among the residents and the sailors that if women were taken aboard any ship, the ship would be cursed and over-turned. In this area, old homosexuals were called Chi Hsung (契兄) and the younger Chi Ti (契

弟) . In Fukien, Chi was a special word used when a Chi Ti had illicit relations with another man.

## **Conclusion**

4.11 As mentioned at the outset, homosexuality is one of the least-researched topics. It is not easy to derive conclusions from this subject matter. However, extensive literary evidence unmistakably shows that in traditional China, like other great civilizations, homosexuality was a centuries-old social phenomenon. Homosexuality was certainly not idealized in any dynasty of China, as it was in Greece of the Golden Age, though there were indications that it had been somewhat romanticized by literary figures in certain Chinese periods. Scholars of comparative cultures and societies felt that the Chinese had a fairly open attitude toward sexual practices; sex was not something to be feared, nor was it regarded as sinful. Homosexual act, though generally regarded as repugnant, was tolerated. In the Chinese social setting, people tended to treat it as a private matter. Therefore, a high degree of tolerance toward homosexuality existed, at least in certain periods of Chinese history.

## **Social sanctions**

4.12 Comparatively and historically, homosexuality in traditional China had not been so heavily stigmatized as it was in the west before modern times. The social sanction a homosexual in traditional China would have received was probably nothing more than public ridicule. Indeed, homosexuality was not regarded as any more socially undesirable than "serious" gambling or consorting with prostitutes. It was no accident that homosexuality was not the subject of concern of the law of pre-modern China (as it is not for the law of present-day China).

## **Acknowledgement**

4.13 We are indebted to one member of our Commission for this contribution to our work. Dr. Ambrose King wrote this chapter with reference to the materials set out in Annexure 3. As Head of New Asia College and Chairman of the Department of Sociology at the Chinese University of Hong Kong, we are pleased to accept his research and opinions and adopt them as our own, there having been no factual material to the contrary presented to us.

## Chapter V

### Homosexuality in modern Hong Kong

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#### Homosexual behaviour

5.1 The literary and historical references in our previous Chapter demonstrate, we venture to think beyond doubt, that in traditional China, as in all the other great civilisations, homosexuality undeniably existed and was practised. Indeed the medical and sociological research, referred to in Chapter III, alone would have made any other conclusion extremely unlikely.

5.2 We felt it right, in view of the often-repeated statement that homosexuality in Hong Kong is a habit only of Westerners and is foreign to Chinese, to look beneath the surface of modern Hong Kong and to assess so far as one is able what is the true position in our multiracial community.

5.3 A good starting point we found to be the evidence publicly given to the MacLennan Commission :

<u>Question</u>	<u>Answer</u>
"Q : "Peter", are you a homosexual?	A : Yes.
Q : When did you first discover it?	A : I was taught about it by a friend.
Q : How old were you then?	A : Over 13.
Q : What did he teach you?	A : We slept in the same dormitory after work.
Q : And?	A : He embraced me. At the time I didn't know what it was all about. He masturbated me.
Q : What was the age of this friend of yours?	A : He was 15 or 16.
Q : Did you find that you liked it or that you did not?	A : I found it was quite fun. I began to like it.
Q : Whilst you were working at the restaurant this happened. And did this happen often while you were working there?	A : I also played with the cooks in the kitchen.

- Q : How old were they? A : 17 or 18.
- Q : Where there other people outside the restaurant who had homosexual relations with you? A : Yes.
- Q : What kinds of people? A : Friends outside, and we came to know each other by chance meeting.
- Q : Where? A : In public lavatories.
- Q : How did you come to know them? A : Some would sometimes smile at you and someone would sometimes wink at you. I also went to an amusement park, like Kai Tak Amusement Park. I went to theatres and I met people standing at the back of the theatre.
- Q : How old were you then? A : I was then over 14, going on 15.
- Q : Had you indulged up to that time in any other kind of homosexual activity? A : Sometimes oral sex was performed, sometimes I buggered people, sometimes I was buggered.
- Q : Do you mean you were going out to look for homosexual friends actively? A : I mean to say I went out to look for partners."

(Edited extracts from the translated evidence of a Chinese male prostitute called "Peter" at the MacLennan Commission of Inquiry, 29 October 1980, Transcript pages 152-157).

5.4 We have chosen to quote this evidence not to be offensive or to highlight the seamy side of life, but rather to show a specific example of how a young, ill-educated Chinese boy discovered his propensity among his peers. We have set out in Annexure 27 a short summary of the backgrounds and homosexual careers of "Peter" and of a number of other male prostitutes who gave evidence to the Inquiry. They described with considerable particularity how male prostitutes sold each other's bodies both to friends and to tourists. Procurers ran "stables" of boys in bathhouses. Pimps sold information and friends to authorities. Lovers informed upon each other. Drugs were sometimes an element in seduction. One man caned boys for excitement at \$20 per stroke. Boys extracted presents and money from their patrons.

5.5 Taken together, the evidence at the Inquiry substantiated the following assessment of the situation in Hong Kong which was kindly provided to us by the Royal Hong Kong Police Force late in 1981 : -

*" During the past three years the Special Investigation Unit has been involved exclusively in the investigation of homosexual activities in Hong Kong. In the course of their enquiries they have interviewed a wide cross section of the homosexual community. Their investigations indicate clearly that homosexuality is wide-spread in Hong Kong and involves personalities of many different nationalities from every strata of our society. Information gathered from interviews suggests that no less than 1,000 male prostitutes are operating full or part time, serving both resident and transient homosexuals.*

*The homosexual resident or visitor to Hong Kong has little problem in making contact with fellow homosexuals. International publications have listed establishments and known geographical areas where homosexuals congregate. Public and hotel toilets are frequented by the more frustrated homosexual who is unable to suppress or control his homosexual needs. Frequently homosexual acts take place in the precincts of public toilets. Male prostitutes are known to congregate in the vicinity of toilets and perform acts of gross indecency (at a price) with the willing client. A number of other places including beaches feature as pick-up or meeting places for the homosexually inclined.*

*Persons involved in procurement as a full time occupation are few in number, but it is often difficult to differentiate between them and the amateur pimp. To explain, it has been established that many active homosexuals, both prostitutes and amateurs, engage in the introduction of their homosexual associates, sometimes without payment or reward but frequently for a fee. Professional procurers offer boys of a wide age-range and cater for clients who are usually introduced by friends. Some are known to advertise in newspapers using thinly disguised terminology. The services they provide cover all aspects of sexual depravity. Frequently boys are lured, unsuspectingly, into homosexuality by promises of training in massage or employment as photographic models.*

*In Hong Kong the intellectual or socially well positioned homosexual is often forced by his homosexual urges to seek a companion/prostitute well below his social standing. Many male prostitutes have strong triad connections. Needless to say the triads are completely ruthless personalities whose main goal is money. Many have been found to be heterosexuals who indulge in homosexual acts exclusively for financial gain. The*

*extent of blackmail is difficult to assess. The victims are, for obvious reasons, reluctant to report to the Police. ... many of Hong Kong's homosexuals are socially prominent and occupy posts of a sensitive nature and they may be considered prime targets for blackmailers."*

As a footnote, we observe that if it is correct to suggest that there may be 1,000 male prostitutes, then if each is involved in no more than 5 consensual homosexual incidents each week, there would be over 250,000 such unlawful incidents taking place each year, almost all unreported and undetected.

5.6 We have been assisted in our search for the true picture by field-work conducted by Mr. George Chang in preparation for a documentary television programme he presented late in 1981. We set out an extract from the Minutes of a meeting (Annexure 15) at which he described what he found :

*" 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."*

5.7 A further insight was given to us by four Chinese homosexual men who were interviewed by the members of our sub-committee (Annexure 17). They were asked to comment upon a number of matters, including the often repeated suggestion 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 'Hong's'.*  
(ie. major business houses)

Their response to the claim that homosexuals are promiscuous 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 homosexual community in Hong Kong."*

5.8 It is instructive to compare all these observations with quotations from Mr. Lethbridge's article published in 1976 in the Hong Kong Law Journal :

*" There is another secret society in Hong Kong which is, perhaps, less well known than the Triads or Freemasons. This is the "Homintern" (a neologism invented apparently by the poet W.H. Auden). The word denotes the confraternity of homosexuals, at present a subterranean and inconspicuous minority within Hong Kong .... Of necessity the Hong Kong homosexual is discreet; he does not flaunt his difference. He is not likely to sport a Gay Liberation badge or to be caught ogling young men in Queen's Road."*

*" ... The typical Hong Kong homosexual of European ancestry is more likely to be found playing bridge with male friends than participating in any homosexual liberation movement. The homosexual minority is, on the whole, respectable, conformist in most things, and strongly pro-Establishment. Given the state of the law in the Colony, this is perfectly understandable."*

*" It is not easy to present a clear-cut taxonomy but three types of homosexual may be distinguished in Hong Kong. First, there are those who seek impersonal sex in public places; some are married and do not differ markedly from the run-of-the-mill heterosexual. Then there are those who live with another man; in the case of a European the latter is likely to be a younger Chinese. We may call this "domestic" homosexuality for it simulates, in some respects, the pattern of heterosexual marriage; as in any marriage, either one of the parties may at times indulge in sex with another person. Some of these relationships last a long time, but most are short-term; when the affair collapses the European is usually compelled to grant his erstwhile lover "severance pay", which may run to several thousand Hong Kong dollars. Thirdly, there is the male prostitute. It is not certain whether the latter is a true homosexual; yet the ease with which the male prostitute is able*

*to enter into homoerotic acts with other males would suggest he could not be atavistically heterosexual."*

(The Quare Fellow : Homosexuality and the Law in Hong Kong; 6 H.K.L.J. pages 292, 321-2).

## **The incidence of homosexual offences**

5.9 We have no doubt from all that we have learned that the practise of active homosexuality is comparatively widespread in Hong Kong, and that it occurs in all social classes and amongst members of all the races in Hong Kong.

5.10 It is our belief that the available statistics considerably understate the number of offences committed. The bare statistics reproduced in Annexures 23 and 24 show, for example, that 1352 offences against public morality were reported in 1981, of which only 63 were of a homosexual nature; similarly 692 persons were prosecuted for the former class of offence, but only 54 cases were for homosexual offences.

5.11 As a general comment there are two distinct factors which distort statistics recording the incidence of all sexual offences. The first is that there is no "victim" in those many sexual cases where both parties have consented to the illegal conduct and are satisfied with its outcome, so that neither will have any reason to report the matter or invoke the law. Second, even in those cases where there is a "victim", only too often they feel too embarrassed, disgusted or frightened to report to parents, friends or the police, or they fear the effects of the attendant publicity. For instance, the recent Crime Victimization Survey conducted in Hong Kong showed that only 41% of crimes of violence (which included sexual assaults upon women) were reported to the police; this low reportage is believed to occur for reasons such as those described above.

5.12 It seems reasonable to suppose that the same distorting factors are as likely to occur in homosexual as in heterosexual incidents. We must therefore turn elsewhere than to published statistics to gain an impression of the true incidence of the commission of homosexual offences.

5.13 We have referred in the footnote to paragraph 5.5 to the speculation that perhaps a quarter of a million homosexual incidents with male prostitutes may occur annually. Let us now make another hypothetical calculation related however not to prostitution but to the incidence in society generally of such conduct.

5.14 If Kinsey's work on sexual behaviour and his calculation that 10% of any given male population is almost exclusively homosexual are applicable to Hong Kong, then in 1981 there were in our population some 180,000 male homosexuals aged between 15 and 59. If the same calculation is restricted to unmarried males between the ages of 15 and 35, then the

number of homosexuals in that group would be about 70,000. If we assume that only one quarter of these groups are practising homosexuals, and that each indulges in homosexual acts contrary to our criminal law once a fortnight with another consenting male member of the sample group, then we would find that between 585,000 and 227,500 criminal homosexual incidents take place each year in Hong Kong within these two groups respectively. All these calculations are of course hypothetical, though some may consider that, if anything, they underplay the extent of practised homosexuality in our community.

5.15            Whatever the true statistics may be, we are convinced by our researches that there are in Hong Kong each year a very substantial number of persons who deliberately decide to break these criminal laws, and who are unlikely in present circumstances to be detected and prosecuted. We consider later the undesirable effects of such a widespread disregard for the law.

## **Official reactions to homosexuality**

5.16            We gave a brief outline in Chapter I of the sequence of events which took place in Hong Kong from 1978 onwards. We have relied upon the history set out in the Report of the MacLennan Commission for the more detailed exposition which follows. It seems to us that two elements were involved : policies for detection and investigation by the police, and policies for the employment of civil servants. It was when these two elements interacted that difficulties arose.

5.17            As to detection and investigation, it was widely believed that, as the police acted usually only upon complaint, little effort was made before 1978 to investigate the activities of male adult homosexuals. This was subsequently called by such names as "the blind-eye policy". It was also widely rumoured that some highly placed members of the Hong Kong community, including judges, businessmen, lawyers (in both private and government practice), police officers and civil servants were practising homosexuals. A specific example of these beliefs may be found in the evidence of "Peter" during the MacLennan Commission : he claimed that one of the reasons he eventually informed upon some of his European civil servant clients was provided by the Chinese police inspector who interrogated him. "Peter" claimed that the Inspector said words to this effect :

*"You (Chinese male prostitutes) are the victims. You are Chinese. Nothing will happen to them (the Clients). They are Europeans. They won't even be prosecuted. They'll simply be sent back to England."*

(Edited translation of the evidence of "Peter" 31 October 1980, Transcript page 261.)

5.18 The situation changed in 1978. First there was the arrest of the European solicitor for abuse of young boys, followed by disclosures about the possible extent of procurement and abuse of youth. Action was taken to follow-up these allegations. At about the same time, a Chinese youth formally complained that a Police Officer had tried to assault him indecently. The officer was Inspector John MacLennan. The youth returned to his studies in Scotland and no prosecution could be instituted without his evidence. However MacLennan's contract of employment was terminated. He protested his innocence and appealed successfully. He was reinstated. Three years later the Commission of Inquiry found that the Chinese youth was telling the truth.

5.19 Meanwhile, in mid 1979, the European solicitor who was serving his sentence of 3 years' imprisonment drafted a petition for clemency which alleged discrimination, and claimed that he was in a position to name many "highly placed" homosexual men. In the light of these and other matters the Commissioner of Police sought from the Governor directions under Section 4 of the Police Force Ordinance (Cap. 232) as to the deployment of resources to investigate homosexual offences. Meetings were held between the Governor, Attorney General, Chief Secretary and senior Police Officers. A policy was formulated and agreed. It was contained in a letter sent by the Attorney General to the Commissioner of Police, which we set out in full in Annexure 28. The letter stated that the prime targets should be procurers, followed by those who abused youth or persons under mental disability. After listing other areas for investigation, it suggested that leads (as opposed to direct evidence of offences) pointing to consenting adult homosexuals should not usually require investigation, but that leads should be followed up when they pointed to people in certain categories, the last being those engaged in the administration of justice and senior members in the Government service.

5.20 The unit in the Police Force which had been engaged since August 1978 in the follow-up investigations into procurement of youth for homosexual abuse was strengthened. It reported directly to a Deputy Commissioner of Police, who in turn advised the Attorney General and the Governor of the progress of investigations. The special investigation unit had become The Special Investigation Unit (or SIU). When a member of it asked the Director of Public Prosecutions "if this investigation would be brought to a grinding halt if indeed it did reveal names of prominent people", the reply was : "that was not the case at all, the investigation was to be pressed on with and it did not matter whose name emerged." (MacLennan Commission of Inquiry, Transcript pages 11005 - 11009). The police officer's reaction was that this might well "open a Pandora's box". In the view of a number of homosexuals and commentators it did just that: their criticism has since been directed towards any person who has been concerned with applying these policies.

5.21 This introduces the next element in the equation : discretion and selectivity. In so far as the Special Investigation Unit is concerned, we can do no better than refer to the findings of the Commission of Inquiry :

" As always, targetting was and is a matter for the Police; the Legal Department is to give legal advice. Whatever the basic and general policy position might be, the consequence of that meeting was that there would be some kind of liaison for discussion between the Police and the Legal Department but there was no question of any official surrendering of police authority at all. As a matter of practice there would be consultation in relation to the area of targetting because of the sensitive nature of the investigations. There was no suggestion that the Legal Department sought to take over the Police or the Police sought to surrender their "classic rights", but merely that as a matter of practice there would be consultation on the matter of targetting in relation to individual cases. Though this was a departure from normal practice, it was a practical solution....."

" In theory, the Police had no discretion to be selective in their work. Section 10(b) of the Police Force Ordinance stipulates that the duties of the Police Force shall be to take lawful measures for preventing and detecting crimes and offences. It is therefore part of the obligations and duties of a Police Officer to detect crime and bring an offender to justice (Archbold on Criminal Practice, Evidence and Pleading, 40th ed. para. 2718 page 1311).

In practice, since it is impossible to investigate or detect every crime and bring every culprit to justice, selectivity in Police work is inevitable as a matter of reality. In this context, selectivity is well described by Mr Clancy, Director of Criminal Investigation, as a "device to ensure that Police resources and manpower are not dissipated across a very wide front with less efficiency and less effectiveness." Put more plainly, selectivity is a conscious decision on the part of the Police Force, in the face of strongly competing calls on their resources, to choose targets for active consideration from among a pool of "suspects" who are so classified because certain information or intelligence against them has been gathered. The degree of selectivity obviously depends on the number of targets chosen for investigation in relation to size of the pool of suspects. If all suspects were actively investigated, then the question of selectivity would not arise. However, bearing in mind that only limited resources can be allocated to one particular type of crime, the number of targets that can be actively investigated at any one time would be dictated by the manpower resources allocated, the severity of the offences concerned and the reliability of the information at hand. In the field of homosexual offences, Mr Clancy, in his evidence, stated that "given the extent of the field and the fact that the Unit (SIU) had been in existence for a relatively short period, I think one of the parameters certainly would be recent activity."

*In a situation where only a small number of targets have been pursued, such as in the investigation of homosexual offences, very often cries of "victimization" or "persecution" would be made by the persons under investigation. These complaints often relate not so much to their innocence but rather to the reasons (if any) for their selection while many others who are, in their view, more "deserving" cases, are unmolested. More often than not, allegations would be made against the law enforcement agents that they are operating on a highly discriminatory policy of selectivity in favour of the privileged or influential groups within the community."*

*" From the ordinary citizen's point of view, he might feel very concerned over the selectivity of SIU investigations if many other persons whom he knows, believes or suspects to be homosexuals are not investigated. It is understandable that he would feel concerned, but nevertheless he may not realize that what he knows is not known to the police, or vice versa. What is obvious to a person who is familiar with the homosexual scene may not be obvious to the SIU officers unless it is reported to them or detected by their intelligence network. Conversely, the Police may be in possession of information not available to the ordinary citizen.*

*As far as the gathering of intelligence is concerned, having examined all the SIU records, I find that there is nothing to support the suggestion that the SIU investigations were confined to only junior and/or middle ranking civil servants or any group in particular. In fact, the intelligence records include a fairly large number of personalities occupying different positions in a wide range of occupations." ....*

*(Paragraphs 48, 52 to 54, 57 to 58, Report of Commission of Inquiry into Inspector MacLennan's Case 1981, pages 64 and 65.)*

*" It was not until July 1979 that the SIU activities were "rekindled" but additional staff (up to the original strength, plus one Chief Inspector) was not made available to the Unit until August/September 1979 after the Government House meeting of the 28 August 1979. It is clear from the evidence that since July 1979 the Unit was very busy in re-interviewing all the witnesses involved in the five cases. It was during the course of interviewing one of these witnesses known as "Mars" that the SIU obtained direct evidence implicating a Government lawyer. The Unit followed up this lead and he was subsequently prosecuted. Similarly, "Colin" and MacLennan were not "chosen" from a pool of suspects but their names were given to Constable Liu Man in the course of intelligence gathering. Once (such) credible leads emerged, the SIU was duty bound to follow*

*them up, and they did so. There is no evidence to suggest that MacLennan was singled out or that his targetting was prompted by any improper motive ....*

*From the analysis above, it can be seen that from the inception until the targetting of MacLennan, the SIU at no state had the opportunity to exercise any discretion to "select" targets from its pool of suspects. The Unit all along had been acting on the five files which related to active procurers and credible leads which emerged from time to time. As far as the follow-up of credible leads was concerned, priorities were given to recent homosexual activities only."*

(Paragraphs 42 and 43 of Report of Commission of Inquiry into Inspector MacLennan's Case, 1981, pages 190 and 191).

5.22 Allegations were also made, both during and after the Commission of Inquiry, that the Government's policy counselled favour for high-ranking Government officers. (Henry Lethbridge; Pandora's Box : The Inspector MacLennan Enigma (1982) 12 H.K.L.J. page 4 at page 23). That the reverse was the intention appears from the evidence given at the Commission of Inquiry. For convenience we refer also to the following extract from a published letter to the Editor of the Hong Kong Law Journal by the Attorney General :

*" Naturally social status or wealth are totally irrelevant to the decisions that an Attorney General has to take about prosecuting, or to the police when deciding whether or not to investigate. But in giving guidance to the police on whether to follow up "leads" (by which was meant allegations or suggestions of doubtful credibility) then matters such as seniority, degree of trust, access to secret or confidential information, or, for instance, whether or not the person was charged with the responsibility of exercising important discretions or personally taking such decisions, are plainly relevant. It is obvious that there exists a risk of blackmail in relation to any conduct which is deplored by very many people in our society, the more so when it constitutes a criminal offence. It was this, amongst various other considerations, which led to the inclusion of the specified exceptions discriminating against, not in favour of, senior members of the Government service as well as the law and the Judiciary. The risk is obviously less real and certainly potentially less damaging in relation to more junior people.*

*In this connection, it was intended, and I am certain understood by those present when the matter was discussed at Government House (including the Commissioner and Deputy Commissioner of Police) to mean that although "leads" (as opposed to evidence) against junior members of the*

*Government service might not require to be followed up, those pointing at persons in senior posts would require different treatment."*

(Editorial: (1982) Hong Kong Law Journal page 1 at page 2.)

5.23 We turn now to the last inter-related branch of policy, employment in the civil service. The usual form of contract of service for Government employees provides that either the employee or the employer may terminate the agreement on giving three month's notice or salary in lieu of notice. It was this clause which was sought to be invoked in 1978 in respect of Inspector John MacLennan. In the view of the Secretary for the Civil Service, fairness would usually require that the officer be told and be given the opportunity to refute any reasons which might prompt the Government to consider invoking this clause. The Government retains a different power pursuant to Colonial Regulations of compulsorily retiring a civil servant where this is considered desirable in the public interest.

5.24 The background to the employment policy was explained by the Secretary in evidence. In January 1980, after a European civil servant in Security Branch had been convicted of homosexual charges, the policy was reviewed with the purpose of formulating criteria against which the Administration would judge cases of suspected or proven homosexual behaviour by civil servants. It was the first time such a review had been conducted. It was determined that, in matters of employment, all such cases should be treated on their individual merits, but an effort was made to try to draw together all the various considerations into one set of guidelines to help in the evaluation of each case: (MacLennan Commission : 7 January 1981, pages 3209, 3224, 3236).

5.25 We have also been referred to newspaper reports in 1982 which reproduced a document containing advice to Heads of Government Departments. Broadly speaking, it provides that known practising homosexuals of either sex (being those convicted of a homosexual offence or those who have formally acknowledged their active homosexuality) should not be offered appointment in the civil service. Consideration also would be given to termination of the services of any serving officer convicted of a homosexual offence. Heads of Department were advised to refer for advice the case of any officer known or suspected to be a homosexual. We have set out the full text of this document at Annexure 29. It was later acknowledged to be a circular issued by the office of the Secretary for the Civil Service.

5.26 This policy has in turn been criticised as discriminating against homosexual employees of Government (see for example Annexure 4 for reactions in newspapers). Apart from the arrest of several civil servants charged with homosexual offences, we are unaware of any factual material which indicates the extent of homosexuality among employees of the Hong Kong Government.

## Commentary

5.27 We see no reason why Kinsey's work on human behaviour should not broadly be applicable in Hong Kong. This means that it would be realistic to expect that between 125,000 and 250,000 men (between 5% and 10% of the male population) are homosexual, the vast majority being Chinese. It is reasonable to assume that hundreds of thousands of homosexual incidents take place each year, the majority being consensual acts between adults. As the law stands at the moment, all these activities are illegal, and our calculations indicate that a negligible proportion are investigated and detected. We feel that this brings the law into disrepute, while at the same time producing an attitude of defiance of the law among many in whom respect for the law would otherwise be the norm. If no man is above the law, a precept embodied in Magna Carta, then it is not desirable in our view to have a situation where a significant number of otherwise responsible members of the community feel that they ought to be above and free to break a particular law. We suspect that this moral "schizophrenia" is one of the factors which causes the tension we observed in some homosexual individuals.

5.28 It is important, we believe, that the public should place confidence in the administration of justice. Public officials equally should expect to receive scrutiny and to be accountable for their decisions. The use of discretion by enforcement agencies in the area of investigation of offences, and by prosecuting agencies in deciding whether to prosecute or not, is an exercise familiar to all those who are involved in the administration of justice. They are different discretions, to be exercised according to different principles. It would serve little purpose, in our view, to seek to enumerate either all the relevant principles, or all the relevant factors properly to be taken into account.

5.29 The public are entitled to expect that decisions of this nature are not made arbitrarily or capriciously: these are hallmarks of the rule of law. Yet failure to meet these standards has been the ground on which some commentators have persistently attacked decisions about the investigation and prosecution of offences concerning homosexuality. A number of persons suspected or accused of homosexual offences have claimed that they were "singled out". These comments are not unique to Hong Kong; they have been made in a number of jurisdictions. We take the view that some commentators have confused responsibility for the existence of the law with responsibility for its enforcement or prosecution.

5.30 We make mention of these matters because they are relevant to our overriding concern for the administration of justice. We have read with attention the findings of the Commissioner at the conclusion of the MacLennan Inquiry and they clearly show the efforts made by senior public officers to arrive at sensible and humane policies. Nevertheless criticisms continue to be voiced. These factors reinforce our view that the present laws are capable of raising considerable passion in the breasts of some people, and that it is desirable, in the interests of the administration of justice, for the appropriate policies to be widely promulgated among the members of

investigatory agencies and also made known among those members of the community likely to be affected.

5.31 The police themselves recognize that investigations in this field are sensitive, requiring supervision and a sense of proportion. We share that concern. Equally we are reminded that since 1978 the disciplined strength of the SIU has fluctuated from a low of two men to a high of 26, in a force of some 30,000 officers, scarcely a disproportionate deployment of resources.

5.32 All reasonable people are agreed that procurers should be investigated and prosecuted. Police cannot do this without searching for and questioning their clients or the prostitutes, who cannot be found without police going covertly to the places they frequent. It is not easy for police to deal with a man who is frightened of exposure, frightened of prosecution himself or frightened perhaps for his job. Similarly, the community strongly believes, as we do, that pederasts and those who use drugs and other means to seduce boys should be investigated and prosecuted. Police cannot do this without alarming other sections of the homosexual community.

5.33 The fact remains that, at the end of the MacLennan Commission of Inquiry, the Commissioner found that certain police officers in some of their investigations or actions were improperly motivated or had breached approved standards. We are concerned to limit the recurrence of such incidents, to ensure that the discretion necessarily entrusted to our police officers is wisely exercised.

5.34 In Hong Kong's system there are a number of traditional checks and balances: senior police officers scrutinise priorities and performance; then there is the separate ministerial decision whether or not to authorise a prosecution or to grant an immunity to any witness; the courts have an important role in overseeing the results of individual police behaviour; an independent legal profession is another essential safeguard of the rights of suspects and of the propriety of police behaviour. Ultimately there may be recourse to a Commission of Inquiry. Experience has demonstrated that this combination of safeguards is usually adequate to limit the damage capable of being caused by the individual whose human fallibility has exceeded his professionalism. We wonder whether, simply from a practical point of view, we have any contribution to make to this aspect of the subject.

5.35 Deployment of police resources is necessarily a matter for the Commissioner of Police, and not for us. However it has occurred to us that the benefit we have gained from considering in Chapter VI numerous sexual offences together, rather than homosexual behaviour alone, might have a wider application. If it is felt that these investigations require specialist skills and careful security, so that they cannot be dealt with at Divisional level by general criminal investigating teams, we have wondered whether the work might not be performed by those "vice squads" which currently investigate female prostitution, vice establishments and massage parlours. As we understand it, procurers have a catholic taste and themselves run "strings" both of females and males. These vice squads customarily consist of police

officers of both sexes. We can see advantages in having all aspects of commercial sexuality investigated by similar teams.

## **Civil service employment**

5.36 The laws of contract and of master and servant, and the regulations of the Civil Service are outside our terms of reference. However we feel that their interrelationship with the topic under discussion, especially in public controversy in recent years, permits us to venture certain observations.

5.37 It is obvious that security is of particular concern in the case of civil servants and that it is desirable to limit the potential risk of breaches. Hong Kong, unlike so many other countries, is highly centralised in its administration : within the same building decisions may be taken about land use, affecting the prosperity of the whole community, or about public works tenders, or about refugees and illegal immigration, affecting the physical security of the whole community, or about sensitive political matters concerning the future of the territory. We do not believe that the concern to protect the confidentiality of discussions and decisions about such matters is melodramatic, nor does it arise from a fear of exposure to scrutiny. We can see that it is a proper concern. We have concluded that perhaps the best course is flexibility; the blanket application of common standards may not be the effective answer, however desirable in theory. The risk of damaging breaches of security, the risk of susceptibility to blackmail obviously increases with the seniority of the employee.

5.38 There is also an obvious case for exclusion from particular types of work of persons of minority sexual disposition on no ground other than pragmatism. The presence of homosexual men or women, in the current climate of community attitudes, may well be disruptive of particular fields of work in the civil service, such as guarding prisoners, working in Special Branch or teaching young people. In these cases, we can see justification for a policy which declares that such persons be not employed or, in appropriate cases, be not retained in service : rigorous standards may be expected of an employer who is accountable for the expenditure of the public's money.

5.39 Nevertheless, it is our view that (subject to our previous comments) male homosexuality creates no greater risk to security than do other forms of conduct which, whatever the state of the law, an individual wishes to keep secret, whether it be adultery, alcoholism, gambling, or an illegitimate child. Equally, women are as susceptible as men to pressures brought about by the threat of disclosures of this nature.

5.40 We consider, then, that the employment policy of the Government may require review. There is no reason why the policy should not deal with susceptibility of women as well as men to undue pressure, in the exercise of official duties, arising out of all forms of sexually-related behaviour, heterosexual as well as homosexual. We believe that such a policy should be drawn to the attention of all applicants and also to all serving employees. We

observe that a policy which sets standards of conduct which are unrealistically high contributes to the situation we are concerned to ameliorate, namely opportunities for blackmail. In conclusion, we wish to emphasize the vital importance of fairness. Let the rules be realistic, let them be widely known, not only by those applying them but also by those subject to them and let the principles of natural justice be applied in the consideration of individual cases.

## Epilogue

5.41 The Commission of Inquiry into the death of Inspector MacLennan provided a catalyst for the examination of aspects of homosexuality in Hong Kong. It concluded that the Inspector committed suicide from fear of disgrace over the exposure of his bisexual activities with, among other men, "Peter". If "Peter" had the first words early in this Chapter, perhaps it is fair that another man should have the last :

*"John MacLennan was just an ordinary man. But for the tragedies that befell him, he would have worked and lived in blissful anonymity. He was not perfect, neither was he the scum of the earth. Like all of us, he had his good qualities, and a few bad ones too. There was nothing special about him. Even his sexual proclivities were nothing special, for there are many others like him."*

(Paragraph 38, page 33, Report of the Commission of Inquiry into Inspector MacLennan's Case 1981).

## Chapter VI

### The laws in Hong Kong

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#### Introduction

6.1 For the purpose of this chapter, we have applied a liberal construction to our terms of reference and have examined laws "affecting" homosexual conduct and not merely those "governing" it. In many cases, laws of general application do not distinguish between heterosexual or homosexual conduct. We discuss some of these laws to see how they do affect homosexual behaviour and whether they offer the community sufficient protection. In other cases, laws prescribe sexual conduct in respect of particular groups, such as young women. These laws may be relevant by analogy when we consider homosexual abuse. In conducting this survey, we also wish to assess whether these laws would be affected by proposals we have received for changes in laws governing homosexual conduct, and what penalties are appropriate.

6.2 We begin with some brief remarks about general provisions of the criminal law which protect all members of the community. Then, as the family is the cornerstone of communal life in Hong Kong and is said to be threatened by homosexuality, we mention several aspects of the law relating to marriage and divorce. Next we look to laws protecting the community in sexual aspects of public behaviour. This leads us to consider how the law regulates the sexual content in what this community, and particularly our youth, may watch, read and hear in publications, such as films, magazines and television. All these matters we classify as General Protection.

6.3 Thereafter we turn to Specific Protection and consider how certain groups of people, such as women and children under 21, mental defectives, school-children, prisoners, members of the armed services and last but not least, men, are given specific protection by the law in various aspects of their sexual lives. For the sake of completeness we mention also the control of venereal disease.

6.4 Experience has shown, and that gained from the MacLennan Commission in particular, that almost as important as the laws themselves are the means of enforcement. Accordingly we have considered in conclusion some of the rules of law and evidence concerning offences of a homosexual nature.

