

香港法律改革委員會

研究報告書

有關同性戀行爲之法律

(論題二)

有關同性戀行爲的法例

一九八零年一月十五日，香港總督麥理浩爵士會同行政局頒令成立香港法律改革委員會，授權其對律政司及首席按察司所提交考慮的香港法律問題進行研究，並提出報告。

一九八零年六月十四日，律政司及首席按察司提交下項問題供本委員會進行研究：

“本港現行有關同性戀行爲的法例應否予以修改？若然，應如何修改？”

一九八零年七月五日，本委員會委任一個小組委員會負責研究及考慮此項問題，以便向本委員會提供意見。

一九八二年六月二十八日，小組委員會向本委員會提出報告。本委員會在一九八二年七月至一九八三年四月間召開多次會議，討論上述問題。

本委員會認為，基於本報告書所臚列的理由，本港現行有關同性戀的法例應予修改。

本委員會所提出修改法例的建議，詳載本報告書內。

香港法律改革委員會同人謹此呈遞有關同性戀行爲法例研究報告書。

祈理士（律政司）

羅弼時（首席按察司）

黎守律（法律草擬專員）

歐義國

周梁淑怡

傅雅德（上訴庭按察司）

胡法光

金耀基

郭志權

李國能

李國寶

羅德丞

麥雅理

韋彼得

一九八三年四月十五日

香港法律改革委員會

研究報告書

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第一章 引言

1.1 根據第(ii)頁所載的研究範圍，本委員會的職責和任務，是考慮假如修改本港管制同性戀行為的法例，是否符合本港社會整體最佳利益；如果答案是肯定的話，則建議作何修改。這項工作並不容易，因為在許多社會，包括本港社會在內，不少人都對同性戀問題避而不談。可以肯定的說，凡有人討論這個題目，他們的看法往往截然不同。

1.2 有些人贊成下列意見：

“以香港或任何其他地區的文化背景來說，一些導致家庭分離的法例，實在不合時宜。創造神地的神不但造人，而且分造男女，並說：‘因此，人要離開父母，與妻子連合，二人成爲一體。’（馬太福音 19：4-19）爲了避免淫亂，又說：‘男子當各有自己的妻子，女子也當有自己的丈夫。’（哥林多前書 7：2）人的性慾是神一手創造的，婚後的性生活是正確、崇高而神聖的（參閱希伯來書 13：14），不但爲了繁殖下一代（創世記 1：26-28），更是讓男人和他的妻子得到歡愉和快樂（參閱哥林多前書 7：4-5）。同性戀不是性愛，只是性變態——雞姦。”

（節錄自一九八二年二月十七日南華早報署名‘歐洲人’的讀者來函。）

1.3 其他人則對那些自認是被不公平地壓迫的少數人的感受寄予同情：

“一個人除非完全忠於自己，忠於他人，不然便無法充分享受人生，保持高尚的精神。我現在求神饒恕及同情那些在今日世界中飽受痛苦的同性戀者。我也希望他們知道，他們所做的並不可耻，他們的行為亦非罪行。他們毋須責備自己，自暴自棄。這些年來的同性戀生活，使我體會到真愛的重要。我永遠不會後悔自己所做過的及所犧牲的一切。我清楚自己所走的路。也清楚必須以真誠的態度面對這件事，承受一切可能引起的後果。只要我忠於自己，忠於別人，定能臨危不亂，克服萬難，消除恐懼……

我必須徹底忠於自己，必須活得像個人，不折不扣的人……”

（節錄自一九八一年十二月一名中國同性戀者的供述。參閱附件十六。）

1.4 在英國未通過一九七六年性罪項法之前，本港管制男同性戀行爲的法例與英國並無不同。例如，在本港，成年男子雙方同意私下進行雞姦，即屬犯法，可被判終身監禁。在七十年代以前，公開討論同性戀的言論幾絕無僅有。香港大學社會學教授李必治（Mr. Henry Lethbride）在一九七六年所發表的，是本港首次也是唯一有關這個題目的作品。

1.5 報紙偶然會報導某人被法庭控以同性戀罪行的案件，但甚少市民加以留意或發表意見，直至一九七八年八月，一名歐籍男士因犯同性戀罪而被拘捕，且被判罪名成立，才引起人們的注意。該名男子是一位英籍律師，在本港執業多年，當時被控與四名十五歲華籍少年進行雞姦及粗獷行爲。被告認罪，被判入獄三年。他不服上訴，但遭上訴庭駁回。

1.6 警方因拘獲該名男子而發現若干證據，皇家香港警察隊轄下之刑事偵緝部其中一組，後來稱爲特別調查小組，奉命根據這些資料調查與同性戀有關的賣淫活動，以及介紹和利用青少年賣淫的非法行爲。警方制訂若干調查與男同性戀有關罪行的方針，隨後並拘捕及檢控若干人。

1.7 差不多同時，即一九七九年年中，一群未經正式組織的市民，將一份有四百二十四人簽名的請願書遞交政府，請求修改本港法例，使與英國及愛爾蘭的法例趨於一致。

1.8 警方原擬拘捕一名人士歸案，控以與男妓發生粗獷行爲，該人是在警隊服務的一名年青蘇格蘭籍督察，名叫麥樂倫。結果，警方並未將他逮捕，因爲當警方在一九八零年一月初進入其寓所進行拘捕時，麥已死亡。不出數日，若干時事評論員開始對麥氏的死因和引致死亡的情況，公開作種種揣測。

1.9 死因裁判官與陪審團對麥氏的死因進行研訊後，裁定其“死因不明”，新聞界對這件事爭相報導。陪審團所提出的其中一項建議，是修改本港的法例，“使與英國的法例一致”。越來越多人公開討論這宗案件及男同性戀問題。

1.10 香港法律改革委員會於一九八零年初成立，律政司和首席按察司起初選作研究對象的題目是商業仲裁、管制同性戀行爲的法例及民事訴訟的證據問題。關於第一第二兩項題目的資料文件及研究範圍，於一九八零年六月十四日法律改革委員會首次會議席上，提交各委員。本委員會隨即委出小組委員會去研究這兩項問題。小組委員會的成員包括法律改革委員會委員及其他人士。楊鐵樑按察司答應出任同性戀問題研究小組委員會的主席。幾天之後，他從另一方面接獲另一項任命：總督會同行政局下令成立麥樂倫事件調查委員會，報告引致麥樂倫督察死亡的情況，楊氏奉委爲該一人委員會的調查專員。

1.11 本委員會指定小組委員會所須執行的任務，主要是搜集真實的資料。小組委員會的成員和職權範圍，載於附錄一。麥樂倫事件調查委員會所

審閱的證據中，大部份與小組委員會的工作有關，因此，小組委員會須待至一九八一年七月麥樂倫事件調查委員會的工作完畢後，才能完成任務。結果，小組委員會前後用了兩年時間才完成各項研究和工作，期間共舉行會議十六次，最後於一九八二年六月二十八日向本委員會提交一份非常詳盡的報告書，全文近二百頁。

1.12 小組委員會及其秘書工作態度認真，一絲不苟，對本委員會的幫助極大。他們有時在十分困難及敏感的情況下進行工作，雖然不欲張揚，但卻仍然備受注視。小組委員會能搜集各種不同的事實、數字及取自社會多方面和各階層的意見，他們的識見和機智實在值得稱讚。在小組委員會和所有向他們提供資料的人士協助下，我們相信已掌握足夠的資料作為對這項問題進行合乎理性探討的基礎。對小組委員會的協助，我們深表謝忱。本委員會各委員亦曾於一九八二年七月至一九八三年四月間的會議上研究這項問題。楊鐵樑按察司雖然已經卸任，不再擔任本委員會委員，但卻答應繼續給予幫助。本委員會的大部份討論他均有參加。楊氏對這項問題一貫關注及鼎力協助，本委員會謹此表示謝意。

第二章 本委員會進行工作的方法

本委員會的職責

2.1 本委員會深知，如果我們對本身的職責清楚明白，將對了解我們這項研究工作大有幫助。根據本委員會的職權，我們只是受命“考慮……然後提交報告”。本委員會僅屬諮詢性質，當局並無訂下準則，俾所遵循。除當然委員外，本委員會其他成員都是以個人身份，由總督委任，義務出任委員。

2.2 假如本委員會指出下列情形，可能使讀者更深瞭解我們的工作。本委員會不是政府部門，或政府工作小組，也不是為政府制定政策的組織，更不是本港的立法機構。雖然我們設法指出公眾利益所在，但卻不是市民的代言人，更不是某一部分市民的代言人。此外，本委員會亦非必要為改革而改革。我們也不代表任何政治思想、宗教信仰、或其他特別見解。

2.3 本委員會自覺是關注社會事務市民的一份子，以嚴肅眼光來探討某方面的法例。這些法例在實際執行時如何發揮作用？它們能否迎合本港社會的需要？過去有甚麼改革建議？修改法例有甚麼利弊？改革要付出甚麼代價？權衡之下，怎樣才能符合公眾利益？這些因素都在考慮之列，而在考慮過程中，我們自然要徵詢大眾、個人和政府的意見。但我們不是舉行全民投票，或游說他人提出建議。

2.4 本委員會的成員交換意見，以及試圖達成一致的結論時，所發表的是個人意見，說明我們相信甚麼是正確、明智和可行；我們希望根據本港的情況，為本港的問題尋求解決辦法。我們持這個觀點去研究受委託的事項，因此，不擬令有關問題的爭論更趨激烈。反之，我們着重把原則條分縷析，以及盡力搜羅真實的資料。除本委員會的成員外，任何人均毋須對本報告書‘負責’。至於應否實施本委員會的建議，則是其他人士的問題，這便是所謂人各有責。

法律的作用

2.5 法律與個人道德觀的關係，歷來是個傷腦筋的問題。有些人士堅持本身的信念，說香港是一個儒家社會，因此政府有責任去制定法律，確立社會的道德標準。本委員會絕對尊重這些人士的意見。就效果而言，這種觀念與思想家阿奎那的自然律並無不同。兩種見解都旨在為社會建立崇高的價值觀。

2.6 在英國法理學上，戴富林大法官（Lord Devlin）是這種見解的主要支持者之一。他認為法律是為保障社會而設，因此，法律不但要保障社會每一個人，使他不致身心受損、墮落及被人利用，並且：

“要保障社會及其體系的思想、政治和道德，否則人民無法共同生活。個人道德和個人對社會的忠心，應該受到同等重視，二者兼備，則社會昌隆，二者缺一，則社會衰亡。”

戴氏認為英國的刑法“自始即顧及道德原則，直至現在仍繼續顧及道德原則”。他舉出若干基於道德原則而列為刑事罪的行為，如協議自殺、決鬥、墮胎，以及成年近親發生亂倫行為等，縱然有人可能反駁說這類行為並不影響或危害大眾，可私下進行而不侵犯他人，且未必與敗壞道德或利用他人有關。然而，正如戴氏指出，沒有人會冒此大不韙去建議將這類行為從刑事法中剔除，純粹作為個人道德問題看待。（戴富林：《道德的實踐》（*The Enforcement of Morals*）（一九六五年），牛津大學出版社）。

2.7 我們曾經抱着實事求是的態度來測驗上述觀點。我們問自己：究竟法律本身能否抑制獸慾？抑或只能處理這些慾念宣洩後所帶來的最顯著後果？法律能令我們想到甚麼是自由？抑或只能保障人民可表達思想上的自由？法律能否使人類互相尊重、互相關懷？抑或只能管制人類冷漠行為中較無情的一面？法律能否規定我們合乎人道？抑或只能懲罰不人道的行為？

2.8 哈德教授（Professor H.A.L.Hart）懷疑究竟法律是否可能完美，或是否可能為法律作完美的定義（哈德：《法律與道德》（*Law and Morality*）（一九六五年））。從上述問題，可見本委員會對此項懷疑也有同感。我們寧願採取比較實際的態度去問：法律可以為我們做甚麼？因此，我們現在應該要求法律為我們做甚麼？

2.9 根據本委員會觀察所得，這種態度，與下述現象不謀而合，就是很多香港人認為刑事法例可以在非常實際的事情上保障市民：有了這種保障，我們就可以在這煙稠密的城市到處走動而有安全感或不致受到騷擾；青少年和弱小者也可受到保護，不致被人利用或淪於道德敗壞；我們的家園和努力的成果亦會得到保障；社會也可避免在不知不覺中因賄賂行為或錢財方面的敗壞行為而受到影響。

2.10 法律的作用和法治是重要的事。雖然只有少數人對兩者的概念感到興趣，事實上，每一個人在日常生活小節上都受到它們影響。本港社會及工商情況是否穩定，亦繫於這兩個因素。上述的概念，要求我們在一定程度上尊重和遵守法律，從而確保社會治安良好。兩者須保持均衡。過去多年來，本港及其他地區發生的一些突發事件，足以提醒我們未能保持這項均衡對社會所造成的危害。人們是否尊重法律，是保持均衡的一個重要因素。

2.11 本委員會認為必須認識到，除了精神不健全的人外，每個成年人均須對自己的行為負責，包括負法律上的責任。假如我們希望享受社會上的種種利益，包括法律的保障，那麼對於應受那些法例約束及應遵守那些法例，就不能隨意選擇。

2.12 本委員會亦注意到，在本港，“放任主義”一類名詞所包含的概念實際分為兩方面。第一，當局在處理問題時不採取實用手法而採用順其自然的方法，即屬“放任主義”的表現，也就是說，當局只提供一個架構，使社會得以發展，市民得以追求個人目標，而不會對個人實現目標的方法加以嚴密的控制，除非是為了保障其他人士而必須這樣做。第二，無論根據西方政治思想“放任主義”一詞的涵義為何，在香港它似乎都能引起港人的共鳴。

2.13 本委員會在考慮法律的正確作用時，曾討論法律可能帶來的影響。“迫害”是一個常用的名詞，但已因誤用而失去原有意義。然而，受迫害的感覺則是另一回事，許多自認為屬於受壓迫的少數人士均有這種感覺。本委員會相信，香港與其他地方一樣，很多有同性戀癖好的男子，不認為他們有需要受到特別保障。然而，若干曾向我們作供的男同性戀者卻給予我們不同的印象。他們之中，部份會有受迫害的感覺。他們的癖好、人們的偏見、被人視為社會上的污點、恐懼就業困難、以致對“法律”的恐懼等，都使他們覺得陷於困境。單憑改變法例，當然不能除去所有弊病，然而，有兩點是本委員會肯定的：假如任何法例的現行情況大大助長人類所受的痛苦，以及任何法例無必要而增強壓迫感，則我們必須有強大的理由，才能提出保留該等法例。我們不應故意利用法律作為敵視某種行為的工具。

2.14 本委員會認為有必要提出這些意見（可能已是一批不言而喻的道理），因為我們所採用的方法，是基於我們對法律的作用的理解。在考慮有關問題後，以及鑑於香港的情況特殊，我們同意英國胡分頓委員會（Wolfenden Committee）的意見，認為刑事法例的正確作用在於：

“維持公眾治安及風紀，保護市民免受侵犯和傷害，充份保障市民，使不致受人利用及淪於墮落，特別是保護那些由於年輕、身心脆弱、缺乏經驗、以及在身體和經濟方面須特別倚賴別人和需政府照顧，因而特別容易受到傷害的人。”

而不是

“為達到上述目的，而進一步干涉市民的私生活，或意圖強行規劃人們某些特別的行為。”

2.15 因此，本委員會認為，建議保留或撤銷某項法例，毋須在法律的範圍以內或以外，根據道德標準，對一項行為作出判斷。我們強調，不將某種行為視作違法，並不等於將其合法化，更非表示該種行為已獲得道德上的認可。

第三章 誰是同性戀者——醫學分析

引言

3.1 人類社會，無論原始或先進，差不多都有同性戀行為發生，或許，自有人類以來，便有同性戀。由於同性戀行為牽涉道德、宗教及文化價值觀等問題，要採用客觀態度，冷靜而科學化地加以分析，實在不易。不過，如果要積極地處理同性戀行為所牽涉到的心理社會問題，就必須採取這種客觀態度。

定義

3.2 同性戀一詞，用簡易的日常用語來解釋，就是指任何涉及同性性關係的行為。

3.3 同性戀與異性戀行為有時並非明顯分立的，而行為形式亦無明確的區分，反過來說，這兩種行為是一條連續線上的切點，線兩端分別為絕對異性戀及絕對同性戀，中間則為程度不同的雙性戀行為。一九四八年，金賽（Kinsey）及其同寅曾根據心理反應結果及公開的同性戀經驗，建議將連續線劃為七分表：0分表示絕對異性戀；1分表示異性戀行為佔優勢，間中有同性戀行為；2分表示異性戀行為佔優勢，但常有同性戀活動；3分表示異性戀和同性戀行為各佔一半；4分表示同性戀行為佔優勢，但常有異性戀活動；5分表示同性戀行為佔優勢，間中有異性戀行為；6分則表示絕對同性戀者。（Kinsey, A.C. Pomeroy, W.B.及 Martin, C.E.合著的《男性性行為》一書，一九四八年由美國費城 W.B. Saunders 出版）。

3.4 其他人則建議 1、2 分的得分者應稱為“兼性同性戀者”，3、4 分稱為“雙性戀者”，而 5、6 分則稱為“專性同性戀者”。

流行病學

3.5 大概而言，幾乎所有社會都有同性戀之類的活動，但各個社會對同性戀的態度卻有很大的差異，因此，對同性戀流行的程度進行科學研究，實在非常困難。

3.6 金賽的研究報告（一九四八年）是以五千多名美國白種男子的訪問紀錄為根據，所得結論是百分之三十七的男子在青春期的至老年的一段期間曾有過公開的同性戀行為，並達到性高潮。一項與同性戀問題有關的統計資料顯示，這班男人中有百分之十可稱為差不多絕對同性戀者（即他們在十六至五十五歲的一段期間至少有三年可取到金賽計分表上的五分或六分），而百分之四則自青春期以來，一直都是絕對同性戀者。另一項意味深長的結論是，

佔百分之十三的被訪者在踏入青春期以後，雖然再無公開的同性性接觸，但因仍對同性者有情慾的反應，所以可說是有同性戀的傾向。

3.7 到目前為止，金賽的研究仍是最徹底和最詳盡的一項調查，歐洲方面也曾數度進行調查，所得結論大都與金賽的很接近。

3.8 金賽等人亦對美國女子作出過類似的研究（一九五三年），結果顯示，美國女子比起美國男子來說，是較少發生同性戀行爲。不過，染上此癖的女子，未婚的比已婚的多很多。在未婚女子中，有百分之二至六可稱爲絕對同性戀者，但已婚的就不超過百分之一；換言之，她們在二十至三十五歲之間，每年都取到金賽計分表上的五分或六分。另一方面，她們之中承認曾有過同性戀經驗或念頭者，約佔百分之二十八，其中有達到性高潮經驗的佔百分之十三。

3.9 各項調查雖然受到很多因素所限制，但從調查結果可見，同性戀這種癖好實在很普遍，即使在極力反對同性戀的社會裏也如是。到底爲何這麼多男女不管道德禮教的阻撓，而要走上同性戀的道路呢？這實在是個令人感到十分費解的一個精神心理問題。

同性戀的起因

3.10 同性戀何以會發生，至今仍未有一致的結論。

3.11 當今解釋同性戀起因最具影響力的，就是採用心理分析法。這種心理分析，是把雙性概念（人生來就有雙性器官，這是基於人類胚胎早期有着雌雄同體的性特徵）和建立在心理社會因素之上的成長理論結合起來。根據分析，人類在生理上早有陰陽兩性的特徵，所以在心理上有雙性戀的傾向是正常的事，而在正常的成長過程中，所有人在幼年都會經歷同性戀的階段，但如果在成長後才出現同性戀傾向或行爲，根據解釋，就是正常的發展在幼年時受到抑制所致，或是由於家庭與父母關係不良而產生性能力喪失的恐懼，於是回復到幼年的同性戀階段。

3.12 一個較新的見解是異性戀是所有哺乳類動物的正常生理規範，包括人類在內，而同性戀的發生經常是生活不愉快，對異性戀產生恐懼的病態發展。

3.13 隨着現代遺傳學及內分泌學的發展，醫學界不斷努力，試圖證明同性戀愛是由於先天性傾向或由於內泌素所造成。一般來說，由於一接合子性孿生子患上同性戀的機會，較雙接合子性孿生子爲高，因此以目前對這方面的知識領域來說，實在尙未能摒除潛伏的先天性傾向與後天環境互相影響的可能性。

3.14 對染色體進行的研究，仍未能證明同性戀者跟異性戀者有何分別。有些遺傳學家認爲同性戀者跟異性戀者比較，出生次序上出現向右移轉（這

就是說，同性戀者為同胞兄弟中出生較遲者），表示其中可能存在一些目前仍未能證明的染色體異變。可是，這樣的一個假設似無必要。同性戀者出生次序上向右移動，可能只是表示出生較遲的同胞兄弟更易受家庭生活父母偏愛的影響，而這種生活有加強同性戀發展的傾向。

3.15 最近對內泌素進行的研究，顯示同性戀者尿內睪丸素和血漿內睪丸素俱較雙性戀者和異性戀者為低。此外，大部份絕對同性戀者及“近乎絕對”同性戀者亦與一般人不同，其精子計數結果明顯地低得多，且精子發生畸形的頻數亦較高。

3.16 此外，還有一項事實使人相信身體的構造可能是若干類同性戀的成因。最近對低等動物進行的一項研究顯示胚胎內泌素對成長中胎兒的腦中央——丘腦下部——產生作用，可能對將來成年後的性生活有很大的影響。在胎兒成長的重要時刻，若胚胎內泌素未能發生作用，即使這些動物性器官外表看來沒有反常之處，它仍可能對這等動物性生活產生巨大的變化。雖然我們知道不能在低等動物與靈長類動物之間作比較，但這一點卻令人產生疑問，是否一些同性戀者生下來的時候，“在腦的神經體液系統中已潛伏着一種先天因素，這些因素使他們在精神性慾上更易於傾向同性戀——這並不意味他們會自動或身體構造使他們如此，而只不過是由於社會環境中各種因素剛好同時存在所誘發而已。”

3.17 我們有理由相信一些特殊的生活遭遇亦會使人有同性戀的傾向，例如在監獄內，在私家寄宿學校中，在船艦上——這些性別隔離的情祝下，同性戀行為出現較多。當這些同性戀者遇到異性時，大多數會回復原來的異性戀愛，但有些則沒有改變。有些人只要有過同性戀經驗，便會繼續下去。還有一些理論家指出那些先天傾向未確定的人，很可能會在“同性戀”的相聚環境薰陶下模倣學習別人而受到影響；亦有一些人在初次接觸女性時受到嚴重創傷，對“異性懷有恐懼”，因而有同性戀的傾向。

3.18 因此，我們要知道同性戀有不同的類型，不同的成因會有不同的影響。

精神病理學

3.19 我們沒有理由假定同性戀和異性戀都有一種特殊的心理動力。事實上，所謂同性戀人格根本並不存在，而同性戀者的個性變幅跟異性戀者的一樣大。或許同性戀者較異性戀者發生神經質人格變異會更多。但這種變異不一定是由同性戀本身所導致的。在任何文化環境中，如果同性戀者被視為“古怪”人物，被人譏笑、羞辱、藐視和排斥，而這些生來便有同性戀傾向的人對本身自我形象受損、情緒上缺乏安全感及各種防衛性的個性轉變，如果不感到痛苦，這才叫人驚奇。另一方面，很多男女同性戀者工作認真負責，信用好，他們還往往身任要職，過着安定、正常的成年人的生活。從心理動力

學的觀點來看，這些同性戀者，除了在性方面另有選擇外，跟正常的異性戀者毫無分別。

過濾性病毒肝炎

3.20 過濾性病毒肝炎是一個嚴重影響公共衛生的問題。男同性戀者、吸毒者、娼妓及其他濫交的人受到傳染的機會很高。在氣候炎熱的國家，發展中國家，包括香港，和歐洲的一些地區，A 型肝炎和 B 型肝炎特別盛行。B 型肝炎對人類的威脅是不容置疑的。它不單是一種急性疾病，嚴重程度各有不同，而且一旦染上便很難根治，尤其是在出生前或年幼時已染上的兒童。

3.21 在英國，HBsAg (B 型肝炎表面抗原) 帶菌者所佔人口比率很低 (約為百分之零點二)，但是在非洲和亞洲的大部份地區，這個比率卻超過百分之十。而全世界 HBsAg 帶菌者總數大約會超過二億人。香港人口中有百分之九點六是 HBsAg 帶菌者，表示這些人曾經患上肝炎。在那些 HBsAg 帶菌者比率高的國家，有很多人患上慢性肝病和肝癌。差不多可以肯定 B 型肝炎過濾性病毒與這些腫瘤的病原有關。在 HBsAg 帶菌者比率高的國家，例如中國，肝癌是最普遍的腫瘤之一，相信它也是對人類威脅最大的一種腫瘤。

3.22 最容易感染上肝炎的人士，計有接受多次輸血的病人、先天或後天免疫性弱的病人、身患惡性病的病人、血液滲透、移植和腫瘤研究單位的病人和工作人員、弱智人士及照顧弱智人士機構的服務人員。過濾性病毒肝炎是醫療護理和實驗室研究人員的一種職業病，尤其是外科醫師和病理學家。在一些地區，更時常發生帶菌的母親在她的子女未出世前已將 B 型肝炎傳染給他們的事例。

3.23 有關男性同性戀者之間 B 型肝炎病毒的確實傳播途徑，仍未研究出來。現時已知道精液內含有低濃度的 HBsAg，因此，精液中的 B 型肝炎病毒，很可能就透過細微的黏膜傷口，侵入對方體內。不過，假如 B 型肝炎病毒循其他途徑侵入人體，病毒的份量可能會更多。

3.24 現時醫學界已發現對付 B 型肝炎病毒的疫苗。有些人由於職業、行為或醫療的關係，有很大機會接觸該種病毒，對他們來說，這項發現無疑帶來莫大的好處。至於是否需要積極推行免疫工作，當然要視乎該種病毒的傳染實況而定。假如同性戀者不受排斥，無須秘密行事，他們就較為樂意接受免疫治療。

心理測驗

3.25 如果沒有臨床觀察的紀錄，根本沒有可能憑着心理測驗，測知同性戀者與異性戀者在徵狀上的差異。同性戀並非一種單純的臨床病症，而同性戀的傾向，與個人內心或人際關係的其他範疇，卻又沒有關連。

治療

3.26 就最廣義的同性戀問題而言，一切治療方法，充其量只能取得有限的成效。絕大部份的同性戀者，都不願意改變他們的性愛方式。法律上的制裁，對同性戀者亦不起作用：法國、瑞典和荷蘭容許同性戀活動，而美國則明令禁止，然而這幾個國家的同性戀活動都同樣普遍並無因此而增加或減少。基於這個原因，英國遂於一九六七年准許成年人私下進行同性戀活動，只要雙方同意便可。現時美國也朝着這個趨向發展。美國精神病協會公開贊成這項法律，而關於“政府及市民在就業、房屋、公共住宿、發牌等方面對同性戀者歧視”方面，則表示遺憾。美國現有八個州——科羅拉多、康乃狄克、德拉威、夏威夷、伊利諾、北達科塔、俄亥俄、俄勒崗——已採用這項法例，再者美國法律學院亦已表示贊成。不過，對於引誘兒童或在公眾場所行爲不檢，美國的法律並沒有作出讓步。這些行爲，無論關乎同性戀或異性愛活動，始終屬於違法。

結論

3.27 同性戀是一個激動情感的問題。醫生亦不能免於偏見，即使是持有個人觀點，也屬合理。不過，醫生在以專業身份診治病人時，則必須關懷病人的需要，摒除個人偏見。在美國，同性戀已經從官方的精神病症類別中剔除出來不視爲是一種精神病。英國方面，一般人也逐漸接受這項決定。同性戀已慢慢地爲人接受，且被視爲人類性愛活動的一部份。

3.28 社會上每個階層，或者說每個角落，都有同性戀者存在，但一般人對他們卻甚有誤解。男性之間的性愛形式有許多種，其中比較普遍的，包括口交和肛門交，或者互相手淫，此外還加上一切情話、愛撫和其他表達愛慕的行爲，情形與異性愛關係無異。有些同性戀者，和部份異性愛者一樣，對性交並不如何重視。

3.29 有關治療同性戀的方法，據跡象顯示，其效果僅止於暫時性。同性戀者遭遇的問題，大多數直接由於社會人士的誤解及隨而帶來的敵視構成。

鳴謝

3.30 法律小組委員會中一名成員吳達偉醫生，於參閱附件三所列資料後撰寫本章，本委員會特此致謝。此外，本委員會接獲若干名醫學界人士來函，對同性戀問題發表意見（見附件八）。另一方面，本委員會亦就本章內容，徵詢其他在職醫學界人士（芳名見附件二）的意見。綜合結果，本委員會採納吳達偉醫生之意見。

第四章 傳統中國社會的同性戀問題

導言

4.1 同性戀這個題目縱非完全被忽視，也是最少受到科學性研究的問題之一。世界各社會，不論過去或現在，有關同性戀的資料均少之又少。不過，同性戀是人類性行爲的一個方式則已爲學術性研究所建立，不容置疑。福特（Ford）及比殊（Beech）曾對七十六個社會調查，發現其中百分之六十四的社會，或至少其中某些成員，都認爲同性戀是正常或可接受的行爲；而其餘百分之三十六的社會中，即使同性戀行爲是受譴責或禁止的，但也有證據顯示這種行爲仍然暗中存在，至少其中有些社會是如此的（見福特及比殊著“性行爲模式” Ford, C.S. and Beech, F.A., *Patterns of Sexual Behavior*, New York: Harper & Bros., 1951）。金賽博士和他的合作者，在一項對超過五千個美國白人的調查中發現，其中百分之十在十六歲到五十五歲之間，至少有三年時間或多或少是同性戀者，而其中百分之四則終其一生是同性戀者（見金賽等所著“男性性行爲” Kinsey, A.C., Pomeroy, W.B., and Martin, C.E., *Sexual Behavior in the Human Male*, Philadelphia: W.B. Saunders, 1948）。金賽報告無疑是直至目前爲止一項對人類性行爲最透徹與廣泛的調查。

傳統中國社會的同性戀問題

4.2 傳統社會中，有關同性戀的資料十分稀少。要想對傳統社會各個階段的同性戀行爲之模式及流行程度，作一全面的社會學分析極爲困難。但有一件事是相當肯定的：即在所有主要的文明都存有同性戀。中國傳統社會亦非例外。本文擬對傳統中國的同性戀現象作一簡要的分析。應指出者，傳統中國的同性戀現象是獨立於其他古代社會的歷史現象。

4.3 中國有關同性戀最早的事例，是不易於攷證的。但是，有些學者從古代的典籍，如《商書》、《周書》（《逸周書》）的記載中，推測早在商代（公元前一一二二年）及周代（公元前一一二二年至五〇〇年）時，同性戀即已存在，有所謂“美男破老”或“美男破產”之說（見潘光旦“中國文獻中同性戀舉例”，收入潘光旦譯註，《性心理學》，商務印書館，上海，中華民國三十五年，第三八〇至第四〇五頁）。

4.4 在春秋時代（公元前七二二年至四八一年），同性戀的事例在韓非子的《說難篇》中就有載述。《說難篇》中記彌子瑕受寵於衛靈公之故事，說彌子瑕“與君遊於果園，食桃而甘，不盡，以其半啗君，君曰，愛我哉！忘其口味，以啗寡人。”世稱同性戀爲「餘桃斷袖」之癖，餘桃的典故就出於此。戰國時代（公元前四〇一年至二二一年）有些君主、權臣常有男子爲

「嬖」和「變童」。《魏策》中所載魏王所寵幸的美男龍陽君即屬此類，而中國長久以來即以“龍陽君”為同性戀的代名詞。也許有關同性戀的記載最可取信的是司馬遷的《史記》和班固的《前漢書》這兩部權威性的史著了。從這兩部書中，我們相信在前漢（公元前二〇二年至公元九年）時，同性戀是頗為普遍的現象，至少在王室是如此。皇帝如高祖（公元前二〇六年至一九五年），惠帝（公元前一九四年至一八八年），文帝（公元前一七九年至一五七年）及武帝（公元前一四〇年至八十七年）都有男的佞幸寵臣，如籍孺、閔孺、韓嫣、韓說等。其中最著名的是文帝，他的寵幸包括鄧通及太監趙談和北宮伯子。前漢的最後一個皇帝為哀帝（公元前六年至公元二年）有幾個受寵愛的男子，最為出名的是董賢。《漢書》說他“為人美麗自喜，哀帝望見，悅其儀貌”，並記述有下面一段話：“嘗晝寢，偏籍上袖，上欲起，賢未覺，不欲動賢，迺斷袖而起”，斷袖與餘桃皆為同性戀之雅稱，而斷袖的典故即由此來。同性戀的現象自前漢之後並未中斷，惟在《後漢書》中則無同性戀事例的記錄。但到了晉末及六朝，同性戀的事例在史書中又出現。其間事例頗多，梁朝詩人庾信及《陳書》中提到的韓子高皆為同性戀者，似無可疑。稽康（公元二二三年至二六二年）及阮籍（公元二一〇年至二六三年）兩位歷史人物，世人皆視為同性戀者。

4.5 宋代（公元九六〇年至一二七九年）時候，在大城市裏，普遍出現有男子為妓的現象，此雖為法律所禁，但仍不為之絕，此在王室南移後尤然（見胡禮譯《元人入侵前的中國日常生活》Jacques Gernet, *Daily Life in China: On the Eve of the Mongol Invasion*, trans. by H.M. Wright, Stanford University Press, 1962, 第 98 至第 99 頁）。男妓裝飾如女人出沒於街市，此一時期或者是同性戀明顯化的一個高潮，自此之後則又轉為隱秘矣。

4.6 在此應指出者，六朝之後，正史不復有同性戀事例之記載，但是，在一些稗官野史中則仍不乏同性戀之載錄。於明（公元一三六八年至一六四四年）、清（公元一六四四年至一九一二年）兩代，記述尤多；文壇名士袁枚之《子不語》、《續子不語》、《隨園詩話》及紀昀之《閱微草堂》、《如是我聞》皆為較著名者。

4.7 同性戀在清代的小說中亦可找到。小說誠不必為真，惟亦足以反映社會生活之某種實情。《紅樓夢》在中國小說中最享盛譽，亦間有描寫同性戀之事，儘管此在小說中所佔筆墨不多。而在李漁之《肉蒲團》中，主角未央生與其童僕之同性戀關係至為明顯，誠然，未央生固非純同性戀者。在小說中，以男子同性戀為主者厥推陳森之《品花寶鑑》。在《品花寶鑑》中，主人翁皆為男子，且絕多數為戲子，此一小說充份反映當時戲子及其友朋的生活狀態。民間關於戲子與同性戀者關係之說法，與《品花寶鑑》所述者頗多契合。

4.8 在十七世紀，一位隱名作者寫了一本叫《斷袖篇》的書。此書記述中國歷史上五十個著名同性戀的故事。依范古力克（R.H. Van Gulik）之見，這本書是此類書籍中之僅有者（見范著《古代中國性生活》R.H. Van Gulik, *Sexual Life in Ancient China*, Leiden: E.J. Brill, 1961，第 48 頁）。

4.9 從中國歷史上看，同性戀似為一明顯存在的社會現象。不錯，我們對各朝各代同性戀之流行的情形，已無從知悉。顯然，它因朝代而有異。對中國性生活極具研究的范古力克指出，中國同性戀“在六朝之早期最為盛行，再者則在北宋之期（公元九六〇年至一一二七年）。自此以往直至明末（公元一六四四年），男性同性戀較之多數西方社會則不會更多。”

4.10 同性戀在中國歷史上，不止因時期不同而有異，而且在空間的分配上亦有差別。有的地區同性戀情事較多，此或由於貧窮及其他社會因素所致。清代福建同性戀頗為流行，寢成風氣，或謂此係由於航船職業之故，緣該地居民與航船者皆迷信：如女子上船，則該船會遭受咀咒而不免傾覆。閩俗契兄契弟之稱，流傳已久。契字在福建有一特別語意，契弟則意含男子與同性之關係也。

結論

4.11 本文一開始即指出，同性戀是最少受到研究的題目之一，對於傳統中國社會之同性戀現象，甚難有確切之論斷。但是，廣泛的、不同類別的文獻有力地顯示同性戀是一古老的社會視象。所可肯定者，儘管有迹象顯示，中國某些時期中，在文士墨客的筆下，同性戀行為被雅化，而染有浪漫的色調；但同性戀在中國任何朝代都未有如古希臘時代之被理想化者。從事於文化與社會比較研究的學者認為，中國人對於性的態度是相當開放的；性並非可怕，也不以為是罪惡。一般人雖然對同性戀行為感到厭惡，但通常都予以容忍。根本上，同性戀一向被認為乃個人之私事。所以，在中國歷史上，社會對於同性戀的容忍是很大的。

社會制裁

4.12 比較地說，或從歷史上看，同性戀在傳統中國並不如過去西方某些時期那樣受到嚴厲的詬責。在傳統中國社會，一個同性戀者所受到的社會制裁恐不外是嘲笑和揶揄。誠然社會視同性戀之不足取，亦不更甚於溺賭與狎妓也。由此以觀，傳統中國之法律從不以同性戀為對象（男子為妓則屬另一回事），蓋有以也（即使今日中國之法律亦莫不然）。

鳴謝

4.13 本章乃由新亞書院院長、中文大學社會系系主任金耀基博士，參攷附件三所載資料撰寫。金博士為本委員會委員之一，其研究心得及高見，本委員會樂於接納，並視為本委員會的意見，而迄今本委員會亦無接獲其他與本章見解相左的資料。金博士惠賜鴻文，本委員會謹此致謝。

第五章 現代香港的同性戀問題

同性戀行爲

5.1 本委員會在前章所引述的文學和歷史資料，令我們相信在古代中國，一如其他偉大文明古國一樣，同性戀的確是存在的，且亦有人進行同性戀活動。其實，第三章所述的醫學和社會學研究已足以排除其他結論的可能性。

5.2 常聞人道：在香港，同性戀活動只是西方人的玩意，與華人無關。爲此，本委員會認爲有必要剖析時下香港的情況，盡可能探求我們這個華洋雜處社會內裏的真相。

5.3 本委員會認爲第一步工作是研究麥樂倫事件調查委員會所錄取的公開證供：

“ 問：‘彼得’你是否同性戀者？

答：是。

問：你何時開始發覺有這種傾向？

答：是朋友教我的。

問：你當時幾多歲？

答：超過十三歲。

問：他教你幹什麼？

答：我們下班後同到宿舍去睡覺。

問：然後？

答：他擁抱我。當時，我不知究竟發生甚麼事。他替我手淫。

問：你朋友有多大年紀？

答：他大約十五、六歲。

問：你當時是否喜歡他這樣做呢？

答：我覺得很有趣。我開始喜歡這種玩意。

問：這事件是當你任職酒樓時發生的。你在該處工作時，這類事情是否經常發生？

答：我也有在廚房和廚子們玩在一起。

問：他們有多大年紀？

答：十七、八歲。

問：除了酒樓的職工外，你是否有和其他人發生同性戀關係？

答：有。

問：他們是什麼人？

答：外間的朋友。我們在偶然的場合中認識。

問：在甚麼地方？

答：公廁。

問：你如何認識他們？

答：他們有時會對你微笑，有些還向你眨眼。我也曾前往啓德遊樂場等地方。在戲院也可以找到他們，他們都站在戲院後面。

問：你當時年紀有多大？

答：超過十四歲，快要十五歲。

問：直到那時為止，你是否有縱情於其他同性戀活動？

答：我們有時口交。我有時雞姦人。有時人雞姦我。

問：你是否指自己出外活躍結交同性戀朋友？

答：我的意思是我出外找尋侶伴。”

（節錄自一名名為“彼得”的中國籍男妓於一九八零年十月二十九日向麥樂倫事件調查委員會所作供詞，謄本第 152 至第 157 頁）。

5.4 本委員會引述上面的供詞，並非有意惹人反感，亦不是想突出人生醜惡的一面。我們只想利用這個特殊的例子，說明一個學識淺薄的中國男孩如何從友伴中染上同性戀癖好。有關“彼得”以及向麥樂倫事件調查委員會作供的其他幾位男妓的背景和同性戀經歷，摘錄於附錄二十七。他們在供詞內，詳盡描述男妓之間如何互相向朋友和遊客出賣肉體，淫媒如何在浴室控制一群男童作為搖錢樹，拉皮條者如何向當局出賣情報和朋友，愛人如何互相告發；有時，毒品是引誘的因素。在供詞內，曾有敘述一名男子鞭打男童作樂，每鞭代價二十元。男童亦向顧客榨取禮物金錢。

5.5 一九八一年底，本委員會得蒙皇家香港警察隊提供一份有關本港同性戀活動情況的評估報告；綜合調查委員會所錄取的證供，足證警方評估準確：——

“在過去三年間，特別調查小組一直集中調查本港同性戀活動。在調查過程中，該組人員曾先後會晤不少不同社會階層的同性戀者。調查結果顯示本港同性戀活動頗為普遍，同性戀者中有不同種族，來自不同社會階層的人士。根據從會晤中所收集的資料，本港有全職或兼職男妓超過一千人，服務對象包括本地及來港旅遊的同性戀者。

本地或來港旅遊的同性戀者，如要找同道中人，並無多大困難。若干國際刊物臚列同性戀者聚集的場所和其他知名的地方。有些無法抑制性慾的人，在情急之下會前往公廁或酒店廁

所找尋對手。不少同性戀活動是在公廁附近進行。男妓喜歡聚集在公廁附近，與嫖客談妥價錢後，便與他進行粗獷行爲。還有其他地方，例如海灘等，則爲同性戀者提供結識和會面的機會。

以淫媒爲業者，人數甚少；不過，要區別職業淫媒和業餘淫媒，十分困難。原因是不少活躍的同性戀者，不論是男妓或業餘愛好者，都會向別人介紹同性戀朋友，有時甚至不收取金錢或報酬，但大多時會收取一些費用。至於職業淫媒，手下控制不少年齡不同的少男，嫖客大多經由朋友介紹，有些則在報章刊登廣告，所用字句亦頗爲露骨。他們提供各類反常的性服務。很多時候，少男會誤信可獲得按摩訓練或受僱爲攝影模特兒，不知不覺受人誘騙進行同性戀活動。

本港有知識或有社會地位的同性戀者，爲着滿足自己的性慾，很多時候不得不找一位社會地位比他低微的伴侶／男妓。很多男妓與黑社會關係密切，黑社會會員全屬冷酷無情，他們只重金錢，這是毋庸贅言的。有不少男妓根本亦好女色，他們縱情於同性戀活動，只不過是唯利是圖。因此，敲榨勒索的情況，實難以估計。由於明顯的理由，受害者大多不願向警方舉報……本港不少同性戀者享有社會地位，擔任的職位性質微妙，他們都可能成爲敲榨勒索的最佳目標。”

本委員會從觀察所得結論，可作爲上文的注腳：假如全港有男妓一千人的推斷是正確的話，如果他們每人每星期內在雙方同意下進行同性戀活動不足五次，則這類非法活動每年在本港發生超過二十五萬宗，差不多沒有一宗遭人舉報或被警方偵破。

5.6 一九八一年後期，一個寫實的電視節目在本港播映。該節目的記者兼策劃人陳樂儀先生在策劃該節目時所進行的實地調查，對本委員會探求事實真相的工作，很有幫助。我們在本報告書內節錄了某次會議的紀錄（附件十五），陳先生在會議席上，敘述調查結果如下：

“爲電視廣播有限公司籌拍這個有關同性戀問題的節目時，他訪問了很多人，並探訪若干經常有同性戀者出入的地方。他曾經參加他們的社交活動和聚會。這節目製作需時六個月。他發現，他遇到的同性戀者來自社會各階層：包括公務員、商人、教學界人士、傳播界的人士、侍應、文員、藝術家、作家、推銷員、專業技術員等。有些來自歐洲，有些來自美洲和亞洲，其他是本港人士。他們的年齡大約由十八歲至三十歲或以上。從心理學家觀點而言，他們的心態與異性戀者無異。他們是男性，因此在性方面比女性較易衝動。此外，由於他們不會生兒

育女，而且處身於香港這樣的社會環境，因此，他們分手的可能性，比已婚男女為高。他們的行徑，與異性戀者並無不同。”

5.7 此外，小組委員會的成員曾訪問四名華籍同性戀男子(附件十七)，使本委員會對問題有更深入的了解。他們對提出的問題發表意見，其中包括經常提及“同性戀只是西方有而中國無”的問題：

“受訪者的答案是，在他們的同性戀圈子裏，並無西方人士。圈子的成員包括一名年約四十五歲的醫生、兩名新聞從業員（一名三十一歲，另一名約二十歲）、以及若干學生，全部為中國人。各同性戀圈子之間的分別，也許就在於他們的成員來自不同的社會階層。有些同性戀圈子的成員來自經濟能力較差的階層，例如侍應和酒店房間服務員。華籍同性戀者的年齡差別頗大，職業範圍亦十分廣泛，包括店員及‘行’（大商行）的僱員。”

對於有人認為同性戀者濫交的問題，他們的答案是：

“一般而言，同性戀者並不濫交。個別同性戀者可能濫交，正如個別異性戀者可能濫交一樣。一對同性戀人之間的感情關係，通常很深厚。受訪者又認為，愈來愈多人誤會那些衣著華麗的的士高常客，就是本港的典型同性戀者。”

5.8 上述所有意見倘和李必治先生（Mr. Lethbridge）於一九七六年在香港法律導報一篇文章內所發表的言論作一比較，當能發人深省：

“香港還有另一秘密組織，這個組織也許不及三合會和共濟會那麼有名。那就是‘同性戀國際聯盟’（Homintern）（這個新詞似乎是詩人奧登所創），意指由同性戀者組成的團體。現時，本港只有少數人是同性戀者，他們在不為人知的情況下秘密活動……本港的同性戀者行為謹慎；他們不會標奇立異，招搖過市。他們似乎不會佩上同性戀者解放運動徽章到處炫耀，或在皇后大道向青年男士送秋波。”

“……本港的典型歐裔同性戀者可能會與男性朋友玩橋牌，卻不會參與同性戀者解放運動。大體而言，佔本港人口少數的同性戀者頗為正派，在很多方面都能隨俗，並且極為擁護政府。在本港現行法律下，這種現象實在不足為怪。”

“要把同性戀者明確分類，並不容易，但本港的同性戀者仍可分為三類。第一類是那些在公眾場所找尋生張熟魏為性伴侶的同性戀者；有些已婚，與普通的異性戀者分別不大。第二類是那些與另一男性同居的同性戀者；如該同性戀者為歐籍人士，則前者通常為一華籍青年。我們可以把這種關係稱為“家庭

式”同性戀，因為在某些方面，這種關係類似異性婚姻關係；正如任何婚姻一樣，有時其中一方可能與別人發生性關係。這類同性戀關係有時維持一段長時間，但大部分是短期關係；當關係結束時，該歐籍人士通常被迫給予其前度情人一筆可能高達數千港元的“掙煲費”。第三類同性戀者是男妓。沒有人敢肯定這類人士是否真正的同性戀者，但鑑於男妓很容易與其他男性發生性關係，他們似乎不可能是隔代遺傳的異性戀者。”

（“攬同性戀的傢伙：香港的同性戀問題與法例”（The Quare Fellow: Homosexuality and The Law in Hong Kong）；《香港法律導報》（Hong Kong Law Journal）第六期，第二九二、三二一至三二二頁）。

同性戀罪行的發生率

5.9 根據我們所得資料，毫無疑問，現時同性戀活動在本港相當普遍，任何社會階層或種族中，都有發生同性戀的事件。

5.10 本委員會相信，現有統計資料大大低估了同性戀罪行的實際數字。例如，附件二十三及二十四轉載的少量統計數字顯示，一九八一年舉報的1,352宗有傷風化案中，只有63宗屬於同性戀性質；同時，692人被控有傷風化罪，但只有54宗是同性戀罪案。

5.11 一般而言，性罪行的統計數字未能正確反映實際情況，是由於兩種截然不同的因素。第一個因素是，很多與性有關的罪案沒有“受害人”，犯事雙方均同意進行該違法行為，並對結果感到滿意，因此，任何一方都不會基於任何理由而向警方舉報，或尋求法律幫助。第二個因素是，即使案件中有“受害人”，通常他們也覺得過份尷尬、噁心或恐懼，因而不向家長、朋友或警方報告，另一方面，他們或者擔心舉報後，事件會張揚。例如，最近在本港進行的罪案受害者統計顯示，在所有暴力罪行（包括侵犯婦女的性罪行）案件中，警方接獲報告者僅佔百分之四十一；有關方面相信，舉報數字如此低，是由於上述因素或類似因素所致。

5.12 我們似乎有理由假設，既然發生於異性之間的罪行統計受上述因素影響，則同性戀罪行的統計亦會受同樣因素影響。因此，除已公佈的統計數字外，我們必須另覓資料，以了解同性戀罪行的真相。

5.13 我們在第5.5段的註腳中提及，涉及男妓的同性戀事件假設每年達二十五萬宗。現在讓我們再根據假設，進行另一項計算，這項計算與賣淫無關，而是關乎同性戀行為在社會發生的數字。

5.14 金賽博士曾研究美國人的性行為，並計算出在任何男性人口中，有百分之十幾乎是絕對同性戀者。如果金賽博士的研究結果適用於香港，那麼，一九八一年，本港人口中，約有十八萬名年齡由十五歲至五十九歲的男性是

同性戀者。如果以十五至三十五歲的未婚男性來作同樣的計算，則該組人口中，約有七萬人是同性戀者。如果我們假設上述兩組男性中，只有四分一實際上有同性戀行爲，而每人每隔兩星期便同一組別的另一男性，在雙方同意下作出違反本港刑法的同性戀行爲，那麼，我們便會發覺，本港每年有 585,000 宗和 227,500 宗同性戀刑事罪案，分別在上述兩組男性中發生。當然，上述數字全部出於假設，但亦有人認爲，它們未能完全反映本港社會同性戀問題的嚴重程度。

5.15 不論正確的統計數字爲何，本委員會根據各項研究結果，相信本港每年有大量人士蓄意違反上述刑事法例，而按照現時情況，警方極難偵破這些罪案及檢控有關的違例人士。稍後我們會研究，漠視法紀的情況如此普遍，會帶來甚麼不良後果。

官方對同性戀的反應

5.16 本委員會在第一章已依次撮述自一九七八年以來本港發生與同性戀問題有關的事件。至於下文中較詳盡的闡述，則以麥樂倫事件調查委員會報告書所載的歷史爲根據。我們認爲所牽涉的問題有兩個：警方在偵緝及調查方面的政策；以及當局的公務員叙用政策。當這兩個問題碰在一起時，便會產生種種麻煩。

5.17 在偵緝和調查工作方面，一般人相信由於警方只是接獲投訴後才有所行動，因此警方於一九七八年以前在調查成年男同性戀者的活動方面只是做了很少的工作。有人更稱當時的政策爲“隻眼開，隻眼閉的政策”。此外，亦有謠言廣傳謂香港有一些地位高的人士，包括法官、商人及律師（包括私人執業或任職政府者）都是有同性戀行爲的人士。在麥樂倫事件調查中“彼得”所作的證供，就是一個可以說明這兩種信念的例子：“彼得”辯稱他供出若干位歐籍公務員顧客的名字，其中一個原因是由於那位向他問話的警務督察所說的話。“彼得”聲稱該督察曾對他說下列一番的話：

“你們（中國籍男妓）都是受害者，你們是中國人。不會有任何事情發生在他們（那些顧客）身上的，因爲他們是歐籍人士，他們甚至不會被檢控，當局只會將他們遣回英國罷了。”

（“彼得”在一九八零年十月三十一日所作供詞編譯本，見謄本第二六一頁。）

5.18 上述情況在一九七八年卻有所改變。首先是當局將一名淫辱多名男童的歐籍律師拘捕。其次是揭發數宗案件，顯示了介紹青少年賣淫活動及淫辱青少年罪行的猖獗程度。警方對這些案件都作了進一步的調查。在大約同樣時間，一名中國籍少年正式投訴謂一名警務人員曾試圖非禮他。該名警務人員就是麥樂倫督察。由於該名少年其後返回蘇格蘭求學，當局因此不能在

缺乏該少年作證的情況下控訴麥樂倫，但麥樂倫的僱用合約卻遭中止，麥樂倫遂提出抗議表示無辜，結果上訴得直而獲恢復原職；但三年後的調查委員會卻發現該名中國籍少年所說乃屬事實。

5.19 同時，在一九七九年中，該名被判監禁三年的歐籍律師擬備了一份特赦請願書，指稱當局行動有所偏袒，並謂可以供出多位“地位極高”的同性戀男子的名字。由於上述事件及其他事故，警務處長遂促請香港總督根據警察條例（香港法例第二三二章）第四條就調查同性戀罪行須動用的人力物力發出指示。總督、律政司、布政司及數位高級警務人員經過多次會議後終於訂定一項獲各方面同意的政策。是項政策載於律政司致警務處長函件中，而該函全文已收錄於附件二十八之內。該函謂警方的主要調查目標首先為淫媒，其次方為淫辱青少年或精神不健全的人士。該函除列舉其他調查範圍外，並提議警方倘得到有關成年人在雙方同意下進行同性戀行為的綫索（與直接犯罪證據相對而言），通常可毋須展開調查，但如果綫索是有關某些類別的人士，則須追查綫索，而司法界人士及政府高級公務員是列於這些類別中最後一類者。

5.20 自一九七八年八月起負責追查介紹青少年賣淫非法活動的警察單位此時已獲增添人手。該單位須直接向副警務處長負責，而副警務處長則須就調查進展向律政司及總督報告。該單位日後遂演變為特別調查小組（或稱SIU）。該組一名成員曾向刑事檢控處長提出以下問題：“調查會否因為真的披露若干位知名人物的名字而停止下來？”刑事檢控處長的答覆如下：“情況並非如此。不論披露那一個人的名字，調查仍會繼續下去的。”（麥樂倫事件調查委員會，謄本第11005至11009頁）該名警務人員認為這樣做會打開了“潘多娜的盒子”；而一些同性戀者及評論者更相信有如此後果：由此時起他們的抨擊便針對執行這些政策有關的人士。

5.21 跟着要談的是方程式的另一部分：警察酌情決定的權力和挑選調查目標的問題。單以特別調查小組而論，我們最好引述麥樂倫事件調查委員會所得的結果：

“訂定調查目標一向都是警方的工作，律政司署只是負責提供法律意見。無論基本及一般政策怎樣，該次會議的結果是，警方及律政司署日後會互相聯絡，進行討論，但警方毋須正式放棄任何權力。在實行方面，由於調查將涉及性質敏感的問題，因此雙方會就訂定調查目標的範圍，進行磋商。至於職權方面，並無迹象顯示律政司署有意接管警方的職權，或警方有意放棄‘傳統的權利’，只是在實行有關工作時，雙方須就個別案件訂定調查目標的事宜，進行磋商。雖然這並非慣常做法，但卻不失為一實際的解決辦法。”

“理論上警方無權挑選案件調查。警察條例第十條(b)款訂明警察的職務是採取合法措施防止及偵查罪行。因此，警察的職責之一是偵查罪行，將犯罪者繩之於法（柯哲保論刑事訴訟程序，證據及答辯，第四十版，第 1311 頁 2718 段（Archibald on Criminal Practice, Evidence and Pleading, 40th ed. p. 1311, para. 2718）。）”

“實際上由於警方不可能將所有罪行逐一調查，將所有犯罪者逐一繩之於法，所以只好挑選若干案件調查，這委實是無可避免的。刑事偵緝部總主任簡乃善恰當地稱這種選擇為‘一種方法，以確保警方能夠盡量動用人力物力集中應付一項特別問題，免得因分散實力而減低效率。’簡言之，選擇是警方自覺的決定，當需要警方用人力物力處理的事項繁多，警方乃從一群因警方掌握對他們不利的消息或情報而被列為‘嫌疑者’的人中挑選若干名作為積極調查目標。選擇的程度顯然因嫌疑者總數與被選為調查目標的人數而異。假如所有嫌疑者均接受調查，選擇的問題根本不會出現。然而，警方只能動用有限的人力物力去對付某一類罪案，同一時間內接受積極調查的人數須完全取決於警方所能動用的人力物力、有關罪行的嚴重程度及警方所掌握的資料可靠程度。關於同性戀罪行，簡乃善作供時表示‘鑑於此類罪行的範圍甚廣，而調查小組只不過成立不久，本人認為該小組的調查範圍之一當然是近期的同性戀活動。’”

“在只有少數嫌疑者接受調查的情況下，例如有關同性戀罪行的調查，接受調查的人士往往大呼遭受‘迫害’。他們投訴不是因為他們清白，而是不服因何（假如真的是有原因）被選中而其他他們認為更‘值得’調查的人士卻可以逍遙法外。往往有人會指責維持法紀的人員極為偏頗，在選擇調查對象時偏袒特權分子或有勢力人士。”

“從普羅大眾的觀點去看，如果他們所認識、相信或懷疑的多數同性戀者並沒有受到調查，他們可能對特別調查小組的選擇問題感到異常關注。他們的關注是可以理解的，然而他們或許不明白自己所知的，警方卻不知道，反之亦然。熟識同性戀活動情形的人士所知道的，調查小組人員未必一定清楚，除非有人向他們提供消息或由他們的情報網偵查出。反過來說，警方卻可能掌握一些普羅大眾得不到的資料。”

“單就蒐集資料而言，本人審閱調查小組所有紀錄後，發覺並無任何憑據證明調查小組的調查範圍只局限低級或／及中級

公務員或任何一類人士。事實上情報紀錄的範圍頗大，包括各行業各階層的人士。”

（麥樂倫事件調查委員會報告書第 63 至 65 頁第 48, 52, 53, 54, 57, 58 段）

“及至一九七九年七月，調查小組才重新展開工作，但該小組要待至同年八月二十八日總督府舉行會議後，方在八、九月間獲增添人手（除恢復原有人數外，另加一名總督察）。證據清楚顯示，自一九七九年七月起，該小組的人員忙於再次接見與該五宗案件有關的證人，並從其中一人（綽號‘火星’）獲得有關一名政府律師的直接證據。該小組依循此綫索追查，終於將該名律師繩之於法。同樣地，‘哥連’與麥樂倫並非從一群涉嫌者中‘挑選’出來，而是當該小組蒐集情報時，有人向警員劉敏透露他們的名字。既然有可靠的綫索出現，該小組的人員當然要執行本身職務，追查到底，而他們的確這樣做。並無證據顯示該小組特意挑選麥樂倫，或出於任何不正當的動機而調查麥樂倫……”

“從上述分析可見調查小組從開始工作直至調查麥樂倫為止，根本沒有機會在一群嫌疑者中隨意挑選調查對象。由始至終，該小組都是根據有關五名活躍淫媒的檔案及不時發現的可靠綫索而採取行動的。單就追查可靠綫索而言，該小組只優先調查近來發生的同性戀活動。”

（麥樂倫事件調查委員會報告書第一九七頁第 42, 43 段）

5.22 此外，在麥樂倫事件調查委員會謂調查期間及工作完成後，有人指責政府的政策對高級公務員有所偏袒（李必治文“潘多娜的盒子：麥樂倫督察之謎”（Pandora's Box: The Inspector MacLennan Enigma）；《香港法律導報》（Hong Kong Law Journal）第十二期（一九八二年）第二十三頁）；但從該調查委員會所獲得的證供來看，政府的意思則剛看相反。為方便參考起見，現將律政司致香港法律導報編輯的一封信件摘錄如下：——

“自然，律政司決定是否起訴，或警方決定是否調查時，絕不會考慮被調查人的社會地位或財富；可是，在指示警方應否追查綫索時（所謂綫索，即指真實性存疑的指控或提示），則須考慮年資、可信度、是否接觸秘密或機密資料、或有關人士是否負責行使重要權力或是否由其本人作出決定等因素。顯然，任何人如其行為為社會上眾多人士所痛恨者，均有被敲詐的危險，倘該種行為構成刑事罪行，則遭受敲詐的危險程度更大。由於這個緣故以及其他因素，當局將指定須例外處理的各類人

士列入，目的是針對，而非維護在政府各部門、法律界及司法界工作的高級職員。如果是較低級的職員，危險性顯然較低，所造成的損害也較小。

當上述問題在督憲府展開討論時，所有在場人士（包括警務處處長及副處長）一致認為——本人肯定他們當時亦明白——凡涉及政府低級公務員的‘綫索’（相對於證據）雖然毋須追查但對於指向高級公務員的綫索，則須使用另一種方法處理。”

（一九八二年《香港法律導報》社論，第二頁）

5.23 現在要談談最後一項互相關聯的政策——公務員的聘用。根據政府公務員的一般服務合約規定：政府或公務員任何一方如欲終止合約，須給予對方三個月通知，或以薪金代替通知。一九七八年，當局便是引用這一條款來處理麥樂倫督察事件。銓叙司表示：當局通常都會向該名公務員解釋考慮引用該條款的原因，同時亦給予該公務員答辯的機會，以示公平。此外，政府亦保留一項根據殖民地規則所賦予的權力：為公眾利益起見，政府於認為有需要時可強迫某公務員退休。

5.24 銓叙司在作證時，曾解釋公務員叙用政策的背景。一九八零年一月，當局在一名在保安科工作的歐籍公務員被判犯同性戀罪後，重新檢討該項政策、目的是制訂一些準則，以便在決定如何處理涉嫌或已證實的公務員同性戀事件時，有所依循。這類檢討，為歷來第一次。結果，當局決定，在叙用方面，所有這類個案均應按個別情況處理，同時亦應試圖將各種不同的情況，歸納起來，訂定一套指標，以便於評估每一個案時，有所幫助（麥樂倫調查：一九八一年一月七日，第三二〇九，三二二四及三二三六頁）。

5.25 本委員會在獲提示下，曾參閱一九八二年的報章報導。該報導轉載一份向政府部門首長發出指示的文件的內容，其大意為：在聘請公務員時，對已知為同性戀的人士，（即犯同性戀罪者或前曾承認有活躍同性戀行為者），不論男女，均不應錄用。在職公務員倘犯同性戀罪者，亦應考慮將其解僱。對於已知或涉嫌為同性戀的公務員，部門首長亦須將其個案向當局請示意見。本報告書附件二十九載有該文件的全文。該文件後來獲當局承認為銓叙司辦事處發出的一份通告。

5.26 此項政策亦受到批評，認為當局對同性戀公務員歧視（參閱附件四有關報章的反應）。除數名被控同性戀罪的公務員被拘捕外，我們並未發現任何事實或資料足以顯示香港政府公務員中同性戀問題的嚴重程度。

評論

5.27 本委員會看不出為甚麼金賽博士對人類行為方面的研究結果不應在本港廣泛引用。換言之，假如估計本港男同性戀者的人數是介乎 125000 至 250000 之間（佔男性人口百分之五至十），而其中絕大部分是中國人，這個估計可算與實際相符。此外，我們假設本港每年有盈千累萬的同性戀事件發生，而其中大部分是屬於成年人在彼此同意下進行者，這項假設亦屬合理。根據目前法例，此等行為全屬非法。根據本委員會計算出來的結果，只有極少數是經過調查後破案的。本委員會認為此舉實有損法律的名聲，同時亦使本來視尊重法律為理所當然的人變得蔑視法律。假如法律真的如英國大憲章所謂至高無上，無人能及，我們認為社會裏便不應有大量本來奉公守法的市民覺得他們應該凌駕於法律之上，可以任意觸犯任何法例。本委員會懷疑這種道德上的“精神分裂症”，可能是造成若干同性戀者精神緊張的原因之一。

5.28 市民對本港司法應該具有信心，本委員會認為這一點頗為重要。同樣，公務人員亦應受到監察，並應對自己所作的決定負責。執法部門調查罪案應審慎從事，而檢控部門在決定應否提出檢控時亦應如此。所有司法人員對這種處事態度毫不陌生。由於需要審慎的地方各有不同，因此各部門須按照不同的準則行事。基於這個原因，本委員會認為不宜臚列一切有關準則或應考慮的因素。

5.29 市民當然有權期望這類決定並非出於武斷，因為審慎的決定是法治的特徵。不過，若干評論家卻以當局未能達到這些標準為理由，不斷抨擊當局在調查及檢控同性戀罪行方面所作出的決定。有些涉嫌或被控犯有同性戀罪行的人士聲稱他們被“挑選”出來，這些批評並非香港僅有，事實上，在很多國家，都有提出同樣的批評。本委員會認為某些評論家將法律存在的責任與執行法律或依法檢控的責任混為一談。

5.30 由於此等事項乃關乎我們所最關注的司法問題，故在本文提及。本委員會仔細研讀麥樂倫事件調查專員在結論中所提出的調查結果。這些結果充分反映高級公務人員確實盡了一番努力，以求訂出合理而合乎人道的政策。雖然如此，評論續有出現。這些因素更令我們相信：目前的法律足以激起某些人士的情緒。本委員會亦覺得，為着司法的利益，當局應將有關政策向調查部門的人員以及可能受到影響的社會人士公佈。

5.31 警方本身亦認為這類調查頗為敏感，進行時須小心監督，輕重分明。本委員會亦有同感。據悉，自一九七八年以來，特別調查小組的紀律人員常有變動，最少時只有兩人，最多則有二十六人。對於擁有三萬名人員的警隊而言，這種人力部署是否相稱呢？

5.32 明白事理的人士都認為當局應調查淫媒，並將他們繩之於法。警方要辦到此點，就不得不先尋找男妓及嫖客，加以查問。要尋找他們，就不得不暗裏前往他們經常出入的地方。警方要對付懼怕露面、懼怕檢控或懼怕丟職的人士，實在並不容易。同樣，社會人士與本委員會均堅決認為當局應調查雞姦者以及利用藥物或其他方法引誘男童作同性戀行為的人，將他們繩之於法。警方要調查及檢控他們，就不得不驚動同性戀圈子內其他方面的人。

5.33 事實上，麥樂倫事件調查專員經調查後，發覺若干警務人員在某些調查或行動中動機不當或違反所訂準則。本委員會所關注的是怎樣去減少同類事情再度發生，確保本港警務人員能善於運用所獲賦予的權力。

5.34 本港制度設有多重保障，由來已久：高級警務人員負責審核辦案的優先次序，以及屬下的工作表現。至於應否提出檢控或應否豁免證人不受檢控則由另一機構決定。法庭在監察警務人員行為方面任務重大。此外，獨立的律師行業不但保障疑犯權利，亦可確保警務人員行為正當。最後，當局甚至可以成立調查委員會。經驗證明，上述種種保障通常足以減低那些專業道德勝不過犯錯的本性的人士所造成的禍害。從實際角度來看，本委員會懷疑自己能否在這方面作出任何貢獻。