6.5 When describing the various provisions we have tried to avoid technical terms. Whether specified in the text or not, the reference for every provision we have considered (together with the penalty) has been set out in a table at Annexure 30.

## **General protection**

### ***Life liberty and bodily injury***

6.6 We have borne in mind the provisions of the criminal law which protect the community in matters affecting life, bodily injury, liberty, and property. The majority of these provisions are offences of general application which give protection to every member the community regardless of age, sex or sexual proclivity. We have shown the range of penalties, and referred to the sections of the relevant Ordinances, in the schedule at Annexure 30.

6.7 We mention a few factors which should be remembered. It is murder to kill someone intentionally. The life of every member of the community is of equal value before the law. The law does not therefore distinguish between, say, heterosexual or homosexual passion as the motive or cause. The same applies to offences such as assault causing bodily harm, kidnapping, false imprisonment, criminal intimidation or blackmail. These are useful weapons already available for use against those who prey upon young women, or those who may wish to prey upon young men.

### ***Marriage and Divorce***

6.8 It is an offence punishable by imprisonment for 2 years to marry a minor under 21 without the consent of parent or guardian, contrary to Section 29 of the Marriage Ordinance (Cap. 181). It is implicit in this Ordinance that the only persons who may contract a lawful marriage are a man and a woman of marriageable age. This has received explicit recognition since 1972 in Section 20 of the Matrimonial Causes Ordinance (Cap. 179) which declares that a marriage is void if the parties are not respectively male and female. Hong Kong has yet to grapple with sex changes and the attendant problems of determining when a man is a man or woman a woman. (c.f. Greaves, The Times, 11 February 1983).

6.9 There have been no suggestions made to us indicating pressure to provide for marriages between persons of the same sex. Nor have there yet been any claims for division of the joint property of a long-standing liaison between persons of the same sex. This may not be surprising in the present state of the law and of community attitudes. Under general laws of contract and property, without importing purely moral obligations arising from de facto relationships, there seem to us adequate legal mechanisms for determining fiduciary obligations which may accrue during such relationships.

6.10 However there is one aspect of commercial sexual relationships which we have had to consider. Under the law as it stands at the moment, with almost every act between male homosexuals being illegal, a contract for sexual services between male prostitute and client is void for illegality : the law says that you cannot enforce payment for breaking the law. Any change

to the laws governing homosexual conduct could therefore have some effect on the enforceability of such contracts. It is scarcely likely that a prostitute will sue for \$200, but what if he becomes the equivalent of a mistress, exclusively to one client on a promise of reward? On the one hand, it is easy to say that such agreements do not deserve to be honoured and should be regarded as unenforceable as contrary to public policy. On the other hand, if the male prostitute has no remedy at law, to whom will he turn? We would not be surprised if he resorted either to blackmail or to triad persuasion. We are reminded that the ancient custom of concubinage received formal recognition so that concubines had certain property rights; but that in 1970 the status was abolished here. We are aware too that one of the principal differences between a female and a male concubine is the matter of children. We shall revert to this problem later (in paragraph 11.8).

6.11 Returning to marriages between persons of opposite sex, the only ground for divorce, under Section 11 of the Matrimonial Causes Ordinance, is that the marriage has broken down irretrievably. To establish this ground the petitioner must satisfy the court under Section 11A of the following facts (amongst a number of others) : that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. There is little doubt that if a wife discovers her husband is a practising homosexual, this would be sufficient to establish this ground : see Arthur v. Arthur (1964) 108 Sol. Jo. 317; Coffer v. Coffer (1964), 108 Sol. Jo. 465. Similarly a husband could succeed if he established that his wife was a practising lesbian, even though there is nothing unlawful about such behaviour. We conclude that this ground of divorce would not necessarily be affected by any change in law relating to male or female sexuality.

6.12 This subject we have treated with necessary superficiality. We believe that, in the present climate of law and public feeling, it is unlikely that we shall see many divorce petitions in Hong Kong alleging homosexual conduct. If the institution of marriage is believed to be under threat from a number of sources, including homosexuality, we cannot see that the law of divorce can do any more to cauterize threats which seem to us more behavioural than legal.

### ***Public behaviour***

6.13 We believe that the control both of public behaviour and of publications are sufficiently important to the life of our community to warrant a full description. Accordingly we now summarise the most important provisions which regulate conduct of a sexual nature in these two fields.

6.14 Apart from extensive provisions which regulate the conduct of processions and meetings in public, it is an offence for any person to behave in a noisy or disorderly manner, or to take part in an unlawful fight in a public place contrary to Sections 17B or 25 of the Public Order Ordinance (Cap. 245). The penalty is a fine of \$5,000 and imprisonment for 12 months. If

three or more together commit disorderly conduct likely to provoke others to commit a breach of the peace, the penalty may be as much as 5 years' imprisonment (Section 18 of Cap. 245). It is possible that if three or more men or youths were publicly flaunting their homosexual affection, this might provoke members of the public to commit a breach of the peace; but it would require extreme behaviour before a court would be likely to convict.

6.15 It is an offence under Section 4(3) of the Summary Offences Ordinance (Cap. 228), punishable by imprisonment for up to 3 months and a fine of \$500, to obey a call of nature in any public, exposed or improper place. Another provision in subsidiary legislation prohibits any person from obeying the call of nature in any street, public place exposed to public view, or in any common part of a building other than a toilet. Furthermore, it is an offence for any person without reasonable cause to permit a child under 12 of whom he is in charge to obey a call of nature in these circumstances. The penalty is a fine of up to \$1,000 for the first, and \$2,000 for a second offence. (By Laws 8 and 23, Public Cleansing and Prevention of Nuisance By-laws made under Section 15, Public Health and Urban Services Ordinance (Cap 132).)

6.16 Before 1978, the Summary Offences Ordinance prohibited indecent behaviour by a female in a public place. Section 12 (now repealed), so far as relevant, provided :-

*"Any female who being in a public place or place of public resort, or being on any verandah or at any window or doorway over or opening on to any public place, solicits, or loiters for the purpose of soliciting any person for any immoral purpose or behaves indecently shall be liable to a fine of \$500 or to imprisonment for 3 months."*

6.17 In 1978 the Crimes (Amendment) Ordinance (No. 1 of 1978) revised the law relating to sexual offences against women and the exploitation of women, and use of premises, for illicit sexual purposes. The Ordinance, among other things, replaced provisions then contained in Sections 4(24) and 12 of the Summary Offences Ordinance. Section 4(24) which prohibited indecent exposure in public was replaced by Section 148 of the Crimes Ordinance. Section 147 was enacted to deal with soliciting for an immoral purpose. However the provision prohibiting indecent behaviour in public was repealed without any replacement.

6.18 Section 148 of the Crimes Ordinance (Cap. 200) now provides that a person who, without lawful authority or excuse, in any public place or in view of the public indecently exposes any part of his body commits an offence. This does not apply to a child under 12 who is bathing naked. The penalty is up to 6 months' imprisonment and a fine of \$1,000. These offences apply both to women and to men. Exposure is held to be indecent if it offends the common standard of decency of the community. That standard is flexible, depending upon community values at any given time : a small boy baring his all to the world as he relieves himself in the gutter may lawfully be photographed; on the other hand a nubile sixteen year old girl who bares her

chest, or an eighteen year old youth who exposes himself in the street, may offend the common standard of decency. One thing is clear : public behaviour which may be tolerated in London, San Francisco or Manila would probably not be tolerated by the community in Hong Kong. The purpose of this section of the law is to ensure that, whatever people may do in the privacy of their homes, at least when members of the family go walking in the street they will not be subject to behaviour which offends their sense of what is proper and right.

6.19 Section 147 of the Crimes Ordinance (Cap. 200) now provides that any person who, in a public place or in view of the public, solicits for any immoral purpose, or loiters for the purpose of soliciting for any immoral purpose, commits an offence punishable by a fine of \$1,000 and 6 months' imprisonment. Although this section is most commonly regarded as applying to female prostitutes or their pimps, in fact it is capable of applying to women who solicit women, and men who solicit women or men. Thus in so far as lesbian and homosexual behaviour is regarded as immoral, then publicly seeking out partners, whether for commercial gain or not, is punishable.

6.20 It is noticeable that there is no reference to age either of the offender or of potential "customers". Nor is there reference to locality. Both could well be important. It could be said that, to importune young people of either sex is more reprehensible than soliciting people of mature judgement. Certainly this concern has been expressed to us in respect of young men being solicited for homosexual purposes. It has been suggested too that the locality could be significant. Soliciting outside a school is not the same as soliciting in a street of bars. Some suggest indeed that in the latter case principles akin to caveat emptor apply, If one goes to an area notorious for this type of activity, it is said, then one can hardly complain about being approached. We do not agree : the public have the right to go about all our streets without meeting offensive conduct.

6.21 There is a further possible application for this offence which we have noticed. Not only could it apply to loitering for immoral purposes such as soliciting but, if its ambit was extended, it could also apply to those known as Peeping Toms who observe women or men in a state of undress within their own homes or in the use of facilities such as communal washrooms or lavatories in a residential building.

6.22 We turn now to consider a number of matters affecting public decency in particular locations. Public lavatories, bathing beaches and parks usually fall within the common definition of public places in existing legislation. Commercial bathhouses, public swimming pools, public stadia, museums, libraries and civic centres are deemed to be public places for certain purposes, including the laws relating to offences against decency. A number of the offences we have already mentioned therefore penalise indecent conduct in these areas or establishments. In addition, we now detail some of the provisions of the Public Health and Urban Services Ordinance (Cap. 132), and Bye-laws made under it, which are particularly relevant to our subject.

Public Lavatories and Commercial Bathhouses : no person shall loiter in, or use for any purpose other than the purpose for which it is intended, any water closet. No person in a public convenience shall, by forcible or improper means, or for any improper purpose, enter any cubicle which is occupied by another person, or otherwise knowingly intrude upon the privacy of any other person using such a cubicle. No person, other than a child under 5 accompanied by a nurse or relative, shall enter any part of a public lavatory allocated for the use of persons of the opposite sex. In all these cases the penalty is a fine up to \$250. Similar provisions apply to commercial bathhouses.

Bathing Beaches : no person shall use abusive language, indecently expose his person, conduct himself otherwise than in a peaceful, decent and orderly manner, or do any act which is likely to inconvenience or annoy any other person using a beach. The penalty is a fine up to \$500 and imprisonment for 14 days.

Public Swimming Pools : no person shall conduct himself other than in a quiet, decent and orderly manner; except in a dressing room, no person shall appear or go about naked or so sparsely dressed as to offend against public decency. No person over 14 shall, without permission from an attendant, enter any part set aside for children, unless he is in charge of a child. No person over the age of 8 shall enter a dressing room reserved for the opposite sex. The penalty for all these offences is a fine up to \$250 and liability to removal by the attendant.

Pleasure Grounds : no person shall behave otherwise than in an orderly and decent manner or be otherwise than properly clothed. No person shall wilfully disturb, interrupt or annoy any other person in the proper use of the pleasure ground. No person shall use any abusive language to the annoyance of any person. The penalties for these offences are up to 14 days imprisonment and a fine of \$500. In addition, the authority by notice may set aside an area as a children's playground and restrict the persons who enter it. Any person who disregards this notice may be removed.

6.23        Bars must be licensed for the sale of liquor under the provisions of the Dutiable Commodities Ordinance (Cap. 109) and of Regulations made under that Ordinance. The Liquor Licensing Board is charged with the responsibility for licensing. It may grant or refuse an application for a licence or for its renewal absolutely, or subject to such conditions as it thinks fit; it is not restricted to those set out in the statutory form. This form provides that the licensee shall not permit any person to occupy or use any portion of the premises for any immoral purpose. Common prostitutes, reputed thieves, and persons of known bad character shall not knowingly be suffered to assemble or remain on the premises. Drunkenness or other disorderly conduct shall not be knowingly permitted. Breach of licence conditions renders the licence voidable at the option of the Licensing Board.

6.24        As these conditions read, it is apparent that at present bars catering to female or male prostitutes should not receive a licence or a

renewal. These provisions would remain unaffected by any change in the laws affecting male homosexual conduct. A licence was in fact recently terminated by the Board when the police proved that the premises were a place of resort for male homosexuals, and that undesirable and indecent conduct was taking place there.

6.25 A number of offences are set out in the Regulations. The licensee shall not permit any person under the age of 18 to drink any intoxicating liquors on the premises. The licensee shall not employ on the premises anyone who is under 15. Between the hours of 8 p.m. to 6 a.m. he shall not employ any female under 18. Between the hours of 6 a.m. and 8 p.m. he shall not employ any female under 18 without the written permission of the Board. The penalty for all these offences is a fine of up to \$5,000 and imprisonment for 6 months. A person is deemed to be employed notwithstanding that he receives no wages, commission or other advantage from the licensee, and that any services offered by the employee are to be performed elsewhere than on the licensed premises. This latter provision seems to accord frank recognition to the practise of some bars to provide as escorts or to serve drinks women who then sometimes leave to perform commercial sexual favours for customers. Whether this law is changed or not, there seems to us little reason why the protection given to young women between 15 and 18 should not be extended to young men. Finally, so far as bars are concerned, there is a fine of \$2,000 for any person who advertises, presents or carries on any entertainment in a bar without a permit from the Commissioner of Police. Entertainment includes concerts, plays, films or exhibitions of abnormal persons or animals. Needless to say, this provision would cover "strip-shows", "blue movies" or other exhibitions of an indecent nature, whatever the age or sex of the participants.

6.26 Massage Establishments and Public Dance Halls are required to be licensed under the provisions of the Miscellaneous Licences Ordinance (Cap. 114). The Licensing Authority may refuse to grant or renew a licence in respect of any premises which have been improperly conducted, or to any person if the refusal is expedient in the public interest. We observe that provisions affecting public indecent conduct do not apply in these premises. We observe also that, in respect of massage establishments, there is no requirement for protection of privacy, nor prohibition as to indecency, nor limitations of age either of the staff or of the customers. Finally, in the current climate of feeling, the present requirement that treatment must be given by a person of the same sex might be seen almost as a positive inducement to lesbian or homosexual activity. Some massage establishments no doubt have a long and honourable tradition in Hong Kong. Others apparently do not, since a working party has recently been established to review their activities following complaints by members of a District Board. At the moment massage parlours are treated in law as private premises. Current provisions prohibiting male homosexual conduct do apply, whether it be buggery or gross indecency, including masturbation, since in these cases privacy is irrelevant; but any change in these laws might have an effect on permitted conduct in such establishments because they are private premises.

6.27 In Public Dance Halls, no person under 16 may be in the premises and no person under the age of 18 may be employed : Lee Fu-yuen v. R (1978) H.K.L.R. 522; Poon Chun-yuen v. R (1981) H.K.L.R. 580. The Licensee is enjoined not to permit any impropriety of language or any indecency of dance, dress or gesture. Breach of these regulations may entail a fine of \$10,000 and imprisonment for 6 months. In contrast to the requirements in respect of Bars, these provisions make no distinction between the sexes for, employment, nor do they have staggered hours of prohibition. However, despite their name, Public Dance Halls do not fall within the definition of public places and therefore general laws prohibiting a number of forms of indecent behaviour are not applicable.

### ***Public performances***

6.28 There is a general prohibition against any person taking part in, providing or managing, whether for reward or not, any public live performance of an indecent, obscene, revolting or offensive nature. The penalty is a fine up to \$25,000 and imprisonment for 1 year. "Live performance" includes any play, show, exhibition, act, entertainment, presentation, display or other performance of any kind given by one or more persons. It is public if it is a performance given in a public place, or in view of the public or a section of the public, or to which the public or a section of the public are admitted, whether on payment or otherwise.

6.29 By current standards, full nudity, mimed or actual sexual intercourse between persons of the same or opposite sex, oral sexual gratification and so on would all be prohibited. It is noticeable that there is no distinction by reason of sex or age either of performers or of customers. It is possible that in some cases willing patrons who pay entrance fees may be held to be aiding or abetting the commission of this offence, and liable to the same penalties.

6.30 The Licencing Authority has power to cancel a licence of any Place of Public Entertainment. Any person who continues a performance after receipt of notice of cancellation is liable to a fine of \$1,000 for every day of continuation. The Authority may cancel where it is satisfied either that there has been a breach of licence-conditions or that there has been disorder on the premises, or that the performance is offensive to good manners, or decorum, or is calculated to corrupt public morals. A Superintendent of Police may close any performance or temporarily any premises where it appears to him necessary on the same grounds.

6.31 In summary, premises must be licensed for public entertainment, and each type of performance must receive a permit; for particular types of performance licence-conditions or permit-conditions may require an age limit for admission. Equally, conditions may require that advertisements warn prospective patrons of the nature of the performance. This is a form of censorship on the one hand, and a form of protection on the other, for sections of the public. What may be acceptable for an audience of adults may

be offensive for young people, and even bedroom farce may not be appropriate for children. All these performances are subject to the overriding restriction that they be not calculated to corrupt public morals. This is an objective test, taken from the language of the old common law in England where it was decided that :

*"The words 'corrupt public morals' suggest conduct which a jury might find to be destructive of the very fabric of society":*

Per Lord Simon of Glaisdale in Kneller v. D.P.P. [1972] 2 All E.R. 898.

6.32 This test would prohibit the showing of many forms of explicit sexual connection, whether between men or women or both. It is noteworthy that there is no saving on the grounds of artistic or literary merit. It is arguable that depiction of explicit homosexual conduct would remain within this prohibition, even if the laws affecting such conduct were changed.

6.33 Picture Theatres are places of public entertainment and are subject to the licensing restrictions we have described. However a different form of regulation applies. No person shall advertise, present or carry on any cinematograph display to which the public are invited or have access or which persons may attend by reason of being members of any club or other organization unless every film, poster or advertisement has been approved for exhibition. Again the penalty is a fine up to \$10,000 and imprisonment for 6 months. The Commissioner for Television and Films is the Film Censorship Authority to whom every film intended for exhibition in Hong Kong together with all advertisements, posters, trailers and so on must first be submitted. He directs a panel of censors who are appointed by the Governor.

6.34 The censor may approve or refuse to approve a film and accompanying material, or approve subject to alteration or excision or to other conditions. If required the Censor must give his reasons within 7 days, and provision is made for appeal to a Board of Review comprising the Film Censorship Authority and 6 other persons appointed by the Governor. The Board has the same powers as the censor, and so the review is in the nature of a rehearing. No film may be exhibited or advertised until the censor's notification has been received at the place of exhibition.

6.35 Any member of the public who upon moral, religious, educational or other grounds is of opinion that a film should not be exhibited may ask the Chief Secretary to refer the film to the Board of Review, and if he does so the proceedings are treated as an appeal before the Board. The Chief Secretary may order suspension of exhibition of the film pending the Board's determination. Exhibition in breach of this order attracts a fine up to \$10,000 and imprisonment for 6 months.

6.36 We have set out these procedures at some length, because film censorship is an important issue in Hong Kong. One most interesting feature of these regulations is that there is no mention of the grounds on which censorship can or should be exercised. We have sought assistance from the

Film Censorship Authority, who has informed us that films submitted for public exhibition are expected to observe three basic principles : ordinary good taste and common sense, respect for the opinions of the public, and respect for law and social institutions, with special attention being directed to the impact films may have on young persons. Films and related materials will not therefore be banned by the censor unless there is a likelihood that their showing in a public place would, amongst other things, cause shock or disgust in the mind of the average member of the audience or would have a corrupting effect upon morals. Erotic displays such as the filming of sexual organs, perversions and abnormalities, or films which emphasise nothing but sex, are almost certain to be banned or cut.

(Extracts from paragraphs 4, 5 and 14 of Notes for Guidance, Film Censorship Standards, Television and Films Division, Secretary for Home Affairs, May 1973.)

6.37 Both in respect of places of public entertainment generally and in respect of picture theatres we note that there is nothing specifically prohibiting the performance or exhibition of films in the presence of persons beneath any age specified in the permit or classification; the only relevant offence is that of performing or exhibiting in breach of the licence, permit or censor's conditions.

6.38 Though it is not really within our terms of reference, we feel that in the interests of protection for youth, and because there are so many families whose parents are both out at work all day and cannot exercise full control over their adolescent off-spring, consideration should be given to penalizing the exhibitor not for "permitting or allowing" but simply for "exhibiting" in the presence of under-age persons. It might be made a defence to be established on the balance of probabilities to show that the exhibitor was unaware of the presence of those under age and also had taken all reasonable steps to prevent entry. This would effectively place the responsibility for enforcement of this regulation where it belongs, firmly on the shoulders of the person who makes money out of the performance or films, namely the exhibitor.

### ***Publications***

6.39 In addition to the systems of licensing premises and of censoring films, a number of the provisions we shall now describe are applicable also to films as well as to written publications.

6.40 It is an offence at common law, punishable with fine and imprisonment at the discretion of the court, to conspire to corrupt public morals : see "The Ladies' Directory" case, Shaw v. D.P.P. [1962] A.C. 220, where a booklet consisting mainly of advertisements by prostitutes with their names and addresses and specialities was held to be an obscene publication. In England, it has been held that publishing items relating to lesbianism, homosexuality and oral sexual intercourse in a magazine distributed amongst

boys' schools was such a conspiracy : R v. Anderson [1972] 1 Q.B. 304. This decision has been applied also in Knulier v. D.P.P. [1972] 2 All E.R. 898 where it was held to be a conspiracy to publish advertisement in a magazine inviting readers to take part in homosexual acts with advertisers. We are not aware of any prosecution for this offence in Hong Kong, but we envisage a prosecution based on facts like those in Shaw's Case being successful.

6.41 Newspapers and magazines are controlled under the Control of Publications Ordinance (Cap. 268). It is an offence under Section 3 to print or publish a publication any part of which tends to induce any person to commit an offence. The penalty is a fine of up to \$10,000 and imprisonment for 3 years. This provision would apply at present to the situation we have just described, namely advertisements for homosexual partners, or articles which glamourise homosexual relationships. Clearly this section might be affected by any change in the laws concerning homosexuality. We are unaware of how frequently the section has been invoked, but we suspect very rarely indeed.

6.42 Upon the application of the Attorney General, a magistrate may order the suppression (for not more than 6 months) of any local newspaper, the publisher or editor of which has been found guilty of an offence against Section 3, or of an offence against the Objectionable Publications Ordinance (Cap. 150) or of any offence of a nature prejudicial to the maintenance of public order, safety, health or morals. Again we are unaware whether this power has been invoked, but it would cover, for example, the newspaper in Shaw's case.

6.43 The Governor in Council may prohibit the importation of any particular publication which appears to him likely to be prejudicial to the maintenance of public order, safety, health or morals. It is an offence, punishable by a fine of up to \$10,000 and imprisonment for 3 years to sell, offer for sale, distribute or be in possession of such a prohibited publication. As we have seen, this could but need not be affected by any changes in laws affecting homosexuality. We are unaware of this power ever having been used.

6.44 We are reminded by a recent prosecution of the Undesirable Medical Advertisements Ordinance (Cap. 231). A fine of \$2,000 awaits any person who takes part in the publication, other than in a technical journal, of any advertisement which represents any treatment as being effective for venereal disease, the cure of any habit associated with sexual indulgence, or the promotion of sexual virility, the restoration of mental faculties or of lost youth. In so far as this Ordinance is non-specific as to the type of sexuality it addresses, it covers advertisements relating to males and their "sexual indulgence" with other men and would continue to do so notwithstanding any changes of law affecting sexual conduct. We comment upon the provisions of the Venereal Diseases Ordinance (Cap. 275) at a later stage of this summary.

6.45 Telephone, Telegraph and Post: Any person who sends a message by these means which is grossly offensive, is of an indecent,

obscene or menacing character, or is intended to cause annoyance or needless anxiety is liable to a fine of \$100 and imprisonment for 1 month. This obviously covers obscene calls by men to women, but it is capable of applying also to calls by women to women, or by men to men; it could also cover the caller who maliciously rings a man's family to accuse him falsely of homosexuality. These offences are almost impossible to prevent and very difficult to detect unless the caller is known. Notwithstanding this, since we believe that such calls are an insidious invasion of privacy, we doubt the adequacy of the penalty for the present offence. We are concerned also with the similar but more serious misuse to which "videophone" links may be put when they eventuate.

6.46            There is a fine of \$500 and imprisonment for 6 months for any person who posts, sends by post, or imports by post any obscene, immoral, indecent, offensive or libellous material, or anything the importation or circulation of which is forbidden in Hong Kong or in the country of destination. These provisions of the Post Office Ordinance (Cap. 98) are of wide application and would be unaffected by changes in laws affecting sexual conduct.

6.47            Objectionable Publications : It is appropriate now to consider the provisions of the Objectionable Publications Ordinance (Cap. 150). It is an offence in Hong Kong to import, or have in possession for gain, an objectionable article. It is an offence to publish such an article, whether for gain or not. The potential penalty is a fine of \$10,000 and imprisonment for 3 years. An article, which includes written material, films, sound recordings or videos, is objectionable if it consists of or contains matter of an indecent, obscene or revolting nature. An article is also deemed objectionable where it is both accessible to those under 16 and contains stories which show amongst other things acts of excessive violence or cruelty, rape or sexual perversion, acts of a repulsive or horrible nature, or which tend to deprave or to corrupt a reader.

6.48            The test for indecency was first laid down in Yeung Kam-tsuen and Another v. R [1962] H.K.L.R. 633 at 667 : "For the purpose of determining whether a photograph is or is not indecent, obscene, revolting or offensive, the magistrate must exercise the community's conscience and treat himself as representing the community's feelings in the matter. Further, he must consider whether each photograph, in the context and circumstances in which it is published, is indecent, obscene, revolting or offensive, disregarding the opinions of other persons which in any event are inadmissible."

6.49            This test was endorsed by the Court of Appeal in Mirchandani Mohan Gulabrai v. R [1977] H.K.L.R. 523. A limited company, its director and manager were convicted of offences contrary to Section 4(1)(b) of Cap. 150 relating to issues of the magazines "Oui" and "Penthouse". These magazines were on sale to the public wrapped in plastic envelopes marked "For Adults Only". The Court of Appeal held that the proper test of the objectionableness of an article should be whether the community as a whole, having regard to the circumstances, would consider the article to be objectionable. An article

itself provided the best evidence of its own objectionableness or of the absence of such qualities. The Court held it should not be concerned to compare the article in question with others, and should also not be concerned with standards in other jurisdictions.

6.50 In the present climate of public feeling in Hong Kong, there is little doubt that any publication representing intercourse by either sex would fall within this prohibition. It was held in Hon Tak-san v. R (Crim. App. 355/82) that an advertisement by prostitutes in a newspaper using euphemistic expressions amounted to an objectionable publication. Explicit depiction of many forms of male homosexual affection falling short of buggery would probably be found objectionable also.

6.51 Television : The two television stations in Hong Kong are enjoined by regulation to exclude from programmes material likely to offend against good taste and decency, though they may be permitted to broadcast at appropriate times and in appropriate circumstances genuine works of art or literary merit, and programmes giving a serious presentation of moral or social issues. The Television Authority has power to prohibit the broadcasts of any programmes.

## **Specific protection**

6.52 Bearing in mind the General Protection described above, we turn now to consider a series of specific offences, many of them applicable only to one category of people, but all having a sexual connotation. We look at these matters in the following order : women, women and children under 21 years of age, those of unsound mind, school children, prisoners, the armed services, and men.

### ***Women***

6.53 In the schedule set out at Annexure 30 we catalogue but do not here consider in detail some of the well-known offences by which the law protects women, such as rape, incest and attempts or conspiracies to commit these offences.

6.54 Indecent assault upon a woman carries a liability to 5 years' imprisonment. Consent is relevant to indecent assault : to touch a woman when she desires it is obviously no crime, but to do so against her will is an assault. Behaviour is indecent if it offends against the common standards adopted in the community. The age of consent is 16 years, and beneath this age any indecent touching even though with consent nevertheless constitutes the offence.

6.55 Anyone who procures a woman to have unlawful sexual intercourse by threats or intimidation, or who administers drugs to obtain or facilitate intercourse with a woman is liable to 14 years' imprisonment. A man or woman who procures a woman by false pretences or false representations

to have unlawful sexual intercourse is liable to 5 years' imprisonment. These offences are specifically designed to deal with forms of trafficking in women. Two of them apply even where the intercourse eventually takes place outside Hong Kong. They also penalise the person who arranges a service for a "customer" who may not know at the time of the act that the girl is under the influence of another person, or of drugs. His action consequently may not in law amount to rape, but the procurer remains liable.

6.56 There is a general offence, punishable by 2 years' imprisonment, for unlawful transferring possession of any person, male or female, for valuable consideration. Consent is no defence. Specifically, any man or woman who takes part in moving a woman into or out of Hong Kong for the purpose of prostitution, whether with or without her consent, commits an offence punishable by 7 years' imprisonment. There is the same penalty imposed upon either men or women who procure a woman to become a prostitute, to leave Hong Kong intending her to join a brothel or to leave her usual place of living in Hong Kong intending her to join a brothel.

6.57 Any man or woman who harbours a woman with the intention that she shall have unlawful sexual intercourse with men, or for the purposes of prostitution, is liable to imprisonment for 14 years. To harbour a woman is to feed, clothe and house her. A woman who for the purposes of gain exercises control over a woman for the purpose of prostitution may be imprisoned for 5 years. A man who knowingly lives wholly or in part on the earnings of prostitution is liable to the same penalty.

6.58 Where a woman is detained against her will, whether by man or woman, for unlawful sexual intercourse or in a vice establishment, the penalty may be 14 years' imprisonment. Vice establishment includes premises which are used wholly or mainly by 2 or more women for the purpose of prostitution, or premises used wholly or mainly for organising prostitution. In either case, "wholly or mainly" and "prostitution" have to be proved. For the meaning of "wholly or mainly" see A.G. v. TANG Ping-wing (Crim. App. Np. 411 of 1981); for the meaning of prostitution see R v. De Munck (1918) 13 Cr. App. R. 113, R v Webb (1964) 47 Cr. App. R. 265, SHENG Ming-huei, (Crim. App. 762/80) and Archbold para. 2952 and para. 2966.

6.59 Any man or woman who keeps a vice establishment is liable to be fined \$20,000 and imprisoned for 7 years, while letting premises for this use or (as a tenant) permitting it, brings a penalty of a fine of \$20,000 and 2 years' imprisonment. In TAM Kim-leung (Crim. App. 1081 of 1981), Sir Denys Roberts C.J. held that "keeping" means "maintaining the premises, knowing that they are being used as a vice-establishment and having some measure of control over their use as such, though this control may be short of active management on a continuous basis". On the point of managing or assisting in the management, he said "In my view, the offence is complete if it can be shown that the defendant is taking a part of some significance in the running of a vice-establishment."

6.60 It is an offence to permit any premises to be used for the purposes of habitual prostitution, the penalty being 2 years' imprisonment and a fine of \$20,000. It is another offence to keep a house or other building for the occupation or resort of prostitutes to the annoyance of any person living nearby. The penalty is imprisonment for 3 months. Finally there remains the offence at common law of keeping a disorderly or bawdy house.

6.61 Prostitutes & Lesbians Despite the many provisions governing sexual matters it is noticeable that it is not an offence for a woman to be a prostitute, though if she is of age and a willing prostitute she may be guilty of aiding and abetting the commission of a number of offences. Nor is it an offence for a woman to be a lesbian. Lesbian acts of intimacy in private are not punishable unless there is an element of force. Applying the classic definition of prostitution "as any commercial sexual connection between man and woman" (per Darling J., in de Munck [1918] 1 K.B. 635 at 637), then the majority of the provisions listed earlier protect neither women who are procured for commercial lesbian activity, nor homosexual prostitutes. We have already noted two further offences which may concern the public behaviour of those engaged in prostitution. A man or woman who indecently exposes any part of his or her body in any public place, or in view of the public, is liable to imprisonment for 6 months and a fine of \$1,000. So is any man or woman who solicits, or loiters for the purpose of soliciting for any immoral purpose. These provisions could apply as much to lesbian or homosexual behaviour as to the more traditional form of prostitution.

### ***Women and children under 21***

6.62 By statute it is an offence to abduct, against the will of the parents or guardian, a child of either sex (under 14), a young boy or girl (between 14 and 16) and any unmarried female infant (under 21). The penalty in each case is two years' imprisonment. Under another statute any person who steals a child of either sex under the age of 14 (or with intent to steal any article on the child) is liable to imprisonment for 7 years. In a third statute it is made an offence for either a man or woman to abduct an unmarried girl under 16 against her parent's will; the penalty is 5 years' imprisonment. Abduction of an unmarried girl under 18 with the intention that she shall have sexual intercourse with a man or men is punishable by 7 years' imprisonment.

6.63 An offence of general application prohibits any man from having unlawful sexual intercourse with a girl under 16 (penalty 5 years) or with a girl under 13 (life imprisonment). Any man or woman who commits or incites acts of gross indecency with or towards a child of either sex under the age of 14 is liable to imprisonment for 5 years. It goes without saying that consent is irrelevant.

6.64 Any man or woman who permits a girl under 13 to resort to premises for sexual intercourse or for the purpose of prostitution is liable to life imprisonment. If she is under 16, the penalty is 14 years' imprisonment.

Any man or woman in a position of responsibility who causes or encourages the prostitution of, sexual intercourse with, or indecent assault upon a girl under 16 is liable to 5 years' imprisonment. Any man or woman who procures a girl under 21 to have sexual intercourse with another man in Hong Kong or elsewhere is also punishable by 5 years' imprisonment.

### ***Mental defectives***

6.65 This term applies to a man or woman suffering from a state of arrested or incomplete development of mind, including subnormality, which is such that he or she is incapable of living an independent life or of guarding him or herself against serious exploitation.

6.66 A man or woman who takes a mentally defective woman out of the possession of her guardian with the intention that she shall have sexual intercourse with a man is liable to imprisonment for 7 years. Unlawful sexual intercourse with, or indecent assault upon, a mentally defective woman is punishable by 5 years' imprisonment unless the man did not know or had no reason to suspect her to be a defective.

6.67 Any person who procures a mentally defective woman to have sexual intercourse whether in Hong Kong or elsewhere with another person is liable to imprisonment for 5 years. Any person who causes or encourages the prostitution of a mentally defective woman, whether in Hong Kong or elsewhere, or who permits her to resort to premises for the purpose of sexual intercourse or prostitution is liable to imprisonment for 10 years.

6.68 Section 65(2) of the Mental Health Ordinance (Cap. 136) provides that any person who has, or attempts to have, unlawful sexual intercourse with any female mentally disordered person under care or treatment in a mental hospital while in hospital or on leave from it is liable to imprisonment for 3 years and a fine of \$5,000. Consent is no defence if the accused knew or had reason to know that the person was a mentally disordered person under care or treatment.

6.69 The law in both England and Scotland has been amended in the manner provided by Section 1(4) of the Sexual Offences Act 1967, which altered Section 128 of the Mental Health Act 1959 by providing that the latter section should have effect "as if any reference therein to having unlawful sexual intercourse with a (mentally defective) woman included a reference to committing buggery or an act of gross indecency with another (mentally defective) man". Section 1(3) precluded the giving of consent for the purposes of the Sexual Offences Act 1967 by any man suffering from severe subnormality but added the rider that "a person shall not be convicted, on account of the incapacity of such a man to consent, .... if he proves that he did not know and had no reason to suspect that man to be suffering from severe subnormality".

6.70 Finally, Section 65(2) of the Mental Health Ordinance provides that any person employed in a mental hospital who ill-treats any patient is liable to imprisonment for 2 years and a fine of \$1,000. Although not apparent on the face of the wording, we believe that this section is capable of including sexual abuse of any variety as a form of "ill-treatment"; it would be unaffected by any change in Hong Kong laws relating to sexuality.

### ***Venereal disease***

6.71 We consider this problem because of the cases reported to us where homosexual contact has caused venereal disease. The Venereal Diseases Ordinance (Cap. 275) provides that if any medical practitioner finds that a patient is suffering from venereal or associated disease, and if he receives information as to the person suspected to have caused it, he must report the latter person's name to the Deputy Director of the Medical and Health Department. The Deputy Director may serve a notice requiring a medical examination on such a person. Failure to comply with the notice is an offence punishable by a fine of \$1,000 and imprisonment for 6 months.

6.72 This Ordinance applies to persons of any age, and of either sex. It applies to any sexual relationship. It does not make it an offence either to contract or to pass-on venereal disease. It does not require the doctor to disclose the identity of his own patient. The operation of this law would be unaffected by any change in laws relating to homosexuality. We note that there has been an unsuccessful attempt to claim that it is an assault for a carrier of venereal disease knowingly to engage in sexual relations without warning the other party : R v. Clarence (1888) 22 Q.B.D. 23.

### ***School children***

6.73 Schools are not public places, and so the provisions regulating conduct in such-places do not apply. There are no offences which relate specifically to sexual abuse by teachers or pupils. However, any attempt by a teacher through his instruction to influence pupils in regard to sexual conduct could be stopped by the school manager or, in the last resort, by the Director. Next, it would undoubtedly be professional misconduct and hence grounds for cancellation of his licence if a teacher conducted himself with undue familiarity in respect of any pupil, male or female. Finally, all offences of indecency, whether towards males or females, currently carry terms of imprisonment. Accordingly any teacher convicted of such an offence apart from the legal penalty would be liable to have his licence cancelled. Even if the law were changed so that certain sexual conduct was no longer punishable, the registration of a teacher could be refused on the ground that he is not a fit and proper person. That is a matter of policy to be decided by the Director, and in the last resort by the Governor in Council.

6.74 Although there are no offences specifically penalising indecent conduct by a teacher towards pupils, it is customary in courts to treat as a

circumstance of aggravation of penalty the fact that any person, such as a teacher, is in a position of special trust and responsibility towards a young complainant. We are aware of only six prosecutions in recent years in Hong Kong for offences in these circumstances, of which two involved homosexual conduct.

### ***Prisoners***

6.75 Inmates of prisons and prison officials alike are of course subject to the general law. More detailed regulation of their conduct is provided by the Prison Rules made under Section 25 of the Prisons Ordinance (Cap. 234). There is no provision in the current administration of the affairs of male and female prisoners for visits by husbands, wives or friends with a view to sexual connection taking place. Equally, the Rules require that male and female prisoners be accommodated and treated separately.

6.76 Offences by prisoners against prison discipline are visited by penalties such as solitary confinement for as long as a month and forfeiture of remission, of privileges or of earnings. Without distinction between the sexes, every prisoner commits an offence against prison discipline if (amongst a number of things) he is indecent in language, act or gesture, commits an assault, attempts to do these things, or is convicted of a criminal offence while a prisoner. It is apparent that all lesbian or homosexual connection would be prohibited by these rules, consensual as well as forced. Any change of laws in these matters would be reflected only in the last category of prison offences, namely by reducing the number of criminal offences for which a prisoner could be convicted.

6.77 A Prison Officer commits a disciplinary offence if (amongst a number of things) he allows undue familiarity between a prisoner and himself, unnecessarily uses force in dealing with a prisoner, or while on duty acts in a disorderly manner or in any manner prejudicial to discipline. It is apparent that any forced or consensual sexual conduct by an officer with a prisoner could be penalised under these rules. The penalties range from reprimands to dismissal. Again these provisions would remain unaffected by any change in general laws, unless there was any consequent change in administrative policy. We can see a number of good reasons why there may be considered to be no basis for changing that policy in any event.

### ***The Armed Services***

6.78 Disciplined Services such as the Navy and the Army are constitutionally the responsibility of the Government in the United Kingdom. Domestic law in Hong Kong therefore has little relevance in so far as purely service matters are concerned. In general terms, all three services make homosexual conduct an offence under their disciplinary codes. We have set

out in Annexure 31 a brief summary of the legislative provisions governing these and related matters.

## **The "abominable offences"**

### ***Background***

6.79 Hong Kong in 1865 adopted the English Offences Against the Persons Act 1861, without change of any provisions. At that time the sections on abominable offences prohibited only buggery (sodomy and bestiality) and attempts to commit the so called "abominable crimes". The maximum penalty was penal servitude for life. For twenty years therefore the laws of England and Hong Kong did not prohibit gross indecency between males.

6.80 In 1885 a private member's bill was introduced into the House of Commons to regulate female prostitution. An amendment proposed for the first time to penalise gross indecency between males, and for the first time there appeared the famous words "in public or private". It was supposedly based upon French law, although in fact this never penalised such conduct. The debates were heated. In the result the bill which passed did enact the offence of gross indecency of male with male, which became Section 11 of the English Criminal Law Amendment Act 1885.

6.81 In 1901, the Hong Kong Ordinance was amended in identical terms apparently in response to three prosecutions for unnatural offences by members of the Armed Forces, the first of which was in 1880. In that year, Peter Hardy, a young soldier of the Royal Inniskillings Regiment, was "convicted of an attempt to commit an unmentionable offence and sentenced first to three years' imprisonment, which was afterwards increased by Sir John Smale, the presiding Judge, to five years". In July 1897 Keysir Singh was charged with attempted buggery with a Chinese boy and sentenced to five years imprisonment with hard labour. A third prosecution occurred in 1900.

### ***The present law***

6.82 The main offences covering homosexual conduct are contained in the following provisions of the Offences Against the Person Ordinance (Cap. 212) in a chapter still entitled "Abominable Offences" :-

#### **Buggery**

"Any person who is convicted of the abominable crime of buggery, committed with mankind or with any animal, shall be guilty of felony, and shall be liable to imprisonment for life." (Section 49)

#### **Attempted Buggery and Indecent Assault**

"Any person who attempts to commit the said abominable crime or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person shall be guilty of a misdemeanor, and shall be liable to

imprisonment for 10 years." (Section 50(a)).

**Consent**

"It shall be no defence to a charge or indictment for an indecent assault upon a male person under the age of 13 to prove that he consented to the act of indecency." (Section 52)

**Gross Indecency**

"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 a misdemeanor triable summarily, and shall be liable to imprisonment for 2 years." (Section 51)

***Buggery***

6.83 This offence consists of anal intercourse ("sodomy") by a man with another man or with a woman : R v. Wiseman (1718) Fortes Rep. 91. It also includes intercourse in any manner between a man or woman and an animal ("bestiality"). Proof of any degree of penetration without emission is sufficient to establish this offence : R v. Recksphear (1832) 1 Mood. C.C. 342; Offences Against the Person Ordinance Cap. 212, Section 53. Consent is no defence. Both the active and passive parties are guilty as principal offenders : 1 Hale P.C. 670; Halsbury 4th Edn. para. 1031; Smith & Hogan, 4th Edn. p. 439. Consent is however a factor mitigating sentence. As with other crimes where a public element forms no part of its definition, it matters not whether the act is committed in private or in public, although a public act of buggery would no doubt be an aggravating factor relevant to sentence.

***Attempted buggery and inchoate offences***

6.84 While Section 50 of the Offences Against the Person Ordinance (Cap. 212) expressly makes attempted buggery a crime and prescribes a maximum sentence for such attempt, at common law and as enacted in Section 81 of the Interpretation and General Clauses Ordinance (Cap. 1), liability for inchoate forms of offences (attempts, incitement and conspiracy) is in any event automatic. Thus a conspiracy to commit buggery or inciting another to commit buggery are also offences. Sentences are at large but may not exceed the maximum for the full offence.

6.85 Without going into legal refinements, the inchoate offences may be defined as follows :-

A person commits the offence of incitement when he by words or conduct seeks to influence or persuade another to commit some offence.

A person commits the offence of conspiracy when he agrees with one or more other persons to commit a crime.

An attempt is committed when a person performs an act which is a step proximate to commission of the full offence, intending to commit such offence.

It matters not in each of these cases that the full offence is never committed (for example because the person incited refuses the suggestion) for liability for the inchoate offence is incurred by the act of incitement or attempt or by the conspiratorial agreement itself.

6.86            These inchoate offences are relevant for present purposes since, unless preserved by statute, decriminalisation of the full offences would mean decriminalisation of the inchoate offences. Thus if the law were to be changed so that buggery involving consenting adult males in private is no longer illegal, it would not then be an incitement for A (an adult male) to suggest to B (another adult male) that they consensually commit buggery in a private place, even though such suggestion be made in public. Neither would it be a conspiracy for A and B to agree to retire to a private place for such purpose, nor for them then to attempt but fail to achieve buggery.

### ***Liability of secondary parties***

6.87            As with attempts, a person who aids, abets, counsels or procures the commission by another of any offence is automatically guilty of a like offence as a secondary party. This was the common law position which has been made statutory by Section 89 of the Criminal Procedure Ordinance (Cap. 221).

6.88            Again without delving into legal refinements :-

"Aiding and abetting" (which are in practice charged together and are sometimes considered synonymous terms) occurs where a person, present at the scene, does an act which assists or encourages another to commit an offence, intending to render such assistance or encouragement.

"Counselling and procuring" (again dealt with together in practice) occurs where similar acts of assistance or encouragement are intentionally rendered prior to commission of the full offence. The counsellor or procurer need not be present at the scene.

A distinction between these forms of secondary liability and for instance liability for incitement or conspiracy is that unless the principal offender actually commits the main offence no secondary liability arises. Some controversy exists as to this proposition, but it is in general probably accepted as correct : see Smith & Hogan, Criminal Law 4th Edn pp. 132 - 6; Glanville Williams, Textbook of Criminal Law, pp. 314 - 6.

6.89            On this basis, the law on secondary liability for buggery (for example, where A persuades B to commit buggery with C in private, B and C both being adults and consenting to the act), presents a more immediate and

practical concern. If buggery is made subject to limited decriminalisation, then no liability will attach to the secondary party unless statutory provision is made for continuing liability on his part. But if it be thought right to decriminalise the private act, what should be done about those who counsel and procure, or aid and abet? Should statutory provision be made for continuing liability upon them?

6.90 In England, this secondary liability was expressly preserved, notwithstanding limited decriminalisation, by Section 4 of the Sexual Offences Act 1967 which provides :-

*"(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".*

### **Gross indecency**

6.91 There is no comprehensive statutory or judicial definition of this offence. The Wolfenden Committee reported that : "From the police reports we have seen and the other evidence we have received it appears that the offence usually takes one of 3 forms; either there is mutual masturbation; or there is some form of intercrural contact; or oral-genital contact (with or without emission) takes place. Occasionally the offence may take on a more recondite form; techniques in heterosexual relations vary considerably, and the same is true of homosexual relations".

6.92 Limited judicial guidance has developed. This indicates that there is no necessity to show physical contact between the two men if they have behaved in a grossly indecent manner : R v. Hung [1950] 2 All E.R. 291. It has also been established that some form of action in concert, with the consent of both parties, must be shown in order to constitute the offence : R v. Preece [1977] Q.B. 370. It is however a question of degree when "indecency" becomes "gross indecency", a distinction never easy to draw in practice. Thus it has been suggested that if "two male persons kissed each other under circumstances which showed that the act was immoral and unnatural", this would be indecent but not grossly indecent : Smith & Hogan, 4th Ed. p. 442. While buggery would appear usually sufficient to constitute the offence of gross indecency, buggery involves the further element of penetration, not required for gross indecency : R v. Barron [1914] 2 K.B. 570.

6.93 As with buggery, considerations arise as to the desirability or otherwise of preserving inchoate and secondary liability. At present, Section 51 of the Ordinance expressly deals with procuring or attempting to procure acts of gross indecency. In England, Section 4(3) of the Sexual Offences Act, 1967 provides that -

*"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."*

However, it remains an offence for a man to procure another man to commit with a third man an act of gross indecency though, under the 1967 Act, the conduct of the second and third men is not an offence : Smith & Hogan supra p. 442.

### **Indecent assault**

6.94 An indecent assault is any threatened or actual physical conduct of an indecent nature which puts the victim in fear. Any indecent behaviour towards a non-consensual man is penalised, whether the aggressor be female or male. This means that non-consensual buggery or gross indecency upon a male will also be an indecent assault. If the victim is under 14 years of age, then the same conduct, dependent upon the particular facts, may also amount to the offence of gross indecency with a child. Consent to this offence cannot be given by a child under 14, and consent to an indecent assault cannot be given by a male child under 13. It matters not whether the conduct takes place in public or in private, except as a factor in aggravation of sentence.

### **Summary**

6.95 The main offences which impinge upon homosexual conduct in private between consenting male adults consist of buggery and gross indecency. Statutory provision is made for some, but not all, inchoate and secondary forms of these offences. Where no statutory regulation of such inchoate and secondary liability exists in the Offences Against the Person Ordinance, the common law and the Criminal Procedure Ordinance provide for such liabilities.

6.96 Since inchoate and secondary liability is generally dependent on the existence of liability for the main offence, any change in the law would necessitate consideration of whether these forms of ancillary liability should be preserved by statute.

6.97 Liability for forceful sexual assaults of a homosexual nature is independent of the offences of buggery and gross indecency, and would therefore be unaffected by any changes in laws relating to that conduct. It is for consideration whether 13 years is the appropriate age below which a male child cannot give consent to indecent conduct falling short of buggery or gross indecency.

## **Sexual offences - proof and evidence**

6.98 No child under the age of 7 years can in law commit an offence : Juvenile Offenders Ordinance (Cap. 226). This means that no child of tender years can be found guilty of any offence we have mentioned. This does not prevent the use of young children for illegal purposes by those who are knowing or unscrupulous enough. If, for example, a man uses a child to solicit customers, whether for a male or female prostitute, then the instigator is liable for the full offence, the child being regarded as an innocent agent.

6.99 From the ages of 7 to 14 although technically a child may commit offences, it is rare for these matters to find their way to the courts. We mention 14 as an arbitrary rule of thumb. In cases of sexual interference by a boy with women or girls, it is unlikely to be treated as rape unless the boy has or is presumed to have the sexual capacity. An attempted "rape" may therefore have to be charged as an indecent assault. It would appear that if the conduct fell short of being "grossly indecent", then an attempted "rape" by a young boy of a male companion would similarly constitute no more than an indecent assault.

6.100 Difficulties arise with the evidence of children who claim to have been sexually molested. A child may only give sworn evidence on oath where the Court is satisfied that the child understands fully the significance of the oath. This varies from child to child. Again as a practical rule of thumb, it would be rare to see any child below 10 giving sworn evidence. There is a strict rule of law that in cases of a sexual nature no person may be convicted on the unsworn testimony of a child unless it is corroborated in a material particular by sworn evidence. If for example a child in a park alleges that a man came up and exposed himself, conviction would only be possible if the man was caught and confessed, or if the incident was witnessed by an adult or older child. The situation is obviously fraught with difficulties : it is hard to sustain a genuine complaint; it is easy for a complaint to be fabricated.

6.101 Proof of sexual offences against women of unsound mind, and ancillary offences connected with their prostitution, require sworn evidence to corroborate the complaint. If she satisfies the requirement of unsoundness of mind, the woman will not usually be able to give sworn evidence.

6.102 Where the victim of a sexual attack is able to give sworn testimony, the rule requiring corroboration becomes discretionary, that is the jury or court is warned that it may convict on the evidence of the complainant alone, but that it is unwise to do so in the absence of corroboration. Evidence of recent complaint by the victim is admitted not to prove the truth of the allegation, but to indicate consistency of conduct. It is therefore not in law corroboration. It is frequently highly relevant to the credibility of the complainant on issues such as lack of consent.

## Prosecution of offences

6.103 The Attorney General is (apart from private prosecutions) solely responsible for the decision whether to prosecute or not : that is his constitutional responsibility. The decision in the vast majority of cases is however taken by lawyers acting under his delegated authority and under guidelines approved by him. In the case of certain offences in Hong Kong by statute no proceedings can commence without his authorisation, though in the majority of cases this authority is exercised by the Director of Public Prosecutions on his behalf.

6.104 During his evidence at the MacLennan Commission, the Acting Director of Public Prosecutions (now Mr Justice MacDougall) said that there was no special policy for deciding whether or not to prosecute offences of a homosexual nature. Each case was considered on its merits. If the prospects of obtaining a conviction were greater than of an acquittal on the evidence available, then a prosecution would be authorised. He rejected suggestions made by a lawyer who had been unsuccessfully prosecuted that differing standards were applied in relation to decisions to prosecute homosexual as distinct from other offences.

6.105 We mention now some factors which may be relevant to whether police can or should investigate such offences, and to the number of charges brought and convictions obtained in relation to the number of offences actually committed.

6.106 The police usually investigate in the area of consensual adult homosexuality only upon complaint; it follows that in the vast majority of such cases, as there is no "victim" and therefore no complaint, there will be no investigation. Even if there is, evidence may not be readily forthcoming. In the normal course under the law as it stands, both parties to a consensual act of homosexuality are equally guilty of the offence, whether it be buggery or gross indecency. Both may therefore fear prosecution and be reluctant to make statements or give evidence.

6.107 Although there is no general rule of law that in sexual cases a person may not be convicted on the evidence of the female complainant alone, juries are required to be warned that they should take great care before convicting on the evidence of a complainant which is not corroborated in some material way by independent evidence. It is unclear whether this rule is applicable to all homosexual offences : R v. Burgess (1956) 40 Cr. App. R. 144. We cannot see why the considerations which apply to heterosexual offences should not apply with equal force to homosexual offences. Be that as it may, if the complainant in a homosexual case is adult and willing then, as an accomplice, an equivalent rule is applicable, namely that a warning must be given that it is unwise to convict solely on his evidence without independent corroboration. In the absence of a confession by the accused, such evidence is rarely available. If, in addition, the character of the complainant is in doubt because, for example, he is a male prostitute, possibly

with previous convictions for offences of dishonesty, then the weight attached to his evidence will not be great.

6.108 As a community we seem to have arrived at this position: in many cases we have a crime without an aggrieved party, that is to say without a victim in the classic sense. The essential allegation may well be true : the man is a homosexual. Yet it may be very difficult to establish beyond reasonable doubt all the ingredients of a specific charge of indecency. We are tempted to join those laymen who conclude that this situation comes close to making a mockery of the law and of its processes. On the other hand we may conclude that this simply demonstrates the inappropriateness of making such conduct criminal without some further circumstance of aggravation, such as force, youth, blackmail, or exploitation.

## Chapter VII

### Comparative law - the East

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#### The East

7.1 We have studied the legal provisions in some ten countries in the East to discover whether or not their laws penalise consensual homosexual acts by adults in private.

#### Australia

##### *The Commonwealth*

7.2 As the Australian Constitution does not reserve the power to legislate in this area of criminal law to the Australian Parliament, there is no law on homosexual acts which applies throughout Australia as a Federal Law. Accordingly, laws on this subject vary from State to State.

##### *The States*

7.3 Western Australia, Tasmania and Queensland all have provisions which parallel the pre-1967 English legislation. South Australia, Victoria, the Australian Capital Territory and the Northern Territory of Australia have amended their laws relating to homosexual acts. The approach has varied from jurisdiction to jurisdiction; however the effect has been to decriminalise homosexual acts between consenting male adults.

7.4 In 1981, the New South Wales Parliament passed the Crimes (Sexual Assault) Amendment Act that abolished common law "rape" and replaced it with graduated categories of "sexual assault". The language used to express these new offences is "degenderised". The Act defines "sexual intercourse" to include anal and oral intercourse as well as insertion of other objects by another person into the anus or vagina. However, the Act retained the offences of buggery, attempted buggery and indecent assault on a male person. This has created an anomalous situation. A male homosexual is liable to a maximum of 14 years' imprisonment for buggery with consent and to 7 years' imprisonment for buggery which constitutes sexual intercourse without consent. (Paragraph 5.44 of the report "Discrimination and Homosexuality", New South Wales Anti-Discrimination Board 1982). Attempts by way of private members' bills to decriminalise homosexual acts between consenting male adults have been unsuccessful.

7.5 In addition to decriminalising consensual homosexual conduct between adults, the States of South Australia and Victoria have also taken the step of providing sexual neutrality in their criminal law. The South Australian legislation was amended in 1975 to include in the definition of "rape" penetratio per anum of a male or female person without consent. The definition of "carnal knowledge" was similarly amended.

7.6 In Victoria, the Crimes (Sexual Offences) Act 1980 has the effect of treating men and women as far as possible in the same manner. The Victorian Parliament decided it to be undesirable that the laws relating to sexual behaviour should invade the privacy of people more than is necessary to afford them protection from sexual exploitation, particularly exploitation by persons in positions of care, supervision and authority. The Parliament stated in the preamble to this legislation that it was not its intention to condone immorality.

7.7 The Act reviews all sexual offences. It introduces a concept of "sexual penetration" which includes the introduction of the penis into the vagina, mouth or anus of another person, or the introduction of any object (not being a part of the body) into the vagina or anus by another person. While these actions are known to the criminal law, they previously have not, collectively, been described as "sexual penetration". This concept enables the offences to be rationalised, thus removing the misconception that sexual offences are crimes of passion and placing them correctly, it has been suggested, within the category of "crimes of violence", a classification adopted in the recent survey "Crime and its Victims in Hong Kong" (1981, Department of Census and Statistics).

7.8 The Victorian Act redefines rape to include any form of sexual penetration in circumstances where the introduction of the penis of a person into the vagina of another person would be rape. This means that any person of either sex can rape any other person of either sex, that is, make a violent sexual assault upon that other person. This approach has been applied throughout the range of sexual offences previously restricted to "male offending against female" situations, such as "carnal knowledge of a girl under the age of 16 years". This now becomes "sexual penetration of a person under 16 years" so that situations of male to male, female to female and female to male are all included within the same offence of sexual penetration. This contrasts with traditional offences such as indecent assault or gross indecency.

7.9 Victoria's legislation has been based, in large part, upon a report by The Victorian Premier's Rape Study Committee published in 1980. We have found it very thought-provoking; we have attached at Annexure 31 the provisions of the Victorian legislation for comparative purposes.

## **India**

Section 377 of the Indian Penal Code states :-

*"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

*Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".*

7.11 It has been held that section 377 of the Indian Penal Code prohibits not only intercourse per anum but also per os. Gour's "Penal Law of India" refers to the case of Khonu (1925) Sind. 286 as authority for this view (8th edition, 1966, page 2566) and quotes a passage from that judgment :-

*"Is the act here committed one of carnal intercourse? If so, it is clearly against the order of nature, because the natural object of carnal intercourse is that there should be the possibility of conception of human beings, which in the case of coitus per os is impossible".*

The section has been interpreted widely enough to enable a conviction to follow where the accused was proved to have had carnal intercourse by placing his penis into the nostril of a bullock (Khandu v. Emperor, 1934 Lah. 261, referred to at page 2568 of Gour).

## Japan

7.12 We have been referred to the Criminal Code of Japan, which was amended in 1954 (translation by Thomas L. Blakemore), and which provides as follows :-

- (1) Article 174 (public indecency) : "A person who publicly commits an indecent act shall be punished with imprisonment at forced labour for not more than 6 months, or a fine of not more than 500 Yen, or with detention or a minor fine".
- (2) Article 176 (indecency through compulsion) : "A person who, through violence or intimidation, commits an indecent act with a male or female person of not less than 13 years of age shall be punished with imprisonment at forced labour for not less than 6 months nor more than 7 years. The same applies to a person who commits an indecent act with a male or female person under 13 years of age".
- (3) Article 178 (constructive compulsory indecency and rape) : "A person who commits an indecent act or has sexual intercourse with another by taking advantage of loss of consciousness or inability to resist, or by causing a loss of consciousness or an

inability to resist, shall be punished in the same way as in the preceding 2 Articles".

7.13 It is noteworthy that under this Code, the age limit (where force or intimidation are not involved) is 13 years of age. Where acts are committed with persons over 13, either conduct in public or the absence of consent appear to be necessary.

7.14 It thus appears that in Japan, homosexual conduct in private between consenting male adults (adulthood defined to be 13 years of age) is not a criminal offence.

## Malaysia

7.15 Section 377 of the Malaysian Penal Code (F.M.S. Cap. 45) provides that homosexual conduct, whether or not in private, is penalised as follows :

*"Unnatural Offences 377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 20 years and shall also be liable to fine or whipping.*

*Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".*

The Code, by Section 377A also provides :-

*"Outrages on decency 377A. Any male person who, in public or private, commits, or abets 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 punished with imprisonment for a term which may extend to two years".*

## Pakistan

7.17 Section 377 of the Penal Code (1966 Edition) provides as follows :-

*"Unnatural Offences : whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.*

*Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".*

A conviction can be based on the uncorroborated testimony of a minor victim, if it is not otherwise doubtful. Thus, in Manzoor Hussain v. State 1974 P.Cr.L.J. Note 25 a conviction was upheld where the prosecution case consisted of the statement of the 13 year old victim. It appears that this section of the Penal Code has been amended since 1966, at least in respect of sentence, for in Muhammad Hussain v. State 1972 P. Cr. L.J. 682 there is reference to a sentence of whipping. We have, however, been unable to ascertain the present wording of Section 377.

## **People's Republic of China**

7.18 A perusal of the 1980 Criminal Law Code reveals no express prohibition of any homosexual activity, whether in public or in private. It should be noted, however, that the provisions on sexual offences in this Code are somewhat sparse and appear to be restricted to rape, unlawful sexual intercourse with a girl under 14 and forcing a female into prostitution. It has not been possible to obtain information concerning practical official attitudes towards homosexual conduct under the present Code.

7.19 We have also referred to the Chinese Criminal Code of 1930 promulgated by the Republic of China prior to the foundation of the People's Republic (translations by Chao-Yuen C. Chang and by the Legal Department of the Shanghai Municipal Council). Relevant provisions therein are as follows:-

- (1) Article 224 : "Whoever commits any indecent act against a male or female person by means of violence, threat, drug, hypnotism or by any other means that renders resistance impossible shall be punished with penal servitude for a period not more than 7 years. Whoever commits any indecent act against any male or female person under 14 years of age shall be liable to the same punishment".
- (2) Article 227 : "Whoever commits an indecent act against a male or female person above 14 but below 16 years of age shall be punished with penal servitude for a period not more than 5 years".
- (3) Article 228 : "Whoever has carnal knowledge of or commits an indecent act against, any person under his supervision through relationship, guardianship, tutorship, help, or in the course of his public function or private occupation, by making use of such influence upon the person, shall be punished with penal servitude for a period not more than 5 years".

- (4) Article 231 : "Whoever, for lucrative purpose, makes any person to commit any indecent act shall be liable to (penal servitude for a period not more than 3 years and may be accumulatively punished with a fine not more than 500 Yuan). Whoever makes (such offence) a profession, shall be punished with penal servitude for a period not more than 5 years and may be accumulatively punished with a fine not more than 1,000 Yuan".
- (5) Article 233 : "Whoever induces any male or female person under 16 years of age to commit any indecent act against, or to have illicit intercourse with, another person, shall be punished with penal servitude for a period not more than 5 years".
- (6) Article 234 : "Whoever openly commits an indecent act, shall be punished with detention or a fine not more than 100 Yuan".

7.20 As it appears from these provisions, homosexual conduct between consenting adult males in private was not an offence. All the offences listed appear to include one or more elements negating consent or involving young persons (the operative age being 16, with aggravation where the age is under 14), or exploitation, or a public quality to the offending conduct.

7.21 We have also had reference to "Notes and Commentaries on Chinese Criminal Law" by Ernest Alabaster, published in 1899, in order to learn about pre-Republican Chinese Law. He reports that fornication was an offence punishable with 80 blows (page 367) and that an unnatural offence upon an adult or a boy over 12 where there is consent, is treated as a case of fornication "somewhat aggravated" punishable by both parties receiving 100 blows and 1 month's cangue (a large wooden neck collar that prevented the hands being able to reach the mouth, so that the wearer was dependent on the charity of passers-by for food). As to unnatural offences, Alabaster states :-

*"Such are treated in the same way as ordinary immorality, no distinction being made between male or female. An unnatural offence is variously considered, according to the age of the patient, and whether or not consent was given. If the patient be an adult, or a boy over the age of 12, and consents, the case is treated as one of fornication .... If the adult or boy over age resists, the offence is considered as rape - and penalty in accordance (strangulation for ordinary rape, strangulation certain if accompanied with force; and decapitation certain if causing death) ..... If the boy be under 12 years of age, the offence is considered as rape with the penalty therefor - irrespective of consent or resistance, unless the boy has previously gone astray. It doubtlessly appears strange that abominable offences should, on the whole, be treated with but ordinary severity : but such offences are regarded as, in fact, less hurtful to the community than ordinary immorality".*

## The Philippines

7.22 Inquiries made by the Sub-committee of a leading firm of lawyers in Manila elicited the following response : "We have done legal research and we confirm ..... that in the Philippines homosexual relationship between consenting adults in private is not a criminal offence. If minors are involved, then it would be an offence as corruption of minors under the Philippine Child and Youth Welfare Code. However, note that if the homosexual relationship is carried out in public, it could fall under grave scandal penalised by Article 200 of the Revised Penal Code of the Philippines. But there is no offence known as homosexual activity or relationship in Philippine law".

## Singapore

7.23 The Singapore Penal Code (Cap. 103) Section 377 provides as follows :-

*"Unnatural Offences. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with imprisonment for life, or with imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

*Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".*

7.24 The Code, by Section 377A also provides :-

*"Outrages on decency. Any male person who, in public or private, commits, or abets 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 punished with imprisonment for a term which may extend to two years".*

7.25 It therefore appears that Singapore retains the offences of buggery and gross indecency for homosexual conduct between consenting male adults in private.

## South Korea

7.26 The Korean Criminal Code (translation by Gerhard O.W. Mueller) provides as follows :-

- (1) Article 298 (indecent act by compulsion) : "A person who, by means of violence or intimidation, commits an indecent act on another shall be punished by penal servitude for not more than 10 years or fined not more than 25,000 Hwan".
- (2) Article 299 (constructive rape) : "A person who, by taking advantage of the victim's condition of unconsciousness or inability to resist ..... commits an indecent act on another shall be punished in accordance with the preceding (Article)".
- (3) Article 301 (death or injury resulting from rape) : "A person who commits any of the crimes of Articles 297 through the preceding Article thereby causing death or injury of another, shall be punished by penal servitude for life or for not less than 5 years".
- (4) Article 302 (sexual intercourse with a minor) : "A person who, by fraudulent means or by threat of force, perpetrates an act of sexual intercourse or commits an indecent act on a minor or feeble-minded person, shall be punished by penal servitude for not more than 5 years".
- (5) Article 245 (public indecency) : "A person who publicly commits an indecent act shall be punished by penal servitude for not more than 1 year, a fine of not more than 10,000 Hwan, detention or a minor fine".

7.27 It therefore appears to us that homosexual activity between consenting male adults in private is not made an offence in South Korea.