5.35 關於警方人力的部署。當然是警務處處長要處理的問題，本委員會無權過問。不過，本委員會在第六章研究的並非單是同性戀行為，而是包括其他性罪行。我們認為在這方面研究所得，亦可用於其他方面。假如當局認為這類調查需要特殊技術及保密，不應交由警區內普通刑事偵緝組負責，那麼何不交由現正調查妓女賣淫場所及按摩院的“掃黃組”負責。據悉，淫媒男女俱合，手下有男有女。這些“掃黃組”通常都有男女警務人員。本委員會相信由類似的小組來調查各種賣淫罪行，定必有好處。

公務員的聘用

5.36 雖然契約法、僱傭法及銓叙規例均不在本委員會調查範圍之內，但我們覺得這些法例都與討論中的問題有關。近年來，這個問題引起公眾爭論，因此我們大膽提出一些有關這些法例的意見。

5.37 顯然，公務員對安全保障是特別關注的，而最好不過的就是儘量減低侵害安全的危險。香港有別於其他的國家，行政權極度集中：一切決定都在同一幢大廈中達成，其中有關乎整個社會繁榮的土地用途方面的決定、有關工務投標的決定、牽涉社會安全的有關難民及非法入境的決定、以至有關本港未來前途等敏感政治問題的決定等。我們不以爲把有關這些問題的討論和決定保密是小題大做，亦不以爲這樣做是因爲恐怕事情遭受調查而揭露。這不過是適當的關注而已。我們的結論是靈活變通才是善法，無論理論上是如何的好，一視同仁地引用劃一標準並不一定有效。隨着僱員年資的增長，安全受到侵害和遭受勒索的危險明顯地亦有所增加。

5.38 此外，單從實用觀念來看，已有理由把具有“少數性傾向”的人士排除於某類工作之外。由於目前社會人士對同性戀所持態度，當局聘用男女同性戀者可能不利於某方面的工作，例如看管囚犯、在政治部工作或教育年青人等。在這些情祝下，我們認為當局應訂立一項政策，宣佈不得僱用這類人士或在適當情況下將之解僱，而那些使用公帑的僱主，則更須訂立嚴格的標準。

5.39 無論如何，我們認為（除了我們前時提出的評語外），不管法律如何，男同性戀行為對安全保障造成的危險，並不比其他眾人皆欲保密的行為為小，這些行為包括通姦、酗酒、賭博或有私生子等。同樣的，對揭露隱私的威脅，女性所受的壓力亦與男性無異。

5.40 因此，我們認為當局須檢討公務員叙用的現行政策。女性因一切與性有關的行為，包括同性戀和異性戀，其在執行公務上受到過度的壓力，與男性並無不同，因此當局沒有理由採取不同的處理方法。我們認為當局應促請所有申請人和在職人員留意這項政策的存在。從歡察所得，把行為標準訂得不切實際地高的政策摘足以造成目前的情況——亦即製造勒索機會，而這點是我們必須改善的。最後，本委員會要強調公平的重要性。所有規則必須切實可行，及為人所熟悉。無論引用或服從規則的人均包括在內。此外，在考慮個別事件時必須引用自然法的原則。

結語

5.41 研究麥樂倫死因的調查委員會是促使我們研究香港同性戀問題的主要因素。該委員會在結論中指出，麥樂倫是因為恐怕他與“彼得”的兩性戀行為被揭發而帶來恥辱，故而自殺。本章的開首引述“彼得”的幾句話，因此此處引別人的幾句話來作結，也算公平：

“麥樂倫只是一個平凡的人。倘若這些不幸事件從未發生，他可能會優悠地過活，不為人知。他稱不上完人，卻也不是社會的渣滓。像常又一樣，他有優點，也有缺點。他不是一個特殊的人物，對性的癖好也沒有什麼特別，很多人也具有同樣癖好。”

（一九八一年麥樂倫事件調查委員會報告書第三十二頁第 38 段）。

第六章 香港的法律

緒言

6.1 在本章內，本委員會較自由地闡釋本會職權範圍，不僅審閱“管制”同性戀行爲的法例，同時亦檢討“影響”同性戀行爲的法例。很多情形下，一般適用的法例，對異性戀和同性戀兩種行爲不會加以區別，我們研討若干此等法例，找出其對同性戀行爲有何影響，以及是否對社會提供足夠保障。本委員會並研究其他關於某類人士如少女等性活動的規定。這些法例在考慮同性性侵犯問題時，可用類推法而切合是項研究。在調查時，本委員會亦希望能評估那些要求我們修改同性戀法例的建議是否對此等法例有所影響，並考慮甚麼懲罰才算適當。

6.2 本委員會首先略為評述本港刑法之一般性條文，這些條文為社會每個市民提供保障。由於香港的群體生活以家庭為基礎，而有人認為家庭受到同性戀行爲所威脅，我們因此論述幾項與婚姻及離婚有關的法律觀點。其次，我們檢討一些保障市民而管制性方面公開行爲的法例，因而考慮到法律怎樣對市民，特別是青少年從電影、雜誌及電視各方面所看所讀所聽到的性內容加以管制。我們將上述事項歸併為一般保護方面。

6.3 在此之後，我們探討特殊保護方面，即法律對某幾類人士如未滿二十一歲的女性及兒童、精神不健全人士、學童、囚犯、軍隊人員，以至男性，就其性生活各方面提供的特殊保護。為顧及全面起見，我們亦提及性病控制的問題。

6.4 根據經驗，特別是從麥樂倫事件調查委員會所得經驗，與法律本身差不多同樣重要的是執法方式。為此在總結時，本委員會對同性戀罪項的法則和證據規則作出檢討。

6.5 我們在論述法例各項條文時，盡量避用專門名詞。不論文內曾否指明，凡我們考慮過的每一條文，皆連同罰則，列表載於附件三十內。

一般保護

生命、自由及身體傷害

6.6 本委員會顧及刑法中有保護市民生命、財產、人身自由以及身體免受傷害的條文，其中大部份適用於一般罪項，每一市民，不論年齡，性別或對性的癖好如何，都受保護。附件三十的附表，載有罰則及有關法例的各條款。

6.7 我們論及幾點應緊記的原則：蓄意殺人就是謀殺；在法律之前，每個市民的生命價值都是相等；所以法律並不分辨異性戀或同性戀情慾作為犯罪的動機或起因。至於其他罪項如毆打傷害他人身體、綁票、非法禁錮、刑事恐嚇或勒索等罪，該原則照樣適用。對付淫辱少女或企圖淫辱少男的人，這也是現行可用的有效武器。

結婚及離婚

6.8 根據婚姻條例（香港法例第一八一章）第二十九條的規定，任何人士，倘未徵得二十一歲以下未成年人的父母或監護人同意而與該未成年人結婚者，即屬違法，可被判監禁兩年。該條例的含義，是只有達到結婚年齡的男性與女性，始可合法結婚。自一九七二年起，香港法例第一七九章婚姻訴訟條例第二十條即把這含義明確列入。該條聲明，若婚嫁雙方非屬一男一女，婚姻便告無效。對於變性及隨之而來的種種問題，如怎樣斷定男性為男性、女性為女性等，本港仍未能應付（參閱一九八三年二月十一日出版的時代周刊祁扶士（GREAVES）一文）。

6.9 至今本委員會沒有接獲建議，表示有壓力要求准許同性結婚，亦未聞有長期結伴的同性人士要求分配共同財產的聲請。鑑於現行法律及社會態度，此點實不足為奇。我們認為，只要不涉及由於實在關係而引起純粹是道德方面的責任，則按照一般合約法和財產法，對判斷這種關係下所形成的受託責任，法律已提供足夠依據。

6.10 然而，本委員會亦須對商業性的性關係加以考慮。就現時法律而言，幾乎所有男同性戀行為都屬違法，男妓與顧客之間的性服務協議，亦因違法而無效。法律有規定任何人不能因做犯法事而追討報酬。用此，如管制同性戀的法例作任何修改，則對這類協議的執行有若干影響。當然男妓不可能為二百元而提出控訴，但如果他的地位相等於情婦，完全侍奉一名顧客而受報酬，情形又會如何？一方面，我們可以很容易說，此類協議不值得履行，既然違反公共政策，亦應視作不能執行論。另一方面，如男妓在法律上申訴無門，他會向誰求助？他們轉而採取恐嚇手段或由黑社會出面說項，亦不足為奇。有人向我們提示，妾侍制此古舊風俗以前受到正式承認，而妾侍亦可享有若干財產權；但一九七零年，本港已取締妾侍地位。我們亦留意到，女性為妾與男性為妾其中一大分別是子女問題。本委員會稍後在 11.8 段會重提此點。

6.11 回看異性間的婚姻，根據婚姻訴訟條例第十一條的規定，離婚的唯一理由是婚姻破裂，無法挽救。要證明此項理由，申請離婚者必須按照該條例第十一甲條，除其他情由外，提出下開為法庭所接納的事實：答辯人行為不合理，申請人難與共同生活。如果妻子發現丈夫有同性戀癖行，無疑可成為足夠理由。（參閱一九六四年夏德對夏德案（律師導報第一〇八輯第三一七頁）及一九六四年高發對高發案（律師導報第一〇八輯第四六五頁））。

同樣地，為丈夫者，如證實妻子有同性戀癖行，理由亦同樣成立，雖然女同性戀行為不算違法。本委員會結論認為，修改關於男女性行為的法例，不一定會影響上述離婚理由。

6.12 關於此方面，本委員會認為只須作表面探討已足。我們相信，在現時法律及輿論情況下，本港不會有太多以指摘對方同性戀為理由的離婚申請。如果婚姻關係受到威脅，包括同性戀在內，本委員會看不到有關離婚的法例可產生甚麼作用以抵銷這些威脅。我們認為這是人類行為問題多於法律問題。

公眾行為

6.13 本委員會相信，管制刊物及公眾行為兩方面的措施，對社會生活非常重要，值得提出來深入討論。因此，本委員會現將法例中在上述兩方面管制與性有關事物之若干最重要條款摘要說明。

6.14 法例除有不少條款是管制在公眾地方遊行及舉行集會外，亦規定凡違反公安條例（香港法例第二四十五章）第十七 B 或第二十五條的規定，在公眾地方喧嘩或擾亂秩序，或參加非法打鬥，即屬犯法，可判罰款五千元及監禁十二個月。假如三名或以上人士集體行為不檢，以致可能挑撥他人破壞社會安寧者，則可判監禁最高五年（香港法例第二四十五章第十八條）。假如三名或以上男子或青年公開表現其同性戀愛意，這種行為亦可能挑撥社會人士破壞社會安寧；但除非所表現的行為極端狂熱，否則法庭可能不會判被告有罪。

6.15 根據簡易程序治罪條例（香港法例第二二八章）第四條第(3)款的規定，凡在任何公眾地方、無掩蔽或其他不適當的地方大小便，即屬違法，可被判監禁最高三個月，及罰款五百元。根據另一法例的附屬規例規定，任何人士不得在任何街道、大眾可看見的公眾地方、或大廈廁所以外任何公眾地方大小便。此外，任何人士，如無充份理由亦不得容許其所照顧未滿十二歲的小孩在上述情形下大小便。上述違例事項，初犯者可被判罰款最高一千元，再犯則最高二千元。（根據公眾衛生及市政條例（香港法例第一三二章）第十五條而制訂之公眾潔淨及防止妨礙衛生事物附例第八及第二十三條。）

6.16 一九七八年前，簡易程序治罪條例規定婦女不得在公眾地方有猥褻行為。該條例第十二條（現已撤銷）的有關規定如下：——

“任何婦女，如在公眾地方、或公眾常到地方，或在公眾地方之上或通往公眾地方之任何陽台、窗戶或入口，兜搭任何人士，或為兜搭任何人士而遊蕩，以便作不道德行為者，或舉止猥褻者，可被判罰款五百元或監禁三個月。”

6.17 在一九七八年，刑事罪（修訂）條例（香港法例一九七八年第一號）將性侵犯婦女，及利用婦女及使用樓宇進行非法性目的之條文修訂。該等修

訂條文，其中一部份乃取代當時載於簡易程序治罪條例第四條第(24)款及第十二條的規定。該條例第四條第(24)款的條文，即有關禁止在公眾地方作猥褻暴露的規定，則由刑事罪條例第一四八條所取代；而第一四七條亦對誘人作不道德行為之罪項加以規定。然而，有關禁止在公眾地方作猥褻行為的條文則予撤銷，並無其他條文取代。

6.18 刑事罪條例（香港法例第二〇〇章）第一四八條現規定如下：任何人士，如無合法權力或理由而在公眾地方或公眾可看見的地方猥褻暴露其身體任何部份，即屬違法；此項規定並不適用於未滿十二歲而赤身沐浴的小孩。上述罪名的罰則為監禁最高六個月，及罰款一千元，這些罪名對男女兩性均適用。所謂暴露身體，如屬違反社會人士所公認的良好行為標準者，則視為猥褻；這些標準卻有彈性，視乎某一時間的社會觀念而有所改變：我們可以拍攝一個全身赤裸在街溝上大小便的小孩而不致觸犯法律；但在另一方面，一名發育成熟的十六歲少女裸露胸脯，或一名十八歲青年在街上暴露身體，都可能違反公認的良好行為標準。然而，任何公眾行為，在倫敦、三藩市或馬尼拉等地的人可以容忍，但在香港的社會卻未必能夠容忍，這點是非常明顯的。本條法例旨在確保，無論人們在家裏私下做什麼事，但最低限度當其家人到街上行走時，他們不致看到任何與他們所認為正常合理行為相悖的異行。

6.19 刑事罪條例（香港法例第二〇〇章）第一四七條現規定如下：任何人士，如在公眾地方或在公眾可看見的地方，兜搭作不道德行為，或為兜搭作不道德行為而遊蕩，即屬犯法，可被判罰款一千元及監禁六個月。雖然這條文一般視為適用於妓女或其皮條客，但實際上亦適用於婦女兜搭其他婦女，或男子兜搭其他婦女或男子。因此，只要女同性戀或男同性戀行為被視為不道德，則公開找尋性伴侶，無論其目的是否為謀利，均須受處罰。

6.20 法例並無提及犯罪者或可能成為“顧客”者的年齡，亦無提及地點問題。然而，這兩者也許都非常重要。其實可以這樣說，無論引誘青年男子或女子，都比引誘思想成熟而具判斷力的人士，更應受到指摘。本委員會曾聽到對於青年男子被引誘作同性戀行為一事所表示的關注。亦有指出地點問題可能也是非常重要的。在學校外面兜搭和在酒吧林立的街道上兜搭，兩者絕不相同。事實上，有人認為在後者的事例中，一些近乎買者自行當心的原則應該適用。假如一個人跑到以這類活動而臭名遠播的地區，那麼他便不應投訴有人向他兜搭。如果說任何人都有權跑到所有街道上而不應碰到令人生厭的行為，這種說法本委員會不敢苟同。

6.21 本委員會注意到，上述條文亦可作進一步引用。該條文不但適用於為兜搭作不道德行為而遊蕩的罪名，並且在條文的範圍擴大後，亦適用於那些在自己家中或在住宅樓宇內公眾浴室或廁所偷窺裸體男女的“警伯”。

6.22 本委員會現在轉而研究發生在某些特別場所內而能影響公眾高尚風氣的其他問題。根據現行法例，公廁、泳灘及公園通常都屬“公眾地方”一詞的定義範圍內，但為符合若干目的起見，包括有關猥褻罪的法例，商營浴室、公眾泳池、公眾體育館、博物館、圖書館及文娛中心亦視作公眾地方。因此，上文提及的若干規定，亦對在上述地點或場所發生的猥褻行為適用。此外，本委員會現對公眾衛生及市政條例（香港法例第一三二章）及其附例之若干規定，其中特別與本委員會研究的論題有關者，加以詳細說明。

公廁及商營浴室：任何人士，不得在廁所內遊蕩，或利用廁所作其他非原定的用途。在公廁或公眾浴室內，任何人士不得施用暴力或不正當手段，或為達到任何不正當目的，而進入任何已由別人佔用的小房，或故意妨礙其他佔用該小房人士的隱私權。任何人士，不得進入劃定為異性使用的公廁任何部份，但未滿五歲而由嫗姆或親戚陪同下的小孩，則不在此限。上述各罪名的罰則，均為罰款不超過二百五十元。該等規定亦適用於商營浴室。

泳灘：任何人士，不得使用污言穢語，猥褻暴露身體，舉止失檢或作出任何足以侵擾或阻礙其他使用海灘人士的動作。上述罪名的罰則，均為罰款不超過五百元及監禁十四天。

公眾泳池：任何人士，不得舉止失檢；除在更衣室內者外，不得裸露身體或脫光衣服隨處跑動或僅穿少許衣服而致有損公眾的高尚風氣；任何十四歲以上人士，如未得管理員許可，不得進入劃歸兒童使用的任何部份，但須照顧小孩者則不在此限。任何八歲以上人士，不得進入為異性而設的更衣室。上述各項罪名的罰則，均為罰款不超過二百五十元及遭管理員逐離現場。

遊樂場：任何人士，不得舉止失當或衣冠不整。任何人士，不得蓄意騷擾、攔阻或觸犯任何適當使用遊樂場的其他人士。任何人士，不得使用污言穢語以至擾犯他人。上述各罪的罰則為監禁最高十四天，及罰款五百元。此外，當局有權張貼通告，將某一範圍劃為兒童遊樂場，限制其他人士入內。任何人士，如不遵守通告者，得逐離現場。

6.23 根據應課稅品條例（香港法例第一〇九章）及其附屬規例的規定，酒吧必須領牌方可售酒。牌照由酒牌局負責發給。該局有絕對權力批准或拒絕酒牌之申請，亦可拒絕換領，或規定必須遵守若干條件始予批准，該等條件亦非僅限於在法定表格上印有者。酒牌的條件，規定持牌人不得容許任何人將售酒樓宇或其部份地方作不道德用途，亦不得明知而容許公認之娼妓、慣匪及惡蹟昭彰的人在售酒樓宇內集結或逗留，亦不得明知而容許醉酒或其他失檢行為出現。持牌人如違反上述條件，則酒牌局有權將酒牌撤銷。

6.24 從上述條件來看，酒吧目前顯然不能款待男妓或妓女，否則便無法領取酒牌或換牌。縱使有關男同性戀行為的法例有任何修訂，對此項規定亦

無影響。最近，警方證明一間售酒樓宇常為男同性戀者光顧，並有人在內進行不良及猥褻行爲，酒牌局查明後，遂將其酒牌撤銷。

6.25 應課稅品規例載列若干罪項，包括持牌人不得容許十八歲以下的人士在售酒樓宇飲用烈酒。持牌人不得僱用十五歲以下的人士在售酒樓宇工作。在每日晚上八時至早上六時的一段時間內，不得僱用十八歲以下女性工作。在每日早上六時至晚上八時的一段時間內，如未得酒牌局書面許可，持牌人不得僱用十八歲以下女性工作。違犯上述任何一項罪名，最高可被判罰款五千元及入獄六個月。持牌人縱使並無給予某僱員任何工資、佣金或其他利益，或僱員所提供的服務乃在該持牌售酒樓宇以外地方進行者，該僱員仍得視為受其僱用論。後一規定，似乎等於坦白承認一些酒吧的陋習。該等酒吧習慣僱用女性隨侍或陪酒，而該等女僱員有時會離開酒吧，為顧客提供收費性服務。無論有關的法例是否予以修訂，我們認為十五歲至十八歲間的女性所獲得的保障，亦應予以擴大，使青年男子亦可同樣獲得保障。最後，有關酒吧的另一項規定為：任何人士，如未獲警務處處長發給許可證而在酒吧宣傳、上演或進行任何娛樂節目，可被判罰款二千元。該等節目包括音樂會、戲劇、電影、展覽異常人士或獸類等。此項規定當然適用於“脫衣舞”、“小電影”或其他色情表演，參加者的年齡性別對此項規定並無影響。

6.26 根據雜類牌照條例（香港法例第一一四章）的規定，按摩院及公眾舞廳均須領牌。該等場所如經營不當，則發牌當局有權拒絕發給或換領該等場所的牌照；如為公眾利益，發牌當局亦可拒絕發牌予任何人士。據本委員會觀察，有關禁止在公眾場所進行猥褻行爲的規定，對上述場所並不適用。本委員會亦發覺，針對按摩院的法例，並無規定保障隱私權，亦無禁止進行猥褻活動，而對按摩院職員或顧客的年齡亦無加以限制。最後，以目前大眾的觀感來看，現時必須由同性人士進行按摩的規定，可能被認為近乎積極鼓吹女同性戀或男同性戀行爲。本港一些按摩院無疑是歷史悠久及作風良好，但其他按摩院顯然並非如此，最近因區議會議員投訴，政府已成立一工作小組檢討此等按摩院的經營。目前，按摩院在法律上係視作私人場所。現行禁止男同性戀行爲的規定，無論針對雞姦或粗獷行爲，包括手淫在內，對按摩院亦同樣適用，此乃由於對管制上述行爲而言，是否私下進行，並無關係。但有關法例如作出修訂，對容許在按摩院內進行的行爲，便有所影響，因為按摩院乃視作私人場所。

6.27 至於公眾舞廳方面，法例規定十六歲以下人士不得進入舞廳，十八歲以下的人士不得受僱於舞廳工作：李富源（譯音）對女皇（一九七八年）香港案件摘錄第五二二頁；潘振源（譯音）對女皇（一九八一年）香港案件摘錄第五八〇頁。持牌人須負責不得容許舞廳內有任何粗言穢語、淫褻舞姿、暴露服裝或不雅動作。如違反上述規定，可被判罰款一萬元及入獄六個月。上述規定與針對酒吧的規定不同之處，乃有關僱員方面並無劃分性別，亦無

規定每日分段禁制時間。公眾舞廳似乎名不符實，因為根據定義，公眾舞廳並不屬於公眾場所，故此禁制若干猥褻行為的一般規定，對公眾舞廳並不適用。

公開表演

6.28 任何人士，無論是否收取報酬，均一般受禁止參與、提供或管理任何淫褻或令人厭惡的公開真人表演，違者最高可被判罰款二萬五千元及監禁一年。“真人表演”一詞包括單人或多人上演的戲劇、表演、展覽、動作、娛樂、陳列或各式各樣的演出。真人表演如在公眾地方進行，或公眾人士或某部份公眾人士可以看到之地方，或接受公眾人士或某部份公眾人士入場參觀者，則無論收費與否，均視作公開表演論。

6.29 依照目前的標準衡量，全裸、同性或異性間模仿或真正進行的性行為、口舌性服務等全在被禁之列。一點值得注意的，就是此項禁制不分表演者及觀眾的性別或年齡，因此在某些情形下，自願付費入場的觀眾可能被控協助及教唆他人觸犯上述罪項，並可被判相同的刑罰。

6.30 發牌當局有權將任何公眾娛樂場所的牌照撤銷。任何人士，如在接獲撤銷牌照通知後仍繼續表演，則在繼續表演期間內，每日可被判罰款一千元。發牌當局如認為持牌人違反所規定的條件，或持牌樓宇秩序欠佳，或表演有礙觀瞻，違反禮教，或故意使公眾道德墮落，則發牌當局可將牌照撤銷。警司級警務人員如認為需要者，可根據同樣理由制止任何表演或暫時封閉任何樓宇。

6.31 綜合而言，樓宇必須領牌始可提供公眾娛樂，每類表演均須領有許可證；至於某些特別表演，其牌照條件或許可證條件可能對觀眾的年齡加以限制。同樣，該等條件可能規定有關的廣告須提出警告，使欲參觀的人士預知表演的性質。在一方面，此乃審查的一種形式，另一方面，則為保障各階層市民的一種辦法。成年觀眾所能接受的，可能年青觀眾感到厭惡，甚至閨房鬧劇亦可能不適合兒童觀看。此等表演全部均須受一項先決限制，就是不能故意使公眾道德墮落。此乃一項選擇題的測驗方法，引自英國古舊習慣法的詞句，當時曾裁定：

“‘使公眾道德墮落’一詞指陪審員認為對社會結構會造成破壞的行為”

在奈拉（*Kneller*）對刑事檢控專員案中〔一九七二年〕全英案件摘錄第二輯第八九八頁，西門大法官（Lord Simon）曾作上述評語。

6.32 按照這個測驗，多種涉及性的大膽演出，不論其為男性之間，女性之間抑或兩性之間的表演，都在禁止之列。值得注意的是，儘管有人用藝術

或文學價值作為藉口，亦難以逃避法律追究。有一點仍可爭論的，就是即使管制此行為的法例有所修改，明顯描繪同性戀行為的演出，是否仍應禁止。

6.33 電影院為公眾娛樂場所，受上述牌照規定所管制，不過所管轄之規例則有不同。任何人士，不得在可邀請公眾進入或公眾可隨時出入，或公眾可憑會所或機構會員名義出席的場所，宣傳、展示或放映電影，除非每一影片、海報、廣告均獲批准展示，否則可被判罰款一萬元及監禁六個月。電視電影管理專員本身亦是電影檢查監督。凡擬在香港放映的每部影片，必須連同有關廣告、海報、預告片等呈交該監督，由其指示經總督委出的電檢人員，進行檢查。

6.34 電檢人員可通過或拒絕通過一部影片及其附交資料，或准予通過但須修改、刪剪或附有其他條件。如接到要求，電檢人員須於七日之內陳述刪改等理由。如有上訴，可向電影覆審委員會提出。該會由電影檢查監督及六名經總督委出的人士組成。該委員會獲賦與電檢人員同等權力。是以覆檢與重新聆訊的性質相同。任何影片在接到電檢處通知書送至放映地點前，均不得放映或宣傳。

6.35 任何市民，如基於道德、宗教信仰、教育觀點或其他理由，認為某部電影不宜公開上映，可要求布政司將該片交由電影覆審委員會審核。如布政司依從所請，這項程序則視為向電影覆審委員會上訴論。布政司可飭令該片暫停放映，以待該委員會作出決定。違令放映者，可被判罰款一萬元及監禁六個月。

6.36 本委員會詳細敘述此一程序，是因為電影檢查在香港十分重要。電檢規例最令人感興趣的特色，是並無規定電影可以檢查或必須接受檢查的理由。本委員會曾請教電影檢查監督，知悉公開放映的電影必須遵守三個基本原則：具有一般健康意識和常識，重視輿論，尊重法律及社會制度，尤須注意電影對青少年所產生的影響。因此除非某部電影及其附交資料之公映有不良後果，包括使一般觀眾震驚、反感，或有傷風化，否則電檢處不會貿然禁映。色情鏡頭，如性器官特寫、性變態或反常行為的渲染，或主題單方面強調性的影片，則差不多肯定會被禁映或遭刪剪。（節錄自一九七三年五月民政司署影視管理處編撰內電影檢查標準指南第四、五及十四各段。）

6.37 關於一般公眾娛樂場所和電影院兩類地方，本委員會發覺，即使在場人士年齡未屆許可證或類別所規定的年齡，法律並無特別規定禁止節目或影片上演或放映，唯一可提出起訴的罪項，就是上演節目或放映電影違反牌照、許可證或電檢條件的規定。

6.38 雖然嚴格而言，這個問題不屬本委員會職權範圍，我們認為，為保護青少年，加以由於甚多家庭，父母整天在外工作，未暇充份看管年輕子女，本委員會謹建議有考慮懲罰放映者或演出者的必要。懲罰理由不是指其“准

許或容許”，而是追究其在未成年人之前“放映或表演”。至於權衡可能性後，能證明放映者或演出者不知有未屆所定年齡人士在場，及其已採取合理措施，阻止此等人士入場者，則可作為辯護理由。這樣便可有效將執行此一規例之責任明確由靠表演或放映賺取金錢的人士肩負，此即指放映者或演出者。

刊物

6.39 除有關發牌予樓宇及電檢制度兩項外，本委員會將討論若干對電影和書刊同樣適用的法例條交。

6.40 據英國習慣法，串謀妨害公眾道德乃屬違法。法庭有權酌情判罰款及監禁：參閱“名媛錄”一案（一九六二年蕭亞（Shaw）對刑事檢控專員案上訴案件匯編第二二〇頁）。該案裁定一本以登載妓女姓名、地址、專長等廣告為主的小冊屬淫褻刊物。在英國，如在分派各男校之雜誌內刊登內容涉及女同性戀、男同性戀、口交等事項者，則屬此一類串謀行為（一九七二年政府對安狄遜（ANDERSON）案 1 Q.B.304）。這個裁決後來亦在一九七二年奈拉（Kneller）對刑事檢控專員案（全英案件摘錄第二輯第八九八頁）所援引作為依據。該案認為，凡在雜誌上刊登廣告，徵求讀者與登報人進行同性戀活動，即屬串謀行為。本委員會未悉此種罪項曾否在香港提出檢控，但可以預見，倘根據類似蕭亞案事實提出檢控，當可望成功。

6.41 報章及雜誌受香港法例第二六八章刊物管制條例管轄。根據該條例第三條規定，凡承印或出版刊物，其內容之任何部份可誘使他人犯罪者，即屬違法，可被判罰款最高一萬元及監禁三年。目前此項條文應適用於本委員會在上文所述情況，即刊登廣告徵求同性戀伴侶或著文誇述同性戀關係。假如同性戀法律有所修改，明顯地本條文或會受到影響。我們未詳究該條文曾否經常被引用。不過照揣測應屬罕有。

6.42 倘本港任何報章發行人或編輯違反刊物管制條例第三條或違反香港法例第一五〇章不良刊物條例，或所犯罪項性質妨礙社會秩序、安全、健康或道德而被判罪名成立者，則如經律政司申請，裁判司可飭令該份本地報章停刊，為期不超過六個月。我們亦未悉以前曾否有人使用此項權力，但對如蕭亞案中的報刊，當屬適用。

6.43 如總督會同行政局認為某一刊物的輸入極可能妨礙社會秩序、安全、健康或道德者，則可禁止其輸入。凡出售、兜售、發行或藏有此等違禁刊物，即屬違法，可被判罰款一萬元及監禁三年。依照本委員會看法，修改同性戀法例雖然可能但不一定必要影響到這方面的執行。我們亦不悉曾否有人使用此項權力。

6.44 曾有人提醒本委員會有關最近一宗根據香港法例第二三一章不良醫藥廣告條例提控的案件。任何人士，如在專業性雜誌以外之刊物刊登廣告，

宣傳醫治性病良方，根除性放縱所引致之陋習，增強性能力，恢復腦力，或使人返老還童者，可被判罰款二千元。由於該條例未有說明所指的性屬何種類，故應對有關男性及其與同性間“性放縱”的廣告亦同樣管制，並在有關性活動的法例修改後繼續受管制。在摘要的較後部份，本委員會將對香港法例第二七五章性病條例加以評論。

6.45 電話、電訊及郵遞：任何人士，如利用此等途徑傳遞極令人厭惡之訊息，或屬猥褻、淫穢或惡意、或志在滋擾對方或使對方不必要憂慮者，可被判罰款一百元及監禁一個月。明顯地，男性打淫褻電話給女性亦受此條文管制，但同時亦適用於女性之間或男性之間的此類電話，並且對致電男性的家庭，惡意誣指該男性為同性戀者，亦一樣適用。此等罪行，殊難防範，如非已知打電話者是誰，亦難查明真相。儘管如此，既然本委員會認為此舉侵犯他人隱私權，我們對現行刑罰是否足夠表示懷疑。我們並關注到一種與此相似但更為嚴重的情況，即一旦有“傳真電話”後，此途徑將會有更不當使用。

6.46 任何人士，如寄發、經郵局寄出、或郵購輸入任何猥褻、不道德、淫穢、令人反感或誹謗性資料，或輸入或傳遞香港或其他目的地國家所禁止的物件，可被判罰款五百元及監禁六個月。上述規定，載於香港法例第九十八章郵政局條例。該條例適用範圍甚廣，修改性活動法例，應對其無大影響。

6.47 不良刊物：現時似應對香港法例第一五〇章不良刊物條例各條款予以檢討。在香港，輸入或藏有不良書刊物品圖利乃屬違法。出版此類書刊物品，不論為圖利與否，亦屬違法，可被判罰款一萬元及監禁三年。書刊物品，包括文字記載、影片、聲帶或錄影帶、如其包括有或載有猥褻、淫穢或令人厭惡的事物，即視為不良。凡書刊物品，如十六歲以下人士可以閱讀或觀看到，故事內容渲染暴力或殘酷行為、強姦或性變態行為，令人厭惡或恐怖的行為，或可使讀者腐化或墮落者，亦視為不良刊物。

6.48 淫褻一義之檢驗，首見於一九六二年楊金全（譯音）及其他人士對政府案（香港案件摘錄第六三三頁，下文見第六六七頁）：

“為斷定一幀照片是否猥褻、淫穢、令人厭惡或反感，裁判司必須本着社會良知，視其本人為代表大眾對此事的看法。此外，裁判司亦須考慮每幀照片發表時的個別情況和當時環境，而決定其是否猥褻、淫穢、令人厭惡或反感，而毋須理會旁人意見，此等意見無論如何亦不會被接納為證據。”

6.49 上訴庭在一九七七年古拉貝（*Mirchandani Mohan Gulabrai*）對政府案（香港案件摘錄第五二三頁）中，曾對這個檢驗法加以肯定。一間有限公司及其董事及經理，均因發行“Oui”及“Penthouse”雜誌事，違反香港法例第一五〇章第四條第(1)款(b)段規定，而判罪名成立。此等雜誌乃用印有“只

供成人閱讀”標誌的膠袋包裝，公開發售。上訴庭認為：正確檢驗書刊物品是否不良，應在考慮案情環境後，視社會整體是否認定該書刊物品良與不良。書刊物品本身提供最好的證據，可資證明其為不良或根本無不良成份。上訴庭認為該庭不必將此等書刊與其他刊物比較，亦不必考慮其他司法體系所訂立的標準。

6.50 按照香港目前民情輿論，凡內容涉及男女單方性交的刊物，肯定應在被禁之列。一九八二年刑事上訴案第三五五宗 韓德生（譯音）對政府案，法庭裁定娼妓在報章上刊登的廣告，縱然措辭婉約含蓄，亦屬不良刊物。凡大膽描繪各類同性戀但未致雞姦的情慾，亦可能會被裁定為不良一類。

6.51 電視：香港兩間電視台受有關規例管制，不能播放內容有違健康意識和高尚風氣的節目。然而在適當時間和環境，電視台亦可獲准播放真正具藝術或文學價值的作品，甚至一些討論倫理和社會等嚴肅問題的節目。電視管理處有權禁止任何節目的播放。

特別保護

6.52 既有上述之一般保護項目，本委員會現對一系列特別罪項作出檢討，其中大部份只適用於某一類人士，但全部都有性成份包涵在內。我們按照下列次序作出考慮：女性、未滿二十一歲婦孺，精神不健全者、學童、囚犯、軍人及男性。

女性

6.53 有些大眾熟悉的法例訂定侵犯女性的罪項，例如強姦、亂倫以及與此等罪項有關的企圖或串謀罪行。我們雖然不擬在此詳細討論，但已將之列入附件三十的有關附表內。

6.54 非禮女性最高可被判監禁五年。非禮罪中對方同意與否具有關鍵性：在女性有此願望時撫摸女性顯然不算犯法，但如違反對方意願，便是非禮。所謂非禮行為，是指該行為違反社會一般標準而言。法定有權表示同意年齡是十六歲。十六歲以下即使對方同意，非禮撫摸亦屬犯法。

6.55 任何人士，如介紹他人迫姦婦女，或迷姦婦女，可被判監禁十四年。任何男女，如介紹他人誘姦婦女，可被判監禁五年。此等罪項乃特別針對各種形式的販賣婦女，其中兩罪項且適用於上述所指性行為最後在香港以外地區進行的情形。任何人如替“顧客”安排性服務，而該顧客當時可能不知道接客的婦女乃受他人或藥物所控制，則該淫媒仍須受上述規定制裁。在法律上，該顧客的行為可能不相等於強姦，但該淫媒仍屬違法。

6.56 本港有一項一般罪行，規定任何人士，如為獲得有價值報酬，而非法轉讓人口（不論男女），即屬違法，可被判入獄兩年，受害人縱使同意，

亦不構成辯護理由。特別而言，任何男女，如參與運送婦女進出香港為妓，則無論該婦女是否同意，仍屬違法，可被判入獄七年。任何男女，如介紹婦女為妓、介紹婦女離開香港意欲使其加入妓寨，或介紹婦女離開香港通常的居所，意欲使其加入妓寨，亦可被判入獄七年。

6.57 任何男女，如窩藏婦女，意欲使其與男性進行非法性交，或使其賣淫者，可被判入獄十四年。“窩藏”婦女乃指向婦女提供食物、衣服及居所。任何女性，如為謀利而控制婦女，使其賣淫者，可被判入獄五年。任何男性，如明知而全部或部份依靠妓女賣淫為生者，可被判處相同的刑罰。

6.58 任何男女，如非法禁錮婦女於罪惡場所，或使其進行非法性交者，可被判入獄十四年。罪惡場所包括全部或主要為兩名或兩名以上婦女用作賣淫的樓宇，以及全部或主要用作組織賣淫的樓宇。在上述兩種情形下，是否為“全部或主要”及“賣淫”等情事須予以證明。有關“全部或主要”一詞的定義，可參看律政司對鄧炳榮（譯音）案（刑事上訴案一九八一年第四一一宗）；有關“賣淫”一詞的定義，可參看一九一八年女皇對狄文基（*De Munck*）案刑事上訴報告第十三輯第一一三頁；一九六四年女皇對韋伯（*Webb*）案刑事上訴報告第四十七輯第二六五頁，盛文輝（譯音）案（刑事上訴案一九八〇年第七六二宗）及 *Archbold* 第 2952 段及 2966 段。

6.59 任何男女，如設置罪惡場所，可被判罰款二萬元及入獄七年；而將樓宇租予他人作此用途，或身為住客而容許該樓宇作此用途，則可被判罰款二萬元及入獄兩年。在譚劍良（譯音）案中（刑事上訴案一九八一年第一〇八一宗），首席按察司羅弼時爵士裁定“設置”一詞乃指“明知樓宇係用作罪惡場所而維持樓宇，並對該等用途有一定程度的控制權力，雖然上述控制並未達到無間斷的積極管理程度。”羅弼時爵士在論及何謂管理或協管理時說：“依本人意見，如能證明被告在參與經營罪惡場所方面略有重要性，則該被告即視為經已觸犯上述罪項論”。

6.60 凡容許任何樓宇作慣常賣淫用途，即屬違法，可被判入獄兩年及罰款二萬元。如設置樓宇或其他建築物以供妓女住用或作為其常到之處，因而對鄰近居民造成滋擾，亦屬違法，可被判入獄三個月。最後，習慣法亦有規定，設置淫褻場所或妓院，乃屬違法。

6.61 妓女及女同性戀者 雖然本港有多項規定對性事加以管制，但一點值得注意的，就是婦女賣淫並非違法，但如婦女已成年，並自願淪為妓女，則可能會被控協助及教唆他人觸犯若干罪項。如婦女為女同性戀者，亦非違法。私下進行親暱的女同性戀行為，不會受到懲處，除非有強迫的成份，則屬例外。如採納賣淫一詞的傳統定義，即“男女間進行任何性買賣”（達寧（*Darling*）法官在一九一八年狄文基（*de Munck*）案（1 K.B. 635 at 637）中用語），則先前所列的大部份規定，對受介紹進行商業性女同性戀行為的婦女，或同性戀妓女，均無保障。本委員會已留意到另外兩項與從事賣淫者的公開行為

有關的罪行。任何男女，如在公眾地方，或在公眾可看到之地方，猥褻暴露其身體的任何部份，即屬違法，可被判入獄六個月及罰款一千元。任何男女，如兜搭或在街上遊蕩企圖兜搭他人作不道德行爲，亦可被判處相同的刑罰。此等適用於較傳統賣淫方式的規定，亦極可能同樣適用於女同性戀或男同性戀的行爲。

年齡在二十一歲以下的婦女及兒童

6.62 根據法例，任何人士，如違反男女童或青少年家長或監護人的意願，而誘拐男童或女童（年齡在十四歲以下）、男青年或女青年（年齡在十四歲至十六歲間）或任何未成年未婚少女（年齡在二十一歲以下），即屬違法，每罪均可被判入獄兩年。根據另一法例，任何人士，如拐帶年齡在十四歲以下的男童或女童（或企圖盜竊其身上的任何物件），可被判入獄七年。根據第三條法例，任何男女，如違反少女家長的意願而誘拐年齡在十六歲以下的未婚少女，即屬違法，可被判入獄五年。誘拐年齡在十八歲以下的未婚少女，企圖使其與男性進行性交者，可被判入獄七年。

6.63 根據一條一般適用的罪名，任何男性不得與未滿十六歲的少女（監禁五年）或未滿十三歲少女（終身監禁）非法性交。任何男性或女性，如與未滿十四歲的男童或女童發生粗獷行爲或引逗其發生此等行爲者，可被判監禁五年；此項罪名當然與雙方是否同意並無關係。

6.64 任何男女，如容許未滿十三歲少女使用樓宇進行性交或賣淫，可被判終身監禁；假如該少女未滿十六歲，則刑罰為監禁十四年。任何居於須負責任職位的男性或女性，如引致或鼓勵未滿十六歲少女賣淫、與其性交，或對其非禮，可被判監禁五年。任何男性或女性，如介紹未滿二十一歲少女在本港或其他地方與男子性交，亦可被判監禁五年。

弱智人士

6.65 上述名詞適用於心智發展受障礙或不健全的男女性，包括心智遜常的人。這些人士並無能力過獨立生活或保護自己免受利用。

6.66 任何男性或女性，如帶走某一心智不健全的婦女，使其脫離監護人，以便其與某一男性性交，可被判監禁七年。任何男性，如與某一心智不健全的婦女進行非法性交，或對其非禮，可被判監禁五年；但如該男性並不知悉或無理由懷疑該名婦女為不健全者，則不在此限。

6.67 任何人士，如介紹某一心智不健全的婦女在本港或其他地方與他人性交，可被判監禁五年。任何人士，如引致或鼓勵某一心智不健全的婦女在本港或其他地方賣淫，或容許該名婦女利用樓宇進行性交或賣淫，可被判監禁十年。

6.68 精神健康條例（香港法例第一三六章）第六十五條第(2)款規定：任何人士，如與或企圖與任何在精神病醫院接受護理或治療而心智失調的女子，在醫院內或在其放假離院期間非法性交，可被判監禁三年及罰款五千元；假如被告知悉或有理由知悉該女子為正在接受護理或治療的心智失調者，則不能以獲得該女子同意作為辯護理由。

6.69 英格蘭及蘇格蘭的法例均已按英國一九六七年性罪項法第一條第(4)款所規定的方式修訂，而該條文亦對英國一九五九年精神健康法第一二八條作出修改，從而規定：上述第一二八條之效力“一如其內凡提及與（心智不健全）婦女非法性交之處，均作為包括與（心智不健全）男性進行雞姦或粗獷行為”。為實施英國一九六七年性罪行法起見，其第一條第(3)款規定即使任何患嚴重心智遜常的男性表示同意，亦不得作為辯護。惟該條款另有一項附加條文，規定“任何人士，如能證明並不知悉或並無理由懷疑某一男子為嚴重心智遜常者，則不會因該名男子未有表示同意的能力而被判有罪”。

6.70 最後，精神健康條例第六十五條第(2)款規定：任何受僱於精神病醫院工作的人士，如虐待任何病人，可被判監禁兩年及罰款一千元。上述條文字面的意義上雖未有言明，但本委員會相信其內容可包括各種性侵犯在內，作為一種“虐待”形式看待；如本港法例有關性問題的條文有所更改，亦不會影響上述的規定。

性病

6.71 本委員會研究這個問題，是因為所接獲的報告，指出同性戀接觸會引起性病。根據性病條例（香港法例第二七五章）的規定，任何醫生，如發現病人患性病或與性病有關的疾病，並知悉懷疑引致性病人士的資料，必須將該引致性病人士的姓名向醫務衛生署副署長報告。醫務衛生署副署長可發出通知書，着令該人士接受身體檢查。如未能遵照通知書接受檢查者，即屬違法，可被罰款一千元及監禁六個月。

6.72 上述條例對任何年齡的人士，不分男女，均屬適用，對於任何性關係，亦同樣適用。根據該條例規定，患上或傳遞性病並不作為罪行，而醫生亦無受規定透露其病人的身份。有關同性戀的法例如有任何改變，亦不會影響上述法例的施行。本委員會注意到：曾有企圖提出控告，要求裁定性病帶菌者明知及未有向對方發出警告而與其進行性關係，乃屬犯毆打他人罪；但此項控告並不成立：一八八八年女皇對卡拉倫斯 (Clarence) 22 Q.B.D. 23。

學童

6.73 學校並非公眾地方，因此，有關管制在公眾地方行為的規定對其不適用。本港並無特別為教師或學生所進行的性侵犯規定任何罪名。然而，教師在授課時如企圖在性方面影響其學生，可由校方加以制止，或最後由教育署署長加以制止。其次，假如教師對任何男女學生有過份親熱行為，則無疑

屬職業上行爲不當，有理由吊銷其教師執照。最後，根據現行法例，所有對男女作出猥褻行爲均屬違法，可被判監禁。因此，任何教師如違反上述罪名而被判有罪，除依法懲處外，還會遭吊銷教師執照。即使法例有所修改，使若干性活動不再受究治，當局仍能以某一教師不適合爲人師表之理由而拒絕其註冊。這是教育政策問題，須由教育署署長決定，或最後由總督會同行政局決定。

6.74 本港雖無特別處罰教師非禮學生的規定，但對於任何人士如教師等，由於其所處地位，特別受年青人信任，而本身亦負有重任，法庭通常會因此而加重刑罰。本委員會知悉本港近年來僅檢舉過六宗屬上述情形之案件，其中有兩宗涉及同性戀行爲。

囚犯

6.75 無論囚犯或監獄人員均須遵守一般法例規定。他們的行爲，更受根據監獄條例（香港法例第二三四章）第二十五條而制訂的監獄規則所限制。現時管理男女囚犯事務的辦法中，並未有任何規定，容許囚犯的丈夫、妻子或朋友探訪囚犯而與其進行與性有關之事。同樣，根據監獄規則規定，男女囚犯必須分別安置在不同居處，分別看待。

6.76 任何囚犯如違反監獄紀律，可被罰單獨囚禁達一個月，並取消應得的利益、工資或減刑。任何囚犯，無論性別，如語言、行動或姿勢猥褻，或毆打他人，或企圖做上述各項情事，或身爲囚犯而觸犯刑事罪等，即屬違反監獄紀律。顯然上述規則禁止所有男女同性戀關係，無論這些關係是雙方同意進行，或是被迫進行者。有關此等情事的法例如有任何更改，則僅會在最後一類的監獄違例事項中反映出來；換言之，這些改變就是減少囚犯可觸犯的刑事罪項。

6.77 監獄督導員如犯有下開行爲：與囚犯過份親熱、不必要而對囚犯使用武力、或當值時行爲不檢或有妨害紀律行爲，即屬犯紀律罪。顯然督導員和囚犯之間進行任何強迫或同意的性活動，都可根據上述規則懲治。罰則由譴責至撤職查辦不等。除非行政政策相應修改，否則法例之一般更改並不對此等規定有所影響。本委員會認爲，維持政策不變，理由相當充份。

軍隊

6.78 紀律部隊如海軍、陸軍等，憲法規定歸英國政府負責。對於純屬軍隊事務，本港法律不甚適用。廣泛而言，三軍皆在其紀律守則中將同性戀行爲列爲罪項。本委員會將管制此等及有關事項的條文摘要列入附件三十一內。

“醜惡行爲罪”

背景

6.79 香港自一八六五年即採用英國一八六一年侵害人身罪法，有關條文全部引用，不作修改。當時醜惡行爲罪只限於禁止雞姦與獸姦及企圖犯此等“醜惡罪行”，最高刑罰爲終身勞役監禁。因此，英國和香港對男性間粗獷行爲不加禁止，歷時達二十年。

6.80 一八八五年，英國下議院議員以私人名義在下議院提出法案，以管制女性賣淫，並且首次動議修例懲罰男性粗獷行爲，這也是首次出現“公開或私下”這一名詞。據說該修訂是以法國律例爲藍本，但該例實際上向無懲罰此一行爲。關於上述動議，辯論相當激烈。結果法案獲得通過，男性間粗獷行爲便成爲罪行。這項規定，載於一八八五年英國刑法修訂法第十一條。

6.81 一九〇一年，香港法例作出完全雷同的修訂，顯然是因有三宗軍人分別被控違反自然罪而引起的。第一宗檢控發生於一八八〇年。當年一名隸屬英國皇家依寧吉靈兵團（Royal Inniskillings Regiment）的年青士兵夏棣（Peter Hardy），“被判企圖犯難以宣述的罪名成立，最初被判監禁三年，嗣後又由主審法官施默爵士（Sir John Smale）加重爲五年”。一八九七年七月，基劭辛（Keysir Singh）被控企圖雞姦一名華籍男童，被判處五年勞役監禁。第三宗同類性質的控案則發生於一九〇〇年。

現時的法律

6.82 有關同性戀的主要罪項，載於香港法例第二一二章侵害人身罪條例的下逃條款內，名稱仍爲“醜惡行爲罪”：——

雞姦： “任何人士，如犯雞姦罪，不論對人畜，均屬犯重罪，一經定罪，可被判終身監禁。”（第四十九條）

企圖雞姦及非禮： “任何人士，如企圖犯上述醜惡罪行，或毆打他人意圖犯上述罪行，或非禮任何男性，即屬犯輕罪，可被判監禁十年。”（第五十條(a)款）

同意： “在進行有關非禮十三歲以下男性罪之控訴或公訴時，不得以該男性同意非禮行爲作爲辯護理由。”（條例第五十二條）

粗獷行爲： “任何男性，不論公開或私下，如與另一男性有粗獷行爲，或參與作出該行爲或介紹或企圖介紹任何男性與另一男性進行粗獷行爲，均屬犯輕罪，一經簡易程序審訊定罪，可被判監禁兩年。”（條例第五十一條）

雞姦

6 83 是項罪行包括男性與男性或與女性的肛交（“雞姦”）：參閱一七一八年政府對韋斯文（*Wiseman*）案（*Fortes Rep. 91*）。此罪行也包括男性或女性與獸畜的任何形式性交（“獸姦”）。有關此罪項，只須證明曾有任何程度的插入即可，而毋須證明曾排出精液：參閱一八三二年政府對雷斯庇（*Reckspear*）案（1 MOOD. C.C. 342）及香港法例第二一二章侵害人身罪條例第五十三條。犯者不得以對方同意為辯護理由。雙方不論屬主動或被動均作主犯論罪：見 1 Hale P.C. 670，夏斯伯利（*Halsbury*）第四版第一〇三一段；史密夫與何瑾（*Smith & Hogan*）第四版第四三九頁。不過同意是可以作為求情輕判的理由。該等行為，與其他定義中不存有社會因素之罪項一般，無所謂是否公開或私下進行。不過，公開雞姦行為，無疑會引致刑罰加重。

企圖雞姦及初步罪項

6.84 香港法例第二一二章侵害人身罪條例第五十條明文規定，企圖雞姦亦屬犯法。該條並訂定此罪的最高刑罰；同時，根據習慣法和香港法例第一章法律釋義及通則條例第八十一條的規定，初步形式的罪項（企圖、煽動及串謀）不論如何，亦自動負有刑責。因此串謀進行雞姦或煽動他人雞姦，也屬犯法。法例雖無硬性規定罰則，但不會超逾正式罪項所定的最高刑罰。

6.85 如不論及法律精微意義，初步罪項可有如下定義：

任何人士，如用言語或行動以影響或勸誘他人犯某類罪行，即屬犯煽動罪。

任何人士，如與另一人或一人以上同意作犯法行為，即屬犯串謀罪。

任何人士，如意欲犯某一罪項而作出一項行動，該行動乃接近完成觸犯該罪項者，即屬犯企圖罪。

上述任何一種情形，不必計較正式罪項是否從未完成（如被煽動者不接受提議），蓋初步罪項的責任是由煽動、企圖或同意串謀的行動所構成。

6.86 此等初步罪項與本項研究切合，因為除非法例規定將之保留，否則如正式罪行不再視作違法，初步罪行亦不應視作違法。是以如法例作出修訂，規定成年男性彼此同意而私下進行的雞姦行為，不算違法，則 A 君（一名成年男性）向 B 君（另一名成年男性）提議大家同意私下進行雞姦，則即使此項建議是公開提出，亦不應作煽動論罪。同樣，A 君和 B 君大家同意到私人場所進行此事，亦不算串謀；而他們嘗試雞姦但未能竟事，也不算犯企圖罪。

次要當事人的責任

6.87 任何人士，如協助、教唆、指導、或介紹他人犯罪，即視為次要當事人，而自動觸犯同一罪項；此與上文所述的“企圖”罪相同。這項規定原屬習慣法，但後來已由刑事訴訟程序條例（香港法例第二二一章）第八十九條制訂為法定條文。

6.88 此外，如不論及法律的精微意義，下述詞語可作解釋如下：——

“協助及教唆”（實際上協助及教唆為一併控告的罪名，且兩詞有時亦作同義詞處理）：凡在案發現場的人士，如有意提供協助或鼓勵而採取任何行動，以協助或鼓勵另一人犯罪，即屬犯此罪項。

“指導及介紹”（實際上兩項罪名均一併處理）：凡於案發前故意採取同樣行動，以提供協助或鼓勵，即屬犯此罪項。指導者及介紹者無須處身於案發現場。

次要責任與例如煽動者或串謀者的責任，其分別如下：除非主犯實際上作出主要罪行，否則次要責任不會成立。上述意見曾引起爭論，但一般而言，現已為人接受為正確：參看史密夫與何瑾（Smith & Hogan）合著《刑法》（Criminal Law）第四版，第一三二至第一三六頁；威廉士（Glanville Williams）的《刑法課本》（Textbook of Criminal Law），第三一四至第三一六頁。

6.89 根據上文所述，如所犯罪項為雞姦，則有關次要責任的法例（例如，甲說服乙與丙私下進行雞姦，而乙及丙均為成年人，並同意進行該行為）會引起直接實際的問題。假如雞姦罪獲得有限度不視作違法，則除非制定法定條文，規定次要當事人仍須繼續負責，否則該人不必負法律責任。但假如認為應不視該私人行為作違法，則那些指導及介紹，或協助及教唆的人應如何處置？應否制訂法定條文，規定該等人士仍須繼續負法律責任？

6.90 在英國，雖然有關行為已有限度不視作違法，但一九六七年性罪項法第四條仍將這項次要責任明確保留，該條之規定如下：——

“(1)任何男性，如介紹另一男性與第三名男性進行雞姦，雖然根據本法第一條之規定，雞姦並非違法，但該人仍可被公訴，一經定罪，可被判監禁不超過兩年。”

粗獷行為

6.91 上述罪項，並無法定或司法上的全面定義。英國胡分頓委員會在其報告書中稱：“根據本委員會所閱覽的警方報告書及所得的證據，有關粗獷行為的罪項通常可分下列三種形式：互相手淫、作若干形式的腿部接觸、或口部與性器的接觸（泄精或不泄精）；上述罪項間中可能以更隱秘的形式表現；異性戀關係的技巧千變萬化，而同性戀的關係亦是如此”。

6.92 司法當局已逐漸獲得有限度的指導。假如兩名男子曾進行粗獷行爲，則無須證明彼等曾有肉體接觸：一九五零年女皇對孔（*Hung*）案全英案件摘錄第二輯第二九一頁。此外，要構成上述粗獷罪名，必須證明雙方曾有某種形式的一致行動，及雙方均同意進行。一九七七年女皇對皮理斯（*Preece*）案（Q.B. 370）。然而，“猥褻行爲”變爲“粗獷行爲”，則屬於程度上的問題；要識別這兩種行爲，實際上十分困難。因此，有意見指出，假如“兩名男性在某種情況下互相接吻，而這種情況顯示該動作違背道德及違反自然者”，則該動作只屬猥褻行爲，而非粗獷行爲：史密夫與何瑾（*Smith & Hogan*），第四版第四四二頁。雖然，僅雞姦一事，通常都足以構成粗獷行爲罪，但雞姦須進一步涉及插入的動作，而粗獷行爲則不需有此：一九一四年女皇與巴朗（*Barron*）案（2 K.B. 570）。

6.93 與雞姦問題一樣，應否保留初步及次要責任問題，亦須加以研究。目前，侵害人身罪條例第五十一條對介紹或企圖介紹進行粗獷行爲的罪項有明確的規定。在英國，一九六七年性罪行法第四條第(3)款規定如下：——

“根據一九五六年法第十三條的規定，任何男性，如介紹另一男性與前述男性進行粗獷行爲並非違法，而由於本法第一條，該行爲並不構成上述第十三條所指罪項。”

然而，任何男性，如介紹另一男子與第三名男子進行粗獷行爲，則即使根據一九六七年法的規定，該第二名及第三名男子的行爲並非罪行，但第一名男子仍屬違法：見上述史密夫與何瑾書第四四二頁。

非禮

6.94 非禮是指任何恐嚇進行或實際進行而使受害人恐懼的有形猥褻行爲。無論男女，如對未表同意的男性進行猥褻行爲，得被處罰；因此，凡未經同意而對男子進行雞姦或粗獷行爲者，亦作犯非禮罪論。假如受害者未滿十四歲，則相同的行爲亦可視爲與兒童進行粗獷行爲論，惟得視乎特有的事實而定。凡未滿十四歲的兒童不能同意進行上述罪項，而未滿十三歲的男童則不能同意接受非禮行爲。除在判處較重刑罰時作爲考慮因素外，無論上述行爲是否公開或私下進行，都無關宏旨。

摘要

6.95 對成年人間彼此同意私下進行的同性戀行爲有所影響的罪項，主要有雞姦和粗獷行爲兩類。當局僅對此等罪行的部份初步罪項及次要罪項制定法規。如侵害人身罪條例未有對此等初步及次要罪項的責任予以規定，則該等責任由習慣法及刑事訴訟程序條例處理。

6.96 由於初步及次要罪項責任，通常視乎主要罪項是否有任何責任存在而定，因此，法例如作任何更改，則須研究應否將此等形式之輔助責任立例保留。

6.97 同性戀中暴力非禮所引起的責任，與雞姦及粗獷行爲兩罪無關，因此，有關後述行爲的法例如有任何改變，亦不會影響暴力非禮行爲所引起的責任。本委員會現時要考慮者，爲就猥褻行爲而言，凡未滿十三歲的男童，不能同意接受未至雞姦或粗獷行爲的猥褻行爲，然則十三歲之年齡是否適當？

性罪項——證明及證據

6.98 根據少年犯條例（香港法例第二二六章）的規定，年齡在七歲以下的兒童，在法律上被視爲無犯罪能力。換言之，年幼兒童不會被判觸犯前文所載的任何罪項。有等明知此情形的狡獪之徒，可能會利用小孩作奸犯科。例如，某人利用兒童替男妓或妓女兜攬顧客，則該教唆者已觸犯此罪項，而該兒童僅視爲無辜的犯罪工具。

6.99 年齡介乎七歲至十四歲間的兒童，雖然技術上視爲有犯罪能力，但甚少會被控告。本委員會提出十四歲，只是本身粗略的估計。如某男童對婦女或女童作性騷擾，則除非該男童具有或被推定具有性能力，否則不會被控強姦。因此，企圖“強姦”罪可能須改爲非禮罪處理。由此看來，如有關的行爲未達到“粗獷”程度，則男童向同性所犯的企圖“強姦”罪，同樣亦只能構成非禮罪。

6.100 假如兒童聲稱遭人非禮，其證供會難於處理。法庭必須認爲該兒童對宣誓的重要性完全明白，方可聽取其經宣誓後所作的證供。兒童是否完全明白宣誓的重要性，則視乎個別兒童而定。據本委員會粗略估計，年在十歲以下的兒童甚少作出宣誓證供。一項嚴格的法例規定，在有關性罪項的案件中，法庭不能依靠小孩未經宣誓的證供而將被告定罪，除非該證供的重要內容獲得經宣誓而作的其他證供予以佐證。舉例而言，如某兒童聲稱一男子在公園走近其身旁露體，則除非該男子被捕及認罪，或此事件有另一成年人或較年長的兒童做證，否則該男子不能被判有罪。上述情況確實有困難出現：要證明真實的投訴殊非容易；而此類投訴卻很易虛構。

6.101 要證明侵犯心智不正常婦女的性罪項，以及與該等婦女賣淫有關的附帶罪項，必須有經宣誓而作的供詞佐證。如婦女被測定爲心智不正常，則通常不能作宣誓證供。

6.102 如遭性侵犯的受害人有能力作出宣誓證供，則有關佐證的規定便由法官自行決定：法官須向陪審員或法庭提出警告，指明雖可僅依靠投訴人的證據而定罪，但如無佐證，則此舉殊非明智。受害人新近所作的證供，可予

以接納，但只能用以證明被告行爲常屬如此，而不能證明投訴事件的真偽。因此在法律上，此等證供並不屬於佐證。在某些問題上，要決定投訴人的可信程度時，例如投訴人聲稱並無同意等，則上述證供通常有很大關連。

罪項的檢控

6.103 律政司（除私人提出的檢控外）是唯一有權決定是否提出檢控的人員：此乃憲法規定的責任。但在大多數情形下，律政司均授權屬下的律師依照其所定方針作出決定。根據法例，在香港發生的若干罪項，均須由律政司授權方可提出檢控，不過在大多數情形下，均由刑事檢控專員代律政司執行此項權力。

6.104 署理刑事檢控專員麥達高（現為按察司）在麥樂倫事件調查委員會作供時指出，決定是否檢控同性戀罪項，當局並無特別的政策。每一案件將視乎案情而定。如根據有關證據，將被告定罪比無罪釋放的機會較大，則會授權予以檢控。一位曾遭當局檢控但罪名不成立的律師認為，當局決定是否檢控同性戀罪項的標準，與檢控其他罪項的標準，並不相同，但麥達高先生對此不表同意。

6.105 本委員會現提述一些因素，可能與下列情事有關：警方能否或應否對該等罪項展開調查、實際犯罪的數目與檢控及定罪數目所作的比較。

6.106 在成年人雙方同意進行的同性戀案件中，警方通常只在接獲投訴後方展開調查；在大多數該等案件中，由於並無“受害者”，故此亦無人投訴，警方亦不會展開調查。縱使有人投訴，亦不易獲得證據支持。依照目前的法例，通常而言，同意進行同性戀行爲的雙方，無論是雞姦或粗獷行爲，均屬違法。因此，雙方均可能恐怕會被檢控而不願作供或作證。

6.107 根據法例，在性罪項案件中，雖然並無規定不能單靠女投訴人的證供而將被告定罪，但法官必須警告陪審員，使他們知道不能單靠投訴人在重要事實方面並無獨立證據予以佐證的證供而將被告定罪，他們在裁定有罪前，必須加倍小心。此項法規是否適用於一切同性戀罪項，則並不明確：一九五六年女皇對白加時（*Burgess*）案刑事上訴報告第四十輯第一四四頁。本委員會認為適用於異性戀罪項的考慮因素，亦應同樣有效地適用於同性戀罪項。即使如此，在同性戀案件中，如果投訴人爲成年人及爲當時自願的共犯，則同樣的法規便適用，即法官必須警告陪審員，指出單靠該投訴人的證供而無獨立的佐證，則將被告定罪殊非明智。如果被告並不認罪，則鮮有該等獨立的佐證。此外，如果投訴人的品格令人懷疑，例如他身爲男妓，或可能以前曾被判犯有不誠實的行爲，則他的證供將較難使人入信。

6.108 作爲一個社會，本港似乎達到以下的情況：在許多案件中，我們知道有人犯罪，但該案並無人受損害，即該案並無傳統上所指的受害人。案中的主要指證可能屬實：即該人乃同性戀者，但要毫無疑問地確定某項淫褻行

為的一切因素存在，則非常困難。我們或許會同意一般人所作的結論，上述情況是近乎對法律及法律程序的一種嘲弄。另一方面，我們亦可總結指出，上述情況只顯示如罪行不涉及更嚴重的情形如使用武力、涉及青年人、含有勒索或利用成份，則規定一切同性戀行為屬違法，似非所宜。

第七章 與東方國家法律的比較

東方國家

7.1 我們研究約十個東方國家的法律，以觀察該等法律是否對成年人彼此同意而私下進行的同性戀行為加以懲罰。

澳洲

聯邦

7.2 由於澳洲憲法並無賦予國會關於這方面刑法的立法權力，所以至今尚無像聯邦法律那樣施行於全澳洲的同性戀法例。因此各省份在此方面的法例皆不盡同。

各省份

7.3 西澳洲、塔斯馬尼亞及昆士蘭各省的法例，與英國一九六七年以前的法例相同。南澳洲、維多利亞、澳洲首都直轄區及澳北區已相繼修改其同性戀法例。各省份執行法例的方式容有不同，然效果則一，即成年男性彼此同意而進行的同性戀行為不視作違法。

7.4 一九八一年，新南威爾士國會通過刑事罪（性侵犯）修訂法，將習慣法下之“強姦”取銷，而代之以分等級的“性侵犯”罪。新罪項的條文並無指明有關人士的性別。在新法令內，“性交”的定義包括肛交及口交，以及由他人將其他物體納入肛門或陰道內。不過，該法令仍保留雞姦、企圖雞姦及非禮男子等三項罪名，因而造成不規則的情況。男同性戀者在對方同意下進行雞姦，最高可被判監禁十四年；但如在未得對方同意下進行雞姦，若作性交論，則最高可被判監禁七年。（一九八二年新南威爾士反歧視委員會“歧視與同性戀報告書”第 5.44 段）。國會議員曾以私人名義多次提出制訂法案，企圖使成年男子雙方同意而進行的同性戀行為不視作違法，但均告失敗。

7.5 南澳洲和維多利亞兩省除把成年人彼此同意而進行的同性戀行為不視作違法外，並實現刑法上性別中性化規定。一九七五年，南澳洲修改法例，將未經同意而插入男性或女性肛門的性行為加入“強姦”定義內。同時“性交”定義也作出相應的修訂。

7.6 維多利亞省一九八〇年刑事罪（性罪項）法，規定男女兩性一視同仁。維多利亞議會作出決定，認為關於性方面的法例，不應侵犯人們的私生活。即使非屬不得已，亦只限於保障他人免受性利用，特別是那些負責照顧、