## Taiwan

7.28 The present Taiwan Code follows very closely the pre-1949 Republic of China Code which has been outlined above. The article numbers and the contents of each such article remain in substance identical. There is only an addition (to Article 225) in the following terms : "A person who takes advantage of the insanity of a male or female person or of a similar condition which makes resistance impossible and who commits an indecent act against such person shall be punished with imprisonment for not more than 5 years".

7.29 Accordingly, we believe that homosexual conduct between consenting adult males in private is not an offence in Taiwan.

## Summary

7.30 Our inquiries reveal that more countries in the region tolerate consensual homosexual conduct by adults in private than penalise it, and that characteristically their legal systems only intervene where the homosexual

activity involves some additional element of force, abuse of the young, oppression, fraud, absence of consent, exploitation or occurrence in public.

7.31 Our researches demonstrate that neither the People's Republic of China nor the Chinese Republic which immediately preceded it expressly penalised consensual homosexual conduct in private by adults. Nor does the law do so in Taiwan, the Philippines, Japan, South Korea or in some Australian States. Such conduct appears to have been criminal in Imperial China, however, as it so remains in Malaysia, Singapore, Pakistan and in the other Australian States.

7.32 We endeavoured to obtain authoritative material relating to the legal and moral attitudes of the countries studied and were grateful for the help we received from Australia. Of particular interest would have been material relating to other countries whose cultural composition reflected our own. Upon inquiry, for example, we learned from both the Commissioner of Law Revision in Malaysia and the Deputy Public Prosecutor in Singapore that no surveys of a legal or sociological nature on the subject of homosexuality have been undertaken in their respective countries. On further study, a possible reason for this paucity of material became evident. Statistical information obtained from the Singaporean and Malaysian authorities shows, in brief, that the yearly average of reported "unnatural" and "gross indecency" cases in each country is less than 12. It is, of course, impossible to predict whether or not in the future a desire for reform of the homosexuality laws will arise in those countries. For the moment it can fairly be said that the whole topic receives very little attention.

## Chapter VIII

### Comparative law - the West

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#### The West

8.1 In keeping with our mandate, we had intended originally to limit our researches to those countries with most direct relevance to the circumstances of Hong Kong. We were sceptical of those who urged us to see these matters in the context of "a global sexual revolution". The fact remains that the traditional English and common law base for sexual offences has been in a process of review and change in a number of countries. We have noted indeed that the operation of the English Sexual Offences Act 1967 is still under review, the law of Scotland has recently been amended to bring it into line with that of England, and Parliament in 1982 has been asked to consider, for the second time in 4 years, the extension of the same measures to Northern Ireland. The law in Northern Ireland was the subject recently of scrutiny by the European Court of Human Rights, which measured that law against the European Convention of Human Rights. Some of the states of Australia also have recently changed their laws on sexual behaviour in the ways explained in the previous chapter.

8.2 We have therefore been persuaded that while our attention should remain directed principally to the problems here and the answers for Hong Kong in our particular historical and geographical setting, we would be unwise to ignore relevant experience further field. There may be lessons to be learned from attempts to grapple with problems which now appear to us despite cultural differences to have more similarities than distinguishing characteristics.

8.3 Furthermore, whilst international comity may usually be one of the least pressing of considerations when considering change in matters of strong local significance, it may be of some relevance when assessing our proposals to know whether they are unique or have been adopted in other communities with a legal tradition common to ourselves.

#### Canada

8.4 The Canadian Criminal Code provides a uniform set of criminal laws for all of Canada since criminal law, under the Federal Constitution, is a matter for the Federal Government rather than the Provincial Legislatures. Section 155 of the Code broadly prohibits buggery by providing:

*"Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for 14 years."*

8.5            However buggery between married persons or between consenting adults who engage in homosexual behaviour in private is exempted from the proscription of the criminal law.

Section 158 provides that :

*"(1) Section 155 and 157 do not apply to any act committed in private between*

*(a) a husband and his wife, or*

*(b) any two persons, each of whom is twenty-one years of age,*

*both of whom consent to the commission of the act.*

*(2) For the purposes of subsection (1),*

*(a) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and*

*(b) any person shall be deemed not to consent to the commission of an act*

*(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or*

*(ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is feeble-minded, insane, or an idiot or an imbecile."*

8.6            Thus homosexual behaviour between consenting adults in private is not a criminal offence. The Law Reform Commission of Canada in 1978 proposed that the prohibition against buggery contained in Section 155 should be deleted altogether and replaced with a broad provision prohibiting any "sexual assault" (such as rape, forced sodomy, and so on). These recommendations have not yet been enacted.

## United Kingdom

### *England and Wales*

#### *Background*

8.7 Sodomists have long been penalised in England. In the thirteenth century, ecclesiastical law required that they be buried alive or burnt. In 1553, Parliament first passed a law which made sodomy a felony, in terms almost identical with Section 49 of the Hong Kong Ordinance. The penalty was death. It remained so until 1861, when the Offences Against the Person Act made the full offence punishable by life imprisonment, and the attempt by 10 years' imprisonment. In 1885 Parliament enacted the provision which dealt, for the first time, with acts of gross indecency between males (in terms identical with Section 51 of the Hong Kong Ordinance). For the first time there appeared the famous words : "in public or private". In 1957, a Committee chaired by Sir John Wolfenden by majority recommended that homosexual acts between consenting adults in private should no longer be unlawful. This recommendation was implemented ten years later when Parliament, probably in advance of public opinion, passed the Sexual Offences Act 1967.

#### *Sexual Offences Act 1967*

8.8 We have attached a copy of the Act at Annexure 33. The central provision is Section 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 21 years."*

8.9 Features of note in the legislative change are as follows :-

- (1) "In private" is defined to exclude a situation where more than two persons take part or are present, or any acts done "in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise." Privacy has otherwise been held to be a question of fact : (R. v. Reakes 1974 Crim. L.R. 615). We note that a similar restriction does not apply to heterosexuals.
- (2) As to "consent", the statute expressly defines this element to exclude any apparent consent given by a person "who is suffering from severe sub-normality within the meaning of Mental Health Act 1959", but at the same time provides that the other person involved is not guilty if he proves that he did not know of, and had no reason to suspect, the existence of such severe sub-normality.

- (3) Special provisions are enacted preserving criminal liability upon special classes of persons, for example hospital staff committing buggery or gross indecency with mental patients, or persons in the disciplined services and on board merchant ships.
- (4) Special provision is also made to impose criminal liability on any man or woman living on the earnings of prostitution of another man; similarly in respect of homosexual brothels.
- (5) The burden of proof is placed on the prosecution to establish the absence of consent, the lack of privacy, or that any of the parties is under 21.
- (6) When buggery is now committed (that is in those cases where criminal liability is retained notwithstanding the decriminalisation) the maximum punishments have been changed. Buggery with a man of or over the age of 16 is punishable by 10 years' imprisonment unless the other man consented. If there was consent, the maximum is 5 years' imprisonment in the case of a defendant who is over 21 if the other man is under that age. Where there is consent and both parties are over 21, or both are under 21, the maximum punishment is 2 years' imprisonment.

#### *Further proposals*

8.10 Concern remained amongst social reformers in England and led to the setting-up of an unofficial working party with general terms of reference which included the law relating to homosexuality. On this subject, the Sexual Law Reform Society Working Party Report of 1975 (summarised at 1975 Criminal Law Review pp. 330 - 331) concluded as follows :-

*" The 1967 Act partially implemented the recommendations of the Wolfenden Report (Cmnd. 247, 1957) by providing that homosexual relations between two consenting adults aged over 21 in private should no longer be a criminal offence, and making certain consequential changes to the 1956 Act. It was, however, essentially a negative reform : it merely removed this single limited category of male homosexual behaviour from the criminal area, leaving intact the basic assumption of the law that homosexuality should be treated as more anti-social and generally criminal than heterosexuality. It failed in consequence to provide for equal treatment under the law of homosexual and heterosexual relationships in the following respects :*

- (a) *The age of consent at which it becomes possible legally to commit a male homosexual act is 21. This contrasts with 16 for a girl who consents to heterosexual intercourse and with the legal age of majority (since 1969) of 18;*

- (b) *The definition of what constitutes a homosexual act "in private" is far more narrowly drawn than in the case of heterosexual acts (i.e. consenting behaviour becomes an offence if a third person is present, even on private premises);*
- (c) *Members of the armed forces and (in certain circumstances) British merchant seamen are excluded from the legalisation of homosexual acts committed by them in private, even when off duty or on leave;*
- (d) *The Act does not extend to Scotland or to Northern Ireland;*
- (e) *Some penalties under the Act are heavier than those for equivalent heterosexual offences;*
- (f) *It remains an offence for a third party to procure (i.e. facilitate, not necessarily for reward) a homosexual act which is legalised by the 1967 Act;*
- (g) *Heterosexual buggery - even between a consenting husband and wife - remains punishable with life imprisonment."*

The Report continued :-

*" ..... Considerable further reform of the law in this area is therefore required to bring it into accordance with the principles set out in Section 3 of this report. Logically the 1967 Act and those provisions of the 1956 Act which provide for the different treatment of homosexual as opposed to heterosexual behaviour should be repealed and replaced by provisions relating impartially to all sexual conduct, regardless of the sex of those participating. The notion that young men need a higher degree of legal protection from homosexual assaults than young women do from heterosexual assaults strikes us as absurd. We propose that Sections 12, 13 and 32 of the 1956 Act, Section 1 (save for subsections (4), (6) and (7)), and Sections 2, 3, 4, 5 and 6 of the 1967 Act should be repealed. The institution of impartial treatment along the lines we recommend also implies some statutory revision of existing common law provisions, in particular those relating to conspiracy, and to the law of evidence (so as to eliminate the anomaly which permits evidence of a homosexual predisposition to be placed before a jury as tending to prove the identity of a man accused of a homosexual offence, although he has no previous convictions of a similar kind.)"*

8.11 In 1978 the European Commission of Human Rights considered in the case of X v. United Kingdom 3 EHRR 63 whether or not the legislation (which made private and consensual homosexual behaviour by men between 18 and 21 a criminal offence) amounted to an interference with the right to respect for private life, contrary to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission held that "legislation which makes private and consensual homosexual behaviour concerning young men between 18 and 21 a criminal offence amounts to an interference with respect for the applicant's private life which falls to be justified on one of the grounds in paragraph 2 of Article 8".

8.12 The Commission took the view that the age limit established in the United Kingdom had to be examined on its own merits and the fact that the majority of European states had adopted 18 as the age of consent for homosexual conduct did not necessarily mean that the United Kingdom stipulation of 21 was not "necessary in a democratic society". Having examined the United Kingdom background, the Commission went on to say :-

*"151. The legal system in establishing the contractual age of majority at 18 has recognised that they had sufficient maturity to take important decisions and accept their consequences. Accordingly their private consensual homosexual relationships ought to be a matter of legitimate personal choice beyond the reach of the criminal law.*

*152. The Commission considers that the age limit of 21 may be regarded as high in the present era, especially when contrasted with the current position in other member States of the Council of Europe. The Commission is also aware that current trends throughout Europe in relation to private consensual homosexual behaviour, tend to emphasise tolerance and understanding as opposed to the use of criminal sanctions. Moreover as far as the legislative position in the United Kingdom is concerned, the Commission considers that it may be seen as inconsistent to have an age of majority applicable to voting and other legal transactions which is lower than the age of consent for homosexual behaviour.*

*153. However, the Commission cannot disregard the fact that this question was examined by the Wolfenden Committee and that their recommendations were seen fit to be adopted by Parliament and incorporated in the 1967 legislation. Nor can it ignore the fact that the issue has been before Parliament again in 1977 Private Member's Bill which was not accepted and that it is being currently re-examined by the Criminal Law Revision Committee and the Policy Advisory Committee on Sexual Offences.*

*154. In addition, the Commission takes the view that there is a realistic basis for the respondent Government's opinion that, given the controversial and sensitive nature of the question involved, young men in the 18 to 21 age bracket who are involved in homosexual relationships would be subject to substantial social pressures which could be harmful to their psychological development.*

*155. In this connection, the Commission does not consider that the respondent Government has gone beyond its obligation under the Convention in finding the right balance to be struck.*

*156. Accordingly, the Commission finds that the interference in the applicant's private life involved in fixing the age of consent at 21 is justified as being necessary in a democratic society for the protection of the rights of others."*

8.13 The question of age of consent for sexual intercourse was one of the matters considered by the Home Office Criminal Law Revision Committee in 1980 in their Working Paper on Sexual Offences. The Committee concluded :- "... the minimum age for homosexual relations should be no higher than 18 years .... we agree too that the present age of majority, 18, is a most important factor in determining what should be the minimum age for homosexual acts; and like the majority of the Policy Advisory Committee most of us believe that in order to protect those young men between 16 and 18 whose sexual orientation has not yet become firmly settled the minimum age should be 18" (paragraph 13).

8.14 The Committee also examined section 1(2)(a) of the Sexual Offences Act 1967. The majority were of the view "that the law on indecent acts in public should be the same whether those committing these acts are of the same sex or of different sexes" (paragraph 131). The Committee believed that 2 alternatives were available :-

*"(38)(a) Consideration should be given to the creation of an offence penalising sexual intercourse (with a member of the same or the opposite sex), or gross (or serious) indecency with another person, in circumstances where the act is likely to be seen by others to whom it would be likely to cause serious offence (paragraphs 137, 140).*

*(b) Alternatively the act should be likely to be seen by "members of the public" and be likely to cause serious offence, "members of the public" being defined so as to include occupiers of neighbouring premises (paragraph 140).*

*(c) If the form of provision described in sub-paragraph (b) above were chosen, the ingredient of causing serious offence might be dispensed with and the offence simply*

*be defined in terms of having sexual intercourse or doing an act of gross (or serious) indecency with another person in circumstances where the act is likely to be seen by "members of the public" (paragraph 140).*

*Whichever formula is adopted it should be necessary to prove that the defendant knew that his conduct was likely to be seen by others or was reckless as to that (paragraph 141). The offence should be punishable with 12 months' imprisonment and triable either way (paragraph 142).*

*(39)(a) If the form of provision described in sub-paragraph (a) or (b) of paragraph (38) above were chosen (under which a likelihood of causing serious offence would have to be established), consideration should also be given to the creation of an offence penalising any person who, whether alone or with another person, engages in acts of gross (or serious) indecency in the presence of others on premises of common resort (paragraph 144).*

*(b) If the form of provision described in sub-paragraph (c) of paragraph (38) above were chosen (under which it would not be necessary to establish likelihood of causing serious offence), the "common resort" provision in sub-paragraph (a) of this paragraph would not be needed provided that it were made clear that "members of the public" included persons admitted to the premises of a club (paragraph 146).*

*(40) As an alternative to the offences described in the previous two paragraphs, homosexual conduct (i.e. buggery and gross indecency) should remain punishable as such where it occurs in public, or where it occurs in private and more than two persons take part or are present, as under section 1(1) and 2(a) of the Sexual Offences Act 1967. It is for consideration whether in that event section 1(2)(a) could be relaxed by an exception for acts occurring "on a domestic and private occasion". Heterosexual conduct in public should be dealt with by a provision along the lines of the offence proposed by the Law Commission (paragraph 143).*

*(41) Homosexual acts between males in a lavatory to which the public have or are permitted to have access, including such acts in cubicles, should continue to be offences and should be punishable with 12 months' imprisonment and triable either way (paragraph 147)."*

*Indecent displays*

8.15 Concern over public displays of a sexual nature resulted in the passing of the Indecent Displays (Control) Act 1981 which sought to penalise the public display of any "indecent matter". Exceptions include displays during the performance of a play and matter included in the display of an art gallery or museum, visible only from within the gallery or museum. No definition of "indecent" is attempted but "matter includes anything capable of being displayed, except that it does not include an actual human body or any part thereof" (Section 1(5)).

## **Northern Ireland**

### *Background*

8.16 Inapplicable as the experience in Northern Ireland may seem at first sight to the circumstances of Hong Kong, we have found significant similarities in the history of recent proposals for changes to its laws : a common legislative base, the emergence of strong interest in the media and among some sections of the public, divisions among the community based on religious, principled and ethical grounds and, judging by the Dudgeon case, an airing of nearly every argument which has been canvassed before us, with particular reference to the rule of law and the responsibility of a responsive government to a community which is not fully self-governing.

8.17 Laws governing homosexuality in Northern Ireland were the same as those in England before the 1967 Act, and were therefore the same as those in Hong Kong. The Parliament of the United Kingdom has been directly responsible for governing Northern Ireland since 1972. In July 1978 the Government proposed a draft Homosexual Offences (Northern Ireland) Order, the effect of which would have been to bring the law in Northern Ireland into line with that of England and Wales. Specifically, homosexual acts in private between two consenting male adults over the age of 21 would no longer have been punishable.

8.18 Introducing this measure, the Secretary of State concluded :

*".... In brief, there are two differing viewpoints. One, based on an interpretation of religious principles, holds that homosexual acts under any circumstances are immoral and that the criminal law should be used, by treating them as crimes, to enforce moral behaviour. The other view distinguishes between, on the one hand that area of private morality within which a homosexual individual can (as a matter of civil liberty) exercise his private right of conscience and, on the other hand, the area of public concern where the State ought and must use the law for the protection of children, those who are mentally retarded and others who are incapable of valid personal consent.*

*I have during my discussions with religious and other groups heard both these viewpoints expressed with sincerity*

*and I understand the convictions that underlie both points of view. There are in addition other considerations which must be taken into account. For example it has been pointed out that the present law is difficult to enforce, that fear of exposure can make a homosexual particularly vulnerable to blackmail and that this fear of exposure can cause unhappiness not only for the homosexual himself but also for his family and friends.*

*While recognising these differing viewpoints I believe we should not overlook the common ground. Most people will agree that the young must be given special protection; and most people will also agree that the law should be capable of being equitably enforced. Moreover those who are against reform have compassion and respect for individual rights just as much as those in favour of reform have concern for the welfare of society. For the individuals in society, as for Government, there is thus a difficult balance of judgment to be arrived at."*

8.19 In July 1979, the Government announced that it did not intend to pursue the measure further for these reasons :

*"Consultation showed that strong views are held in Northern Ireland, both for and against change in the existing law. Although it is not possible to say with certainty what is the feeling of the majority of people in the province, it is clear that a substantial body of opinion there (embracing a wide range of religious as well as political opinion) is opposed to the proposed change .... [The] Government have [also] taken into account ... the fact that legislation on an issue such as the one dealt with in the draft order has traditionally been a matter for the initiative of a Private Member rather than for Government. At present, therefore, the Government propose to take no further action ..., but we would be prepared to reconsider the matter if there were any developments in the future which were relevant."*

#### *The case of Jeffrey Dudgeon*

8.20 On 22 October 1981, the European Court of Human Rights by a majority of 15 to 4 held that the law in Northern Ireland prohibiting homosexual conduct between consenting adult males in private was in breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 8 provides:

- "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance*

*with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

8.21 During a drug raid on Dudgeon's flat-mate in 1976, police discovered documentary evidence of Dudgeon's homosexuality, took it away and subsequently interviewed him about homosexual matters. He was not prosecuted, by decision of the Director of Public Prosecutions.

8.22 Dudgeon claimed before the European Court of Human Rights that the laws which permitted this conduct by the police interfered with his right to respect for his private life, which included his sexual life. The Government submitted that the admitted interference was justified under Article 8 as being necessary "for the protection of morals" or "the protection of the rights and freedoms of others".

8.23 The Court accepted that there is in Northern Ireland "a strong body of opposition stemming from a genuine and sincere conviction shared by a large number of responsible members of the Northern Irish Community that a change in the law would be seriously damaging to the moral fabric of society. This opposition reflects a view both of the requirements of morals in Northern Ireland and of the measures thought within the community to be necessary to preserve prevailing moral standards."

But the majority took the view that :

*" The convention right affected by the impugned legislation protects an essentially private manifestation of the human personality.*

*..... the reasons given by the Government, although relevant, are not sufficient to justify the maintenance in force of the impugned legislation in so far as it has the general effect of criminalising private homosexual relations between adult males capable of valid consent. In particular, the moral attitudes towards male homosexuality in Northern Ireland and the concern that any relaxation in the law would tend to erode existing moral standards cannot, without more, warrant interfering with the applicant's private life to such an extent. "Decriminalisation" does not imply approval, and a fear that some sectors of the population might draw misguided conclusions in this respect from reform of the legislation does not afford a good ground for maintaining it in force with all its unjustifiable features."*

8.25 Dudgeon further claimed that he was a victim of sexual discrimination in breach of Article 14 of the convention, in that he was subject under the present law to greater interference with his private life than are male

homosexuals in other parts of the United Kingdom, and heterosexuals and female homosexuals in Northern Ireland itself. In particular he claimed that the age of consent should be the same for all forms of sexual relations. The majority found it unnecessary to decide this matter, and they reserved the issue of damages, Dudgeon having claimed a total of \$20,000.

8.26 A strong dissent was delivered by Judge Zekia of Cyprus, on the basis that the maintenance of the existing law was necessary for the protection of morals and of the rights of others in Northern Ireland :

*" Christian and Moslem religions are all united in the condemnation of homosexual relations and of sodomy. Moral conceptions to a great degree are rooted in religious belief. All civilised countries until recent years penalised sodomy and buggery and akin unnatural practices.*

*In Cyprus criminal provisions similar to those embodied in the Acts of 1861 and 1885 in the North of Ireland are in force. Section 171 of the Cyprus Criminal Code, Cap. 154, which was enacted in 1929, reads :*

*"Any person who (a) has carnal knowledge of any person against the order of nature, or*  
*(b) permits a male person to have carnal knowledge of him against the order of nature*

*is guilty of a felony and is liable to imprisonment for five years."*

*Under section 173 anyone who attempts to commit such an offence is liable to 3 years' imprisonment.*

*While on the one hand I may be thought biased for being a Cypriot Judge, on the other hand I may be considered to be in a better position in forecasting the public outcry and the turmoil which would ensue if such laws are repealed or amended in favour of homosexuals either in Cyprus or in Northern Ireland. Both countries are religious minded and adhere to moral standards which are centuries' old."*

8.27 Judge Walsh of the United States also dissented forcefully, arguing that it is the right, and indeed duty, of the State to adopt moral principles and to legislate against immorality. He said :

*" The rule of law itself depends on a moral consensus in the community, and the law cannot afford to ignore the moral consensus of the community. If the law is out of touch with that moral consensus, whether by being too far above it, the law is brought into contempt ... much of the basis of the Wolfenden*

*Committee's recommendations ... was the belief that the law was difficult to enforce, and that when enforced was likely to do more harm than good by encouraging other evils such as blackmail. This obviously is not of universal validity ..."*

and he went on to give as the principal ground of his judgment :

*" Sexual morality is only one part of the total area of morality, and a question which cannot be avoided is whether sexual morality is "only private morality" or whether it has an inseparable social dimension. Sexual behaviour is determined more by cultural influences than by instinctive needs. Cultural trends and expectations can create drives mistakenly thought to be intrinsic instinctual urges. The legal arrangements and prescriptions set up to regulate sexual behaviour are very important formative factors in the shaping of cultural and social institutions."*

### *Change in the law*

8.28 In March 1982, the Secretary of State for Northern Ireland told the House of Commons :

*" The Government have noted the decision of the European Court of Human Rights that the law on Homosexual Offences in Northern Ireland is in breach of Article 8 of the European Convention on Human Rights. Under the Convention, Her Majesty's Government have undertaken to abide by decisions of the court in cases to which they are a party. The Government will therefore be taking steps to bring the law on homosexual offences in Northern Ireland into line with that of the rest of the United Kingdom."*

This the Government did by Order Number 1536 (N.I. 19) on 27 October 1982, which came into effect on 9 December 1982.

## **Scotland**

### *Homosexuality*

8.29 With the passing of the Criminal Justice (Scotland) Act 1980, the law on homosexuality in Scotland became the same as that in England and Wales. Thus, by section 80(1) "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". Similar restrictions as in England are provided by section 80(2) which provides that an act is not private :

*"(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."*

8.30 Prior to the 1980 Act, sodomy (as buggery is termed in Scots law) was a crime between males. MacDonald states that "Unnatural carnal connection between males, and attempt thereat, is a crime. Both the acting and consenting parties are punishable" (Criminal Law, 5th Edition, page 149). Sheriff Gordon defines sodomy as "unnatural carnal connection between male persons" (Criminal Law, 2nd Edition, page 894) and goes on to say that "it consists in and is limited to penetration of the anus of one male by the penis of another, the degree of penetration required being the same as that in rape" (ibid, page 894).

8.31 The offence was one at common law and not, as in England, a creature of statute. It was limited to the circumstances described in the preceding paragraph and it was never an offence in Scotland for a male to have anal intercourse with a consenting adult woman, nor did other forms of "unnatural connection" (save bestiality) constitute sodomy. Gordon points out that there is no classification in Scotland corresponding to the American Law Institute's Model Penal Code's "deviate sexual intercourse" which is defined as "sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal" (Gordon, page 836).

8.32 As far as lesbianism is concerned, Gordon states that, "there has, for example, been no recorded prosecution for lesbianism, and such behaviour is not thought to be criminal, but it could be described as shamelessly indecent : it was described in 1811 as being 'a crime so infamous that it was never before heard of in this country' " (ibid, page 33). The quotation which Gordon cites is taken from Woods and Pirie v. Graham 1811 Moncrieff's Papers, a slander action. There is no authority to suggest that homosexual acts in private between consenting females would be contrary to Scots law.

8.33 It is perhaps worthy of note that on the passing of the Sexual Offences Act 1967 in England and Wales, the then Lord Advocate publicly announced that no proceedings would be taken in Scotland against individuals in circumstances where no prosecution could have lain in England. This policy was continued by successive Lord Advocates until the decriminalisation of private consensual homosexual conduct by the Criminal Justice (Scotland) Act 1980.

#### *Indecent conduct*

8.34 Certain aspects of homosexual conduct might constitute the Scottish offence of "shameless indecency". MacDonald states that "all shamelessly indecent conduct is criminal" (4th Edition, page 221) but provides no authority for this assertion (as has been pointed out by Gordon, 2<sup>nd</sup> Edition, page 906). Nevertheless, MacDonald's proposition was adopted by the High Court of Justiciary in McLaughlan v. Boyd 1934 J.C. 19, a case which

involved a number of charges of the common law offence of "lewd, indecent and libidinous practices". The charges read that the accused " ... in your licensed premises ... did use lewd, indecent and libidinous practices towards ... by seizing his hand and placing it on your private parts". Further charges of assault related to the accused "placing your hand upon [their] private parts". The accused was convicted on some charges of each kind.

8.35 Prior to McLaughlan v. Boyd lewd and libidinous practices had related only to practices with persons under the age of puberty. Gordon argues strenuously against MacDonald's concept of shameless indecency in both editions of his work but the approach of McLaughlan was subsequently upheld in the landmark case of Watt v. Annan 1978 S.L.T. 198. Here, the accused was charged on summary complaint that he did "conduct [himself] in a shamelessly indecent manner and did exhibit or cause to be exhibited to a number of persons a film of an obscene or indecent nature, which depicted inter alia sexual intercourse, involving a number of male and female persons, acts of masturbation, oral sex and unnatural acts and practices, including the drinking of urine and inserting a candle into the private parts of female persons appearing in said film, and said film was liable to create depraved, inordinate and lustful desires in those watching said film and to corrupt the morals of the lieges".

8.36 Objection was taken by the accused's solicitor to the relevancy of the complaint on the ground that, first, the language in the complaint and in particular the words "conduct yourself in a shamelessly indecent manner" and, second, the remainder of the charge from the words "manner and" did not constitute a crime known to the law of Scotland. The objection was repelled and the accused was convicted and appealed. It was argued again on behalf of the accused that the complaint did not disclose a crime known to the law of Scotland and, further, that unless the indecency took place in public there could be no criminality.

8.37 In the course of his judgement Lord Cameron said "... it is clear ... that it is not the indecency of the conduct itself which makes it criminal but it is the quality of 'shamelessness', and the question is what is the content of this qualification? ... [For] the conduct to be criminal, in such circumstances as the facts in the present case disclose, [it] must be directed towards some person or persons with an intention or knowledge that it should corrupt or be calculated or liable to corrupt or deprave those towards whom the indecent or obscene conduct was directed. Whether or not conduct which is admittedly indecent or obscene is to be held criminal will depend on proof of the necessary mens rea and upon the facts and circumstances of the particular case. It would be impracticable as well as undesirable to attempt to define precisely the limits and ambit of this particular offence, far less to decide that the nature of the premises or place in which the conduct charged has occurred should alone be decisive in transforming conduct which would otherwise be proper subject of prosecution into conduct which may do no more than offend the canons of personal propriety or standards of contemporary morals" (page 201).

8.38 Further on in his judgement, Lord Cameron reverts to the question of the public or private nature of the exhibition and says, "Neither the publicity nor the privacy of the locus of the conduct charged necessarily affects far less determines the criminal quality of indecent conduct labelled as shameless .... In my opinion therefore it is not essential to relevancy of a charge of shamelessly indecent conduct that it must be labelled that the conduct in question occurred in a public place or was a matter of public exhibition." Lord Cameron went on to say that in the circumstances, the sheriff was entitled to find that the film in question was calculated or liable to deprave or to corrupt.

8.39 Thus did an unsupported statement by a text-book writer enter the criminal law of Scotland and, if Lord Cameron's judgement is followed to its logical conclusion, there seems little to prevent the prosecution of individuals in even more "private" circumstances than those of Watt v. Annan. An attempt to extend the category of shamelessly indecent conduct to corporate personalities failed in Dean v. John Menzies (Holdings) Ltd. 1981 S.L.T. 50 on the grounds that the complaint was incompetent in respect that a limited company could not form the mens rea for such an offence. Lord Cameron, in a dissenting judgement, remarked that "If a company can by law - by legal fiction if you will - be endowed with a mind and will exercisable by natural persons acting within the confines of the company's legal competence, and be held responsible for actings in pursuance of the exercise of that mind and will, then if those actings are contrary to the common criminal law, I find it difficult to see upon what basis of principle it can be said that the company is free of criminal liability however this may be enforced. The wicked intent in all common law crimes is the intent to perform the criminal act. The motive or moral depravity of the actor are alike irrelevant to the quality of the act in the eye of the law. Therefore if the act is intentional the criminal intent is presumed whatever the motive which inspired the actor" (page 56).

8.40 Numerous charges of shamelessly indecent conduct have arisen in relation to the sale or exposure for sale of obscene books and films. Robertson v. Smith 1979 SLT (Notes) 51 provided authority for the application of a charge of shameless indecency to such conduct while in Tudhope v. Taylor 1980 SLT (Notes) 54 it was held that the necessary mens rea for a conviction of shameless indecency had been established where an accused exposed indecent and obscene magazines for sale but instructed his staff not to let children browse through them.

8.41 The limitation on prosecution imposed by Dean v. John Menzies (Holdings) Ltd. was reinforced by Tudhope v. Barlow 1981 SLT (Sh. Ct.) 94 when the Crown was unsuccessful in prosecuting employees of two retailers in respect of the sale of indecent and obscene magazines because the employees had no control over the items stocked and could not therefore be fixed with the necessary mens rea.

8.42 It seems that the matter in question must have been exposed for sale, rather than merely in the possession of the accused for some future distribution (Tudhope v. Somerville 1981 SLT 117). "Exposed" does not

require a "putting on public view", however, but merely an availability for sale (Scott v. Smith 1981 SLT (Notes) 22).

8.43 Smith v. Downie 1982 (Sh. Ct.) 23 was concerned with the sale or hire of indecent and obscene video cassettes and it was held that it was sufficient to establish mens rea to show that the accused had read the descriptions on the cassettes before exhibiting them for sale. It was further held that the criminality of pornography was not its supposed effect upon the conduct of the lieges but the depression of current standards of decency and accordingly the court should come to a conclusion whether something was simply indecent and obscene viewed in the light of contemporary standards.

8.44 Since the offence of shameless indecency is one of criminal intent, where the sale of obscene material is concerned it is necessary that the accused is aware of the contents of the magazines or other matter in question and the offence cannot be committed recklessly or negligently (Tudhope v. Barlow 1981 SLT (Sh. Ct.) 94). This last proposition is supported by Tudhope v. Taylor (supra) where the necessary mens rea was inferred from the actions of the accused in restricting the access of young persons to the magazines in question.

8.45 In addition to founding a charge of shameless indecency, certain homosexual conduct may constitute a breach of the peace in Scots law. It is important to note that in this respect police officers are considered members of the public to the same extent as private citizens in their capacity to be alarmed and annoyed. This would appear to be different from the position in England where the cases of Parkin v. Norman and Valentine v. Lilley (1982) 3 W.L.R. 523 suggest that different criteria are appropriate where the sole witnesses to the conduct in question are police officers. In both cases, homosexual suggestions were made in public toilets to police officers in plain clothes and it was held, inter alia, that such behaviour was not likely (in view of the character of the witnesses) to provoke a breach of the peace.

8.46 The offence of breach of the peace in Scotland is a far-ranging one and its basis consists of the charge that "you did conduct yourself in a disorderly manner and commit a breach of the peace". The offence readily and regularly covers "peeping Toms". In Raffaelli v. Heatly 1949 J.C. 101, dealing with just such a case, Lord Justice - Clerk Thomson remarked at page 104 that, "where something is done in breach of public order or decorum which might reasonably be expected to lead to the lieges being alarmed or upset or tempted to make reprisals at their own hand, the circumstances are such as to amount to breach of the peace". That definition is today even wider for in Sinclair v. Annan 1980 SLT (Notes) 55 the offence of breach of the peace was carried to the point where it became necessary only to prove that there was embarrassment on the part of the victim, a finding which must clearly place all public homosexual conduct at risk of prosecution.

## *Bestiality*

8.47 Bestiality is a crime in Scotland. Thus, MacDonald states "unnatural carnal connection with inferior animals, and attempt thereof, is a crime" (5th Edition, page 149). It is possible that the law may differ from that in England for while a woman may be guilty of bestiality in England the position is unclear in Scotland. In James McGivern (1845) 2 Broun 444 the indictment referred only to "carnal connection with a beast" but Alison describes bestiality as the connection of a man with an animal (referred to by Gordon at page 894). There has been no reported case of bestiality by a woman.

## *Indecent displays*

8.48 The provisions of the Indecent Displays (Control) Act 1981 apply to Scotland and it is to be assumed that interpretation of those provisions will present no major differences from that in England and Wales. Further provision on this subject is made under the Civic Government (Scotland) Act 1982.

## *Civic Government (Scotland) Act 1982*

8.49 Prior to the passing of the Civic Government (Scotland) Act 1982, a number of statutes of purely local application existed in various parts of Scotland. This earlier legislation covered, inter alia, a number of offences with a sexual connotation, including indecent exposure (section 380(1) of the Burgh Police (Scotland) Act 1892) and the publication or distribution of indecent material (section 380(3)).

8.50 The 1982 Act was the result of a Working Party set up to examine Civic Government. Section 51 provides that it shall be an offence to display "any obscene material in any public place or in any other place where it can be seen by the public" (subsection (1)) or to publish, sell or distribute or (with a view to its eventual sale or distribution) make, print, have or keep any obscene material. Where an offence under subsection (1) is charged, it is open to the Court to find the accused guilty of an offence under section 1(1) of the Indecent Displays (Control) Act 1981. A wide definition of "material" is given in section 51(8), such that it includes any "film, tape, disc or other kind of recording (whether of sound or visual images or both)".

8.51 Section 51 came into effect on 1 April 1983 and it seems reasonable to suppose that, notwithstanding the absence of the word "indecent" from the section, the test applied by the courts is likely to be the same as that adopted in Ingram v. Macari 1982 SLT 92 and 1983 SLT 61. Broadly speaking, the prosecution must show that the material is of such a nature as to be calculated to produce a pernicious effect in depraving and corrupting those open to such influences and that the material is being exhibited, circulated or offered for sale in such circumstances as to justify the inference that it is likely to fall into the hands of persons liable to be so corrupted.

8.52 Section 52(1) provides that :-

*"Any person who -*

- (a) takes, or permits to be taken any indecent photograph of a child ... ;*
- (b) distributes or shows such an indecent photograph;*
- (c) has in his possession such an indecent photograph with a view to its being distributed or shown by himself or others; or*
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such an indecent photograph, or intends to do so*

*shall be guilty of an offence".*

8.53 The wording of this sub-section is identical to that of section 1(1) of the Protection of Children Act 1978 and effectively extends the provisions of that Act to Scotland. It should be noted that section 52(8) of the 1982 Act defines "photograph" to include film and video-recordings.

8.54 Loitering for the purposes of prostitution was an offence under section 381(22) of the Burgh Police (Scotland) Act 1892 but the offence is clarified by section 46 of the 1982 Act to cover both male and female prostitutes. Imprisonment for offenders has been abolished. The offence of breach of the peace discussed earlier will continue to apply to "kerb-crawlers" who cause annoyance and alarm to pedestrians when seeking out street prostitutes.

8.55 A system of control of "sex shops" is instituted by section 45 and Schedule 2 of the Act by providing for licensing by local authorities. "Sex shop" is defined in section 2(1) of Schedule 2 as "any premises, vehicle or stall used for business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles" while "sex articles" are said to be "anything intended for use in connection with, or for the purpose of stimulating or encouraging -

- (i) sexual activity; or*
- (ii) acts of force or restraint which are associated with sexual activity" ,*

and a widely defined range of sexual visual or sound recordings (sections 2(3) and (4) of Schedule 2).

## **United States of America**

8.56 In the United States of America, individual states are free to enact whatever (constitutional) legislation governing homosexual conduct they desire. The Federal Government has played little part in current reforms concerning homosexual rights. For example, the current Administration has upheld the Armed Services' decision to bar homosexuals from all military service and Federal equal employment opportunity and anti-discrimination statutes do not protect homosexuals. Legislative reforms have tended to emerge at the State level. National committees of the American Bar, Medical, and Psychiatric Associations have all called for the repeal of the remaining state sodomy statutes and the American Law Institute has recommended that all sexual practices not involving force, adult activity with minors, or public conduct, be excluded from the criminal law.

8.57 Twenty-two states have altered their laws on sodomy. For example, in 1975, California revised the provisions of its Penal Code governing homosexual behaviour. Previously sodomy was ambiguously defined as "The infamous crime against nature" and "any person" who engaged in it was guilty of a felony. After revision, private consensual adult homosexual acts were decriminalised.

8.58 New York's regulatory scheme has also been changed. New York's Penal Code provides that "a person is guilty of consensual sodomy when he engages in deviate sexual intercourse with another person". Such intercourse is defined as "sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva." Thus both consensual homosexual, and certain heterosexual, conduct between unmarried persons is proscribed. Only five states exclude married persons from their criminal sodomy statutes.

8.59 This regulatory scheme was ruled unconstitutional by the highest New York Court in 1980. The court reasoned that the constitutional right of privacy, enunciated in various Supreme Court rulings, could be expanded to cover consensual homosexual behaviour. "Personal sexual conduct is a fundamental right, protected by the right to privacy because of the transcendental importance of sex to the human condition, the intimacy of the conduct, and its relationship to a person's right to control his or her own body."

8.60 This rationale based on privacy is notable since nearly all arguments for reform in this area are based on privacy rights. It is unlikely that an argument in this form is directly applicable in Hong Kong, though we must later consider the effect of international conventions. The Massachusetts State Supreme Court has also held that the State may not punish consensual sodomy between adults in private. In addition, various municipalities have enacted legislation protective of homosexuals in areas such as public employment, housing, and education. It is at this level that a number of reform measures have occurred.

## ***Other States***

8.61 We understand that approximately 25 States still criminalise consensual sodomy in private, though the laws are rarely enforced. Many of these laws also penalise the same conduct when it occurs between members of the opposite sex. By way of example, we mention several states specifically. In Virginia, oral and anal sex between members of the same or opposite sex, married or not, is criminal. A federal court's decision upholding the constitutionality of this statute was summarily affirmed by the U.S. Supreme Court. (Doe v. Commonwealth, 1976.) Michigan criminalises both homosexual and heterosexual sodomy, and Florida prohibits "unnatural and lascivious acts" which include sodomy. Every state continues to maintain age limit prohibitions and forbids public sexual activity.

## ***U.S. Supreme Court***

8.62 As noted above, the Supreme Court has summarily affirmed (that is, without giving an opinion or hearing argument) a decision upholding Virginia's restrictive sodomy statute. The court thus refused to extend the right of privacy to cover private consensual sexual behaviour. Some commentators state that prior privacy cases generally can be read as limited to married persons in the sphere of begetting children; obviously homosexual behaviour cannot be protected on this basis. Legal commentators argued that the privacy right could be extended rationally to protect homosexual behaviour. The press noted that as most states have legislation similar to Virginia's, which includes sexual conduct of married persons within their proscriptions, such laws intrude on the bedrooms of all adults. It was said that laws which attempt to control conduct, but are unenforceable, are worse than no laws at all.

8.63 The legal significance of the Doe opinion is unclear. The Court has not yet directly addressed the issue and Doe may simply be a statement that reform in such highly political areas as homosexuality should come not from the federal judiciary but from the State legislatures.

## **International conventions**

8.64 In 1948 the General Assembly of the United Nations passed the Universal Declaration of Human Rights. We set out a number of the provisions of significance for present purposes. We have supplied the underlining.

Article 2 "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or

other opinion, natural or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Article 7 "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration ....."

Article 12 "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Article 16 "(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) The family is the natural and fundamental group unit of society and is entitled to protection by society and by the State."

Article 29 "(2) In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the first requirement of morality, public order and the general welfare in a democratic society."

8.65 The Declaration was followed by the International Covenant on Civil and Political Rights, which was adopted by the General Assembly in 1966 and came into force in 1976:

Articles 2(1) and 26 reproduce Article 2 of the Declaration;

Article 17 reproduces Article 12 of the Declaration;

Articles 19, 21 and 22 reproduce Article 29 of the Declaration; and

Article 23 reproduces Article 16 of the Declaration.

8.66 By Article 1, each State party to the Covenant undertook to respect and to ensure to all individuals within its territory the rights recognized

in the Covenant, without distinction of any kind, such as sex. The States also undertook to take the steps necessary to adopt such legislative measures as may be necessary to give effect to the rights recognized in the Covenant.

8.67 Similarly, the International Covenant on Economic, Social and Cultural Rights was adopted in 1966 and came into force in 1976. Article 7(c) provides that the State Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

8.68 Article 10 provides that the State Parties recognize that:-

- (3) .... children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health .... should be punishable by law.

8.69 The United Kingdom has signed each convention, and has applied their provisions to Hong Kong. We do not know if the People's Republic of China has joined the conventions. We have set out these provisions at some length because the implications for Hong Kong are significant. Article 8 of the European Convention on Human Rights is similar to Article 12 of the Declaration and Article 17 of the Covenant on Civil Rights. These articles guarantee freedom from interference with privacy. As we have seen in paragraph 8.24 the Dudgeon case interpreted this right to include sexual privacy. Thus, if this interpretation is correct, so much of the present law of Hong Kong as interferes with the sexual activities of consenting adults in private would be inconsistent with Article 17 of the Covenant on Civil Rights.

8.70 We are not aware of any person seeking either a declaration or to defend a homosexual case in Hong Kong on the ground that, in some way, these Covenants overrule so much of our laws on homosexuality as offend these articles. We do not comment upon the likelihood of success in mounting such arguments, other than to observe that these International Covenants do not purport to grant rights of action or remedies to individual citizens; it is only States which may litigate them. It is sufficient for our purposes to point out that there is this apparent inconsistency between local law and international obligation. It is of equal significance, to our mind, to remember that these covenants unequivocally seek to protect marriage, women and children, as well as privacy.

## Chapter IX

### Our public consultation and local research

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#### Television, radio and the press

9.1 There is one private and one Government Radio Station in Hong Kong, each with programmes in English and Chinese. Their combined listening audience is a daily average of about 3,740,000. There are two television stations each with an English and a Chinese channel. The combined viewing audience during peak hours is a daily average of 3,250,000. There are three English-language daily newspapers and fifty-five Chinese-language newspapers, with a combined daily circulation of nearly one and a half million, being 300 copies for every 1,000 people. The world average is 102 for every 1,000 people.

9.2 We conducted a survey of items in the various media about the subject of male homosexuality between 1978 and 1982. This was no idle exercise. We are inclined to place value on "unsolicited" sources, such as published letters to editors. We collected some of those letters, and had regard to them as if they had been sent to us in response to our public appeal (see Annexure 4).

9.3 Of interest were a number of matters. First, the subject received far more space and attention at all times in the English than in the Chinese language media. This may not be surprising but it is worthy of notice. Second, some of the major newspapers have taken an editorial stand on the subject. We set out a summary of their views in Annexure 4. Broadly speaking the English-language newspapers were in favour of a limited decriminalization of homosexual conduct. Third, the identity of persons whose views were recorded in letters, news stories or articles was sometimes significant. For example, the former Governor of Hong Kong, Lord MacLehose, during the course of an interview with the Press in July 1980, said that, in his personal view : "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." (See Annexure 4 for the full text of his remarks).

9.4 Finally, it may not be remarkable but it is fair to point out that the interest of individual members of the press has waxed and waned. A graph would show that interest peaked during the case of the European in 1978, during the MacLennan Inquest and during stages of the MacLennan Commission of Inquiry. Nevertheless press inquiries concerning the work of the Sub-committee and the progress of the Commission have been

maintained at a fairly consistent level throughout the period since the MacLennan Inquiry ended.

## **Public appeal**

9.5 The first task of our Sub-committee was to invite the views of interested persons and organisations both by public appeal and by direct invitation. The public appeals were made through the press in July 1980 and repeated in September 1981. We wish to acknowledge with gratitude the assistance rendered by those who gave us their views.

9.6 The form and results of public appeals for views are contained at Annexure 5. It is important to bear in mind that in evaluating the written submissions there is often no way of establishing how representative each one might be. The most that can be said is that Annexure 5 contains a summary of the varied views of those people and organizations in Hong Kong who felt strongly enough about the subject to respond to our Sub-committee's general invitations through the media. It would be unwise, for obvious reasons, to draw any firm conclusions merely from the fact that, of the 26 people or organisations who wrote to us of their own initiative, 16 were in favour of reform whilst 10 were against.

## **Direct appeal**

9.7 The sub-committee gave considerable thought to the question of direct invitation to selected organisations and individuals. It was appreciated from the outset that this exercise was not intended to be a comprehensive survey of public opinion in Hong Kong.

9.8 One difficulty we confronted was this : we believe that many people do not know what the current law provides; we believe that many people have strong views about the subject of homosexuality, and frequently confuse those feelings with a reaction to laws concerning homosexual conduct; we believe that many people would prefer not to be asked about the subject at all; we believe that many people have at least two standards on the issue : what they say and expect to be judged by in public, and what they are prepared to accept in their hearts.

9.9 In order to focus attention, to seek a more specific response to the legal implications, it was thought desirable to provide a brief summary of the current law. This we sought to do in an accurate but non-technical way, with the greater attention being given to the provisions concerning buggery and gross indecency since much of the sub-committee's work was directed to these issues.

9.10 However we were concerned with two difficulties. Even the act of informing people of legal provisions is capable of colouring their response. We had to ask whether the role of the Commission included an educative

function. Second, it is our experience that, human nature being what it is, we were far more likely to obtain meaningful responses to a positive proposal than to a general appeal for comment. The drawback, by which we felt constrained, was that to put a proposal may be construed as "pushing" people or, at the least, as indicating our own views (at a time when we had not in fact ourselves formed any views).

9.11 At the end of the day we concluded that it was right to give people the opportunity to comment, informed by the summary of the law, but that it would be inappropriate at that stage for us to seek a reaction to positive proposals. It may well be, though it is not a matter for decision by us, that publication of our report (with the specific suggestions which we shall make) may provide the public reactions of which necessarily we have been deprived.

9.12 The main point of the direct approach was to supplement the general invitations which the sub-committee had already made through the media. It was decided to distinguish between companies and firms on the one hand and "non-employing" organizations on the other. By adopting the questionnaire formula for business houses, we hoped to learn about employment practices in Hong Kong relating to homosexuals. From "non-employing" organizations, we chose to invite specific views. In both cases, the Sub-committee enclosed with each questionnaire a letter and a summary of the current state of the law in Hong Kong, in both the English and Chinese languages (see Annexure 6).

## **Employers**

9.13 The form of questionnaire, in both languages, was approved by the full Commission and may be found at Annexure 7(I). Questionnaires were sent to 600 private business houses. The list covered the whole spectrum of commercial activity in Hong Kong and was compiled with the assistance of the Census and Statistics Department of the Hong Kong Government. To encourage response from business houses, it was decided to treat the responses as confidential, in the sense that the name of the firm would not be disclosed. Accordingly, we shall not publish either the list of businesses consulted or the names of those who replied.

9.14 An analysis of the answers to the questionnaires is at Annexure 7(II). In summary, a total of 181 companies and firms responded, being 30.16% of the total, employing between them a large number of employees. Some facts emerged :-

95% do not require applicants for jobs to disclose whether they are homosexuals;

41% would be likely to reject a job applicant if it was known or believed that he was a homosexual;

19% would be likely to dismiss an otherwise suitable employee if he was discovered or believed to be a homosexual;

92% would not alter their present employment policy even if the law was changed so as to allow homosexual acts in private between consenting adults.

## **Other organizations**

9.15 The form of letter sent in both languages to organisations is at Annexure 8(I). Letters were sent to the 91 organisations listed at Annexure 8(II). The list was compiled from our own researches and with the assistance of the Home Affairs Branch of the Hong Kong Government. While not seeking to be exhaustive, we have tried to ensure that contact was made with the majority of groups who are concerned for the interests of sections of our community. 29 organisations (or roughly 30%) replied. The responses varied in length. It has been possible in all but two cases to summarize each organisation's view in Annexure 8(III).

9.16 The views varied of course. The very fact that the Bar Committee and the Council of the Law Society both independently decided that this was an issue upon which they preferred that individual members, rather than themselves, should be asked to express personal views is not without significance. Of those who took a stand, the conflict of attitudes is highlighted by comparing, for example, the responses kindly given to us by the Anglican and the Roman Catholic Churches respectively :

The Rev. Louis Tsui wrote that :

*"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."*

The most Rev. Bishop John Wu, Roman Catholic Bishop of Hong Kong, wrote that :

*"We therefore suggest that sexual activity performed in private between consenting adult homosexuals or heterosexuals should not be a criminal offence."*

9.17 We are especially grateful to the Academic Staff Association of the University of Hong Kong and the Hong Kong Polytechnic Staff Association, who submitted representations from a number of their members. The former Association even took the trouble to conduct its own questionnaire exercise for our benefit. It is felt that these representations could not satisfactorily be summarized and that they merit reproduction in full, which we do at Annexures 9 and 10.

## District Boards

9.18 The views of District Boards were also solicited between January and March 1982. District Boards are important organisations in Hong Kong. They were established in 1981 by the District Boards Ordinance (Cap. 336). There are now 18 covering the whole Territory. Their charter is to advise the Government of the requirements and views of residents in their area about matters affecting living and working there. Their membership comprises 132 elected members, 135 appointed unofficial members and various official appointed members, such as from police and transport.

9.19 In seeking views from these bodies, we received valuable administrative assistance from the secretariat of the City and New Territories Administration. Our request was in the same form as the letter to organisations (Annexure 8(I)). The predominant views expressed in the replies from a total of 14 District Boards were :-

- 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;
- that relaxation of existing law, either by way of decriminalizing or legalizing homosexual activities, would imply that the Government encourages such activities;
- that this would be most undesirable especially in view of the effect on the younger generation, and might lead to family disorganisation and social disintegration.

9.20 On the other hand, a number of individual Board members held different views and proposed amendments to the present legislation. Their proposals can be summarized as follows :-

- the present law, especially the maximum penalty of imprisonment for life for buggery under Section 49, Offences Against The Person Ordinance (Cap. 212), is considered too harsh and the heavy penalty should be replaced by applying some sort of mandatory psychiatric treatment and rehabilitative measures;
- 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;
- heavy sentences should still be imposed on those committing homosexual offences involving children, and especially on those who benefit from trading in such activities.

The views of all those District Boards who kindly responded are contained in Annexure 11.

## **Personal meetings**

9.21 During the course of its work, our Sub-committee interviewed a number of individuals and organisations who expressed a willingness to make oral representations. The following is a summary of the results.

### ***Mr. Neil Duncan and Mr. T. L. Tsim***

9.22 Mr. Duncan and Mr. Tsim met the Sub-committee and spoke in support of the following proposition :-

*"That without necessarily either condoning or wishing to seem to encourage such activities on the part of either sex, consenting adults who do engage in homosexual activities, by mutual consent and in private, should not be deemed thereby to be breaching the law."*

The terms of this proposition had been published in the summer of 1979 by a small working group known as the Movement for Homosexual Law Reform, of which Mr. Duncan and Mr. Tsim were members, and had attracted written support from 424 members of the public. The documents prepared by the working group were originally submitted to the Attorney General and then were made available to the Sub-committee. The full text of the working group's "Proposal for Homosexual Law Reform" is contained in Annexure 12.

### ***Kowloon Chamber of Commerce***

### ***Hong Kong and Kowloon Residents Society***

### ***Mongkok District Tai Kok Tsui Area Committee***

### ***Mutual Aid Committee Lai Chi Kok***

9.23 These organisations were amongst those who originally sent in written representations on their own initiative, but later met the Sub-committee. It was of great interest to us to find that although all representatives of the organisations initially were against any change at all in the law, the attitudes of some of them softened noticeably during the course of the Sub-committee's discussion with them once it was made clear that any proposals for legislative change would be limited in scope and would not be intended or calculated actually to encourage homosexual behaviour. Nevertheless, as the notes of the meeting show (Annexure 13), very serious reservations were expressed by all representatives.

## **Hong Kong General Chamber of Commerce (HKGCC)**

9.24 HKGCC was amongst those organisations which received our letter requesting views. It has 9,200 members. The Chamber was interested enough to invite members of the Secretariat of the Commission to address it on the issue. Following this meeting, a letter was received from the Chamber which summarises its position (Annexure 14).

### **Mr H.J. Lethbridge**

9.25 In 1976, Mr Henry Lethbridge, Reader in Sociology at the University of Hong Kong produced a paper entitled "The Quare Fellow : Homosexuality and the law in Hong Kong" which was published in the Hong Kong Law Journal. The paper deals in detail with the English history of the law relating to homosexual conduct, the origin of homosexual stigma, homosexuality and the law in Hong Kong. In view of the obvious depth of research and thought which went into the preparation of the paper the Sub-committee invited Mr Lethbridge to give it the benefit of his current views. His reply included the following passages :-

*"The paper I published in the Hong Kong Law Journal in 1976 was written with a particular purpose : to combat the view that only the English were sometimes addicted to the crime against nature .....*

*"There is however, one important point : the use of one Chinese character - he fa - has confused the Chinese population. The term seems to suggest that the Government wants to legitimise (i.e. to make it morally acceptable) when, I presume, what is meant is to decriminalize some homosexual offences. There is a vast difference between these two conceptions."*

We take his point, as we emphasised in Chapter II.

### **Mr George Chang**

9.26 Mr George Chang produced a documentary television programme for a local television company late in 1981 on homosexuality in Hong Kong. It is interesting to note that shortly before the programme was screened the Sub-committee had tabled for discussion by the full Commission a proposal that one of the television companies should be approached to produce a programme with the main aim of informing members of the public of the current state of the law. This proposal had been endorsed by the full Commission. Mr Chang's programme was studied by the Sub-committee and he later kindly accepted an invitation to discuss his work with two members of the Sub-committee, Mr Justice Yang and Hon Mrs Selina Chow. A written record of the meeting was agreed by Mr. Chang and is reproduced at

Annexure 15. He was later kind enough to pass to us a statement written by a Chinese homosexual in response to the television programme. Since it contains one of the most personal accounts we have read of life as a Chinese homosexual we have set it out at Annexure 16.

### ***Interviews with Professed Homosexuals***

9.27 It should be said at the outset that in interviewing a number of homosexuals who expressed willingness to make submissions the Sub-committee were aware of this constraint : to receive evidence of homosexual conduct could, in some circumstances, compromise legally both the interviewee and members of the Sub-committee, given the present state of the law. Accordingly it was made clear to all interviewees that the Sub-committee wished to hear and discuss views rather than homosexual experience. This was accepted by all interviewees.

9.28 Should the need have arisen, the Attorney General had indicated that he would at the request of the Sub-committee, and in order to help them to obtain proper information, give sympathetic consideration to any request for immunity from prosecution for any particular individual and for those who heard his disclosures. In the event, and partly as a result of the detailed evidence given during the MacLennan Commission of Inquiry, we resolved that it was unnecessary for our purposes to seek further evidence of this sort.

### ***Four Chinese Homosexual Men***

9.29 Through the good offices of Mr. Chang, the Sub-committee were subsequently able to interview four Chinese homosexuals, to hear and discuss their views and to obtain some insights into the attitude of the homosexual community in Hong Kong. Aged between 23 and 30, they came from different walks of life. The homosexual groups with whom they associate are exclusively Chinese. None of them have told their families about their dispositions. They spoke in favour of limited decriminalization as a first step towards changing social attitudes, while recognizing that safeguards would be necessary by way of the age of consent. Notes of the meeting are contained in Annexure 17.

### ***Mr. X***

9.30 Mr. X is an Antipodean journalist resident in Hong Kong for three years. Previously he had lived in the Far East for approximately 8 years. He is a homosexual. He volunteered to make submissions to the Sub-committee and prepared a paper (Annexure 18) outlining his views. Subsequently he met members of the Sub-committee and spoke in support of his paper. He said he had no objection to his identity being disclosed, but we have decided it is not necessary to name him.

### ***A European Homosexual***

9.31 He is a lecturer and highly educated. He has travelled extensively and lived and worked in many countries where homosexual conduct between adults in private is not an offence. He volunteered to meet members of the Sub-committee. He spoke strongly but reasonably in favour of decriminalisation for consenting adults in private. He pointed out that many homosexuals in Hong Kong still concealed the fact for both legal and social reasons. He did state personal knowledge of a few instances of serious depression amongst individual homosexual students, caused either by reluctance to accept their own homosexuality or by social pressures.

### ***Another European Homosexual***

9.32 Members of our Secretariat made contact with this businessman in his early thirties who has lived most of his life in Hong Kong. He is homosexual and has been prosecuted for homosexual offences. He spoke about his extensive experiences in the homosexual communities not only of Hong Kong but of London, San Francisco, the Philippines and Thailand. A note of the meeting was prepared and, after being sent to him for checking by his legal adviser, was returned to us, on the understanding that his identity would not be published, and that he should not be regarded as a spokesman for the homosexual community.

9.33 In brief, he expressed what some may regard, at first sight, as a novel view. His express purpose was "to forewarn the Government (sic) of the consequences that may ensue upon decriminalization". Three matters were foreseen by him : decriminalization may be used by racketeers as an opportunity to exploit both "the market" and young Chinese males; the level of overt homosexual activities in public will rise dramatically; homosexuals may be exposed to greater danger of prosecution, specifically in relation to under-age partners.

9.34 We have set out the complete record of the interview with him at Annexure 19; the fears he expressed as well as other matters put to us are discussed in Chapters V, X and XI.

### **The prisons**

9.35 Predominantly male communities such as the armed forces and penal institutions have such specialized environments that it becomes an artificial exercise to translate the incidence of any homosexual behaviour in these organisations to the wider community of Hong Kong.

9.36 However, we received some valuable insights through the good offices of the Commissioner of Correctional Services and his staff, who

organized a series of group discussion sessions among the inmates of the drug addiction treatment centres in Hei Ling Chau and Tai Lam. 144 male inmates and 32 female inmates participated. The consensus of opinion appeared to be that homosexual behaviour should not be tolerated in a prison setting since to do so would amount to granting a privilege denied to heterosexuals who are unable to fulfil their sexual desires whilst in prison. The view of the inmates was that homosexual behaviour does not occur in penal institutions in Hong Kong. A full analysis of the inmates' views is to be found at Annexure 19.

## **The police**

9.37 We were grateful for the assistance of members and officers of the Royal Hong Kong Police Force in a number of ways. Statistics relating to the incidence of offences both of a homosexual and heterosexual nature were supplied and are reproduced in Annexures 23 and 24. A general description of aspects of homosexual life in Hong Kong, as seen by police investigators, is set out in Chapter V. Police Staff Associations were among those who responded to our request for submissions, as shown in Annexure 8(II).

## **The MacLennan Commission**

9.38 At any level the picture which emerged from the evidence given during this Inquiry was not pretty. We accept, of course, the warning we have been given by some practising homosexuals that the necessary emphasis in the Inquiry upon the activities of male prostitutes may provide a distorted image of aspects of homosexual life in Hong Kong.

9.39 There is one matter we wish to emphasize. The evidence given at that Inquiry undermined two of the assertions upon which many commentators rely. It proved beyond argument that it is inaccurate to claim that Chinese people, specifically those who live in Hong Kong, do not contain in their midst numerous practising homosexuals. Furthermore, it is simply untrue to suggest that homosexuality is a "western" vice visited upon the sexually innocent and conservative Chinese people of Hong Kong.

9.40 We do not wish to repeat the work of that Inquiry : many people suffered in many ways, one fatally, in the world which was there studied. Many others suffered in the re-creation of that world in the evidence. We refer to that Inquiry because it was important in itself, and important to our own work. The evidence there publicly given and the findings published by its Commissioner are materials we have taken into account in Chapter V. Whether directly or indirectly, they have had an effect upon our conclusions.

## **Survey of public opinion**

9.41 We were grateful to be supplied with a survey commissioned in September 1980 by a local commercial radio station, and for permission to print the results. 509 Chinese adults, over 20 years old, were interviewed by telephone in the Chinese language after 5 p.m. In answer to the question : "Should the Government continue to treat homosexuality as a criminal offence?", 71% answered affirmatively. In answer to the question : "Should the legislation be amended so that an adult's homosexual activities in private would not be regarded as an offence?", 27% answered affirmatively. There was a statistically significant correlation between the answer and age; for example, in the age range of 20 to 34, 64% were against change and 35% were in favour; of those over 55, 80% were against change while 16% were in favour. Again, of those who did favour change, more than half were in the age range 20 to 34. We set out the survey in full at Annexure 21.

9.42 We have been supplied with the results of another survey which took place late in 1982. Again we are grateful for permission to print the results. In this survey 2,000 people between the ages of 15 to 64 agreed to undergo personal interviews lasting as long as an hour and a half. They were questioned on a wide range of issues. 65% thought that laws against homosexuality should not be relaxed. We set out relevant portions of this survey at Annexure 22.

9.43 We have found the results of these surveys of interest, but hardly surprising. We discussed whether to commission our own survey, using a reputable commercial organisation. We made contact with several and were grateful for their advice as to ways, means and estimates of expense. We were also reassured to know that, if we wished to proceed, funds could have been made available by the Government. Having weighed the pros and cons of the idea, we concluded that the results of another survey would be of limited value. Taking into account the findings of the earlier surveys, together with the wealth of published reaction to the broad issue of homosexuality, as well as the materials submitted to us, the question boiled down to this : looked at pragmatically, how much more knowledge, as a matter of degree, do we need as members of this Commission to make an informed decision on the matters before us? In our judgment, we now have sufficient. After nearly three years on this project, we decided to draw a line for ourselves.

## **Miscellaneous matters**

9.44 We were grateful for the assistance of a number of departments of the Government which supplied us with certain statistics which we have set out in Annexure 26.

9.45 We learned that in 1981 there were almost 1¼ million households in Hong Kong, the average number of members being 4, though more than 10% comprise households with more than 7 members. In recent

years, Hong Kong's population has contained more men than women. In 1981, there were about 1,500,000 women and about 1,800,000 men between the ages of 15 and 59. 564,000 of these men were single. The mean age of the population in 1981 was 26. In 1982, there were over 1,370,000 children enrolled at kindergarten, primary and secondary schools, taught by 40,200 teachers, of whom 13,800 were male and 26,400 female. Since 1970, there have been 6 cases in which teachers have been convicted of sexual offences with children with whom they came into contact at their work. Two of these offences involved homosexual conduct. In addition, one allegation of homosexuality not leading to prosecution has been made since 1970. There is no evidence of homosexual conduct by teachers involving females.

9.46 In 1982, 661 films were submitted for censorship by the Television and Entertainment Licensing Authority. 13 films were banned outright and 200 were passed with cuts. One film was cut because of homosexual scenes. The 85 cinemas in Hong Kong have had an average annual audience over the last 4 years of approximately 66 million viewers. 99 million packets were posted from Hong Kong in 1982 and 97 million were received. Only 1 case has come to light in the last 5 years of commercial quantities of indecent matter entering Hong Kong by post and this was not of a homosexual nature. Individual cases of indecent matter come to light but few involve homosexual material. Over the last 5 years, 43 cases have been prosecuted and 54 persons convicted following seizures by the Customs and Excise Department under the Objectionable Publications Ordinance (Cap. 150). About one third of these seizures were related to homosexuality. About 100 to 150 prosecutions under the Objectionable Publications Ordinance are successfully mounted each year, either by the Customs and Excise Department, Home Affairs Branch or the Police; around 10 of these would be expected to be in relation to homosexual publications.

9.47 Premises administered by the Urban Services Department in 1982 included 926 public toilets, 64 commercial bath-houses, 41 bathing beaches, 14 public swimming pools and 418 hectares of pleasure grounds. In the past five years, staff of this department have not received any complaints of indecent behaviour of a homosexual nature in any of these locations. 71 massage establishments are licensed in Hong Kong. One licence was revoked in 1981 and 3 in 1982. No reports of homosexuality in respect of massage establishments have been made. One report of indecent conduct of a heterosexual nature was made in 1981. There are 48 licensed Public Dance Halls. Three cases of indecent behaviour were reported in 1982 but none related to homosexual behaviour. During the last 5 years, 32,386 cases of venereal disease were reported to the Government Social Hygiene Clinics. 22,766 cases were reported by men and 9,620 by women. Only 30 cases were known to be due to homosexual contact between men.

## **Consultations outside Hong Kong**

9.48 These took several forms. First, we received submissions from an organisation in Scotland concerned with homosexuality. We were urged to

amend the law in terms of the English legislation. These submissions are set out in Annexure 25.

9.49 Secondly, we solicited help from lawyers or legal organisations in a number of countries to ascertain their legal provisions, and materials on current legal and moral attitudes. The results may be seen in Chapters VII and VIII; a full list of those consulted in this way is set out in Annexure 2.

9.50 Thirdly, we have been particularly interested to assess the effects of changes in the law, and we sought assistance in this field. Although our focus was directed to neighbouring Asian countries, we found England and America the most fruitful in this regard, as shown in Chapter X.