監護和擁有權勢者所利用。議會在該項法例的總則中，表明立法本意非為容忍不道德行為。

7.7 維多利亞上述法令檢討各類性罪項，制訂“性插入”的概念，包括陽具進入他人的陰戶、口腔或肛門，或以任何物體（非屬身體的一部份）納入他人的陰戶或肛門。在此之前，此等行為雖為刑法所知，但從未統稱為“性插入”。這概念令當局能理性地對待這些罪行，糾正將性罪行當作發洩情慾罪惡看待的謬誤觀念，從而正確地將其歸納入暴力罪行一類。這個分類，最近名為“一九八一年在香港發生的罪案及其受害者”的調查（一九八一年政府統計署），亦予採用。

7.8 維多利亞的法令改寫強姦定義。凡在某人的陽具進入另一人的陰戶即算強姦的情形下，則強姦的定義包括任何形式的性插入。因此，任何人都可強姦他人，姦人者與被姦者俱不論性別；亦即說，強姦是向他人施暴，強行作性侵犯。此法律觀點以前應用在各類性罪項方面時，僅局限於“男性侵犯女性”，例如“與未滿十六歲女童性交”，現將改為“性插入未滿十六歲人士”從而將男性對男性、女性對女性、女性對男性的侵犯統納入“性插入”罪項下。這與傳統罪項，諸如非禮，粗獷行為等罪確有差異。

7.9 維多利亞的法令，大部份根據維多利亞首長特委的強姦調查小組在一九八〇年所公佈的報告書而制訂。本委員會認為該報告書堪發人深思，特將該維多利亞法令條文載錄於附件三十一，以供對照參考。

印度

7.10 印度刑法第三七七條規定：

“任何人出於自願與任何男性、女性或獸畜進行違反自然的性交，可被判終身監禁或為期長達十年任一形式的監禁，並可兼判罰款。

釋義：凡有插入，即足以構成本條所指性交罪項。”

7.11 印度刑法第三七七條被公認為不獨嚴禁肛交，亦禁止口交，高豪（GOUR）所著：“印度刑法”援引一九二五年江奴（Khonu）案（信地：286）作其論點依據（見該書一九六六年第八版第二五六六頁），並節錄一段該案的判詞：——

“這種行為是否屬於性交？如是則分明違反自然，因為性交的自然目的是使人有機會受孕，本案的口交則斷無成孕之理。”

該條一向有廣泛之解釋，後來在一案中，該案被告證實曾將陽具插入閹牛鼻孔，進行性交，因此，被判罪名成立。（簡杜（Khandu）對國王案，一九三四年，拉合爾，二六一，見高豪書第二五六八頁）

日本

7.12 本委員會曾參閱一九五四年修訂的日本刑法（英譯者：白嘉馬 Thomas L. Blackemore），下文引述有關條文：

(一) 第一七四條（公開猥褻行爲）：

“凡公開作猥褻行爲者，可被判不超逾六個月的強迫勞役，或最高罰款五百日元，或拘禁，或科以輕微罰金。”

(二) 第一七六條（強硬進行猥褻行爲）：

“凡以暴力或恐嚇手段對已滿十三歲的男女進行猥褻行爲者，可判處六個月以上七年以下的強迫勞役。與未滿十三歲男女進行猥褻行爲者，處罰相同。”

(三) 第一七八條（推定爲強硬進行猥褻行爲及強姦）：

“凡利用或引致他人失去知覺或喪失抗拒能力，藉機進行猥褻行爲或性交者，按以上兩條規定處罰。”

7.13 值得注意的是，日本刑法（不涉及使用武力或作出恐嚇）的年限爲十三歲。凡與逾十三歲者發生上述行爲，則須是在公眾場所發生或未經本人同意，方構成罪行。

7.14 由此可見，日本成年男性（法定成年年齡爲十三歲）彼此同意私下進行同性戀行爲不算犯刑事罪。

馬來西亞

7.15 馬來西亞刑法（馬來西亞法例第四十五章）第三七七條規定，同性戀行爲不論私下進行與否，其罰則如下：

“第三七七條違反自然罪：任何人如出於自願，與任何男性，女性或獸畜進行違反自然性交，可被判監禁，刑期可長達二十年，並可兼判罰款或鞭笞。

釋義：凡有插入，即足以構成本條所指性交罪項。”

7.16 此外，該刑法第三七七 A 條亦有如下規定：——

“第三七七 A 條猥褻行爲：任何男性，不論公開或私下，如與另一男性或教唆，或介紹，或企圖介紹任何男性與另一男性發生粗獷行爲，可被判監禁，刑期可長達兩年。”

巴基斯坦

7.17 巴基斯坦刑法第三十七條（一九六六年版）有下列規定：

“違反自然罪：任何人士，如自願與男性、女性或獸畜進行違反自然的性交，可被判終身流放或任一形式監禁，刑期可長達十年，並可兼判罰款。

釋義：凡有插入即足以構成本條所指之性交罪項。”

未成年受害者的證供，縱使無佐證，但只要無疑點，即可據以裁定被告有罪。故此在曼舒·胡申（*Muhammad Hussain*）對政府案中（見一九七四年巴基斯坦刑法導報註釋二十五），控方以十三歲的受害者的供詞作為證供，而法庭則維持原判，裁定被告有罪。此條文似自一九六六年起便有所修訂，起碼在刑期方面，因為在穆罕默德·胡申（*Manzoor Hussain*）對政府案中（見一九七二年巴基斯坦刑法導報第六八二期）曾提及判鞭笞一事。不過，本委員會無法確定目前第三七七條的措詞。

中華人民共和國

7.18 中華人民共和國一九八零年所制定的刑法，並無明令禁止公開或私下進行的任何同性戀活動。然而，在上述刑法中，有關性罪行的條文並不多，似乎亦只限於強姦、非法與未滿十四歲女童性交、以及逼良為娼等。至於在現行法例中，該國官方對同性戀行為所採取的實際態度為何，則無法獲得資料。

7.19 本委員會亦曾參閱中華人民共和國成立前，中華民國一九三零年所公佈的中國刑法（由張肇元及上海工部局法律部翻譯成英文）。茲引述該刑法中有關條文如下：——

- (一) 第二百二十四條：“對於男女以強暴、脅迫、藥劑、催眠術或他法，至使不能抗拒而為猥褻之行為者，處七年以下有期徒刑。對於未滿十四歲之男女為猥褻之行為者，亦同”。
- (二) 第二百二十七條：“對於十四歲以上未滿十六歲之男女，為猥褻之行為者，處五年以下有期徒刑”。
- (三) 第二百二十八條：“對於因親屬、監護、教養、救濟、公務或業務關係服從自己監督之人，利用權勢而姦淫或為猥褻之行為者，處五年以下有期徒刑”。
- (四) 第二百三十一條：“意圖營利，使人為猥褻之行為者，處（三年以下有期徒刑，得併科五百元以下罰金）。以犯（前項之罪）為常業者，處五年以下有期徒刑，得併科一千元以下罰金”。

(五) 第二百三十三條：“引誘未滿十六歲之男女，與他人為猥褻之行爲或姦淫者，處五年以下有期徒刑”。

(六) 第二百三十四條：“公然為猥褻之行爲者，處拘役或一百元以下罰金”。

7.20 上述條文顯示，成年男子彼此同意而私下進行同性戀行爲，不屬違法；而列為罪行者，均似乎包括下列一項或多項含義：即拒絕同意，或涉及年青人（有法律效力的年齡為十六歲，而少於十四歲則罪行較嚴重），或出於利用，或該違法行爲屬公開性質。

7.21 本委員會為研究中華民國立國前之有關法律，亦曾參閱艾拉伯斯特（Ernest Alabaster）所著，一八九九年出版的“中國刑法評論”。該書報導說，姦淫乃屬違法，違者杖八十（第三六七頁），而對成年人或十二歲以上男孩進行違反自然行爲，即使獲得其同意，亦視作“較為嚴重”之姦淫案論，違者雙方得各杖一百及枷一月（枷是套在頸上的大型木製刑具，披枷的罪犯，雙手扣緊，不能進食，只能向過路者乞討食物）。至於違反自然罪，艾氏在其書中敘述如下：——

“處理此項罪行的方法，與處理一般不道德行爲者無異，且無男女之別。違反自然罪視受者的年齡、是否同意接受該行爲等因素，而作不同的考慮。如受者為成年人，或為十二歲以上男孩並同意接受該行爲，則視為姦淫論……。如該成年人或該超齡男孩抗拒該行爲，則視為強姦罪論，並處以適當刑罰（一般強姦罪處以絞刑；如使用暴力則處以絞刑，不得減赦；如引致死亡，則處以斬首之刑，不得減赦）……。假如該男孩未滿十二歲，則所犯罪項視為強姦論，並處以應得之刑罰，而不論該男孩是否同意或抗拒該行爲；但假如該男孩曾犯過錯，則作別論。至於醜惡罪行則僅作普通懲罰，這點的確令人感到奇怪。事實上，與一般不道德行爲比較，上述罪行可算是給社會帶來較輕的損害。”

菲律賓

7.22 小組委員會曾向馬尼拉一間具規範的律師行查詢，所得的答覆如下：“我們曾作研究，證實……在菲律賓，成年人間彼此同意而私下進行同性戀行爲，並非刑事罪；但假如涉及未成年人，則根據菲律賓兒童及青少年福利法，將構成腐化未成年人罪名。然而，凡公開進行同性戀行爲，則屬於嚴重醜事，可根據修訂菲律賓刑事法第二零零條規定處罰；但我國法律並無同性戀活動或關係之罪行。”

新加坡

7.23 新加坡刑法（新加坡法例第一〇三章）第三七七條規定如下：

“第三七七條 違反自然罪：任何人如出於自願與任何男性，女性或獸畜進行違反自然的性交，可被判終生監禁，或刑期可長達十年的監禁，並可兼判罰款。

釋義：凡有插入，即足以構成本條所指性交罪項。”

7.24 此外，刑法第三七七 A 條亦有如下規定：——

“第三七七 A 條 猥褻行爲：任何男性，不論公開或私下，如與另一男性或教唆，或介紹，或企圖介紹任何男性與另一男性發生粗獷行爲，可被判監禁，刑期可長達兩年。”

7.25 因此，新加坡似乎仍保留雞姦及成年男子彼此同意而私下進行同性戀粗獷行爲等罪項。

南韓

7.26 韓國刑法（由穆拿（Gerhard O.W. Mueller）翻譯成英文）有下列規定：——

- (一) 第二九八條（強硬進行猥褻行爲罪）：“凡施用暴力或恐嚇手段對他人進行猥褻行爲者，判監禁十年以下，或科二萬五千圓以下罰金”。
- (二) 第二九零條（推定強姦罪）：“凡乘他人喪失知覺或無抗拒能力……而進行猥褻行爲者，其罰則與前罪同”。
- (三) 第三零一條（強姦引致傷亡罪）：“凡採前條手段而觸犯第二九七條罪行並引致他人傷亡者，可判終身監禁或監禁五年以上”。
- (四) 第三零二條（姦淫未成年人罪）：“用欺騙或武力威脅手段姦淫未成年或弱智人士或進行猥褻行爲者，可判監禁五年以下”。
- (五) 第二四五條（公開猥褻行爲罪）：“凡公開進行猥褻行爲者；可判監禁一年以下，科一萬圓罰金，或拘禁，或科較輕罰金”。

7.27 因此，根據南韓法律，成年男子彼此同意而私下進行同性戀行爲，似乎並非違法。

台灣

7.28 台灣現行法規，主要根據一九四九年前所制定的中華民國法規。該法規已於上文簡述。除下列一項增訂條文（在第二二五條加入）外，各條編

號及內容均絕大部份保留。增訂條文為：“對於男女乘其心神喪失或其他類似之情形，不能抗拒，而為猥褻之行爲者，處五年以下有期徒刑”。

7.29 因此，本委員會相信，根據台灣法律，成年男子彼此同意而私下進行同性戀行爲，不屬違法。

摘要

7.30 本委員會研究顯示，大多數鄰近國家對於成年人彼此同意而私下進行同性戀活動，都採取容忍的態度，不予懲治，其法制特點，是除非同性戀活動涉及暴力，或青少年受侵犯，或涉及壓迫、欺詐或利用，或未得對方同意，或在公眾地方發生，否則不會加以干預。

7.31 根據本委員會的研究，不論中華人民共和國或一九四九年以前的中華民國，對成年人彼此同意而私下進行同性戀活動，均無明文予以懲治。至於台灣、菲律賓、日本、南韓以及澳洲若干省份，亦無法例懲治這類活動。中國在帝制時代，似乎將同性戀視爲罪行，而時至今日，馬來西亞、星加坡、巴基斯坦和澳洲若干省份仍將同性戀列爲非法。

7.32 本委員會盡力向所研究國家蒐集同性戀問題方面法律和道德觀念的權威資料。對於澳洲當局所提供的協助，本委員會至爲銘感。對於與本港文化結構相近國家的資料，我們特感興趣。此外，馬來西亞法律修訂專員以及星加坡副刑事檢控處長在答覆本委員會的查詢時，指出其國家並無就同性戀所牽涉的法律或社會問題，進行任何調查。我們進一步研究後，亦理解缺乏資料的原因。簡略來說，從星加坡和馬來西亞當局所提供的統計資料，可見在其國家內，經舉報的“違反自然”和“粗獷行爲”案件每年每國平均不足十二宗。這些國家將來是否打算改革同性戀法律，當然無從預測。不過，在目前來說，同性戀問題在這些國家並未引起關注。

第八章 與西方國家法律的比較

西方國家

8.1 為免超越受委託進行的工作範圍，本委員會原擬將研究對象局限於與本港最有直接關係的國家。有人促請本委員會在研究同性戀問題時，應從“全球性革命”着眼，本委員會對此意見有所懷疑。然而，事實上，若干國家也一直檢討及改革作為管制性罪項根據的傳統英國法律及習慣法。據悉，英國一九六七年性罪項法之實施情況尚在檢討中，而蘇格蘭的法例最近亦曾作修訂，以便與英國法例趨於一致；此外，一九八二年，國會曾被要求考慮將有關措施推廣至北愛爾蘭，這已是四年內的第二次。最近，歐洲人權法庭曾審查北愛爾蘭的有關法例，將其與歐洲人權公約印證。澳洲若干省份近年亦曾改革有關性行為的法例，詳情載於前章。

8.2 因此本委員會亦順應部份意見，雖然我們主要仍是參照本港特殊的歷史背景和地理因素，研究及設法解決本港同性戀問題，不過，如果置較遠地區的有關經驗不顧，則頗為不智。誠然，這些地區與香港各有不同的文化背景，但在現時來看，彼此所遭遇的問題，共通之處似多於差異的地方；它們在處理這類問題的經驗，殊堪借鏡。

8.3 在研究推行改革時，如果有關問題主要屬於地區性質，則尊重國際意見與否，只屬次要；不過，這些意見亦有助於評估我們所提出的建議，看其是否與眾不同，抑或早已在其他與本港承受同一法律傳統的社會實施。

加拿大

8.4 加拿大刑法是全國各地的統一刑事法律，此乃由於根據聯邦憲法，刑事法律應由聯邦政府制定，而非由各省份制定。該刑法第一五五條對雞姦作概括的禁制規定如下：

“任何人士，如進行雞姦或獸姦，即屬違犯可經公訴程序起訴的罪項，可被判入獄十四年。”

8.5 夫婦或有同性戀行為的成年人彼此同意私下進行的雞姦，則不受上述刑法所禁制。

第一五八條規定：

“(1) 第一五五及第一五七條對下列人士彼此同意私下進行的任何行為，並不適用——

(甲) 夫婦，或

- (乙) 雙方均屬年滿二十一歲的人士。
- (2) 為執行第(1)款的規定——
- (甲) 某項行為如係在公眾地方進行，或有超過兩人進行或在場者，則不視作私下進行論；及
- (乙) 凡有下列情形者，則任何人士均視作不同意進行某項行為論——
- (i) 如遭對方以武力、威脅或恐嚇傷害身體等手段而被迫同意，或因對方欺詐及誤述該行為的性質而被騙同意，或
- (ii) 如同意的一方係弱智、精神錯亂、白癡或低能的人士，而進行該行為的另一方明知或有理由相信對方乃屬此類人士者。”

8.6 因此，成年人彼此同意私下進行的同性戀行為非屬違法。在一九七八年，加拿大的法律改革委員會建議將第一五五條有關雞姦行為的禁制全部撤銷，而代以概括規定，以禁制任何“性侵犯”（例如強姦、強迫雞姦等）。此項建議至今仍未獲通過成為法例。

英國

英格蘭及威爾士

背景

8.7 在英格蘭，很久以前便已嚴懲雞姦者。十三世紀時，教會法例規定將雞姦者活埋或燒死。一五五三年，國會首次通過法例，規定雞姦屬重罪，其條文與香港相對的條例第四十九條的規定大致相同。刑罰為死刑。直至一八六一年，侵害人身罪法規定雞姦者可被判終身監禁，而企圖雞姦則可被判十年監禁。一八八五年，國會首次制定有關男性間進行粗獷行為（與香港相對條例第五十一條的規定相同）的法例。從該時開始，“公開或私下”一詞便出現。一九五七年，由胡分頓爵士（Sir John Wolfenden）任主席的委員會以大多數票通過，建議成年人彼此同意而私下進行的同性戀行為不再屬違法。十年後，國會可能走在輿論之前，在一九六七年通過性罪項法，將委員會建議制定成為法例。

一九六七年性罪項法

8.8 本報告書的附件三十三附有該法令的副本，其中心規定為第一條第(1)款：

“縱使任何法例或習慣法另有規定，凡私下進行同性戀行為者，如彼此同意而雙方均年滿二十一歲，則不屬違法，但須受下條規定限制。”

8.9 有關的法例修訂要旨，茲摘錄如下——

- (1) “私下”一詞之定義為：如超過兩人參加或在場，或如該項行為乃在“公廁進行，而該公廁乃市民無論是否需繳費即可進入或獲准進入者”，則該項行為亦不視為在私下進行。除上述情形外，私下一事，只作為事實觀點看待，依照案情而定：（一九七四年*女皇對韋奇士（Reakes）*案刑事法律報告第六一五號）。本委員會注意到，該限制並不適用於異性戀行為。
- (2) 有關“同意”一詞，法例明確規定：“某人如神智遜常，至一九五九年精神健康所指的程度”，則該人雖表面上同意，法庭亦不接納此作為理由，但如能證明當時並不知情，亦無理由懷疑該人的神智嚴重遜常者，則不屬有罪。
- (3) 制定特別條款，以保留某類人士須負刑事責任，這些人士包括與精神病患者發生雞姦或粗獷行為的醫院職員、紀律部隊人員及商船船員。
- (4) 制定另一項特別條款，規定不論男女，凡倚賴男妓收入為生，或經營同性戀妓寨者，均須負刑事責任。
- (5) 如須證明當事人不表同意，或同性戀活動並非私下進行，或任何一方年齡不足二十一歲，則控方須負舉證責任。
- (6) 縱使同性戀不再視為違法，但在若干情況下雞姦仍須負刑事責任；雞姦的最高刑罰已予修改。除非獲對方同意，否則雞姦十六歲或以上男性可被判監禁十年。如獲對方同意，但其年齡不足二十一歲，而被告年齡則超過二十一歲，則最高可被判監禁五年。如獲對方同意，而雙方均超過二十一歲，或雙方均不足二十一歲，則最高刑罰為監禁兩年。

進一步的建議

8.10 英國的社會改革份子對於同性戀問題，仍表關注。後來遂有一個非官方的工作小組成立，其職權範圍屬一般性，但包括研究有關同性戀法例。一九七五年性法例改革會工作小組報告書（摘錄於一九七五年刑事法律評論第三三〇至三三一頁）就此問題作結論如下：——

“一九六七年性罪項法局部實施胡分頓報告書（Cmnd. 247，1957）所提出的建議，規定二十一歲以上的成年人彼此同意而私下發生同性戀行為不再視為違法。此外，並對一九五六年的

有關法規作相應修訂。不過，這些修訂基本上屬於消極性質，只令一項範圍狹窄的男性同性戀行為脫離刑事罪行的範疇，而絲毫不理會法例基本上已假定同性戀較異性戀為更反社會及更嚴重的罪行。因此，法律對同性戀和異性戀未能一視同仁。這情況從下列幾點可見一斑：——

- (甲) 在法律上，男性須達二十一歲才有權同意與人發生同性戀行為。可是，女性只須達十六歲即有權同意與異性性交，而自一九六九年開始，法定成人年齡已定為十八歲；
- (乙) 構成同性戀行為在“私下”進行的因素，其定義遠較異性戀者狹隘（舉例來說，雙方同意進行的行為，只要有第三者在場，即使在私人樓宇內發生，亦屬違法）；
- (丙) 軍隊人員，以及在若干情況下包括英國商船船員，私下進行同性戀活動，縱使已下班或正在休假，亦不會因該行為經已合法化而免罪；
- (丁) 該法令之範圍，並未擴大至適用於蘇格蘭及北愛爾蘭；
- (戊) 該法令所規定的若干罰則，較異性間犯同等罪項者為嚴厲；
- (己) 一九六七年性罪項法使同性戀合法化，但第三者介紹他人（即未必為換取報酬而方便他人）進行同性戀活動，仍屬違法；
- (庚) 異性間進行雞姦，即使是夫婦二人彼此同意進行，仍可被判終身監禁。”

報告書繼續指出：——

“……因此，有關這方面的法例仍須多方面進一步改革，以符合本報告書第三章所列舉的原則。一九六七年法令以及一九五六年法令內規定對同性戀行為與異性戀行為作不同處理的若干條款，理應撤銷，而代之以不問參與者性別而公平處理一切性行為的條款。如謂年青男性防同性侵犯所需之法律保護，應較年青女性防異性侵犯者多，實有違常理。本工作小組建議撤銷一九五六年法令第十二、第十三及第三十二條，以及一九六七年法令第一（第(4)、第(6)及第(7)款除外）、第二、第三、第四、第五及第六各條。此外，如按照本小組所建議的方針公平處理，則須立法修訂習慣法現行若干條款，特別是有關串謀罪以及有關證據的法例（俾能消除容許向陪審團提出有關先天同性戀傾向證據的不正常現象，以免被控犯有同性戀罪者，過

往雖無類似犯罪紀錄，亦會因上述證據而被指證為同性戀者。）”

8.11 一九七八年，歐洲人權委員會在研究 *X 對英國案* (3 EHRR 63) 時，曾考慮法例將十八歲至二十一歲男性彼此同意而私下進行同性戀活動定為刑事罪，應否視為侵犯個人享有私生活的權利，違背歐洲保護人權及基本自由公約第八條的規定。結果，人權委員會認為：“法例規定十八至二十一歲之間的年青男性彼此同意而私下進行同性戀活動視為刑事罪，乃屬侵犯申訴人根據第八條第二段其中一項理由應享個人私生活的權利。”

8.12 人權委員會認為，英國所訂定的年齡限制，應按其本身的情況加以檢討，雖然歐洲大多數國家規定年齡達十八歲者即可同意發生同性戀行為，但這並不一定表示英國將年齡定為二十一歲，並非“民主社會所需者”。人權委員會在研究英國的情況後，有以下的意見：——

“151. 法律制度將有權簽訂契約的法定年齡定為十八歲，是承認達到這個年齡的人士心智成熟，有能力作出重要決定和承擔後果。因此，他們如果彼此同意，私下發生同性戀關係，應屬合法的私人抉擇，不應受刑事法例所干預。

152. 本委員會認為：將年齡限制定為二十一歲，在這個時代來說，特別是與歐洲理事會其他成員國家比較，可算偏高。本委員會並察覺，對於雙方同意私下進行的同性戀活動，歐洲目前的趨勢是傾向於採取容忍和諒解的態度，而非加以法律制裁。此外，單從英國本身的法律立場來看，本委員會覺得有權投票及進行其他合法交易的法定年齡低於有權表示同意進行同性戀活動的年齡，法例規定似乎有欠一致。

153. 不過，本委員會不能忽視胡分頓委員會曾檢討這個問題，而其建議並獲國會通過採用，納入一九六七年法令內。此外，本委員會亦注意到國會議員在一九七七年曾以私人名義提交法案，促使國會再次考慮這個問題，但該法案未為國會通過。目前，英國刑事法例改革委員會及性罪項政策諮詢委員會正對有關問題重新檢討。

154. 此外，辯方政府認為這是一個具有爭辯性的敏感問題，年齡在十八至二十一歲之間的少男，如參與同性戀活動，勢將飽受社會壓力，妨害心理發展，本委員會認為上述見解頗為實際。

155. 因此，本委員會並不認為，辯方政府在尋求一個中庸的解決方法時，曾踰越公約所訂的約束。

156. 基於上述意見，本委員會認為將有權表示同意的年齡定為二十一歲，縱然妨礙申訴人的私生活，但為保障其他人士的權利，該項規定乃民主社會所需者，故屬合理。”

8.13 一九八〇年，內政部刑事法律修訂委員會在其性罪項研究報告書中，曾研究有權表示同意性交年齡的問題。該委員會總結說：“……進行同性戀活動的最低合法年齡，不應超過十八歲……本委員會亦同意，目前以十八歲為成年人年齡的規定，乃釐定進行同性戀行為最低合法年齡的首要考慮因素；正如政策諮詢委員會多數委員的意見一樣，本委員會大部份成員亦認為，由於十六歲至十八歲年青人的性趨向仍未十分穩定，所以最低合法年齡應訂為十八歲。”（第 13 段）。

8.14 該委員會亦審閱英國一九六七年性罪項法第一條第(2)款(a)段。大部份委員認為，“對於公開猥褻行為，不論違犯者屬相同性別或不同性別，法律應一視同仁。”（第 131 段）。該委員會認為有兩種立法方式可供選擇：——

- “(38) (a) 下述情況，可考慮立法規定為罪項：任何人士，在可能為他人所見而又可能引致該等人士極度反感的情形下，與別人性交（與同性或異性）或進行粗獷（或極猥褻）行為。（第 137 及 140 段）。
- (b) 或如該行為可能為‘公眾人士’所見而又可能引致該等人士極度反感者。‘公眾人士’之定義包括鄰近樓宇的居民（第 140 段）。
- (c) 假如採用上述(b)分段的規定，其中‘引致該等人士極度反感’的因素可以刪除，而該罪項可界定為在可能為‘公眾人士’所見的情形下與別人進行性交或粗獷（或極猥褻）行為。”（第 140 段）。

無論採用何者，必須證明被告知道其行為可能為他人所見或被告罔顧他人可看見其行為之後果（第 141 段）。違犯者可循公訴程序或簡易程序被起訴，並可被判處監禁十二個月。（第 142 段）。

- “(39) (a) 假如採用上述第(38)段(a)或(b)分段的辦法（如是則須證明該行為可能引致他人極度反感），則須規定，任何人士，如在一般人可到之場所及有他人在場的情形下，單獨或與別人進行粗獷（或極猥褻）行為，即屬違法。（第 144 段）。
- (b) 假如採用第(38)段(c)分段的規定（如是則無須證明該行為可能引致他人極度反感），倘能明確規定‘公

眾人士’一詞包括進入會所內的人士，則(a)分段中‘一般人可到之場所’的規定可以刪除。

- (40) 除上述兩段所擬的罪行外，一如一九六七年性罪項法第一條第(1)款及第(2)款(a)段規定，凡公開進行同性戀活動，或私下而超過兩人參與或在場進行同性戀活動（即雞姦及粗獷行爲），應屬違法。不過假如該行爲‘在家內及私人場合’進行，則可考慮應否放寬第一條第(2)款(a)段的規定。至於異性公開進行性活動，則應依法律委員會所建議的罪項，制訂條款予以處理（第 143 段）。
- (41) 男性在大眾可進入或容許進入的廁所內，包括廁格內，進行同性戀活動，仍屬違法，可循公訴程序或簡易程序被起訴，並可被判處監禁十二個月（第 147 段）。”

猥褻展示

8.15 由於社會對性方面的公開展示甚為關注，結果引致英國一九八一年猥褻展示（管制）法之通過，以便對任何公開展示“猥褻物品”之行爲加以處罰。至於戲劇表演時之展示，以及畫廊或博物館展覽中（以在畫廊或博物館外觀看不到爲合）的物品，則不在管制之列。該法令並沒有爲“猥褻”一詞下定義，但“物品則包括任何可展示之事物，惟真實人體或其任何部份則例外。”（第一條第(5)款）。

北愛爾蘭

背景

8.16 驟眼看來，北愛爾蘭的經歷與香港的情況似不相干，但本委員會研究兩地近年改革法律的建議，卻發現以下重大類似之處：兩地的立法基礎相同、傳播界及部份社會人士表現興趣濃厚、社會因宗教、原則及道德的關係而出現分歧意見。而且在愛爾蘭的杜澤安（Dudgeon）事件中，公眾人士提出幾乎包羅萬有的論點，其中特別針對法治，以及討論一個對民意有反應的政府，對一個非完全自治的社會所應負的責任。本委員會對此亦詳加研究。

8.17 北愛爾蘭管制同性戀的法律，與英國通過一九六七年法之前的法律相同，因此與香港的法律並無二致。自一九七二年以來，英國國會即直接負責管轄北愛爾蘭。一九七八年七月，政府提出同性戀罪項（北愛爾蘭）令草案，目的在使北愛爾蘭的法律與英國及威爾士趨於一致。草案特別規定，兩名二十一歲以上男性彼此同意私下進行同性戀活動，不再屬於違法。

8.18 國務大臣於提出這項措施時總結說：

“……簡而言之，現時存在兩種不同觀點。一種以教義的詮釋爲基礎，認爲一切同性戀活動均屬不道德，因此必須運用刑法

的力量，規定該等活動為罪行，以推行道德生活。另一種觀點劃分兩方面：一方面着眼於私人道德，同性戀者可以（作為一種公民自由權）依照良心行使其私人權利；另一方面是公眾利益，國家應該而且必須利用法律，保障兒童、智力遲鈍及其他無能力自作有效承諾的人士。

本人曾與宗教團體及其他團體討論，聽取他們同樣出於至誠的意見，同時本人明白兩種觀點背後的信念。除此以外，我們還考慮其他因素。譬如說，有人指出現行的法例難以執行，又說同性戀者害怕行徑洩露，以致特別容易遭受勒索，而這種恐懼心理，不僅令同性戀者本身鬱鬱不歡，其家人和朋友亦不會愉快。

本人一方面參考這些不同觀點，但另一方面則認為不應忽略彼此相同的意見。大部份人士認為我們應給予年青人特別保護，又認為法律應公平執行。不僅如此，就是反對改革的人士，對個人權利亦同樣擁護和尊重；而贊成改革的人士，對社會公眾的利益也同樣關懷。因此，社會上的個體，也如政府一樣，對這個問題難以訂出一個兼顧各方面的良策。”

8.19 一九七九年七月，政府宣佈不擬繼續研究此問題，理由如下：——

“經廣泛諮詢之後，發現北愛爾蘭人民對改革現行法律之議正反意見分歧，態度強硬。雖然我們無可能確知大部份人民的感受，但事實放得很明白，反對改革建議大有人在（包括範圍廣泛的宗教和政治意見）……政府亦考慮到……在傳統上，制定如該法令草案所涉及事項的法例，一向是由一位議員以私人名義提出，而非由政府主動。因此，政府現時建議不再採取進一步行動……不過假如將來有任何有關發展，政府當會再行考慮該問題。”

杜澤安 (Jeffrey Dudgeon) 事件

8.20 一九八一年十月二十二日，歐洲人權法庭以十五票對四票，裁定北愛爾蘭禁止成年男性雙方同意而私下進行同性戀行為的法例，違反歐洲保護人權及基本自由公約第八條的規定。

該第八條規定如下：

- “(1) 每個人都有享受私生活、家庭生活、家庭和函件受到尊重的權利。
- (2) 除非為執行法例規定，以及為在民主社會內保障國家安全、公眾安全或國家經濟利益，防止騷亂或罪案，保障

健康或道德，或保障他人權利及自由，否則該管當局不得干涉任何人士運用上述權利。”

8.21 一九七六年，警方在掃毒行動中，搜查與杜澤安居於同一單位的男子，檢獲證明杜澤安有同性戀行為的文件，於是把文件帶走，並在事後向杜氏查問其同性戀行為。後來刑事檢控專員決定不予檢控。

8.22 杜澤安向歐洲人權法庭指稱，法律容許警方採取該項行動，是干犯其私生活受尊重的權利，而性生活是私生活的一部分。政府向法庭承認該項干預行動，但認為根據第八條的規定，該項行動實屬合理，乃“為保障道德”或“保障他人權利及自由”，而須進行者。

8.23 該法庭接納下述事實，就是在北愛爾蘭，“很多有責任感的社會人士都真誠相信修改法律會嚴重損害社會的道德結構，他們形成一股強大的反對力量。這股力量反映出北愛爾蘭要求甚麼道德準則，當地社會人士認為必須採取什麼措施，才能維持現時普遍奉行的道德標準。”

8.24 但審理該案的法官大多認為：

“受該項遭人非議的法例所影響的公約權利，是保障人性中主要是私下表現的一面。

……政府所持理由雖然中肯，但不足以證明有理由繼續執行該項遭人非議的法例，因為該項法例規定，兩個有權表示同意的成年男性私下發生同性戀關係，乃屬違法。要特別一提的是，雖然北愛爾蘭對男性同性戀行為抱有上述道德觀念，並擔心放寬法例可能導致現行道德標準受到破壞，但除非有更深入理由，否則不應對申訴人的私生活作如此過份的干預。‘不視為違法’並不是‘贊同’的意思，就這點而言，雖然有人擔心修改法例可能引起部份社會人士誤會，但由於現行法例有很多不合理的方面，這種憂慮並不構成足夠理由去維持該等法例。”

8.25 杜澤安又指稱，他在性方面受到歧視，有違公約第十四條的規定。因為若論私生活，在現行法例下，他所受的干擾，比英國其他地方的男同性戀者，以及北愛爾蘭本身的異性戀者和女同性戀者所受的干擾為大。他特別指出，有權表示同意的年齡應該劃一，不應因性關係的形式有別而歧異。審理此案的法官大多認為毋須就這問題作裁決。杜澤安本來共索償二萬元，但法庭亦未有作出有關賠償的決定。

8.26 來自塞浦路斯的史祁亞法官（Judge Zekia）則提出強烈反對意見，他認為必須維持現行法例，北愛爾蘭才能保障道德觀念和他人權利：

“基督教和回教都譴責同性戀關係及雞姦行爲。道德觀念大部份源於宗教信仰，所有文明國家都懲罰雞姦、獸姦和其他類似的違反自然行爲，直至近年才有所改變。

塞浦路斯現行刑事法，與北愛爾蘭在一八六一年和一八八五年通過的法例相似。一九二九年通過的塞浦路斯法例第一五四章刑法第一七一條內容如下：

‘任何人士如(a) 與他人進行違反自然之性交，或
(b) 容許任何男性與其進行違反自然之性交，
即屬犯重罪，可被判監禁五年。’

根據第一七三條，任何人士，如企圖作出上述違法行爲，可被判監禁三年。

雖然一方面，可能有人認爲，本人是塞浦路斯，法官而會心存偏見，但另一方面，也可能有人認爲，以本人的身份，當更易預見，如塞浦路斯或北愛爾蘭撤銷或修訂法例，以利便同性戀者，則必會引起大眾強烈抗議和導致社會混亂。這兩個國家，同是宗教思想濃厚，並且堅持有數百年歷史的道德標準。”

8.27 美國的華殊法官（Judge Walsh）也同樣作出有力的相反意見，認爲國家有權，亦更有責任，採納適當道德原則，立法制裁不道德行爲。他說：

“法治要依靠社會共同道德觀來施行，因此法律不能漠視社會的共同道德觀。如果法律與社會的共同道德觀脫節，即使把法律訂爲至高無上，仍會被蔑視……英國胡分頓委員會作出建議時，主要是……相信法例難以執行，而一旦執行，就會鼓勵其他罪惡，例如敲詐等，結果可能弊多於利。這個見解顯然並非放之四海而皆準……”

然後，他說出自己所作判決的主要根據：

“性道德只是道德的一環。一個我們無法避而不談的問題，就是性道德究竟屬‘純粹個人道德’，抑或與社會有不可分割的關係？性的行爲，受文化的左右比本能上的需要更大。文化潮流和期望，可能造成一些推動力而被人誤以爲是出於本能的衝動。在塑造風俗習慣和社會制度的過程中，那些管制性的行爲的法定安排和規定，是非常重要的形成因素。”

法律的改變

8.28 一九八二年三月，北愛爾蘭事務大臣在下議院稱：

“政府已知悉，歐洲人權法庭裁定北愛爾蘭的同性戀法例，違反歐洲人權公約第八條的規定。根據該公約，英國政府承諾在任何案件中，如英國為其中一方當事人，則英國將遵守該法庭的判決。因此，政府將採取步驟，使北愛爾蘭的同性戀法例與英國其他地方的同性戀法例趨於一致。”

其後英國政府於一九八二年十月二十七日頒佈命令第一五三六號（北愛爾蘭命令第十九號），把上述政策實施。該令由一九八二年十二月五日起生效。

蘇格蘭

同性戀問題

8.29 自一九八零年英國刑事審判（蘇格蘭）法通過後，蘇格蘭的同性戀法例即與英格蘭及威爾士的法例相同。根據該法第八十條第(1)款之規定，“凡私下進行同性戀行為不屬違法，但雙方必須同意且年滿二十一歲。”又第八十條第(2)款所訂的規限與英格蘭類似，即規定下開情況不視作私下進行論：

- “(a) 超過兩人參與或在場；或
- (b) 在公眾可以進入或獲准進入（不論繳費與否）之廁所進行。”

8.30 在該一九八零年刑事審判（蘇格蘭）法通過之前，男性之間進行雞姦乃屬刑事罪行。麥當奴（MacDonald）在其著作中解釋：“男性之間發生或意圖發生違反自然之性關係，乃屬罪行”（《刑事法》（Criminal Law）第五版，第一四九頁）。戈登法官（Sheriff Gordon）對雞姦的定義是：“男性之間違反自然的性關係”（《刑事法》（Criminal Law）第二版，第八九四頁），並說：“雞姦僅指男子將陽具插入另一男子之肛門，而插入之程度須與強姦者相同。”（同書，第八九四頁）。

8.31 在英格蘭，此罪項列入法規，但在蘇格蘭，則只屬習慣法的一項，而只有上段所指之情況始構成罪行。男性若得成年女性同意而與其進行肛交，則不屬違法。至於其他“違反自然之關係”（獸姦除外），亦不構成雞姦。戈登指出，根據美國法律學院的標準刑法，“變態性交”的定義是“無夫婦關係者進行之口交或肛交，或與獸畜進行之任何形式性交”（戈登書，第八三六頁），但蘇格蘭則無相應之劃分。

8.32 有關女性同性戀，戈登稱：“舉例說，直至目前為止，本國並無女性同性戀被檢控之紀錄。這種行為並不視為刑事罪行，但可稱為無恥淫褻行為。一八一一年，女性同性戀被形容為‘本國聞所未聞的無恥罪行’。”（同書，第三十三頁）。上述乃戈登引自一宗誹誘案：一八一一年活士（Woods）

及皮利（*Pirie*）對紀雷姆（*Graham*）案（*Mocrieff's Papers*）。目前並無權威性論據說明女性雙方同意而進行之同性戀行為抵觸蘇格蘭法律。

8.33 一點值得注意的是，英格蘭及威爾士通過一九六七年性罪行法時，當時蘇格蘭律政司公開聲明，任何人士，如其違法之情形在英格蘭不被檢控者，則在蘇格蘭亦不會被起訴。其後繼任的律政司均維持這項政策，直至一九八零年刑事審判（蘇格蘭）法規定雙方同意而私下進行的同性戀行為不再視作違法止。

猥褻行為

8.34 在蘇格蘭，若干同性戀行為可能構成“無恥淫褻罪行”。麥當奴認為“所有無恥淫褻行為均屬違法。”（第四版，第二二一頁）。但麥氏並無提出任何權威性論據，以證明其說法。（戈登在其著作第二版第九〇六頁亦指出這一點）。雖然如此，蘇格蘭高等法院審訊一九三四年麥洛能（*McLaughhlan*）對貝特（*Boyd*）案（*J.C.19*）時亦採納麥氏的主張。該案涉及多項“下流、猥褻、淫蕩行為”，觸犯習慣法之規定。控方指控被告“在領有牌照樓宇內……有下流、猥褻、淫蕩的行為……抓起他的手，放在你的私處”。被告更被控“將手放在〔他們的〕私處”。後來被告在每類控罪中均有數項裁定罪名成立。

8.35 在麥洛能對貝特案之前，下流淫蕩行為只涉及與未屆發育期的少年所發生的行為。戈登在其著作的初版及再版均強烈反對麥氏對無恥淫褻行為的概念。但後來法庭在審理一九七八年屈特（*Watt*）對安楠（*Annan*）（*S.L.T.198*）這宗劃時代案件時，卻維持麥洛能案所用的方法。在屈案中，控方循簡易程序控被告“行為無恥淫褻，向或使人向多名人士放映淫褻電影。該片包括描述男女性交、自瀆、口交以及違反自然行為、並有喝小便及插洋燭入女性私處等鏡頭。該片可能刺激起觀眾墮落、放縱及淫亂的情慾，並敗壞國民的道德”。

8.36 辯方律師提出反對，認為控罪不當，理由是根據蘇格蘭法例，控罪的措詞尤其是“被告行為無恥淫褻”等字眼，以及隨後的指控並不足以構成罪項。但反對遭法庭駁回，並判被告罪名成立。及後被告上訴。辯方律師在上訴時復辯稱控方所指控的罪項，並不存在於蘇格蘭法例，此外，除非猥褻行為是公開進行，否則不應視作違法。

8.37 金馬倫大法官（*Lord Cameron*）在審結此案時指出：“……顯然……構成罪行的原因並非行為本身猥褻，而是‘無恥’的性質。問題是：這種‘無恥’性質的內涵究應怎樣？就本案所顯示的事實而言，要證明猥褻或淫穢行為屬違法，則該行為須是指向某人或某些人士，有意或明知而故意使其墮落或淪於邪惡，或可能墮落或趨於邪惡。至於公認為猥褻或淫穢的行為是否違法，則視乎能否證明被告確有犯罪意圖，以及視乎案情或有關事實而定。本

席認為毋須試圖確切界定此罪項之界限及範圍，此舉並不切實際，更毋須決定應否單憑案發現場之性質而將原應構成罪項之行爲轉爲僅違反個人道德規範或當時社會道德標準之行爲”（第二〇一頁）。

8.38 金馬倫大法官在判詞中回述該次放映究屬公開性質抑屬私下性質時稱：“不論案發現場屬於公開性質抑或私下性質，均不足以影響，更不足以決定被指爲無恥淫褻行爲之罪性……因此本席認爲無必要指證發生無恥淫褻行爲的地點是屬於公眾地方，或該行爲是屬於公開展露性質，始屬與違犯該項罪名有關。”金馬倫大法官續稱，在此情況下，地方法官有權認爲該電影足以使人墮落或淪於邪惡。

8.39 如此一來，一名教科書作者一句並無實據的說話，便收入蘇格蘭的刑法。假如根據金馬倫大法官的判決而下一個合乎邏輯的結論，則任何人士在比屈案更“私下”的環境發生此種行爲，亦似乎難免遭檢控。但在一九八一年 *甸納 (Dean) 對孟斯 (實業) 有限公司 (John Menzies (Holdings) Ltd.) 案 (S L T 50)* 中，控方試圖將此類無恥淫褻行爲的範疇擴大至適用於法團，卻未成功。原因是有限公司不能有犯此罪行的意圖，故罪名不能成立。但金馬倫大法官的判詞卻持異議，認爲“假如一家公司可以受法律（或可稱爲法律上的假設）賦予頭腦及意志，而可由人在公司法定權限下運用，而在運用該頭腦及意志時，須爲所作的行動負責；則如所作的行動觸犯習慣刑法，本席看不出究竟是根據甚麼原則說公司可毋須負刑事責任。至於如何追究責任則屬另一回事。所有觸犯習慣刑法的不良意圖就是犯罪意圖。以法律觀點來看，不論罪行之性質如何，犯罪者的動機或道德上的墮落情況是一樣。因此，假如罪犯蓄意違法，不論犯罪之動機何在，其犯罪意圖卻可推定。”

8.40 蘇格蘭當局檢舉無數售賣或擺賣色情書籍及電影，控以無恥淫褻行爲罪名。一九七九年 *羅拔臣 (Robertson) 對史勿夫 (Smith) 案 (SLT (Notes) 51)* 乃檢控此類無恥淫褻行爲之根據。一九八零年案 *德合 (Tudhope) 對泰來 (Taylor) 案 (SLT (Notes) 54)* 中，法庭裁定被告確有犯罪意圖，因被告陳列色情雜誌出售，但囑咐職員不准兒童翻閱。

8.41 前述 *甸納案* 所奠下的檢控限度，經過一九八一年 *德合 (Tudhope) 對巴路 (Barlow) 案 (SLT (Sh. Ct.) 94)* 後更爲確定。該案兩名零售商的僱員被控售賣色情刊物，但由於僱員對出售貨品無權支配，法庭無注裁定他們存有犯罪意圖，遂判被告罪名不成立。

8.42 這類檢控案件似乎必定涉及被告陳列貨品出售，而並非只是擁有貨品以作日後銷售（一九八一年 *德合 (Tudhope) 對森馬威 (Somerville) 案 (SLT 117)*）。然而，“陳列”一詞並非必須“擺放於公眾可見之地方”，而是指可供售賣（一九八一年 *史葛 (Scott) 對史勿夫 (Smith) 案 (SLT (Notes) 22)*）。

8.43 一九八二年史勿夫 (*Smith*) 對丹尼 (*Downie*) 案 ((Sh. Ct.) 23) 涉及租售色情錄影帶。法庭認為被告在展售錄影帶前，必定看過其說明，故此裁定被告確有犯罪意圖。法庭並認為，色情物品之所以構成罪行，並不是因為它可以影響國民的行為，而是它可以壓低目前的道德標準，法庭應考慮當時的標準而裁定某類事物是否屬於色情淫褻。

8.44 鑑於無恥淫褻罪行乃有犯罪意圖之罪行，倘罪行涉及售賣色情物品，則被告理應清楚雜誌或有關物品之內容，斷無可能在魯莽或疏忽之下犯罪 (一九八一年德合 (*Tudhope*) 對巴路 (*Barlow*) 案 (SLT (Sh. Ct.) 94))。上述德合對泰來案可支持此項見解。由於案中被告禁止兒童接觸該雜誌，法庭由此推斷被告存有犯罪意圖。

8.45 根據蘇格蘭法律，若干同性戀行為除可構成無恥淫褻行為外，亦可構成擾亂公安罪。值得注意的是：在這方面，警務人員亦視為市民一份子，警務人員受驚及受擾的程度亦視為與一般市民相同。這種情況似乎與英國有異。英國一九八二年柏堅 (*Parkin*) 對羅曼 (*Norman*) 案以及一九八二年華倫泰 (*Valentine*) 對李利 (*Lilley*) 案 (3 W.L.R. 523) 顯示：如警務人員是該等行為的唯一目擊證人，則法庭會以另一種準則審裁。在上述兩案中，便衣警員在公廁發現有同性戀行為的跡象，但鑑於目擊證人之身份，法庭裁定被告之行為並不可能擾亂公安。

8.46 在蘇格蘭，擾亂公安罪的範圍頗為廣泛，而主要的指控根據是：“被告確實行為不檢，擾亂公安。”此罪當然亦經常包括偷窺罪。大法官湯信 (Clerk Thomson) 在一九四九年拿非利 (*Raffaelli*) 對喜利 (*Heatly*) 案 (J.C.101) 中稱：“倘某種行為擾亂公安或破壞大眾禮儀，而當局有理由相信此種行為可能引起國民驚恐或不滿或可能誘發公眾施加報復者，則可視為擾亂公安。” (第一〇四頁)。時至今日，此罪項的定義更為廣泛。在一九八零年辛基亞 (*Sinclair*) 對安楠 (*Annan*) 案 (SLT (Notes) 55) 中，控方僅證明受害人感到尷尬，法庭便裁定被告犯擾亂公安罪。根據此項裁決，顯然所有同性戀行為均有遭受檢控之虞。

獸姦

8.47 在蘇格蘭，獸姦屬刑事罪。麥當奴說：“凡與較低等動物發生違反自然的性關係，包括企圖有這種關係，均屬刑事罪” (第五版第一四九頁)。蘇格蘭法律可能與英格蘭法律有所不同，因為在英格蘭，婦女可被判犯獸姦罪，而在蘇格蘭，情況便不如此明確。在一八四五年麥傑雲 (*James McGivern*) 案 (2 Broun 444) 中，被告的控罪僅為：“與野獸發生性關係”，但愛理臣 (Alison) 對獸姦的定義卻是：男子與獸畜的關係 (戈登在其書第八九四頁亦有提及)。迄今並無婦人獸姦事件呈報。

猥褻展覽

8.48 英國一九八一年猥褻展覽（管制）法適用於蘇格蘭，其釋義與英格蘭及威爾士的釋義可以假定不會有重大差異。一九八二年公民政府（蘇格蘭）法對這個問題有進一步規定。

一九八二年公民政府（蘇格蘭）法

8.49 一九八二年公民政府（蘇格蘭）法通過之前，蘇格蘭各地均有若干僅適用於當地的法例。這些較早期的法例，除其他事項外，還涉及若干與性有關的罪行，包括猥褻露體（一八九二年市鎮警察（蘇格蘭）法第三八〇條第(1)款）及出版或分發猥褻物品（第三八〇條第(3)款）。

8.50 上述一九八二年法令，是根據一個研究公民政府的工作小組的研究結果而制訂。該法令第五十一條規定：在任何公眾地方或任何公眾可看見的地方展示任何猥褻物品（第(11)款），或出版、售賣、或分發、或製造、印刷、擁有或藏有任何猥褻物品（最終目的在售賣或分發），均屬違法。若控罪是根據第(1)款提出，則法庭亦可根據一九八一年猥褻展覽（管制）法第一條第(1)款將被告定罪。一九八二年的法令第五十一條第(8)款對“物品”一詞有廣泛的定義，即包括“影片、錄音帶、錄影帶、唱片、或其他方式的錄影和錄音”。

8.51 該法令第五十一條於一九八三年四月一日起生效，雖則其內容並無“猥褻”一詞，但如法庭要測定是否猥褻，則可合理假設其方式可能一如一九八二年及一九八三年英格林（*Ingram*）對麥加利（*Macari*）兩案（SLT 92 及 SLT 61）所採用者。大致言之，控方必須證明該物品性質特殊，故意產生不良作用，使受此物品影響之人士墮落及淪於邪惡，而該物品之展覽、流傳或售賣情況，亦足以使人認為其會落入容易受誘墮落者之手。

8.52 第五十二條第(1)款規定：——

“任何人士，如有下列情形者，即屬違法——

- (甲) 拍攝，或准許他人拍攝兒童猥褻照片……；
- (乙) 分發或展示此種猥褻照片；
- (丙) 藏有此種猥褻照片，以備自己或由他人分發或展示；或
- (丁) 刊登或使人刊登廣告，其內容可能令人意會刊登廣告者有此類猥褻照片分發或展示，或意圖如此。”

8.53 第五十二條(1)款的用字，與一九七八年保護兒童法第一條第(1)款完全相同，因而將該法例的效力擴大至適用於蘇格蘭。有一點要注意的就是：一九八二年法令第五十二條第(8)款規定“照片”一詞包括影片和電視錄影帶。

8.54 根據一八九二年市鎮警察（蘇格蘭）法第三八一條第(22)款的規定，為賣淫而遊蕩，乃屬違法。但一九八二年的法令第四十六條則對此點加以澄清，以包括男女妓在內。違例者可予囚禁的規定經已撤銷。較早前所討論的破壞公安罪，繼續適用於“路邊遊蕩者”，此即公然尋找街頭妓女，對行人造成騷擾，引致驚慌的人。

8.55 該法令第四十五條及附表二規定，經營“性商店”須向地方當局領取牌照，因而建立管制“性商店”的制度。對於“性商店”一詞，該法例附表二第二條第(1)款所下的定義是：“任何商用樓宇、車輛或攤檔，其業務大部份是售賣、出租、交換、借出、陳列與性有關物品，或示範使用這些物品。”至於“性物品”是指“任何物品，其用途涉及，或目的在刺激或鼓勵——

(i) 性活動；或

(ii) 與性活動有關的用勁或抑制動作”，

此外亦包括範圍廣泛而與性有關的錄音錄影帶（附表二第二條第(3)及(4)兩款）。

美國

8.56 在美國，各州得自由制訂管制同性戀法例（憲法）。聯邦政府極少參與現行有關同性戀權利的改革。例如：現政府同意三軍當局禁止同性戀者服役，而聯邦平等就業機會和反歧視的法例亦不維護同性戀者。有關同性戀的法律改革似乎都是由各州發起。美國律師、醫師和精神病專家等公會的全國委員會，均呼籲撤銷餘下各州未廢止的雞姦法例，而美國法律學院（American Law Institute）亦建議：一切性行爲，若不涉及武力、非成年人與未成年人發生或非公開進行，即不應列入刑事法內。

8.57 美國有二十二個州經已更改有關雞姦的法例。例如：加利福尼亞州在一九七五年修訂有關同性戀行爲的刑法。在此之前，雞姦的定義含糊不清，被訂為是“違反自然的無恥罪行”，任何人士如有此種行爲，即屬犯重罪。法例修訂後，成人雙方同意私下進行的同性戀活動，即不再視作違法。

8.58 紐約州的管制法規亦已改變，該州的刑法規定：“任何人士，如與他人進行變態性交，即犯彼此同意雞姦罪”。此類性交的定義是：“兩名不屬夫婦關係人士的性行爲，其中包括陽具與肛門、口與陽具，或口與陰戶的接觸。”由此可見，非夫婦之間所同意進行的同性戀活動和若干異性戀活動，均在禁止之列。只有五州將有婚姻關係人士自雞姦刑法中刪除。

8.59 上述管制法規，於一九八零年為紐約州最高法庭裁定為違反憲法。法庭所持理由是：聯邦最高法院在多次裁決中，曾闡明私生活自由乃憲法權利，這項權利可擴大至包括雙方同意的同性戀行爲。“個人性行爲是一項基

本權利，受隱私權所保障，這是因為性對人體情況有超然重要性，而性行為是人與人之間極親密的行為，且涉及個人控制自己身體的權利。”

8.60 這種以隱私權為根據的理論值得注意，因為幾乎所有這方面的改革理論，都是強調隱私權的。這種改革論調，不可能直接應用於香港。然而，我們稍後亦要考慮國際公約在這方面的影響。麻省最高法院曾裁決：該省不宜懲罰成年人雙方同意私下進行的雞姦行為。此外，各大都市亦已立法，在公共就業、房屋和教育等方面保障同性戀者的權利。總之，有多項改革是由大都市開始進行的。

其他各州

8.61 據悉美國約有二十五個州仍將雙方同意私下進行的雞姦行為列為刑事罪，不過這項規定很少執行。有多個州的法例亦規定男女之間的雞姦行為屬非法。茲舉數州為例：在維珍尼亞州，同性或異性之間，不論已婚或未婚，口交或肛交均屬刑事罪。這項法例，獲得一個聯邦法庭裁定為符合憲法，並即時由美國最高法院認可（一九七六年杜爾（Doe）對維珍尼亞州案）。密茲根州規定雞姦行為，不論同性或異性，均屬違法，而佛羅列達州則禁止“淫褻、違反自然的行為”，包括雞姦在內。至於年齡方面，每州仍有限制，且均禁止公開的性活動。

美國最高法院

8.62 如上段所述，美國最高法院已即時認可（意指並未發表意見或聆聽辯論）一項維持維珍尼亞州雞姦法例的裁決。法院因此不將雙方同意私下進行的性行為列入隱私權範圍內。有些論者認為，以前有關隱私權的個案，一般來說可視為只限已婚人士在生兒育女範圍內應用，顯然同性戀行為不能根據這基礎而獲得維護。法律評論界則認為，隱私權可合理擴大，使同性戀行為亦受到保障。由於美國各州的法律大多數與維珍尼亞的法律大致相同，包括限制已婚人士的性活動，因此報章輿論認為此等法律形同干涉所有成年人的床上生活，並說規範人類行為的法律，如果不能執行，其壞處更甚於完全沒有法律。

8.63 杜爾所提出意見的法律意義不大清楚，法院對該問題仍未直接處理，而杜爾的意見可能只不過是一項陳述，認為對高度公眾性問題如同性戀方面的改革，不應出自聯邦司法機關，而應該由各州立法進行。

國際公約

8.64 一九四八年聯合國大會通過人權宣言。為方便討論起見，本委員會在此列出幾項重要條款。劃綫是我們加上去的：——

第二條： “本宣言所載的一切權利與自由，人人皆得享受，不分種族、膚色、性別、語言、宗教、政見或其他主張、籍貫或門第、財產、出生或其他身份。

此外，不論是獨立、托管、非自治或其他有限主權的國家或地區，均不應因其政治地位、管轄權或國際地位而對該國或該地區的人民有所區別。”

第七條： “在法律之前人人平等，一體享有法律之平等保護，而不受歧視。為免遭受有違本宣言之任何歧視，人人均應得到平等保護……”

第十二條： “任何人之私生活、家庭、住所或函件不容無理侵犯，其聲名或信譽亦不容攻擊。人人有權受法律保護，免受此種侵犯或攻擊。”

第十六條： “(1) 成年男女，均不受種族、國籍或宗教之任何限制，有權婚嫁及成家立室。在婚姻方面，在結合期間及在解除婚約時，男女俱有平等權利。

(2) 家庭是社會的自然及基本群體單位，有權受社會及國家的保護。”

第二十九條： “(2) 人人於行使其權利及自由時，僅應受法律之限制，其唯一目的，應在確認及尊重他人之權利與自由，及符合民主社會中道德、公共秩序及一般福利之首要條件。”

8.65 繼人權宣言後，跟着亦有“公民權及政治權國際盟約”。該盟約於一九六六年由聯合國大會採用，並於一九七六年生效：

盟約第二條第(1)款及第二十六條轉錄人權宣言第二條；

第十七條轉錄人權宣言第十二條；

第十九、二十一及二十二條轉錄人權宣言第二十九條；及

第二十三條轉錄人權宣言第十六條。

8.66 該盟約第一條規定：每一締約國須尊重盟約承認之權利，並確保其每一國民享有該項權利，不分性別，或其他區別。同時，締約國應負責採取所需步驟進行必要之立法措施，以實施盟約所承認的權利。

8.67 與此同時，“經濟社會文化權利國際盟約”亦於一九六六年獲採用，並於一九七六年生效。該盟約第七條(c)款規定：締約國得承認人人享有公平及良好工作條件的權利，以確保工作上人人享有晉升至適當水平的平等機會，除年資及才幹外，不必受任何條件限制。

8.68 第十條規定：締約國得承認：——

(3)……兒童及青年應獲得保障，免受經濟及社會剝削。倘他們的道德及健康受工作危害，則……應受法律的處罰。

8.69 英國對以上每項公約，均予以簽署，亦將其規定應用於香港。本委員會不悉中華人民共和國有否參加此等公約。本委員會詳細轉載此等規定的內容，因為其對香港寓意重大。歐洲人權公約第八條，與人權宣言第十二條及公民權盟約第十七條類似。此等條款保證隱私權不受干擾的自由。正如我們在 8.24 段所見，杜澤安事件解釋性隱私權亦應包括在此項權利之內。因此，倘此項解釋正確，則目前本港法律多處干擾成年人雙方同意私下進行之性活動，實與公民權盟約第十七條之規定相違。

8.70 在某些方面，香港有關同性戀的法例與此等盟約如此分歧，可以說是侵犯此等條款的規定。本委員會不悉香港有無人根據這一論點而要求發表聲明或為一宗同性戀案件辯護。至於提出這些論點能否爭取到勝利，本委員會不擬置評。但我們注意到，此等國際盟約不會向個別市民授予起訴權或補救辦法；只有國家才可以就此提出訴訟。只要指出本港法律與國際盟約之間顯著抵觸的地方，已達到本文之目的。本委員會認為同樣重要者，是必須緊記此等盟約之明確目標是保障婚姻、婦孺及隱私權。

第九章 本委員會所作的公開徵詢及在本港進行的研究

電視、電台及報章

9.1 香港有私營及政府電台各一家，每家電台有中、英文節目，每天聽眾平均合共三百七十四萬。電視台有兩家，每家有中、英文台各一個，每天黃金時間的觀眾平均合共三百二十五萬。英文日報有三份、中文日報五十五份，日銷共約一百五十萬份，亦即每千人閱讀三百份，而世界各地則平均每千人閱讀一百零二份。

9.2 本委員會曾作調查，研究各種傳播媒介在一九七八至一九八二年間以男性同性戀為題的節目或文章，頗有收獲。本委員會側重“自發性”的一類資料來源，例如把報章所刊出的一部份“讀者來函”剪輯起來，當作市民響應本委員會的公開呼籲而寄來的信件處理（參閱附件四）。

9.3 有幾件事是值得留意的。首先，英文報章討論這個問題時所撥出的篇幅及表示關注的程度，無論何時都遠超中文報章；這點可能已是意料中事，但仍值得留意。其次，有些大報章在社評表明本身的立場，其意見摘要已錄於附件四。概括來說，英文報章贊成在有限度的情況下，不把同性戀行為視作違法。第三點，某些人士曾透過書信、新聞稿或專文抒發意見，有時這些人物的身份頗為舉足輕重。例如，一九八〇年七月，前任香港總督麥理浩勳爵接受報界訪問時，曾在席上發表個人意見說：“修改該法例總有其好處，尤其是可藉此將本港法律與英國法律的差距消除。關於此事，本人注意到遭檢控的人其實頗多是外籍人士。”（原文請參閱附件四）

9.4 最後，個別報章對此問題的關注時起時伏；這點本無特別之處，不過為公平起見，須在此清楚指出。如用圖表表示，可以見到報章關注的幾個高峰，是一九七八年一名歐籍人士案件發生、麥樂倫事件審訊、及麥樂倫事件調查委員會聆訊之時；然而，麥樂倫事件告一段落後，報章對於小組委員會的工作及法律改革委員會的進展，均不時提出質詢。

公開呼籲

9.5 小組委員會工作第一步，是公開呼籲與直接邀請有關人士與團體發表意見。一九八〇年七月，該委員會在報章公開呼籲，一九八一年九月，又進行第二次呼籲。承蒙各界支持。並提供意見，謹此衷心致謝。

9.6 公開呼籲的格式與結果，載於附件五。要注意的是，衡量這些意見書時，通常無法肯定每份意見具有多少代表性。附件五所載，充其量只可說

是綜合多方面意見的摘要，而這些意見都是一些對此問題有主見的人士與團體響應本委員會在傳播媒介的公開呼籲而提出的。主動來函提供意見的人士或團體共有二十六個，其中贊成修改法例的有十六個，反對的則有十個。單憑這項事實便妄下定論，實屬不智，其理由是顯而易見的。

直接呼籲

9.7 關於選定若干團體與人士，直接邀請他們發表意見的問題，小組委員會經詳加考慮，且在發端時即已認定，不擬把這項工作當作本港市民意見的全面調查去處理。

9.8 當前要面對的困難是，本委員會相信：很多人對現行的有關法例一無所知，且對同性戀問題有成見，以致對同性戀法例有所反應時，往往摻雜此種意見；不少人根本不想被問及這個問題；在這問題上，很多人至少有兩套標準，一套是他們公開發表言論後期望別人憑該言論衡量他們，另一套是他們內心願意接受的。

9.9 為求集中注意力，讓各界就該問題在法律上的含義多提具體意見，本委員會認為提綱挈領地介紹一下現行法例最為理想；這點確已做到，且務求內容深入淺出。由於小組委員會負責研究雞姦與粗獷行為的問題，故此在介紹時較為側重這方面的法律條文。

9.10 然而，本委員會對兩項疑難感到關注。首先，僅是給市民介紹法例的要點，亦已有渲染之嫌，足以影響他們的反應。因此，我們懷疑法律改革委員會應否一併負起啓導任務。其次，根據過往經驗，提出明確的建議去讓市民批評，比呼籲他們提供一般性的意見更能獲得有意義的反應，這是人性使然。不過，提建議仍有其缺點，就是使本委員會感到拘束，因為若沒有“向人宣傳”之嫌，至少也被認為自行表明意見（事實上，當時本委員會仍未有具體的見解）。

9.11 經過多方考慮，本委員會最終認定應該撮錄有關法例的內容，好讓市民有機會作出批評，但似乎暫時不宜提出明確的建議以尋求市民的反應。雖然決定權不在本委員會，但本委員會認為將來發表報告書（書中包括本委員會將要作出的具體建議），必可能引起市民的反應，這些反應必然有本委員會所不便發表的意見。

9.12 採用直接呼籲方法，主要目的是在小組委員會藉傳播媒介廣徵市民意見之餘，另外加以補充。本委員會決定把公司商號列為一類，“非僱用性”團體則為另一類。在商行方面，希望藉着問卷方式得知它們在用人方針上對同性戀者採取甚麼態度；而在“非僱用性”團體方面，則徵詢其具體意見。無論如何，本委員會均將問卷發予兩類機構，同時附上有關書函及現行法例的撮要，文件全部中英對照（參閱附件六）。

僱主

9.13 中英對照的問卷，已為本委員會全體委員通過，其格式可參閱附件七(I)。問卷分發給六百間商行填寫。承蒙政府統計處協助，得以編訂一個商行名單，將香港商界各行業均包括在內。為了鼓勵商行多作反應，本委員會決定把回件保密，做法是商行名號不予公開；因此，榜上有名的行業、及有回件的商號，均不刊載於此。

9.14 問卷答案分析詳見於附件七(II)。簡略地說，有回件的公司商號共有一百八十一間，佔全部受調查商行百分之三十點一六；此等商行均僱有大量員工。以下數點乃從分析得到：——

- * 受調查商行百分之九十五表示，不須求職者透露是否同性戀者；
- * 受調查商行百分之四十一表示，如知悉或認為應徵者是同性戀者，即可能不予錄用；
- * 受調查商行百分之十九表示，如知悉或認為勝任現職的僱員是同性戀者，即可能將其革職；
- * 受調查商行百分之九十二表示，縱使法例修訂後，容許雙方同意的成人私下有同性戀行為，公司亦不會更改原有用人方針。

其他團體

9.15 分發予團體的函件乃中英對照，其格式列於附件八(I)。此等團體共有九十一個，名單見附件八(II)；此名單一方面由本委員會搜集，另一方面則承蒙政府民政科協助編製。本委員會雖無意包羅鉅細，仍務求聯絡上大多數關心各階層人士利益的團體。有回件的團體共二十九個（約佔全部百分之三十），其意見書內容則長短不一。除兩個團體的意見書外，其餘意見書均能個別作摘要，請參閱附件八(III)。