## **Materials**

9.51 We have consulted a wide range of published materials from a number of different sources. We tried to be selective rather than exhaustive, since our purpose was to inform ourselves, and possibly those who may read our report in Hong Kong, rather than to write a definitive treatise. The full list is set out at Annexure 3.

## **Summary**

9.52 All in all, during the period of our researches, we have received responses from business houses, organisations and individuals representing thousands of the people who live and work in Hong Kong. The collection of all these facts, opinions and legal materials has been a major undertaking. It has strained our resources and, at times, not only our patience but that of our correspondents. For their help in this aspect of our work we are grateful. We trust that we have done justice to their efforts. If we have now assembled more essential facts and opinions about the matter than have previously been available in Hong Kong, we believe this to be a useful contribution to a debate which will not end with the publication of our report.

## Chapter X

### Consequences of change

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#### Introduction

10.1 Whenever change is proposed to the status quo, there is a natural concern for the consequences. In a way there is a sense of greater freedom from responsibility where one is legislating positively. When a new prohibition is introduced, one can say : well at least this or that major evil has been stopped; that is the first consequence. In many cases one can continue by saying : and no matter what unforeseen consequences may also flow, none could be worse than the evil which has now been prohibited.

10.2 Where, however, one is considering the decriminalisation of conduct, there is sometimes a feeling of venturing into the unknown, of entering the realm of the unpredictable. A familiar response is : better the devil you know than the devil you do not. Natural caution may suggest : well, you may avoid this mischief, but what further and possibly greater mischief may follow? What will be the second and third order consequences of the change?

10.3 When we ask ourselves what will happen if the present law is changed in any way, we start with an awareness of the constant interaction between the attitudes, values and conduct adopted by society, and the written law. Sometimes the written law may shape those standards : but gradual changes in attitudes and behaviour also must lead to changes in the law. Viewed in a historical perspective the law is in a constant state of gradual change as attitudes and behaviour alter. We do not suggest that the written law should be subservient to attitudes or conduct. What we do suggest is that lawmakers should always be alive to the changing needs of society, and be ready if necessary to alter the law accordingly.

10.4 We are presently considering English laws which date back, in the case of sodomy, at least to the Dark Ages, and in the case of gross indecency, for 100 years. The printed words may not have undergone much change, but we, the ordinary human beings for whom laws are shaped, have changed in the patterns of our public and private behaviour, in our ideas, our attitudes and in our perceptions of law. These factors are relevant to matters of cause and effect. For example, the prohibition of certain conduct by law does not necessarily mean that the conduct ceases overnight. Similarly, lifting a restriction does not always have the result that an explosion of the newly permitted conduct takes place. The extent of changes in behaviour will depend not simply upon a change in the law, but also upon the response by the community. That response will be influenced largely by the existing social beliefs and habits.

10.5 To those of fixed religious or spiritual values, to whom some principles of earthly behaviour are immutable, if the conduct is "a sin", then any action which does not actively prohibit the conduct is also akin to "a sin". This, it is said, amounts to an unacceptable consequence of a change in the law. Our answer is that, applying the principles we have enunciated in Chapter II, the law has no business simply with enforcing spiritual values. Besmirching the collective virtue of a community is not, in our view, an evil consequence the law could or should seek to combat : spiritual transgressions which do not affect the lives of others should, we believe, be dealt with by spiritual, rather than temporal, sanctions.

10.6 We have found it helpful to our perspective to remember also that most, if not all, of the unpleasant sides of homosexual life in Hong Kong find their daily parallel in the exploitation of young women for sexual gratification or gain. The litany paraded through the courts reveals if anything more abuse, more seduction, more physical violence, kidnapping, extortion and blackmail in relation to young women than to young men, notwithstanding that there is extensive protection by law for young women and relatively little for young men.

10.7 As an example, there spring to mind within the last three years only two violent deaths known to be of a "homosexual nature" : the suicide of John MacLennan upon fear of arrest and exposure, and the robbery, tying-up, gagging and eventual suffocation of an antique dealer by his homosexual partners. During the same period there have been crimes of violence too numerous to catalogue committed upon women in the name of "heterosexual influences" : a European sailor murdered a prostitute using a broomstick in the process; a young Chinese man cut off the penis of his rival for the affections of a young girl; a man killed young girls, committed necrophilia, cut off their sexual parts and stored them in jars; and numerous young Chinese girls have been raped, in order to be forced into prostitution by shame.

10.8 The point we wish to make is this. Conventional heterosexual intercourse between consenting adults in private is not illegal, yet crimes of passion occur frequently. Homosexual connection in the same circumstances is illegal. Would restoration of that homosexual connection to the legality enjoyed by heterosexuals cause more, or less misery and other crime or have no effect, or is it impossible to say? Put in more colloquial terms, the question is whether decriminalisation of homosexual acts between consenting adults in private would necessarily open "the flood-gates" to a spate of other crimes of a homosexual nature. The answer, in our opinion, is that it is highly unlikely.

10.9 Of course we are not concerned solely with whether or not any change in the homosexual laws might cause an outbreak of other crime. It is equally important, we believe, to consider whether this change might lead to altered patterns of behaviour in public by homosexuals which would be for good reason offensive to other members in our community. The unnecessary creation of tension in society for such reasons is a consequence to be avoided.

10.10 Bearing these preliminary thoughts in mind, we have looked initially to other jurisdictions for guidance. As the relevant laws of those Asian countries which we have considered have not been altered, we cannot provide answers by looking at the experience of our neighbours.

## England and Wales

10.11 We consulted available sources in Hong Kong and requested the assistance of an English research institution with a view to obtaining reliable material on the social consequences of the 1967 change in the law of England. We have been unable to find any direct or comprehensive study on this subject. It has been pointed out by one writer, Gordon Rose (1970 British Journal of Criminology, page 349), that "the difficulty of conducting research into this field is well-known and there is little hard evidence about the results".

10.12 However, statistical data based on police figures in England were discussed by R. Walmsley, a member of the Home Office Research Unit (reported in [1978] Criminal Law Review page 4000). These are his conclusions, which we find of interest:

### *"Summary*

1. *Since the Sexual Offences Act 1967, which included provisions legalising homosexual behaviour between consenting adults in private, the number of offences of indecency between males recorded as known to the police had doubled and the number of persons prosecuted for that offence has trebled.*

2. *The estimated prosecution rate (prosecutions brought as a proportion of prosecutions possible) almost doubled between 1967 and 1971 and remains much higher than the 1967 figure.*

3. *Most of the additional offences known and prosecuted involved indecency between two males aged 21 or over [i.e. not necessarily buggery, and not in private].*

4. *There are wide variations between police areas in respect of recorded incidence and of prosecution rate.*

5. *There are three possible ways of accounting for the changed situation since 1967. There may have been changes in the attitudes and behaviour of homosexuals; there may have been changes in the attitudes and behaviour towards homosexuals of the public (in reporting the offence) and of the police. A third hypothesis is that the Act itself is the source of the increases in recorded incidence and prosecution rate : it provided the police with a basis on which action could more confidently be taken against those involved in homosexual acts*

*in public, and it introduced summary trial for the offence or indecency between males thus making it easier to bring prosecutions.*

6. *The variations between police areas may be the result of a number of local factors; including the extent of the problem, staff resources and the ease of having a case dealt with by the courts. This should not be surprising : nor should it be seen as grounds for any criticism of the police."*

10.13 A study by the Home Office in 1979 found that the number of convictions for homosexual offences has increased fourfold in England and Wales since 1967. In a recent book "Gays and the Law", Paul Crane suggests that the use of summary trials allowed by the 1967 Act helps to explain this increase.

## **Scotland**

10.14 The Crown Agent has kindly supplied us with criminal statistics relating to homosexual offences which were not decriminalised by Section 80(7) of the Criminal Justice (Scotland) Act 1980 (that is homosexual acts other than in private between consenting adults) :-

<u>Year</u>	<u>Convictions</u>	<u>Offences made known to police</u>
1977	4	15
1978	7	17
1979	7	35
1980	11	19
1981	39	82

10.15 It would be unwise to attempt to draw definite conclusions from such small numbers but it may be that the re-statement of the Scottish position in statute has led both to an increase in the report rate to the police and by the police to the prosecuting authorities.

## **Australia**

10.16 A study recently conducted by the New South Wales Anti-Discrimination Board found that the number of prosecutions for homosexually related offences decreased in the Australian Capital Territory after enactment of laws decriminalising consensual adult homosexual behaviour in private. The study also found that South Australia reported fewer arrests for homosexual offences by males after decriminalisation. The authors pointed out, however, that the low number of reported cases lessens the reliability of the statistics.

## United States of America

10.17        The United States of America, in many ways still a crucible of ideas and attitudes in Western countries, provides numerous well publicised examples to illustrate the worst fears held by some of our correspondents. New York, Boston, Chicago and San Francisco have seen, over the last 10 years, instances of public behaviour and public recognition which most people in Hong Kong would find totally unacceptable. For example, we set out an extract from the cover story in Time Magazine, published on 23 April 1979 under the heading "How Gay Is Gay?" :-

*"Wandering into the New Town section of Chicago's North Side, a visitor quickly notices the changed city scene : male couples in tight jeans and with close-cropped hair walk together; the crowd watching a volleyball game in Lincoln Park is all male, so are most of the people taking the spring air on a strip of beach along Lake Michigan. In the past few years, New Town has become Chicago's first centre of open homosexual activity, with an initial result that could have been predicted a decade ago : last summer roving gangs of young toughs shouting anti-homosexual epithets beat up a number of men strolling the streets of the area late at night." ..... "What followed, however, would have been remarkable if not unthinkable in Chicago or in many other major American cities just a few years ago. 'Gay Life', a local homosexual weekly, organized street patrols to stop the assaults. They were also aided by "straight" volunteers from neighbourhood community associations. Moreover, they were helped by the Chicago police ....."*

*"In its way, what happened in New Town symbolizes a national trend that is changing the lives of the American minority that forms the gay society. Homosexual men and women are coming out of the closet as never before to live openly. They are colonizing areas of big cities as their own turf, operating bars and even founding churches in conservative small towns, and setting up a nationwide network of organisations to offer counselling and companionship to those gays - still the vast majority - who continue to conceal their sexual orientation. As in New Town, gay people still encounter suspicion and hostility, and occasionally violence, and their campaign to live openly and freely is still far from won. But they are gaining a degree of acceptance and even sympathy from heterosexuals, many of whom are still unsure how to deal with them, that neither straights nor gays would have thought possible just the day before yesterday."*

10.18        A study in the State of Illinois after sodomy was decriminalised found that the number of prosecutions for soliciting increased. The author suggests that the increase was the result of intensified activity by police

against homosexual behaviour in public (Gunnison, "The Homophile Movement in America").

10.19 We have also referred to an article entitled "Reported Consequences of Decriminalization of Consensual Adult Homosexuality in Seven American States" (Geis, Wright, Garrett and Wilson, 1976, Journal of Homosexuality, Volume 1(4), page 419). The authors claim that : "This article reports results of a survey of police officials, prosecuting attorneys, and members of homosexual groups in the seven states that had decriminalized private homosexual behaviour between consenting adults. Despite the dire predictions of many, the responses indicate that, among other things, decriminalization has had no effect on the involvement of homosexuals with minors, the use of force by homosexuals, or the amount of private homosexual behaviour. Additionally, decriminalization reportedly eased somewhat the problems of the homosexual community and allowed the police to devote more time to the investigation of what generally are regarded as more serious criminal offences".

10.20 The survey was conducted by questionnaires sent to 70 police departments, to 40 prosecuting authorities in the same districts of cities with populations exceeding 50,000 and to 47 homosexual groups. 17 police departments responded, 13 prosecuting attorney offices answered, as did 6 homosexual groups. This is obviously a small sample, by any standards. The authors recognized this limitation, and responded that they "were not aiming at total coverage, but rather at determining how officials and persons closely acquainted with the situation found things after decriminalization".

10.21 Principal findings were that 88% of police officers and 90% of prosecuting attorneys and 73% of the homosexuals felt that there had been no increase in the use of force by homosexuals. Next, 80% of prosecuting attorneys, 96% of homosexuals and 69% of police officers stated that the involvement of minors with homosexuals was no more prevalent after the change in law. 71% of the prosecutors, 63% of the homosexuals and 54% of police officers believed that private homosexual behaviour had not increased notably.

10.22 Other findings were that half of the respondents noted an increase in "gay" bars; 26% of the prosecutors and 59% of the police reported an increase in public solicitation; nearly half of the respondents reported a decrease in social condemnation of homosexuals; 75% of the homosexuals thought that as many homosexuals are now arrested as before, but charged under "public order" statutes, whereas only slightly more than 10% of the prosecutors and police agreed. Finally, 50% of police officers reported that decriminalizing private homosexual behaviour allowed them to spend more time on serious crimes.

10.23 The authors concluded that they had found a consistent belief among those replying that the decriminalization of homosexuality had not produced the kinds of deleterious consequences that had been feared. We noticed that the authors also cited a study conducted in Holland which

indicated no change in the incidence of homosexual offences following the decriminalization of private homosexual activity.

## **Our conclusions**

10.24 The limitations of the information we have been able to obtain for this chapter are apparent. Research to demonstrate changes in behaviour when the law is altered is bedevilled by a number of factors : there has been a tendency in some jurisdictions, both before and after decriminalization not to specify the sex of the offender or victim, or their age, where offences against public decency or of indecent assault are concerned; both investigatory and prosecution policies, before and after decriminalization, have varied from place to place and are not publicly known, so that it is almost impossible to know if one is comparing like with like. There is a lack of statistically reliable data, both overseas and locally, and the circumstances of Hong Kong make direct application of inferences derived from the experience of different communities overseas of very limited assistance. Specifically, we have been unable to locate any research dealing with the effect upon any predominantly Chinese communities.

10.25 Perhaps, even if it had been available, we might have been asking too much from such research. We might in effect have been asking the researchers to engage on our behalf in an exercise of crystal ball gazing, asking them to substitute experience in different circumstances and environments for our own knowledge of local customs and social attitudes.

10.26 In Chapter IX we acknowledged the assistance we derived from those in Hong Kong who made submissions to us. A number of them made reference to consequences they feared or foresaw for this community if the law is changed and we have taken account, particularly, of warnings about increased public activity, "homosexual" clubs, recruitment by racketeers of youths for prostitution and extortion by blackmail (see, for example, paragraph 9.33). On the other hand we found less persuasive the suggestion that a change in the law could result in prosecution of homosexual adult men for using under-age partners. After all, heterosexual adult men are required to be careful of the age of female partners.

10.27 Having paid regard to all this research, locally as well as overseas, the truth is that we are unable to give anyone the comfort of announcing firm forecasts about the consequences of any change in the law. We appreciate that the lack of firm conclusions in this area will be less than satisfactory to those seeking certitude. The only consolation we can give is that we have seriously considered the whole variety of views about possible consequences, and these have assisted us to reach and shape our conclusions and recommendations. The more obvious dangers in the spectrum of possible effects caused by our proposals we have sought to guard against, as our next chapter shows. But whether in practice the consequences will be minimal or great, and the behavioural and other changes large or small, will depend upon the interplay of many factors :

community response to our proposals;

official responses, including investigatory and prosecution policies;

behavioural reactions both in public and in private by men and women of homosexual inclination;

public reaction to public behaviour;

the strength of social sanctions against homosexual conduct;

reactions by those involved in protection and prostitution rackets;

sentencing policies adopted in future by the Judiciary;

the attitudes of employers, and their employment policies;

the responses of the entertainment and tourist industries.

We regret that the potential variations are too great to allow us to foresee exactly where the pendulum of change will come to rest. We do not have the gift of prophecy.

# Chapter XI

## Our reasoning and conclusions

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### Introduction : our guiding principles

11.1 We have sought in answering the question posed in the notice of reference of this topic both to be pragmatic and to seek for principles which might illumine the way ahead. We have had to survey a wide field, for the laws "governing homosexual conduct" include those designed to protect children and young persons, those regulating behaviour both in public and in closed communities like prisons, those covering pornography, apart altogether from those offences of a purely homosexual nature like gross indecency between males.

11.2 Some of the principles we have espoused will be apparent from the discussions in our preceding chapters. The role of the law has been central to our consideration. In the sphere of homosexual conduct we see it principally as a means of protecting the vulnerable, including young people and the mentally disabled, from exploitation or sexual corruption; and as a protection to people generally against public behaviour that is indecent or offensive to the majority. We do not agree that in the name of a spurious freedom either of these important protections should be weakened - rather should they be strengthened in whatever ways are practical. Whenever the actions of the individual impinge upon and may harm or seriously offend others, then we believe that the law should take preventive action.

11.3 We recognise the importance within the community in which we live of the family. We believe it should be a prime aim of the law wherever it touches the communal life of the family to seek to preserve and strengthen it ; the most stringent measures are justified to protect our young and bring them up in the proper way. Sometimes serving this objective may involve being practical and choosing the lesser evil between two opposing courses, neither of which is ideal.

11.4 As our work progressed, we became aware of the similarity of the influences upon and of the dangers threatening our youth, both male and female, in the sexual field. We have learned, we think, from the steps already taken by the law to guard young females even from their own desires, as in those laws setting the age beneath which it is unlawful for others to have sexual intercourse with them despite their consent. It seems to us appropriate and right that, where possible, similar legislation should protect the young and the mentally disabled of each sex.

11.5 We are impressed with the importance of ensuring in our society that the law and the administration of justice retain the respect of our citizens,

for we see that respect as cement holding together the fabric of society. Having said that, we find conflicting pressures : on the one hand we are concerned by the way the existing law is deliberately and frequently broken by those who normally would be its staunch upholders, and we are worried that the present legal environment may be a fertile breeding ground for blackmail, for triad activity, and for the commercial exploitation of young people; on the other hand we foresee danger were any change in the law to lead to behaviour in public by a minority which was offensive to the majority, so that the law itself came into disrepute. We heed the warnings given us both by some unacceptable features of the American experience, and specifically by the Hong Kong homosexual whose views we summarised at paragraph 9.32 to 9.34.

11.6 The evidence noted in chapters III, IV and V has convinced us that there is in all sectors of our Hong Kong community, and amongst all the races in it, a significantly large minority whose predisposition from birth is exclusively homosexual; and we have learned that there is nothing that can be done to change that innate character. We have learned of the personal misery of many such people: the suicide of Inspector MacLennan may be seen by some as an extreme example, but we feel the statement of the Chinese homosexual set out in Annexure 16 to be a more typical illustration. In so far as the law needlessly and unnecessarily contributes to such unhappiness by banning the expression of personal proclivities and feelings in circumstances where no harm is done to others, then in our opinion it is not serving a justifiable purpose. It should not be a function of the law to enforce moral judgments in areas where there is no need to protect others.

11.7 Bearing these general observations in mind, we now turn to make our specific recommendations.

## **Marriage**

11.8 We believe that the laws relating to marriage and divorce need no amendment in respect of homosexual conduct by either sex. Specifically we have concluded and we recommend that the law should not be amended to permit persons of the same sex to enter marriage.

11.9 This raises the question, which we have considered, as to whether long-standing relationships of a sexual flavour between persons of the same sex, such as those considered in paragraphs 6.9 and 6.10 should receive the protection of the law. We have concluded and we recommend that as a matter of public policy they should not receive legal recognition, both to retain parity with similar heterosexual relationships and to discourage prostitution.

## Youth under 21 years old

### *Prostitution, procuration and sexual intercourse*

11.10 We turn now to consider how best to protect our young. We are concerned principally with homosexuality. We wish to see proper protection for male children and youths from sexual exploitation and abuse. The evidence given at the MacLennan Inquiry provided many examples of such exploitation and demonstrated beyond a peradventure the need for laws to protect them. But we have found a surprising lack of such laws dealing with youths and male children in contradistinction to the provisions applying to girls and young women. In their case Part XII of the Crimes Ordinance (Cap 200) provides a comprehensive code designed to protect them by punishing, amongst others, anyone who:

procures them by threats to have sexual intercourse;

has intercourse with a girl under 13 (life imprisonment) or has intercourse with a girl under 16, or with a female defective (5 years);

takes an unmarried girl under 16 for any reason out of the possession of her parents against their will ;

so takes a girl under 18, for the purpose of sexual intercourse;

harbours or controls a woman for the purposes of prostitution;

procures a woman to become a prostitute;

procures a girl under 21, or a female defective to have sexual intercourse with a third person;

causes or encourages the prostitution of a female defective ;

as owner or occupier of premises induces or knowingly suffers a girl under 16 to be there for the purposes of prostitution.

11.11 There are no analagous provisions aimed against those who suborn young men or lead them into prostitution; furthermore, for the reason we give in paragraph 6.61, whilst it is an offence for a man to live even in part on the earnings of a female prostitute, he may live on those of a young male prostitute with impunity. Is this legislative indifference because boys and young men are presumed to be better able to take care of themselves than can girls, or are they thought to be made of firmer stuff and so able to resist female or male seduction? Or is it because the community shuts its eyes and wishes to believe that none of these sexual abuses happen to men? The real reason may be that when the code protecting women was first devised and enacted, homosexuality and male prostitution were not then a problem. The MacLennan Inquiry has proved this no longer to be the case.

11.12 We recommend in principle that the protection for women which we have described above ought to be applicable to young men. The problem is that so many of the provisions protecting females treat sexual intercourse as an ingredient of the offence, and no male homosexual conduct, even though as detrimental to the victim, amounts to sexual intercourse. It therefore follows that for the protection of boys and young men it is necessary to define in a different way the offences which will be designed to protect them by punishing those who through homosexual conduct suborn, seduce, or abuse them, or bring them into homosexual prostitution.

11.13 The first answer which we recommend is that the term "prostitution" in the Crimes and similar Ordinances be defined to include male prostitution so that all those sanctions against the commercial exploitation of young females may also be brought to bear against those who seek to profit from male prostitution.

11.14 The second problem is to apply those provisions in which "sexual intercourse" in the case of females is an ingredient analogously for the protection of boys and young men. We have considered the solutions proposed by Professor Glanville Williams in England and adopted in Victoria and some other States of Australia which we describe in Chapter VIII, but for various reasons have rejected them at the moment for Hong Kong.

11.15 We consider that a line has to be drawn between homosexual conduct which includes physical contact, and homosexual conduct short of that. We see a real difference between the person who has intercourse with an under-age girl, or homosexual contact with a boy, and the person who only speaks to them salaciously. We consider accordingly and we recommend that those provisions in Part XII of the Crimes Ordinance described in paragraph 11.10 which include the phrase "unlawful sexual intercourse" should be enacted also in similar terms but including homosexual physical contact as well as sexual intercourse, and so apply to both sexes.

11.16 We recommend also that those provisions described above relating to the abduction from the control of their families of girls below certain ages also be applied to boys of similar ages since it is possible, if rare, for them to be so lured away. A side effect of these recommendations may be to penalise lesbian activity in a very few such instances.

### ***Indecent assault***

11.17 Indecent assault in law includes conduct such as kissing or touching if done with a sexual motive. Consent negatives the assault and so prevents the commission of an offence. The Crimes Ordinance (Cap 200) and the Offences Against the Person Ordinance (Cap 212) create separate offences of indecent assault upon a woman or upon a man respectively; the offence may be committed by either sex upon the same or the opposite sex. With respect to each offence the law provides that consent given by a child

beneath a given age as a matter of law is incapable of negating the assault. The age of consent for girls is 16 and for boys 13 years. Thus any man or any woman of any age may lawfully act indecently (short of buggery or gross indecency) with a person of either sex who is above those ages provided they have been persuaded to consent. The penalty for indecent assault on a female is up to 5 years and upon a male 10 years' imprisonment.

11.18 It is obviously both appropriate and necessary in our view to seek to prevent the sexual subornation of children who by reason of their youth and inexperience are unable to exercise a mature and reasoned judgment. Taking all the various factors into account, we recommend that the offences of indecent assault be retained to cover all non-consensual assaults of a sexual nature, including those in which by reason of their age young persons are deemed in law to be incapable of giving consent; and that the penalties for indecent assault on males or females should be altered so as to be the same; we consider 5 years to be more appropriate and to fit better within the tariffs set for the other offences we have discussed.

11.19 This leads us to consider what should be the age of consent for both homosexual and for heterosexual activity; the two cannot be considered in isolation though a valid distinction can be made between them. So far as homosexual conduct is concerned, suffice it to say at this stage that for reasons we explain later we do not consider it would be acceptable in Hong Kong, even if there were any decriminalisation of homosexual conduct, to set the age of consent for males to such assaults below the age of 21 years.

11.20 But different considerations apply to heterosexual conduct. The vast majority of children will grow up to be heterosexual. Some sexual contact short of intercourse but including kissing is a natural stage in their adolescent growth. So far as such heterosexual conduct is concerned the law must not intrude by setting the age of consent too high, and so creating an offence out of innocent conduct; but nor should the age be set too low lest adults are not deterred from the seduction of the young, particularly in homosexual cases. But it seems to us unjustifiable and illogical that the age of consent for boys and for girls should for heterosexual conduct be so different. Accordingly we recommend that the age of consent to heterosexual conduct should in the case of both boys and girls be set at the same age, and that this should be 16 years. These recommendations still leave us to consider at a later stage consensual homosexual contact between males who have become adults and similarly between females.

## **Public behaviour**

11.21 We consider it to be of cardinal importance for the reasons we have explained earlier that conduct should not be permitted in places to which the public can resort which may be offensive to the majority in our community. We have observed that there are noticeable gaps in the present laws protecting this aspect of family and community life and we recommend that they be strengthened. It is undesirable if the law permits conduct in public

which is offensive to adults; it is intolerable if this may occur to or in the presence of children.

11.22 So far as public behaviour is concerned, disorderly conduct attracts penalties up to a fine of \$5,000 and imprisonment for 12 months; indecent exposure up to \$1,000 and 6 months; and indecent conduct in a public lavatory only a fine of \$250.

11.23 To our concern we have found that there is no general offence of indecent behaviour, as opposed to the specific offences mentioned above and elsewhere. In the absence of such a provision, and failing conduct amounting to gross indecency, indecent assault or indecent exposure, the man who for instance accosts children in a playground may be liable to no more than a fine of \$500 and 1 month's imprisonment under the Pleasure Grounds By-laws.

11.24 We believe that provision should be made for the better protection of children and of the family when in public, and to deter those who resort to lavatories, beaches, swimming pools and other public places to accost, spy upon or abuse the young, or who offend the general public by other sexually motivated behaviour. Accordingly we recommend the creation of a new offence of indecent behaviour; the penalty should match that for disorderly conduct, a fine up to \$5,000 and imprisonment for 12 months. This new offence should be widely defined and replace the current offences of indecent exposure, obeying calls of nature in public and the majority of the offences of indecent conduct set out in the regulations made under the Public Health and Urban Services Ordinance (Cap. 132). It would then remain for the courts when deciding the appropriate penalty to reflect any circumstances of aggravation such as the location, the age of those present, the degree of harassment and such matters. Obviously indecent behaviour outside a school as the pupils leave deserves harsher punishment than similar conduct where only adults are present.

11.25 It has also become apparent that, unlike their counterparts in museums, libraries, lavatories and bathhouses, the attendants at swimming pools, beaches and children's playgrounds are not given authority to order people off who appear to be about to commit offences, including offences of indecency, at those places. We believe this to be a useful preventative measure to protect the young. Accordingly we recommend that the By-laws made under the Public Health and Urban Services Ordinance (Cap. 132) be amended to empower attendants at public beaches, public swimming pools and public pleasure grounds, when appropriate, to require people to leave; failure to comply should be an offence punishable by a fine up to \$1,000 and imprisonment for 1 month.

11.26 We have observed that there is uncertainty as to whether certain offences which relate to public behaviour are applicable in schools, because these establishments do not fall within the normal meaning of public places. We believe that it is desirable that students of both sexes should be shielded from the more blatant and distasteful forms of sexual harassment, whether in

classrooms or lavatories, either by their peers or by their teachers. We recommend therefore that consideration be given to applying the offence of indecent behaviour to conduct in schools.

11.27 We have considered the situation in bars at some length. We heard of a number of bars in Hong Kong frequented by homosexuals and by male prostitutes. They are small in number when compared to bars catering to heterosexual traffic. We recognise the affront caused to those who unwittingly enter them without any knowledge of their special ambience. There are two problems to be addressed: that concerned with the licensee and that dealing with the male prostitute.

11.28 First as to the male prostitute, the offence of loitering or soliciting for an immoral purpose, as we have already pointed out, would appear to include doing so for homosexual purposes. Such bars are not however public places as defined. Accordingly we recommend that the offence of soliciting for an immoral purpose contrary to section 147 of the Crimes Ordinance (Cap 200) be widened to include places to which the public resort, such as the common parts of buildings, public restaurants, bars and dancing places, the penalty to be a fine up to \$2,000 and 6 month's imprisonment. We recommend that for the avoidance of doubt the definition of immoral purpose be amended to include expressly homosexual purposes.

11.29 Second as to the licensee, if the evidence justifies it, he may be charged with aiding and abetting the prostitute. But this will always be difficult to prove, and a different sanction should also apply. Technically, if the term "prostitute" in the licencing regulations and licences issued under the Dutiable Commodities Ordinance (Cap 109) includes, or is amended to include male prostitutes, and we so recommend, then it would be a breach of licence for the licensee to permit such people habitually to frequent his establishment. Since we understand that licensees of some bars presently permit female prostitutes to frequent them, it seems to us that the matter is essentially one of enforcement, the ultimate sanction being the liability to loss of licence. In principle, even if it were practicable, we do not consider it appropriate to make a distinction between "girlie" and "gay" bars.

## **Other areas of concern**

11.30 We turn now to deal with a few matters of which we have become aware in the course of our work, but which are only peripheral to our terms of reference so that we have not fully researched them, and therefore make no recommendations other than that the appropriate authorities review the position.

### ***Child stealing and selling***

11.31 There are presently three offences dealing separately with abandoning, selling or stealing children. There may well be a case for

rationalising these offences. In any event, for the protection of children and to deter those inclined to sexual abuse of the young we believe that the penalties for selling children (Section 44, Offences Against the Person Ordinance Cap 212) and stealing children (Sections 2 and 26, Protection of Women and Juveniles Ordinance Cap 213) and for abandoning children (Section 26, Offences Against the Persons Ordinance Cap. 212) should be increased.

### ***Obscene telephone calls***

11.32 We understand that the number of obscene telephone calls is increasing. We are well aware of the distress caused by them to adult recipients and the potential harm to children who may pick up the receiver. We suggest that finding means of preventing the problem, and in particular raising the level of penalty (at present up to \$100 or 1 month's imprisonment) merits attention for the reasons we give in paragraph 6.45.

### ***Peeping Toms***

11.33 Peeping Toms, whose eyes invade the privacy of people in intimate situations in bathrooms or bedrooms on our crowded housing estates, have, we are told, become a very real nuisance in the past two years. One recently fell many storeys from outside a bathroom. There are no statutory provisions which deal satisfactorily with the problem, and it deserves consideration as to what means can best be adopted to deal with it.

### ***Indecent publications and films***

11.34 An area of concern to us is the commercial exploitation of sexual depravity by the production in private of photographs or films which will later, on public sale, become objectionable publications or pornographic video films. The legislative policy, broadly, has been to penalise the sale of such material, rather than its production. We suggest that those with responsibility in this field should with despatch consider whether it would not be wise to penalise such activities as necessarily take place in the production of pornographic material by those who procure, manage, arrange or take part. It should be considered whether the courts might be enabled to take into account as a circumstance of aggravation of any offence the numbers sold or intended to be sold, the amount of money made or intended to be made, and the age of any participants, particularly in the case of homosexual depravity.

11.35 We are also concerned about the importation of commercial publications relating to sexuality. We have been supplied with some copies of periodicals from the United Kingdom, U.S.A. and elsewhere, some of which are genuine attempts to provide communication between homosexuals about matters of mutual interest, including reviews of literature and so on; others are blatant attempts to promote salacious behaviour, complete with colourful

pictures. We are concerned at the ease with which children may obtain materials advertised therein.

11.36 We have been struck too by the difficulty facing an importer of books, magazines or videos, who may genuinely be unable to know whether the product will infringe, in view of the widely differing and subjective views commonly held as to what is objectionable or obscene. We understand that this was discussed some years ago. Nevertheless we suggest that the authorities concerned should consider whether to devise means by which a bona fide importer may obtain a ruling prior to importation, perhaps from a Board comprising members of the community. Such a procedure might have the merit of making easier and more efficacious the prosecution of the many highly objectionable publications and videos daily exposed for sale and available therefore for purchase by our young. Such a system could be self-regulatory in that an importer might import and distribute, taking upon himself the risk of prosecution; but those in genuine doubt could seek the censor's classification. The censor as well as having power to ban importation might be authorised to permit it on conditions, for instance that cuts are made, or sale is to adults only.

### ***Sex shops***

11.37 These are not at present a problem in Hong Kong. But we would caution the responsible authorities of their proliferation in certain major cities both in the East and the West, and of the dangers they can present as places of salacious resort to corruptible youth. The situation should, we think, be kept under review, for prevention in this area is better than cure.

### ***Employment***

11.38 In our opinion, limited decriminalization of male homosexual conduct may remove as a specific ground for termination of services of government servants, a small range of offences which presently result in criminal convictions. However, if the present policy is retained, the vulnerability to blackmail and the risk of security breaches will persist to some extent among homosexual employees of Government. If our other proposals are accepted, it would seem to us desirable that the present policies of employment by the Civil Service be reviewed in the way suggested in paragraphs 5.36 to 5.40. As we have already stressed, the principles of natural justice will assist in the consideration of the merits of individual cases.

### **Consensual homosexual conduct by adults**

11.39 We have chosen to leave until this stage our consideration of the remaining laws governing male and female homosexuality. If our proposals are implemented, then any non-consenting sexual conduct will be an offence, and so will any sexual contact by any person with another of

either sex under the age of 16 years who is known or reasonably suspected to be so.

11.40 We therefore define the questions we must ask ourselves in this way :- "What consensual conduct, if any, of a homosexual nature should be penalised for persons of either sex who are over 16 years old?", or, "Bearing in mind the existing and the increased protection we have previously recommended for youth of both sexes to save them from exploitation or force, what consensual sexual conduct between persons of the same sex should be permitted, and, if any, at what age?".

11.41 It will be appreciated that these questions address a narrower issue than the broad issue of "legalising all homosexual conduct" which some commentators have urged upon us and with which we began our consideration of this subject. We believe these questions so framed are a fair and logical consequence of our approach which began by asking : "Whom should the law protect, and from what should they be protected?". We have already concluded that the young must be protected. But what of their elders?

***Consenting Adult Males in Private  
Arguments for retaining the present law***

11.42 Before we provide our answers to these questions, by way of reminder to ourselves and others, we now set out seriatim the principal arguments and submissions made to us in favour of preserving the status quo in the law, all of which address the broad issue rather than the narrower one which we are now considering :

- (a) Homosexuality is not tolerated by traditional Chinese concepts of morality.
- (b) Homosexuality and homosexual behaviour are not found amongst the Chinese people, but are peculiar to occidentals.
- (c) The Chinese in Hong Kong find homosexuality unacceptable.
- (d) Homosexuality distorts the social fabric : it introduces unhealthy trends and immoral practices which are damaging to the mores of society; it is a threat to the institution of marriage; homosexuality is a bad influence on the younger generation.
- (e) Man is by nature heterosexual. Homosexuality is unnatural and therefore cannot be tolerated.
- (f) Man is by nature heterosexual. Homosexuality is unnatural and therefore is a kind of disease.
- (g) The essential function of sexual intercourse is for procreation. Any sexual conduct which is not consistent with this is a crime

against God and the human race, and hence should be punished by law.

- (h) The majority of Hong Kong citizens favour the prosecution of homosexuality. The law should take account of this.
- (i) Every normal person has sexual desires but there are also normal ways of getting relief for such desires other than homosexual activities.
- (j) Amending the present law to bring it in line with the law in England may be regarded as an imposition of an alien concept by an expatriate government on Chinese people.

### ***Our own reasoning and views***

11.43 We take the view that many opinions on the subject of homosexuality reflect a lack of knowledge of the true facts, and are characterised by a lack of perspective and of charity. We believe that homosexuals, both men and women, are human beings who form a significant proportion of our community; on a conservative estimate they number, we think, not less than 250,000 and perhaps as many as 500,000. They are found in Hong Kong among all nationalities and in all walks of life, amongst Chinese and amongst other races in equal measure.

11.44 As we have already explained, we can see very good reason for prohibiting sexual access to those who by reason of youth or disability have not yet formed, or are not fully able to control, their natural sexual impulses. To achieve for the adult homosexual that peace of private mind to which he or she may feel entitled is no justification for granting a licence to prey upon those who do not have the capacity to exercise their own free and mature judgment.

11.45 Our previous recommendations demonstrate that our first concern has been to see that young people and those of feeble mind are protected, as are women, from exploitation by either sex; and that members of the public and their families are protected from overt sexual conduct in public which they may find disconcerting and offensive. Similarly those previous proposals indicate that we are not disposed to assist in the creation of a lucrative market to enable those of criminal disposition to seek to profit from the commercialisation of sexual gratification, whether heterosexual or homosexual.

11.46 Quite different considerations should apply, we believe, to the conduct in private of persons of maturity and adult judgment. Social stigma, as in many other countries, attaches strongly to homosexuals in Hong Kong. We do not consider that this can justify discrimination at law. By the same token, homosexuals deserve no special privileges from the law. Their actions in those areas which involve no one but other consenting adults in private

should be judged by the same standards as the law applies to others in analogous situations. They should be treated with equality under the law and not singled out, as some would suggest, for unfair harassment.

11.47 We have mentioned previously the concept of a right to behave as one likes in private so long as others are not thereby adversely affected. We repeat our emphasis on this because it is fundamental to our reasoning.

11.48 First, such a right is basic to the common law, for the freedom in such circumstances so to behave is guaranteed by the law unless and until in any area express legislation encroaches upon or removes the right to do as we please. Second, we believe that privacy is a very valuable commodity in Hong Kong, and highly prized by the great majority of people who live and work here. Despite a mixture of cultural ethics, we believe that this respect for individual privacy in this wide sense is pervasive of many facets of family and business life in this Territory. Third, the formalized concept of a right to privacy was enshrined for all peoples by the Universal Declaration of Human Rights in 1948. The United Kingdom has signed both the European and also the United Nations Conventions which seek to give practical recognition to such rights, and the provisions of the latter have been applied to Hong Kong; included in the term privacy is the notion of sexual privacy. Fourth, Parliament in the United Kingdom has not only recently brought this aspect of the law of Scotland into line with English law as a matter of general principle, but it has also amended the law in Northern Ireland specifically to give effect to the ruling of the European Court of Human Rights about its obligations under the European Convention on Human Rights to protect specifically the sexual privacy of adults. Similar obligations are made applicable to Hong Kong by virtue of the International Covenant on Civil and Political Rights. Finally, the protection of sexual privacy in the limited form we propose, that is for consenting adults in private, appears to have been the legal norm in China during modern times. For Hong Kong to fail to provide this recognition therefore places us at odds with both English law and Chinese law, and is inconsistent with international agreements. In the absence of an overwhelming local necessity for this discrepancy, and we have been able to find none, Hong Kong should not be the odd man out.

11.49 Our views are reinforced by a number of other subsidiary arguments and factors which we now list seriatim and of which we have taken account:

- (a) Since homosexuality actually existed in many civilizations, including the Chinese, and has done so for many hundreds of years, it is not a Western proclivity alien to Hong Kong.
- (b) where homosexual behaviour among consenting adults in private is not punishable by law, no evidence of serious moral decay or collapse has been detected in those countries in the region where strong family ties and social sanctions persist, such as China or the Philippines. We believe that even if the law is amended, similar social mores will remain in Hong Kong,

enforcing family ties and discouraging the unnecessary exercise of homosexual practices;

- (c) An overwhelming majority of medical practitioners consider that homosexuality is not some kind of mental disorder. We think it important to affirm that homosexuality is abnormal only in the sense that the majority of the population are heterosexuals. Abnormal in the same way are such other 'minority' conditions as athletic or academic brilliance, congenital deafness or blindness, or indeed left-handedness. Even were homosexuality a disease, which we do not accept, no scientifically verified treatment, let alone cure, has been found;
- (d) so long as homosexuality is conducted discreetly in private by consenting adults, it is a private affair doing no harm to any other party, unlike robbery or homicide. Such homosexual practices therefore should not be treated as criminal offences. Matters of private morality are not usually a suitable subject for legislative control. Moreover the law against homosexual activity is not easily enforceable, for its full enforcement would require access by the police to the private dwellings of a relatively large number of otherwise law-abiding citizens. The law may therefore be flouted with relative impunity. This being the case, it is not a proper object for law enforcement;
- (e) We believe that the vast majority of adult homosexuals are otherwise law-abiding citizens, and there is no reason to accuse them of disrupting the social order. But the law as it now stands provides opportunities for the commission of more serious crimes such as blackmail, corruption or bribery; it has to be remembered however that non-criminal conduct which is strongly disapproved of by society may still form the subject of blackmail, though to a lesser degree;
- (f) There are many acts done in private which may be considered immoral, including adultery, fornication or gambling, but which are not criminal offences. In fact, heterosexual adultery is sometimes more harmful than homosexual conduct between consenting adults in private, in that the interests of children may be injured;
- (g) If homosexuality is a crime against God and the human race because it hinders procreation and hence should be prosecuted, then similar activities such as birth control and even masturbation logically should equally be treated as criminal offences.

11.50 Taking into account all these matters, and in the light of our previous proposals, we have concluded and we recommend that the law should not prohibit consensual sexual conduct between adults of the same

sex in private. That leaves for consideration a number of further questions: what meaning or definition should be given to "in private"; a question concerning procurement; at what should be set the age of adult responsibility in this connection; the appropriate penalties for the offences; and the question of lesbian behaviour.

### ***"In private"***

11.51 We have noted that the law in the United Kingdom continues to penalise consensual adult male homosexual conduct if more than two persons are present; by definition the act done is then held not to be in private. We have to consider whether or not the same rule is appropriate in Hong Kong. Logically, it can be argued, once it is accepted that consensual adult behaviour in private should be permitted, then no artificial limitation should be placed upon the numbers present; no such limitation applies in the analagous heterosexual situation.

11.52 We have indicated earlier our concern lest the public behaviour of a small number should offend the majority, and so bring the law and its administration into disrepute. One area in the present context about which we are particularly concerned should our proposals be implemented is that of private clubs, and similar institutions. We would not wish to see a situation arise where the definition of "in private" enabled those so inclined to avoid the spirit of any new law even though, because of unforeseen loopholes, they remained within its exact provisions. Our earlier recommendations are intended to allow a minority with a particular sexual trait not to be forbidden from indulging their instincts in circumstances where it cannot affect others in the community; but we do not seek to equate exactly homosexual to heterosexual conduct - heterosexual dancing is inoffensive, homosexual dancing offends many. The only way to reconcile our two objectives is to move forward cautiously. Accordingly we recommend that the definition of "in private" should only cover the situation when not more than two persons are present; but we recommend also that this definition be reviewed in the light of experience as it is then manifest two or three years after any implementation of our recommendation.

### ***Procurement***

11.53 It will be apparent that in recommending that the law should no longer prohibit one form of consensual homosexual conduct, it is implicit in our reasoning that the majority of forms of inchoate and secondary liability such as conspiracy or attempt, should not persist in relation to that activity in those circumstances and we so recommend.

11.54 We believe that the present protection for women under 21 against being procured for sexual intercourse contained in provisions such as Section 132 of the Crimes Ordinance (Cap 200) is a valuable weapon against those organisers who commercially exploit prostitution. We have

recommended in paragraphs 11.12 to 11.16 that it should be extended also to the protection of young men below that age from either heterosexual or homosexual procurement. We have decided that in the current situation and climate of opinion in Hong Kong, this age limit should continue to be 21, though experience may indicate after several years that this age may safely be lowered.

### ***The Age of Adult Responsibility***

11.55 This brings us naturally to the age of consent for homosexual activity for both sexes. We remember of course that the law provides that it is an offence to have intercourse at all with a girl below the age of 16; so the age of heterosexual consent for women is 16 years; and also that we have recommended that the same age should apply to men for that activity. We now have to consider whether the age of consent for homosexual activity between men or between women shall be the age of 21, or less. Choosing 21 would ensure consistency with our recommendations concerning procurement; it is the age of majority in Hong Kong, and gives the opportunity for the exercise of a more mature and reasoned judgment by persons of either sex, no matter their sexual inclination, before physically committing themselves to adopting lawfully this sexual proclivity. We recognize that sexual mores are changing but, notwithstanding these changes and the age of consent for women being 16, we believe that many men and women in Hong Kong do not experience full heterosexual intercourse until marriage or until they are over 21. At the risk of appearing overly cautious and notwithstanding an obvious inconsistency with heterosexual conduct, we have concluded and we recommend that the age of consent for homosexual activity for men should be the age of 21 years. It follows that for males above the age of 21, but not below it, only in so far as consensual conduct in private is concerned, buggery, gross indecency and indecent assault should no longer be criminal offences. But this decriminalisation, as we have said before, does not imply moral approval, let alone encouragement. It is possible, as we observed with our previous recommendation, that experience will show that the age of 21 is too high for males and should be reviewed; but that does not dissuade us from treading carefully at this stage.

### ***Lesbianism***

11.56 We have had to consider the effect of our previous recommendations upon homosexual conduct between women. Lesbianism is, in general, not an offence between women above the age of 16, provided it is consensual and in private. We have recommended that for males similar conduct should not be decriminalised below the age of 21. Should we therefore now create an offence of lesbian conduct between the ages of 16 and 21 years? We have concluded not, for mainly pragmatic reasons, though we appreciate that our stance conflicts with our premise of seeking to treat male and female conduct alike in law. Our reason is that we are reluctant to create any offence where none exists at present unless a need to do so can

be shown. We have concentrated our research upon male homosexuality and have not studied lesbianism in the depth we would need to do before coming to a conclusion. We advise therefore that the authorities should keep the position under review and act if and when any need for the creation of such an offence is demonstrated.

## **Penalties**

11.57 The present maximum penalty for buggery is life imprisonment and for gross indecency with a male two years' imprisonment. The effect of our proposals is that there will remain the following offences: buggery of and gross indecency with any man in circumstances where it is not in private, buggery of or gross indecency with a male under 21, non-consensual buggery, buggery of or by an animal, attempting or conspiring to commit these offences, and aiding, abetting, counselling or procuring these offences. We believe that these offences have differing degrees of gravity, both one to another and in comparison with heterosexual offences, and that a review of penalties should be undertaken to reflect these differences. We have felt it best that we should not suggest in detail the appropriate penalties for each offence, for this must depend in part on exactly how in the drafting process they are created and categorised, and their relation to analagous offences must be borne in mind. So we recommend that the Attorney General should review the entire field then, and devise a coherent and logical scale of penalties appropriate to Hong Kong.

## **Prisons**

11.58 Prisons will be affected by our previous recommendations, but we believe that no consequential amendment will be required to provisions specifically governing conduct in prisons. It would be open to a court in sentencing for a general sexual offence committed, say, by a prison official upon a prisoner, to take into account as a circumstance of aggravation in deciding penalty the abuse of the position of responsibility by such an official. Hence no specific amendment is necessary, in our view, to present legislation. Secondly, security and discipline in prison establishments of necessity may require more rigorous standards of conduct than prevail outside so that some matters require sanctions even though the same conduct does not amount to a criminal offence. So be it. In the absence of any evidence that homosexual conduct presently takes place in prisons, we conclude that we need only recommend that the responsible authorities consider whether the new offence of indecent behaviour should be applied to prisons.

## **Armed services**

11.59 Regulation of these services in this sphere is a matter beyond the legislative competence of Hong Kong. Accordingly we make no recommendations concerning the armed services. The effect of our proposals

will be that, in effect, members of the forces are still required to comply with the "old" provisions. But we accept in principle that different factors may properly be applicable to regulating conduct in specialised situations, and that those matters are best left to the responsible authority which, in this case, is the British Government.

## **Consequential matters**

11.60 We turn now to several matters which may be affected by our proposals. First, we consider whether the same laws should be applied to heterosexual buggery as we have recommended should govern the conduct of consenting adult males in private, or whether buggery with women should remain prohibited. At present section 49 of the Offences Against the Person Ordinance (Cap 212) prohibits as buggery any insertion of the penis into the anus of any person, be they male or female, even of a man's own consenting wife, on penalty of life imprisonment.

11.61 The safeguards against prostitution of youth and the use of force which we have already described in our view give women sufficient general protection. If, as we believe, the role of the law is to protect the community only where individual conduct in private impinges upon others, then a law which prohibits some few females of sexual maturity from acts they willingly do in private should not remain on the statute books. Its repeal will not do more than restore the freedom of a small number of individuals to act as they wish in this limited area which we consider forms part of heterosexual rather than homosexual activity. We recognise that it may seem an illogical consequence of our proposal that a man may be guilty of an offence who commits buggery upon a youth, while the same act with a woman will be lawful. But in our view a valid distinction can in fact be made between the nature and quality of these acts; for instance, between husband and willing wife, such conduct is heterosexual in nature. The law should be slow to trespass upon consensual conduct in those and similar circumstances.

11.62 It is right and proper we believe to protect young girls from such conduct, even though consensual. We have already concluded that so far as male youth is concerned, the age of homosexual consent should be set at 21 years, which is also the age of majority in Hong Kong. The age at which the law permits consensual heterosexual acts is 16 years. Having considered all these factors, together with the trends in the community towards earlier sexual maturity and younger marriage we are drawn to the conclusion that heterosexual buggery of a consenting woman in private should not be an offence after she has attained the age of 16 years. The effect of our proposals is that, subject to the laws on procuration and prostitution, the law would no longer prohibit any fully consensual sexual conduct in private between a man and woman where both are over 16 years old.

11.63 Next we are aware that our major proposals would have a limited effect upon the laws relating to extradition and immigration by decreasing slightly the number of offences. However we do not believe that

this will cause any difficulty in practical terms and accordingly we have determined that it is not necessary for us to make any recommendations in these fields.

11.64 Finally, we are aware that tourists are one major source of profit for male prostitutes and for their procurers. Over a period of time we believe that, as our proposals take long term effect, the attraction of Hong Kong as a source of homosexual gratification for tourists will diminish significantly, and that few tourists will come here for that purpose. We believe that the sensible and discreet provision of information and warnings for their own protection to tourists about the general protection afforded to young men and women by the law in Hong Kong would be of assistance. This can best be done by those such as hoteliers and escort agencies to whom tourists might turn for assistance. We do not consider it necessary, in these circumstances, for us to make any recommendations.

## **The scope of our proposals**

11.65 The aim of our principal proposals is to ensure that public order is maintained by setting limits on behaviour in public, and that young males, by reason of their vulnerability through age, curiosity, coercion or seduction, are not sexually exploited, lured from their families or prostituted. Once these objects are secured, we believe it safe to provide that the adult male of 21 or more years should not be penalised in his personal sexual habits with another of like sex, age and mind in private. The effect of this proposal is that the offences of buggery, indecent assault and gross indecency will no longer apply to such a person. However these offences will remain for non-consensual conduct, for conduct which is not in private, and also in relation to males under 21.

11.66 We believe that, if the majority of our proposals are followed, it would be a useful and, some may think, a very necessary exercise to monitor closely during the succeeding few years the patterns of response and conduct that emerge and, in particular, what breaches of the provisions of the law have occurred. A review might then usefully be undertaken of these matters, including what is the appropriate age of consent in the light of experience. We recommend such a review in perhaps three years time.

## **Chapter XII**

### **Summary of our work**

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#### **Chapter I : Introduction**

12.1           We point out the widely divergent views held by different people about homosexuality, and set out shortly how problems connected with it surfaced in Hong Kong in 1978 and afterwards. We express our gratitude to those who helped in our work, and particularly to the Sub-committee chaired by Mr Justice Yang which studied the subject in detail at our request and reported to us.

#### **Chapter II : Our approach**

12.2           We describe the proper role of the Commission as we see it. We seek by research to discover the facts, to define principles and to reflect the public interest by discovering the merits and demerits of change. Next we discuss the proper role of the law in this sphere of conduct, and conclude that it should preserve public order and decency, and safeguard those who are vulnerable to exploitation, abuse and corruption; but that it should not otherwise seek to impose a particular view of morality or interfere in the private lives of citizens. We point out that decriminalisation should not be interpreted as conferring any moral blessing.

#### **Chapter III : Who is homosexual? A medical view**

12.3           A medical consultant describes the definition and nature of homosexuality, refers to medical and sociological research into the subject which show that approximately 10% of males are exclusively homosexual by nature, points out that its causes are unknown to science, and concludes by saying that there is no treatment known to be successful.

#### **Chapter IV : Homosexuality in traditional China**

12.4           An eminent academic researches both literary and historical written sources in China, and demonstrates conclusively that homosexuality was practised in China at all periods during its history.

## **Chapter V : Homosexuality in modern Hong Kong**

12.5 We describe the results of our research about the presence and effects of homosexuality in modern Hong Kong, detail what a number of homosexuals told us, and set out evidence about male prostitution. We conclude that there are a very large number, up to perhaps a quarter of a million of male homosexuals in Hong Kong, including members from every race and nationality here. We further estimate that hundreds of thousands of criminal homosexual offences take place in Hong Kong each year, that these are largely unreported and undetected, and that this brings the law into disrepute.

## **Chapter VI : The laws in Hong Kong**

12.6 We summarise the laws in Hong Kong relevant to homosexual conduct and controlling offensive public behaviour. We find that there are far more laws protecting teenage girls from sexual abuse than there are to protect young males. We set out in particular the history of the legislation concerning the specific homosexual offences, and the provisions governing them.

## **Chapter VII : Comparative law - the east**

12.7 We examine how the laws of 10 other countries in the region deal with homosexuality, and find that more permit consensual homosexual conduct in private than penalise it. In particular we find that Chinese law since 1910 has not penalised consensual homosexual conduct in private between adults.

## **Chapter VIII : Comparative law - the west**

12.8 We set out how some countries in the West deal with homosexuality in their laws. We find that the law in England and Wales was amended in 1967 to permit consensual homosexual acts in private between adults, that the law in Scotland and Northern Ireland was similarly amended in 1980, and 1982. We find that the Universal Declaration of Human Rights by the General Assembly of the United Nations became an International Convention coming into force in 1976; this has been applied to Hong Kong - it protects privacy, and guarantees freedom from interference for sexual conduct in private by consenting adults.

## **Chapter IX : Our public consultation and local research**

12.9 We describe all the consultations we have undertaken, and retail the views of those whom we consulted or who made submissions to us. We

describe personal interviews with representatives of community organisations, and with a number of Chinese homosexual men. We refer to the results of questionnaires to 600 business houses, to 200 private organisations, and to the District Boards, as well as the findings of two commercial surveys of public opinion.

## **Chapter X : Consequences of change**

12.10 We consider so far as is possible what might be the effects of any change in the law. We discuss the interaction between changes in community values and the response of the law to these changes. We emphasise that a change in the law does not imply approval of the morality of any conduct which may be decriminalised. We point out that strong social sanctions play an important role in deterring undesirable conduct.

## **Chapter XI : Our reasoning and conclusions**

12.11 We suggest that a prime aim of the law, whenever it touches the communal life of the family, should be to seek to preserve and strengthen it. We emphasise the importance of ensuring that the law and the administration of justice retain the respect of our citizens, and express our concern that some present laws may encourage blackmail, triad activity and commercial exploitation of young people. We decide that it should not be a function of the law to enforce moral judgements in areas where there is no need to protect others; but that where conduct harms people or offends the public, then the law should impose sanctions. We conclude that the laws protecting the vulnerable, especially young people or the mentally disabled, from exploitation or sexual corruption, and the law protecting members of the public generally against public behaviour that is indecent or offensive to the majority, should be strengthened in a number of practical ways.

## **Summary of our recommendations**

12.12 Taking into account all our research over a period of three years, our discussions and the various factors and arguments drawn to our attention, we have decided that we should make a number of recommendations for changes to the laws of Hong Kong. We summarise our recommendations as follows :

### ***Marriage***

12.13 We recommend no amendment to laws relating to marriage and divorce. Specifically we recommend that there be no change to give recognition to sexual relationships of persons of the same sex, and we recommend no change to give recognition to aspects of long standing

relationships of a commercial sexual flavour between persons of the same sex (paragraphs 11.8 and 11.9).

### ***Youth under 21 years old***

12.14 We recommend that males should receive from the law the same protection against commercial exploitation as prostitutes as at present do women; that young males should be protected in the same way as are young women from procuration for the purpose of sexual abuse; that the provision penalising the taking of a girl below 16 out of the possession of her parents, against their will, be extended to boys of the same age; that male mental defectives should receive the same protection against sexual abuse as do female defectives at the moment (paragraphs 11.12 and 11.16).

12.15 We recommend that, to implement the above recommendations, the definition of "prostitution" in the Crimes Ordinance be extended to cover homosexual prostitution; and that where the phrase "unlawful sexual intercourse" appears in certain current legislation designed to protect young women, those provisions be extended to include "homosexual contact" (paragraphs 11.13 and 11.15).

12.16 We recommend that the offences of indecent assault upon males or females be retained; that the penalty for each should be up to 5 years imprisonment; that in the case of homosexual indecent assaults no male under the age of 21 should be capable of giving consent so as to prevent the commission of the offence, while in the case of heterosexual indecent assaults no person under the age of 16 should be capable of giving consent so as to prevent the commission of the offence (paragraphs 11.18 to 11.20).

### ***Public behaviour***

12.17 We recommend that increased protection be provided for all members of the community from any public behaviour of sexual nature, including homosexual behaviour, which offends the common standard of decency of the community, and do so by the creation of a new offence of indecent behaviour, with a maximum penalty of a fine of \$5,000 and imprisonment for 12 months (paragraph 11.24).

12.18 We recommend that attendants at swimming pools, beaches and children's playgrounds be empowered in appropriate circumstances to order off persons who may be about to commit offences including those of indecency (paragraph 11.25).

12.19 We recommend that it be an offence for male prostitutes to solicit for an immoral purpose in places to which the public may resort (paragraph 11.28).

12.20 We recommend that the conditions of licences issued under the Dutiable Commodities Ordinance (Cap. 109) for premises such as bars should be amended to prohibit the licensee from permitting male prostitutes (as well as female prostitutes) habitually to frequent the licensed premises, upon penalty of loss of the licence (paragraph 11.29).

12.21 We recommend that consideration be given to applying the offence of indecent behaviour in public to conduct in such establishments as schools and prisons (paragraphs 11.26 and 11.58).

### ***Consensual homosexual conduct by adults***

12.22 We recommend that the law should not prohibit consensual sexual conduct in private between two males provided both are 21 or more years of age (paragraphs 11.50, 11.52 and 11.55).

12.23 We recommend that offences of agreeing, attempting or conspiring, and the like, to commit the offences decriminalised under the preceding recommendation be abolished; but that the offence of procuration of persons under 21 for homosexual abuse should be retained (paragraphs 11.53 and 11.54).

### ***General***

12.24 We recommend that the penalties for the new offences and for existing and analogous ones be reviewed together and a logical and coherent scale be devised (paragraph 11.57).

12.25 We recommend that if our proposals are implemented the situation be monitored and reviewed in the light of experience (paragraph 11.66).

## **Chapter XIII –**

## **Summary in the Chinese Language**

## **第十二章 —— 本委員會工作摘要**

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### **第一章：引言**

12.1 本委員會指出不同人士對同性戀有迥異的看法，並概要說明一九七八年及其後有關問題怎樣在香港一一浮現。本委員會對鼎力襄助本會工作的各界人士謹表謝忱，特別是法律改革小組委員會主席楊鐵樑按察司，他應本會要求，周詳研究此一主題，並提交報告書。

### **第二章：本委員會工作進行方法**

12.2 本委員會根據所理解情況，述明法律改革委員所正確擔當的角色，通過研究尋求事實真相，闡明原則，並順應民情，就眾所關注的情事，找出修改法例的利弊所在。本委員會亦探討法律對這種行為的正確立場，並作出結論，認為社會秩序與純潔風氣必須保持，而那些易遭人利用、侵犯及易受誘墮落的人士亦應受保護。但除此之外，法律不應將某一獨特道德觀點強加於人，亦不應干預市民私生活。本委員會謹此指出，我們不把此種行為視作違法。斷不能解釋為道德上我們予以認可。

### **第三章：誰是同性戀者？醫學觀點**

12.3 一位顧問醫生在本章論述同性戀的定義及其性質，提及關於該問題曾進行的醫學及社會學上研究。據研究顯示：男性大約有百分之十先天完全屬同性戀者，科學上原因未詳，至今尚無一種堪稱成功的治療方法。

### **第四章：古代中國的同性戀問題**

12.4 在本章，一位著名學者從中國文史卷帙中進行研究，證實同性戀行為在中國歷代都有發生。

## 第五章：現代香港的同性戀問題

12.5 本委員會曾就現代香港同性戀的存在及影響兩項問題進行研究。本章除述及研究結果外，並詳述本委員會從若干同性戀者口中獲知的事情，以及列舉有關男妓的證據。本委員會的結論是：本港男同性戀者的人數眾多，幾達二十五萬人，他們包括不同種族或國籍的人士。本委員會進一步估計，香港每年發生的非法同性戀案件盈千累萬，其中大部份未有向當局舉報，亦未為當局發現，這情形委實有損法律的尊嚴。

## 第六章：香港的法律

12.6 本章摘要列出本港有關同性戀行為及有關管制不良公眾行為的法例。我們發現保護少女免受性侵犯的法例，遠較保護少男者多。本委員會特別列舉有關同性戀罪行法例制訂的歷史及其條文內容。

## 第七章：與東方國家法律的比較

12.7 本委員會對香港鄰近地區的十個國家如何處理同性戀問題的法律加以研究，結果，發現多數法律對於彼此同意而私下進行的同性戀行為，均予容許，只有少數法律懲罰這種行為。另一特別事實，就是自一九一零年以來，中國法律從未對成年人間彼此同意而私下進行的同性戀行為加以懲罰。

## 第八章：與西方國家法律的比較

12.8 本章列舉若干西方國家如何處理同性戀問題的法律。本委員會知悉英格蘭及威爾士的法律已於一九六七年修訂，容許成年人間彼此同意而私下進行同性戀行為；蘇格蘭及北愛爾蘭的法律亦分別於一九八零年及一九八二年作出類似修訂。此外，本委員會知悉聯合國大會所通過的人權宣言，已成為一項國際公約，並於一九七六年付諸實施。該公約亦適用於本港。公約內容乃保護隱私權，保障成年人間彼此同意而私下進行性行為的自由，免受干擾。

## 第九章：本委員會所作的公開徵詢及在本港進行的研究

12.9 本章記述各次徵詢的過程，並轉述徵詢人士及向本委員會賜教人士的意見。本委員會曾晤見社團代表、以及若干中國男同性戀者談話內容，本章亦有記述。本委員會曾向六百間商行、二百間私人機構、以及各區議會發出問卷，並舉行兩次商業性意見調查，調查所得結果，本章亦有提及。

## 第十章：修訂法例的後果

12.10 本委員會盡可能考慮一旦修訂有關法例，可能會帶來什麼後果。至於社會價值觀念的改變，以及法例相應產生的反應，兩者間的相互影響，本委員會亦有討論。本委員會須強調一點，就是有關的法例經修訂後，縱使規定某一行爲不視作違法，亦不表示承認該項行爲符合道德標準。本委員會指出，強烈的社會制裁對阻嚇不受歡迎的行爲，能產生重要作用。

## 第十一章：本委員會的論據及總結

12.11 本委員會建議，法例的內容如涉及家庭群體生活，則該法例的主要目的，須致力維持及加強此種生活。本委員會認為，確保法律及執行能受市民尊重，此點甚為重要。若干現行法例可能助長勒索、黑社會活動、以及利用青少年為謀利工具，本委員會對此事甚表關注。本委員會認為，在某些範疇內，如無必要保障他人免受某類行爲影響，則法例不必負起道德制裁的功用；但如該項行爲足以傷害他人或使大眾感到厭惡，則法例即須加以制裁。本委員會總結指出，為保障容易受侵害的人士，包括青少年及弱智人士，免受他人利用或變成性墮落，並保障一般市民，免受大多數人士認為淫褻或厭惡的公開行爲所影響，則須採用若干實用的方法，加強有關法例的規定。

## 建議摘要

12.12 經本委員會三年來之研究及討論，並考慮多方面的因素及論點，本委員會決定提出數項修改本法例的建議，現將各項建議撮要如下：

## 婚姻

12.13 本委員會建議不修訂有關結婚及離婚的法例。具體而言，本委員會建議對同性之間的性關係在法律上不予認可，本委會同時建議對同性之間帶有商業交易性質長期性關係在法律上不予認可。（第 11.8 段及第 11.9 段）

## 未滿廿一歲之青少年

12.14 本委員會建議男性應如女性同樣受現行法例保障，以免被利用為商業賣淫工具；少男應與少女獲得同等之保障，以防止他們受到教唆而賣淫；有關處罰違反女童父母意願而拐帶未滿十六歲女童，使之脫離父母之法例，應擴大至適用於相同年齡之男童；心智不健全之男性應如心智不健全之女性同樣受現行法例保障，以防止他們受到性侵犯。（第 11.12 段及第 11.16 段）

12.15 本委員會建議為實行上述建議起見，政府應將刑事罪條例內「賣淫」一詞之定義，擴展至包括同性戀賣淫活動；並將現時保障年青女性之條例中提及「非法性交」一詞之定義，擴展至包括「同性肉體接觸」。（第 11.13 段及第 11.15 段）

12.16 本委員會建議保留非禮男性或女性之罪行，最高刑罰應為監禁五年；至於在同性之間發生之非禮行為，如受害人未滿二十一歲，則即使該非禮行為係在受害人同意下發生，從事該非禮行為者仍屬犯法。至於在異性之間發生之非禮行為，如受害人未滿十六歲，則即使該非禮行為係在受害人同意之下發生，從事該非禮行為者仍屬犯法。（第 11.18 段至第 11.20 段）

## 公眾行為

12.17 本委員會建議，由於猥褻性公眾行為，包括同性戀行為，係違反社會一般道德標準，因此應加強保障市民大眾，以免他們成為該等行為的受害者。

本委員會因此建議制定一項名為「猥褻行為」之罪行，其最高刑罰為監禁十二個月及罰款五千元。（第 11.24 段）

12.18 本委員會建議政府授權游泳池、海灘及兒童遊樂場之工作人員，於適當情況下命令可能即將觸犯法例，包括猥褻罪行之人士離開。（第 11.25 段）

12.19 本委員會建議制定法例，禁止男妓在公共場所內作不道德目的之兜客。（第 11.28 段）

12.20 本委員會建議修訂酒吧等場所根據有稅品條例（香港法例第一零九章）申領牌照之條件，以禁止持牌人容許男妓及妓女經常進出該等場所，否則吊銷其牌照。（第 11.29 段）

12.21 本委員會建議考慮禁止任何人士在學校及監獄等場所從事公眾猥褻行為。（第 11.26 段及第 11.58 段）

## 成年人在雙方同意下進行之同性戀活動

12.22 本委員會建議對於年逾二十一歲之男性在雙方同意下，私下進行之同性戀活動，法律不予追究。（第 11.50 段、第 11.52 段及第 11.55 段）

12.23 本委員會建議，由於上述第 12.22 段建議若干行為不視作違法，因此，凡同意、企圖、串謀……從事該等行為者，不屬違法，但教唆未滿二十一歲人士受同性戀侵犯之罪行仍應予以保留。（第 11.53 段及第 11.54 段）

## 一般事項

12.24 本委員會建議將新法例之刑罰與現行及類似法例之刑罰同時加以檢討，以便制訂合理及一致的刑罰標準。

12.25 本委員會建議，如本委員會之建議獲採納執行，則當局應按照經驗對情況之發展加以監察及檢討。（第 11.66 段）

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**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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Caritas Hong Kong

Chinese Manufacturers' Association of Hong Kong

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

Kowloon Chamber of Commerce

Medical Professions Council

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Kowloon City District Board

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

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

Wanchai District Fight Crime Committee

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**(b) NORTHERN IRELAND**

**Legislation**

(See "United Kingdom")

**Judicial Decisions**

Dudgeon v. United Kingdom, European Court of Human Rights, 1980 3 EHRR 40

**(c) SCOTLAND**

**Legislation**

(See "United Kingdom")

**Judicial Decisions**

1. Dean v. John Menzies (Holdings), Ltd. 1981 S.L.T. 50
2. Ingram v. Macari 1982 S.L.T. 92 and 1983 S.L.T. 61
3. James McGivern (1845) 2 Broun 444
4. McLaughlan v. Boyd 1934 J.C. 19
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**(I) ARTICLES**

(A) Express

(14.11.81)

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(C) Hong Kong Standard

- (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  
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- (E) Ming Pao  
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- (F) News Evening Post  
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- (G) Observer  
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  - (3) Is This The Witch-Hunt of the Century (20.3.80)
  - (4) My Life As a Hong Kong Homosexual (6.4.80)
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- (23) Districts Stay Quiet On Gay Law Issue (13.2.82)
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- (27) Homosexuality Not 'A Fad' (8.3.82)
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- (29) Gay Probe Will Stick To Facts (27.5.82)
- (30) Sex Laws Report Completed (3.7.82)
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- (K) Wah Kiu Yat Po  
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- (E) South China Morning Post  
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(5) 6.4.80 (16) 17.2.82  
(6) 26.5.80 (17) 21.2.82

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(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

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(1) 23.9.80

(2) 12.4.82

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"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."*

(Cont'd)

**'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 may 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 Quangdong, 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 : It is against the view of the majority who respect our excellent traditional Chinese moral concepts.