9.16 眾團體自然意見紛紜。香港大律師公會及香港律師會理事會均認為，本委員會宜徵詢個別會員而非兩會的整體意見；此點亦言之有理。該等表明立場的團體，往住意見相左，試比較一下聖公會及羅馬天主教會的高見，便可見一斑：

- * 徐贊生牧師來函稱：
“同性戀行為是難以接受的，聖公會港澳教區同人決不支持當局放寬同性戀法例或使同性戀合法化。”
- * 天主教香港教區胡振中總主教來函謂：
“因此，我們認為，同性或異性的成年人如雙方同意而私下進行性活動，不應視為刑事罪行。”

9.17 承蒙香港大學教職員協會及理工學院教職員協會提交屬下若干會員的意見書，不勝銘感。香港大學教職員協會更不厭其煩，為本委員會向會員進行問卷調查。本委員會認為，要撮述此等意見書的內容，實難做得妥當，故此理宜原文照錄，列於附件九及十。

區議會

9.18 一九八二年一月至三月間，本委員會也曾徵詢各區議會的意見。在香港，區議會是重要的組織，自根據香港法例第三三六章區議會條例於一九八一年成立以來，現時全港共有十八個。區議會的基本精神，是了解區內各種影響居民起居作息的事情，並將居民的需要與意見反映給政府知道。直至現在為止，總計有民選區議員一百三十二位、委任的非官守議員一百三十五位、及（如來自警務處及運輸署等部門的）委任官守議員多位。

9.19 小組委員會徵詢區議會的意見時承蒙政務總署調派行政人員鼎力襄助，至深感劬。寄給區議會的函件，與發予其他團體者相同（參閱附件八(I)）。結果，共接獲十四個區議會的覆函，函中主要提出下述幾點意見：——

- 不應修改現行管制同性戀行為的法例，因放寬現行法例，即與本港大多數華人的道德觀有牴觸；
- 放寬現行法例，無論是不將同性戀行為視作違法或使之合法化，均意味政府鼓勵同性戀活動；
- 此舉殊非所宜，特別是因為此事會影響年青一代，更可能使家庭破裂及社會結構解體。

9.20 另一方面，若干區議員則持有不同見解，並建議修改現行法例；現歸納其建議如下：——

- 他們認為現行法例過嚴，如香港法例第二一二章侵害人身罪條例第四十九條規定，犯雞姦者最高可判終身監禁，即為一例，因此他們認為應向犯者施行一些強制性精神治療及康復措施，以代替重刑；
- 現行同性戀法例應予修改，以容許相方同意的成年人，在毫無報酬的情況下，絕對私下地進行同性戀活動；
- 凡侵犯未成年人的同性戀罪犯，尤其是以此類勾當謀利者，均仍須判以重刑。

承蒙區議會不吝賜覆，感蒙良深，茲將該等意見，載錄於附件十一。

私人晤談

9.21 調查期間，若干人士及機構表示願意口頭陳述意見，小組委員會於是進行一連串會晤，其結果現簡述如下：——

鄧勤先生 (Mr. Neil Duncan) 及詹德隆先生

9.22 鄧勤先生及詹先生與小組委員會晤談時，均支持下列主張：——

“無論男性或女性成年人，如彼此同意而私下進行同性戀活動，均不應視作違反法例，但這不一定表示當局寬容或有意鼓勵同性戀活動。”

這項主張的內容，原本由一個稱為“同性戀法例改革運動”的小團體在一九七九年夏季發表，而鄧勤先生及詹先生亦為該團體的成員。該項主張發表後，共有四百二十四名市民投函表示支持。該團體所擬備的文件，最初送交律政司，其後小組委員會亦得以閱覽。該團體的“同性戀法例改革建議”，全文見附件十二。

九龍總商會

港九居民聯會

旺角區大角咀分區委員會

荔枝角互助委員會

9.23 部份團體初時主動來函表示意見，以上四個團體的代表除來函外，後來更與小組委員會晤談。有一點值得注意的地方，就是雖然這些團體的所有代表本來都反對修改法例，但在討論期間，經小組委員會清楚闡釋，表示任何修改法例的建議範圍將會有限，而事實上亦無意圖或計劃鼓勵同性戀行為之後，其中部份代表的態度顯著軟化下來。然而，正如附件十三的會議紀錄顯示，所有代表均對修改法例建議甚有保留。

香港總商會

9.24 本委員會曾去函要求一些團體發表意見，香港總商會即為其一。香港總商會有會員九千二百人，該會對同性戀問題極為關注，甚至邀請法律委員會秘書處的人員向其講述有關問題。彼此晤談之後，香港總商會來函概述其立場（參閱附件十四）。

李必治先生 (H.J. Lethbridge)

9.25 香港大學社會系教授李必治先生於一九七六年發表一篇論文，題為“攬同性戀的傢伙：香港的同性戀問題與法例”，在香港法律導報刊登。該篇論文詳述英國同性戀法例的歷史、同性戀癖好的由來，以及同性戀與香港的有關法律。李必治先生為撰寫該篇論文，顯然曾進行深入的研究和思考。

小組委員會有見及此，於是邀請他發表其當時的觀感。以下是李先生作覆的部份內容：——

“一九七六年我在香港法律導報發表那篇論文，是要特地反駁下述論調……只有英國人才會偶爾染上這種反自然的惡習……”

“不過有一點很重要：中國人對‘合法’這個中文名詞甚感困惑。這個名詞看來好像表示政府有意使同性戀合法化（即是說道德上可以接納），而實際上我認為其意義僅是把部份同性戀行為不視作違法。兩個觀念差別甚大。”

本委員會採納了他這項意見，並已在報告書第二章強調此點。

陳樂儀先生

9.26 一九八一年杪，陳樂儀先生為本港一家電視台製作一輯有關香港同性戀問題的電視紀錄片。說來有趣，在這輯紀錄片放映前不久，小組委員會已將一項建議列入法律改革委員會的討論議程。建議的內容，就是洽商一家電視台製作一個重點在於向市民介紹現行法律的節目。此項建議業經法律改革委員會通過。小組委員會觀看過陳先生的節目後，邀請其接受訪問，並蒙陳先生俯允與小組委員會兩名委員，即楊鐵樑按察司及周梁淑怡女士，就其作品進行討論。是次討論的紀錄，業經陳先生審閱認為無誤，編入附件十五之內。陳先生其後更將一名有同性戀癖好的華人於觀看節目後的投函轉交本委員會。由於該函為一名有同性戀癖好的華人的自述，內容着重親身經歷，故本委員會特將該函件列為附件十六。

會晤自認有同性戀癖好的人士

9.27 首先必須說明，小組委員會在會晤若干名自願發表意見的同性戀者時，已明白到有以下的顧忌：以現時的法律而言，蒐集同性戀活動行為的資料，在某些情況下可能令被訪者及小組委員會的成員身陷法網。因此，本委員會已向被訪者清楚表示，訪問內容着重聽取意見和討論，盡量避免涉及同性戀活動經歷。所有被訪者均接納這項提議。

9.28 另一方面，律政司曾經表示，為協助小組委員會獲得正確的資料，假若情況需要，他會應小組委員會的要求，體諒有關情況，不對任何個人或聽取其傾訴的人士進行檢控。不過，部份因為麥樂倫事件調查委員會已透露過詳盡的資料，本委員會最後決定，就調查的目的而言，實在無須再從這方面深入探索。

四名有同性戀癖好的華人

9.29 透過陳先生的協助，小組委員會會晤了四名有同性戀癖好的華人，聽取他們的意見和作討論，並藉此探討香港一般同性戀者的心態。四名人士

的年齡為二十三至三十歲不等，來自社會上各個階層。他們所接觸的同性戀團體，全部均由華人組成。他們雖然進行同性戀活動，但都沒有向家人透露。他們主張有限度地寬宥同性戀行爲，作為改變社會人士態度的第一步，與此同時，當局應限定同意進行同性戀者的年齡，為青少年提供保障。晤談紀錄載於附件十七。

X 先生

9.30 X 先生是一名澳洲人，從事新聞工作，在本港居住已有三年，在此之前，曾在遠東居住了大約八年。他是一名同性戀者，曾主動向小組委員會傾訴，並以書面陳述意見（附件十八）。其後他會晤小組委員會的成員，闡述其書面主張。他表示不介意暴露身份，但本委員會認為無須透露其姓名。

一名歐籍同性戀者

9.31 他是一名講師，受過高深教育。他到過多處地方旅行，又曾在多個國家居住及工作，而該等國家均容許成年人私下進行同性戀活動。他自動提出會晤小組委員會的成員，並在會談時合理地堅決表示，成年人彼此同意而私下進行的同性戀活動，應予寬宥。他又指出，本港有許多同性戀者基於法律及社會方面的理由，仍然隱瞞活動真相。他知道有若干名具有同性戀癖好的學生，因為難以接受自己的同性戀行爲或受到社會壓力，心情極度沮喪。

另一名歐籍同性戀者

9.32 秘書處的人員曾與這名商人接觸。他三十出頭，過去大部份時間住在香港。他是一名同性戀者，並曾因此被檢控。他自述其豐富的同性戀經驗，涉及的地方包括香港、倫敦、三藩市、菲律賓和泰國。晤談紀錄完成後曾送交其法律顧問審閱，其後交還本委員會。他表示不可透露其姓名，並且不要把他視為同性戀者的發言人。

9.33 簡言之，他的意見有些人乍看來會感到新奇。他發表意見的明確目的，在於“預先忠告當局（原文如此），寬宥同性戀者可能帶來一些後果。”他預料會出現三種情形：一、不良份子可能乘機藉此圖利及壓榨華人青年；二、公開進行的同性戀活動會大量增加；三、同性戀者更容易受到檢控，尤其涉及未成年伴侶的案件，數量將會大增。

9.34 本委員會將晤談的全部內容記錄收於附件十九之內；這名歐籍人士向本委員會訴說的恐懼及其他事項，分別在第五、第十及第十一章討論。

監獄

9.35 一些以男性為主的團體，例如軍隊、懲教中心等，因為環境特殊，假如向本港市民披露這些地方的同性戀事件，未免顯得造作。

9.36 不過，由於懲教署署長及其屬下人員鼎力協助，本委員會獲得不少珍貴資料。他們在喜靈洲和大欖戒毒所舉辦了一連串小組討論，共有一百四十四名男戒毒者和三十二名女戒毒者參加。討論結果，一般認為監獄內不應容許有同性戀活動，假如作出讓步，即有厚此薄彼之嫌，因為普通人在獄中並不能享受正常性慾。該批戒毒者又認為本港的懲教中心並沒有同性戀活動存在。附件十九詳細分析了戒毒者的意見。

警方

9.37 本委員會荷蒙皇家香港警務處多方協助，深表感激。該處所提供有關同性及異性間性罪行的數字，現轉載於附件二十三及二十四內。至於警方調查所得的本港同性戀活動概況，則載於第五章。警隊各職工會應本委員會要求而發表的意見，則載於附件八(II)。

麥樂倫事件調查委員會

9.38 無論如何，在調查麥樂倫事件期間，由各方證供所顯示出的形象並不美好。若干同性戀者曾經警告本委員會，謂當局在調查麥樂倫事件時，強調男妓活動，此舉雖屬必需，但可能歪曲了本港某幾方面的同性戀活動實況。關於此點，本委員會當表贊同。

9.39 有一點必須強調的是：在調查麥樂倫事件中所提出的證供推翻了不少評論者所堅持的兩個論點。事實證明，關於華人（尤其是居於本港者）當中並無太多同性戀者的說法，絕非正確。此點實無可反駁。另外，有人認為同性戀是種“西方”的敗德行爲，西潮東漸，薰染了本港保守而對性事單純無知的華人。此種說法其實並不正確。

9.40 本委員會無意重覆麥樂倫事件調查委員會的工作。不少同性戀者在該次調查中遭受不同形式的痛苦，其中更有一人心靈受重創。又有很多人在作供時因回憶以往有關同性戀的經歷而感到痛苦。我們之所以提及該委員會所作的調查是因為該項調查本身，以至對本委員會的工作，均相當重要。本委員會在撰寫第五章時亦考慮到在該次調查中公開發出的證供以及調查專員所發表的調查結果，此等資料直接或間接影響本委員會的結論。

民意調查

9.41 本委員會荷蒙本港一間商業電台提供一九八零年九月所進行的調查，並獲准刊印調查結果，至深感紓。電台人員在下午五時後撥電話以中文訪問五百零九名年逾二十的華籍成年人，提出兩項問題：第一是“政府應否繼續視同性戀為刑事罪行”，第二是“當局應否修訂法例，不將成年人私下進行的同性戀活動視作罪行”，贊成第一項者佔百分之七十一，同意第二項

的則佔百分之二十七。從統計數字來看，年齡與答案的相互關係極為密切。舉例說，二十歲至三十四歲的人士當中，有百分之六十四反對修訂法例，另外百分之三十五則表示贊成。至於年逾五十五歲的人士，其中八成反對修訂法例，而另外百分之十六則表示贊成。在贊成修訂法例的人士當中，超過一半是介乎二十至三十四歲之間。有關此項調查的詳情，可參閱附件二十一。

9.42 本委員會又蒙該台供給一九八二年底的調查結果，並獲准將之刊印，至深感荷。調查期間，有二千名十五至六十四歲的人士接受長達個半小時的單獨訪問。接受訪問的人士須要回答各類問題，其中百分之六十五認為當局不應放寬有關同性戀的法例。此類調查的有關部分刊載於附件二十二。

9.43 本委員會認為該等調查結果值得關注，但絕非驚人。本委員會亦嘗研究須否透過著名的商業機構進行調查，並曾與數間機構聯絡，承蒙該等機構賜予有關調查方法以及費用預算的高見，至深感蒙。本委員會獲得保證，假如真的進行調查，定可獲得政府撥款，但經反覆斟酌後，認為調查的效果不會太大。既已獲得先前的調查結果，加上各界人士在報章雜誌對同性戀這個廣泛問題所發表的各種意見，以及外界所提交的資料，本委員會便可認定，問題的癥結所在：從實際的角度來看，我們身為這個委員會的成員，究竟再需要多少知識才可以對這個問題下一個正確的判斷；依我們看，我們已經取得足夠的資料，經過差不多三年的研究，現在決意為自己劃定最後界綫。

其他事項

9.44 本委員會荷蒙多個政府部門協助，提供若干統計數字，深表感激。有關數字刊載於附件二十六。

9.45 據悉一九八一年香港約有一百二十五萬戶人家。雖然其中一家七口的比率超過一成，但平均一家只有四口。近年來，本港人口男多女少，一九八一年介乎十五至五十九歲的女性約有一百五十萬；男性則約有一百八十萬，其中五十六萬四千名尚未結婚。一九八一年本港人口的平均年齡是二十六歲。一九八二年就讀幼稚園、小學或中學的兒童超過一百三十七萬，分別由四萬零二百名教師教導，其中男教師佔一萬三千八百名，女教師則佔二萬六千四百名。自一九七零年以來，教師因觸犯性罪行而裁定有罪的案件共有六宗（對象均為教學時接觸到的兒童），其中兩宗涉及同性戀罪行。此外，自一九七零年以來，只有一宗有關同性戀的指控，但日後並沒有進行檢控。至今並無任何證據顯示女教師涉及同性戀行為。

9.46 一九八二年內，共有六百六十一套電影呈交影視及娛樂事務管理處檢查，其中十三套遭禁映，另外兩百套經刪剪後通過。一套因有同性戀鏡頭而被刪剪。過去四年來，本港八十五間電影院每年平均約有六千六百萬觀眾。一九八二年由香港寄往海外的郵包有九千九百萬個，由外地寄入本港的則有九千七百萬個。過去五年來，屬於商業用途的淫褻物品從海外郵寄入口的案

件，當局只破獲一宗，但該案並無涉及同性戀。當局亦曾破獲私人性質的淫褻物品郵寄入口的案件，但其中甚少涉及同性戀。同期間，香港海關在搜獲淫褻物品後根據不良刊物條例（香港法例第一五零章）而提出檢控的案件共四十三宗，有五十四人裁定有罪。搜獲的物品當中，有三分之一與同性戀有關。每年由香港海關、民政科或警方根據不良刊物條例提出檢控而經法庭裁定有罪的案件約有一百至一百五十宗，估計其中約有十宗涉及同性戀刊物。

9.47 一九八二年，市政總署管轄的公廁有九百二十六個、商營浴室六十四個、游泳海灘四十一個、公眾泳池十四個，以及遊樂場地四百一十八公頃。過去五年來，該署職員從未接獲任何有關在上述地方進行同性淫褻活動的報告。目前，持有牌照的按摩院共有七十一個。一九八一年，當局吊銷一間按摩院的牌照。一九八二年，則有吊銷三個牌照。當局從未接獲按摩院內有同性戀行為的報告。當局在一九八一年接獲一宗有關按摩院內男女間有淫褻行為的報告。目前持有牌照的舞廳共有四十八間。一九八二年當局接獲三宗舞廳內有淫褻行為的報告，但其中並無涉及同性戀行為。過去五年來，政府社會衛生診所治療性病 32386 宗，男性佔 22766 宗，女性佔 9620 宗。其中因男性同性戀而導致性病者只有三十宗。

海外諮詢

9.48 海外諮詢有好幾種形式。第一，蘇格蘭某個組織來函提出關於同性戀的意見，促請本委員會根據英國法例修改本港的法例。該組織的意見刊載於附件二十五。

9.49 第二，本委員會向多個國家的律師及法律組織查明該等國家的法例，以及有關現行法律及道德觀感的資料。查詢結果載於第七及第八章，至於接受查詢的律師及法律組織的名稱則詳列於附件二。

9.50 第三，本委員會特別着重估計法例修訂後所產生的影響，並曾就此事向外地尋求協助。雖然本委員會着眼於鄰近的亞洲國家，但從英美兩國得到的協助反而最大（參閱第十章）。

資料

9.51 本委員會曾參考各類不同來源的刊物。由於參考的目的是使本委員會或者使閱讀本報告書的人士得悉有關資料，而並非旨在撰寫一篇權威性的論文，故此本委員會在挑選資料時力求貴精不貴多。至於刊物名錄則詳載於附件三。

摘要

9.52 總而言之，本委員會在研究期間獲得代表千千萬萬市民的本港商業機構、社團以及個別人士所提供的意見。蒐集事實、意見以及法律資料成為本委員會一項重要工作，這項工作消耗不少人力物力，有時使我們以及與我們通訊的人士失去耐性。在這方面我們承蒙他們多方協助，實深銘感。從我們所得結果看來，相信沒有辜負他們一番心血。假如本委員會現時蒐集到有關同性戀的重要資料及意見較諸以往在本港所得的為多，相信對同性戀問題的討論極有幫助，而這些辯論亦不會隨着本報告書發表而終止。

第十章 修改法例的後果

引言

10.1 每當有人提出改變現狀的建議時，總不免引起對後果的憂慮。假如制訂的法例具積極作用，則立法者或可無後顧之憂。新法例如對某些行為加以禁制，我們便覺安心，最低限度這種或那種嚴重罪行已受控制；這是初步後果。很多時，我們更可以安心說，無論後果如何，總不會比現受制裁的罪行存在時來得更壞。

10.2 但當我們考慮不再將某種行為視作違法時，往往有種冒險的感覺，因為後果無法預料。一般慣常的反應是：害處已知總比未知的好。慎重的人，自然亦會這樣想：這種罪惡縱可避免，但接踵而來不知會有甚麼更大的罪惡？法例修改後的第二第三步後果會怎樣？

10.3 現行法例修改後，情況會如何？本委員會提出這問題時，先已明瞭社會人士的態度、價值觀和行為與成文法之間不斷產生的相互影響。有時成文法雖然可以改造這些行為準則，但它往往亦會因社會人士的態度和行為逐漸轉變而須作修改。從歷史觀點來看，法律是跟隨人類的態度及行為不斷改變。本委員會並非主張成文法應該受制於社會人士的態度或行為，而是主張立法者應時刻留意社會不同的需要，在必要時修改法例，以應所需。

10.4 英國現時的法例，年代久遠，例如有關雞姦的法例，可遠溯自中世紀黑暗時代，而有關粗獷行為的，亦有一百多年歷史。法例的字句可能未有多大改變，但我們這些受法例規範的人，卻在公開行為及私生活方面，以及在思想、態度和法律觀點上，不斷改變。以上各因素實在是互為因果的，譬如：法例雖禁止某種行為，卻不能使該行為朝夕間絕止。同樣地，撤銷對某種行為的禁制，亦不會使該行為一夜間盛行起來。行為改變的程度，不僅受法例改變的影響，亦視乎社會人士的反應而定。這種反應主要受社會現行的觀念和習慣影響。

10.5 對那些存有一定的宗教或精神價值觀念的人來說，若干世俗行為的原則必須堅守不移，因此，某種行為若屬“罪惡”，則任何未能積極制止該種行為的行動亦近乎“罪惡”，所以有人認為如修改法例不做到這點，便是一個不能接受的結果，我們卻認為，根據第二章所提出的原則，法律不必迫人奉行任何精神標準。法律既不能亦不應設法遏止法例修改後對社會道德所帶來的不良影響；違反精神標準的行為，只要不妨礙他人的生活，應以精神而非世俗的方法加以制裁。

10.6 在進行研究期間，我們緊記一點，就是本港同性戀生活醜惡的一面，即使並非全部，亦大部分與日常所見利用年青女性得到性滿足或謀利的

情形相同。縱使法律給予年青女性的保障遠較男性為多，但法庭處理有關虐待、誘姦、暴力對待、綁架，勒索及敲詐少女的案件，卻比有關男性的為多。

10.7 記憶所及，過去三年內所發生與同性戀有關的暴力死亡案件僅有兩宗。第一宗是麥樂倫畏罪自殺案；第二宗則涉及一名古董商人，案發時，該受害者被其同性戀合伙人洗劫，綑綁、塞口，終於窒息而死。但在同一時期，稱為“異性關係影響”而發生在女性身上的暴力罪案卻罄竹難書，例如：一名外籍水兵用掃帚柄殺害一名妓女；一名中國籍青年男子為爭風呷醋而割去情敵的陽具；一名男子殺害多名少女，進行屍姦，割去死者的性器官，存於瓶內；此外更有不少中國籍少女遭人強姦後，被迫賣淫。

10.8 以上多個例子闡明一點，就是男女雙方同意私下進行慣常的性行為雖屬合法，但由情慾所引起的罪案卻時有發生；在同樣情況下進行同性戀行為則屬違法。假如同性戀行為與日常異性戀行為一樣，享有同等合法地位，後果會是引起更多不幸，抑或減少不幸？更多罪行，抑或全無影響？抑或無可能預料？簡而言之，若把成年人雙方同意私下進行的同性戀行為，不再視作違法，是否一定導致同性戀罪案的泛濫？本委員會認為這種可能性極小。

10.9 本委員會所關心的，當然並非只是同性戀法例的修改是否會助長罪行？同樣重要的是，法例的修訂是否會令同性戀者的公開行為的形式有所改變，因而引起社會人士的反感。由於此舉而造成社會上不必要的緊張氣氛，是修改法例所應避免的後果。

10.10 本委員會有見及此，曾初步參考其他地區的有關法例，但由於鄰近亞洲國家的有關法例尚未修改，我們無法從它們的經驗借鏡。

英格蘭及威爾士

10.11 本委員會除研究在本港搜集所得的資料外，並要求一間英國調查公司給予協助，以便取得有關英國於一九六七年修改法例後對社會所造成影響的可靠資料。結果，本委員會無法找到任何直接或全面討論這個問題的資料。作家羅斯（Gordon Rose）曾經指出“對這個問題進行研究是很困難的，這點人所共知，且亦很少證據證明研究結果確實。”（一九七零年英國犯罪學期刊第三四九頁）

10.12 不過，英國內政部研究小組一位成員汪士利（R. Walmsley）曾對按照英國警方數字所編訂的統計資料進行分析（載於一九七八年刑事法例檢討第四〇〇〇頁）。我們感興趣的，是他的結論，現轉錄如下：

“摘要

1. 一九六七年性罪項法規定成年人雙方同意而私下進行的同性戀行為合法。自該法令實施後，警方紀錄所得，男性間猥

褻行爲罪的數字增加了一倍，犯該項罪行而被檢控的人士則增加兩倍。

2. 在一九六七至一九七一年間，估計檢控率（實際提出檢控案件與可能提出檢控案件兩者間的比率）差不多提高了一倍，且均較一九六七年的數字高出很多。
3. 增加的案件中，大部份所知及被檢控的罪行，涉及年齡在二十一歲或以上的男性間的猥褻行爲（即不一定是雞姦，亦非私下進行）。
4. 有關已記錄在案的事件及檢控率方面，不同警區之間有很大差距。
5. 一九六七年以後情況的改變，原因可能有三。首先，同性戀者的態度及行爲可能有所改變；社會人士（在舉報有關罪行方面）及警方對同性戀者的態度及反應可能有所改變。第三個假設是性罪項法本身導致已記錄在案的事件有所增加及檢控率提高，因為警方可根據該法例，更有把握對公開作出同性戀行爲的人士採取行動，同時該法例制訂簡易程序審訊，以處理涉及男性間猥褻行爲的罪行，使檢控工作更容易執行。
6. 至於不同警區間有所差距，可能是由於若干當地因素，包括問題的嚴重程度、治安人員人手是否足夠，以及是否容易將有關案件提堂審理。這實在不足爲奇，亦不應因此而批評警方。”

10.13 內政部在一九七九年進行的一項研究顯示，一九六七年以來，在英格蘭及威爾士，犯同性戀罪行而被定罪的人數增加了三倍。在最近出版的《法律與同性戀》（*Gays and the Law*）一書中，紀保羅（Paul Crane）認爲這項增加，與一九六七年性罪項法所制訂的簡易程序審訊不無關係。

蘇格蘭

10.14 英聯邦採辦處向本委員會提供一些與同性戀罪行有關的罪案數字。根據一九八零年刑事審判（蘇格蘭）法第八十條第(7)款的規定，該等有關行爲仍屬違法（即成年人雙方同意但非私下進行的同性戀行爲）：——

<u>年份</u>	<u>被定罪案件數字</u>	<u>向警方舉報的罪案數字</u>
1977	4	15
1978	7	17
1979	7	35
1980	11	19
1981	39	82

10.15 如根據這些簡陋的資料來作一個確實結論，實非明智。然而，以法例重申蘇格蘭政府的立場，可能使人們向警方舉報的數字，以及警方提交檢控當局處理的案件數字，均有所增加。

澳洲

10.16 新南威爾斯反歧視委員會最近進行一項研究。研究結果顯示，自從制訂法例，准許成年人雙方同意私下進行同性戀行為後，在澳洲首都直轄區（Australian Capital Territory），與同性戀罪行有關的檢控數字有所減少。此外，研究並發現，自從放寬同性戀法例後，在南澳洲，犯同性戀罪行而被捕的男性較前減少。然而，研究報告書的作者卻指出，舉報個案數字太少，因而影響統計數字的可靠性。

美國

10.17 一些來信的人所最擔心會發生的事情，以多方面仍屬西方思想觀念熔爐的美國來說，其實已層出不窮，而且亦極其公開。過去十年來，在美國紐約、波士頓、芝加哥及三藩市所發生的公開同性戀行為，在當地人心目中，已是司空見慣，但在本港則匪夷所思，絕非一般市民所能容忍。以下的一段文字，摘錄自一九七九年四月二十三日時代周刊的封面專題報導——“同性之戀，其樂何如？”，當可舉例說明美國現今的情況：

“走進芝加哥北部新鎮地區，便很快留意到該市的新面貌：身穿窄牛仔褲、頭梳短髮的男子，成雙成對；林肯公園內觀看排球賽的觀眾，全部是男性，密歇根湖邊漫步、沐浴在春風裏的人，也全部是男性。在過去數年，新鎮已成為芝加哥第一個公開同性戀活動中心，初步後果與十年前所預測的一樣：去年夏天，區內年青流氓，深夜聯群結隊，浪蕩街頭，高呼反同性戀口號，並將數名夜歸男子圍毆。”……

“不過，其後發生的事，如果是數年前，無論在芝加哥或美國其他主要城市發生，都會令人覺得不可思議。當地一份同性戀周刊《同性戀者生活雜誌》，為了阻止毆打事件發生，便組織多隊巡邏隊進行街道巡邏，屬區內居民組織的‘正派’志願人士，甚至芝加哥警察，亦給他們一臂之力……”

“在新鎮發生的事情，可說是代表美國國內的一種風氣，這種風氣，正逐漸將屬美國少數人口的同性戀者的生活改變過來。男女同性戀者不像以往，再無須偷偷摸摸過日子了。他們盤踞大都市內一些地區，經營酒吧生意，甚至在保守的小市鎮內成立教會。又因有感於大部份同性戀者仍不敢將其癖好公開，遂於全國各地設立聯會，藉此向該等人士提供輔導和友情。他們

努力追求自由開放的生活，但離成功的日子尚遠，因為一如在新鎮一樣，全國各地的同性戀者仍然備受猜疑，受人敵視，亦不時受到暴力對待。不過，他們已逐漸被人接納，甚至獲得異性戀者的同情；很多異性戀者根本還未知道應如何對待他們。總之，今日所發生的事，在昨天，對同性戀者或非同性戀者來說，都是絕無可能發生的。”

10.18 美國伊利諾州一份調查報告書指出，自從該州通過准許雞姦的法例後，檢舉兜搭行爲的數字即見上升。報告書的作者認爲，這是由於警方加強對付公開同性戀行爲所致（根尼遜（Gunnison）：《美國同性戀運動》（*The Homophile Movement in America*））。

10.19 我們又參攷過一篇文章，題目是“法例准許成年人雙方同意進行同性戀行爲後在美國七州所見的後果”（作者：佳思、賴特、加勒特及威爾遜，《同性戀期刊》一九七六年第一(四)期第四一九頁（Geis, Wright, Garrett and Wilson, 1976, *Journal of Homosexuality*, Volume 1(4), page 419））。文章的作者自稱：“這篇文章是報導一項調查結果；接受調查的人士計有警方人員、檢察官以及各同性戀組織成員，他們來自美國七個州，而當地的法例，已規定成年人雙方同意私下進行同性戀行爲不屬違法。雖然甚多人作出悲觀的預測，但從接受調查人士所作的答覆來看，該法例自通過後，別的後果不談，單就同性戀者與未成年人進行同性戀行爲、同性戀者使用暴力以及他們私下進行同性戀行爲的次數等方面，均未受任何影響。此外，法例放寬後，同性戀者的問題，多少獲得解決，而警方亦可騰出較多時間，進行一般人認爲更嚴重罪案的調查工作。

10.20 該次調查是用問卷方式進行；七十個警察部門，四十個檢察當局（分屬人口逾五萬的城市的四十個地區）及四十七個同性戀組織，均獲派發問卷。其中作覆的警察部門共有十七個，檢察當局十三個及同性戀組織六個。很明顯，以任何標準來說，這是一個很小的抽樣調查。文章的作者亦承認該項調查有不足之處，所以解釋說，他們目的不在全面調查，而在探求官方人員及熟悉此方面情形者對法例放寬後的看法。

10.21 調查的主要發現是，百分之八十八的警方人員，百分之九十的檢察官及百分之七十三的同性戀者均認爲同性戀者使用暴力的事件，並未有因此而增加。其次，百分之八十的檢察官、百分之九十六的同性戀者及百分之六十九的警方人員指出，在法例更改後，未成年人牽涉入同性戀事件並不比以前普遍。百分之七十一的檢察官、百分之六十三的同性戀者及百分之五十四的警方人員相信，私下進行同性戀行爲的事件，並無顯著增加。

10.22 此外，半數作覆的人認爲，“同性戀”酒吧數目已見增加；佔百分之二十六的檢察官及百分之五十九的警方人員指出，在公眾場所兜搭的事件亦告增加；幾近一半作覆的人說，社會人士對同性戀者的非議已見減少；百

分之七十五的同性戀者認為，現時同性戀者被拘之數和先前一樣，只不過他們現在是根據“公安”法令被檢控，但對此點表示贊同的檢察官和警方人員，卻只有百分之十強。最後，佔百分之五十的警方人員指出，放寬私下進行同性戀行為之法例通過後，可讓他們騰出更多時間來應付更嚴重的罪案。

10.23 作者在總結時指出，答覆問卷的人一致相信，法例准許私下進行同性戀行為以後，先前所懼怕的不良後果，並沒有出現。作者又引用荷蘭一項調查為例。該項調查顯示，荷蘭法例准許私下進行同性戀活動以後，同性戀罪案數字，並未因此而有所增減。

結論

10.24 本委員會為撰寫本章而搜羅的資料，很明顯有其不足之處。探求人們在法例修訂後行為有何改變的研究，常因下面幾個因素而有所困擾：有些國家，無論在放寬同性戀法例前後，均無指明公開猥褻罪案或非禮案犯法者或受害者的性別或年齡的習慣；無論同性戀行為屬違法與否，各地均有不同的偵查和檢控政策，且不予公開。因此將各地情形比較，是否以類比類實在不得而知。本港和外國都缺乏可靠的統計資料，而本港處境特殊，即使把各國社會的不同經驗加以引申，直接用於本港，亦不會有多大裨益。具體地說，本委員會沒法找到有關法例修訂後如何影響以華人為主的社會的研究資料。

10.25 縱使或有這些研究資料，本委員會或許會作過高的要求。我們或許會要求研究者用各地不同處境的經驗，代入我們所熟悉的本地習俗與社會觀念，而為我們預卜將來變化如何。

10.26 本委員會承蒙本港各界支持，提交意見書，我們已在第九章表示謝意。部份提出意見的人士談及他們預料或恐懼法例修改後給社會帶來的後果。本委員會亦詳加考慮一些警告，特別是關於：更多同性戀者將會公開活動、同性戀者俱樂部會日益增加，不法之徒亦會吸納年青人加入賣淫組織，並用恐嚇手段進行敲詐等（參閱第 9.33 段或其他各段）。但有一點意見我們覺得頗為牽強，就是有人認為修改法例後，會引致成年男同性戀者與未成年同性伴侶發生關係時被檢控。事實上，即使是異性戀者的成年男性，亦須留意其女性伴侶的年齡。

10.27 坦白地說，本委員會審閱這樣多外國與本地的研究結果後，仍無法確實預測到修改法例後會引起甚麼後果。我們知道，如在這方面尋求不到確實的結論，實難令實事求是的市民感到滿意。唯一能向他們交代的是，本委員會已把各方面認為可能發生的後果，一一認真考慮，這些意見有助於我們達成結論和作出具體建議。本委員會所提出的建議，可能產生廣泛的影響，而其中較為明顯的害處，我們已盡力設法防避，這方面的意見將在下章介紹。但實際上，法例修訂的後果或大或小，其引致行為上或其他方面改變的程度，均受下列因素相互作用所影響：

社會人士對本委員會所提出建議的反應；
政府方面的反應，包括偵查和檢控政策方面；
有同性戀傾向的男性及女性公開和私下的行為反應；
社會人士對同性戀者公開行為的反應；
社會對同性戀行為的制裁力量；
包庇和賣淫集團的反應；
司法部門未來判處刑罰的政策；
僱主的態度及其僱用方針；
娛樂和旅遊事業的反應。

未來的變化可能很大，本委員會無法預測將來的情況究竟如何，實感遺憾；我們委實沒有預知未來的本領。

第十一章 本委員會的論據及總結

緒論：本委員會依循的原則

11.1 本委員會為此主題下的各項問題尋找答案時，不但盡量採取實事求是的態度，而且還探索若干原則，俾往後有所遵循。由於“管制同性戀行為”的法例類目繁多，其中包括懲治純屬同性戀活動的罪項如男性間進行粗獷行為的法例，以至保障兒童和青少年、監管在公共場所和禁閉地方（例如監獄）行為、管制色情刊物的法例等，所以，本委員會的研究範圍十分廣泛。

11.2 本委員會所採用的若干原則，從先前數章的論述中可見一斑。法律的功用是本委員會研究的焦點。本委員會認為，就管制同性戀行為而言，法律主要是保護易受他人危害的人士，如青少年和弱智人士，免受別人利用以及在性方面流於墮落；此外，法律亦照顧那些反對公開猥褻行為或引起大多數人反感行為的市民。本委員會絕不同意濫借自由之名而削弱上述兩項重要的保護功能，反而認為在可能範圍內還須予以加強。因此，如任何人所作的行為侵害他人，或有損他人或使他人極感厭惡，本委員會相信在此情況下，法律便須採取預防行動。

11.3 本委員會體會到，在我們社會中，家庭是重要的一環。凡涉及家庭群體生活的法例，均應以保存和鞏固家庭組織為首要目標。為保護青少年，使他們能在正常環境下長大，縱使採取最嚴厲的措施，亦不為過。為達致上述目標，我們有時不免較為現實，須從兩個俱非理想的對立辦法中，兩害相衡取其輕。

11.4 在進行工作的過程中，本委員會察覺青年人，不論男女，在性方面所受的影響和面對的危險均有相同之處。現行法例已為年青女性提供保護，甚至連她們本身的慾望亦予顧及，因為法例規定，某個年齡以下的少女，雖然出於自願，但與她們發生性行為仍屬違法。本委員會因此認為在可能情況下，青少年和弱智人士，不論性別，均應獲得同樣的法律保護，才屬適當合理。

11.5 本委員會深覺在本港社會最重要者在於確保法律和司法制度受到市民尊重。因為只有這樣，社會的結構組織才能堅強維繫。可是在這方面，存在的矛盾所產生的壓力亦不少。有些平日大力維護法律的人士，在很多情況下，卻知法犯法，本委員會對這種現象感到關注，同時亦擔心現行的法律制度可能倉滋長勒索、黑社會活動及利用青少年作為謀利工具等非法勾當。不過，如果修改法例，本委員會卻恐怕因此而造成一小部分人會公開作出引起大多數人反感的行為，從而使法律尊嚴受損。對於美國所體驗到的不良影

響，本委員會引以為鑑，而特別是本港同性戀者的意見，對本委員會亦有警惕作用。該等意見摘錄於第 9.32 至第 9.34 段。

11.6 從第三、第四及第五章所載的證據，本委員會相信，在本港社會各個不同階層中，無論是何種族，都有一小部分人先天有同性戀的傾向。這群人為數不少，他們天賦的特性根本無法改變。我們亦知悉不少這類人的不幸遭遇：麥樂倫督察自殺事件可算是一個極端的例子；不過，本委員會認為附件十六所載一名華籍同性戀者的自白較具代表性。本委員會覺得，如果個人癖好或個人感情的表達，並無對他人造成傷害，而法律卻橫加禁制，從而不必要的增加不幸，則此等法例並不合理。在某些範疇內，如無必要為他人提供保障，則法例不必負起道德制裁的功用。

11.7 本委員會根據上述的觀點，提出以下建議。

婚姻

11.8 本委員會認為，有關結婚及離婚的法例，毋須因有男女同性戀行為而進行修訂。本委員會特別作出總結認為，並且建議不應修訂法例容許同一性別的人結婚。

11.9 本委員會曾研究同性之間長期維持的性關係（即第 6.9 及 6.10 段所論述者），應否獲得法律保障。本委員會總結認為，並且建議：作為公共政策，同性戀關係不應獲得法律承認，使其與不為法律承認之異性關係處於同等地位，及協助遏止賣淫活動。

二十一歲以下青少年

賣淫、介紹他人賣淫及性交

11.10 保護青少年究竟有何善法？本委員會所關注的主要是在同性戀方面。本委員會認為，男童和少男均應獲得適當的保護，免在性方面遭人利用和侵犯。麥樂倫督察死因調查中所收集的證供，亦可見不少男童和少男受人如此利用的事例，充份顯示他們須有法律保護。我們發覺，法律對女童和少女提供保護，卻完全沒有適用於男童和少男的類似法例規定，實令人詫異。刑事罪條例（香港法例第二〇〇章）第十二部制訂廣泛的法規保護少女和女童，其中包括規定懲治違犯下列罪項的人：

- 使用恐嚇手段介紹女童或少女與人性交；
- 與十三歲以下女童性交（終身監禁），或與十六歲以下少女或精神不健全女子性交（監禁五年）；
- 在違反少女父母之意願下，以任何理由拐帶十六歲以下之未婚少女，使其脫離父母；

- 在上述情況下拐帶十八歲以下少女，以達成性交目的；
- 窩藏或控制女子，以達成賣淫目的；
- 介紹女子當娼；
- 介紹二十一歲以下女子或精神不健全女子與第三者性交；
- 引致或鼓勵精神不健全女子賣淫；
- 身為樓宇業主或住用人，引誘或明知而容許十六歲以下少女在該樓宇內賣淫。

11.11 對於唆使或引導少男賣淫之人，卻未有類似的法例加以懲治。此外，基於第 6.61 段所述理由，任何人士只要局部倚賴妓女收入為生者即屬違法，但如果倚賴年青男妓的收入過活，卻可逍遙法外。法律對男童和少男不加照顧，是否因為假設他們較女童更能照顧自己？又或認為他們都是定力較強，足以抵抗男性或女性的誘惑？抑或社會人士不敢面對現實，寧願相信男士不會遭受性侵犯？真正理由可能是最初制訂保護女子的法例時，同性戀及男妓並不構成問題，不過麥樂倫督察死因調查的結果，已證明情況今非昔比。

11.12 本委員會原則上建議，前述為女性提供的保護，亦應適用於少男。不過，問題是保護女性的法例，大多將性交定為構成罪行的因素，可是，男性間的同性戀行為，雖對受害者造成同樣傷害，卻未被視作與性交相同。因此，如要為男童和少男提供保護，則有關法例內的罪項應另訂定義，以便懲罰藉着同性戀行為唆使、引誘或侵犯男童和少男，或引致他們參與同性賣淫活動的不法之徒。

11.13 解決問題的第一個辦法，本委員會建議在刑事罪條例及其他有關條例內，“賣淫”一詞的定義應包括男性賣淫在內，使各項有關制裁他人利用年青女性作為謀利工具的法則，亦可用以對付靠男妓謀生的人。

11.14 第二個問題，是現時規定與女性“性交”可構成罪行的法例，如何同樣引用以保護男童及少男。第八章所載由英國威廉士教授（Prof. Glanville Williams）建議並經維多利亞省及其他澳洲省份採用的方法，本委員會亦曾予以考慮，但基於種種理由，這些方法目前不宜在本港實施。

11.15 本委員會認為，有肉體接觸的同性戀行為和無肉體接觸的同性戀行為應有所區別。與未成年少女性交或與男童發生肉體接觸，和只以淫邪的態度與他們交談，兩者當然大有差別。本委員會研究此問題後，建議第 11.10 段所載刑事罪條例第十二部有關“非法性交”的條款，應照現時條文重訂，但範圍則包括同性肉體接觸及異性性交，該等規定對男女同樣適用。

11.16 本委員會並建議，上文所載有關誘拐某一年齡以下少女脫離家庭控制的法例條款，亦應適用於同一年齡的男童，因為男童被誘離家的情形縱屬

罕見，但可能性亦會存在。上述各項建議的副作用，是對女性同性戀活動加以懲治，雖然這類情形甚少發生。

非禮罪

11.17 在法律上說，有性動機的接吻和觸摸亦作非禮論。不過，如得對方同意，則不屬非禮，罪名亦不會成立。刑事罪條例（香港法例第二〇〇章）和侵害人身罪條例（香港法例第二一二章）分別將非禮女性和非禮男性列為不同罪項。不論男女，均可被判犯向同性或異性非禮的罪名。根據法例規定，在上述罪項中為受害者的兒童，如不足某一指定年齡，雖則同意進行，在法律上來說亦不能否定非禮罪名。所謂指定年齡，在女子來說是十六歲，男子則為十三歲。因此，如能說服對方同意，任何年齡的男女如向超過上述指定年齡的男女非禮（未至雞姦或粗獷行為），則不屬違法。非禮女性最高可被判監禁五年，非禮男性則為十年。

11.18 兒童由於年少無知，缺乏經驗，思想未成熟，未能作出明智判斷，所以本委員會認為設法防止兒童在性方面受人教唆引誘，實屬適當，且亦有此必要。本委員會在考慮各項因素後，建議非禮罪應予保留，但須包括指所有在未得對方同意而作出的非禮行為，包括對青少年所作出的行為，這是由於青少年年輕，在法律上是被視為無表示同意能力者；此外，非禮男性和非禮女性的罰則應予劃一。本委員會認為監禁五年的罰則較為合理，且亦能配合我們所討論的其他罪項的罰則。

11.19 提出上述建議後，本委員會跟着考慮，在同性和異性非禮事件中，要達到什麼年齡才能有權表示同意。同性非禮和異性非禮事件當然明顯有別，但卻不應獨立考慮。就同性非禮來說，本委員會認為縱使同性戀行為不視作違法，但在目前階段，基於稍後再予闡釋的理由，倘將男性有權表示同意的年齡定在二十一歲以下，本港社會勢難接受。

11.20 在考慮異性非禮行為時，所採取的態度應有所不同，絕大部分兒童在長大後都會愛慕異性。在成長過程中，一些未至於性交的性接觸如接吻等行為，實合乎自然。對於這類異性戀行為，法律不應加以干預；假如將有權表示同意年齡定得過高，即會使一些清白的行為變成犯罪行為。不過，如將年齡定得過低，則不能阻嚇成年人對青少年進行引誘，尤以引誘同性者為然。有關異性非禮的法例，將有權表示同意年齡訂得男女相差甚大，本委員會亦認為不合理，亦不合邏輯。因此，本委員會建議有權對異性戀行為表示同意的年齡應定為十六歲，男女雙方均同。本委員會雖然提出上述建議，仍認為有需要在稍後階段對成年男女在互相同意下進行同性接觸的行為，加以研究。

公眾行爲

11.21 本委員會認為，基於前述理由，在公眾人士常到的地方作出可能令社會上沉默的大多數市民憎惡的行爲，則禁止這類行爲仍屬首要之務。本委員會察覺，在這方面，目前法例對於保障家庭和社區生活顯然有不足之處，因此建議加強法例的規定。法例如果容許在公眾地方作出令成年人憎惡的行爲，已屬不宜，但這些行爲如果發生在兒童身上或兒童在場時發生，則更難容忍。

11.22 關於管制公眾行爲方面，行爲不檢的最高刑罰爲罰款五千元及監禁十二個月，猥褻暴露身體爲罰款一千元及監禁六個月，在公廁內作出猥褻行爲則只罰款二百五十元。

11.23 本委員會察覺，本港法例除規定上述以及本報告書其他章節所載的個別罪項外，並無一條有關猥褻行爲的概括性罪項。本委員會對此深表關注。由於法例並無制訂此罪項，因此，如果一名男子在遊樂場內引誘兒童，倘不至於粗獷行爲、非禮或猥褻暴露身體，則只能根據遊樂場附例最高判處該男子罰款五百元及監禁一個月。

11.24 本委員會認為必須制定法例，使兒童和家庭成員在公眾地方獲得更佳保護，以及阻嚇不法之徒在公廁、泳灘、泳池或其他公眾地方引誘、偷窺或侵犯青少年，或作出其他有性動機的行爲以致令一般市民感到憎惡。因此，本委員會建議新訂一條猥褻行爲罪項，其罰則應與行爲不檢相同，即罰款五千元及監禁十二個月。新訂罪項須含義廣泛，足以取代現行有關猥褻暴露身體、在公眾地方大小便等罪項，以及根據公眾衛生及市政條例（香港法例第一三二章）而制訂的規則所指有關猥褻行爲的大多數罪項。法庭可根據案情嚴重性，諸如地點、在場人士年齡，受害程度等因素，以決定刑罰的輕重。同爲猥褻行爲，在學童放學時在校門外發生者所應判處的刑罰，當然應比只有成年人在場的地方所發生者爲重。

11.25 此外，泳池、泳灘和兒童遊樂場的管理員顯然未獲賦與博物館、圖書館、公廁和浴室管理員相同的權力，以便把似將違犯法紀的人，包括可能會犯猥褻罪的人，驅逐離場。本委員會相信驅逐行動是保護青少年的有效預防措施。因此，本委員會建議修訂根據公眾衛生及市政條例（香港法例第一三二章）而制訂的附例，授權公眾泳灘、泳池及遊樂場的管理員，在適當時候有權飭令某人離場，不服從者可被判罰款一千元及監禁一個月。

11.26 我們發覺，關於公眾行爲的罪項是否適用於學校，有人仍存有疑問，因爲學校通常並不視爲公眾地方。本委員會相信所有男女學童都應受到保護，以免在課室或廁所內受到同學或師長一些較顯著，較令人厭惡的性侵害。因此，我們建議考慮將有關猥褻行爲之罪項，擴大至包括學校以內之行爲在內。

11.27 有關酒吧的問題，本委員會曾詳加考慮。據聞本港若干酒吧有同性戀者和男妓流連其間。這類酒吧，與一般有異性活動進行的酒吧比較，為數甚少。不知內情而誤入的顧客，難免感到十分尷尬。有待解決的問題有二：一是與酒吧持牌人有關，二是如何對付男妓。

11.28 首先，就男妓來說，正如本委員會指出，遊蕩或兜搭作不道德行為等罪名，似包括同性戀行為在內。但該等酒吧並不屬法例所指的公眾地方，因此，本委員會建議，將香港法例第二〇〇章刑事罪條例第一四七條所載有關兜搭作不道德行為罪之規定，擴大至包括公眾常到的地方，如大廈內的公有部分、公開營業的酒樓餐廳、酒吧、跳舞場所等地方，刑罰為最高罰款二千元及監禁六個月。為避免引起疑點，本委員會建議修訂有關不道德行為的定義，使該詞明確包括同性戀行為在內。

11.29 其次，如證據確鑿，持牌人可被控協助及教唆娼妓罪名。但很多時要提出證明並不容易，因此須採用另一種制裁。倘若發牌規例或根據香港法例第一〇九章有稅品條例而發給的牌照所載“娼妓”一詞，係包括男妓在內，或經修訂後包括男妓在內，而本委員會亦建議作此修改，則如持牌人容許該等人士經常流連於其所經營的場所，將屬違反牌照規定。我們知道現時部分酒吧持牌人容許妓女進入酒吧內，因此，我們覺得問題的癥結乃在法律的執行，最終制裁是吊銷牌照。原則上，本委員會認為即使事屬可行，亦不應對“女子酒吧”和“同性戀酒吧”有所區別。

其他重要事項

11.30 我們現擬一談本委員會在工作過程中所遇的一些問題。由於它們與本委員會職權範圍關係不大，我們未有作全面研究，而只建議當局加以檢討。

拐帶及販賣兒童

11.31 目前，遺棄、販賣和拐帶兒童分別列為三類不同的罪項。有人認為這三類罪項應歸納處理。無論如何，為保護兒童，阻嚇可能會對青少年作性侵犯者，本委員會認為販賣兒童（香港法例第二一二章侵害人身罪條例第四十四條）、拐帶兒童（香港法例第二一三章保護婦孺條例第二及第二十六條）以及遺棄兒童（香港法例第二一二章侵害人身罪條例第二十六條）等罪項的罰則應予提高。

淫褻性電話

11.32 據悉市民接獲淫褻性電話的次數日有增加。本委員會知道這些電話對成年人會造成騷擾，同時也明白會對接聽電話的兒童造成損害。基於第 6.45 段所列舉的理由，我們建議當局採取措施，防範這類事件發生，特別是須提高刑罰（現時為最高罰款一百元或監禁一個月）。

偷窺狂

11.33 本委員會知悉，過去兩年來，本港人口稠密的屋邨的浴室或睡房，經常有被人窺秘的情形出現，令人非常討厭。最近，一名警伯自浴室外偷看時，亦不慎由高處墮下。目前沒有法例足以有效處理這個問題，因此，當局須考慮採用什麼有效方法予以解決。

淫褻刊物及影片

11.34 本委員會感到關注的另一問題，是很多人利用色情圖利，例如私下拍製照片或影片，然後公開發售，這些便成為市面的不良色情書刊物品和色情錄影帶。一直以來，立法機構的政策主要是針對此等物品的出售，而不是此等物品的製作。本委員會建議有關當局應從速考慮是否要對促成、經營、安排或參與色情物品製作這類活動的人士加以處罰。此外，當局亦須考慮；授權法庭根據售出或將會售出的色情物品數目、獲利或將會獲利的多寡、參與這些活動者的年齡，特別是那些與同性戀活動有關的，從而確定罪項的嚴重程度。

11.35 本委員會對色情刊物的輸入，亦表關注。我們看到一些英美及各地的期刊，發覺其中一部分是確實為同性戀者傳達他們有共同興趣的消息，如文字評論等，其他則圖文並茂介紹色情玩意。本委員會對兒童可以隨便買到書中推銷的物品，表示關心。

11.36 本委員會明白書刊雜誌及錄影帶進口商所面對的困難。鑑於一般人對什麼是不良，或什麼是淫褻，會有極不同及主觀的看法，進口商實在很難知道他們進口的貨品是否與法律有抵觸。雖然本委員會知悉數年前已曾討論這個問題，但現在建議有關當局考慮採取措施，讓真正的進口商在輸入有關書刊物品前，能夠先向一個比如說由社會人士組成的委員會諮詢，並由委員會裁定應否入口。這程序將有助當局取締大量在本港市面出售而年青人亦可買到的極度不良刊物及色情錄影帶。這個制度可使進口商厲行自律，他們可將書刊物品進口及分發而冒被檢控的危險；但殷實商人如有懷疑，則可向審查員徵詢。審查員除有權禁止有關書刊物品進口外，還可規定條件始批准進口，例如將內容刪剪，或只限向成年人出售等。

性商店

11.37 雖然性商店在本港目前並不構成問題，但我們提醒有關當局，性商店在東西方國家的一些大城市現正逐漸增多，其作為色情場所的危險性亦越來越大，青年人極易受誘墮落。這種事情預防勝於治療，因此，本委員會認為當局應對情況不斷檢討。

僱傭

11.38 本委員會認為，如果在有限度情況下，將男同性戀行為不視作違法，則一些現時可引致刑事起訴及可特別藉以將某些政府僱員解僱的罪項，亦可撤銷。要是現行政策不作改變，則有同性戀癖好的政府僱員受到勒索，政府機密外洩的危險，在若干程度上將繼續存在。如果本委員會的其他建議獲得接納，我們認為值得按照第 5.36 至 5.40 各段所提出的方法，檢討現行公務員僱用政策。正如我們曾經強調，自然法的原則將有助我們對個別情況作出考慮。

成年人彼此同意而進行的同性戀行為

11.39 有關男女同性戀行為的法例，本委員會故意留至現在始行討論。倘若我們所作的建議能夠付諸實施，則所有未經對方同意而進行的性行為，均屬違法，而任何人士，如明知或可合理懷疑某人（不論男女）年齡不足十六歲，而與其進行性接觸，亦屬違法。

11.40 因此，本委員會訂出須向自己發問的問題如下：“十六歲以上男女彼此同意而進行的甚麼同性戀行為應受處罰？”，或“青年男女既有現行的保障，加上本委員會先前建議給予更多的保障，使其免受利用或受暴力對待，則應容許性別相同人士彼此同意而進行什麼性行為？應達到什麼年齡才可進行？”

11.41 讀者很容易發覺，這些問題所涉及的範圍，較若干輿論界向我們所力陳以及本委員會一開始即據以考慮的“一切同性戀合法化”問題狹窄得多。本委員會相信我們所擬的問題，是本委員會研究問題方法的一個既公平又符合邏輯的結果。我們一開始就提出下列問題：“甚麼人應受法律保護，和應保護免受甚麼侵犯？”我們的結論是，青年人必須受到保護。但年紀較長的又怎樣？

成年男子彼此同意而私下進行的同性戀行為

贊成保留現行法例的理由

11.42 為上述問題作答前，本委員會先將各界向我們提出贊成保留法例內現有規定的理由及意見，逐一列出，作為對本委員會及其他人士的提示。這些意見所涉及的範圍，都與“同性戀合法化”這個廣泛的問題有關，而不是本委員會現在所考慮的較狹窄一面：

- (a) 中國傳統道德觀念是不容忍同性戀的。
- (b) 同性戀及同性戀行為是西方人特有的，中國人不好此道。
- (c) 本港華人社會認為同性戀是難以接受的。

- (d) 同性戀破壞社會結構：它引進對社會習俗有損的不健康傾向和不道德行爲；威脅婚姻制度；對青年人有不良影響。
- (e) 人類生來是異性戀的。同性戀違反自然，因此不可以容忍。
- (f) 人類生來是異性戀的。同性戀違反自然，因此是一種病態。
- (g) 性交的主要作用在繁殖後代。任何性行爲若與此目的不符都是違反上天和人類的罪惡行爲，因此須受法律制裁。
- (h) 本港市民大多數贊成檢舉同性戀行爲。法律應顧及這點。
- (i) 每個正常人都是有性慾的。但除了同性戀行爲外，還有其他方法可以使性慾得到正常的發洩。
- (j) 修訂現行法例，使與英國法例趨於一致，可看作是外國人掌權的政府強把外來觀念加諸中國人的做法。

本委員會所持的論據及意見

11.43 本委員會認爲，有關同性戀問題的意見，其中反映發表意見的人對事實真相缺乏認識，未能正確觀察事物和對別人寬大。本委員會認爲男女同性戀者都是人類一份子，他們佔本港人口一個頗大的比例。根據保守的估計，同性戀者人數在二十五萬以上，甚或多達五十萬人。他們當中有各行各業和不同國籍的人，不單有中國人，其他人種也有。

11.44 正如我們所解釋，本港很有理由禁止青年人或弱能人士有機會被性活動影響，因爲這些人不是正常的性衝動未形成，就是未能完全對性衝動控制自如。我們沒有理由爲了使成年同性戀者得到他們認爲應得的內心平靜，而讓那些未有自由成熟判斷力的人成爲他們的犧牲品。

11.45 本委員會上文所提的建議，說明我們一向最感關切的，就是必須設法保護青年人和意志薄弱的人，一如婦女，免受其他男女利用。同時，亦設法保護市民及其家人免受令人反感的公開性行爲打擾。同樣，這些建議也顯示，我們無意協助創造賺錢的市場，使有犯罪傾向的人可從經營滿足性慾的生意中謀利，不論是涉及同性戀或異性戀活動。

11.46 另一方面，本委員會認爲，對於思想成熟和有判斷力的成年人私下進行的行爲，須作不同的考慮。在本港，像很多其他國家一樣，同性戀者被強烈認爲是社會的一種恥辱。但是我們覺得在法律上不應因此而對他們有歧視，同樣地，法律亦不應給予他們任何特權。對於同性戀者與其他成年人彼此同意而私下進行的行爲，我們必須以適用於其他類似情況的法律尺度衡量。在法律之前，他們應該得到平等的待遇，而不應挑出來受如某些人所建議的不公平對待。

11.47 本委員會在上文曾提及，在私底下，人人有權隨自己的好惡而生活，只要他人不會因此受到影響即可。本委員會再次強調這個觀念，因為它是本委員會的基本論據。

11.48 第一，這項權利是習慣法的基礎，因為私生活自由，是法律所保障，只要法例無明令對某一方面的權利加以侵犯或剝奪，則我們可自由享用。第二，本委員會相信，隱私權是香港極寶貴之事物，在這裡生活工作的絕大部份人士，無不珍之重之。雖則本港倫理觀念中西混雜，但本委員會相信，在廣義上這種尊重個人隱私的觀念，普遍存在本港家庭生活和商業活動的各方面。第三，一九四八年的聯合國人權宣言，正式確立全人類均得享有隱私權的觀念。至於對此類權利予以實質承認的歐洲公約和聯合國公約，英國均有簽署，因此聯合國公約是適用於香港。在公約內，“隱私權”一詞包括性方面的隱私權。第四，英國國會最近不但基於一般原則，將蘇格蘭在這方面的法律修訂，使與英格蘭法律趨於一致，而且亦修訂北愛爾蘭的法律，藉以實施歐洲人權法庭（European Court of Human Rights）的裁決。該法庭所作的裁決為：根據歐洲人權公約，北愛爾蘭有義務特別保障成年人在性方面的隱私權。根據國際公民權與政治權盟約（International Covenant on Civil and Political Rights），香港亦有此項義務。最後，有限度保障性方面的隱私權，即限於成年人雙方同意私下進行的，似乎是中國近代法律的標準規定。因此，香港若漠視這點，無異是與英國法律和中國法律背道而馳，亦有違國際協議。既然本港並非有極大需要保留這種差異，而本委員會亦未能證明有此需要，則香港實不宜獨樹一幟。

11.49 此外尚有其他次要的論據和因素，足以支持本委員會的主張，我們亦曾予考慮，現列舉於下：

- (甲) 既然許多文化（包括中國文化）均有同性戀存在，幾千年來未嘗消滅，故這項行為非西方所獨有而香港獨無；
- (乙) 在一些鄰近國家如中國和菲律賓，成年人彼此同意私下進行的同性戀行為雖然不受到法律懲處，但由於受密切的家庭關係和社會風氣約束，因此亦無證據顯示道德因而敗壞或崩潰。本委員會相信，即使將現行法例修訂，類似的社會風氣仍會在本港保持，使家庭關係繼續保持密切，從而阻窒不必要的同性戀行為；
- (丙) 絕大部份醫生認為，同性戀非屬一類精神病。本委員會認為有一點必須確立的，就是同性戀之所以不正常，是因為社會上大部份人都是異性戀者。其實，只有少數人特有的情形，例如出色的運動技能、超卓的學術成就、先天耳聾或失明，甚或使用左手等，亦同樣可算是不正

常。本委員會並不承認同性戀是一種病，但即使是病態，迄今尚無科學鑑定的治療法，更不用說可予治癒；

- (丁) 只要同性戀是成年人彼此同意而私下理智地進行，便屬私事，不像搶劫或殺人事件，會損害他人。因此，這類同性戀活動，不應作為刑事罪處理。屬於私人道德事項，通常不宜立法管制，更何況禁制同性戀活動的法例並不易執行。因為若要充分執行法例，警方便要進入相當多本屬奉公守法市民的私人居所，此等行動，徒令法律受到藐視。因此，同性戀活動，不宜由法律強制禁止；
- (戊) 本委員會相信，絕大部份成年同性戀者，除同性戀外，在其他方面都是奉公守法的，因此無理由指責他們擾亂社會秩序。然而，現行規定卻製造犯更嚴重罪行的機會，例如勒索、貪污或賄賂。可是，一點不容忽視的，就是社會所強烈反對的非刑事罪行，仍可成為勒索的藉口，雖然程度上來得較輕；
- (己) 人們私下進行的許多活動，例如通姦、姦淫以及賭博等，亦可算是不道德的行為，但卻不是刑事罪。其實，異性通姦有時較成年人彼此同意私下進行的同性戀行為所造成的損害更為嚴重，因為前者可能損及兒童的幸福；
- (庚) 如果同性戀行為因為妨礙繁殖，上瀆神靈，下乖人性，便須視為罪行，則其他類似行為，例如節育以至手淫等活動，按理亦應同樣作為刑事罪處理。

11.50 綜合上述各點和較早前所提的各項建議，本委員會的結論和建議是：法律不應禁止同性別成年人彼此同意而私下進行性活動。這個建議在付諸實行之前，還有多個問題待解答，例如：“私下”一詞應有什麼含意或定義？同性戀所涉及的淫媒業又如何？可肩負成人責任的年齡應定為幾歲？此等違法事項的刑罰如何才算適當？女性同性戀問題又應如何處理？

“私下”

11.51 本委員會注意到，英國法律仍然規定、成年男性彼此同意而進行同性戀行為時，如在場人數超逾兩名，仍屬違法；按照法例定義，該項行為即非屬私下進行。我們要考慮同一規定是否亦適合香港。當然在道理上可以說，法律一旦容許成年人彼此同意而私下進行活動，就不應故意規定在場人數；類似的異性活動，並無這種限制。

11.52 較早前本委員會曾指出我們的顧慮，恐防少數人士的公開行為會令大多數人反感，因而使法律和政府當局的尊嚴受損。假若本委員會的建議付諸實行，則一點令我們特別關心的，就是關於私人俱樂部和類似組織方面。

我們不欲看到新訂法例中“私下”一詞為有同性戀傾向人士所利用而逃過新法例的精神，雖則由於不可預見的法例漏洞，他們仍受新訂的法例管制。我們較早前的建議，原意是使小部份有特殊性傾向的人士，不致在不影響他人的情況下被禁進行自己天性的活動。然而我們此舉並非要將同性戀行為與異性戀行為絕對相等看待——男女共舞，不會使人看來不順眼，但同性共舞，卻會令許多人反感。要將我們這兩個目標調和，唯一方法是小心從事。因此，我們建議：“私下”一詞的定義，應只限於不超逾兩人的場合；但亦建議：這個定義應根據實行後所得經驗而加以檢討，因為在建議施行後兩三年，實情便會顯露出來。

介紹賣淫

11.53 明顯地，本委員會建議法律不應再禁止某一形式的彼此同意而進行的同性戀行為，所持論據隱含下述意思：大部份與該項私下活動有關的各種形式初步和次要責任，例如：串謀或意圖等罪名，在該等情形下不應存在，而本委員會亦建議如是處理。

11.54 本委員會相信，現行保護未滿二十一歲婦女免為淫媒介紹進行性交的法例，如香港法例第二〇〇章刑事罪條例第一三二條所載的各項規定，是對付從事此業者的有用武器。在第 11.12 至第 11.16 段本委員會曾建議法律的保護應予擴大，以防止未滿二十一歲的年青男性被介紹向異性或同性賣淫。鑑於本港現行情況和社會一般輿論，本委員會主張上述年齡限制仍應為二十一歲。等到施行數年後當局累積經驗，或可將這年齡限制降低而不致有危險。

可肩負成人責任年齡

11.55 至此，我們要研究男女同性戀活動的“有權表示同意年齡”。本委員會當然知道，任何人士與未滿十六歲的女子性交，即屬違法；換言之，女子與異性進行性活動的有權表示同意年齡為十六歲；此外，我們亦曾建議，同一年齡限制也適用於男性。本委員會現時要考慮的是：男同性戀活動和女同性戀活動的同意年齡應否定為二十一歲或以下。若定為二十一歲，可確保這方面的建議與有關介紹賣淫的建議互相一致。該年齡是香港現時成年人年齡，達到這個年紀的男性及女性，不論性傾向，在未實際合法投入這種性活動之前，都應可運用他們較成熟和理智的判斷力。本委員會深知，社會的性道德觀念正在轉變。但雖然有此事實及有女性有權表示同意年齡為十六歲的規定，本委員會仍然相信，本港許多男女非至結婚或年逾二十一歲，不會有與異性性交的真實經驗。本委員會寧冒過份小心之嫌，及所提建議顯然與異性性活動的建議不一致，我們仍作出下述結論和建議：男性同性戀活動的有權表示同意年齡，應定為二十一歲。由於此項規定，年齡在二十一歲以上而非以下的男子，彼此同意而私下進行的行為如雞姦、粗獷行為或非禮，即不