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

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**

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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.



## 香港有關同性戀之法例簡介

### (一) 「雞姦及獸姦」罪

侵害人身罪條例（香港法例第二一二章）對「雞姦及獸姦」罪訂定罰則。

(1) 該條例之第四十九條規定，人與同一性別之人性交為觸犯雞姦罪，人與獸性交為觸犯獸姦罪，違者最高可被判終身監禁。

上述性交行為不論私下或公開進行，皆屬違法。男人與男人或男人與女人以肛門交合為雞姦。是否經雙方同意並無關係，雙方同屬有罪，且罪行之輕重完全相同。凡人（不論男女）與獸性交，不論以何種方式進行，皆稱為獸姦，是否經雙方同意亦無關係。雞姦罪或獸姦罪，只須進入，即可構成，無須證明曾射精。

(2) 條例第五十條禁止任何人士企圖犯雞姦或獸姦罪，或意圖犯該等罪名而先進行毆打，或向男子非禮。違犯該條款者最高可遭監禁十年。凡有雞姦或獸姦行為者，不論男女，亦不論係私下或公開進行，皆屬違法。

(3) 根據條例第五十一條之規定，任何男人，不論私下或公開，與、或參與、或介紹、或企圖介紹任何男人與另一男人進行任何猥褻行為，即屬違法，最高可遭監禁兩年。

根據其條文，該條款所指之罪行，乃男人與男人間所犯之罪行，且不限於公開進行始屬犯罪，是否雙方同意亦無關係。一般而言，兩男相戀而進行之一切性接觸均為法律所不容，兩者所犯罪項無輕重之分。

## (二) 兒童

法例中載有若干一般性之法定條款保護兒童，使不致在該方面受到私下或公開之騷擾，又特別禁止對十四歲以下兒童進行猥褻行為或誘使該等兒童進行該等行為。獲得兒童本身同意不能作為辯護理由。

**FORM OF QUESTIONNAIRE TO BUSINESS HOUSES**

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



ATTORNEY GENERAL'S  
CHAMBERS  
CENTRAL GOVERNMENT  
OFFICES,  
(MAIN WING),  
HONG KONG.

LRC/SERV/PERS 1

有關同性戀之法例

敬啓者：

有鑑於首席按察司已聯同律政司根據總督會同行政局授予之權力，將下列問題交本委員會考慮：

香港有關同性戀行為之現行法例，是否有修改之需要？  
若有，則應如何修改？

因此，本委員會亟望獲得本港各大企業與商號之協助，俾能知悉一般市民對該問題之意見。茲附上問卷乙份，希 貴寶號選定適當人員，盡量於三週內填妥擲回，不勝感激。所填一切資料，本委員會自當絕對保密。

填妥之問卷，請寄香港中區政府合署律政司署轉法律改革委員會秘書收。  
有勞之處，謹此致謝。此致

法律改革委員會秘書 賀德治

一九八 年 月 日



問卷

1. 請簡述 貴公司／寶號所經營業務之性質（如銀行業、貿易等）。  
.....  
.....  
.....
2. 貴公司／寶號共有僱員.....人，男性佔.....人，女性佔.....人。
3. 貴公司／寶號有否規定前來求職者披露：
  - (1) 曾否在任何刑事案中遭定罪？ 有規定／無規定\*
  - (2) 是否同性戀者？ 有規定／無規定\*
  - (3) 倘(2)之答案為「有規定」，則——
    - (甲) 是否對男女求職者皆有同樣之規定？ 是／否\*
    - (乙) 是否僅對男性求職者有此規定？ 是／否\*
4. 倘 貴公司／寶號遇有一各方面條件皆合適之求職者，惟知悉或認為該人係同性戀者， 貴公司／寶號會否——
  - (1) 因此而拒絕僱用該人？ 會／不會\*
  - (2) 僅在另有同樣合適或更合適之人選時方拒絕僱用該人？ 會／不會\*
  - (3) 認為知悉求職者是否同性戀者係對僱用該人與否有關？ 會／不會\*
  - (4) 僅在所求職位係屬低微者方予僱用？ 會／不會\*
  - (5) 對該求職者另行徹查或特別徹查方予僱用？ 會／不會\*

5. 倘 貴公司／寶號有僱用同性戀者之政策，而該政策未有在上面第 4 欄顯示，請將之簡述於下：

.....  
.....  
.....  
.....

6. (1) 就 台端所知， 貴公司／寶號實際上曾否因知悉或認為某前來求職者患有同性戀，故雖則該人在其他各方面皆符合僱用條件，亦未予錄用？ 曾／不曾\*

(2) 倘(1)之答案為「曾」，則請在此註明約若干次。..... 次

(3) 並請註明男女性各佔若干次。

男性：..... 次

女性：..... 次

7. 倘 貴公司／寶號僱有一位合適之僱員，惟其後發現或認為該人係同性戀者， 貴公司／寶號會否因此而——

(1) 將之解僱？ 曾／不會\*

(2) 削減或取消該僱員之晉升或發展機會？ 曾／不會\*

(3) 對該僱員之僱用採取其他行動？若會，請將有關行動簡述於下：

.....  
.....  
.....

8. 貴公司／寶號實際上曾否將各方面條件合適但患有同性戀之僱員——

(1) 辭退？ 曾／不會\*

(2) 之晉升或發展機會取消或延遲？ 曾／不會\*

9. 倘上面 8(1)或 8(2)之答案為「曾」，則請簡述：

(1) 約若干次？ .....次

(2) 男女性僱員各佔若干次？ 男性：.....  
次

女性：.....  
次

10. 倘 貴公司／寶號有任何關於同性戀者之政策，而該／該等政策未有在上文顯示，請將之述明於下：

.....  
.....  
.....  
.....

11. 倘欲對上述任何答案加以闡釋，請用下列空位：

.....  
.....  
.....  
.....

12. 貴公司／寶號對有關同性戀法例之改革，有否其他意見欲向法律改革委員會發表（不論以口頭或書面方式）？ 有／無\*

13. (a) 倘香港修改其法例，容許互相同意之成年人私下進行同性戀行為，上文有關 貴公司／寶號之現行政策之答案會否因而有所改變？ 會／不會\*

- (b) 倘答案為「會」，則請說明何者會有所改變及理由何在？

.....  
.....

14. 填寫本問卷者之職位或銜頭為（如董事、股東、人事管理主任等）：

.....  
.....

\*請將不適用者刪去。

填妥之問卷請寄香港中區政府合署法律改革委員會秘書收。

**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%

		<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. 7	If an otherwise suitable employee of your company/firm is discovered or believed to be homosexual, is this likely :				
	(1) to result in such employment being terminated by the company / firm?	Yes 12% No 72% No comment 16%	26% 65% 9%	9% 66% 25%	Yes 19% No 67% No comment 14%
	(2) to affect adversely the employee's prospects of promotion or advancement?	Yes 35% No 55% No comment 10%	27% 55% 18%	16% 59% 25%	Yes 26% No 56% 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% No 92½% No comment 2½%	4% 94% 2%	2% 87% 11%	Yes 4% No 92% 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

Our company certainly would not employ anyone with homosexual tendencies.

Our firm would not employ a person who is overly effeminate.

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.

Our company would not knowingly employ an homosexual.

B. Firms with 50 - 499 employees

Sexual habits of employees in their private lives is not a consideration provided it does not interfere with their work.

Any overt homosexual would not be employed to deal with the travelling public.

Staff with homosexual tendency would be checked against so as not to give rise to any offence.

The homosexual will not be allowed to solicit with the customers, guests or clients, otherwise not very relevant.

C. Firms with over 500 employees

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.

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.

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

It would certainly affect his employment and promotion if he is found guilty in a court of law.

Special attention will be paid to him/her to prevent him/her to have an affair with the other employees.

The company is concerned only if this affects the quality of his work.

Termination of service solely depends on performance.

B. Firms with 50 - 499 employees

Disciplinary action would be taken against the homosexual if he/she affects the morale of the other employees.

If he is convicted and imprisoned, he would obviously lose his job.

Such employee shall be asked to resign.

If discovered a homosexual, he would be in an embarrassing situation and would have a difficult relation with his colleagues.

Any unusual behaviour of employee would affect his employment.

C. Firms with over 500 employees

He shall be under management close watch.

His transfer to other departments and hotels will be restricted.

He will be kept away from customers.

Any action on him would depend on whether his personal behaviour would adversely affect his colleagues.

There would be no action if his personal behaviour does not affect the company's reputation and image.

There is no other effect unless his behaviour affects the other employees; then disciplinary action would be taken.

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

Our company strongly objects to the legalization of homosexuality and strongly forbids the occurrence of homosexual acts amongst the employees.

The company would not interfere unless something unusual occurs and would guard against homosexuals trying to employ their friends.

Homosexuality is of no concern unless this affects his performance in the execution of his work assigned to him.

The present law on homosexuality is harsh and unrealistic. A person with homosexual inclination should be treated with sympathy and understanding.

Such behaviour should not be treated as a crime, but rather a moral eccentricity.

Our firm would not question the private life of the staff unless it affects the morale and the work in the office.

If found homosexual, employment will be terminated with one month's notice.

B. Firms with 50 - 499 employees

Employment will be terminated if the homosexuals make advances, molest or trouble another.

Sexual association should not be taken into account. The law in Hong Kong on this subject is out-of-date.

The personal life style of members of staff are of no concern so long as these do not affect their work.

Homosexuality is considered a crime and a shame. Stricter law should be imposed.

If the tendency has an adverse effect on the staff relationship, then it is possible that the company would terminate his employment.

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.

The company would avoid to employ such persons.

Homosexuality is a grave breach of the Chinese customs and moral standard and should be convicted in court.

They should be paid off rightaway.

There should be no discrimination whatsoever.

Such behaviour is irrelevant provided that conduct of the person is irreproachable and does not cause embarrassment or any disturbance within the company.

In the opinion of most Chinese, homosexuality is disgusting and grossly immoral.

The effect on employment depends on the reaction on the other staff.

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.

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.

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

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.

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.

If only 'believed' to be, no action. If 'discovered' to be, in circumstances likely to bring the company into disrepute, employment would be terminated.

A feminine 'male' would not be appointed.

He will be immediately dismissed if found committing immoral conduct, indecency, toutting or solicting for purpose of prostitution.

Immediate dismissal if such behaviour is found amongst the staff.

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.

Any one with homosexual tendency would be dismissed if his behaviour would affect the other employees.

**Annexure 8(l)**

**THE LAW REFORM  
COMMISSION OF HONG  
KONG**

法律改革委員會  
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  
法律改革委員會  
政府合署（中座）



ATTORNEY GENERAL'S  
CHAMBERS  
CENTRAL GOVERNMENT  
OFFICES,  
(MAIN WING),  
HONG KONG.

LRC/SERV/PERS 2

有關同性戀之法例

敬啓者：

有鑑於首席按察司已聯同律政司根據總督會同行政局授予之權力，將下列問題交本委員會考慮：

香港有關同性戀行為之現行法例，是否有修改之需要？  
若有，則應如何修改？

本委員會乃成立一小組委員會，專責進行若干項指定之任務，其中包括向本港各大組織徵求有關該問題之意見。茲附上有關同性戀之本港現行法例簡介乙份，希貴組織閱後盡量於三週內來函通知本人該等法例是否有修改之需要，並請簡述原因何在，不勝感激。來函所述一切，本會自當嚴守秘密。有勞之處，謹此致謝。

來函請寄：香港中區政府合署中座律政司署轉法律改革委員會秘書收。

此致

法律改革委員會秘書 賀德治

一九八一年 月 日

**Annexure 8(II)**

**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	Kowloon General Chamber of Commerce
Hong Kong General Chamber of Commerce	Lingnan College Students' Union
The Hong Kong Girl Guides Association	Lions Clubs International District 303
Hong Kong Junior Chamber of Commerce	The Lok Sin Tong Benevolent Society
Hong Kong & Kowloon Joint Kaifong Research Council	Methodist Church Hong Kong
Hong Kong & Kowloon Kaifong Association	Newspaper Society*
Hong Kong Law Society*	Po Leung Kuk
Hong Kong Medical Council*	Radio Television Hong Kong (RTHK)
Hong Kong Observers	Rediffusion Television (RTV)
Hong Kong Polytechnic Staff Association*	Rotary International District 345
Hong Kong Polytechnic Students' Union	Royal Hong Kong Police Force (RHKPF) Superintendent Association
Hong Kong Professional Teachers' Union	RHKPF Local Inspectors Associations
Hong Kong Social Workers' General Union	RHKPF Expatriate Inspectors Association*
Hong Kong Tourist Association*	RHKPF Junior Police Officers Association
Hong Kong University (HKU) Students' Union	Senior Non-Expatriate Officers' Association
HKU Teachers' Association*	Scout Association of Hong Kong*
HKU Vice Chancellor	Shue Yan College
Incorporated Trustees of the Islamic Community Fund of H.K.	Society for Community Organisation
Journalists' Association	Television Broadcasts Limited (HK-TV)

Tung Wah Group of Hospitals\*

Urban Council

Volunteer Workers' Association

Young 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 moves, 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 :-

There is need for the present laws to be changed.

"Abominable" is not an appropriate word to describe homosexuality.

Imprison of life for a person convicted of buggery is too severe, especially when taken place in private (Section 49).

Imprisonment for 10 years is also too severe for attempt to commit buggery (Section 50).

If Section 51 were to stand, it should not be limited to males upon males and not females upon females.

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)

**HONG KONG UNIVERSITY STAFF ASSOCIATION -**  
**SURVEY OF MEMBERS**

香港大學教職員會

**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	
		===	

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

**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**

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."

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Homosexuality is against the Law of 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 :

reduce the penalty

reinforce rehabilitation of offenders

'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-volent 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."

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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 decriminalize 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

is impossible to enforce, and futile law derogates from the authority of all law;

permits the waste of resources and encourages corruption, these being the inevitable consequences of attempting to enforce the unenforceable;

enhances the prospects of otherwise law-abiding citizens being blackmailed;

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;

being an attempt to regulate consensual conduct which involves no genuine harm to anyone, is an intolerable invasion of individual freedom;

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;

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 :

I can see no reason, moral or social, why the law should concern itself with the private sexual behaviour of consenting adults.

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.

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.

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."

I do not see why males should be discriminated against in the matter of homosexual conduct, since lesbianism is not illegal.+

I do not think the law should prescribe for private morality.

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.

**Annexure 10**

**HONG KONG POLYTECHNIC STAFF ASSOCIATION -  
SURVEY OF MEMBERS  
HONG KONG POLYTECHNIC STAFF ASSOCIATION  
co HONG KONG POLYTECHNIC  
YUK CHOI ROAD, HUNG HOM  
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.

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
- 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

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.

That the existing law and penalties with regard to homosexual acts involving coercion, minors and public indecency be retained.

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 Subcommittee 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 naviety 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 or 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 "Hong". 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.**

Minorities in Hong Kong

The injustice of singling out the homosexual minority for punishment

The absurdity of policing sexuality

The irrelevance of determining "causes" of homosexuality

The social effects of abolishing Hong Kong's laws against homosexual acts

The ridiculousness of heterosexuals determining rules and regulations for homosexual behaviour

The pre-cultural aspect of homosexuality

Chinese attitudes to homosexuality

Homosexuality and employment

Homosexuals and the Armed Forces

Homosexuals and the "security risk"

12. The myth of pederasty

13. Homosexuals and the teaching profession

The "age of consent"

Withholding of truth from children

The prevalence of misconceptions about homosexuality

Negatively loaded terminology

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 Interview 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 prevalance 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 :-

Homosexual practice is an abnormal and deviant social behaviour contradictory to the traditional Chinese moral code and is therefore socially and morally unacceptable.

Heterosexuality is the natural and logical sex behaviour; homosexuality is an unnatural and psychologically abnormal conduct.

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.

Homosexual practice is dirty, disgusting and shameful.

Only 34 participants or 23.61% are in favour of legalization of homosexuality. Their grounds are :-

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.

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.

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 :-

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.

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	<u>34</u>	<u>110</u>	<u>144</u>
	Mean age = 31.91	Mean age = 33.63	

<u>Educational Attainment</u> <u>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
	<u>34</u>	<u>110</u>	<u>144</u>
	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%

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)												
	TOT AL	S E X		A G E			20-34		35-54		55+	
		MALE	FEMAL E	20-34	35-54	55+	MALE	FEMAL E	MALE	FEMAL E	MAL E	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.	

s.2256 PUBLIC OPINION POLL												TABLE 2
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)												
	TOT AL	S E X		A G E			20-34		35-54		55+	
		MALE	FEMA LE	20-34	35-54	55+	MALE	FEMA LE	MALE	FEMA LE	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/PSYCHOLOGIC AL 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	43 6.	18 5.	25 6.	33 8.	-	10 10.	18 8.	15 7.	-	-	-	10 18.

CRIMINAL											
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	6.	6	-	6	-	-	6.	-	-	-	-
LEGISLATION TO SAME	1.	2.		1.			3.				
NOT ILLEGAL FOR HOMOSEXUAL ACTIVITIES TO GO ON IN PRIVATE PLACES	87	48	39	56	31	-	36	20	12	19	- -
	12.	13.	10.	13.	14.		17.	9.	12.	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 CRIMIIL OFFENCE (Q.1b)												
(TOTAL, ANALYSIS, BY SEX, AGE, AND SEX WITHIN AGE)												
		S E X		A G E			20-34		35-54		35+	
	TOTA L	MALE	FEMA LE	20-34	35-54	55+	MALE	FEMA LE	MALE	FEMA LE	MALE	FEMALE
ADULTS WHO PREFER HOMOSEXUALITY TO BE TREATED AS A CRIMNAL 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 29.	385 37.	187 21.	236 30.	156 23.	180 37.	173 39.	63 18.	99 26.	57 20.	113 49.	67. 26.
UNACCEPTABLE TO RELIGION	38 2.	18 2.	20 2.	17 2.	16 2.	5 1.	12 3.	5 1.	6 2.	10 3.	-	5 2.
HOMOSEXUALS CANNOT BE TOGETHER/ GET MARRIED/ HAVE CHILDREN	166 9.	77 7.	89 10.	47 6.	72 11.	47 10.	18 4.	29 8.	53 14.	19 7.	6 3.	41 16.
CONSERVATIVE CHINESE THINKING DIFFERS FROM WESTERN IDEAS	146 8.	98 9.	48 5.	51 6.	78 12.	17 3.	22 5.	29. 8.	64 17.	14 5.	12 5.	5 2.
DOES NOT AND SHOULD NOT EXIST AMONG CHINESE	78 4.	53 5.	25 3.	22 3.	34 5.	22 4.	12 3.	10 3.	29 8.	5 2.	12 5.	10 4.
HAS BAD MORAL INFLUENCE ON SOCIETY	269 14.	141 13.	128 14.	104. 13.	87 13.	78 16.	36 8.	68 20.	58 15.	29 10.	47 20.	31 12.

PREVENT CHILDREN FROM LEARNING AND IMMITATING	47 2.	18 2.	29 3.	11 1.	26 4.	10 2.	6 1.	5 1.	12 3.	14 5.	-	10 4.
HUSBANDS AND WIVES HAVING HOMOSEXUAL DESIRES CAUSES	5 *	-	5 1.	-	5 1.	-	-	-	-	5 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 1.	12 1.	5 1.	17 2.	-	-	12 3.	5 1.	-	-	-	-
AGAINST NATURE/ILLOGICAL/ABNORMAL	332 17.	155 15.	177 20.	123 16.	105 16.	104 21.	60 14.	63 18.	53 14.	52 18.	42 18.	62 24.
HOMOSEXUALS ARE PSYCHOLOGICALLY IMBALANCED/ABNORMAL	330 17.	178 17.	152 17.	150 19.	124 19.	56 11.	72 16.	78 23.	76 20.	48 17.	30 13.	26 10.
DIRTY BEHAVIOUR IS UNACCEPTABLE/SHAMEFUL/UNETHICAL	339 17.	201 19.	138 15.	142 18.	130 20.	67 14.	83 19.	59 17.	82 22.	48 17.	36 16.	31 12.
INDECENT/UNACCEPTABLE/WRONG/FAR OUT	343 18.	154 15.	189 21.	108 14.	121 18.	114 23.	54 12.	54 16.	64 17.	57 20.	36 16.	78 30.
IMPOSSIBLE/RIDICULOUS	129 7.	70 7.	59 7.	48 6.	31 5.	50 10.	24 5.	24 7.	12 3.	19 7.	34 15.	16 6.
OTHERS	6 *	6 1.	-	6 1.	-	-	6 1.	-	-	-	-	-
DK	84 4.	24 2.	60 7.	44 6.	24 4.	16 3.	24 5.	20 6.	-	24 8.	-	16 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>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>	<u>Total</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%

### Age

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%

### Sex

Male	66%	19%	15%	100%
Female	63%	21%	16%	100%

### Housing

Private	65%	20%	15%	100%
Public	65%	20%	15%	100%
Temporary	61%	23%	16%	100%

### Marital Status

Single	65%	20%	15%	100%
Ever married	65%	20%	15%	100%

### Household Income

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%

### Residence in Hong Kong

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)**

<b>A.</b>	<b><u>Buggery</u></b>	<b><u>Sentence</u></b>
	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
<b>B.</b>	<b><u>Gross Indecency</u></b>	
	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. <u>Indecent Assault</u>	<u>Sentence</u>
(1 defendant in each case)	

Indecent assault on male	Fined \$500
"	6 months imprisonment <u>suspended</u> for 12 months
" (2 charges)	5 months imprisonment each concurrent
"	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
" (2 charges)	On probation for 12 months
" (2 charges)	6 months imprisonment
"	Bound over \$500 for 1 year
"	Bound over \$500 for 1 year
"	Fined \$500
" (2 charges)	1 month imprisonment on each charge concurrent. \$500 costs
" (2 charges)	6 months imprisonment
"	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	:	0

received by Urban Services  
Department in the last 5 years

(Source : Urban Services Department)

## **VII. VENEREAL DISEASE**

(1) Number of cases reported in : 32,386  
the last 5 years

(2) Breakdown by sex –

(i) male : 22,766

(ii) female : 9,620

(3) Number of cases found to be due to : 30  
male homosexual contacts

(4) Number of cases found to be due to : 0  
female homosexual contacts

(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 : 8 months  
imprisonment

(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 : 16  
or revocations
- (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 : 3  
indecent behaviour in licensed premises
- (6) Number of reported incidents of : 0  
homosexual indecent behaviour in  
licensed premises
- (Source : Television & Entertainment  
Licensing Authority)

## **XI. MASSAGE 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 10<sup>th</sup> 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

**Annexure 30****LAWS IN HONG KONG**

Report t (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 t (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 Wounding ) intent	Life Imprisonment	S.17, Cap. 212
		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	2 years	S. 44, Cap. 212

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		Person for Money		
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

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		Theft	10 years	S. 9, Cap. 210
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	12 months & \$5000	S.17B, Cap. 245
		Fighting in Public	12 months & \$5000	S.25, Cap. 245
		Unlawful Assembly	5 years	S.18, Cap. 245
		Obeying a call of nature in public	3 months & \$500	S.4(3), Cap. 228
6.15		Calls of nature in public or in buildings	\$1000 (first offence)	By-laws 8 and 23 of Public Cleansing & Prevention of Nuisance By-laws
		Permitting child under 12 to obey call of nature in public	\$1000 (first offence)	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	6 months & \$1000	S.147, Cap. 200
		Loitering with- out explanation	6 months & \$2000	S.160, Cap. 200
		Loitering with	6 months	S.160, Cap. 200

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		obstruction  Loitering causing fear	2 years	ibid
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)		R. 17, Dutiable Commodities (Liquor) Regulations; S.6,

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		(Licence conditions)  (Form 2)		Dutiable Commodities Ord. Cap. 109  R. 21, Schedule to Dutiable Commodities (Liquor) Regulations
6.25	<u>PUBLIC DANCE HALLS</u>	Under-age drinking  Under-age employment  Entertainment without licence  Failure to observe conditions of licence  Failure to keep register Employment of those under 18 Licence permitting indecency	6 months & \$5000  6 months & \$5000  \$2000  \$10,000 & 6 months  \$10,000 & 6 months	R. 28, 30  R. 29, 30  R. 27, 30  S. 4, Cap. 114  RR. 7, 9, 17, 60, 61, 63, 68 Miscellaneous Licences Regulations
6.26	<u>PUBLIC PERFOR- MANCES</u>	Live shows  Keeping a place of public entertainment without licence  Public entertain- ment in breach of licence  Presenting public enter-	\$25,000 & 1 year  \$10,000 & 6 months  \$1,000 & 6 months  \$10,000 & 6 months	S. 12A, Cap. 228  SS. 2, 4, Places Public Entertainment Ordinance Cap. 172  R. 166, 171, Places of Public Entertainment Regulation 5  S. 8, Cap. 172

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		tainment without a permit, or in breach of conditions of permit		
		Continuing performance after notice of cancellation of licence	\$1,000 per day	R. 173, Places of Public Entertainment
6.37	<u>PUBLICATIONS</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

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
		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
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		S. 32, Cap. 52

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.53	<u>WOMEN</u>	panel of censors established under the Film Censorship Regulations)		
		(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
		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
6.54		(Alternative Verdicts)		S. 149, Cap. 200
		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	7 years	S. 129, Cap. 200

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.55		prostitution		
		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
		Man living on earnings of prostitution	5 years	S. 137, Cap. 200
6.56		Woman detained in vice establishment	14 years	S. 134, Cap. 200
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
		Keeping a disorderly house		Common Law
6.60		Indecent exposure	6 months &	S. 148, Cap. 200

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.61	<u>WOMEN UNDER 21</u>	by man or woman  Soliciting and loitering for immoral purpose  Abduction    Stealing a child under 14  Abduction of girl under 16	\$1,000  6 months & \$1,000  2 years    7 years  5 years	S. 147, Cap. 200  SS. 2, 26, 29, Protection of Women & Juveniles Ord. Cap. 213  S. 2, Juvenile Offenders Ordinance Cap. 226  S. 43, Cap. 212  S. 126, Cap. 200
6.62		Abduction of girl under 18 for sexual intercourse  Indecent Assault - No consent by girl under 16  Incest with daughter under 16  Incest with daughter under 13  Unlawful sexual intercourse with girl under 16  Unlawful sexual intercourse with girl under 13  Gross Indecency towards child	7 years  5 years  Life Imprisonment  Life Imprisonment  5 years  Life Imprisonment  5 years	S. 127, Cap. 200  S. 122, Cap. 200   S. 47, Cap. 200  S. 124, Cap. 200  S. 123, Cap. 200  S. 146, Cap. 200

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.63		under 14  Permitting girl under 13 to resort to premises for prostitution  Permitting girl under 16 to resort to premises for prostitution  Guardian encouraging prostitution of girl under 16  Procuring girl under 21 to have sexual intercourse	Life Imprisonment  14 years  5 years  5 years	S. 140, Cap. 200  S. 141, Cap. 200  S. 135, Cap. 200  S. 132, Cap. 200
6.65	<u>MENTAL DEFECTIVES</u>	(Definition of Mental Defective)		S. 117, Cap. 200
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	10 years	S. 142, Cap. 200

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.67	<u>PRISONERS</u>	Prostitution  (Definition of Mentally Disordered Person)  (Inquiry ordered for person of unsound mind)		S. 2, Mental Health Ordinance Cap. 136  S. 7, Cap. 136
6.69		Unlawful sexual intercourse with female patient of mental hospital	3 years & \$5,000	S. 65(2), Cap. 136
6.75		Ill-treatment of Patients by Staff of Mental Hospital	2 years & \$1,000	S. 65(1), Cap. 136
6.75		Offences against prison discipline	1. Separate Confinement for any period not exceeding 28 days	RR. 61(e), (f), (q), (w), 63, Prison Rules; S. 25, Cap. 243
6.76		Disciplinary Offences by Prison Officers	2. Forfeiture of remission not exceeding 1 month  3. Forfeiture of privileges up to 3 months  4. Deprivation of earnings  Dismissal, fine, reduction in rank, stoppage of	R. 239 (h)(iii), (j), (n); Prison Rules, S. 25, Cap. 243

Report t (para)	Topic	Offence	Penalty (Maximum)	Legal Source
	<u>ARMED FORCES</u>	(Application of the U.K. Army Act 1955 in relation to administration, Discipline, trial and punishment of staff etc. to Hong Kong)	increment etc	S. 17, Royal Hong Kong Regiment Ordinance Cap. 199
6.81	<u>THE ABOMINABLE MAN</u>	Buggery	Life Imprisonment	S. 49, Cap. 212
		Attempted buggery	10 years	S. 50(a), Cap. 212
		Gross Indecency	2 years	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 between men) 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 believer "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. believer or a resident U.K. believer) 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 believers 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 believers 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 believer 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 believer under section 20(3).



ANNO VICESIMO NONO  
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

## **Crimes (Sexual Offences) Act 1980**

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**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 "(1)"; Interpretation.
- (b) after the definition of "Aircraft" there are inserted the following definitions:
  - ' "Brothel" means premises to which people of both sexes, or of either sex, resort for the purpose of prostitution. "Brothel."
  - "Drug of Addiction" means a drug mentioned in Schedule of 8 to the *Poisons Act* 1962, heroin within the meaning of that Act or a specified drug within the meaning of that Act.'; "Drug of addiction."
- (c) after the definition of "Motor car" there are inserted the following definitions:
  - "Prostitute" means a male or female prostitute and "prostitution" means prostitution of a male or female person. "Prostitute",  
"prostitution."

"Rape" includes the introduction (to any extent) <sup>"Rape"</sup> in 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.'; and

- (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:

A229

'(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),

Attempt, &c.

liable to imprisonment for a term of not more than five years.

(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

Attempt, &c.

of not more than ten years.

(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

Corroboration.

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.'.

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:

Amendment of  
No. 8731,  
s. 47A.  
Preliminary  
examination for  
certain offences.

(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:

"(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.

11. (1) In section 17 (1) of the *Summary Offences Act* 1966, for the expression—

Amendment of  
No. 7405.  
Offensive  
behaviour.

"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—

Inviting  
prostitution.

- (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
- (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:

Restriction on  
prosecutions.

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.

**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";

1956 c. 69.

- (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".

(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.