再視為刑事罪。正如本委員會在上文所指出，不視作違法並不表示在道德上予以贊同，更談不上加以鼓勵。本委員會在提出前述建議時亦指出，根據經驗，男子的年齡定為二十一歲可能過高，應予檢討；即使如此，本委員會在現階段仍主張以審慎態度提出建議。

女同性戀

11.56 由於前述建議，我們必須考慮其對女同性戀的影響。一般而言，十六歲以上婦女進行同性戀活動不算犯法，只要是雙方同意並私下進行即可。我們曾建議，二十一歲以下男性的類似行為不應不視作違法。因此，我們是否亦應規定年在十六與二十一之間女性的同性戀活動亦屬非法？主要基於現實理由，我們認為不應如此。我們當然知道這個立場與我們尋求在法律上平等對待男女行為的前題有矛盾。我們亦有理由，就是現時不算犯法的事，除非能證明確有需要，否則我們不欲訂為違法。我們一向集中研究男同性戀的問題，對女同性戀問題，則並無深入研究，是以難於作出結論。因此我們建議，當局應經常檢討有關情況，到有此必要時，才採取立法行動。

刑罰

11.57 雞姦目前最高刑罰為終身監禁，而男性間粗獷行為則為兩年監禁。本委員會的建議即使實施，下述事項仍屬違法：非私下與任何男性有雞姦及粗獷行為；與未滿二十一歲男子有雞姦或粗獷行為；非彼此同意的雞姦行為；雞姦動物或被動物雞姦；企圖或串謀進行這些罪行；協助、教唆、指導或介紹他人進行這些罪行。我們相信，這些罪行嚴重程度各有不同，不獨相互比較如此，即使與異性性行為罪項比較亦然，故當局應檢討有關刑罰，從而反映其間的差別。我們認為以不針對每一項罪行提出詳盡適當的刑罰為佳，因為此舉部份須視法律草擬時對這些罪行所下的正確定義和所作的分類，及與其他類似罪行的關係而定。職是之故，本委員會建議律政司先行檢討整個問題，然後制訂一套完整合理而切合本港情況的刑罰。

監獄

11.58 本委員會在上文所提建議，對監獄機構會有影響。但本委員會相信，特別管制在監獄機構內行為的法規，不必作相應之修訂。假如有監獄人員犯性罪行而受害人是囚犯，則法庭可考慮該員濫用職權而視案情輕重決定刑罰。因此，本委員會認為不必特別修訂現行法例。其次，基於保安和紀律理由，監獄機構對職員行為要求遠較外間嚴格，若干事件，雖未嚴重至刑事罪，仍須加以制裁。有鑑於此，又鑑於並無證據證明本港監獄機構現時有同性戀事件，故本委員會僅建議有關當局考慮應否將新訂的猥褻行為罪引用於監獄機構。

軍隊

11.59 有關軍隊人員在這方面的活動，並非本港法律所能管制。因此本委員會不擬提出任何建議。本委員會即使有建議，軍隊人員事實上仍須遵照“舊有”規定。本委員會接受在特殊情況下管制行為應基於不同因素之原則，而此方面問題，最宜由有關當局處理——就軍隊而言，即為英國政府。

相應引起的事項

11.60 本委員會現須考慮幾件可能受我們建議影響的事項。第一，所建議用於管制成年男性彼此同意而私下進行的同性戀活動的法例，是否應同樣適用於異性雞姦行為，抑或與女性進行的雞姦行為應續予禁止。現時，香港法例第二一二章侵害人身罪條例第四十九條規定：凡將陽具插入他人的肛門，不論被插入者為男性或女性，甚或為其妻室，且得其同意，均視為雞姦，違者可判終身監禁。

11.61 本委員會認為，上文所述各項防止利用青年賣淫和武力逼使他人就範的措施，大致上已給予婦女足夠保護。如法律果如本委員會所相信，僅在個人私下的行為侵犯他人時，才扮演保護者的角色，則某條禁止少數生理成熟女性私下願意做的事的法例，便不應再存在。將之撤銷，只不過恢復極少數個人的自由，使他們在這有限的範圍內，得以隨自己的意願來行事。這個範圍，本委員會認為是異性戀活動的一部份而非同性戀活動。我們深知，我們的建議可能看來不合理，因為男子雞姦年青人可能犯法，而雞姦婦人卻可能合法。然而我們認為，此兩項行為的性質，其實是可以有效地區分的，例如丈夫與同意這樣做的妻子之間，這項行為便屬於異性性行為。遇有這些情形，法律不應急於干擾雙方同意進行的活動。

11.62 雖然如此，本委員會認為，法律保護年輕女性免受此類行為侵害，是正確而適當，縱使其本人同意亦不例外。本委員會已作出結論，就年青男性而言，同性戀行為的有權表示同意年齡應定為二十一歲，亦即本港成人年齡。然而，法律准許彼此同意的異性性行為，年齡卻為十六歲。鑑於這些因素，加上社會一般人趨於性早熟和早婚，本委員會認為，男性獲得足十六歲女性同意而私下進行雞姦活動，應不算犯法。我們這項建議的後果是：法律除對介紹賣淫和賣淫管制外，對十六歲以上一男對一女彼此完全同意私下進行的性行為，不必予以追究。

11.63 其次，本委員會知悉，所提出的主要建議會稍為減少罪案數目，因而對引渡和移民兩類法例會產生有限度的影響。然而本委員會並不相信此點在實質上會引起困難，故決定不提出任何與此有關的建議。

11.64 最後本委員會知道，遊客是男妓和淫媒的一項主要收益來源。在我們的建議長期生效以後，我們相信，經過一段時間，香港對同性戀遊客的吸

引力使會顯著減弱，而為此目的而來香港的遊客，亦會逐漸減少。我們確信，為遊客本身之保障起見，如能明智審慎地向他們提供有關本港一般保護年青男女的法律常識，警醒他們免干法紀，肯定會有幫助。此舉最宜由酒店業人士和伴遊公司進行，因為遊客最可能向他們求助。鑑於這些情況，本委員會認為毋須提出任何建議。

本委員會建議範圍

11.65 本委員會各項主要建議之目的，在規範公開場合的行為，藉以維持公共秩序，及確保年青男性不會因年輕無知、好奇心驅使，為人所逼或引誘而在性事方面遭人利用，或為人慫恿離開家庭或從事賣淫。這些目的達致後，相信立法免除二十一歲或以上的成年男性因私下與性別相同、年齡相若、思想相近的人進行個人性活動而受懲罰，當不會有危險。這項建議所帶來的影響，就是雞姦、非禮和粗獷行為等罪名，即不能再加諸此類人身上。雖然如此，任何這類未經彼此同意的行為、非私下進行的行為，及與未滿二十一歲男性進行之行為，仍屬違法。

11.66 本委員會相信，如本委員會大部份建議付諸實施，則在其後數年內密切監察社會所出現的反應和行為模式，特別是違法情事的發生，當會有其作用，甚或確有此需要。然後當局可根據觀察所得進行檢討，包括考慮按照施行新法例後的經驗，同性戀有權表示同意年齡應定為多少歲才屬適當等。本委員會認為這項檢討宜於三年後進行。

第十二章 本委員會工作摘要

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：本委員會進行工作的方法

12.2 本委員會根據所理解情況，述明法律改革委員會所正確擔當的角色，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——醫學分析

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是先天性的絕對同性戀者，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：傳統中國社會的同性戀問題

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刑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，並轉述被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，可能會帶來甚麼後果。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，縱使規定某一行為不視作違法，亦不表示承認該項行為符合道德標準。本委員會指出，強烈的社會制裁對阻嚇不受歡迎的行為，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，本委員會對此事甚為關注。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為影響，則法例不必負起道德制裁的功用；但如該項行為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為所影響，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，本委員會同時建議對同性之間帶有商業交易性質的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)申請領牌之條件,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猥褻行爲。(第 11.26 段及第 11.58 段)

成年人雙方同意進行之同性戀活動

12.22 本委員會建議對於年逾二十一歲之男性雙方同意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 段建議若干行爲不視作違法,因此,凡同意、企圖、串謀……從事該等行爲者,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)
	Mr Timothy Bridgman	– Shipping Executive, John Swire and Sons Ltd.
	Hon Mrs Selina Chow, JP	– Commission Member Member of the Legislative Council and Urban Council Director, Brain-child Limited
	Dr Ambrose King	– Commission Member Chairman of New Asia College, Hong Kong Chairman of Department of Sociology, Chinese University of Hong Kong
	Mr Lam Wah Hui	– Chairman, Government School Teachers' Federation
	Dr George Ou	– Consultant Psychiatrist
	Mr Robert Ribeiro	– Barrister, Former Lecturer in Law at Hong Kong University (Commission Member - April 1980 - May 1982)
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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PART I - INDIVIDUALS

Mr Nicholas Adams	– Attorney General's Chambers
Mr Kemal Bokhary	– Barrister
Mr George Chang	– T.V.B.
Dr C.N. Chen	– Chinese University of Hong Kong
Mr C.C. Cheung	– Attorney General's Chambers
Mr Jonathan Daw	– Attorney General's Chambers
Mr N. Demuth	– Commercial Broadcasting Co.
Mr Anthony Dicks	– Barrister
Mr Neil Duncan	– Member, Movement for Homosexual Law Reform
Mr Spencer Griffith	– Attorney General's Chambers
Mr H.A. Hoosenally	– Solicitor
Dr Linda Koo	– Medical Anthropology Department, Chinese University of Hong Kong
Mr Henry Lethbridge	– University of Hong Kong
Mr Ricky Ma	– Attorney General's Chambers
Dr M.L. Ng	– Department of Psychiatry, University of Hong Kong
Mr T.L. Tsim	– Member, Movement for Homosexual Law Reform
Dr K.O. Wong	– Consultant Dermatologist

PART II - ORGANISATIONS

Association of Expatriate Civil Servants

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

Mongkok District, Tai Kok Tsui Area Committee

Movement for Homosexual Law Reform

The Scout Association of Hong Kong

Tung Wah Group of Hospitals

PART III - GOVERNMENT

Mr H.G. Ardley, Postmaster General

Mr K.K. Au, Home Affairs Branch

Mr R.M. Cameron, JP, Acting Deputy Director of Education

Miss S. Chen, Television & Entertainment Licensing Authority

The Commissioner of Correctional Services

District Boards :-

Islands District Board

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

Yau Ma Tei District Fight Crime Committee

Mr J.G. Evans, Education Department

Mr P.H. Hase, Home Affairs Branch

Mr D.A. Jordan, Commissioner of Customs and Excise

Mr M. Leung, Acting Director of Education

Mr Benjamin Mok, Census and Statistics Department

Mr E. Perkins, Royal Hong Kong Police Force

Royal Hong Kong Police Force

The Secretary, City and New Territories Administration

The Secretary for Home Affairs

Mr P. Singh, Secretary, Television Authority

Mr B.D. Wilson, Director of Urban Services

Mr C.H. Wong, Director of Medical & Health Services

Miss M. Wu, Television & Entertainment Licensing Authority

PART IV - OVERSEAS

American Civil Liberties Union

Mr R.M. Armstrong, Secretary to Standing Committee of Attorneys General, Victoria

Mr J.A. Baird, Procurator Fiscal Depute, Scottish Law Commission, Edinburgh

Mr Jose F.S. Bengzon, Attorney at Law, Manila

The Canadian Commission

Mr W.G. Chambers, M.C., The Crown Agent, Crown Office, Edinburgh

Mr F. Crowe, Procurator Fiscal Depute, Crown Office, Edinburgh

Mr J.R. Dick, Attorney General's Chambers, Australia Capital Territory

Gay Rights Advocates, San Francisco

Mr Justice Michael Kirby, Australian Law Reform Commission

Mr R.G. Neighbor, Deputy Public Prosecutor, Attorney General's Chambers, Singapore

New South Wales Anti-Discrimination Board

Miss Marion Pascoe, Office of Parliamentary Counsel, New South Wales

Mr Shiu Charan Singh, Commissioner of Law Revision, Malaysia

Mr C.J. Sumner, Attorney-General, South Australia

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(d) **TASMANIA**

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HONG KONG

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

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 - (2) Review of Homosexual Laws (19.3.80)
 - (3) Is This The Witch-Hunt of the Century (20.3.80)
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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."

'South China Morning Post'

Editorial, 2 February 1982

Day of reckoning for homosexuals

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

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

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

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

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

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

Ming Pao Daily, 16.7.1980

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

HOMOSEXUALITY BETWEEN ADULTS SHOULDN'T BE AN OFFENCE

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

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

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

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

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

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

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

The Star

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Law reform

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUBLIC APPEAL

I. THE FORM

PRESS RELEASE - JULY 1980

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

II. THE RESPONSES

EXTRACTS FROM LETTERS RECEIVED

THOSE AGAINST ANY CHANGE

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

"Homosexuality should not be legalized

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

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

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

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

- (3) From TANG Ho-yin :

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

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

"A Call To Object Resolutely the Legalization of Homosexuality.

I think the proposed amendments should not be implemented."

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

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

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

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

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

"Subject : Objection to Legalizing Homosexuality

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

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

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

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

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

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

(6) From Regina TONG :

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

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

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

(7) From General Association of Kowloon District Association :

"Homosexual activities must not be legalized.

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

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

(8) From three Christian Lawyers :

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

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

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

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

"Homosexuality is a vice.

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

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

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

THOSE IN FAVOUR OF SOME CHANGE

(11) From Perice :

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

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

(12) From YIP Ming-sum :

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

(13) From A Female Homosexual :

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

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

(14) From CHAN Hon-hung :

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

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

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

(15) From CHAU Hoi-ying :

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

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

(16) From An Ordinary Citizen :

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

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

(17) From Anonymous :

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

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

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

(18) From 164 Social Workers and Students :

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

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

(19) From TAM Kwong-tou, Kowloon :

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

(20) From Tai Tung :

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

Homosexuality should be applied to both man and woman.

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

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

(21) From An Undergraduate :

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

(22) From A Homosexual :

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

(23) From Mrs. Elsie Elliott, CBE :

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

(24) From A Non-Homosexual :

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

(25) From Mo Meng U :

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

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

(26) From Anonymous :

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

'Homosexuality is immoral!'

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

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

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

1. "Abominable" Offences

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

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

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

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

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

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

2. Children

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



香港有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）



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

LRC/SERV/PERS 1

有關同性戀之法例

敬啓者：

會考慮：

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旨符合僱用條件，亦未予錄用？ 曾／不會*
- (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？ 會／不會*
- (2) 削減或取消該僱員之晉升或發展機會？ 會／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？ 會／不會*
- (2) 之晉升或發展機會取消或延遲？ 會／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%
Q. 7	If an otherwise suitable employee of your company/firm is discovered or believed to be homosexual, is this likely :						

		<u>Firms employing under 50 persons</u>		<u>Firms</u> <u>employing 50</u> <u>- 499 persons</u>	<u>Firms employing</u> <u>over 500 persons</u>	<u>Total</u> <u>(i.e. all firms)</u>	
(1)	to result in such employment being terminated by the company / firm?	Yes	12%	26%	9%	Yes	19%
		No	72%	65%	66%	No	67%
		No comment	16%	9%	25%	No comment	14%
(2)	to affect adversely the employee's prospects of promotion or advancement?	Yes	35%	27%	16%	Yes	26%
		No	55%	55%	59%	No	56%
		No comment	10%	18%	25%	No comment	18%
Q. 13	If the law in Hong Kong was changed so as to allow homosexual acts in private between consenting adults, would any of the answers you have given (relating to your company's/firm's present policy) be different?	Yes	5%	4%	2%	Yes	4%
		No	92½%	94%	87%	No	92%
		No comment	2½%	2%	11%	No comment	4%

SPECIFIC ANSWERS FROM COMPANIES/FIRMS

Q.5 : If your company or firm has a policy on hiring homosexuals which is not reflected in question 4 above, please state such policy briefly :

A. Firms with under 50 employees

- (1) Our company certainly would not employ anyone with homosexual tendencies.
- (2) Our firm would not employ a person who is overly effeminate.
- (3) The company would not interfere with the private life of the employee but certainly would not allow the staff to commit any immoral or indecent acts in public.
- (4) Our company would not knowingly employ an homosexual.

B. Firms with 50 - 499 employees

- (1) Sexual habits of employees in their private lives is not a consideration provided it does not interfere with their work.
- (2) Any overt homosexual would not be employed to deal with the travelling public.
- (3) Staff with homosexual tendency would be checked against so as not to give rise to any offence.
- (4) The homosexual will not be allowed to solicit with the customers, guests or clients, otherwise not very relevant.

C. Firms with over 500 employees

- (1) The company would not knowingly employ a homosexual. However, a homosexual employee would not be discharged unless such homosexual activities affect the execution of his duties.
- (2) The company is quite reluctant to employ expatriate males because there is likelihood that some of them are homosexuals and the legal as well as social situation in Hong Kong being different from their country of origin would cause embarrassment and difficulties both to them and to the company.
- (3) Homosexuals will not be employed.

Q.7(c): If an otherwise suitable employee of your company or firm is discovered or believed to be a homosexual is this likely to have some other effect on the employment of such employee? If so, briefly describe such effects :

A. Firms with under 50 employees

- (1) It would certainly affect his employment and promotion if he is found guilty in a court of law.
- (2) Special attention will be paid to him/her to prevent him/her to have an affair with the other employees.
- (3) The company is concerned only if this affects the quality of his work.
- (4) Termination of service solely depends on performance.

B. Firms with 50 - 499 employees

- (1) Disciplinary action would be taken against the homosexual if he/she affects the morale of the other employees.
- (2) If he is convicted and imprisoned, he would obviously lose his job.
- (3) Such employee shall be asked to resign.
- (4) If discovered a homosexual, he would be in an embarrassing situation and would have a difficult relation with his colleagues.
- (5) Any unusual behaviour of employee would affect his employment.

C. Firms with over 500 employees

- (1) He shall be under management close watch.
- (2) His transfer to other departments and hotels will be restricted.
- (3) He will be kept away from customers.
- (4) Any action on him would depend on whether his personal behaviour would adversely affect his colleagues.
- (5) There would be no action if his personal behaviour does not affect the company's reputation and image.
- (6) There is no other effect unless his behaviour affects the other employees; then disciplinary action would be taken.
- (7) Homosexuals are subject to dismissal.

Q.10 : If your company or firm has any policy or policies regarding homosexuals not reflected in this questionnaire, please state such policy or policies :

A. Firms with under 50 employees

- (1) Our company strongly objects to the legalization of homosexuality and strongly forbids the occurrence of homosexual acts amongst the employees.
- (2) The company would not interfere unless something unusual occurs and would guard against homosexuals trying to employ their friends.

- (3) Homosexuality is of no concern unless this affects his performance in the execution of his work assigned to him.
- (4) The present law on homosexuality is harsh and unrealistic. A person with homosexual inclination should be treated with sympathy and understanding.
- (5) Such behaviour should not be treated as a crime, but rather a moral eccentricity.
- (6) Our firm would not question the private life of the staff unless it affects the morale and the work in the office.
- (7) If found homosexual, employment will be terminated with one month's notice.

B. Firms with 50 - 499 employees

- (1) Employment will be terminated if the homosexuals make advances, molest or trouble another.
- (2) Sexual association should not be taken into account. The law in Hong Kong on this subject is out-of-date.
- (3) The personal life style of members of staff are of no concern so long as these do not affect their work.
- (4) Homosexuality is considered a crime and a shame. Stricter law should be imposed.
- (5) If the tendency has an adverse effect on the staff relationship, then it is possible that the company would terminate his employment.
- (6) Our company would not take homosexuals, but they could be tolerated so long as their activities do not interfere with the performance of their job.
- (7) The company would avoid to employ such persons.
- (8) Homosexuality is a grave breach of the Chinese customs and moral standard and should be convicted in court.
- (9) They should be paid off rightaway.
- (10) There should be no discrimination whatsoever.
- (11) Such behaviour is irrelevant provided that conduct of the person is irreproachable and does not cause embarrassment or any disturbance within the company.
- (12) In the opinion of most Chinese, homosexuality is disgusting and grossly immoral.
- (13) The effect on employment depends on the reaction on the other staff.
- (14) Hong Kong law is now out of date and should be amended to come into line with that of U.K. so that it is fair and practical to the homosexuals.

- (15) although any abnormal behaviour may be described as a disease which can be explained in social, psychological and clinical terms, there must exist strong constraints and effective control on behaviour which is anti-social or contrary to public morality.

We agree, therefore, that the existing laws should stay with some modifications only where the present provision and punishment are too severe. Homosexual conduct takes place between two consenting adults in private should not be regarded as an offence. In any case, detection will be almost impossible unless there is complication involving a third party. The penalty of life imprisonment as currently provided in section 49 of Cap. 212 is far too severe and leads to subsequent blackmail by one party to another who has more to lose. Buggery or attempted buggery using force, whether in private or in public, should be treated similarly as rape or attempted rape. Children must continue to be protected by law from any act of gross indecency.

- (16) In as much as this is an area where views are expressed on whether or not a change in the law is desirable we are of a negative view. The undesirable results of changing the law can be clearly seen in a number of countries and go far beyond the actual offence itself.

C. Firms with over 500 employees

- (1) Homosexuals should be treated fairly along with the other employees. However, if they have been accused of a homosexual act against a junior, then the company would not employ them.
- (2) The individual concerned, the person's position within the company and the circumstances leading to that discovery or belief would have a bearing on that person's continued employment and/or prospects.
- (3) If only 'believed' to be, no action. If 'discovered' to be, in circumstances likely to bring the company into disrepute, employment would be terminated.
- (4) A feminine 'male' would not be appointed.
- (5) He will be immediately dismissed if found committing immoral conduct, indecency, touting or soliciting for purpose of prostitution.
- (6) Immediate dismissal if such behaviour is found amongst the staff.
- (7) The company policy is not to engage anyone who is known or gives the company an impression that he is or may be a homosexual.
- (8) Any one with homosexual tendency would be dismissed if his behaviour would affect the other employees.

THE LAW REFORM
COMMISSION OF HONG
KONG
法律改革委員會
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）



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

LRC/SERV/PERS 2

有關同性戀之法例

敬啓者：

考慮：

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
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

LIST OF ORGANIZATIONS CONSULTED DIRECTLY

(Those who responded are marked *)

Anglican Church Diocese of H.K.*	Family Planning Association of Hong Kong*
Association of Expatriate Civil Servants*	Foreign Correspondents' Club
Association of Lecturers at College of Education	Heung Yee Kuk
Baptist College Students' Union	Hong Kong Association of University Women
Baptist Convention of Hong Kong	H.K. Bar Association*
Caritas Hong Kong*	Hong Kong British Forces
Chinese Civil Servants' Association	H.K. Buddhist Association
Chinese Christian Church	Hong Kong Chinese Women's Club*
The Chinese General Chamber of Commerce	H.K. Christian Industrial Committee
Chinese Manufacturers Association	H.K. Council of Social Service
Chinese University of Hong Kong (CU) Students Union	Hong Kong Council of Women
CU Teachers' Association	H.K. Educational Bodies Joint Secretaries
CU Vice Chancellor	Hong Kong Federation of Catholic Students
Chu Hai College Chinese Literature & History Students' Union	Hong Kong Federation of Industries
Chung Sing Benevolent Society	Hong Kong Federation of Students
Commerical Radio Hong Kong	Hong Kong Fire Brigade Staff Union
Education Action Group	Hong Kong Fire Services General Staff's Union
Educators' Social Action Council	Hong Kong Fire Services Dept. Staff General's Association

Hong Kong Fire Services Dept., Ambulance Union	Lions Clubs International District 303
Hong Kong General Chamber of Commerce	The Lok Sin Tong Benevolent Society
The Hong Kong Girl Guides Association	Methodist Church Hong Kong
Hong Kong Junior Chamber of Commerce	Newspaper Society*
Hong Kong & Kowloon Joint Kaifong Research Council	Po Leung Kuk
Hong Kong & Kowloon Kaifong Association	Radio Television Hong Kong (RTHK)
Hong Kong Law Society*	Rediffusion Television (RTV)
Hong Kong Medical Council*	Rotary International District 345
Hong Kong Observers	Royal Hong Kong Police Force (RHKPF) Superintendent Association
Hong Kong Polytechnic Staff Association*	RHKPF Local Inspectors Associations
Hong Kong Polytechnic Students' Union	RHKPF Expatriate Inspectors Association*
Hong Kong Professional Teachers' Union	RHKPF Junior Police Officers Association
Hong Kong Social Workers' General Union	Senior Non-Expatriate Officers' Association
Hong Kong Tourist Association*	Scout Association of Hong Kong*
Hong Kong University (HKU) Students' Union	Shue Yan College
HKU Teachers' Association*	Society for Community Organisation
HKU Vice Chancellor	Television Broadcasts Limited (HK-TVB)
Incorporated Trustees of the Islamic Community Fund of H.K.	Tung Wah Group of Hospitals*
Journalists' Association	Urban Council
Kowloon General Chamber of Commerce	Volunteer Workers' Association Young
Lingnan College Students' Union	Workers' Confederation
	Y's Men International, H.K.
	Zonta International

ANALYSIS OF RESULTS

Resume of Replies to Law Reform Commission's
Letter to Organisations Requesting Views

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

"The Bar Association has no corporate view on this matter."

(Martin C.M. Lee, Esq., QC
Chairman, The Hong Kong Bar Association)

"This question lies outside the terms of reference of the Association."

(A.F. Giles, Esq.,
Chairman, Expatriate Inspectors' Association,
Royal H.K. Police)

"The majority of the staff considered that the existing laws and penalties on homosexuality should remain unchanged, whilst the minority felt that the present law governing homosexual conduct should be changed in a way that adult committing the act in private and with mutual consent should not be construed as an offence."

(Correctional Services Department)

"It is not appropriate for the council of the Law Society to give any comments on the matter."

(J.R. Wimbush, Esq.,
President, The Law Society
of Hong Kong)

"The sexual activities of consenting adults in private is an area of personal ethical choice. In this area, it is inappropriate to require the law to enforce community mores, individual moral idea or socially approved behaviour. To attempt to do so brings the law itself into contempt. The law governing homosexual conduct (in Hong Kong) should be changed along the lines indicated above without discrimination between male and female in the use of the word 'homosexual'."

(Dr Peter J. Preston
via Secretary, Supplementary Medical
Professions Council)

"As I understand it, criminal laws are there to protect society and any relaxation of these laws would put society at greater risk and so I see no reason to change them now."

While by no means condoning the offence of homosexuality I believe that the idea of changing the relevant laws may be more of an academic exercise than of much practical assistance to the people of Hong Kong."

(Rev. Sr. M. Aquinas
Ruttonjee Sanatorium)

"I feel that the law on homosexuality needs to be changed.

The term 'abominable offence' seems best restricted to public activity of forcible nature, and not to behaviour carried out in private between consenting adults. In this way minors are still protected."

(Mrs Peggy Lam
of The Family Planning Association of Hong
Kong)

N.B. The comments made by Mrs Lam are her own personal view and not that of the Association.

"I do not agree that there should be laxity on the law relating to homosexuality in Hong Kong. The fact that homosexuality is legalised tends to lead to corruption of young boys on a large scale.

From the medical point of view, it is an "abominable" practice. Homosexuality is known to cause 50% viral hepatitis B and a large number of Kaposi's sarcoma in California. Other infections like syphilis, gonorrhoea and amebiasis, etc. are also prevalent. If homosexuality is allowed in Hong Kong, there would be a degeneration of morals in the population resulting in a propagation of these diseases."

(Professor G.B. Ong,
Department of Surgery, Hong Kong University
via Secretary, Medical Council, H.K.)

"Nearly all Chinese people spurn homosexual conduct. They consider it a disreputable and sinful act and even feel disgusted at discussing it. As a leading welfare institution administered by Chinese people and for the Chinese people, we strongly object the toleration of homosexual conduct in Hong Kong, where about 98% of the residents are Chinese.

Furthermore, we are of the opinion that the existing legislation relating to homosexuality is appropriate and should not be relaxed."

(LUI Che-woo Esq.,
Chairman, Board of Directors,
Tung Wah Group of Hospitals)

"The views that follow are my personal views

I think that the present laws relating to acts between adults in private are unnecessarily harsh I would suggest that attempts to legislate on moral issues are generally doomed to failure."

"On the other hand, as far as children are concerned, I think that the present law is adequate and can see no good reason to make any changes "

(W.H.P. Lewis, Esq., Ph D., MRC Pat, Head,
Institute of Medical & Health Care, Hong Kong
Polytechnic)

"I wish to submit the following comments :-

- (1) There is need for the present laws to be changed.
- (2) "Abominable" is not an appropriate word to describe homosexuality.
- (3) Imprison of life for a person convicted of buggery is too severe, especially when taken place in private (Section 49).
- (4) Imprisonment for 10 years is also too severe for attempt to commit buggery (Section 50).
- (5) If Section 51 were to stand, it should not be limited to males upon males and not females upon females.
- (6) Protection of children under 14 years from gross indecency is appropriate."

(Dr Henry F.K. Li, OBE, O.ST. J.)

**"THE HONG KONG MEDICAL ASSOCIATION REPORT
OF AD HOC COMMITTEE ON PRESENT LAW
RELATING TO HOMOSEXUAL CONDUCT**

Changes Recommended

- (i) The word "abominable" should be dropped as it serves no useful purpose and only reflects a prejudicial attitude.
- (ii) That homosexual acts occurring in private between adults with mutual consent should not be punishable by law. The word "adult" should be defined as a person aged 21 or above. It is felt that the words "private" and "consent" should be clearly defined in the law so that there will be no abuse. The representative of the British Medical Association (Hong Kong Branch) indicated that as far as Council of British Medical Association (Hong Kong Branch) is concerned, buggery, as distinct from other homosexual acts should still remain as punishable by law even if it occurs in private between adults with mutual consent.
- (iii) The punishment for buggery without consent should be the same as punishment for rape.
- (iv) The punishment for indecent assault in homosexual acts should be the same as the punishment for indecent assault on females.

These recommendations on the change of the present law on homosexual conduct should in no way be taken to imply that either the Hong Kong Medical Association or the British Medical Association (Hong Kong Branch) condones homosexual activities."

(Dr K.H. Lee
Hon Secretary, The Hong Kong
Medical Association)

"Personal Opinion :

The laws are too strict and that they should be changed as soon as possible.

SECTION 49 Imprisonment for life is too heavy a sentence for such an offence. Consenting adults committing the act in the privacy of their own home should not come under this law.

SECTION 50 If the attempted act is between two consenting adults in private, it should not be considered an offence.

SECTION 51 This section of the law should be altered to allow relationship between homosexual males in private but not in public.

CHILDREN Care should be taken to maintain the protection of children and young persons who may be enticed or persuaded into committing such acts.

The age limit for protection should be raised from 14 to 18 years of age."

(sd.) Elsie White (Mrs)
Queen Elizabeth Hospital

"On behalf of this hospital I don't think we should change the present laws governing homosexual conduct in Hong Kong."

(sd.) Barbara Choi M.P.H.
Vice President, Hong Kong
Adventist Hospital

"The majority of professional social work staff saw the issue as a moral one rather than a criminal one, if only two willing parties are involved. However, although it should not be a criminal act, it should not be encouraged as homosexuality has many social repercussions especially if one or both of the parties are married."

(Mrs Grace Wan,
Director, St. James Settlement)

"We are of the opinion that the criminal law on homosexual activity should deal only with those cases where it leads to :

- (a) corruption of youth
- (b) Offences against public decency
- (c) exploitation for the purpose of gain

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

It would be undesirable if the suggested changes were to give the impression that homosexual conduct is an acceptable mode of life in the public mind, against which there are no social or moral objections. In referring to it, the term depenalisation would seem to be preferable to legalisation or even decriminalisation."

(M.C. Ma, Esq.,
Administrative Secretary,
Caritas - Hong Kong)

"Comments made in relation to the above include

- the matter is very personal and difficult to justify from the legal point of view if only adults involved.
- protection of children from sexual abuse is important.
- this is a personal matter and as long as it does not disturb other people then it's quite alright.
- 'sexual perversion' hard to define and so long as the adults involved consent to their own behaviour, it should not require legislation.
- concern that people could be wrongly accused of homosexuality (reference to government departmental circular). In addition, it is quite usual for young people to have a 'homosexual phase' and while this may not lead to sexual activity, this fact of accepted normal development needs to be considered in relation to legislation.

The above is not the official view of this agency."

(Thomas J. Mulvey, Esq.,
Director, Hong Kong Family
Welfare Society)

"The present laws governing homosexual conduct in Hong Kong should be upheld."

(Mrs Marina C.H. Ho,
Chairman, The H.K. Chinese
Women's Club)

"The Scout Association of Hong Kong considers that the present laws governing homosexual conduct in Hong Kong should not be relaxed in any manner.

Indeed, the Association would prefer to see all young people under 16 (and not under 14) specifically protected from acts of gross indecency or from incitement to perform such acts."

(H.C. Ma, Esq.,
Chief Commissioner, The Scout
Association of Hong Kong)

"1. I am writing in response to your Circular No. 1/82.

I take it the purpose of any law is to protect society or the individual in society.

It follows that there is no place in the law for a purely moral issue, i.e. one where the question of protection of anybody does not arise.

Indeed, if resources are expended in prosecuting a law which is a purely moral issue then the result could actually be counter productive, by occupying resources that could otherwise have been used for prosecuting laws that do protect people. In other words, it is a waste of tax payers' money.

This is especially true if the moral issue, by being a subject of the law, gives rise to other crimes such as blackmail or corruption, that would not otherwise exist.

My opinion is therefore that all laws or parts of laws which are purely moral issues should be replaced and the issues left to the moralists.

I presume confidentiality will be respected within the AECS.

Yours faithfully,

2. I refer to your circular to AECS members requesting views on the laws of homosexuality for submission to the Law Reform Commission.

I find the law as it stands in Hong Kong at the moment abominable. The sooner the law is changed in line with that in most civilised western countries whereby free association between consenting adults in private is no offence whatsoever, the better.

I also feel that AECS should raise the issue of the ill starred 'leaked' circular on homosexuals in government employment. A strong point should be made that this goes beyond the laws, in request names of known female homosexuals, the association of which never has been a crime. The fact that with enlightened law, there would be no security risk whatsoever, should be emphasised. It would appear from your attached summary of the relevant law that the age of consent in Hong Kong is 14! I find it amazing the society here should be outraged at homosexuality but find this acceptable.

I hope my views may be of interest.

Yours faithfully,

3. With reference to your circular No. 1/82, I consider that the laws of Hong Kong should be amended to reflect those of the United Kingdom in so far as homosexual behaviour taking place between consenting adults in private should not be treated as an offence.

Yours faithfully,

4. I agree with the above letter. (No. 3)

5.

A. 1) History is full of h/s activity in both male and female.

2) Many such people though initially repulsed, find themselves of the type.

- 3) There is no evidence or even tendency that child molestation by h/s occur more frequently than adult males with children of opposite sex. Therefore, in my view :
- B.
- 1) These unfortunate people should not be further humiliated, and h/s relations between consenting adults IN PRIVATE should not be illegal.
 - 2) The efforts of 'Gay' persons to make h/s socially acceptable should be strongly resisted and suitably strong fines and sentences maintained for any 'public' offences."

(Members of Association of
Expatriate Civil Servants)

"The general consensus (among the staff of the company) is that homosexuality practised between consenting adults should not be treated as a crime."

(W.K. Sulke, Esq., OBE, JP)

"I abhor all unnatural sex acts and would not care to associate with any habitual homosexual person. On the other hand, I cannot view such persons as criminals so long as their "offensive" acts are conducted in private and with consent and do not involve any minor."

(B.J. Fludder, JP (Q'ld),
Touche Ross & Co.
Chartered Accountants
Certified Public Accountants)

"We believe that morality is the foundation of law and that in turn morality is determined by the values upheld by a community. Therefore, our laws on homosexuality should be in accord with the values of our community.

On general social considerations, we believe that there are reasons against homosexuality. Firstly, society originates from the institution of the family; but homosexuality is antithetical to this institution. Secondly, the government is actively engaged in efforts towards community building in response to our society's present rapid social change and economic growth; but homosexuality is at variance with community building. Thirdly, our governmental institution is British, and the established church in Great Britain is Protestant; but homosexuality is not accepted in Christian theology. Fourthly, the overwhelming majority of inhabitants in Hong Kong are Chinese, and although Chinese traditional culture is undergoing rapid erosion, the traditional Chinese values are still Confucian; but homosexuality is not found among Confucian values.

As to defence for homosexuality, we are not convinced that because homosexuality is a personal matter it should not be prohibited by law. While we concede that sublimated homosexuality would have no adverse effect on other persons, the expression of homosexual desires would have undesirable effects on others. Some believe that homosexuality is unobjectionable provided that such acts are engaged in between consenting parties. But it would be very difficult to differentiate between consent and victimization. This difficulty would in turn create difficulties for the enforcement of law. Some believe that homosexual acts conducted in private should not be outlawed, but this definition still does not solve the basic question just raised on law enforcement.

On the other hand, we believe that homosexuality inclined persons should be given every assistance to rid themselves of their addiction, just as we rehabilitate other socially

handicapped persons. As to legal protection, we believe that any unscrupulous person who blackmails or harasses others for alleged homosexuality should be severely penalised by law, irrespective of whether the blackmailed or harassed party could be successfully proved for contravention of homosexual laws."

(Chinese Manufacturers'
Association of Hong Kong)

"Homosexual conduct is undesirable and we, of the Chinese Anglican Church of Hong Kong & Macau, will not endorse any law aimed at relaxing or legalising it.

Homosexuality has already been seen by many as a kind of sickness or psychological problem and not just a mere crime. We would like to see some more positive approaches taken in the forms of medical or psychological treatment."

(Rev. Louis Tsui
Diocesan Secretary,
Diocese of Hong Kong & Macao)

"The Holy Scripture and the on-going tradition of Christianity make it clear that homosexual acts (as distinguished from homosexuality as a state of condition) are immoral. This teaching was reaffirmed by the Roman Catholic Church as late as 29 December 1975.

However in accepting this teaching one is not thereby committed to support legislation making all such conduct a criminal offence. We are of the opinion that the criminal law on homosexual activity should deal only with those cases where it leads to :-

- (a) corruption of youth;
- (b) offences against public decency; and
- (c) exploitation for the purpose of gain.

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

It would be undesirable if the suggested changes were to create the impression in the public mind that homosexual conduct is an acceptable mode of life against which there are no social or moral objections. In referring to it, the term depenalization would seem to be preferable to legalisation or even decriminalization "

(The most Rev. Bishop John B. Wu,
Catholic Bishop of Hong Kong)

"Homosexuality acts between consenting adults should not be the subject of prosecution

We believe that there is no difference between the practice of homosexuality in Chinese and Western societies."

(R.G. Hutcheon, Esq.,
Editor, S.C.M. Post)

"This Association has no special views on the question of changing the law in this instance."

(J.H. Pain, Esq.,
Executive Director,
Hong Kong Tourist Association)



香港大學
教職員會

HONG KONG UNIVERSITY STAFF ASSOCIATION -
SURVEY OF MEMBERS

ACADEMIC STAFF ASSOCIATION
UNIVERSITY OF HONG KONG

17th March, 1982.

The Secretary,
Law Reform Commission,
c/o Attorney General's Chambers,
Central Government Offices (Main Wing),
Hong Kong.

Dear Mr. Hodge,

Laws on Homosexuality: Questionnaire Results

I have already sent you a copy of the questionnaire which we distributed to our members.

Of 648 questionnaires sent out, 197 (30.4%) were returned. This is a high response rate for a mailed questionnaire, but of course it must be noted that the total number of responses came from only approximately one-third of our members.

In the questionnaire we set out five statements and asked the respondent to indicate which statement was closest to his or her own view. The following breakdown shows the number and percentage of respondents favouring each statement.

Statement	1	25	(12.7%)
"	2	79	(40.1%)
"	3	87	(44.2%)
"	4	4	(2.0%)
"	5	2	(1.0%)
		<hr/>	
		197	
		<hr/> <hr/>	

We also invited respondents to offer additional comments if they wished. In all 55 additional comments, varying from one line to several pages, were received, and these are enclosed under statement headings. A dot in the left hand margin indicates the beginning of each comment.

I hope that the results of our survey, particularly the comments from respondents will be of some interest to your Commission.

Yours sincerely,

Murray Groves
Chairman
Academic Staff Association



香港
大學
教職
員
會

ACADEMIC STAFF ASSOCIATION
UNIVERSITY OF HONG KONG

20th February, 1982.

To: All members of the A.S.A.

Subject: Law Reform Commission, Laws on Homosexuality

We have received the attached documents from the Secretary of the Law Reform Commission, namely, a letter asking for this Association's views on changing the present laws governing homosexual conduct in Hong Kong, and summaries of the present relevant laws of Hong Kong in English and in Chinese.

The Committee of the A.S.A. does not feel it is in a position to give the Law Reform Commission the "views" of our "organization", since it is not a matter on which as an organization we have ever formulated our views, and it might be argued that it is not a matter on which our constitution authorizes us to formulate a corporate view, except insofar as the issue could conceivably at some time or other arise in connection with the employment of one or more of our members.

At the same time, the A.S.A. Committee appreciates the wish of the Law Reform Commission to obtain views from all sectors of the community, including university staff.

We therefore invite members to return the attached reply form, on which they are invited to express their views, on or before Monday 8th March. You may return the forms anonymously; there is, no need to sign them or put your name on them (unless you have a particular wish to do so). We hope that, on an issue of current community concern, members will make an effort to respond.

We shall send a summary of the responses to section 1 of the reply form, plus all the individual responses we receive to section 2 of the reply form, to the Secretary of the Law Reform Commission.

Please return the reply forms to

Mr. N.J.A. Jepson,
Secretary, A.S.A.,
c/- Dept. of Prosthetic Dentistry.

Murray Groves
Chairman
Academic Staff Association

University of Hong Kong
Academic Staff Association

LAWS ON HOMOSEXUALITY: REPLY FORM

1. Please place a tick in the box beside the one statement among the following statements that most closely approximates to your own view:

- I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed.
- Without condoning homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly.
- I have no objection to homosexual conduct and believe that the law should freely permit any sexual acts, whether heterosexual or homosexual, between consenting adults in private.
- I have an opinion quite different from any of those expressed above. Please specify:-
- I have no opinion.

2. If you wish to accept the Law Reform Commission's invitation to indicate the reasoning behind your views, please do so in the space below and overleaf (or in a separate document if you need more space):-

1. "I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed."

- * Homosexuality is against the Law of with Nature. Living things only mate the opposite sex. Anal intercourse occurs in nature only if the male happens to find the wrong 'hole' accidentally.
- * All homosexuals should be psychiatrically assessed! They are abnormal and should be treated appropriately.
- * Although I have every sympathy with such people (males or females), I believe that the present laws governing homosexual conduct in Hong Kong are appropriate, and should not be changed, except to raise the age of protection for children (males or females) up to at least 16 when they should be stronger to counter physical violence and resist lure of any sort.

All the furore for changes, as I can observe, has been in the English press - the Chinese press and the local Chinese I meet on a day-to-day basis are either indifferent (i.e. see no point for changing), embarrassed (that such behaviour, although tolerable and perhaps cry out for therapy, etc. should actually be the subject for public condonement), cynical (they see that since the foreigners are seen to be all for it, Hong Kong as a gweilos' paradise would in all probability be forced to accept this 'advancement', 'enlightenment') or feel simply distasteful (on individual and societal basis).

A recent attempt of mine to briefly point to the fact that the indigenous population (or at least sections of it) do feel differently (nothing abusive, or racist, or anything detailed) but just pointing out to the deep-down feelings and reactions of several parents, was suppressed - i.e. by the Editor of Readers' Correspondence of the S.C.M.P., although every condition for eligibility to the column was complied with. This makes one really wonder.

Genuine feelings are not allowed to express themselves and one seems to be caught between appearing unsympathetic (unenlightened, whatever it means) or hypocritical by determined supporters for changes FOR THIS COMMUNITY.

Thirdly, as far as I can follow some of the arguments put up for changes, one was based on the fact that PEOPLE WHO CAN'T HELP THEMSELVES SHOULD NOT BE PROSECUTED (-: fallacies :-

- a) that it is society's fault, anything but the offenders' fault (is this established? how about those who do it for kicks?)
- b) who ever heard of criminals or offenders being pardoned simply because they cannot help themselves? or heard other offences being urged to become perfectly legal behaviour and trends simply because the offenders cannot 'help' themselves?

The sensible thing, surely, is to adopt one or some of the following measures :

- i) reduce the penalty
- ii) reinforce rehabilitation of offenders

- iii) 'preventive' studies and other preventive measures (presumably, to strengthen family ties, and more effective parenting education, etc.?)

Not changing any laws will not do away with particular categories of crime which they sought to 'punish', but neither will the undesirable behaviour vanish just because one does away with laws. If the persons who support changes in such laws guarantee that there will not be a concomitant increase in child abuse (male children being sexually abused, or lured etc.) for the local community, then I may be persuaded to support it also. Is there any sociological studies comparing or establishing that there is no positive correlation? To a concerned parent, the argument that existing laws are inadequate to extinguish female child abuse (from people practising heterosexualism) is no sound basis for amending laws which may not guarantee de facto that male children will not similarly be abused. I find it all very frustrating, to speak the truth.

- * Homosexuals spread diseases, particularly virus hepatitis B. This, in conjunction with some other factors or alone, gives rise to liver cancer which is a fatal disease. If only consenting adults will thus be developing cancer, I can't care less but they tend to spread the disease by other means. This is an encouragement to corrupt young boys.
2. "Without condoning homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly."
-

- * Adult to be eighteen years old.
- * I feel that the present law can be used to put unfair pressure on individuals and is out of date.
- * Section 51 should stand with the sole deletion of the word 'private'.
- * Personally I find the thought of homosexuality distasteful but appreciate that what consenting adults do in private is their own affair, providing it does not affect anyone else.

I do not think homosexual organizations should be allowed to set up shop in Hong Kong (or anywhere else for that matter) because of the influence it might have on younger people.

I also think that the Government should discourage single sex education and take steps to changing existing boys or girls schools to co-educational establishments, and not create environments which encourage homosexuality.

I fear for the younger generation; if homosexuality is tolerated, will homosexuals want more freedom of movement after the law is modified? And I shudder to think if homosexuals go one step beyond the law as they apparently do at present. These are genuine fears but should not be allowed to cloud the issue. After all, you can lead a horse to water, but you can't make him drink (willingly that is).

Laws on indecency, sexual assault, etc. concerning homosexuals presumably will remain at least as rigid as the heterosexual equivalents, but I think visual indications of homosexual behaviour, such as two men locked in a passionate embrace, should not be allowed in public.

I am married, father of two children, Chinese but Western born, and about 50% or more western educated. I am conservative regarding matters like marriage and open display of affection, but consider myself fairly liberal in most other matters.

- * The law is based on a combination of attitudes - traditional, hypocritical, sexist and others – which are inappropriate as a basis for Law. The Law encourages blackmail, malice and misuse by unscrupulous police. It is very difficult to believe that any rational body could conceive of it as being ethical to proscribe behaviour in private where there is mutual consent.
- * Provided adults are defined as over 18 years.
- * To subject any non-violent sexual act to legal proscription is to identify that act as a particularly substantial basis for blackmail, corruption or, in some circumstances, for serious breaches of 'security'. To remove such proscription is to minimise this effect and, at the same time, 'allows' the private exercise of sexual preference as a matter over which the law chooses to have no interest.
- * What about the law on buggery with animals? I think the animals should be protected, as they have no choice in the matter; therefore the laws on this should stay or be stated separately.

I think what adults (humans) do in private is entirely up to them if no cruelty is involved. It is quite wrong to say that private sexual behaviour should conform to any set pattern. You may as well have a law saying men and women should only copulate in the missionary position! However, I would like the law to protect children against adult homosexuals, and procuring of boys should still be illegal (as in Britain, I think). I hope animals will be protected too, because they usually are forced into sexual acts and are even killed sometimes, as a result, I believe.

I did not tick the third box because I cannot say I do not object to homosexual behaviour in general. It is a negative trend in society and if developed too far might destroy the family unit. Where would the next generation come from if all men were homosexuals? No children in the world - how sad that would be! Perhaps I'm stating the obvious.

- *
 1. In my opinion the present law encourages blackmail and assault by innuendo, against which there is little recourse.
 2. The recent attempts to apply the law in Hong Kong have brought the law itself into disrespect. This aspect of relations between two consenting adults in an ethical-moral matter is not one for the Law.
 3. The Law has a clear and straightforward role in protecting minors and those judged incapable of giving consent from seduction or exploitation.
- *
 1. The State has enough to do without concerning itself with innocuous sexual activities.
 2. The law as it stands dates from a society when State and Church authority were indistinguishable. This is no longer the case. The law is an expression of a narrow interpretation of certain Biblical passages.

- * Laws which cannot be effectively enforced are unjust. Selective enforcement both looks like persecution and may well be that. Such a situation breeds disrespect for the legal system and Government.
- * Adults to be 21 or over.
- * A) A distinction must be drawn between acts committed in public and those committed in private between consenting adults.
- B) The present law discriminates unfairly against males.
- C) Penalties for procuring and committing homosexual acts (all acts, buggery or otherwise) should be reasonably comparable.
- * The current laws on "abominable" offences ought to be repealed, thus bringing Hong Kong into alignment with other Chinese jurisdictions (Taiwan and China). Laws protecting minors, punishing rape and fixing penalties for public indecency should be retained.

Rights of minorities ought not to be decided by majority vote. This community, like many others, is manifestly hypocritical and inconsistent in its public views and private behaviour. It vastly underestimates the numbers of and contributions of its homosexual community.

Homosexuality among consenting adults is a "victimless crime". Enforcing the current law or threats to do so, seriously affects the well-being of otherwise law-abiding and productive homosexuals to the detriment of the community.

TRANSLATION NOTE : In the media constant, references are made to "legalizing" homosexuality, rather than "de-criminalising" this behaviour. In Chinese, there is no difference between "legalizing" and "legitimizing" the behaviour. One character, he fa (合法) stands for both English-language meanings. Thus to talk about "legalizing", homosexuality has the connotation of encouraging it by making it legitimate in Chinese. Perhaps it is more accurate to use the words "de-criminalize" in both Chinese and English. This distinction is significant.

- * The homosexual act should not involve payment.
- From religious, biological, social and family considerations I believe that heterosexual relationships are normal. However, unless other offences such as intimidation, blackmail, public procurement, financial incentives or violation of minors is involved, I don't think homosexual acts should be regarded as criminal activities. More emphasis should be given to counselling and treatment of what I would regard as an illness.
- * I believe there should be consistency in the law of the land, and therefore if the law forbids homosexual relationships it should also uphold the sanctity of marriage by including adultery and fornication in the legislature.
 - * Homosexual activities are not biological norm. Thus, they should be strictly private and not be advertised.
 - * Considering the custom and tradition of our present society, it may be early to make such change now. This may not be the appropriate time.

- * ... Consenting adults in private only should not be subject to legal penalties
3. "I have no objection to homosexual conduct and believe that the law should freely permit any sexual acts, whether heterosexual or homosexual, between consenting adults in private."
-

- * I believe that sexual acts of any nature between two consenting adults in private should not be subject to any penalties. In the case of homosexual acts, I believe that certain people are born with the inclinations and should not be penalised for something that they cannot or do not wish to stop. I feel the law at present is a violation of personal freedom.

- * A victimless crime is the language most civilised societies in the 1980's employ.

It is imprudent to put a name to any political or social mien in Hong Kong; therefore I regretfully decline to do so.

- * I believe that it is a basic human right that individuals should be free to express their sexuality and to enjoy sexual relationships with those of a similar mind without any interference from the law except to protect minors and to preserve public order and decency.

- * It is my view that the law of the land should not be concerned with private morality, and that what consenting adults choose to do in private should be their own business.

The security arguments fail once conduct is legal (that is, liability to blackmail becomes less important).

It is not true that homosexuals seek to corrupt young people; paederasts are a different class of person and may be hetero- as well as homosexual.

It is completely unsatisfactory to have a law which is not strictly applied (one suggestion is that we should keep but not implement the law). This simply brings respect for the whole of the law to a low level.

As to the argument that it is out of keeping with the views of the Chinese community - the law was a U.K. import;

Mainland China, as far as I can ascertain, has no such law. To de-criminalize private conduct is not a licence to 'do it in the street and frighten the horses'. To legalize is not the same as to approve.

The change of the law in England in 1967 was fiercely opposed, but is now an accepted fact. The change I noticed in homosexual friends was really marked - a lessening of anxiety. It is never easy to belong to a minority which deviates from the accepted norm, but a change in the law will be a compassionate act which will at least make life easier for people who cannot help that they react differently from the rest of us in this one way.

- * The current law against homosexuality

(1) is impossible to enforce, and futile law derogates from the authority of all law;

- (2) permits the waste of resources and encourages corruption, these being the inevitable consequences of attempting to enforce the unenforceable;
 - (3) enhances the prospects of otherwise law-abiding citizens being blackmailed;
 - (4) is itself an evil (in that it is capable of causing great human misery and restriction on free choice) and thus must be justified, whereas no compensating benefit can be discovered;
 - (5) being an attempt to regulate consensual conduct which involves no genuine harm to anyone, is an intolerable invasion of individual freedom;
 - (6) can only be supported by a moral claim which is vicious, anti-human and unnecessary for the maintenance of decent social life in this community;
 - (7) is sexist, there being no good reason for discriminating between men and women in this respect.
- * The above responses relate only to section 49 but some reference should be made to sections 50 (assault) and 51 (soliciting). I believe assault by one person on another, whether sexual or not, should still be the concern of the criminal law. As to soliciting and prostitution, both sexes should be treated alike in this matter, and thus perhaps this whole area should be reviewed as well.
 - * Also I would like to see the repeal of sections 49 and 50 of the Persons Ordinance.
 - * This is not the 'reasoning behind my views' but since the law of England has been extended to Scotland and N. Ireland, it makes less sense for a colony ruled by English Law to be so out of step.
 - * Broadly my position is that indicated; however:
 1. I might well object to certain homosexual (or heterosexual) conduct, but do not consider it my business.
 2. Similarly, the law should have no interest in such matters; so I (pedantically) object to the implications of 'freely permit'.
 - * The reasoning behind my non-objection owes its development to my education at a University which has for its motto : Dominus Illuminatio Mea !
 - *
 1. I believe that it is an unwarranted intrusion upon the liberty of the individual to legislate in respect of sexual behaviour in circumstances where mature judgement is in issue and where there is no encroachment into public domain.
 2. I believe that it is wrong to victimise any group of individuals on the basis of their sexual proclivities so long as consensual acts between adults in private are involved.
 3. I believe it is wrong by maintaining the present laws to attribute virtue to blind myth and popular prejudice on the part of the uninformed.
 4. I believe that the possibilities for blackmail would be significantly reduced.

5. I believe that, from a mental health point of view, the decriminalization of homosexual acts under the Wolfenden formula would have very positive benefits to individuals in the homosexual community.

- * between consenting adults in private, insofar as those acts do not involve the commission of some other offence!

"Without condoning homosexual conduct" : does this phrase mean "It is not the case that I condone homosexual conduct" or "I disapprove of homosexual conduct"? If the former, it might cover "I have no objection to homosexual conduct", since one who has no objection to it is one who neither condones nor does not condone it - i.e. it is not the case that he condones it.

- * There are two reasons why I consider the present law should be expunged from statute. The first is that any law which seeks to prevent, or to punish acts committed in private, is a largely unenforceable law. And unenforceable laws are, ipso facto, bad laws. For they can be enforced solely through denying privacy, and this means gross intrusion whenever there purports to be reason for suspicion, or it means expecting, quite improbably, self-incrimination by one or other party. And this is largely unworkable : because it is, it will lead, necessarily, to injustice. Most who are guilty will go unpunished, some will not. Such things do bring the law into disrepute. The cost to society of ensuring just enforcement is so great, in terms of surveillance on a scale which we can neither afford nor tolerate, that a law of this sort must be repealed. Laws enforcing what are called 'public morals' have a place, if any, when and only when the 'morals' in question are so completely of the fabric of a society that conduct at odds with them is, in effect, unthinkable. This is not now the case.

My second reason, however, runs deeper than the simple matter of legislative good sense. It is a moral reason. Whilst I recognize the moral propriety of legislation protecting from harm those who cannot protect themselves; and allowing here for a generous interpretation of 'harm', I have yet to be convinced that the actual practice of sexual activity of whatsoever kind between consenting adults, provided both or all parties are in full possession of unimpaired faculties, could ever be harmful to anyone, no matter how helpless, so long as the activity itself is in private. The only counter-argument, that what is at issue is the moral fabric of society as a whole, and that damage to that is what occasions necessary harm to all, rests upon organicist theories of society which are at the least contentious. And in any event the moral fabric of a society, if there is such a thing that is not merely whatever aggregate of individual moral practices and beliefs holds in a given time and place, is not to be confused with a legal code. For a legal code, whatever else it must be, must certainly be such as to accommodate great diversity of beliefs if it is not to take us backwards to a period of intolerant repression, for which there is no justification. For it is surely a matter of great and proper satisfaction that over the last three centuries the law has been seen, if sometimes with more hope than justification, as the bulwark of individual liberty. If moral disapproval is strong, then that which is disapproved will be practised by few, and always with some unhappy sense of guilt. Let that be enough for those whose conception of morality is so intolerant and uncharitable. Finally, one cannot enforce morality in any case. Perhaps an outward show can be required, though I have given reasons for doubting this in this case. But the inner belief cannot. At the moment, and in this regard, the law is a fool. Let it cease to be so.

- * No reason, of any plausibility whatever, has ever been presented which suggests that homosexual conduct is in any way wrong. Therefore, it is wrong that homosexual conduct is illegal.

.... between consenting adults in private. Public references should be avoided - even in the media, through a code of acceptable local practice? i.e. quietly mind your own business and don't stir up trouble - it is bad joss!

* My objections to the provisions of the Laws of Hong Kong which make homosexual acts between consenting adults in private criminal may be summarized as follows :

(a) I can see no reason, moral or social, why the law should concern itself with the private sexual behaviour of consenting adults.

(b) In view of the fact that consenting adults in Hong Kong, both Chinese and expatriate, do engage in homosexual acts in private despite the law, the provisions of the law cause them unnecessary suffering through fear of prosecution, fear of blackmail, fear of dismissal from their employment, etc.

(c) Enforcement of the law unnecessarily wastes the time of a wide array of public servants paid with the taxpayer's money - from the Governor and the Attorney-General down through the judiciary and police force. The obsessive concern of such public servants with homosexuality, as witnessed by the MacLennan case and the recent circular from the Secretary for the Civil Service to Civil Service heads, has been unedifying, to say the least.

(d) The argument (often advanced) that changes in the law would offend Chinese opinion, and that therefore it is best to "let sleeping dogs lie", seems to me totally fallacious. No satisfactory evidence as to the state of Chinese opinion has been adduced. In any case, "sleeping dogs" have not been allowed to "lie": there is abundant evidence that the Attorney-General, the police, and now most recently the Secretary for the Civil Service, have been instigating action against homosexuals, and so long as laws which declare homosexual acts to be criminal remain on the statute book, any of these people or indeed anyone else in the community could institute action against homosexuals which might cause them suffering, or even ruin, at any time.

* I do not believe that sexual acts between consenting adults in private should be subject to legislation, or legal penalties. Such law is an intrusion in a private aspect of life and an intrusion on individual freedom.

* Please forward this opinion to L.R.C.

If homosexual conduct is seen to be offensive, then one could regard masturbation (defined in Oxford Advanced Learner's Dictionary - Hornby, as "provide sexual excitement by manual or other stimulation of the genital organs"), especially use of 'other' stimulants, as equally offensive, and imprison the whole of Hong Kong for past and present offences.

* 1. Laws prohibiting homosexual conduct between consenting adults in private are largely unenforced because they are largely unenforceable. As such they are a mockery of the law and they bring the whole administration of justice into disrepute.

2. "The state has no business in the bedrooms of the nation." - Rt.Hon. Pierre Elliot Trudeau, M.P., to the House of Commons, Ottawa, ca. 1968.

- * In addition I think the age for protecting children should be raised to 16. "Children" and "adults" - children with children should be untouched by the law as what kids do with kids in schools, locker rooms, etc. is natural and part of the growth process.
- * It is not against the law for sexual acts to take place between women, therefore the law at present discriminates against men. It is my view that there should be equal rights for all persons over 18 years of age in choice of sexual activity with other adult humans.
- * I do not believe that it is appropriate for the law to be able to prohibit any aspect of private behaviour which causes no harm to any individual. The standard reasons given for the prohibition of homosexuality include :
 - the Bible specifically condemns it;
 - homosexuals are more 'perverted' and are involved in more sexually-directed crime than heterosexuals;
 - homosexuals actively solicit and corrupt young people and convert them to homosexuality.

The first of these reasons has no real relevance in the law. The Christian religion is a minority in Hong Kong but certain Christian people are very vociferous in their condemnation of matters which I personally feel are personal decisions, such as abortion and homosexuality. The second and third reasons, while commonly used and often prefaced in letters to the editor with statements like "It is a known fact that ...," have not ever been supported by investigation.

The law as it stands at the moment is not consistent with that in most of the Western world. It places a large number of people in the position of committing criminal acts on a daily basis, and provides a situation which is open to blackmail and corruption. I do not consider the homosexuals I know to be criminals. Just because their innate preference is for a partner of the same sex is no reason for the law or their fellow man to condemn them.

- * The law should not interfere with sexual acts between consenting adults in private. It is as simple as that.

I am a Chinese, and to our local Chinese "Moral Majority" who said the law should not change because Chinese are moral beings and traditional Chinese society do not accept homosexuality, I'd say : traditional Chinese society deliberately castrate some males to be eunuch and bind the feet of young girls. Will these Chinese "Moral Majority" chaps castrate themselves and bind the feet of their own daughters please.

- * Clearly everyone has among the basic human rights the rights to his own thoughts, feelings and emotions. It seems to me that the basic human rights include the rights to one's own sexual feelings. No one can choose to be a homosexual, a bisexual or a heterosexual; one's sexuality is a God-given fact of life. To outlaw homosexual acts is as cruel and inhumane as to outlaw sexual contact between a man and his wife or a youth and his girlfriend. We are prone to think of anything sexual as "dirty" or "immoral", but sexuality is a part of human nature after all, and everyone whether homosexual, bisexual or heterosexual should be permitted these basic satisfactions.

It is very alarming to me that so many people in Hong Kong seem to regard homosexuals as immoral and perverted - and criminal to the extent of requiring a

special branch of the Police Department to seek them out. It is time we faced the fact that homosexuals are not unthinkable creatures on the fringes of society but are rather the very people around us : no doubt they include some of our colleagues and students at the University, as well as doctors, lawyers, judges, government servants, bus drivers, factory workers, business leaders, and indeed people from all levels of society. We may not always know exactly who they are, but this is itself a sad fact and owes in large measure I believe to the perverse and misguided laws in Hong Kong on this subject which may well force even some of our closest friends and colleagues to live in fear and to hide some of their most basic feelings. This is an outrage. The sooner Government grants basic human rights to all its subjects, the better.

It is sometimes said that Hong Kong's laws on homosexuality cannot be repealed because the "Chinese community" does not favour repeal. On the contrary, it seems to me that most Chinese are not against repeal, but either favour repeal (whether they are willing to say so or not) or have no strong views on the subject at all. The self-appointed spokesmen of the "Chinese community" who speak out so stridently against repeal should be judged by the merits or demerits of their arguments rather than the weight of their office; most of these arguments that I have heard, such as that homosexuality is a mental illness, that it is against yin and yang, that it is alien to Chinese culture, or alien to Christian thinking, etc. are based on ignorance or prejudice, or both. In any case, the question of law reform should not be treated as a popularity contest; it is a human rights issue, and Government must take responsibility to lead and bring Hong Kong's laws up to a civilized modern standard. Was Lincoln wrong in emancipating the black slaves against community wishes?

One last point. I would normally sign my name to an Academic Staff Association matter, but in this case I feel I cannot. During the MacLennan affair, it became clear that virtually anyone favouring law reform becomes immediately "suspected" as a homosexual in the eyes of the Police; and the recent Civil Service Circular makes it clear that even "suspected" homosexuality is grounds for investigation, review of employment contract, and possible dismissal. Under these draconian conditions - reminiscent of McCarthyite America or even Nazi Germany in kind if not intensity - only the exceptionally courageous will speak out by name in favour of law repeal. Although thankfully not part of the Civil Service, the University is a little too close to it for comfort; why should I or anyone else here risk his privacy and that of his family by speaking out by name? Given the government's manifest homophobia and penchant for witch-hunting, truly open enquiry on this issue becomes impossible, and the work of the Law Reform Commission becomes something of a travesty, in my opinion. Our community is a lot further from enlightenment than we think.

- * I think it is no business of the law at all whatever consenting adults are doing in private.
- * The present laws governing homosexual conduct are unjust and unwise. They have embarrassed and, if left unchanged, will continue to embarrass the Hong Kong Government. This is largely the Government's own fault for its altered attitude to enforcement of these laws in the late 1970s led directly to the MacLennan affair and thus turned homosexuality into an issue. It is not an issue that will go away. Several points arise.
 1. Should the State have the power to punish two consenting adults for a sexual act committed in private? Where in such a case, is the victim? Who has been harmed? How has society suffered?
 2. Any legislation which seeks to prevent homosexual acts will always be very difficult to enforce. A homosexual act may be seen as a 'crime against nature'

but to the homosexual it is entirely natural. The homosexual will disregard such legislation, as happens in Hong Kong. This brings the Law itself into disrepute ('the Law is an ass', etc.) and that is not healthy.

3. Most homosexuals are not ordinarily criminal. The laws, as they stand, turn them into criminals. Surely, it would be a sensible and just policy to decriminalize homosexual acts between consenting adults conducted in private? The present laws give rise to doubts, suspicion, and fear amongst homosexuals. This is not just.
 4. The present laws do, however, provide scope for the criminal element in society, often at the expense of homosexuals. Here one thinks of the activities of Triad societies and, in particular, of blackmail.
 5. It is sometimes claimed that homosexuals in Government employ are a security risk, presumably on the grounds that they render themselves liable to blackmail. Does not a married heterosexual engaged in, say, an illicit 'affair' similarly put himself at risk? If sexual acts between consenting adults in private were to be decriminalized then security risks would be greatly reduced.
 6. It is sometimes argued that any change in the present laws will put minors at risk. As the Wolfenden Report observed, those homosexuals who prefer relations with adults rarely have dealings with minors, and it is scarcely probable that they will abandon practices which would be permitted if the laws were changed to adopt new ones which presumably would continue to be criminal.
 7. Surely in Hong Kong, with its many serious and pressing problems, the police have better things to do than pursue homosexuals who are otherwise law-abiding citizens? This is the view taken, one gathers, by a number of Hong Kong policemen. Furthermore, the present laws appear to give altogether too much scope to 'over zealous' police officers, as was made abundantly clear during the course of the MacLennan Inquiry. There is a widespread suspicion that the Hong Kong Police is a law unto itself. The present laws on homosexuality allow policemen too much discretion.
 8. Reference was made above to the doubts, suspicion, and fear amongst homosexuals. There can be no more eloquent testimony to this sorry state of affairs than the great difficulty that the Sub-committee on homosexual law reform has apparently had in persuading any practising homosexual to come forward and testify.
 9. As money is what really counts in Hong Kong it has been left until last. Would the Government have had to pay out \$16 million for the MacLennan Inquiry but for the present laws? Would the average tax-payer regard this as money well-spent?
- * Law should not interfere with the acts of two or more consenting adults who know what they are doing.

Homosexual behaviour through rape, seduction, blackmail or by fraud, etc. should still be punishable but this is already covered by other laws which apply equally to heterosexual behaviour.

Homosexuality is not a problem. The present law makes it a problem.

For thousands of years the Chinese have left control of homosexual behaviour to social attitudes, which change from time to time. Laws against homosexual behaviour were rarely made and much more rarely enforced.

Can't see the reason why male homosexual behaviour is punishable while female homosexual behaviour is not!

- * The starting point of any discussion concerning the extent of governmental interference in the liberty of individual citizens to do as they please is the presumption in favour of liberty : restrictions of individual liberty, whether by direct criminal prohibition or by some other legal instrument always need some special justification. That is to say, other things being equal, it is always preferable that individuals be left free to make their own choices and that undesirable conduct be discouraged by such non-coercive measures as education, exhortation, taxation (on undesirable conduct) or provision of positive incentives such as economic subsidies or rewards (for alternative to undesirable conduct).

Under what conditions and for what reasons can the presumption in favour of liberty be overridden?

It is well-established that the prevention of harm to others (the 'harm principle') is always a relevant reason for coercion, though it is arguable that the State may also be justified, at least in some circumstances, in prohibiting (1) "immoralities" even when they harm no one but their perpetrators (the principle of legal moralism); (2) actions that hurt or endanger the actor himself (the principle of legal moralism); or (3) conduct that is offensive though not harmful to others (the offence principle).

Such liberty-limiting principles, however, are best understood as stating neither necessary nor sufficient conditions for justified coercion but rather specifications of the kind of reasons that are relevant or acceptable in support of proposed coercion, though in a given case they may not be conclusive. Even the prevention of harm to others - while always counting in favour of proposals to restrict liberty - might in a given case not count enough to outweigh the presumption against interference or it might be outweighed by the prospect of practical difficulties in enforcing the law, excessive costs and forfeiture of privacy.

Applying the above liberty-limiting principles to the existing proscription of homosexuality in Hong Kong, the following propositions emerge :

1. No distinguishable harm to others can be attributed to homosexuality which may justify its prohibition.
 - Tendency of homosexuals to molest children?

This argument is based on a confusion between homosexuality and pedophilia. The latter, a tendency on the part of an adult to find sexual satisfaction in relations with children, is not peculiar to homosexuals; homosexuals have no particular inclination, as a group, to seek out young boys - no more, at any rate, than their heterosexual counterparts. Liberalised legislation may 'bring the homosexuals into the open' but there is no convincing evidence that it would encourage homosexuals to engage in wide-spread pedophilia, and it would not reduce the penalties for pedophilia in any case.

- Dangers of putting homosexuals into positions of trust with youngsters?

There is no justification for keeping homosexuals out of positions of trust where young boys are concerned more than prohibiting heterosexuals from serving as teachers or counsellors where young girls are concerned. In either case, the issue is not so much the homosexual or heterosexual propensities of the individual concerned as his proclivity to engage in sexual relations with under-age persons. There is at the same time considerable evidence that some homosexuals have made excellent teachers.

- Susceptibility to blackmail?

Homosexuals are not unique in their vulnerability to blackmail and extortion (heterosexuals, particularly those who are married, are at least as vulnerable as homosexuals and similarly people who are prone to become drunk or gamblers). It is also arguable that if we remove the criminal sanctions against homosexuals the latter would be less likely to succumb to blackmail.

- Destruction of the family, one of society's most fundamental institutions?

No evidence to support the suggestion that the legitimization of homosexuality would lead to widespread breakdown in family life or to a failure on the part of many people to establish normal marriages and families.

The argument rests on an unsubstantiated assumption that tens of thousands of people are eagerly awaiting the passage of legislation that would enable them to break away from the shackles of their heterosexuality so that they could do what they really want to do, namely, enter into relations with other men. Even if we accept that some men with strong inclinations towards homosexual relations - who may have married because of social or business pressure - might be prepared to give up their families if the sanctions were lifted, we still have to weigh the harm that might come to people because of the existence of such sanctions against the hurt to some people as a result of their elimination.

Clearly the potential damage to families that could potentially be affected should not be exaggerated, given that other factors enter into a person's decision to break up his family and that some of these marriages are probably very unhappy anyway.

- General moral breakdown?

There is no evidence that homosexuality constitutes a threat to the moral foundations of the community. Indeed it is arguable that in view of the demoralising and corrupting methods employed by the police in tracking down homosexuals and affecting their arrest, the legalisation of homosexuality would bolster the moral foundations of the society.

2. On the other hand, some side-effects of the laws proscribing homosexuality are invariably harmful:

Laws against homosexuality may lead to the iniquities of selective enforcement and to enhanced opportunities for blackmail and private revenge. The pursuit of homosexuals also diverts the police attention and effort that

could be employed more usefully against crimes of violent aggression, fraud and corruption which are the overriding concerns of our metropolitan society.

3. Harm to oneself?

Such harm, if any, is the result of society's attitude towards the homosexuals' peculiar form of erotic behaviour rather than direct result of that behaviour itself.

Indeed, it is submitted that if society would reduce its condemnation of homosexual behaviour, at least by removing the penalties that it imposes upon those who are caught, the conditions of homosexuals would be greatly ameliorated.

4. Immoral?

Firstly, moral views, even if generally and strongly held by society, should not be enforced by law simply because they are generally and strongly held (otherwise why distinguish religious, political, racial or social views so held?).

Secondly, it is questionable whether any assertion of public revulsion concerning homosexuals in Hong Kong can stand up on examination. In particular, three factors deserve consideration : (1) the proportion of the community who disapprove of the practice; (2) the strength of their disapproval (will they riot or attack those who practice it if it is legalised?) and (3) the qualitative nature of the majority and minority groups (a strong majority of cultivated opinion may be significant even if it is but a minority of public opinion).

Thirdly, even if one concludes that the feelings of disgust or revulsion towards homosexuality are prevalent in the Hong Kong community this is only one factor to be considered and no more than that. It can never replace careful investigation of the social consequences of the conduct and criminal prohibition. As was stated by Graham Hughes : 'the legislator cannot be wiser than he is, but he does not have to be as stupid as the stomach of the man in the street'.

5. Offensive?

Clearly whether the behaviour is heterosexual or homosexual the public has a right not to be exposed to its manifestations if there is a general consensus that such manifestations are offensive (subject to the standards of universality and reasonable avoidability and generally balanced by due regard for liberty and privacy).

This may constitute a reason for supporting liberalisation of the law which is confined to the demand that prohibition of private relations between consenting adults be relaxed.

6. Efficacy of the law :

It is fairly clear that imprisonment is ineffectual in helping to reorient people with homosexual tendencies (if cure is the aim, how much sense does it make to send a homosexual to a place where his only companions are males deprived of every sexual outlet but masturbation and homosexuality?; perhaps it would

be a better idea to send him to a place where he would be surrounded by girls specially trained in the art of arousing men who tend not to be particularly interested in women).

7. Cost :

The expenditure of wealth and human resources required for the enforcement of rules on sexual conduct is too great for the benefits that might accrue from such enforcement. On the other hand, the benefits of removing the proscription of homosexuality are clear: the police would be free to fight dangerous criminals and to maintain order in the community; the courts would be relieved of part of their crushing burden; prisons would be emptied of those whose offences are basically petty and of no great or immediate social consequences; and a great many people would be relieved of the constant fear that they might be arrested for forms of behaviour that they consider to be completely harmless.

4. "I have an opinion quite different from any of those expressed above."

- * I think all convicted homosexuals should be deported - there are too many people bugging about in Hong Kong.
- * I feel the penalty for such acts between consenting adults seems too harsh, especially section 49.
- * I cannot tick box (2) since the use of the word "condoning" implies acknowledgement of an offence. It would, however, be correct for me to say :

"Without expressing an opinion one way or another on the morality or otherwise of homosexual conduct, I believe that homosexual acts between consenting adults in private should not be subject to legal penalties, and that the law should be changed accordingly."

1. I do not see why males should be discriminated against in the matter of homosexual conduct, since lesbianism is not illegal.+
 2. I do not think the law should prescribe for private morality.
 3. The present system encourages blackmail, and must lead to a great deal of personal unhappiness.
- + This is the practical effect, though I recognize that one of the technical offences is supposed to be buggery rather than homosexuality.
- * Homosexuality should be prohibited by law, but the existing penalties are too severe.

**HONG KONG POLYTECHNIC STAFF ASSOCIATION -
SURVEY OF MEMBERS**

**HONG KONG POLYTECHNIC STAFF ASSOCIATION
co HONG KONG POLYTECHNIC
YUK CHOI ROAD, HUNGHOM
KOWLOON**

TEL. 3-638344

22nd March 1982

Secretary
Law Reform Commission of H.K.
Attorney General's Chambers
Central Government Offices
(Main Wing)
Hong Kong

(Attn: Mr. A.S. Hodge)

Dear Secretary,

With reference to my previous letter of 18th January 1982, I am pleased to enclose some views expressed on the question of the Laws of homosexuality by some members of the Polytechnic Staff Association. I wish to emphasise that these comments do not represent the official view of the Association, but are simply a collection of ideas submitted by several members. I hope this will be of assistance to you.

Yours faithfully,

J.K. Dockerill
Secretary, P.S.A.

JKD/fh

Views from some staff members.

"Should the present laws governing homosexual conduct in H.K. be changed and, if so, in what way?"

1. Law is antiquated - about time it was changed. What people do in private should be their own business.
2. A law is a restriction of a person's liberty which can only be justified if it serves the protection of somebody else's superior rights (preferably those of a person unable to defend these rights him/herself). As such a purpose cannot be detected in the present legislation the whole lot should be considered null and void from the beginning and, consequently, all records concerning such matters should be destroyed.
3. Yes, it should be changed, at least to prevent blackmail.
4. The law as it stands today should be abolished. In sexual matters between adults consent is highly irrelevant. The present law is clearly leading to oppression, blackmail, police interference in people's private lives etc. The attached letter 9-2-82 S.C.M.P. puts the matter clearly.
5. The law as it stands should be abolished. Homosexuality is not wrong, nor a perversion. It is a biological fact. Therefore we cannot legislate it out of existence. The current law is inhuman, and encourages unpleasant prying into private lives and is potentially harmful both to the individual and to society. What is happening just now smacks of a witch hunt.
6. The law as it stands should be revised to allow for greater individual freedom of choice. The S.C.M.P. article expresses my sentiments on this issue.
7. The law as it stands should be rescinded. No evil/crime/wrongness has ever been attributed to homosexuality, as such. What exactly is the present law trying to effect? Letter on Sunday 7-2-82 to S.C.M.P. by Lee Chi Chung expresses my sentiments. The area of homosexuality does in no way come under legal ruling.
8. The law should be changed to allow homosexual activities between consenting adults. Adequate safeguards should be provided to protect children. The state has no right to interfere in these matters.
9. The law as it stands should be abolished and revised to allow homosexual acts which will require precise definition between consenting adults in private. Homosexuality is only an alternative pattern of sexual behaviour and attitudes which has been in existence in all societies for thousands of years. No evidence has ever been produced to prove that such behaviour per se has ever led to the social, moral, financial, educational or political de-stabilisation of any society. On the contrary, homosexuals have been recognised leaders in politics, music, theatre and in many other fields of the Arts and Sciences. Laws discriminating against homosexuals, therefore, are based on false premises and misconceived moral judgements.
10. I am in complete agreement with the above. People should not be condemned for propensities over which they have no control. Conduct which harms neither the individual nor society as a whole should not be subject to sanctions.
11. I agree with the above. It is a personal matter and one over which people may have no control. Others have no right to judge their behaviour, provided no harm is done to others, particularly children.

12. I agree with the first clause and I don't think the 2nd clause is necessary because both the heterosexuals and homosexuals could be child molesters. If we find it difficult to respect people's different sexual preference, we should at least tolerate it.
13. I believe that homosexual acts between consenting parties should not be a punishable offence. I therefore think that the existing law should be changed at least as a first step towards eliminating discrimination of homosexuals.
14. Any human being should be allowed the right to pursue happiness in the way he sees it fit, provided, in so doing, he does not harm others. The present laws on homosexuality interfere with this right unnecessarily. The laws therefore should be abolished.
15. While this issue does not concern me personally - as I believe, it does not concern colleagues to whom this Memo has been circulated - I feel that the laws relating to homosexual conduct in Hong Kong should be changed to make them more humanely acceptable. Perhaps, the laws could be brought into line with those in England where homosexual conduct between consenting adults in private is not considered to be a criminal offence. In any event the expression of views on this issue would be rendered considerably easier if such conduct were not viewed as a criminal offence punishable by 'a maximum penalty of imprisonment for life.'
16. I agree with the above that this conduct should not be viewed as a criminal offence, but I do not agree that laws should be changed and brought into line with those in U.K. as this might imply societies' approval/acceptance of such "abominable acts." The maximum protection should, however, be given to children.
17. I also believe that HK laws relevant to homosexual conduct should be brought into line with those of UK - blackmail and the protection of children were both fully debated when the UK law was changed.
18. Yes, laws should be changed, but should only be limited to consenting adults above 21 years of age.
19. Homosexual activities, be they between males or between females, should not be prohibited by law if they are carried out in private by adults and cause no offence to others not involved in them and with the parties' consent. Buggery between males or between male and female carried out in private and with the parties' consent should not be penalised.
20. I strongly support a change in the law to remove the offences involving Homosexuality except in the cases of children (which could be covered by child abuse laws anyway). I would also suggest that given the disclosure of the Government memo on this issue re the employment of staff that the P.S.A. requests on undertaking from the Poly. Director that no victimisation of current staff or the policy towards new staff is in force or is proposed.
21. The law should be brought into line with British laws on homosexuality.
22. As far as I am aware the BRITISH law is objective and seems acceptable. Perhaps it could be followed in H.K.
23. I think the law on homosexuality should be brought into line with U.K. law so that homosexual practices between consenting adults is not an offence. There are two reasons for this.

- (a) the law as it stands lacks any demonstrable basis in terms of the harm done to society by homosexuality.
- (b) the existence of the law puts all homosexuals at risk of blackmail and persecution and is therefore a cause of social harm.
24. "Abominable" offences
- 'Out-of-date" law. Who cares? As long as not performing in public & agreeable to both parties.
25. 1. When there is force, or either partner (human, that is) is under age an appropriate penalty should be imposed.
2. What people do in their own home should be no concern of the law provided no harm is done to any person and provided no public nuisance is created.
26. I feel very strongly that what takes place between CONSENTING ADULTS in private, is entirely their own business and should not involve the law.
- How can something be regarded as an offence that is practised quite commonly, and to no harm to themselves, by a section of the population? Any sexual offences practised on children or non-consenting adults must of course be heavily punishable; and ideally avoidable. The laws which cover such protection and punishment are necessary, but the law which invades the privacy of any section of the adult population is irrelevant and shameful.
27. In my opinion:
The law should be changed to be brought in line with the present British law.
Special suggestions:
- (1) Buggery with anyone should be legalized providing it is with consent. Without consent, penalties should be brought in line with those on rape.
- (2) As (1) above. 'Indecent assault' should be punishable regardless of age and sex.
- (3) If buggery is legalized, 'procuration' would cease to exist as a crime.
- I'd prefer not to sign if it really doesn't make any difference. If signing will improve the chances of getting the law changed, I would sign.
28. Changed in favour of allowing adults the right to choose partner/s for homo/hetero-sexual relationships.
29. Animals and children NO - but normally the "penalty" should be help not imprisonment.
Consenting adults, in private, YES.
30. The law should be brought in line with the present British law.
31. Hong Kong's law on homosexuality should be reconsidered in relation to other reforms in other countries over the last decade - e.g. England.

VIEWS OF DISTRICT BOARDS AND FIGHT CRIME COMMITTEES

The following responded to a Law Reform Commission letter requesting views :-

Yau Ma Tei District Fight Crime Committee

Mongkok District Fight Crime Committee

Kowloon City District Board

Sai Kung District Board

Sai Kung District Fight Crime Committee

Southern District Board

Southern District Fight Crime Committee

North District Board

North District Fight Crime Committee

Islands District Board

Sham Shui Po District Board

Wanchai District Fight Crime Committee

Tsuen Wan District Board and Area Committees of Tsuen Wan, Kwai Chung and Tsing Yi

Tuen Mun District Fight Crime Committee and Tai Hing Estate Local Affairs Committee

**EXTRACTS FROM REPLIES FROM
DISTRICT BOARDS AND FIGHT CRIME COMMITTEES**

1. General Assessment

Of all the replies from Local District Boards and Fight Crime Committees, the predominant view was that the existing law on homosexual conduct should not be changed because liberalization of the present legislation would offend the moral sense of the majority of the Chinese population in Hong Kong. Relaxation of, either by way of decriminalizing or legalizing, homosexual activities would imply that the government encourages such activities. This would be most undesirable especially in view of the effect on the younger generation and might lead to family disorganization and social disintegration. On the other hand, a number of the Board members held a more radical view and proposed amendments to the present legislation. Their proposals can be summarized as follows :-

- (1) The present law, especially the maximum penalty of imprisonment for life under S.49, is considered too harsh and the heavy penalty should be replaced by applying some sort of mandatory psychiatric treatment and rehabilitative measures.
- (2) The existing law on homosexuality should be amended to allow homosexual conduct in total privacy by adults with mutual agreement and consent of both parties and without involvement of any kind of reward.
- (3) Heavy sentences should still be imposed on homosexual offences involving children, especially on those who benefit from trading in such activities.

2. Summary of Specific Views

Yau Ma Tei District Fight Crime Committee
Mong Kok District Fight Crime Committee

Views expressed by unofficial members of the committees are summarised as follows :

- (i) Homosexuality is regarded by the Chinese as abnormal behaviour and should not be legalised. Existing laws relating to homosexuality should remain save some minor modifications.
- (ii) The maximum penalty of imprisonment for life for the offence of buggery (under S.49 of the Offences Against the Person Ordinance (Cap. 212) seems too harsh.
- (iii) In passing sentence on a person convicted of buggery, two elements - consent and use of force - should be given due consideration; and
- (iv) Heavy sentences should be passed on anyone convicted of homosexual offences involving children.

Kowloon City District Board

Six Board members spoke at the meeting, with the majority favouring maintenance of the status quo.

One member, solicitor by profession, did suggest that the law should be changed because it interferes with individual's freedom of action.

Sai Kung District Board

While the majority of the unofficial members viewed that the legislation should not be amended to make allowance for homosexual conduct and felt that to discuss this subject openly was shameful, the remaining three unofficial members held different views. These members agreed on amendments to allow homosexual conduct in total privacy by adults with mutual agreement and consent of both parties, and without involvement of any kind of reward. They felt that the present legislation on homosexual conduct was too strict. It was also suggested that consideration should be given to lifting the heavy penalty currently in force and applying some sort of mandatory psychiatric treatment to the parties involved. One member remarked that the word "abominable" was incorrectly chosen to describe this kind of conduct as this might cast a wrong impression on such conduct.

Sai Kung District Fight Crime Committee

In principle, the Meeting was of the opinion that homosexuality should not be encouraged. Members felt that homosexuality would be likely to lead to family disorganization which, in long term, would lead to social disintegration. While heavy penalties might serve as a deterrent, members considered that imprisonment for life might be too harsh.

Some members held the view that the imposition of penalties to prevent people from committing homosexual acts might interfere with personal freedom.

Apart from penalty, it was suggested that some rehabilitative measures such as referral to probation officers or psychiatrists should also be considered.

Southern District Board

While the majority of the members do not favour changing the law on homosexuality as it stands, some members suggested that the maximum penalty for homosexual acts between consenting adults should be reduced.

Southern District Fight Crime Committee

Members of the Committee felt that the Chinese were traditionally more conservative in their outlook and any move to liberalize the law on homosexuality in Hong Kong would most likely be opposed. They also agreed that children should continue to be protected by law from any form of homosexual activities, and that the law should remain very harsh towards those who benefit from trading in such activities.

There was, however, a divergence of views on whether the existing law should be relaxed. Some took the view that the maximum penalty of imprisonment for life for person convicted of buggery under Section 49 of the Offences Against Persons Ordinance (Cap. 212) was unduly harsh. It was suggested that if homosexual activities were between consenting adults in private premises, these should not be regarded as criminal activities.

On the other hand, some took the view that any relaxation of the present law might result in an increase of homosexual activities and was therefore undesirable.

North District Board

Dr Pang Hok-tuen said that if homosexual behaviour is legalised it would enable people with this behaviour problem to be assisted, rather than punished. He felt that punishment, for example by imprisonment, is pointless and inappropriate in most cases, although criminality should be retained where prostitution or minors are involved, or where homosexual behaviour takes place in public or without the consent of those involved.

Dr Chan Chee-chung felt that homosexuality is unnatural and that legalisation would encourage it. He did consider, however, that psychiatric treatment and counselling would be a more constructive approach than imposing penalties.

Mr Cheung Yan-lung said that in his view the legalisation of homosexuality would offend the moral sense of the majority of the Chinese population in Hong Kong. He also agreed, however, that psychiatric treatment of homosexual offenders is preferable to punishment by imprisonment.

North District Fight Crime Committee

Unofficial members unanimously agreed that homosexuality should not be legalised in Hong Kong for the following reasons :-

- (a) homosexual behaviour was a mental sickness and legalisation was not a means to cure it;
- (b) legalising homosexuality would only encourage more people to practice it. This would aggravate the problem even further instead of solving it; and
- (c) legalisation would certainly offend the moral sense of the majority of the Chinese population in Hong Kong.

Unofficial members also unanimously agreed that a maximum penalty of life imprisonment for buggery was too heavy.

Islands District Board

Strong views against homosexuality were unanimous among the unofficial members.

Sham Shui Po District Board

Only three members commented on the issue and they were all against any change to the existing laws as in their view homosexual conduct should not be tolerated in Hong Kong, which is basically a Chinese community.

Wanchai District Fight Crime Committee

Mr LO Yick-sun viewed that abominable homosexual conduct, carried out by consent of both parties, should not be regarded as an offence, but members held that this might encourage more homosexual acts. Mr HO Choi-chiu however felt that homosexuality was still a serious offence, and the law should not be amended to allow for any leniency in punishment.

As regards penalties, members suggested :

- (1) Para 1(i), under Section 49, conviction of buggery liable to life imprisonment - members considered the penalty too harsh and suggested it be relaxed; and
- (2) Para 1(iii), pursuant to Section 51, any male person convicted of an act of gross indecency with another male person, should be liable to a maximum penalty of 10 years instead of 2 years as stipulated.

Tsuen Wan District Board and Area Committees
of Tsuen Wan, Kwai Chung and Tsing Yi

The discussions were centred on two themes:-

- (a) given the local circumstances in Hong Kong, whether homosexuality should be legalised; and
- (b) again, given the circumstances in Hong Kong, whether the laws governing homosexuality in Hong Kong should be changed.

The views of the majority of the members of the meeting on (a) was that homosexuality is totally unacceptable in Hong Kong which is primarily a Chinese community, and as homosexual conduct is unnatural and is contrary to Chinese traditions and concepts of morality, homosexuality should be totally banned. Only one member who is a doctor by profession favoured legalising homosexuality as he believed, by legalising homosexuality, the spread of venereal diseases could be better controlled.

The views on (b) were more divided:-

- (a) some feel that the existing laws on homosexuality should not be changed as it has been working reasonably satisfactorily for years;
- (b) some feel that the maximum penalty of life imprisonment appears to be too severe for offences of this nature and perhaps the maximum penalty could be reduced, to say 10 years;
- (c) penalty could be more severe for offences committed in public than those in private;
- (d) some are of the opinion that offences committed in private between consenting adults should not be regarded as criminal, as Hong Kong is after all a free society; and
- (e) the laws should not discriminate against any sex. There should be provisions in the laws to impose a higher penalty on any person who procures or attempts to procure the commission by a male person of any act of gross indecency with another male; this is an effort made to prohibit male prostitution.

Tuen Mun District Board, the Tuen Mun
District Fight Crime Committee, and the
Tai Hing Estate Local Affairs Committee

A wide range of views are collated as follows :

- (a) Professionals, e.g. doctors, industrialists etc. view that homosexual relationship is basically private and personal and can be allowed between consenting adults as long as interests of other parties are not jeopardized.
- (b) Aged locals, representatives of religious bodies and school principals strongly object this sort of behaviour which is deemed contradictory to the Chinese culture; they are satisfied with the existing legislation and penalty and can tolerate no relaxation in this respect.
- (c) It is a general consensus that the ceiling age for protection of children should be raised from 14 to 16.

MOVEMENT FOR HOMOSEXUAL LAW REFORM

Proposals for Homosexual Law Reform

Introduction

We request Government to consider amending the 'Offences against the Person' Act so as to render homosexual acts between consenting adult males in private no longer a criminal offence.

We propose this because the present law is

- i) not enforced
- ii) generally unenforceable
- iii) discriminatory
- iv) conducive to other crimes

Our proposal only relates to sexual acts performed

- i) in private
- ii) where both parties are adult
- iii) where there is no coercion

We would support the retention of the existing laws and penalties with regard to offences involving minors, public indecency, and coercion or assault. These laws protect society, whereas, we contend, the law with regard to consenting adults in private does not.

The existing law

The present law with regard to homosexual acts is contained in sections 49 to 53 of the Offences against the Person Ordinance of 1971. It provides for life imprisonment for the acts of sodomy and bestiality (not distinguishing, in the case of sodomy, the act between consenting persons from that where there is no consent).

It provides for imprisonment of up to ten years for attempts to commit the above acts or for assault with intent to commit the above acts or for any indecent assault on a male person.

It provides for imprisonment of two years for the commission of, or attempted commission of acts of gross indecency (not defined) with another male person, in public or in private.

We have no quarrel with the law relating to assault (non-consent), nor with the law relating to public indecent behaviour. We therefore make no reference to the existing laws with regard to soliciting, loitering etc., which offences are not the subject of this proposal.

The law dealing with homosexual activities was first introduced in Hong Kong by the Colonial Government and the legislation was modelled on the law in England. Subsequent amendments have also followed similar amendments to the English law, though Hong Kong has not followed the provisions of the Sexual Offences Act of 1967, which rendered private acts between consenting male adults legal in the United Kingdom.

At this point we should mention that, until the Colonial Government introduced a special category of 'homosexual offence', there was no existing, local law on the subject. Historically

China seems to have been less concerned with regard to homosexual activities, provided they did not infringe or impose on public safety, decency and the smooth operating of society.

It is ironic in the circumstances that the present law is sometimes defended on the grounds that 'Chinese opinion' would not favour a change. The law was introduced by the colonial authority: the law in England has since been amended to make homosexual conduct between adult consenting males in private no longer an offence. Furthermore such conduct is not a criminal offence in the Peoples Republic of China. It is a diminishing minority of countries which have any legislation with regard to such conduct.

The law is not enforced

It is now over three years since any prosecution has been brought with regard to homosexual activity between consenting adult males in private, and even longer since any charges have been made on the initiative of the Crown. The law is simply not being enforced. We do not refer here to cases involving coercion, minors or public indecency, which would remain offences under our proposal.

There is surely no justification for retaining on the statute books a law which is not enforced. We argue below that the law is also unenforceable and indeed is harmful to the public interest.

There is, we believe, no other law which is retained but is not enforced. The existence of such a non-enforced law surely undermines the law itself as a whole. If certain 'offences' are really regarded as criminal, then it is difficult to understand why no prosecutions are brought. It is further difficult to understand the non-enforcement if the 'offences' are deemed to merit such penalties as life imprisonment.

However the severity of the penalties is not our concern, but rather that laws which are not enforced should not be retained. Our proposal would simply bring the law into line with current practice. It may be argued 'Why change the law if nobody enforces it anyway?' The answer is that the law itself is undermined by not being enforced, that it could not be properly enforced anyway, and that its continued existence leads to more real problems both for homosexuals and for the public good.

The law is unenforceable

For the law to be enforced in a credible way would require access by the police to the private dwellings of a relatively large number of law-abiding citizens. It is not known how many male adult homosexuals there may be in Hong Kong. Furthermore homosexual acts may be committed occasionally by people whose principal inclination is heterosexual.

The number of homosexuals is not germane to our proposal. If the law can be shown to be unenforced, largely unenforceable, discriminatory and conducive to other crimes, it is not relevant whether we are considering a minority of 1,000, 10,000 or 100,000. However, if statistics from other countries are remotely significant it is likely that something between 2% and 4% of the adult male population has, at some time, engaged in a homosexual act such as would now render him liable to criminal prosecution.

It follows that a substantial minority exists who are, at present, subject in theory to criminal investigation. The existence of such 'crime' which is not even investigated, let alone prosecuted, demonstrates the general unenforcibility of the present law. Given the large number of 'real' crimes that require action, it would simply be impractical to assign manpower to investigate people's domestic bedroom habits.

More importantly, and we lay great stress on this, it would be improper, and an infringement of individual freedom and privacy to attempt to investigate the private conduct of otherwise law-abiding citizens in this way.

The largely unenforceable nature of the law means that such offences as are brought to the attention of the authorities are likely to be either public (in which case they would remain offences under our proposal) or the result of a 'tip-off' from a person with a grievance against the offender. We refer later to blackmail and corruption in this connection.

The law is discriminatory

First the law is discriminatory against male as opposed to female homosexuals. Activities between consenting adult female homosexuals are not, and never have been, a criminal offence in Hong Kong. There is, we believe, no other law which discriminates between the sexes in this way, other than offences which can only be committed by one sex, e.g. rape of a female by a male. This is unjustifiable.

More fundamentally the law discriminates against male homosexuals as opposed to the heterosexual majority solely by virtue of their preference for the emotional and sexual partnership of their own sex.

We are not here concerned with attitudes towards homosexual activity. Many who support our proposal would concur with the view that a normal fulfilled and happy heterosexual pattern of behaviour is the desideratum.

However there are many things which may be disapproved of, including, for example adultery and fornication, which, are not, however, criminal offences, though heterosexual adultery doubtless is more harmful than homosexual conduct between consenting adults in private, in that there is an injured third party.

The homosexual condition is abnormal, in that the majority of the population is heterosexual. So, however, are such 'minority' conditions as athletic or academic brilliance, blindness, speech-impediments, being left-handed (once thought of as requiring remedial treatment), or earning more than \$100,000 a year. The issue is not whether a condition accords to the norm but whether, in the context of this proposal, the expression, in private, of that condition should be prosecutable by law.

There is surely no other sphere of activity where the law may intervene when there are no injured parties, no infringement of public safety, decency or property rights, and where the parties concerned have committed no offence other than to be different from the majority. This is discrimination which is as unnecessary as it is undesirable.

The law is conducive to other crimes

The existence of a law which is neither enforced nor generally enforceable provides considerable opportunities for the dishonest person to engage in blackmail and corruption.

At present the discreet homosexual in Hong Kong can live a respectable and law-abiding existence, knowing that, even if his mode of life is known to others, he will not run the risk of prosecutions, providing he does not otherwise break the law. However, someone who wished to blackmail him, or pursue corrupt activities without interference, would have a singular opportunity by threatening to expose the homosexuals activities to the authorities.

We concede that this would still remain an undesirable possibility following an amendment to the law, as there will remain for many a stigma attached to the condition of homosexuality.

However, the removal of the possibility of legal prosecution, with the possibility of imprisonment for up to life would reduce the opportunities for the corrupt and the blackmailer. It would also end the iniquitous situation whereby the forces of law were required to take action against otherwise law-abiding citizens at the instigation of informers of sometimes questionable repute. That the law chooses not to take action on its own initiative has already been demonstrated.

A related matter which has been brought to our attention, particularly by religious, social and psychological workers, is that there are cases where a homosexual may have certain problems (perhaps, but not necessarily, associated with his homosexuality), need advice and help, but be unable or unwilling to seek such help, as he would, in the course of doing so, need to confess to what is, at present, a criminal offence involving possible imprisonment. We have been much impressed by this unfortunate state of affairs.

General

We do not see the male homosexual as an actual or potential criminal by virtue of his condition. The vast majority are ordinary, law-abiding members of the community. To associate the average homosexual with the few unlawful people who are rightly charged in connection with activities involving minors, coercion or public indecency, is as wrong as to judge the majority of heterosexual males according to those involved in pornography, rape, adultery and so forth. It is with this law-abiding majority of homosexuals that we are concerned. There has always been, and probably always will be in all societies, a minority of the population, male and female, who are homosexually inclined. Our argument is that they should be subject to the law in exactly the same way as the heterosexual majority. That they should be prosecutable for any offences involving coercion, violence, assault, public indecency, and engaging in prostitution.

It is now widely accepted that homosexuality is not a disease or a condition necessarily requiring treatment. It is simply a minority condition, and it is not a proper function of the law to, in theory, persecute this minority. That the law does not do so, cannot generally do so, and, it seems evident, does not wish to do so, renders a change in the law desirable.

Proposal

- a) That the law of Hong Kong be amended to accord with present practice, and that homosexual acts between consenting adult males in private be no longer a criminal offence.
- b) That the existing law and penalties with regard to homosexual acts involving coercion, minors and public indecency be retained.
- c) That the law be amended for an initial period of five years, at the end of which the matter be further considered.

It is well appreciated that Government has many other matters to consider of an equally or more urgent nature. Should it be necessary we would understand there may be a need for our proposal to be considered in principle, pending time for the necessary legislation. We would, however, urge Government to respond to our proposal which would remove from the statute book a law which does not serve the public interest in any way, and which constitutes an unnecessary and undesirable situation in our community.

In support of our proposal we are forwarding to you 424 signatures of individuals who wish to associate themselves with our proposal.

NOTES OF MEETING WITH REPRESENTATIVES
OF KOWLOON CHAMBER OF COMMERCE,
HONG KONG & KOWLOON RESIDENTS' SOCIETY
AND OTHERS

Meeting held on 9 January 1982
at Hon. Mr. Justice Yang's Chambers

Present :	Hon. Mr. Justice T.L. Yang	–	Chairman
	Dr. Ambrose King)	
	Hon. Mrs. Selina Chow, JP)	
	Mr. Robert Ribeiro)	Members of
	Dr. George Ou Ta Wei)	Sub-committee
	Mr. T.C. Bridgman)	
	Mr. Lam Wah Hui)	
	Mr. Jonathan Daw	–	Secretary
	Mr. C.C. Cheung		Attorney General's Chambers
	Mr. Tang Ho Yin		Mutual Aid Committee, Lai Chi Kok
	Mr. Shek King Man		Hong Kong & Kowloon Residents' Society
	Mr Ha Yu Man		Mongkok District, Tai Kok Tsui Area
	Mr. Anthony Wong		Kowloon Chamber of Commerce
	Mr. Wong Cham		Kowloon Chamber of Commerce

1. Justice Yang thanked the guests for volunteering to give submissions to the Sub-committee.
2. Mr. Wong Cham started by saying that over 95% of Hong Kong's population are Chinese and there is no law in Chinese history legalising homosexuality. In Cantonese, the nickname "gays" connotes despicable implications as criminals of murder and assault. He knew of no place in the world other than the U.K. where homosexuality is permitted by law. He said he had been to the States and learnt that a soldier was dismissed for being a homosexual. He circulated a copy of an article he wrote in Wah Kiu Yat Pao expressing his views on this subject.
3. Mr. Wong went on to explain how bad it could be to practise homosexuality. In the animal kingdom, he said, homosexual behaviour is against nature. He queried why in Hong Kong we have to engage ourselves in such discussions as to legalise homosexuality. He thought it was not necessary at all.
4. Mr. Wong voiced disagreement to the argument that if somebody is practising homosexuality, it should be legalised. By the same logic, he said, because of many robberies nowadays, should we consider approving of such a crime. He thus objected to legalising homosexuality personally and on behalf of his organization.
5. Hon. Selina Chow proposed and Justice Yang agreed and undertook to explain the present state of the law regarding homosexuality to the guests.

6. Mr. Anthony Wong pointed out that there are a lot of differences between Hong Kong and the U.K., both geographically and historically. Here we have over 95% Chinese and according to the Chinese customs and practice, homosexuality should be prohibited.
7. Mr. Shek used Chinese philosophy of "tin (sky)" and "tei (ground)", "yim" and "yeung" to illustrate his points that homosexuality should not be permitted at all. He further said that if it is allowed, it would lead to family break-down and social confusion.
8. Mr. Ha opined that in Hong Kong, even if homosexuality is legalised, it will have very little effect on the public at large. However, when children of our society are brought up in a mixture of European and Chinese standards of education, they would be adversely influenced and may take it as a custom to practice homosexuality.
9. Mr. Ha agreed with Mr. Wong Cham that this topic should not be discussed in Hong Kong at all. He had brought this issue up with his friends and committee members and nobody opposed his views. He therefore petitioned to all those concerned with the making of the law to heed to public opinions and not to discuss this matter any further.
10. Mr. Anthony Wong said in their committee meetings, all members were surprised in learning that the issue was being raised. He explained that in Hong Kong where the bulk of the population came from China, there is only a very, very small percentage of the citizens who are homosexuals. As he saw it, any law should be for the good of the public but in Chinese society, this issue is very embarrassing and disgusting. It should never have been raised at all. If homosexuality is legalised, it would only lead to confusion. He considered it a waste of time and money.
11. Mr. Tang took it as representing his Mutual Aid Committee and his Confucian organization. He opined that this matter should not be discussed at all. Those who raised this issue did not know what is right or wrong. Quoting a Menscius saying, he condemned all those foolish persons. According to Chinese philosophy, homosexuality has adverse effects on the physiology and psychology of the people. In Taiwan and Mainland China, he said, homosexuals were made criminals of law.
12. Justice Yang pointed out that in China, there is no written law concerning the issue of homosexuality. Mr. Tang said that there is indeed no need for legislation in Hong Kong or else it would break the close political tie with China. He then continued in arguing that the law should not be changed because there was only a small proportion of the population practising it. In conclusion, he opposed any legislation legalising homosexuality.
13. Disagreeing with Mr. Shek's argument, Mr. Wong Cham said they cannot interfere with the rights of Europeans to legalise their laws on homosexuality but in their Chinese society, they should not be compelled to accept European law as suitable to them.
14. Hon. Mrs. Chow explained the loopholes in the law on homosexuality, with particular emphasis on the issues of two consenting men practising it in private and on the cases of blackmail and criminal intimidation.
15. Dr. King said that they are not encouraging homosexuals by reviewing the law but rather, they are looking at the issues of the law which are not satisfactory.

16. Justice Yang advised that in China, there is no legislation to put homosexual to jail but in Hong Kong, we have the law to this effect.
17. Mr. Wong Cham agreed that the public misunderstood the work of the Sub-committee and thought it was encouraging homosexuality. The guests all shared the same view that homosexuality should be condemned but the present state of the law is not satisfactory.
18. Hon. Mrs. Chow and Dr. King both explained that the Sub-committee is only looking at a very small area of the law. Mr. Wong Cham and the others accepted this point.
19. In replying to Mr. Anthony Wong's question, Justice Yang said from past statistics, there were very little cases concerning homosexuality. Mr. Wong felt it not essential to change the law at present for a small group when there are so many urgent matters for the majority. However, Hon. Mrs. Chow found it expedient to have two or more areas of law reform carrying out at the same time.
20. Dr. Ou expressed his views on the issues from the angles of medical and psychological aspects. Mr. Anthony Wong and the others seemed agreeable to the argument that by its nature, the subject should include not only social problems but also medical complications.
21. Hon. Mrs. Chow brought the meeting's attention to a documentary compiled by TVB on the subject of homosexuality released about a month ago on television. Mr. Wong Cham said he was interviewed by a TVB reporter several months ago but he did not talk much because MacLennan's inquiry was being conducted at that time. All present agreed that the documentary was well presented and the views expressed by the editor were objective and sensible.
22. Justice Yang was concerned that even if the law on homosexuality is changed, the public would not accept its practice as normal and all the guests agreed to this point.
23. Hon. Mrs. Chow quoted the analogy of bigamy and said that the change in law should take into account social trends. Justice Yang said that the argument at present should be centred on taking away the illegality rather than legalising homosexuality.
24. Dr. Ou mentioned some medical cases whereby persons indulging in homosexuality would develop psychological diseases if they are in constant fear of being penalised by the law. Justice Yang agreed with Mr. Wong Cham and the others that the judge would take into account the accused's medical records when considering the sentence imposed on homosexuals.
25. Finally, it was agreed in the meeting that the law would only affect a very small portion of the population and that while it is simple to recommend changes in the law, there will be complicated political and social issues that will follow.
26. In conclusion, Justice Yang outlined the fact-finding role of the Sub-committee and assured the guests that their views would be reflected in the report to the Commission. At a later stage, he said, the Commission would discuss the matter in depth and decide what should, or should not, be done.

(C.C. Cheung)
11.1.82

EXTRACT FROM LETTER
FROM HONG KONG GENERAL CHAMBER OF COMMERCE
TO LAW REFORM COMMISSION

"As you will have realized from the discussion that took place, members feel that the matter is basically one on which the individual will make up his own mind and that the implications for employers, as far as can be determined, are not particularly serious. The majority of companies would seem not to have any particular expressed policy regarding employment of homosexuals, with the important exception that if homosexual behaviour was found to be disrupting staff relationships and was in any other way causing embarrassment to an employer, action is likely to be taken just as it would with regard to any other form of disciplinary offence or undesirable behaviour. By and large, members seem not to find that the employment of homosexuals creates any overt problems.

The previous paragraph refers to the situation as it exists at present, under which homosexual behaviour is a legal offence. The Committees feel that should it eventually be decided that a change in the law is desirable, any amendment in legislation should be drafted so as to discourage what might be termed 'the flaunting of conspicuous homosexual behaviour'.

The Chamber feels that it would be difficult to obtain any meaningful expression of opinion by carrying out any form of survey among its member companies, and that this would not probably establish much beyond what I have reported above.

Thank you for giving us the opportunity to comment on this issue. We hope that this view, even if it is somewhat negative, is of some help to you.

Yours sincerely,

Assistant Director
Administration"

NOTES OF MEETING WITH MR GEORGE CHANG

Meeting between T.L. Yang, Selina Chow and
George Chang of TVB on Tuesday, 24 November
1981 from about 10:30 a.m. to about 12:30 p.m.

During the meeting, several ideas were discussed. T.L. Yang and Selina Chow are particularly grateful to George Chang for seeing them and spending so much time with them. He was sincere, frank and open. The following is a summary of what he said.

"In preparing for the TVB programme on homosexuality, he had interviewed many people and visited a number of places frequented by homosexuals. He had attended their social gatherings as well as meetings. It took him six months to produce the programme. He found that the homosexuals he encountered came from all levels of society : there were civil servants, business men, people from the teaching profession, people working for the media, waiters, clerical staff, artists, writers, salesmen, technical experts, etc. Some were from Europe, some from American countries and Asian countries, others being local. The age group was between about 18 to 30 or above. From a psychological point of view, their mentality was the same as heterosexuals. Being men, they are more easily sexually aroused than a woman. Also procreation being impossible, and coupled with the conditions of a community such as Hong Kong, the chances of their breaking up a union are greater than that of a marriage between a man and a woman. The code of behaviour does not differ from that of heterosexuals."

2. The homosexuals seen by George Chang are not particularly concerned about the state of the law, for they are already taking part in homosexual activities anyway. The threat of blackmail (e.g., in the case of civil servants) does not appear to be a strong reason for amending the law, for non-criminal conduct, e.g. adultery, may nevertheless be the subject of blackmail. George Chang feels that the problem should be approached from a psychological and anthropological point of view.

3. Many factors, and not any single one, contribute to a person being a homosexual. There is, in the case of a few, an important element of will or decision making. In many cases, a person may, at some point of time, make a conscious decision to be a homosexual or to shun homosexuality and lead a happy heterosexual life. This paragraph applies to a few only.

4. George Chang says : "I think for a gay person, the process of 'coming out', of recognizing one's own sexual preference can happen at an early age, 14 or 15, or it can happen when a person is 18, 20, 25 or even after 40. For someone who cannot cope with his or her own sexual preference, that is, if he or she is faced with such a choice, then such a person is a closet homosexual who is very sensitive to his environment; and the slightest disapproval may be looked at by this person as oppressive. For a gay person, the moment of decision making or the coming out process, may take a very long time. For someone to be able to say, 'yes, I'm gay', means that that person is prepared for the worst and he is willing to face all the resulting consequences."

5. Dr Nan-lun Ng of the Department of Psychiatry, HKU, and Dr Linda Koo, Medical Anthropologist, Faculty of Medicine, HKU were interviewed by George Chang and he thinks we might approach them. Dr Choy Yuen-wan (蔡元云) of 'Breakthrough' may also be contacted. They have encountered homosexuals in their counselling service.

6. This paper has been seen by George Chang.

(T. L. Yang)

STATEMENT OF A CHINESE HOMOSEXUAL

(Translation)

Foreword

Late in the night of 6.11.81, TVB broadcast a programme called 'The Homosexuals'. It has stirred up the emotions and thoughts of a group of people who have been forced to conceal their identities. It is believed that in the near future, homosexuals who have buried confusions and conflicts deep in their hearts for years will, as a result of the programme, voice their feelings to society.

A number of people have always said that homosexuality is a sickness unique to white people, and the above special programme is the first programme about local Chinese homosexuals ever produced in Hong Kong. It is a selfish and unjust society in which homosexuality is banned by the law. However, there are still people who have spoken out for homosexuals and produced for them a special programme in a sincere and honest way. Their kindness is like sunshine in winter, warm and tender.

Traditional conservative views, existing legal restrictions and various other causes have led the majority of the public to prejudice and misunderstanding about homosexuality. What is more annoying is that there are people who for their own interest, do their best to vilify homosexuals and turn them into ugly and unnatural things so as to gain the public's favour. However, they themselves have only limited knowledge about homosexuality. Apart from lamenting their bad fortune, the poor victims can do nothing about this. On the other hand, the public becomes more biased against homosexuals and dislikes them more. But just like a fairy tale, when the worst time of despair and sadness has come, the sage brings hope to the wounded and the weak. Social dignitaries who appeared in the TV programme used their reasoning and conscience to comment on the behaviour and psychology of homosexuals. With knowledge and love, they did justice to these disadvantaged persons. At the same time, the programme gave the victims who lived in darkness a chance to reveal their inner world. Should the world have more wise and kind men like them it would be less ugly and the oppressed could gradually stand erect.

Every homosexual has his own story and reasons for being willing to play the role of such a social outcast. I, as a member of this minority, have long wanted to make a confession to my family and friends. However, I am a man of little virtue and ability. Up to the present, I am still withholding the truth from my family. This is the saddest thing in my whole life. Now, since the others were bold enough to appear on television I do not think that it matters much in telling my own past experiences. It shows my support to friends who appeared on television and it can be a tribute to the special programme.

Starting from the age of 11 or 12

Homosexuals' admiration and affection for the same sex comes from the heart. To them, these feelings are natural and normal. They are real physical and psychological feelings which they cannot control. So long as homosexuals do not do anything harmful to others, there is really nothing wrong with their feelings and actions. I found that I was attracted by the same sex as early as 11 or 12 years old. At first, I was scared, thinking that I was the only queer man in the world. After 20, I gradually came to know friends similar to me. I found that they were all mentally balanced, some with high intelligence and good morals. I began to experience deeply this hidden world. The gains, losses, happiness, anger, sorrow and joy experienced are the same as those in the kaleidoscopic world of a heterosexual.

Causes leading to suicide and nervous breakdown

In a medical book, I found the definition of homosexuality : 'Homosexuality is an innate state of mind. We now begin to know its causes. Pathologically speaking, homosexuality is similar to colour blindness, left-handedness or heterotaxy'. So homosexuality is not a 'psychological perversion'. It can only be called a form of 'sexual imbalance' and this imbalance is only one of the many styles of sexual life. So long as a homosexual is healthy in thinking and mentality, his sexual inclinations will not harm himself or others. However, the society in which a homosexual lives and his family do not allow him to satisfy his physical and psychological needs. The homosexual has to act a false part to cater for society and others. This psychological and mental burden which is unnatural and irrational can gradually force a normal person into the obscure world of insanity. And there is the danger that this will eventually lead him to suicide or nervous breakdown.

I became economically independent when I was 14. The independent life gave me a strong will. Though I did not tell the world and my family about myself (of course, there was no need to), heterosexual friends who were close to me knew about me, understood me and accepted me. I was glad that I had more of my real self and more freedom, both in daily and mental life, than my homosexual friends. The only shortcoming was that I had to make some compromise in my job and cover up my true nature. However, this small burden was not heavy enough to lead me to suicide or nervous breakdown. I was fortunate.

The impact of spiritual and sexual desires

Most homosexuals have their own stories and background : lack of family love in childhood, lack of good friends in adulthood, failures in studies and career, crowded and noisy living conditions, and emptiness in mental life. All these can make one seek desperately for physical contact with another person. It is not a sin as it aims at releasing one's burning desire and anaesthetizing the emptiness at heart. Love and desire are not evils in themselves. As long as deception and oppression are not involved and the other party does not get hurt, restrictions and curbs should not be imposed on sex and its various forms. Love and desire should be given the greatest degree of openness and freedom, and the secrets of one's bedroom should also be given strict protection by the law.

When I was 18, I fell in love secretly with a boy (not a gay) who was 2 years younger. I had not come out then and I did not know how to find gay friends. It was the first time in my life that sparks of fire leapt from the depth of my heart. I lost myself and I unilaterally gave him all my love. Of course, I did not achieve anything. I well perceived that it might end up in a tragedy but my passion grew stronger day by day. My behaviour and actions towards him also became more excited and crazy. Eventually, he was so scared that he ran off every time he saw me. Very late on a certain night, I could no longer control my burning desire. I was in a state as if I were hung in mid-air by my physical and psychological needs. Recklessly, I climbed out the window, ignoring the danger of falling down, I climbed along the drain-pipe towards his sleeping room

Married life with homosexuals or heterosexuals

Homosexuals can never be like heterosexuals. They cannot take the correct road of life, i.e., friendship followed by love and then proceed in unity to marriage. Since homosexuals cannot build a family of their own so even those in love lack responsibility, perseverance and faithfulness. As a result, they do not have a serious and reasonable attitude about sex and love. However, this is not an absolute phenomenon. On the other side, we can also find examples of faithful, dedicated, profound and noble love. The examples may not be many, but they do exist.

Sometimes, a homosexual, under the pressure of society and family, is forced to pick a girl at random and marry her. Unless he is bisexual and his married life can satisfy his psychological and physical needs, he will certainly lead a double life after marriage so as to satisfy his real needs. Such a marriage which is held to cater for the public's interest will not save him from his 'sorrow'. The marriage will only turn into a foolish and ridiculous tragedy which does harm to all parties involved.

In a gay party held in the spring festival of 1974, I found 'him'. Those days were filled with sunshine and freshness which I will never forget. Our love naturally bore fruit. I declared to all my gay friends that my lonely life as a bachelor had ended and I would start another chapter in my life. However, we are only an ordinary pair. In the past few years, we have not experienced any serious difficulties or problems. The pressure of life has reduced our togetherness into something simple and unexciting. Lately, I have even found that we now seldom succeed in achieving harmony and unity, both spiritually and physically. I know that these shortcomings are natural in any love affairs. They are something we have to face. How can life be always perfect? I do not mind all these. The important things are we still treasure our days together; we still find life together harmonious and happy; and we still love and are concerned about each other. I do not care about storms in the outside world and I deeply believe that our love will be like a stream in a secluded valley, ever flowing and ever refreshing

A loner isolated from the people

Under the current social circumstances, homosexuals will naturally and voluntarily abandon their old friends and relatives. On the other hand, they will try their best to avoid new friends and colleagues. Why do they become so unsociable? They are also human beings. They need assistance, love, friendship and concern just like others. But they will become lonelier year by year, getting more and more isolated from others. Others may think that they are unsociable but they are actually forced to suppress their feelings and retreat to seclusion and concealment.

Sometimes, a homosexual may suddenly lose control of himself and open his heart to others. He will tell his family and friends what he really likes or whom he loves. This will allow him to enjoy freely for a moment the pleasure of being honest with others. However, the real world does not permit him to do so. He will end up by being rejected, isolated and insulted by others. So he has to submit to reality. In order to protect himself, he drops off old friends and avoids making new ones.

This sorrowful self-isolation can make some homosexuals very pessimistic. They feel that fate and circumstances are against them and they can do nothing about it. The only escape is evasion. So they live helplessly in loneliness and contradictions, bearing with them the 'masterpiece' that mother nature has bestowed on them. Their hearts are thus permanently filled with unnamed sadness and lonely feelings.

As a gay, 1975 was the year I had my biggest test. I was recruited by one of the disciplinary forces and had a high-paid job. I thought that I could get rid of poverty and gradually achieve success in my career. However, one's character determines one's role in life. I was defeated by the challenge of 'human relations'.

My colleagues were all men of mettle and masculinity. As a team of seven or eight, we worked together and after work we ate, went out and had fun together. But sadly for me, what they did and talked about every day, mostly directed to gambling, girls and family business, were a world apart from my own likings and personal interests. As time went by, I found myself increasingly estranged from these people and the gulf separating us widened as

they were getting more acquainted with each other in a family way. The more often I tried to shy from them, the greater would be their curiosity about me. This in turn added to my eagerness to keep to myself lest my true self be unwittingly revealed. I was beginning to feel the pinch of the shackles that were unnecessarily brought to bear on my mind. In a bid to make life easier, I had once thought of putting on the mask of pretending to be heterosexual, making myself behave just like one of them and sharing the fun sanctioned by the world. But I was well aware in that event I could hardly stand up to the pricks of my conscience for indulging in lies and self-deception.

Realizing that I could never accommodate myself to others who had done precious little to accept me either, the only course left open to me was to accept whatever "fair" judgment others would pass on me. And the verdict read "Guilty. You're fired!" Nevertheless, I was prepared to pay this price as long as I could be true to myself. I was not going to relinquish my own belief just for the sake of keeping a good job. I would rather face others' rejection and condemnation than say what other people say. I must be faithful to myself and live for my own sake.

Personality unsound and feelings immature

Many homosexuals are treading a lonely and melancholy path that will ultimately lead to a solitary life. These hapless people must nevertheless face up to the facts of life. Who will choose to forsake the happiness of a family life that is acceptable to all and that can be cherished openly without compunction? To homosexuals, however, the leopard can never change its spots. Finding a life-long companion from among one's own sex is as difficult as finding an oasis in the desert. That is why most of them have spent long periods, or even a lifetime, living in their own solitary world.

For these people, the feeling of loss and loneliness will grow with their age. Those who are still bachelors beyond the age of 30, in particular, will feel they owe something to their families and friends. So, many have acquired the habit of frequenting bars, discotheques and the like, and immersing themselves in gambling and other pleasures. Living in a dream world gives them the pleasures of the moment, however, ephemeral they may be. Yet, their inner life is still abject despair and privation. Losing interest in other useful pastimes, they have abandoned themselves to despair.

I first came out in 1973 when I got acquainted with friends having the same tastes through newspaper advertisements soliciting friends. From then onwards, I discovered many places where friends sharing similar tastes got together. Over the years, I came to know many gay people and understand them in depth.

Gay people are on the whole good-natured and seldom do harm to others. However, one thing is regrettable. That is, too many just do not bother to observe the proprieties and behave properly to others. They can be friends one day but complete strangers the next. With others there is no spiritual communication. This is particularly the case with those who are afraid of people. As regards their relationships with the other sex, they often act with naivety and childishness and appear sadly immature and inadequate when it comes to love. They are pessimistic and defeatist in love affairs.

Gay people give one the impression that they do not have a sound personality or a mature frame of mind. One of the reasons why they cannot keep on good terms with even their own people is the enormous pressure exerted by the law, the community, and the family. It gives them a sense of guilt. As they feel they belong to a different breed, they will at first repel their own selves and then alienate themselves from others. This self-imposed estrangement will gradually spread to other members within the same circle. They will no

longer be enterprising and energetic, and will eventually be devoid of any feelings as though their senses are completely numb.

Breaking through the spiritual shackles

Different people have different values and attitudes. There should be no definite and commonly imposed norms as long as our behaviour does not cause harm to others. A conservative society makes room for only one track and people have to follow the ways it approves. Anyone who takes a different course will be liable to be denounced, rejected and branded as "abnormal". It is hoped that Hong Kong will rid itself of such conservative thinking and that its people will no longer adhere to what they consider as "normal" standards of morality.

As a matter of fact, homosexuality need not be judged in moral terms or be subject to legal sanction. The question of homosexuality is not one of morality or law. To be honest, human and conscientious is what morality and laws are about; to be otherwise is not moral and lawful. What matters most is whether one is benevolent and affectionate to others and whether one has respect for life. One should be judged by one's personality and conduct, and not by whether one is a homosexual or a heterosexual.

I am very glad that I have now found a job that really suits me. I have found inner peace and a happiness though it is not a high-paid job. Now I no longer have to put on a mask and delude myself in order to accommodate myself to others. I can choose freely those colleagues who understand, accept and sympathize with me and have a spiritual dialogue with them. I have worked here for five years and have decided to regard this as a life-long career. I do not mind leading a simple life if only I can live unfettered spiritually in return.

I have recently got acquainted with a group of friends who have a stronger will. We spend a lot of time together on artistic and cultural pursuits. Though we are only a small group, we are sure that we can set a good example and bring new hope to other homosexuals. I am strongly convinced that the community will one day break away from the old and decadent conventions and adopt a rational approach in making its own judgment. Let us hope that one day everyone will have the freedom to love and do as they like and due respect will be given to what people say and feel. Only then will life be full and gratifying to us.

Epilogue

No man can enjoy his life fully and with a pure soul unless he is entirely sincere to himself and others. I now pray to God to forgive and sympathize with the homosexuals who have suffered immensely in the present-day world. I also hope that they will know it is not a shame to do what they do and their deeds are no crime. They need not reproach and reject themselves. We should equip ourselves with new knowledge and new concepts if we are to adapt ourselves to this part of the world where much significance is attached to freedom, democracy and human rights. The shortcomings and weaknesses of the past should be erased with the lapse of time. Today, we can manage to rid ourselves, little by little, of the shackles that come from within and without and face the world with an entirely new look. We should show the world the sincere, healthy and beautiful side of us. We should tell the world of our grievances and sufferings, as well as our ideals, aspirations and longings

All these years of homosexual life have enabled me to appreciate the importance of a genuine love. Never will I repent of what I have done and sacrificed. I am fully aware of the path I have been treading. I also know all too well that I have to face up to it with sincerity and bear whatever consequences may arise. As long as I am faithful to myself and others, I am sure that I will, undaunted in the face of perils, surmount all difficulties and dispel all fears

I must be faithful to myself through and through. I must live like a man, every
bit a man

NOTES OF MEETING WITH 4 YOUNG HOMOSEXUALS

Meeting held on 6.2.1982 at
Mr. Justice Yang's Chambers

1. Members of the Sub-committee met interviewees, all Chinese males, who had voluntarily come forward as homosexuals wishing to express views and provide assistance to the Commission. It was agreed that their names would not be noted but that they would be known as Mr. A, Mr. B, Mr. C, and Mr. D respectively.

2. The interviewees gave the Sub-committee personal particulars as follows :-

(1) Mr. A

Presently aged 27 and single. He was born and raised in Hong Kong, attending a well-known Anglican school. He went abroad at the age of 17 for university studies and returned to Hong Kong where he has worked for 4 to 5 years as an accountant. His family are in Hong Kong, his parents not having had a high level of education. He does not consider himself religious but would loosely describe himself as Buddhist.

(2) Mr. B

Presently 30 years of age. He was born and educated in Hong Kong to secondary level and presently works with an import/export company owned or operated by foreign interests. He lives at home with his parents and six brothers and sisters. He describes his family as having a left-wing background but says that he has personally rejected such left-wing leanings.

(3) Mr. C

Presently 30 years old and single. He comes from a working class family with 8 children. His mother is now deceased and the other children are all married. He was educated in Hong Kong to secondary level. In 1967 he moved away from his family and is now living with a friend. He regards himself and this friend as a gay couple and they are recognised by others as such a couple. His friend is under pressure to get married and this worries Mr C. Mr C himself is not under any pressure to get married. He says that he first felt attracted to males when he was a young teenager and regarded them as beautiful.

(4) Mr. D

Presently aged 23. He was brought up in Hong Kong and studied in a co-educational secondary and post-secondary college. He comes from a middle-class family of 3 children. His mother had a Eurasian father. Mr D regards her as more westernised and it was his mother who chiefly brought him up. Neither his family nor his fellow students know of Mr D's homosexual inclinations. Only certain old friends are aware of such inclinations.

3. The interviewees described the existence of circles of Chinese friends who are homosexuals. Such circles tend to be exclusively homosexual since members of such circles often do not wish their families or colleagues at work to know of their homosexual inclinations.

4. The interviewees generally felt that knowledge on the part of family, friends and colleagues at work would cause rejection and numerous difficulties. Mr A for instance stated that if his father knew of his homosexuality, he would be rejected from the family and that if people at work found out, there was a risk of dismissal. Mr A however had never come across a case of a person actually being dismissed by reason of homosexuality. All the interviewees stated that they felt considerable pressure constantly from the need not to be "found out". We were told that as result of such pressure, homosexual friends have been known to adopt the appearance of heterosexuality, in some cases getting married and having children.

5. The existence of criminal sanctions was said to enhance of reinforce such social pressures. The interviewees expressed the view that such criminal laws relegated homosexuals to 2nd Class citizens. Mr B said : "I do not regard myself as different from others. To have to go to prison because one is gay is oppressive."

6. When asked what would result from a change in the law, the interviewees expressed the view that such change would be a first step towards changing social attitudes towards homosexuality. At the same time, all the interviewees acknowledged that a change in the law would not by itself change social attitudes and that it would not result in homosexuals openly declaring their homosexuality. It was also felt that a change in the law would remove an obstacle to careers or promotion in employment. None of the interviewees thought that a change in the law would lead to public displays of homosexual behaviour since social pressures would continue to inhibit such displays.

7. Certain points of view against any change in the law were then put to the interviewees for their reactions, including the following :-

- (1) That homosexuality is a western manifestation and alien to Chinese culture. The response was that in the gay circles in which the interviewees moved, there were no westerners. Members of such circles included a doctor aged about 45, 2 journalists aged 31 and about 20 and also some students, all being Chinese. Various homosexual circles differed perhaps by their members belonging to different social classes. Some such circles involved members of lower economic groups such as waiters and hotel room attendants. Chinese homosexuals also span a large age range and various occupations, including shopkeepers and employees of the "Hongks". The interviewees all rejected as incorrect any suggestion that there were no historical precedents in China.
- (2) That homosexuals were promiscuous and that a change in the law would tend to encourage such promiscuity. The response was that general promiscuity is not the case. Individuals may be promiscuous just as heterosexuals may individually be promiscuous. Deep emotional ties often develop between a homosexual couple. The interviewees also thought that there was a tendency to mistake flamboyant frequenters of discotheques as being representative of the homosexuality community in Hong Kong.
- (3) That a change in the law would encourage individuals, particularly young persons to become homosexuals. The response was that this was unfounded.

8. All the interviewees agreed that a minimum legal age of consent would be important and right. They did not have any strong views as to what age the law should adopt but felt that any change towards decriminalisation would be an improvement.

9. Decriminalisation was further supported by the interviewees on the grounds that criminal punishments are pointless and do not rehabilitate. Decriminalisation would also lessen risks of blackmail and remove inhibitions among homosexuals from dealing with the authorities. Such inhibitions exist in collateral matters, for instance, a homosexual might be inhibited from reporting a theft for fear of investigations showing that he was a homosexual and therefore exposing him to a criminal prosecution.

10. When asked about the impact of the MacLennan Inquiry, the interviewees felt that generally homosexuals regarded the case as a scandal, giving the public a misleading image of homosexuals by focusing on the activities of male prostitutes.

11. The interviewees expressed concern about the recently published Civil Service Branch Memo on employment of homosexuals in the Civil Service. They expressed the view that Government should take a coherent and positive step to decriminalise the law, stressing its present oppressive effect on homosexuals.

(R. Ribeiro)

STATEMENT BY MR W.

PART ONE

A Personal Statement

I am a homosexual. From the earliest stirrings of sexual awareness, I knew I was attracted to other males. To me, my sexual orientation is perfectly normal. It evolved spontaneously, unconsciously, naturally. I would not change it, even if that were possible. In my adolescence, I made the discovery that males are divided between those -- the larger in numbers -- who are attracted to females, and those who are like myself. I soon learned how to make contact with other homosexuals, and so began an active sex life.

I am a criminal. In Hong Kong, each time I give physical expression to these natural instincts, I break the law. I do not feel constrained by that law. I break it often, as often as my heterosexual brother responds to his natural urges.

Furthermore, I am a convicted criminal. I have been brought before a Hong Kong court on a charge that could not be made in many other countries because the "offence" does not exist in their legal codes, and because places where homosexuals may meet discreetly are not subject to police investigation, and commercial establishments catering to a homosexual clientele are not prohibited.

Obviously, the first paragraph of Part Two which follows is based on personal experience. I know exactly how the law is enforced in Hong Kong because it happened to me. But I use this first-hand knowledge only to illustrate a general point of view, which I have striven to express in a wholly objective way.

I state categorically that this submission is not made in a spirit of rancour or resentment due to the humiliation of arrest, appearance in court and exposure in the newspapers. Every view stated in these pages has been held and articulated since long before the traumas of those events.

I am employed by a company that rates me according to my professional abilities. My superiors are all heterosexuals and to my knowledge were unaware of my orientation until my arrest. They then assured me unhesitatingly and unequivocally that the quality of my work was the sole criterion by which they judged my value to the firm. In other countries, I might take that for granted; in Hong Kong, I have reason to be deeply grateful.

I have been a resident of Hong Kong since May 1980. To those who say this is insufficient time to absorb the cultural complexities of the issue, I add that I have lived in the Far East since 1969, except for 19 months in London and seven months in Paris. I speak two Asian languages. Specifically, I have lived, apart from Hong Kong, in Japan (three years, eight months), Thailand (three years, ten months) and the Philippines (five months). I have been many times to Singapore and Malaysia. I have visited, mostly in connection with my work, Taiwan, South Korea, Indonesia, Burma, Vietnam, Cambodia, Laos, Bangladesh and India.

Of Chinese history and culture, I have read widely. My daily work involves me constantly with Chinese social issues, politics and economics. I understand a good deal about Chinese mores and customs. I am familiar with Chinese moral attitudes. I am personally acquainted with a great many Chinese people, many of them homosexual.

PART TWO

A statement to the heterosexuals of Hong Kong, made on behalf of a hundred thousand homosexuals

Preamble

If the law in Hong Kong - written in English - is to be changed, it will be changed by legislators who think and deliberate in English. Obviously, they are more likely to be swayed by cogent arguments presented in that language. Yet the vast majority of homosexuals in Hong Kong have little or no command of it. That is why I presume to speak for them. After all, the ones who eventually reach a decision - many of them expatriate - will doubtless claim to be acting on behalf of the Chinese people of Hong Kong.

But discrimination by heterosexuals against homosexuals transcends cultural condemnation. It has to do with human rights. So the core issues in this statement, though seen here in the Chinese context, would be just as valid if made on behalf of Russian, Iranian or South African homosexuals, all of whom have to contend with homophobic laws.

A statement to the heterosexuals of Hong Kong, made on behalf of a hundred thousand homosexuals who dare not speak

If you claim your laws are just, these things you may not do.

You may not send your police to spy in the obscure places where we meet. You may not force us to lurk furtively in dark alleys by denying us decent places to gather. You may not have your police leap from their hiding places, seize us, haul us handcuffed before our neighbours. You may not bring us before a magistrate and charge us with behaving according to our natural instincts. You may not wave our underwear in court and deliberate for hours on the origin of specks of spittle. You may not publish all this in the newspapers. You may not assign us a criminal record for the rest of our lives.

Of course, we do not expect you to approve of our sexual orientation. We understand that you outnumber us twenty to one and that the rules of social behaviour are your rules. We know that equality is too much to ask for. We don't expect that. Only justice before the law.

These things you may do, cruel and devoid of compassion though they may be. You may cast out the son you bore and raised when at puberty he turns by nature to his own sex. You may strike a beloved brother from the family tree when the dreaded secret is out. You may, if you want, remove a bachelor uncle's urn from the family tomb when the truth is posthumously revealed. You may spurn your homosexual neighbour, forbid your family to speak to him. You may shun the society of homosexual colleagues. You may mutter about the abomination of homosexuality, declare it to be disgusting, despicable, filthy. You may decline to mention the very word; you may vomit at the thought of it. But you may not arrest us, if you say you are just.

Not a single one of us determined for ourselves our sexuality, any more than you did. Our sexual orientation arose in us spontaneously, naturally, just like yours. To punish us for being what we are is manifestly unjust, to hunt us down is unconscionable.

We understand that we have no say in deciding what is morally acceptable in society. We know it is a heterosexual-governed world, that Chinese culture, which homosexuals cherish in most of its aspects, just like you, has no place for us. But we declare that our rights as human beings must take precedence over society's condemnation when what we do is by mutual consent, when there is no victim, when the only injury is to your sensibilities. We don't know why you

are so consumed with fear and loathing of something you will never see. We won't flaunt our sexuality at you, but we deny that you, the majority, have the right to persecute and punish us, no matter how much the practice is endorsed by historical precedence.

Certain things have long traditions in Chinese culture but are wrong by every law of humanity and decency. One may not drown unwanted baby girls. One may not castrate boys for service as eunuchs. One may not keep slaves. One may not cripple infant girls by binding their feet. And one may not punish homosexuals.

PART THREE

How many homosexuals are there in Hong Kong?

The fact that no one has conducted sociologically valid surveys on the distribution of the two sexualities in Hong Kong is not the same as saying we lack reliable indications. There is convincing evidence gathered elsewhere, especially in the United States - a multi-cultural society - that sexual orientation is consistent among the various races. Indeed, the dualism is apparently so biologically natural that it has been studied among many species of our mammalian order.

In the absence of reliably gathered statistics, it is much more reasonable to assume that residents of Hong Kong conform to the general global pattern rather than to make unsubstantiated claims that the distribution of the two sexual orientations is different in this small territory from what it is elsewhere.

Of all the many surveys conducted in the United States from the time of the Kinsey Report on, none place the incidence of homosexuality at much less than one in 20, or around 4% - 5% of the population. This figure refers to exclusive homosexuals, excluding bisexuals and heterosexuals who may have had a couple of homosexual experiences. Some findings, it is true, place the figure much higher - up to 10% - but this is due not so much to inconsistency as to what should be defined as homosexual.

Taking the lowest, most conservative figure, some 4% of Hong Kong's males citizens would be homosexuals. This amounts to 110,000 people.

Many, perhaps the majority of male homosexuals in Hong Kong over the age of 30 are married, because an intensely family-oriented society makes a social misfit of the man who disregards his parents' desire for him to marry and have children.

Being homosexual does not preclude having sex with women, though few if any homosexuals would be interested in doing so unless there were pressing reasons such as marriage. Similarly, heterosexuals can have homosexual relations, though there would have to be special circumstances, the inaccessibility of women being the most common.

The degree to which one culture or another is prepared to tolerate occasional discreet homosexual experiences by heterosexual men varies greatly. In some societies, this is regarded as little more than an amusing and quickly forgotten adventure repeated rarely again if at all. A man who slept a couple of times in his youth with a male friend would not be considered a bisexual by any reasonable definition. Heterosexuals are always in charge of setting these standards because of their numerical domination. Anglo-Saxon societies, the United Kingdom for example, are among the most homophobic. Yet in the United States, which has a long history of unrelenting persecution of homosexuals, the Kinsey Report, and all subsequent studies has shown that about one heterosexual male in every three has had a homosexual experience.

Chinese culture, we are told, is also very homophobic. It is difficult to imagine any people more consumed with loathing and intolerance of homosexuals than American heterosexual men, but if Chinese were twice as phobic, it would mean that one in six has had at least one homosexual experience, perhaps in adolescence. This amounts to nearly half a million Hong Kong men.

PART FOUR

Some factors that should be carefully considered by any body of men and women whose task it is to define, regulate and enact legislation governing homosexual conduct.

1. Minorities in Hong Kong
2. The injustice of singling out the homosexual minority for punishment
3. The absurdity of policing sexuality
4. The irrelevance of determining "causes" of homosexuality
5. The social effects of abolishing Hong Kong's laws against homosexual acts
6. The ridiculousness of heterosexuals determining rules and regulations for homosexual behaviour
7. The pre-cultural aspect of homosexuality
8. Chinese attitudes to homosexuality
9. Homosexuality and employment
10. Homosexuals and the Armed Forces
11. Homosexuals and the "security risk"
12. The myth of pederasty
13. Homosexuals and the teaching profession
14. The "age of consent"
15. Withholding of truth from children
16. The prevalence of misconceptions about homosexuality
17. Negatively loaded terminology
18. Monogamy and promiscuity
- 4.01 Minorities in Hong Kong

There are many minorities in Hong Kong. Some are racial (Indians, Vietnamese ...); some linguistic (Shanghainese, Chiu Chow ...); some religious (Muslims, Roman Catholics). Many minorities are biological. Homosexuals form just one of these.

Some others: lefthandedness, (about 10% of the population), blood group AB (7%), IQ over 140 (1%), diabetics, blonds, physically handicapped, very short people, very obese people

No one chooses to be placed in any of these minority categories, nor, indeed, to be grouped with the majority. No one is heterosexual by choice. Certainly no one can decide to be a genius or to select the race or religion of his parents.

On a population base of 5,250,000, it can be calculated that there are in the colony approximately

525,000	left-handed people
367,500	people with blood group AB
236,250	homosexuals
52,500	people with IQs over 140
45,000	people of ethnic Indian origin
35,000	Muslims

None of these people belongs to any of these minorities by choice. Yet only homosexuals are subject to punishment for being what they are.

NOTE: Sources for these statistics are: the Government (population, religion); Department of Psychology, University of Hong Kong (left-handedness, or laterality, a highly complex issue for which the figure quoted is a rough approximation, and intelligence); the Red Cross Blood Transfusion Service; the Indian Chamber of Commerce.

4.02 The injustice of singling out the homosexual minority for punishment

About one person in every 20 in Hong Kong is homosexual. Well over 100,000 are male and subject to punishment if it can be proved that they have acted sexually according to the dictates of natural urges. Not one of these people determined for himself his own orientation, any more than heterosexuals did, yet the law provides for the punishment of so many. This is manifestly unjust. It is made more so by the fact that no legal proscriptions against homosexuality among women exist. Most societies, whatever their cultural attitude towards homosexuality - and this can range from half-hearted acceptance to rank intolerance - have never enacted laws against homosexuality; among those that have, most have since modified or rescinded those laws. No society that subjects biological minorities to punishment can claim to be a just one.

4.03 The absurdity of policing sexuality

The sheer magnitude of the task of investigating the sexual inclinations of a whole population is of course beyond the capabilities of the authorities, and naturally, they do not try. Police therefore restrict themselves to clandestine observation of places where homosexuals are known to gather in secret and make a token number of arrests. This partial and arbitrary enforcement reduces the risks of detection, but by its very selectiveness is made all the more untenable in terms of either logic or justice. If a law is worth having, surely it should be consistently enforced; if not, surely it should be scrapped. It might be said of any law of prohibition that the essence of whatever justice it may have is its universal application. But this, in the case of homosexuality, is patently and obviously impossible. Some random statistics highlight the absurdity. Taking the widely accepted minimum 4%-5% for the incidence of homosexuality, there would be 100 homosexuals on a peak-hour MTR train, 5 on a tunnel bus - any of

whom might be on the way to engage in illegal sexual activity. There would be 2,600 homosexuals at a crowded race meeting at Happy Valley. A big public-housing cruciform building would contain 370 homosexuals. There would be 400 homosexuals at Hong Kong University, 2,500 living in Wan Fu Estate. As all the sex activity of all these people is plainly labelled criminal by the law, the police ought, in order to be fair and consistent, attempt to identify these people and gather evidence for their conviction. If they are not prepared to do that, the law should be abolished.

NOTE: Sources of statistics: MTRC, KMB, Royal Hong Kong Jockey Club, Housing Department, Government Year Book.

4.04 The irrelevance of determining the "causes" of homosexuality

It is futile to attempt to convert a heterosexual into a homosexual. His basic orientation towards females was established so early in his infancy as to make his orientation irreversible. At puberty, its physical manifestations emerge spontaneously. So it is with homosexuals. Whether sexuality is determined by genetic factors by environmental influences, or simply by the development of individual personality makes little difference as it cannot be altered. Ascribing "causes" therefore becomes nothing more than an exercise in academic curiosity, and certainly of no value to the legislator.

4.05 The social effects of abolishing Hong Kong's laws against homosexuality

Chinese have a finely honed sense of decorum. Chinese heterosexuals do, and so do Chinese homosexuals. It is inconceivable that legislation would make the slightest difference to the unwritten rules of social behaviour or of what is appropriate comportment in public.

4.06 The ridiculousness of heterosexuals determining rules and regulations for homosexual behaviour

Everyone would instantly find it implausible, laughable even, for an assembly of homosexual legislators, however wise, learned and respected they may be, to sit in solemn deliberation - of what heterosexuals may or may not do, to whom, when and where. It is surely no less absurd for a body of men and women almost entirely composed of heterosexuals to determine or define the perimeters of homosexual behaviour.

4.07 The pre-cultural aspect of homosexuality

It is beyond dispute that there were practising homosexuals, functioning in much the same way as they do today, in China countless millennia before the emergence of the Chinese civilisation (or of any other civilisation). Homosexuality flourished before there was a Confucius, a Lao Tze, a Buddha, a Moses, a Jesus or a Mohammed to condemn it; before there was writing to comment on it, before there was speech to name it. For the Hong Kong authorities to believe they can stop it is self-evidently ridiculous.

4.08 Chinese attitudes to homosexuality

Much has been said or written, a good deal of it by non-Chinese, about the Chinese heterosexual's supposed aversion to his homosexual brother or neighbour. Certainly, given the weight of heterosexual influence in shaping society's values, the Chinese, like the British, are "homophobic". But is a verifiable fact that the great majority of

Chinese heterosexuals do not want to know about it, to discuss it, to make judgements or to be forced to make judgements about it. This is quite unlike British heterosexuals, who are ready and apt to voice distaste for homosexuals. Besides, most discussions of Chinese cultural attitudes to the subject ignore the view of the vast number of Chinese homosexuals, who, by way of comparison, outnumber British heterosexuals, both in Hong Kong, and in the entire body of human beings. In point of fact, the Chinese traditionally do not, like the English, enact formal legislation to ban or regulate homosexuality. Chinese heterosexuals simply do not want to hear about it, do not want the conversation forced upon them, do not want a judgement or decision demanded of them. If forced to say, against their will, yes or no, most may well opt to say no, but this is a far cry from a popular demand for banning homosexuality. Chinese society frowns on many other aspects of behaviour - drunkenness for example - but does not call for laws that punish people simply for being drunk. Conversely, Chinese society in Hong Kong readily accommodates behaviour the British feel an overwhelming need to control, gambling being a good example. The difference is that the British tend to ban what they frown on, by law, while the Chinese merely frown.

4.09 Homosexuality and employment

There is nothing to indicate that unemployment in Hong Kong is higher among homosexuals than among heterosexuals. In other words, homosexuals already have jobs. It's just that it is not usually known which employees are homosexual. The fact that they cannot be differentiated shows that they do their work as well as heterosexuals, and that there can be no reason for discrimination in employment except blind prejudice. The dismissal of a worker from employment because it is discovered that he is homosexual is cruel and unjust and would not be permitted in a society which operates on the principle of fairness.

Governments, even ones not elected by the people, have a responsibility to be fair in hiring public servants. Not to employ a homosexual in a government job solely because of his orientation is manifestly unfair.

Public corporations have a duty to their shareholders, a proportion of whom are homosexual. A just society would not permit employment discrimination by publicly listed companies, whose activities are carefully monitored by the authorities to ensure fairness in many other ways.

A homosexual police officer does the same job as his heterosexual colleague - no better, no worse. If the law against homosexual acts were abolished, there could be no possible reason for excluding homosexuals from the police force.

4.10 Homosexuals and the Armed Forces

Since few Hong Kong Chinese are attracted to the military life, this issue is not as important as it is elsewhere - in Britain, for example, where there is institutionalised discrimination against homosexuals in the armed forces, a discrimination enshrined in the law.

Heterosexuals who worry that all soldiers may not be like themselves should ponder the irrefutable fact one soldier in every 20 in a conscripted army is - by definition of a universal draft - a homosexual. This must necessarily have been true of the armies of Napoleon, Genghis Khan or Chiang Kai-shek, as well as troops on both sides in the First and Second World Wars and in the ships of the Royal Navy. They were heroes or cowards like any other soldier, they killed the enemy, won medals, dug trenches or latrines. In every conscripted battalion of 1,000 men, there must be 40 homosexuals.

Fear of homosexuals in the armed forces is therefore obviously irrational. Homosexuals have enough problems foisted on them without having to worry about the irrational fears of heterosexuals.

All heterosexual men have lived all their lives in close proximity to homosexuals - at school, in sporting teams, in places of employment, in neighbourhoods. Why not the army, too? The notion of a homosexual soldier proposing to have sexual relations with someone patently not interested is clearly absurd, and likely to occur only to a homophobic heterosexual. If such a bizarre suggestion should be made, the heterosexual soldier simply says no - in much the same way he spurns an unwanted offer of friendship or religious proselytizing.

What remains is aversion. This is the same as aversion to Jewish soldiers, to black soldiers, to Methodist soldiers, to left-handed soldiers.

4.11 Homosexuals and the "security risk"

If a homosexual, freely and without attaching any special significance to it, acknowledges his orientation to people who know him, what possible reason could there be for blackmail? If a heterosexual has some secret about himself he dreads becoming publicly known, then that person is a security risk. So is the homosexual who pretends that he is not.

4.12 The myth of pederasty

A very, very tiny proportion of heterosexuals is attracted to pre-pubescent children. A similarly tiny proportion of homosexuals is so attracted. It is so obvious as to be not worth further discussion that the law must protect children. A larger, but still small proportion of both heterosexuals and homosexuals is attracted to post-pubescent adolescents. A large number of people are sexually attracted to young women or men, but the majority of adults are attracted to other adults. Being attracted, is of course, not the same as proposing sex, no matter whether the object of the attraction is sixteen or sixty. Homosexuals do not molest children, disturbed people do. The belief some heterosexuals have that a majority of homosexuals is interested in boys is one of the many profound ignorances that have arisen in Hong Kong, because heterosexuals have avoided opportunities to become informed about homosexuality.

4.13 Homosexuals and the teaching profession

Every school in Hong Kong with more than 20 teachers must have homosexuals working as teachers. Every classroom has, on the average, one, two or three pupils or students who are homosexuals, or who will become so upon sexual maturity. This is true of all schools, always has been and will be no matter what decision is made about the law in Hong Kong. Whether they knew it or not at the time, every adult person with a full education has been taught by homosexuals. Homosexual teachers do not teach homosexuality; they teach reading, mathematics, history, science. It makes no difference to the heterosexual-to-be that the male or female teacher he admires and respects is a homosexual. It will not affect the natural sexual instincts that will spontaneously manifest themselves during and after puberty. One's sexuality is not determined by modelling oneself after an admired teacher. Homosexual teachers, though possibly not personally interested in having a family of their own, have no possible motive, even if it could be done, to influence young people to refute the family life. After all, they have parents and brothers and sisters of their own, and most Chinese have strong family ties. There is no logical reason for denying a teaching career any more than any other profession to the homosexual.

4.14 The "age of consent"

Soon after puberty, every person in Hong Kong, or China or the world develops sexual desires of his or her own, entirely independent of any adult he or she may have known. Most male adolescents develop a healthy interest in girls; about one in 20 male adolescents develops a healthy interest in boys. How they cope with those inclinations is a matter for the community, a religion, the family or the individual to determine. It is not a matter for the law. Heterosexual activity before marriage may be condoned or proscribed; few societies have avenues for accommodating homosexuality. But even these powerful cultural influences cannot change a sexual orientation. How much less can a law?

When an older person is involved with a younger in a sexual relationship, the contentious issue of age of consent arises and automatically involves the law. An arbitrary delineation has to be made, even though social and sexual maturity - among both males and females - varies greatly from individual to individual. Nature's own answer to the question of what is the appropriate age of consent is puberty, or time when a person can experience sexual arousal and gratification. Nature's answer is clearly unacceptable. When determining this issue, wise legislators would certainly first separate the legal sanction from the social or moral one. When deciding the age of consent fair and just legislators would make it the same for heterosexuals and homosexuals. The law in England which permits a homosexual boy to begin a legal sex life five years after a heterosexual boy or a homosexual girl is patently unjust.

4.15 Withholding of truth from children

There are about 250 million homosexuals in the world. This exceeds the number of Americans, is twice the population of Japan, is five times as many as there are Britons, fifty times the number of residents of Hong Kong. To label so many millions of people "abnormal" is patently absurd on grounds of logic. To deny that they exist is more than absurd - it is a lie. Yet the truth is deliberately withheld from both heterosexual and homosexual children in Hong Kong. Heterosexuals often enter adolescence in the mistaken belief that theirs is the only commonly practised form of sexuality; young homosexuals are often ignorant of the fact that there are thousands of others in the community around them who have sexual urges just like their own. Regardless of whether society approves of the facts or not, withholding of truth is immoral by every accepted system of value judgements. Educating children about the facts is not putting a stamp of approval on them. Children can be taught intolerance for homosexuals - that is a value judgement - but they may not be told that they do not exist. Ideally, children would be taught that there are two normal sexualities, one of them considerably more common than the other.

4.16 The prevalence of misconceptions about homosexuality

A lot of heterosexuals are - to use some distasteful terms - "cissies", "Mummy's boys", "womanish", "effeminate". Heterosexual men work as ladies' hairdressers, interior decorators, dress designers, ballet dancers. A great many homosexuals are rugged sportsmen, aggressive, belligerent people, construction workers, truck drivers. It may be true that a lifetime of negative reinforcement about themselves passed on by a heterosexual-dominated society leads a small number of homosexuals to adopt extreme airs - exaggerated masculinity is one well-known attitude said to be adopted by homosexuals, effeminacy another. These are stereotypes readily recognised by heterosexuals, who are largely ignorant of the vast number of homosexuals around them - ignorant because they are physically and socially no different from themselves.

Being different may be considered in some societies sufficient justification for despising, but not in enlightened societies. Being different can never be a crime, because of the inherent nature of justice. It is ironic that unpleasant social behaviour like aggressiveness and deceitfulness is often better tolerated than harmless oddities of behaviour related to sexual identity (such as effeminacy or extreme masculinity) and practised by a tiny minority.

4.17 Negatively loaded terminology

Most words for homosexuals or homosexual acts in the heterosexual lexicon are loaded with hatred. In Hong Kong, all such legal terminology is in English : buggery, sodomy, gross indecency etc. It is a fact that there is nothing that homosexuals do that heterosexuals don't do too, but when they do it, it is called "making love", when homosexuals do it, it is "gross indecency". The mere use of this terminology in itself reinforces negative attitudes towards a large section of the community.

4.18 Monogamy and promiscuity

Heterosexual legislators charged with the task of regulating homosexual behaviour should not expect a mirror image of their own sexuality. Society has rules - rules which vary considerably from one culture to another - about what is acceptable, appropriate or even mandatory in the conducting of heterosexual relationships. No such rules exist for the homosexual, whose relationships, being outlawed, are conducted according to patterns of behaviour that have existed on a simple level for thousands of years, since before the emergency of today's heterosexual-governed cultures, the Chinese and the British among them.

Homosexual behaviour is closer to basic human nature, closer to the relationships heterosexuals would have if their conduct were not closely monitored by cultural regulations and prohibitions developed over many centuries.

Monogamous or promiscuous inclinations are part of this basic human nature. They have little to do with sexual orientation. Rather, it is the fundamental difference between male and female sexual responses that governs monogamy and promiscuity. It is a fact beyond dispute that male arousal and gratification can be accomplished much more speedily than the average female arousal. In fact, it is not uncommon for men to experience spontaneous sexual desire merely by contemplating sexual intercourse, even with a stranger. Women, on the other hand, are much more likely, even in the absence of cultural or religious obstacles, to want to become well acquainted with a partner and to proceed gradually. This is true whether it stems from cultural conditioning or from fundamental biological differences. It naturally follows that when both partners are male, sex can be accomplished faster, more frequently, with more partners and fewer constraints. For heterosexual men such conditions fall into the realm of sexual fantasy since a corresponding number of similarly inclined women do not exist. Thus the opportunity for a more frequent change of sex partner is available to homosexual men, though the desire may be present in both orientations.

This is not to say that all homosexuals, any more than all heterosexual men are inclined to promiscuity. Many homosexual couples have stable, long-lasting and contented relationships. Some, indeed, last a lifetime. Probably the least promiscuity of all occurs among homosexual women. The difference between homosexual and heterosexual men in this regard is that society never drew up a set of rules for homosexual relationships, while heterosexuals have great social pressure to preserve their duly sanctioned relationships, even when a mutual attraction has run its course.

Some heterosexuals are given to saying that homosexual relationships are more akin to primeval behaviour while their own is the conduct arising from civilisation. Yet these same people are likely to voice the common (and erroneous) belief that homosexuals are "artistic" or "sensitive".

No homosexual would presume to draw up rules of conduct for heterosexuals. Heterosexuals whose assigned task is to define and regulate homosexual behaviour should take into consideration these similarities between heterosexual and homosexual men, and the differences between men and women.

PART FIVE

Some specific recommendations on changing Hong Kong's laws on homosexuality

1. Modification of existing laws
2. Enactment of new laws

Modification of existing laws

1. That the law or laws which make homosexual acts among males illegal be repealed in their entirety, not merely "liberalised"

that it thereby become not lawful for a homosexual to be arrested, brought to trial and if convicted punished for engaging in homosexual activity

that homosexuality be thereby deemed to be on exactly the same footing in the eyes of the law as heterosexuality - all the while taking cognizance of the fact that abolition of legal prohibition does not preclude social or cultural condemnation of homosexuals by heterosexuals.

2. That there be no exceptions to these rights under the law; that no provision be made for the exclusion of homosexuals from the armed services or the merchant marine.
3. That the "age of consent" be exactly the same for heterosexuals and homosexuals, and, ideally, for males and females.

Enactment of new laws

1. That people responsible for hiring personnel in government departments or agencies be not allowed to deny employment to any person solely on the grounds that that person is a homosexual

that opportunities for career advancement be in no way impeded in the public service merely because of sexual orientation

that careers in the Royal Hong Kong Police Force, the teaching profession, the medical service and the judiciary be not excluded from this provision, providing social decorum is kept

that the so-called "security risk" be deemed not applicable to any government servant who openly acknowledges his or her sexual orientation.

2. That any company registered on any of the four stock exchanges or the united Stock Exchange of Hong Kong be required by law to be non-discriminatory in their hiring practices

that it be illegal for a public company to dismiss an employee or retard his or her career solely on the grounds that that person is a homosexual.

3. That bars, clubs or other places of entertainment catering to a homosexual clientele be permitted to open for business

that these establishments be subject to exactly the same operating rules and regulations as heterosexual establishments, and visited by the police no more frequently.

SUBMISSIONS BY A HOMOSEXUAL

The Interviewee

European. Age early 30s. Occupation - businessman. Born in Hong Kong and brought up to a large extent in Hong Kong. Fluent speaker in English and Cantonese. Member of the gay community of Hong Kong many years. Has University degree in psychology. Many Chinese and European acquaintances, some friends, both straight and gay. Experience of the effect of Hong Kong homosexuality laws having been prosecuted for such offences. Extensive experience of gay communities overseas - San Francisco, London, Philippines, Thailand, etc.

Views

Interviewee came in not to offer a solution to the problem but to forewarn the Government of the consequences that may ensue upon "decriminalisation". Believes in gay human rights and civil rights, but also respects human rights of all people in general including those who might be exploited by the "decriminalisation". Interviewee's views do not necessarily reflect those of the gay community of Hong Kong.

1. The Interviewee expressed serious concern as to the consequences in Hong Kong of any "decriminalisation", even to limited extent of "2 consenting adults in private", which for the purposes of the interview was taken as being the maximum extent of any change in the existing law in Hong Kong.

2. The Interviewee foresees the following consequences :

(a) "Decriminalisation" may be used by Chinese racketeers as an opportunity to exploit. Current state of the law imposes constraints not simply on homosexuals but, paradoxically, on the seeking to exploit homosexuals. At present, with every aspect of homosexuality activity illegal, even the young adult who would otherwise be employed by the racketeer to ensnare a gay "victim" (with a view to extortion) is regarded by the racketeer as a high risk since his activity is in itself illegal. Consequently, to "legalise" such activity is to provide the racketeers with a licence to direct and manipulate the homosexual activities of young adults under a cloak of legality. There will be no shortage of available young (Chinese) adults eager to offer their services to racketeers. With the basic legal constraints removed, vice rings related to all aspects of homosexual activity will flourish. Young adult male homosexuals, of whom there are many from very poor families, will opt for the financial rewards of male prostitution in the belief (rightly or wrongly) that the law in Hong Kong now condones such behaviour.

(b) The level of overt gay activities will rise dramatically. Gay fishball stalls and mahjong parlours in Hong Kong will be managed and financed with one aim - to cash in on the apparent "liberalisation" of the law, with a view to establishing Hong Kong as the Asian centre for the homosexual tourist trade. It is inevitable that those promoting Hong Kong in this new business venture will be the very same racketeers who will run the vice rings referred to above.

(c) Homosexuals may, in the event of decriminalisation of the type envisaged, be exposed to greater danger of prosecution. At present, with all homosexual activity illegal, most gays are necessarily discreet and cautious. For the most part, they have learned to live with the law and arrange their lives accordingly. The Interviewee fears that the introduction of an age of consent may serve to provide opportunities for arbitrary "under-age" prosecutions against gays who have lowered their guard in the genuine belief that their 19 or 20 year old "partner" is, in fact, 21.

(d) Correspondingly, on past experience in Hong Kong, there is a serious risk that enforcement authorities will view the age of consent principle as a mandate to apply the law strictly in relation to under-age conduct. Whilst strict action against pederasts is of course fully justified, the Interviewee feels that different considerations should apply vis-a-vis 18, 19 and 20 year olds.

3. Other points made by interviewee :

(a) Current publicity on the gay issue is highly damaging to prospects of satisfactory reform (i.e. avoidance of consequences referred to at 2(a) and (d) above).

(b) State of relative peace exists in gay community at present. No evidence of police harrassment. Although potential for harrassment will remain so long as law is in its present form, such potential is considerably less of an evil to the gay community and to society generally than are the consequences referred to at 2(a) and (d) above.

(c) Estimate that 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 :-

- (1) Homosexual practice is an abnormal and deviant social behaviour contradictory to the traditional Chinese moral code and is therefore socially and morally unacceptable.
- (2) Heterosexuality is the natural and logical sex behaviour; homosexuality is an unnatural and psychologically abnormal conduct.
- (3) The legalization of homosexuality will mean the official endorsement or acceptance of such practice by the community. This may result in a degradation of the moral standard in society and may also have an undesirable influence on the younger generation who may be induced to experiment with such act because of curiosity, even if the legalization does not cover youngsters.
- (4) Homosexual practice is dirty, disgusting and shameful.

Only 34 participants or 23.61% are in favour of legalization of homosexuality. Their grounds are :-

- (1) It will cause no harm to the society if homosexual practice is carried out in private between two consenting adults provided that such practice is not to be publicized and there are provisions for the protection of minors.
- (2) If two homosexuals really love each other and their relationship does not affect any third party, then the private 'love affair' between the two should not be treated as an offence even though the great majority of the population might not be in favour of such practice.
- (3) The homosexuals will no longer be subject to blackmail.

The background data of those who are in favour or against the legalization of homosexuality are given in the attached table.

Other feedbacks from the discussion are :-

- (1) In Hong Kong, homosexual practice is very much limited to the local European community, it is comparatively rare among the local Chinese population and is non-existent in penal institutions.
- (2) While some 23.61% of the participants are in favour of legalization of homosexuality, there is practically no one who advocates tolerance of homosexuality in a prison setting where offenders are normally deprived of

their sexual needs. To allow homosexuals the advantage to have sexual relationship with their fellow inmates is not fair to the others in the prison population who must achieve their sexual gratification by masturbation. However, there are suggestions that the question of providing opportunities for long term prisoners to have sexual relationship with their wives/girl friends should be considered.

<u>Age Grouping</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Under 21	2	11	13
21 – 24	10	14	24
25 – 29	7	28	35
30 – 34	3	19	22
35 – 39	4	7	11
40 – 44	1	6	7
45 – 49	4	8	12
50 – 54	2	8	10
55 – 59	1	7	8
60 and over	–	2	2
Total	<u>34</u>	<u>110</u>	<u>144</u>

Mean age = 31.91
Mean age = 33.63

<u>Educational Attainment Years of Formal Education</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Nil	5	17	22
1 year	1	5	6
2 years	1	4	5
3 years	3	18	21
4 years	2	4	6
5 years	3	11	14
6 years	10	33	43
7 – 9 years	6	15	21
10 – 12 years	3	3	6
	<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	<u>19</u>	<u>12</u>	<u>31</u>
	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	<u>19</u>	<u>12</u>	<u>31</u>
	Average years of formal education = 3.74	Average years of formal education = 3.67	

The difference in the mean age and the average years of formal education between these two groups is not statistically significant.

<u>Marital Status</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Single	4	3	7
Married	–	–	–
Divorced	–	–	–
Separated	4	1	5
Co-habiting	11	8	19
Total	<u>19</u>	<u>12</u>	<u>31</u>

<u>Occupation on Admission</u>	<u>In favour of Legalization of homosexuality</u>	<u>Against</u>	<u>Total</u>
Drug Peddler	2	–	2
Pick-pocket	2	–	2
Dance-hostess or Prostitute	14	9	23
Unemployed	1	3	4
Total	<u>19</u>	<u>12</u>	<u>31</u>

No significant difference exists between the two groups in respect of the occupation of the group members. The great majority of them are employed as dance-hostesses or prostitutes.

COMMERCIAL RADIO OPINION SURVEY SERVICE

Chinese public opinion in Hong Kong does not favour a change in the law on homosexuality. That is the finding of a public opinion survey released today by Commercial Radio.

The CR Opinion Survey Service (CROSS) reports that 7 out of 10 Chinese adults think that homosexual behaviour should continue to be treated as a criminal offence.

Most of those who oppose a change in the law say that homosexuality is contrary to Chinese morals.

CROSS asked Chinese men and women over the age of 20 whether they thought homosexuality should continue to be treated as a criminal offence or whether legislation should be amended so that adult homosexual behaviour in private would not be regarded as an offence.

The interviews were carried out for CROSS by Survey Research Hong Kong Ltd., a leading independent research organization, which also organised the sample and analysed the results. The study is the first of a series to be commissioned by Commercial Radio.

The CROSS study reveals that men are less tolerant on this issue than women. While 74% of men said homosexual behaviour should continue to be a criminal offence the figure for women was lower at 67%.

Among Chinese adults in Hong Kong opinions also vary with age. Only 16% of those over 55 think the law should be changed. Twice as many between the ages of 20 and 34 favour a more lenient view of private homosexual behaviour between adults.

People opposed to a change in the law were asked to give their reasons. The most frequent reasons are related to Chinese morals. 29% say homosexuality is unacceptable to Chinese traditions, ethics or morals, 18% say it is indecent, unacceptable or "far out" and 8% mention that conservative Chinese thinking differs from Western ideas.

Some base their opinions on the abnormality of homosexual behaviour, saying it is against nature while others make the point that homosexuals of the same sex cannot get married or give birth to children. A slightly smaller group oppose any change in the law on the grounds that homosexuality is a bad moral influence on society and has a bad impact on the family.

The CROSS study shows that men and women differ in their reasons for opposing amendment of the law. Men tend to be more concerned with the traditional and moral aspect and to stress the difference between Chinese and Western thinking. Women tend to be more concerned with the abnormality of homosexual behaviour and its effect on marriage and family life.

CROSS also asked the 27% who thought that the law should be amended to give their reasons.

Most of them say they think homosexual behaviour in private between adults should not be a criminal offence because it is a private matter which has no effect on society or does no harm. 24% say it is a matter of personal freedom.

Of the women who think the law should be amended, 70% argue that it is a personal matter with no harmful effects on society. By comparison, only 43% of men give that as their reason for amending the law.

A small number of people think the law should be changed because there is a new generation in Hong Kong, with new ideas and that Hong Kong is becoming westernised. This opinion is held more strongly among people in the older age group, 55 and above.

Only a small number (1%) of those in favour of amending the law felt that this should be done to bring Hong Kong law in line with that in Britain. This view was confined to men in the 20 to 34 age group.

Commenting on the CROSS study a spokesman for Commercial Radio said today that it is the first of a series in which trends and issues of public interest will be explored.

"As a public broadcasting organization" he said, "we are vitally interested in the state of public opinion on social and related issues. We also believe that valid statistical sounding of public opinion on these issues is important for the community at large and for organizations, including Government, which have to make decisions on these issues.

"We shall continue to publish CROSS studies as a public service and will make the detailed findings available to responsible organizations for further research."

The CROSS study is based on 509 telephone interviews. Survey Research Hong Kong Limited selected households by the probability sampling method using the telephone directory as a sampling frame. The results were weighted up to population value using Government population figures.

INTRODUCTION

Research Objectives

1. HK Commercial Broadcasting Co. Ltd. has commissioned SRH to conduct a telephone survey among 509 Chinese adults aged 20 and over. The research was designed to look into :
 - (i) The opinions of Hong Kong Chinese adults towards the homosexuality issue.
 - (ii) Their intention to emigrate in the next few years and in 1997 when China takes over the New Territories.

Fieldwork

2. Fieldwork was conducted from 19-20 September 1980. They were carried out in the evenings in order to maximize the number of contacts.
3. Households were selected for interview by probability sampling method using the telephone directory as sampling frame. For each household selected, the interviewer would first establish the total number of adults in the household, then use a random number table to select one for full interview.

Weighting

4. Using the Government population figures, the result of this survey has been weighted up to population value.

FINDINGS

Preferred Form of Treatment for Homosexual Activities

5. The vast majority of Chinese adults (7 out of 10) think the government should continue to treat homosexuality as a criminal offence. On the other hand, there is a sizable portion (27%) of the population who feel that the legislation should be amended so that adult's homosexual activities going on in private places would not be regarded as an offence.

(From Table 1)

6. A significant relationship exists between the people's age and opinions towards the subject, that is, the younger the person, the more likely that he/she prefers not treating homosexuality as a criminal offence. In fact, more than half of those who choose to amend the legislation are aged 20-34. On the other hand, one should realize that even among the 20-34, their majority (64%) is still in favour of treating homosexuality as criminal offence.

(From Table 1)

7. It is also interesting to note that men are less tolerant than women about the issue.

	<u>TOTAL</u>	<u>SEX</u>		<u>AGE</u>		
		<u>Men</u>	<u>Women</u>	<u>20-34</u>	<u>35-54</u>	<u>55+</u>
All adults aged 20 and over	2,743	1,420	1,323	1,234	894	615
	%	%	%	%	%	%
Continue to treat homosexuality as a criminal offence	71	74	67	64	74	80
Amend legislation so that adult's homosexual activities going on in private places would not be regarded as an offence	27	25	30	35	24	16
Neutral/Don't know	2	1	3	1	1	4

(From Table 1)

Reasons for Choice of Treatment

8. Those who favour treating homosexuality as a criminal offense have 3 main types of reasons :-

- (i) Homosexuality is contrary to Chinese morals
 - e.g. Unacceptable to Chinese traditions/ethics/morals 29%
 - Indecent/unacceptable/wrong/far out 18%
 - Conservative Chinese thinking differs from Western ideas 8%
- (ii) Contrary to Mature
 - e.g. Homosexuals are psychologically imbalanced/abnormal 17%
 - Against nature/illogical/abnormal 17%
 - Homosexuals cannot be together/get married/have children 9%
- (iii) Bad influence on society
 - e.g. Has bad moral influence on society 14%
 - Has bad impacts on family/causes physical/medical harm 4%

(From Table 3)

9. The majority of those who prefer to amend the legislation share a common point of view homosexuals are entitled to enjoy their personal freedom and interests. For example :

- A personal matter - no effects/harm on society - should not be controlled 57%
- A matter of personal freedom 24%
- Some people's likes 16%

(From Table 2)

s.2256 PUBLIC OPINION POLL											TABLE 1	
PREFERRED FORM OF TREATMENT FOR HOMOSEXUAL ACTIVITIES (Q.1a)												
(TOTAL, ANALYSIS BY SEX, AGE, AND SEX WITHIN AGE)												
	TOTAL	SEX		AGE			20-34		35-54		55+	
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
ALL ADULTS AGED 20+ ABOVE	2743 100.	1420 100.	1323 100.	1234 100.	894 100.	615 100.	668 100.	566 100.	479 100.	415 100.	273 100.	342 100.
CONTINUE TO BE TREATED AS A CRIMINAL OFFENSE	1943 71.	1052 74.	891 67.	787 64.	666 74.	490 80.	441 66.	346 61.	380 79.	286 69.	231 85.	259 76.
AMEND LEGISLATION SO THAT ADULT'S HOMOSEXUAL ACTIVITIES GOING ON IN PRIVATE AREA WOULD NOT BE REGARDED AS AN OFFENCE	747 27.	356 23.	391 30.	430 35.	218 24.	99 16.	215 32.	215 38.	99 21.	119 29.	42 15.	57 17.
NEUTRAL/DK	53 2.	12 1.	41 3.	17 1.	10 1.	26 4.	12 2.	5 1.		10 2.		26 8.

REASONS FOR AMENDING LEGISLATION SO THAT ADULT'S HOMOSEXUAL ACTIVITIES GOING ON IN PRIVATE AREA WOULD NOT BE REGARDED AS AN OFFENSE (Q.1b)												
(TOTAL, ANALYSIS BY SEX, AGE, AND SEX WITHIN AGE)												
	TOTAL	SEX		AGE			20-34		35-54		55+	
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
ADULTS WHO THINK THE LEGISLATION SHOULD BE AMENDED	747 100.	356 100.	391 100.	430 100.	218 100.	99 100.	215 100.	215 100.	99 100.	119 100.	42 100.	57 100.
A PERSONAL MATTER - NO EFFECTS/HARM ON SOCIETY - SHOULD NOT BE CONTROLLED	426 57.	154 43.	272 70.	258 60.	130 60.	38 38.	107 50.	151 70.	35 35.	95 80.	12 29.	26 %
A MATTER OF PERSONAL FREEDOM	177 24.	89 25.	88 23.	96 22.	64 29.	17 17.	42 20.	54 25.	35 35.	29 24.	12 29.	5 9.
A MATTER OF HUMAN RIGHTS	45 6.	30 8.	15 4.	23 5.	11 5.	11 11.	18 8.	5 2.	6 6.	5 4.	6 14.	5 9.
SOME PEOPLE'S LIKES	121 16.	42 12.	79 20.	62 14.	37 17.	22 22.	18 8.	44 20.	18 18.	19 16.	6 14.	16 28.
A BIOLOGICAL/PSYCHOLOGICAL PROBLEM/NEED OF HOMOSEXUALS	47 6.	18 5.	29 7.	35 8.	6 3.	6 6.	6 3.	29 13.	5 6.	-	6 14.	-
SHOULD NOT INTERFERE WITH HOMOSEXUALS WHO ARE ADULTS/HAVE REACHED A CERTAIN AGE	35 5.	30 8.	5 1.	23 5.	6 3.	6 6.	18 8.	5 2.	6 6.	-	6 14.	-
TOO SERIOUS TO TREAT HOMOSEXUALITY AS A CRIMINAL	43 6.	18 5.	25 6.	33 8.	-	10 10.	18 8.	15 7.	-	-	-	10 18.
OFFENSE												
UNFAIR TO HOMOSEXUALS	21 3.	6 2.	15 4.	16 4.	-	5 5.	6 3.	10 5.	-	-	-	5 9.
PERMITTED BY BRITAIN'S LEGISLATION, SHOULD AMEND HK'S LEGISLATION TO SAME	6 1.	6 2.	-	6 1.	-	-	6 3.	-	-	-	-	-
NOT ILLEGAL FOR HOMOSEXUAL ACTIVITIES TO GO ON IN PRIVATE PLACES	87 12.	48 13.	39 10.	56 13.	31 14.	-	36 17.	20 9.	12 12.	19 16.	-	-
PERMISSIVE WITH CONSENT OF PERSONS INVOLVED	60 8.	30 8.	30 8.	32 7.	22 10.	6 6.	12 6.	20 9.	12 12.	10 8.	6 14.	-
PERMISSIVE AS NO OTHER ILLEGAL ACTS OCCUR	26 3.	6 2.	20 5.	16 4.	10 5.	-	6 3.	10 5.	-	10. 8.	-	-
SHOULD NOT USE VIOLENCE TO SOLVE A LONG EXISTING ISSUE	17 2.	12 3.	5 1.	11 3.	-	6 6.	6 3.	5 2.	-	-	6 14.	-
COMMON IN OTHER COUNTRIES	12 2.	12 3.	-	6 1.	-	6 6.	6 3.	-	-	-	6 14.	-
NEW GENERATION/ IDEAS/HK IS WESTERNIZED	33 4.	18 5.	15 4.	11 3.	6 3.	16 16.	6 3.	5 2.	6 6.	-	6 14.	10 18.
OTHERS	50 7.	30 8.	20 5.	34 8.	16 7.	-	24 11.	10 5.	6 6.	10 8.	-	-
DK	26 3.	6 2.	20 5.	5 1.	11 5.	10 10.	-	5 2.	6 6.	5 4.	-	10 18.

S.2256 PUBLIC OPINION POLL												TABLE 3	
REASONS FOR TREATING HOMOSEXUALITY AS A CRIMINAL OFFENCE (Q.1b)													
(TOTAL, ANALYSIS, BY SEX, AGE, AND SEX WITHIN AGE)													
	TOTAL	SEX		AGE			20-34		35-54		35+		
		MALE	FEMALE	20-34	35-54	55+	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
ADULTS WHO PREFER HOMOSEXUALITY TO BE TREATED AS A CRIMINAL OFFENSE	1943	1052	891	787	666	490	441	346	380	286	231	259	
	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	
UNACCEPTABLE TO CHINESE TRADITION/ETHICS/MORALS	572	385	187	236	156	180	173	63	99	57	113	67.	
	29.	37.	21.	30.	23.	37.	39.	18.	26.	20.	49.	26.	
UNACCEPTABLE TO RELIGION	38	18	20	17	16	5	12	5	6	10	-	5	
	2.	2.	2.	2.	2.	1.	3.	1.	2	3.	-	2.	
HOMOSEXUALS CANNOT BE TOGETHER/ GET MARRIED/ HAVE CHILDREN	166	77	89	47	72	47	18	29	53	19	6	41	
	9.	7.	10.	6.	11.	10.	4.	8.	14.	7.	3.	16.	
CONSERVATIVE CHINESE THINKING DIFFERS FROM WESTERN IDEAS	146	98	48	51	78	17	22	29.	64	14	12	5	
	8.	9.	5.	6.	12.	3.	5.	8.	17.	5.	5.	2.	
DOES NOT AND SHOULD NOT EXIST AMONG CHINESE	78	53	25	22	34	22	12	10	29	5	12	10	
	4.	5.	3.	3.	5.	4.	3.	3.	8.	2.	5.	4.	
HAS BAD MORAL INFLUENCE ON SOCIETY	269	141	128	104.	87	78	36	68	58	29	47	31	
	14.	13.	14.	13.	13.	16.	8.	20.	15.	10.	20.	12.	
PREVENT CHILDREN FROM LEARNING AND IMITATING	47	18	29	11	26	10	6	5	12	14	-	10	
	2.	2.	3.	1.	4.	2.	1.	1.	3.	5.	-	4.	
HUSBANDS AND WIVES HAVING HOMOSEXUAL DESIRES CAUSES	5	-	5	-	5	-	-	-	-	5	-	-	
	*	-	1.	-	1.	-	-	-	-	2.	-	-	
DISRESPECT BETWEEN THE TWO BAD IMPACTS OF FAMILY/CAUSES	75	36	39	33	36	6	18	15	12	24	6	-	
PHYSICAL/MENTAL HARM	4.	3.	4.	4.	5.	1	4.	4.	3.	8.	3.	-	
SHOULD NOT ENCOURAGE HOMOSEXUAL ACTIVITIES	17	12	5	17	-	-	12	5	-	-	-	-	
	1.	1.	1.	2.	-	-	3.	1.	-	-	-	-	
AGAINST NATURE/ILLOGICAL/ ABNORMAL	332	155	177	123	105	104	60	63	53	52	42	62	
	17.	15.	20.	16.	16.	21.	14.	18.	14.	18.	18.	24.	
HOMOSEXUALS ARE PSYCHOLOGICALLY IMBALANCED/ABNORMAL	330	178	152	150	124	56	72	78	76	48	30	26	
	17.	17.	17.	19.	19.	11.	16.	23.	20.	17.	13.	10.	
DIRTY BEHAVIOUR IS UNACCEPTABLE/ SHAMEFUL/UNETHICAL	339	201	138	142	130	67	83	59	82	48	36	31	
	17.	19.	15.	18.	20.	14.	19.	17.	22.	17.	16.	12.	
INDECENT/UNACCEPTABLE/WRONG/FAR OUT	343	154	189	108	121	114	54	54	64	57	36	78	
	18.	15.	21.	14.	18.	23.	12.	16.	17.	20.	16.	30.	
IMPOSSIBLE/RIDICULOUS	129	70	59	48	31	50	24	24	12	19	34	16	
	7.	7.	7.	6.	5.	10.	5.	7.	3.	7.	15.	6.	
OTHERS	6	6	-	6	-	-	6	-	-	-	-	-	
	*	1.	-	1.	-	-	1.	-	-	-	-	-	
DK	84	24	60	44	24	16	24	20	-	24	-	16	
	4.	2.	7.	6.	4.	3.	5.	6.	-	8.	-	6.	

SURVEY OF PUBLIC OPINION (1982)

Hong Kong Lifestyles Study

Methodology

The survey was carried out by a private research company, AGB McNair Hong Kong Ltd. The purpose of the study was to provide a more complete understanding of what people are like in Hong Kong.

The survey covered a random sample of 2017 people aged between 15 and 64 living in Hong Kong Island, Kowloon and New Territories. The fieldwork was carried out between 1 April to 30 June 1982 and face-to-face interviews were conducted with randomly selected respondents.

The survey contained over 100 questions of which those annexed were the only ones relating to moral attitudes or homosexuality. No preliminary information on the existing law on homosexuality was given to interviewees. The questions were in both Chinese and English and it is understood that the Chinese translation did not stress the word "not" in question 7 as the English version did.

Selected findings from the Lifestyle Study
carried out in April - June 1982

<u>Statements</u>	<u>% of Respondents</u>			<u>Total</u>
	<u>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>	
1. I cannot respect a girl who gets pregnant before marriage	30%	19%	51%	100%
2. Abortion laws should be liberalised	37%	27%	36%	100%
3. People have too little respect for traditional values these days	69%	17%	14%	100%
4. There is too much emphasis on sex these days	51%	31%	18%	100%
5. I think making it easier for people to get a divorce is a bad thing	39%	33%	28%	100%
6. Premarital sex is all right	27%	28%	45%	100%
7. Homosexual laws should NOT be relaxed	65%	20%	15%	100%
8. I worry about loss of face	45%	17%	38%	100%

Homosexual Laws should not be Relaxed

% of Respondents

	<u>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>	<u>Total</u>
Overall	65%	20%	15%	100%
<u>Age</u>				
Under 25	64%	19%	17%	100%
25-39	69%	18%	13%	100%
40-54	65%	20%	15%	100%
55 or above	56%	25%	19%	100%
<u>Sex</u>				
Male	66%	19%	15%	100%
Female	63%	21%	16%	100%
<u>Housing</u>				
Private	65%	20%	15%	100%
Public	65%	20%	15%	100%
Temporary	61%	23%	16%	100%
<u>Marital Status</u>				
Single	65%	20%	15%	100%
Ever married	65%	20%	15%	100%
<u>Household Income</u>				
Under \$2000	64%	25%	11%	100%
\$2000 to \$3999	67%	18%	15%	100%
\$4000 to \$5999	63%	21%	16%	100%
\$6000 to \$9999	66%	16%	18%	100%
\$10000 or over	60%	23%	17%	100%
<u>Residence in Hong Kong</u>				
Less than 7 years	68%	24%	8%	100%
7 years or more	64%	20%	16%	100%

REPORTED OFFENCES RELATING TO HOMOSEXUALITY

The statistics which follow have been compiled with the assistance of the Police Force and the Registrar, Supreme Court. Specific details relating to cases prior to 1979 cannot be supplied by the Police due to the cross referencing system in use at that time. However Annexure 24 contains of all relevant cases dealt with by the courts since 1979. The Chart below contains data relating to the number of reported unnatural offences for the years 1971 - 1982 together with a breakdown of these offences into sub-categories.

Chart

A. Number of Reported Unnatural Offences 1971 - 1982

<u>Year</u>	<u>No. of cases reported</u>	<u>No. of persons prosecuted</u>
1971	7	3
1972	2	1
1973	14	7
1974	21	13
1975	17	13
1976	40	35
1977	27	14
1978	44	40
1979	52	42
1980	80	70
1981	63	54
1982	31	18

B. Unnatural Offences breakdown by Sub-Categories 1979 - 1982

<u>Offences</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Indecent Assault on male	11	64	22	8
Buggery	11	3	5	12
Gross Indecency	28	12	27	11
Other Miscellaneous	2	1	9	-
Bestiality	-	-	-	-
	—	—	—	—
	52	80	63	31
	—	—	—	—

DETAILS OF COURT CASES INVOLVING
HOMOSEXUAL CONDUCT FROM 1979 TO 1981
(AS SUPPLIED BY ROYAL HONG KONG POLICE FORCE)

<u>A.</u>	<u>Buggery</u>	<u>Sentence</u>
	2 defendants	D. 1 12 months imprisonment D. 2 6 months imprisonment
	2 defendants	9 months imprisonment each <u>suspended</u> for 2 years
	2 defendants (aged 15 years)	To Detention Centre
	1 defendant (4 charges)	3 years on each charge (concurrent)
	1 defendant (incitement to commit Buggery)	1 year imprisonment
	1 defendant	Absconded while on bail
	1 defendant (aged 14 years)	Training Centre
<u>B.</u>	<u>Gross Indecency</u>	
	2 defendants	Bound over \$500 for one year each
	2 defendants	Bound over \$500 for 18 months each
	2 defendants	Bound over \$800 for 18 months each
	1 defendant (5 charges)	Sentence 4 months each count concurrent
	1 defendant	Bound over for 12 months at \$2,000 and pay costs \$400; no conviction recorded
	1 defendant (attempt to procure the commission of an act of gross indecency)	Bound over \$300 for one year
	2 defendants	Fined \$250 each
	1 defendant	Fined \$200
	3 defendants	Fined \$500 each
	2 defendants	Fined \$500 each
	1 defendant (soliciting for an immoral purpose)	Fined \$500

2 defendants	D.1 1 month imprisonment D.2 on probation for 18 months
2 defendants	Fined \$250 each
1 defendant	Fined \$500 Costs \$500
2 defendants (2 charges)	D.1 Bound over \$500 for 12 months Costs \$500 D.2 Fined \$250
2 defendants	Bound over \$500 for 12 months costs \$1,250 No conviction recorded
1 defendant	1 month imprisonment <u>suspended</u> 1 year
2 defendants	Each bound over \$500 for 1 year
2 defendants	Bound over \$500 for 12 months each
1 defendant (3 charges)	18 months on each charge (all concurrent)
1 defendant (8 charges) (procuring an act of gross indecency)	Convicted – 18 months on each charge (all concurrent)
1 defendant (3 charges)	A – Fined \$500 B – 13 weeks imprisonment C – 6 months imprisonment <u>suspended</u> for 2 years
1 defendant (3 charges)	Unconditionally discharged. No conviction recorded. \$600 costs.
1 defendant (16 charges) one defendant	18 months imprisonment on each charge (concurrent)
1 defendant (10 charges) (Procuring an act of gross indecency)	4 charges - not guilty; 6 charges guilty 1 year imprisonment.
2 defendants	D. 1 On probation for 12 months (no conviction recorded) D. 2 Bound over \$350 for 12 months
2 defendants	D. 1 Fined \$200 D. 2 Fined \$250

2 defendant	Both bound over \$500 for 6 months (no conviction recorded)
1 defendant	1 month imprisonment <u>suspended</u> for 12 months
1 defendant	Conditional discharge. Bound over \$500 for 2 years and to pay costs of \$1,000.
1 defendant	Bound over \$500 for 1 year
1 defendant	Bound over \$500 for 2 years. Costs \$500
1 defendant	Bound over \$500 for 2 years. Costs \$500
1 defendant	Fined \$500
1 defendant	Fined \$250
1 defendant	Bound over \$500 for 18 month
2 defendants (2 charges)	Both bound over \$500 for 1 year
1 defendant	Fined \$300
1 defendant	Fined \$500
1 defendant	Fined \$500

C. Indecent Assault

Sentence

(1 defendant in each case)

Indecent assault on male	Fined \$500
"	6 months imprisonment <u>suspended</u> for 12 months
"	5 months imprisonment each concurrent
(2 charges)	Bound over \$500 for 2 years
"	Bound over \$500 for 2 years
"	On probation for one year
"	Bound over \$300 for 12 months
"	Fined \$500
"	On probation for 12 months

"	On probation for 12 months
(2 charges)	
"	6 months imprisonment
(2 charges)	
"	Bound over \$500 for 1 year
"	Bound over \$500 for 1 year
"	Fined \$500
"	1 month imprisonment on each charge concurrent.
(2 charges)	\$500 costs
"	6 months imprisonment
(2 charges)	
"	Bound over \$1,000 for 12 months
"	\$500 costs
"	Bound over \$500 for 12 months
"	Bound over \$100 for 12 months
"	Bound over \$1,000 for 2 years.
"	Costs \$500
"	12 months probation
"	3 months imprisonment <u>suspended</u> one year
Indecent assault on a child under 14	3 months in prison <u>suspended</u> for 18 months
"	To Detention Centre
"	Probation for 18 months. No conviction recorded.
"	3 months imprisonment <u>suspended</u> 2 years
"	20 days imprisonment

SUBMISSION BY SCOTTISH ORGANIZATION

"I write to submit evidence to your Committee, as Honorary President of the Scottish Homosexual Rights Group, and more specifically, as a Consultant Psychiatrist with many years' experience in both general and forensic psychiatry. The most widely held psychiatric view today is that homosexuality is not an illness, nor are homosexuals sick people.

Oppressive social attitudes which are still found in many cultures can give rise to loneliness, isolation, feelings of rejection which in turn can precipitate neurotic or psychotic - particularly depressive - breakdown, and potential suicide. Homosexual men have to cope with the additional stress of the law, which makes homosexual behaviour a crime. The resultant emotional conflict comprising both fear and guilt can be a strong determinant factor in mental illness among male homosexuals.

The legal aspect, however, is one which can and should be relieved by a change in the law, making homosexual behaviour between adult consenting males no longer a crime.

(sd.) Keith R.H. Wardrop
M.B. Ch.B., F.R.C. PSYCH., D.P.M.
Lanarkshire, Scotland."

"We urge the Special Committee which is looking into the law of the Colony to recommend that the law on age of consent is changed so that the same age - 16 - applies to all men and women, heterosexual or homosexual.

Philip Lightowlers
National Secretary
For and on behalf of the
National Executive Committee
Meeting of 2 August 1980,
Scottish Homosexual Rights
Group"

SCHEDULE OF MISCELLANEOUS STATISTICS

I. POPULATION

(1)	Total population as at December 1982	:	5,287,800
(2)	Breakdown of population by sex -		
	(i) Male	:	2,752,300
	(ii) Female	:	2,535,500
(3)	Estimated number of non-Hong Kong citizens (1982) -		
	(i) British (excluding Armed Forces)	:	21,900
	(ii) Filipino	:	20,000
	(iii) Indian	:	14,400
	(iv) American	:	12,400
	(v) Malaysian	:	9,100
	(vi) Thai	:	9,000
	(vii) Australian	:	7,900
	(viii) Portuguese	:	7,400
	(ix) Pakistani	:	7,400
	(x) Japanese	:	7,100
	(xi) Canadian	:	5,000
	(xii) Singaporean	:	4,500
	(xiii) Indonesian	:	3,700
	(xiv) German	:	2,100
	(xv) Korean	:	2,100
	(xvi) French	:	1,500
	(xvii) Dutch	:	1,200

- (4) Place of origin of Chinese population -
- (i) Born in Hong Kong : 57%
 - (ii) Born in overseas Chinese communities : 41%
- (5) Number of illegal immigrants repatriated to China in 1982 : 8,680
- (6) Number of Vietnamese refugees in camps : 12,616
- (7) Population density per square kilometre : 4,923

(8) Age distribution :

	<u>under 15</u>	<u>15 - 64</u>
1972	34%	60%
1982	24%	68%

(Source : Hong Kong Yearbook, 1983)

II. RELIGION

(1) Breakdown of population by religious affiliation -

- (i) Buddhist/Taoist/Confucian : Exact figure unknown, but a significant majority
- (ii) Roman Catholic : 250,000
- (iii) Protestant : 200,000
- (iv) Muslim : 30,000
- (v) Hindu : 10,000

(2) Number of Buddhist and Taoist temples : 350

(Source : Hong Kong Yearbook, 1983)

III. FAMILY

- (1) Number of households : 1,155,900
- (2) Number of marriages –

	(i)	1976	:	39,600
	(ii)	1982	:	53,993
(3) Number of divorces –				
	(i)	1976	:	1,000
	(ii)	1982	:	3,120
(4)	Number of births		:	86,036

(Source : Hong Kong Yearbook, 1983)

IV. THE POST OFFICE

Number of packets mailed in 1982 : 96 million

(Source : Postmaster General)

V. CINEMA

(1)	Average annual cinema audience		:	66 million
(2)	Number of cinemas		:	85
(3)	Number of films submitted for review by Television & Entertainment Licensing Authority in 1982		:	661
(4)	Number of films refused licence in 1982		:	13
(5)	Number of films passed in 1982 after cuts made		:	200
(6)	Number of films cut because of overt homosexual scenes		:	1

(Source : Commissioner for Television & Entertainment Licensing)

VI. URBAN SERVICES FACILITIES

A.	(1)	Public toilets	:	926
	(2)	Commercial public bath houses	:	64
	(3)	Bathing beaches	:	41

(4)	Public swimming pools	:	14
(5)	Pleasure grounds	:	418 hectares
(6)	Stadia	:	9
(7)	Gardens of Remembrance	:	6
(8)	Public libraries	:	27
(9)	Museums	:	3
(10)	Civic centres	:	8
(11)	Indoor game halls	:	9
B.	Number of reports of homosexual offences in above localities received by Urban Services Department in the last 5 years	:	0

(Source : Urban Services Department)

VII. VENEREAL DISEASE

(1)	Number of cases reported in the last 5 years	:	32,386
(1)	Breakdown by sex –		
	(i) male	:	22,766
	(ii) female	:	9,620
(3)	Number of cases found to be due to male : homosexual contacts	:	30
(4)	Number of cases found to be due to female : homosexual contacts	:	0

(Source : Medical & Health Department)

VIII. CUSTOMS AND EXCISE

Seizures under the Objectionable Publications Ordinance by Customs and Excise Department

<u>Year</u>	<u>No. of cases Prosecuted</u>	<u>No. of persons Convicted</u>	<u>Total fine/ imprisonment</u>
1980	1	2	\$ 15,500
1981	14	17	\$164,500
1982	28	35	\$ 73,520

(and 11 months' imprisonment)

Note	:	(a)	largest single fine	:	\$53,000
		(b)	longest sentence of imprisonment	:	8 months

(Source : Commissioner for Customs & Excise)

IX. EDUCATION

(1)	Number of schools in 1982	:	2,350
(2)	Total enrolment as at September 1982	:	1,371,497
	(i) Kindergarten	:	205,200
	(ii) Primary	:	547,512
	(iii) Secondary	:	518,721
	(iv) Others	:	100,064
(3)	Number of students studying overseas	:	over 12,000
(4)	Total number of teachers	-	
	(i) male	:	13,800
	(ii) female	:	26,400
(5)	Number of teachers convicted of sexual offences since 1970	:	6
(6)	Number of teachers convicted of homosexual offences since 1970	:	2
(7)	Number of allegations of sexual offences since 1970 not leading to prosecution	:	1

(Source : Education Department)

X. PUBLIC DANCE HALLS

- (1) Total number as at February 1983 : 48
- (2) Most commonly reported breaches of licence conditions :
- (i) Employment of assistants without approval;
 - (ii) Employment of under-aged assistants;
 - (iii) Incomplete register of employees;
 - (iv) Consumption of liquor without a valid licence;
 - (v) substandard seating arrangements.
- (3) Number of licence cancellations or revocations : 16
- (4) Most common grounds for licence cancellation or revocation :
- (i) Transfer of operation/management without permission of Authority;
 - (ii) Keeping a disorderly house and failing to observe licence conditions;
 - (iii) Keeping a vice establishment.
- (5) Number of reported incidents of indecent behaviour in licensed premises : 3
- (6) Number of reported incidents of homosexual indecent behaviour in licensed premises : 0

(Source : Television & Entertainment Licensing Authority)

XI. MESSAGE PARLOURS

- (1) Number of premises licensed : 71
- (2) Types of premises -

- (i) Beauty salons : 17
 - (ii) Private clubs : 14
 - (iii) Premises issued a Massage Establishment Licence : 40
- (3) Number of licence revocations -
- (i) 1981 : 1
 - (ii) 1982 : 3
- (4) Number of reported incidents of use of premises by under-aged persons : 0
- (5) Number of reported incidents of indecent behaviour of a homosexual nature : 0

(Source : Licensing Office,
Royal Hong Kong Police Force)

XII. TELEVISION

Average Weekday Audience Size at Peak Hours

Time	ATV Chinese	TVB Jade	ATV English	TVB Pearl
1900-2000	578,750	1,988,585	16,205	2,315
2000-2100	381,975	2,335,835	6,945	20,835
2100-2200	307,895	2,146,005	23,150	34,725
2200-2300	682,430	1,365,850	25,465	67,135
2300-0000	219,925	490,780	6,945	46,300

Based on week ending 7 November 1982

(Source : Television & Entertainment
Licensing Authority)

**Summary of Evidence given publicly by male prostitutes
before the Commission of Inquiry into the death
of Inspector John MacLennan**

PETER

Personal Background

Peter was born in Hong Kong on the 17th July 1957. He is Chinese. He left school when he was thirteen, having reached Primary IV level. He left school because he was a below-average student. He is able to read Chinese, but not English. He speaks a little English.

After leaving school Peter commenced working as a dim sum seller in a tea house. Later he worked in the kitchen of the same establishment. About a year after starting work Peter changed his employment and became a factory worker. He subsequently worked in other factories before becoming a construction worker. His employment history shows that he remained in each job for between a few months and a year. When he was seventeen Peter became unemployed and it was not until he was twenty that he obtained further employment in a dyeing factory. Between then and the time he gave evidence before the Commission of Inquiry in October 1980 Peter also worked as a security guard and spent substantial periods unemployed.

Peter's Homosexuality

Peter's first homosexual experiences occurred when he was thirteen at the time of his first employment. At that stage he slept in a dormitory with a fellow worker who was aged about sixteen.

This person made advances to Peter who permitted himself to be masturbated. At first, Peter says, he "didn't know what it was all about", but soon began to enjoy mutual masturbation with his male friend.

Later these activities extended to other kitchen workers at the tea house where Peter was working. As a result of these contacts Peter came to know that homosexuals frequent public lavatories and parks and he sometimes encountered chance meetings at such locations which subsequently resulted in homosexual liaisons. He also found that he was able to make homosexual contacts amongst males loitering at the back of picture theatres.

By the time Peter was fourteen he had graduated to oral sex and active and passive buggery with his homosexual acquaintances. He actively sought homosexual partners with whom he had relationships which varied from a single encounter to many meetings over long periods.

In 1975 Peter became a male prostitute. By 1978 he had moved into an apartment house in Tsimshatsui which was the area in which he was principally working as a male prostitute. He acquired customers through introductions and at homosexual haunts which he came to know of in the Tsimshatsui area. His customers included Europeans and Asians, many of whom were tourists.

When Peter commenced his career as a male prostitute in 1975 the minimum price he would normally accept for his services on any one occasion was \$100. Occasionally, if he found his client young and good looking, he was prepared to accept less. By October 1980 the minimum price Peter was prepared to accept for his services was \$200 from tourists or

sometimes less from regular local clients he found handsome and whose company he enjoyed. Normally, he negotiates the price with his clients before returning to their hotel rooms or homes.

LULO

Personal Background

Lulo is a Chinese male who was born in Hong Kong on the 30th October 1949. He left school at the age of seventeen when he was in Form 2. He was, as a result of his education, able to speak and write a little English at the time he left school.

At the time he ceased attending school Lulo left home and started living with his cousins. He commenced working in an electronic factory assembling radios and remained in that job for about two years. From the time he left that employment until November 1980, when he gave evidence before the Commission of Inquiry, Lulo earned a living as a male prostitute.

Lulo's Homosexuality

Lulo was not unwittingly introduced to homosexual practices by an older man. He recalls having a keen interest in boys from early in his school career, although he did not indulge in homosexual activities until he was about twenty. His first homosexual encounter was with a European whom he met in a Tsimshatsui lavatory. This person watched Lulo for a short time and then began to talk with him. They arranged to meet later the same day when they booked a room in a guest house in Tsimshatsui. There mutual masturbation took place and Lulo was paid \$100 for his services. It was as a result of this incident that Lulo realised his attraction sexually to other men and the income he could earn from homosexual prostitution. As a result, he left his job and rented a room in Tsimshatsui. He came to know that certain bars and the Star Ferry Concourse in that area were places where he could make homosexual contacts and he began successfully plying his trade.

Lulo learned to effect a feminine way of walking and to smile at prospective customers. He found this to be a successful way of attracting customers in the street. He made it a practice to negotiate a price with each prospective customer before going to the customer's hotel or to a guest house where a room could be rented.

Normally, Lulo earned about \$200 from each customer and this was irrespective of the services he rendered. He indulged in all aspects of homosexual practice from masturbation to active and passive buggery. His customers have always been tourists and non-Chinese local residents. He indulges in homosexual acts with local Chinese, but does not accept payment on such occasions.

In relation to some of his local customers, Lulo often visits their homes in order to provide his services. Sometimes he exchanges telephone numbers with his local customers in order that further meetings can be arranged.

MICHAEL

Personal Background

Michael was born in Mainland China in 1943. He received four years of primary education in China and has a limited ability to read Chinese characters. In 1960 he came to Hong Kong and obtained employment in a weaving factory. He worked in that job for between four and five years. After that he worked in a metal factory for two years and then in a

garment factory for about ten years. At the time he gave evidence before the Commission of Inquiry in November 1980 he was employed in an hotel.

Michael's Homosexuality

Michael first realised he was a homosexual when he was very young. He did not, however, engage in homosexual activities until after he arrived in Hong Kong. His first experience of that nature was a chance meeting, when he was in his mid-twenties, with a homosexual who was about ten years older than he was. Although no homosexual acts took place between them this person told Michael that there were homosexuals who frequented the Tsimshatsui area. He mentioned that the Star Ferry Concourse and outside the Ambassador Hotel were popular meeting places for homosexuals.

As a result, Michael went to the Star Ferry Concourse a short time afterwards and came into contact with the homosexuals who frequented the area. He realized that male prostitutes were operating in the area and, although he did not start actively seeking out customers, his first homosexual relationship was with a European tourist who paid him \$100 for his services. On that occasion the tourist started talking to him in the lobby of the Hong Kong Hotel and they agreed to go to his hotel room together. Oral sex and masturbation took place on that occasion and Michael was paid \$100, although money had not been mentioned before the payment was made to him.

Most of Michael's homosexual liaisons are with tourists. He says that he seldom negotiates a price for his services in advance, but accepts such money as is offered to him. He is prepared to indulge in oral sex, masturbation and active buggery, but not in passive buggery. He does not engage in homosexual acts with the other male prostitutes he knows because he regards them as friends and therefore prefers not to do so. Some of his customers are local people.

BOBBY

Personal Background

Bobby is Chinese and was born in Hong Kong on the 10th November 1959. He is the ninth of eleven children in his family. Bobby was educated to Form I level and left school at the age of sixteen. He can speak and read Chinese proficiently and has a very limited knowledge of English.

Bobby's Homosexuality

Bobby realised he was a homosexual when still at school. He had his first homosexual experiences with a school friend when he was in Form I. Those experiences involved mutual masturbation.

During 1977 Bobby met several of the male prostitutes who were active in the Tsimshatsui area. Soon after that he was introduced by one of his male prostitute friends to a European living in Hong Kong in order that he could be paid for performing homosexual acts with him. On that occasion he was paid \$50. Since then Bobby has regularly performed homosexual acts for financial reward. Most of his customers are non-Chinese tourists. He also has customers, both Chinese and non-Chinese, who live in Hong Kong.

Bobby generally receives between \$100 and \$300 for his services. If he has been introduced to a customer by another male prostitute Bobby pays him a portion of his earnings. Such amounts vary depending upon the proportion he is asked to pay.

Bobby is prepared to provide all forms of homosexual services including active and passive buggery.

JEFF

Personal Background

Jeff was born in Hong Kong on the 19th February 1954. He has three younger brothers and three younger sisters. Jeff left school at the age of thirteen, having attained an education of Primary V level.

Between the time he left school and gave evidence before the Commission of Inquiry in December 1980 Jeff was employed as a mason. In December 1980 he was earning \$120 per day in that employment.

Jeff's Homosexuality

Jeff's first experience of male prostitution was in mid 1977. On that occasion he was in the vicinity of the Star Ferry Concourse in Kowloon at about 1 a.m. He was approached by a foreign tourist who asked him if he had a place to sleep. Jeff replied that he did not and he agreed to accompany the tourist to his room in the Hong Kong Hotel. There he participated in masturbation and oral sex with the tourist and they spent the night together. Jeff left the room the following morning after being given \$100 by the tourist. Jeff says that he then realized the amount of money he could make in male prostitution and after that time he often went to the Star Ferry Concourse in Kowloon for the purpose of meeting customers. Most of Jeff's customers are tourists, although he has some local patrons who are mainly Europeans.

Jeff became acquainted with the other male prostitutes working in the Tsimshatsui area. One of them introduced Jeff to a European living in Hong Kong who indulged in flagellation. This person hit his subjects with a rattan cane and was prepared to pay his "victims" \$20 for each stroke of the cane. Jeff agreed to be beaten by this person and was taken to his flat by the male prostitute who introduced them to each other. Jeff and his customer removed their clothing and over a period of about ten minutes Jeff was hit with a cane ten times by him. Whilst doing this the European masturbated himself. After completing his performance the European turned on a lamp to inspect the results of his efforts and showed Jeff a photograph of an earlier flogging he had inflicted on another male. He then paid Jeff \$200 and the other male prostitute \$50 for having introduced Jeff to him.

By early 1979 Jeff ceased working as a male prostitute. At that time he had met another older European male who also lived in Hong Kong. Jeff often slept in this person's flat in Tsimshatsui and Jeff describes their relationship as being that of father and son. It was this person who advised Jeff to cease working as a male prostitute and Jeff accepted this advice because he feared "getting into trouble" if he continued.

LETTER DATED 31 AUGUST 1979
FROM THE HON. ATTORNEY GENERAL OF HONG KONG
TO THE COMMISSIONER OF POLICE
(SOMETIMES REFERRED TO AS THE SIU CHARTER)

Operation Rockcorry

"I have read the resume CID report of 20 August 1979 and understand that the Police wish to have guidance upon what resources to devote to Operation Rockcorry.

A distinction can be made between direct evidence of criminal activity, and information or 'leads' which if time and manpower were devoted to them might enable the acquisition of such evidence. In general, where there is evidence in the possession of the police of the commission of any serious crime, it is their duty to lay that before the Attorney General's Chambers for a decision as to what action to take. But where there are only 'leads', then it is a matter of judgment in each individual case whether these should be followed up, or whether diverting police resources to do so would detract from the suppression of other sorts of crime having a higher priority in the prevailing circumstances, and hence not be in the wider public interest.

There being so much other crime with which to deal, including violent crime, illegal immigration and triad activities, and police resources obviously not being limitless, it is out of the question to devote sufficient resources to following up every allegation of homosexuality. The Police will therefore have to proceed in homosexual cases with a degree of selectivity. I realize what a difficult position this puts them in and I hope it may be helpful therefore if I set out some priorities.

Against this background, so far as homosexual crime is concerned, the primary target should be those who profit from homosexuality through procuring. These are important targets since triad connections, protection, and use of 'muscle' are all likely to be involved.

The second targets should be homosexuals who abuse young boys (say of the age of 18 and under) or other persons under mental or other disability - as opposed to indulging in homosexual activities - with consenting adults.

The third targets should be homosexuals against whom credible evidence emerges during other investigations; by credible evidence I mean the direct evidence of persons directly concerned or with personal knowledge of what occurred, as opposed to hearsay, gossip or mere suspicion.

Fourthly, if specific complaints of homosexual practices are made by members of the public to the Police, then of course they must be acted upon in the normal way.

In the investigations of the cases referred to above, I expect that leads pointing to practising homosexuals will be bound to crop up. Such leads should generally only be followed up either if they assist in the prosecution of a procurer, or if the abuse of young persons is suspected to have occurred. I consider in the context of the present situation with regard to crime in Hong Kong and the need to choose those areas of crime in which the limited police resources should be deployed, that it is not necessary to follow up suspicions of homosexuality unless they come within the criteria I have described above.

An exception to the above guidance in relation to consenting adults should be made in the case of credible 'leads' against either members of the Judiciary or of the Attorney General's Chambers or of other lawyers in active practice in the Courts or of the Police. Assuming such leads to be credible, then these should be followed up because it is unacceptable to have those charged with the enforcement of the law themselves to be deliberately breaking it. Each such lead must of course be individually assessed and common sense applied in judging its credibility. Hong Kong seems to breed rumours and wild allegations (as indeed has already been shown in some instances in Rockcorry itself) and it would cause unnecessary public alarm and be a waste of resources if every incredible allegation was pursued, or if allegations were further pursued once they were shown not to be credible.

It is I suppose possible that leads may appear pointing at very senior police officers or, similarly, members of my chambers. These should be reported to me personally at once and I will decide the manner in which the enquiries should proceed - to do otherwise would place more junior police officers in a difficult and invidious position.

Lastly, it may be that credible leads appear pointing at senior members of the Government service. In deciding whether or not to pursue them, such cases must be considered on an individual basis, bearing in mind the position of the suspect in government and all the other circumstances.

I have appointed Mr. Neil Macdougall, the Assistant Director of Public Prosecutions and Mr. Warwick Reid, Senior Crown Counsel, to be available for consultation about any legal aspects of Operation Rockcorry where the police feel they need advice. I am also personally available should any matter arise where either yourself or the leader of the Rockcorry team feel it would be helpful to consult me. I would wish also to be kept informed of the general progress of the Rockcorry investigation, and told at an early stage of any leads which are being followed up and which point at senior members of the Government, the police, or the Judiciary.

With regard to Operation Rockcorry, I do not think a much larger deployment of Police manpower than that currently engaged is justified, although it may be that some temporary reinforcement in the form of either supervision or additional subordinate staff is necessary to dispose of the current enquiries. This of course is a matter for the Commissioner of Police.

I hope that Operation Rockcorry and the series of prosecutions resulting from it, including that of the prime target Molo Choy, and the continuation of operations along the lines and at the level of activity I have suggested above, should have a deterrent effect on the practice of homosexual crime in Hong Kong.

However, it is possible that evidence may emerge that the amount of homosexuality alleged to exist within the community and Government services is leading to corruption and blackmail in the present state of the law. In this case, we would have to consider either amending the law or deploying more Police manpower to decrease homosexuality. But in default of such evidence, and with Police resources stretched to deal with the upsurge in crime and illegal immigration, I do not think action in excess of that which I have outlined above is justified."

(Reprinted from Report of the Commission of Inquiry into Inspector MacLennan's Case 1981, pages 62 and 63)

CIVIL SERVICE CIRCULAR ON EMPLOYMENT

5th January 1982

Secretariat Confidential Circular No. 106/82

Employment of Homosexuals in the Civil Service

Now that the report of the Commission of Inquiry into the death of Inspector MacLennan has been published, it is thought that Heads of Department will wish to have some guidance as a reminder on the employment of homosexuals in the civil service, and specifically on the exercise of their delegated powers of appointment and termination of service. This circular therefore defines the existing policy and procedures which Heads of Department may find helpful.

2. A "known homosexual" is someone (of either sex) who has been convicted of a homosexual offence or who has formally acknowledged being a practising homosexual.
3. No known homosexual should be appointed to the Hong Kong civil service, irrespective of rank or grade. Where a candidate for appointment is a suspected homosexual, the case should be referred to the Secretary for the Civil Service.
4. Where a serving officer has been convicted of a homosexual offence, consideration should be given by his Head of Department to terminating his service in accordance with established civil service practice.
5. Where it comes to the notice of a Head of Department that a serving officer is a known or suspected homosexual, the case should be referred automatically to the Secretary for the Civil Service for advice.
6. Dealing with cases involving known or suspected homosexuals is never easy and Heads of Department are invited to seek advice from the staff of Civil Service Branch.
7. Any queries on this circular should be addressed to the Deputy Secretary for the Civil Service (Staff Management) (Tel. No. 5-95531).

MARTIN ROWLANDS
Secretary for the Civil Service

To : Branch Secretaries
and Heads of Department

LAWS IN HONG KONG

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 to 6.7	<u>THE FAMILY</u>			
	<u>LIFE</u>	Murder	Death	S.2 of Offences Against Persons Ordinance Cap. 212
		Manslaughter	Life Imprisonment	S.7, Cap. 212
		Infanticide	Life Imprisonment	S.47C, Cap. 212
		Abortion	7 years	S.46, Cap. 212
		Procuring Abortion	Life Imprisonment	S.46, Cap. 212
		Child Destruction	Life Imprisonment	S.47B, Cap. 212
		Concealing Birth	2 years	S.48, Cap. 212
		Assisting Suicide	14 years	S.33B, Cap. 212
		Aiding and Abetting		S.82 of Interpretation and General Clauses Ordinance Cap. 1
		Counselling and Procuring		"
		Conspiracy		Common Law
		Misprison of Felony		Common Law
	Assisting a Fugitive		Common Law	

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 – 6.7	<u>BODILY INJURY</u>	Attempts to Murder	Life Imprisonment	SS. 10-14, Cap. 212
		Shooting) – with) intent	Life Imprisonment	S.17, Cap. 212
		Wounding)		
		Administering Poison so as to Endanger Life	10 years	S.22, Cap. 212
		Causing Bodily Injury by Gun-Powder or Acid	Life Imprisonment	SS. 28, 29, Cap. 212
		Attempting to Choke or Strangle to Assist Another Offence	Life Imprisonment	SS. 20, 21, Cap. 212
		Assault with intent to cause acts to be done	5 years Imprisonment	SS. 25, 27 of Crimes Ordinance Cap. 200
		Wounding or poisoning	3 years Imprisonment	SS. 19, 23, Cap. 212
		Assault Occasioning actual bodily harm	3 years	S. 39, Cap. 212
		Common assault	1 year	S. 40, Cap. 212
		Incest	7 years	S. 47, Cap. 200
		Abandoning a Child	3 years	S. 26, Cap. 212
		Child Abuse	2 years,	S. 27, Cap. 212
6.6 – 6.7	<u>LIBERTY</u>	Kidnapping	Life Imprisonment	S. 42, Cap. 212
		Unlawful Transfer or Possession of Person for Money	2 years	S. 44, Cap. 212

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.6 – 6.7	<u>FEAR</u>	Letters threatening Murder	10 years	S.15, Cap. 212
		Threats to Destroy property	10 years	SS. 61, 63, Cap. 200
		Blackmail	14 years	S.23 of Theft Ordinance Cap. 210
		Criminal Intimidation	5 years	SS. 24, 27, Cap. 200
		Professing Membership of Triad Society	5 years & \$5,000	SS. 19, 20 of Societies Ordinance Cap. 151
		Criminal Libel	2 years plus fine	SS. 5, 6 of Defamation Ordinance, Cap. 21
		Public Mischief-publishing false information	5 years & \$50,000	S. 30 of Public Order Ordinance Cap. 245
		Sending false or menacing message by telephone	1 month \$100	S. 20 of Summary Offences Ordinance Cap. 228
6.6 – 6.7	<u>PROPERTY</u>	Arson or Destroying Property with intent	Life Imprisonment	SS. 60, 63, Cap. 200
		Criminal Damage	10 years	SS. 60, 63, Cap. 200
		Aggravated Burglary	Life Imprisonment	S. 12, Cap. 210
		Burglary	14 years	S. 11, Cap. 210
		Robbery	Life Imprisonment	S. 10, Cap. 210
		Theft	10 years	S. 9, Cap. 210

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.8	<u>MARRIAGE</u>	Marrying minor under 21, without consent of parent (Grounds for Nullity) (Grounds for Divorce)	2 years	S.29 of Marriage Ordinance Cap. 181 S.20, Cap. 181 SS.11 and 11A of Matrimonial Causes Ordinance Cap. 179
6.14	<u>PUBLIC BEHAVIOUR</u>	Disorderly conduct Fighting in Public Unlawful Assembly Obeying a call of nature in public	12 months & \$5000 12 months & \$5000 5 years 3 months & \$500	S.17B, Cap. 245 S.25, Cap. 245 S.18, Cap. 245 S.4(3), Cap. 228
6.15		Calls of nature in public or in buildings Permitting child under 12 to obey call of nature in public	\$1000 (first offence) \$1000 (first offence)	By-laws 8 and 23 of Public Cleansing & Prevention of Nuisance By-laws S.15, Public Health & Urban Services Ordinance Cap. 132
6.16		Indecent exposure	6 months & \$1000	S.148, Cap. 200
6.17		Loitering and soliciting for immoral purpose Loitering without explanation Loitering with obstruction Loitering causing fear	6 months & \$1000 6 months & \$2000 6 months 2 years	S.147, Cap. 200 S.160, Cap. 200 S.160, Cap. 200 ibid

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.20	<u>PUBLIC LAVATORIES</u>	Indecency	\$250	By-laws 5, 7, 10 of Public Convenience (Conduct & Behaviour) By-laws; S.35, Cap. 132
6.20	<u>COMMERCIAL BATH- HOUSES</u>	Indecency (Refusal of admission or removal of persons from public lavatories and bath-houses)	\$500 & 1 month	By-laws 13, 18 of Commercial Bath-house By-laws; S.35, Cap. 132 SS. 37, 38, Cap. 132
6.20	<u>BATHING BEACHES</u>	Indecency	\$500 & 14 days	By-laws 5, 15, 16 of Bathing Beach By-laws; S.109, Cap. 132
6.20	<u>PUBLIC SWIMMING POOLS</u>	Indecency	\$250	By-laws 4, 6, 7, 13 of Public Swimming Pool By-laws; SS. 42, 149, Cap. 132
6.20	<u>PLEASURE GROUNDS</u>	Indecency	\$500 & 14 days	By-laws 7, 21, 22, 24, 30 and 32, Pleasure Grounds By-laws; S.109, Cap. 132
6.21	<u>BARS</u>	(Power to grant licences) (Licence conditions) (Form 2)		R. 17, Dutiable Commodities (Liquor) Regulations; S.6, Dutiable Commodities Ord. Cap. 109 R. 21, Schedule to Dutiable Commodities (Liquor) Regulations

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.25	<u>PUBLIC DANCE HALLS</u>	Under-age drinking	6 months & \$5000	R. 28, 30
		Under-age employment	6 months & \$5000	R. 29, 30
		Entertainment without licence	\$2000	R. 27, 30
		Failure to observe conditions of licence	\$10,000 & 6 months	S. 4, Cap. 114
		Failure to keep register Employment of those under 18 Licence permitting indecency	\$10,000 & 6 months	RR. 7, 9, 17, 60, 61, 63, 68 Miscellaneous Licences Regulations
6.26	<u>PUBLIC PERFORMANCES</u>	Live shows	\$25,000 & 1 year	S. 12A, Cap. 228
		Keeping a place of public entertainment without licence	\$10,000 & 6 months	SS. 2, 4, Places Public Entertainment Ordinance Cap. 172
		Public entertainment in breach of licence	\$1,000 & 6 months	R. 166, 171, Places of Public Entertainment Regulation 5
		Presenting public entertainment without a permit, or in breach of conditions of permit	\$10,000 & 6 months	S. 8, Cap. 172
		Continuing performance after notice of cancellation of licence	\$1,000 per day	R. 173, Places of Public Entertainment

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.37	<u>PUBLICA-</u> <u>TIONS</u>	Closure of performance or premises		RR. 173, 174
		Exhibition of films in cinemas without approval	\$10,000 & 6 months	S. 5, Cap. 172
		Exhibition of films without notification of censor's decision	\$10,000 & 6 months	R. 5, Film Censorship Regulations; S.7, Cap. 172
		Exhibition of films contrary to order by Chief Secretary	\$10,000 & 6 months	R. 11, Film Censorship Regulations
		Conspiracy to corrupt Public Morals		Common Law
		Publishing material tending to induce Commission of Offence	\$10,000 & 3 years	SS. 3, 20, Control of Publications Ordinance Cap. 268
		Contravening an order for suppression of Local Newspaper	\$10,000 & 3 years	S. 4, Cap. 268
		Contravening the Governor's Prohibition of Importation of Newspaper	\$10,000 & 3 years	S. 5, Cap. 268
		Possession of Prohibited Newspaper	\$10,000 & 3 years	S. 5(3), Cap. 268
Advertising treatment for Venereal Disease and Sexual Virility	\$5,000 & 1 year	S. 3, Undesirable Medical Advertisement Ordinance Cap. 231		

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.49	<u>TELEVISION</u>	Indecent message by telephone	\$100 & 1 month	S. 20, Cap. 228
		Posting obscene, immoral indecent or offensive material	\$500 & 6 months	SS. 32, 38, Post Office Ordinance Cap. 98
		Importation, possession for gain or publication of objectionable articles	\$100,000 & 3 years	S. 4, Objectionable Publications Ordinance Cap. 150
		Television station Broadcasting in breach of Prohibition ordered by Television Authority	\$10,000 & 6 months	S. 35, Television Ordinance Cap. 52
		(Television Authority may issue codes of practice)		SS. 4, 34, 37, Cap. 52
		(All film material to be submitted to panel of censors established under the Film Censorship Regulations)		S. 32, Cap. 52
		(Licensee to supply to Television Authority on demand any material intended for broadcasting)		S. 33, Cap. 52
Broadcasting any programme prohibited by the Television Authority	\$10,000 & 6 months	S. 35, Cap. 52		

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.53	<u>WOMEN</u>	Failure to comply with regulations e.g. to exclude certain material in programmes	\$50,000	RR. 4, 6, Television (Standards of Programmes) Regulations, SS. 27, Cap. 52
		Unlawful Intercourse by threats	14 years	S. 119, Cap. 200
		Unlawful Intercourse by drugs	14 years	S. 121, Cap. 200
		Unlawful Intercourse by fraud (Alternative Verdicts)	5 years	S. 120, Cap. 200 S. 149, Cap. 200
		Indecent Assault upon woman	5 years	S. 122, Cap. 200
6.54		Transferring a person for money	2 years	S. 44, Cap. 212
		Transferring a woman for prostitution	7 years	S. 129, Cap. 200
		Procuring a woman into prostitution	7 years	S. 131, Cap. 200
6.55		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

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.57		Keeping a vice establishment	7 years & \$20,000	S. 117 and S. 139, Cap. 200
		Letting premises for vice establishment	2 years & \$20,000	S. 143, Cap. 200
		Tenant permitting use of premises for vice establishment	2 years & \$20,000	S. 144, Cap. 200
6.58		Permitting premises to be used for habitual Prostitution	2 years & \$20,000	S. 145, Cap. 200
		Keeping a house for occupation by Prostitutes	3 months & \$500	S. 8(c), Cap. 228
6.60		Keeping a disorderly house		Common Law
		Indecent exposure by man or woman	6 months & \$1,000	S. 148, Cap. 200
6.61	<u>WOMEN UNDER 21</u>	Soliciting and loitering for immoral purpose	6 months & \$1,000	S. 147, Cap. 200
		Abduction	2 years	SS. 2, 26, 29, Protection of Women & Juveniles Ord. Cap. 213 S. 2, Juvenile Offenders Ordinance Cap. 226
		Stealing a child under 14	7 years	S. 43, Cap. 212
		Abduction of girl under 16	5 years	S. 126, Cap. 200
		Abduction of girl under 18 for sexual intercourse	7 years	S. 127, Cap. 200

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.62		Indecent Assault - No consent by girl under 16	5 years	S. 122, Cap. 200
		Incest with daughter under 16	Life Imprisonment	
		Incest with daughter under 13	Life Imprisonment	S. 47, Cap. 200
		Unlawful sexual intercourse with girl under 16	5 years	S. 124, Cap. 200
		Unlawful sexual intercourse with girl under 13	Life Imprisonment	S. 123, Cap. 200
6.63		Gross Indecency towards child under 14	5 years	S. 146, Cap. 200
		Permitting girl under 13 to resort to premises for prostitution	Life Imprisonment	S. 140, Cap. 200
		Permitting girl under 16 to resort to premises for prostitution	14 years	S. 141, Cap. 200
		Guardian encouraging prostitution of girl under 16	5 years	S. 135, Cap. 200
		Procuring girl under 21 to have sexual intercourse	5 years	S. 132, Cap. 200
6.65	<u>MENTAL DEFECTIVES</u>	(Definition of Mental Defective)		S. 117, Cap. 200

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.66		Taking out of possession of guardian	7 years	S. 128, Cap. 200
		Unlawful sexual intercourse	5 years	S. 125, Cap. 200
		Indecent assault	5 years	S. 122, Cap. 200
		Procuring sexual intercourse	5 years	S. 133, Cap. 200
		Causing Prostitution	10 years	S. 126, Cap. 200
		Permitting resort to premises for intercourse or Prostitution	10 years	S. 142, Cap. 200
		(Definition of Mentally Disordered Person)		S. 2, Mental Health Ordinance Cap. 136
		(Inquiry ordered for person of unsound mind)		S. 7, Cap. 136
6.67		Unlawful sexual intercourse with female patient of mental hospital	3 years & \$5,000	S. 65(2), Cap. 136
6.69		Ill-treatment of Patients by Staff of Mental Hospital	2 years & \$1,000	S. 65(1), Cap. 136
6.75	<u>PRISONERS</u>	Offences against prison discipline	1. Separate Confinement for any period not exceeding 28 days 2. Forfeiture of remission not exceeding 1 month	RR. 61(e), (f), (q), (w), 63, Prison Rules; S. 25, Cap. 243

Report (para)	Topic	Offence	Penalty (Maximum)	Legal Source
6.76	<u>ARMED FORCES</u>	Disciplinary Offences by Prison Officers (Application of the U.K. Army Act 1955 in relation to administration, Discipline, trial and punishment of staff etc. to Hong Kong)	3. Forfeiture of privileges up to 3 months 4. Deprivation of earnings Dismissal, fine, reduction in rank, stoppage of increment etc	R. 239 (h)(iii), (j), (n); Prison Rules, S. 25, Cap. 243 S. 17, Royal Hong Kong Regiment Ordinance Cap. 199
6.81	<u>THE ABOMINABLE MAN</u>	Buggery Attempted buggery Gross Indecency	Life Imprisonment 10 years 2 years	S. 49, Cap. 212 S. 50(a), Cap. 212 S. 51, Cap. 212
6.83	<u>INCHOATE OFFENCES</u>		Not exceeding the maximum of the full offence	S. 81, Cap. 1
6.86	<u>SECONDARY PARTIES</u>		Same as the full offence	S. 89, Criminal Procedure Ordinance Cap. 221

MISCELLANEOUS LEGAL PROVISIONS

I. ROYAL FORCES

(a) THE NAVY

The Naval Discipline Act 1957 provides by s.37 that :-

"Every person subject to this Act who is guilty of any disgraceful conduct of an indecent kind shall be liable to dismissal with disgrace from Her Majesty's service or any less punishment authorised by this Act."

2. The definition covers homosexual conduct and the provisions of s.1(1) of the Sexual Offences Act 1967 do not prevent such an act from being an offence under the Naval Discipline Act (s.1(5) of the Sexual Offences Act 1967). A similar proviso in respect of Scots law is found in s.80(5) of the Criminal Justice (Scotland) Act 1980.

3. In addition to s.37 of the Naval Discipline Act, s.42 of that Act provides that "any person subject to this Act who is guilty by any civil offence (that is to say any act or omission which is punishable by the law of England or would be so punishable if committed in England) shall be liable on conviction under this Act " and proceeds to specify the range of penalties.

4. Under s.8 of the Sexual Offences Act 1967, where the offence is gross indecency, leave of the Director of Public Prosecutions is necessary before proceedings are instituted if at the time of the commission of the offence any one of the men concerned was under the age of 21. It was held in Secretary of State for Defence v. Warn [1968] 2 All E.R. 300 that even in respect of courts-martial the authorisation of the Director of Public Prosecutions had to be obtained. Similarly, despite the fact that s.52(1) of the Naval Discipline Act sets a time limit of 3 years for the commencement of proceedings for an offence under the Act, it was remarked per curiam in Warn that the 12 month time limit imposed by s.7(1) of the Sexual Offences Act 1967 applied equally to court martial proceedings.

5. Not only do the provisions of the Naval Discipline Act apply to all officers on the active list and all ratings (s.111) but also to colonial naval forces (s.115) and "to persons embarked as passengers on board Her Majesty's ships or aircraft" (s.117). Where naval forces are on active service, the Naval Discipline Act extends to :-

- "(a) any person employed in the service of that body of those forces;
- (b) any person employed in the service of any portion or member of that body of those forces; or
- (c) any person who accompanies that body of those forces or any portion thereof" (s.118(1)).

6. This extends the application of s.37 to civilians in the 3 categories given.

7. By s.126 of the 1957 Act, certain provisions are made for enabling the Act to be applied to the colonies. In fact, since the provisions of the Act attach to classes of persons rather than a particular location s.126 has little relevance to s.37.

8. As far as homosexuality on merchant ships is concerned, s.2(1) of the Sexual Offences Act 1967 retains the pre-1967 Act offences "provided that the act charged is done on a United Kingdom merchant ship, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other United Kingdom ship". A "United Kingdom merchant ship" is defined in s.1(3) as being a ship registered in the United Kingdom habitually used, or used at the time of the act charged for the purposes of carrying passengers or goods for reward. The sanctions of s.2 of the Sexual Offences Act 1967 apply to merchant seamen on or off duty provided the offence is committed aboard the ship of which at least one of the parties is a crew member. The wording of s.2 requires 2 merchant seamen to be involved before an offence is committed. No penalty arises under the section if one merchant seaman indulges in homosexual conduct not otherwise criminal with another who is not a merchant seaman.

9. For the purposes of homosexual offences it would seem that merchant seamen serving in ships requisitioned by the Royal Navy would come under the strictures of s.37 and s.42 of the Naval Discipline Act as serving on one of "Her Majesty's Ships" within the definition given in s.132(1) of that Act as including "ships and vessels, other than Her Majesty's ships, engaged in the naval service of Her Majesty, whether belonging to Her Majesty or not".

(b) THE ARMY

10. The provisions of s.66 of the Army Act 1955 regarding "disgraceful conduct" state that :-

"Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act."

11. As with the navy legislation, s.1(5) of the Sexual Offences Act 1967 excludes from the ambit of s.1(1) of that Act any act which would be an offence under the Army Act and the Scottish position under s.80(5) of the Criminal Justice (Scotland) Act is identical.

12. Under s.70 of the Army Act any person who is subject to military law and commits a civil offence, whether in the United Kingdom or elsewhere, is guilty of an offence under s.70. The meaning of "civil offence" is the same as that adopted in s.42 of the Naval Discipline Act 1957. The effect of s.70 is that any act or omission which, if committed in England would be punishable by law may become an offence punishable under the Army Act even though the offence was committed abroad. The term "civil offence" is defined in terms of the law of England and it is to be presumed that an offence under the law of Scotland or Northern Ireland which was not an offence under English law would avoid the application of s.70.

13. Apart from regular members of the Army, the 1955 Act applies to, inter alia, "every person not otherwise subject to military law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under the command of an officer holding a land forces commission or a commission in the Territorial Army" (s.205(i)(j)). In addition, the Act applies to any person employed by any part of the regular forces on active service (s.209(i)).

14. S.17 of the Royal Hong Kong Regiment Ordinance (Cap. 199) specifically provides that the Army Act shall apply in relation to the administration, discipline, trial and punishment of those on the permanent staff at all times and to the remaining officers and members of the Regiment when on active service.

15. Both the Naval Discipline Act and the Army Act apply to members of the regular forces even when off duty or on leave.

(c) THE AIR FORCE

16. The provisions of the United Kingdom Air Force Act 1955 apply "in relation to any territory under Her Majesty's protection, ... as it applies in relation to a colony" (section 215(1)) to officers and airmen of the Royal Airforce at all times and to those in the Royal Auxiliary Air Force when on duty (section 205). It applies also to every person not otherwise subject to air-force law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under the command of an officer holding an air force commission.

17. Where a colony raises an air force under its law, that law may make provisions relating to the members of that air force "so as to have effect as well when they are outside as when they are within the limits of the colony" (section 207). The 1955 Act also applies to civilians where they are employed in a part of the air force which is on active service (section 209).

18. As with the Naval Discipline Act and the Army Act, so with the Air Force Act which provides by section 66 that any person "who is guilty of disgraceful conduct of a cruel indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding 2 years". The limited decriminalisation of homosexuality introduced by the Sexual Offences Act 1967 does not affect the Air Force Act (section 1(5) of the Sexual Offences Act 1967).

19. Section 70(1) of the Air Force Act makes provision similar to that found in the Army Act and Naval Discipline Act and states that "any person subject to air force law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section". The term "civil offence" is defined "as any act or omission punishable by the law of England" (section 70(2)).

20. It might be argued that section 64 of the 1955 Act which creates the offence of "scandalous conduct" might cover homosexual conduct. The section applies only to officers and provides that any officer "who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall on conviction by court-martial be cashiered".

II. EXTRADITION

21. "Extradition is the formal surrender by one country to another ... of an individual accused or convicted of a serious criminal offence committed outside the territory of the extraditing country and within the jurisdiction of the requesting country which, being competent by its own law to try and punish him demands the fugitive's surrender" (Halsbury's Laws of England, 4th Edition, Volume 18, paragraph 201).

22. A distinction can be drawn between extradition and deportation (which is the process whereby the competent authorities require a person to leave and prohibit him from returning to a territory) or return of persons denied admission to a territory (which is the administrative act whereby such persons are returned to the territories whence they came). Extradition can also be distinguished from the exclusion of a person from a state under provisions such as the Prevention of Terrorism (Temporary Provisions) Act 1976 which enables the Secretary of State to exclude persons concerned in terrorism designed to influence public opinion or government policy with respect to affairs in Northern Ireland. Similarly, procedures exist whereby deserters or absentees from visiting forces may be returned to the custody of the relevant country's service authorities (Visiting Forces Act 1952 sections 1 and 13).

23. As far as extradition itself is concerned, the United Kingdom position may be divided into extraditions involving foreign states and those involving Commonwealth countries, United Kingdom dependencies and the Republic of Ireland. The former are governed by the Extradition Acts of 1870 and 1873 and the latter by the Fugitive Offenders Act 1967. While there may be procedural variations between the two classes of extradition, the basic requirements are similar - the offence for which the requesting country wishes to extradite the criminal from the United Kingdom must be one recognised by the law of the United Kingdom as a criminal offence. The United Kingdom will not allow extradition where the offence is political or it is likely that the offender will be tried for offences other than the one for which extradition is granted.

24. The Extradition (Hong Kong) Ordinance (Cap. 236) brings into force in Hong Kong the provisions of the U.K. Extradition Acts of 1870 and 1873 with certain minor amendments. Conversely, the Extradition Ordinance has been incorporated into the U.K. Extradition Acts by virtue of an Order in Council made under s.18 of the Extradition Act 1870 (Order in Council of March 20, 1877). Under s.2 of the Extradition Act 1870 when an Order in Council is made applying the Act to a foreign state the provisions of the Act extend to every British possession, unless the Order in Council specifically provides otherwise. Thus, any agreement reached by the United Kingdom with a foreign state regarding extradition will automatically affect Hong Kong unless the enabling Order in Council specifies otherwise.

25. The 1870 and 1873 Acts list in Schedules the extradition crimes for which extradition from the U.K. (and hence Hong Kong) will be granted. These include any indictable offence under the Offences Against the Person Act 1861 and the Sexual Offences Act 1956 or their successors. These are the Acts providing criminal sanction for homosexual conduct. The offence for which extradition is sought must be one of these offences and must not fall within certain exceptions given in s.3 of the 1870 Act.

26. The offence must be an indictable one. In that respect, reference must be made to the Criminal Law Act 1977. Section 64(1)(a) defines indictable offence as "an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way". Schedule 3 of the 1977 Act lists offences triable either way and includes s.13 of the Sexual Offences Act 1956 (indecent assault on a woman) and s.4(1) of the Sexual Offences Act 1967 (procuring others to commit homosexual acts).

27. Section 25 of the Magistrates' Courts Act 1952 provides that where an offence may incur imprisonment exceeding 3 months, the accused may elect to be tried by a jury. Taken in conjunction with section 64 of the Criminal Law Act 1977, this means that such offences may be termed indictable offences.

28. Accordingly, buggery (other than between consenting males in private) under s.12 of the Sexual Offences Act 1956 is an indictable offence by virtue of s.3(1) of the Sexual Offences Act 1967; indecent assault on a woman (s.14 of the 1956 Act) or a man (s.15 of the 1956 Act) are indictable (Second Schedule of the 1956 Act); assault with intent to commit buggery (s.16 of the 1956 Act) is indictable (Second Schedule of the 1956 Act); and living on the earnings of male prostitution (s.5 of the 1967 Act) is indictable (by that section).

29. The Extradition Acts of 1870 and 1873 govern extraditions involving foreign countries but where a designated Commonwealth country, another dependency, the United Kingdom or the Republic of Ireland is concerned the provisions of the Fugitive Offenders Act 1967 apply. This Act makes a distinction between extradition to designated Commonwealth countries and United Kingdom dependencies. In the case of the former, the requesting country must show that the offence is one which is listed in Schedule 1 of the 1967 Act. This restriction does not apply to United Kingdom dependencies, of which Hong Kong is one in terms of the

definition given in s.2(2) of the Act. A dependency need only show that the offence is one which is punishable before a superior court by 12 months' imprisonment or more. In the case of both Commonwealth countries and dependencies, the requesting territory must show that the offence constitutes an offence under United Kingdom law in corresponding circumstances.

30. Under the Offences Against the Person Ordinance (Cap. 212) buggery and bestiality (life imprisonment under s.49); attempts to commit or assaults with intent to commit buggery (10 years under s.50); and acts of gross indecency between males (2 years under s.51) all come within the definition of relevant offence under s.3(1)(b) of the Fugitive Offenders' Act 1967 which defines "relevant offence" as one punishable with 12 or more months' imprisonment on conviction by or before a superior court.

31. Under s.17 the provisions of the Fugitive Offenders Act may be extended to any colony and the Act has been so extended to Hong Kong (S.I. 1967/1911, 1968/1975, 1975/2163). The 1967 Act is therefore part of the local law of Hong Kong and its provisions apply.

32. S.3(4) states that : "references in this section to the law of any country (including the United Kingdom) include references to the law of any part of that country". Accordingly, it would seem that in the period between decriminalisation of certain aspects of homosexuality in England and Wales and the later similar decriminalisation in Scotland, persons committing homosexual offences not criminal in England but criminal in Scotland could have been extradited to Hong Kong from either jurisdiction.

33. As with proceedings under the Extradition Acts, the requesting country must satisfy the court at the committal proceedings that there is evidence to justify the trial of the fugitive offender if the offence had been committed within the court's jurisdiction or, where the person is alleged to be unlawfully at large after conviction of the offence, that he had been so convicted and appeared to be at large (s.7(5)).

34. The Hong Kong provisions relating to extradition are to be found primarily in the Chinese Extradition Ordinance (Cap. 235) and the Extradition (Hong Kong) Ordinance (Cap. 236). The former Ordinance is concerned only with the position of Chinese nationals. The definition of "Chinese authority" contained in s.2 (added in 1927) is "any person declared by the Governor to be or to represent the person or persons actually exercising authority in any province or other territory which, in the opinion of the Governor, forms or at any time has formed part of the Republic of China", a definition wide enough to cover both Macau and Taiwan. We understand that the Chinese Extradition Ordinance has never been used and that the People's Republic of China has made no similar provision.

35. The Chinese Extradition Ordinance lists in the First Schedule a number of extradition crimes. The list includes any indictable offence under the Offences Against the Person Ordinance (Cap. 212), which itself contains the provisions relating to homosexuality.

36. Where a requisition for the surrender of a fugitive criminal is made to the Governor by a Chinese authority, the Governor may require a magistrate to issue a warrant for the fugitive criminal's apprehension (s.6). When brought before the magistrate, matters proceed much as in the case of normal committal proceedings (s.9) and the magistrate must order the prisoner to be discharged if the evidence adduced would have been insufficient to justify the magistrate in committing the fugitive criminal for trial in the Supreme Court if the crime of which he is accused had been committed in Hong Kong (s.10).

37. If a prima facie case is made out before the magistrate the prisoner is committed to prison (s.10) but the Governor retains discretion as to whether or not to order his release to the requesting Chinese authority. The fugitive criminal shall not in any case be

released where the offence is political or unless an undertaking is given by the Chinese authority that the fugitive will not be detained or tried in China for any offence other than the one for which he is being extradited without first being returned (or having the opportunity of returning) to "Her Majesty's dominions" (s.4).

38. From the foregoing it may be seen that an order for extradition will not be made unless the offence of which the fugitive is said to be guilty by the requesting country is also an offence in the country requested. The provisions of s.3(4) in the Fugitive Offenders Act 1967 mean that until Northern Ireland amended its law to accord with that in the rest of the United Kingdom extradition for homosexual conduct lay between Hong Kong and the United Kingdom. This is no longer the case. Further, amendment by Hong Kong to remove any of the sexual offences under the Offences Against the Person Ordinance would automatically remove the possibility of extradition to any other country for those offences without the need for any further legislative action.

III. DIPLOMATIC IMMUNITY

39. The Diplomatic Privileges Act 1964 incorporated certain articles of the Vienna Convention on Diplomatic Relations into the law of the United Kingdom (s.2(1)). Chief among these are Article 22, which makes the premises of the mission inviolable; Article 30, which declares that a diplomatic agent shall not be liable to any form of arrest or detention; Article 30, which gives to the diplomatic agent's private residence the same inviolability as is enjoyed under Article 22 by the mission; Article 31, which states that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State; and Article 37 which extends the privileges and immunities of Articles 29 to 36 to the household of the diplomatic agent. Article 1 defines "diplomatic agent" as the head of a mission or a member of the diplomatic staff of the mission.

40. Section 6 of the International Organisations and Diplomatic Privileges Ordinance (Cap. 190) applies the law in England to Hong Kong by stating that "the law and custom relating to the immunities and privileges as to person, property or servants of sovereigns, diplomatic agents or the representatives of foreign powers for the time being in force in England shall, in so far as the same is applicable mutatis mutandis, have effect and be enforced in the Colony".

41. Cap. 190 empowers the Governor to grant privileges and immunities to international organisations and makes specific reference to the officers of the Commonwealth Secretariat and judges and suitors in the International Court of Justice. Section 7(3) makes it clear that the Commonwealth Secretariat may waive their privileges or immunities in respect of any person but there is not specific provision for this in the Ordinance in relation to other organisations. However, Article 32 in Schedule I of the Diplomatic Privileges Act 1964 enables immunity from jurisdiction to be waived in the case of diplomatic agents.

42. The effect of these provisions would seem to be that, unless diplomatic immunity were waived, acts contrary to the criminal law of Hong Kong would not be subject to prosecution if committed by a person enjoying immunity, or in the mission or residence of such a person.

IV. IMMIGRATION

43. The provisions of the Immigration Ordinance (Cap. 115) cover not only the rights of entry of individuals to Hong Kong but also powers of deportation.

44. Section 7 states that a person may not land in Hong Kong without the permission of an immigration officer unless he is one of a class of individuals under section 8 or a member of an aircraft crew (section 9(1)). Those permitted to land under section 8(1) are :-

- (a) Hong Kong belongers (British subjects born, naturalised or registered in Hong Kong under the British Nationality Act);
- (b) resident United Kingdom belongers (United Kingdom citizens who have been continuously resident in Hong Kong for 7 years); and
- (c) Chinese residents (immigrants wholly or partly of Chinese race who have been continuously resident in Hong Kong for 7 years).

45. These last 2 categories' rights of entry are subject to the proviso that if a deportation order is in force against such a person, rights of entry cease during the currency of the order (section 20(6)). Apart from the unrestricted right of entry enjoyed by the 3 categories above, servicemen may also land in Hong Kong without permission (section 10(1)). This right does not extend to servicemen locally engaged.

46. In all other cases, the immigration authorities may examine would-be entrants (section 4(1)) and refuse permission to land (section 11(1)) or impose "such ... conditions of stay as an immigration officer or immigration assistant thinks fit" (section 11(2)(b)). No further guidance is given as to what conditions may be appropriate or what facts may justify refusal to land. In the absence of such specification it is to be presumed that it would be within the powers of an immigration officer to refuse a convicted homosexual permission to land or to allow him to land but impose conditions. A convicted homosexual who was a member of one of the categories listed in section 8(1) would have an absolute right of entry, subject to section 20(6).

47. Section 18(1) empowers an immigration officer to remove from Hong Kong persons refused permission to land. A removal order may be made under section 19(1) by the Governor against a person if it appears to the Governor that that person is "an undesirable immigrant who has been ordinarily resident in Hong Kong for less than 3 years" but such an order shall not be made against a United Kingdom belonger "except after consideration by the Governor of the report of a Deportation Tribunal ... unless the Governor certifies that the departure of the immigrant from Hong Kong is necessary in the interest of the security of Hong Kong or for political reasons affecting the relations of Her Majesty's Government in the United Kingdom with another country" (section 19(3)). It is possible that a homosexual might be regarded as an undesirable immigrant under section 19(1) and that a Deportation Tribunal might uphold such a finding under sub-section (3).

48. Section 20(1) provides that a deportation order may be made against an immigrant (other than Chinese resident, a U.K. belonger or a resident U.K. belonger) where the immigrant has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than 2 years, or the Governor in Council "deems it to be conducive to the public good". The offences under sections 49, 50 and 51 of the Offences Against the Person Ordinance (Cap. 212) are therefore all crimes for which deportation could be ordered.

49. Deportation orders may even be made against Chinese residents or United Kingdom belongers where a court so recommends and a report by a Deportation Tribunal has been considered by the Governor in Council. A deportation order may also be made against Chinese residents or United Kingdom belongers where the Governor certifies "that the case concerns the security of Hong Kong or the relations of Her Majesty's Government in the United Kingdom with another country" (section 20(3)). Both these procedures for deportation only arise where the Chinese resident or Hong Kong belonger has been found guilty in Hong Kong

of an offence punishable with imprisonment for not less than 2 years or the Governor in Council "deems it to be conducive to the public good" (section 20(2)(b)).

50. Even resident United Kingdom belongers are not safe from deportation for under section 20(4) the Governor in Council may make a deportation order if it is deemed "to be conducive to the public good on the ground that the departure of such person from Hong Kong is necessary in the interest of the security of Hong Kong or for political reasons affecting the relations of Her Majesty's Government in the United Kingdom with another country". It is difficult to imagine circumstances in which the nature of a person's sexuality would fall within the ambit of this sub-section but it is possible to conceive of a court recommending deportation of a convicted homosexual Chinese resident or United Kingdom belonger under section 20(3).



ANNO VICESIMO NONO
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

Crimes (Sexual Offences) Act 1980

No. 9509

An Act to amend the Law relating to Sexual Offences, to amend the *Crimes Act 1958*, the *Evidence Act 1958*, the *Vagrancy Act 1966*, the *Summary Offences Act 1966*, the *Magistrates' Courts Act 1971* and the *Magistrates (Summary Proceedings) Act 1975*, and for other purposes.

[Assented to 23 December 1980]

WHEREAS it is desirable for the law to protect all persons from sexual assaults and other acts of sexual coercion: Preamble.

And whereas it is desirable for the law to protect persons from sexual exploitation, especially exploitation by persons in positions of care, supervision and authority:

And whereas it is undesirable for the laws relating to sexual behaviour to invade the privacy of the people of Victoria more than is necessary to afford them such protection:

And whereas it is desirable for the law to protect and otherwise treat men and women so far as possible in the same manner:

And whereas there are certain obsolete rules of law which it is desirable to abolish or modify:

And whereas the Parliament does not intend by this Act to condone immorality:

31081/80 - Price 85 cents

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Crimes (Sexual Offences) Act* 1980. Short title.

(2) In this Act the *Crimes Act* 1958 is called the Principal Act. Principal Act No. 6231. Reprinted to Act No. 9073. Subsequently amended by Nos. 9155, 9228, 9230, 9242, 9323, 9407 and 9427.

(3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement

2. (1) The provisions of the Principal Act as in force immediately prior to the commencement of this Act apply to and with respect to offences against the Principal Act as so in force committed or alleged to have been committed before the commencement of this Act. Transitional provisions.

(2) The provisions of the Principal Act as amended by this Act apply to and with respect to offences against the Principal Act as so amended committed or alleged to have been committed on or after the commencement of this Act.

3. (1) In the Table in section 1 of the Principal Act, under Part I, Division 1, for the expression "(8) Rape and Similar Offences. Defilement of Women. Abduction ss. 44-62." there are substituted the following expressions: Amendment of No. 6231, s. 1.

- "(8) Sexual Assaults ss. 44-46.
- (8A) Sexual Offences against Young Persons ss. 47-50.
- (8B) Acts of Sexual Penetration with Intellectually Defective Persons s. 51.
- (8C) Incest ss. 52-53.
- (8D) Procurement, Abduction, & c. ss. 54-56.
- (8E) Unnatural Offences s. 58.
- (8F) Prostitution, &c. ss. 59-61.
- (8G) Abrogation of Obsolete Rules of Law s. 62.

(2) In the Table in section 1 of the Principal Act, under Part I, Division 1, the expressions "(13) Unnatural and Indecent Offences ss. 68 and 69." and "(14) Carnal Knowledge s. 70." are repealed.

4. In section 2A of the Principal Act—

(a) after the expression "2A." there is inserted the expression Interpretation.
"(1)";

(b) after the definition of "Aircraft" there are inserted the following definitions:

' "Brothel" means premises to which people of both sexes, "Brothel."
or of either sex, resort for the purpose of
prostitution.

"Drug of Addiction" means a drug mentioned in Schedule "Drug of addiction."
of 8 to the *Poisons Act* 1962, heroin within the
meaning of that Act or a specified drug within the
meaning of that Act.;

(c) after the definition of "Motor car" there are inserted the following definitions:

"Prostitute" means a male or female prostitute and "Prostitute",
"prostitution" means prostitution of a male or "prostitution."
female person.

"Rape" includes the introduction (to any extent) in "Rape"
circumstances where the introduction of the penis
of a person into a vagina of another person would be
rape, of—

(a) the penis of a person into the anus or mouth
of another person (whether male or
female); or

(b) an object (not being part of the body)
manipulated by a person (whether male or
female) into the vagina or anus of another
person (whether male or female)—

and in no case where rape is charged is it necessary
to prove the emission of semen.;

(d) at the end of the section there are inserted the following sub-sections:

"(2) For the purposes of this Act, an act of
sexual penetration is—

(a) the introduction (to any extent) of the penis
of a person into the vagina, anus or mouth
of another person of either sex, whether or
not there is emission of semen; or

(b) the introduction (to any extent) of an object (not being part of the body) manipulated by a person of either sex into the vagina or anus of another person of either sex, otherwise than as part of some generally accepted medical treatment.

(3) For the purposes of this Act, both—

(a) a person who introduces his penis or an object into the vagina, anus or mouth of another person; and

(b) the other person—

shall be deemed to take part in an act of sexual penetration."

5. For sub-division (8) of Division 1 of Part I. of the Principal Act there are substituted the following sub-divisions:

'(8) Sexual Assaults

44. (1) A person who indecently assaults another person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Indecent assault.

(2) A person who indecently assaults another person is, if there are aggravating circumstances, guilty of the indictable offence of indecent assault with aggravating circumstances and liable to imprisonment for a term of not more than ten years. Indecent assault with aggravating circumstances.

(3) Where a person is charged with an indecent assault, whether with or without aggravating circumstances, committed upon a person under the age of sixteen years, the consent of the person under sixteen is no defence to the charge unless, at the time the offence is alleged to have been committed— Consent where victim under sixteen.

(a) the accused was, or believed on reasonable grounds that he was, married to the person;

(b) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or

(c) the accused was not more than two years older than the person.

45. (1) A person who commits rape is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years. Rape.

(2) A person who attempts to commit rape, or assaults another person with intent to commit rape, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Attempt, &c.

(3) A person who commits rape is, if there are aggravating circumstances, guilty of the indictable offence of rape with aggravating circumstances and liable to imprisonment for not more than twenty years. Rape with aggravating circumstances.

(4) A person who attempts to commit rape, or assaults another person with intent to commit rape, is, if there are aggravating circumstances, guilty of an indictable offence and liable to imprisonment for a term of not more than ten years. Attempt, &c.

46. (1) Where a person rapes another, attempts to rape another, assaults another with intent to rape or indecently assaults another, there are aggravating circumstances if, but only if— Aggravating circumstances.

- (a) immediately before or during or immediately after the commission of the offence, and at or in the vicinity of the place where the offence was committed, the offender inflicts serious personal violence upon the victim or another person;
- (b) the offender has with him an offensive weapon;
- (c) immediately before or during or immediately after the commission of the offence the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
- (d) the offender is aided or abetted by another person who is present immediately before or during or immediately after the commission of the offence at or in the vicinity of the place where the offence is or was committed.

(2) In paragraph (b) of sub-section (1) "offensive weapon" means an offensive weapon, firearm, imitation firearm, explosive or imitation explosive within the meaning of section 77 (1).

(3) Where a person is found guilty of rape, an attempt to rape, assault with intent to commit rape or indecent assault, evidence may be given that the person has previously been convicted (under this Act, a previous enactment or at common law) of— Where offender previously convicted of certain offences.

- (a) rape (with or without aggravating circumstances);
- (b) rape with mitigating circumstances;
- (c) an attempt to rape (with or without aggravating circumstances);
- (d) assault with intent to rape (with or without aggravating circumstances); or
- (e) indecent assault (with or without aggravating circumstances).

(4) Where the trial judge is satisfied that a person who at the trial before him was found guilty of rape, an attempt to rape, assault with intent to

rape or indecent assault has previously been convicted of an offence mentioned in paragraph (a), (b), (c), (d) or (e) of sub-section (3), he may direct that the entry made upon the record in respect of the offence of which the person was found guilty at the trial before him shall show that, by virtue of this sub-section, the person is guilty of the offence with aggravating circumstances.

(5) A person in respect of whom an entry is made upon the record under sub-section (4) shall for all purposes be deemed to have been found guilty of—

- (a) rape with aggravating circumstances;
- (b) an attempt to commit rape with aggravating circumstances;
- (c) assault with intent to commit rape with aggravating circumstances; or
- (d) indecent assault with aggravating circumstances—

as the case may be.

(8A) *Sexual Offences against Young Persons*

47. (1) A person who takes part in an act of sexual penetration with a child under the age of ten years is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Act of sexual penetration with child under ten.

(2) A person who attempts to take part in an act of sexual penetration with a child under the age of ten years, or who assaults a child under the age of ten years with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Attempt, &c.

(3) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the child.

Consent no defence.

48. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years but under the age of sixteen years and to whom the first- mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than ten years.

Act of sexual penetration with person aged between ten and sixteen.

(2) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years but under the age of sixteen years and to whom the first-mentioned person is not married, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than five years.

Attempt, &c.

(3) Notwithstanding anything to the contrary in sub-section (1) or (2), where a person commits an offence against either of those sub-sections and the person with or upon whom it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment—

Sentence where victim under offender's care.

- (a) in the case of an offence against sub-section (1), for a term of not more than fifteen years; and
- (b) in the case of an offence against sub-section (2), for a term of not more than seven years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless at the time the offence is alleged to have been committed—

Effect of consent.

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section committed with or upon a person of or above the age of twelve years shall be commenced more than twelve months after its commission.

Time limit for certain prosecutions.

49. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of 16 years but under the age of 18 years and to whom the first-mentioned person is not married is guilty of an indictable offence and, subject to sub-section (3), liable to imprisonment for a term of not more than two years.

Act of sexual penetration with person between 16 and 18.

(2) A person who attempts to take part in an act of sexual penetration with such a person, or who assaults such a person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than one year.

(3) Notwithstanding anything to the contrary in sub-section (1), where a person commits an offence against that sub-section and the person with or upon whom it is committed is, either generally or at the time the offence is committed, under the care, supervision or authority of the offender, the offender is liable to imprisonment for a term of not more than three years.

(4) The consent of a person with or upon whom an offence against this section is alleged to have been committed is no defence to a charge under this section unless, at the time the offence is alleged to have been committed—

- (a) the accused believed on reasonable grounds that the person was of or above the age of 18 years;
- (b) the person had previously willingly taken part in an act of sexual penetration with a person other than the accused; or

- (c) the accused was not more than five years older than the person.

(5) It is a defence to a charge under this section if, at the time the offence is alleged to have been committed, the accused believed on reasonable grounds that he was married to the person with or upon whom the offence is alleged to have been committed.

(6) No prosecution of a person for an offence against this section shall be commenced more than 12 months after the commission of the offence.

50. (1) A person who in public or in private—

Gross indecency
with person
under sixteen.

- (a) commits, or is in any way a party to the commission of, an act of gross indecency by, with or in the presence of a person under the age of sixteen years; or
- (b) procures, incites or attempts to procure the commission of an act of gross indecency by, with or in the presence of a person under the age of sixteen years—

is guilty of an indictable offence and, subject to sub-section (2), liable to imprisonment for a term of not more than two years.

(2) Notwithstanding anything to the contrary in sub-section (1), where a person is convicted of an offence against that sub-section and—

- (a) the person under the age of sixteen years was, either generally or at the time of the commission of the offence, under the care, supervision or authority of the offender; or
- (b) the offender has previously been convicted (under this section or under a corresponding previous enactment) of an offence of gross indecency with or in relation to a person under the age of sixteen years—

the offender is liable to imprisonment for a term of not more than three years.

(3) It is no defence to a charge under this section that the person under the age of sixteen years consented to the conduct alleged to constitute the offence unless at the time of the alleged conduct—

- (a) the accused believed on reasonable grounds that the person was of or above the age of sixteen years; or
- (b) the accused was not more than two years older than the person.

(4) It is a defence to a charge under this section if, at the time of the conduct alleged to constitute the offence the accused was, or believed on reasonable grounds that he was, married to the person under the age of sixteen years.

(5) No prosecution for an offence against this section shall be commenced without the consent of the Attorney-General.

(8B) *Acts of Sexual Penetration with Intellectually Handicapped Persons*

51. (1) A person who is employed in any institution within the meaning of the *Mental Health Act 1959*, or in any benevolent asylum or charitable institution, who—

Act of sexual penetration with intellectually handicapped person.

- (a) takes part, or attempts to take part, in an act of sexual penetration with a person who is under care, treatment, supervision or control in any such institution or asylum as a person who is mentally ill or intellectually defective; or
- (b) assaults such a person with intent to take part in an act of sexual penetration—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person who has the care or charge of any person being a patient or mentally ill or intellectually defective and who—

- (a) takes part, or attempts to take part in an act of sexual penetration with the person of whom he has the care or charge; or
- (b) assaults the person of whom he has the care or charge with intent to take part in an act of sexual penetration—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(3) In sub-sections (1) and (2) the expressions "patient", "mentally ill" and "intellectually defective" have the same meanings as they have in the *Mental Health Act 1959*.

"Patient", "mentally ill", "intellectually defective."

(4) It is no defence to a charge under this section that the conduct alleged to constitute the offence was consented to by the person with or upon whom the offence is alleged to have been committed unless, at the time of the conduct alleged to constitute the offence, the accused was, or believed on reasonable grounds that he was, married to the person.

Effect of consent.

(5) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused.

Corroboration.

(8c) *Incest*

52. (1) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his child or other lineal descendant or his step-child is guilty of an indictable offence and liable to imprisonment for a term of not more than twenty years.

Parent and child.

(2) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his child or other lineal descendant or his step-child, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Attempt, &c.

(3) A person of or above the age of eighteen years who permits a person whom he knows to be his father or mother or other lineal ancestor or his step-father or step-mother to take part in an act of sexual penetration with him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Child, &c. who consents.

(4) A person who takes part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his sister, half-sister, brother or half-brother is guilty of an indictable offence and liable to imprisonment for a term of not more than seven years.

Brother and sister, &c.

(5) A person who attempts to take part in an act of sexual penetration with a person who is of or above the age of ten years and whom he knows to be his sister, half-sister, brother or half-brother, or who assaults any such person with intent to take part in an act of sexual penetration, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Attempt, &c.

(6) Consent is no defence to a charge under this section.

Consent no defence.

(7) No prosecution of a person under the age of sixteen years for an offence against sub-section (4) or (5) shall be commenced without the consent of the Attorney-General.

53. (1) Where a person is charged under section 52 it shall be a sufficient defence if he proves that he engaged in the conduct alleged to constitute the offence under the coercion of the person with or upon whom the offence is alleged to have been committed.

Coercion.

(2) In all proceedings under section 52, the person charged shall, unless he adduces evidence to the contrary, be presumed to know that he and the person with or upon whom the offence is alleged to have been committed are related in the manner charged.

Proof of knowledge of relationship.

(3) In all proceedings under section 52 it shall, unless the accused adduces evidence to the contrary, be presumed that persons who are reputed to be related to each other in a particular way are in fact related to each other in that way.

Proof of relationship.

(8D) *Procuration, Abduction, &c.*

54. (1) A person who—

Procuring persons by threats, or fraud.

(a) by threats or intimidation procures or attempts to procure any person to take part in an act of sexual penetration outside marriage; or

(b) by any false pretence, false representation or other fraudulent means procures or attempts to procure any

person to take part in an act of sexual penetration outside marriage—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall not be convicted of an offence against this section upon the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

55. (1) A person who—

Administration
of drugs, &c.

- (a) administers any drug, matter or thing to another person; or
- (b) causes any drug, matter or thing to be taken by another person—

with intent to render the person incapable of resistance and thereby enable himself or a third person to take part in an act of sexual penetration outside marriage with the other person is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

(2) A person shall not be convicted of an offence against this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

56. A person who takes away another person by force, or detains another person against his will— Abduction and
detention.

- (a) with intent to marry the other person;
- (b) with intent to take part in an act of sexual penetration with the other person;
- (c) with intent that the other person should marry a third person;
or
- (d) with intent that the other person should take part in an act of sexual penetration with a third person—

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

57. A person who, with intent that another person under the age of eighteen years should take part in an act of sexual penetration outside marriage with him or any third person or generally takes the other person, or causes the other person to be taken, out of the possession and against the will of his father, mother or other person having the lawful charge of him is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Abduction from
possession of
parent, &c.

(8E) *Unnatural Offences.*

58. (1) A person who commits an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than five years. Bestiality.

(2) A person who attempts to commit an act of bestiality is guilty of an indictable offence and liable to imprisonment for a term of not more than two years.

(3) An act of bestiality is any of the following:

- (a) Buggery committed by a man upon an animal of either sex;
- (b) Buggery committed by an animal upon a man or woman;
- (c) Penetration of the vagina of a female animal by the penis of a man; and
- (d) Penetration of the vagina of a woman by the penis of a male animal.

(4) The law relating to buggery is as prescribed by this Act and no prosecution shall be instituted for any offence of buggery unless it is for an offence against this Act.

(8F) *Prostitution, &c.*

59. (1) A person who procures or attempts to procure— Procuration.

- (a) a person under the age of eighteen years to take part in an act of sexual penetration outside marriage with a third person in any part of the world;
- (b) any other person to take part in an act of sexual penetration outside marriage with a person under the age of eighteen years;
- (c) a person to become a prostitute in any part of the world; or
- (d) a person who is not an inmate of a brothel to become an inmate of a brothel in any part of the world—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) No person shall be convicted of an offence under this section on the evidence of one witness only unless the witness is corroborated in a material particular by evidence implicating the accused. Corroboration.

60. A person who, being the owner or occupier of any premises or managing or acting or assisting in the management of any premises, induces or knowingly allows any unmarried person under the age of eighteen years to enter or remain upon the premises for the purposes of taking part in an act of sexual penetration is guilty of an indictable offence and— Householder permitting penetration of young persons.

- (a) if the other person is under the age of thirteen years, liable to imprisonment for a term of not more than ten years; or
- (b) if the other person is of or above the age of thirteen years but under the age of eighteen years, liable to imprisonment for a term of not more than five years.

61. (1) A person who detains any other person against his will—

Unlawful detention for purposes of sexual penetration.

- (a) in or upon any premises with intent that the other person may take part in an act of sexual penetration outside marriage with the first-mentioned person or any third person or generally; or
- (b) in any brothel—

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if, with intent that the other person should remain in or upon those premises, the first-mentioned person—

Acts deemed to constitute detention.

- (a) withholds from the other person any of the other person's clothing or other property; or
- (b) having lent or otherwise supplied the other person with clothing, threatens the other person with legal proceedings if the other person takes away the clothing.

(3) Where a person has detained another person contrary to sub-section (1), no civil or criminal proceedings shall be taken against the other person for taking away or being found in possession of such clothing as was necessary to enable him to leave the premises in or upon which he was detained.

(4) A person shall, for the purposes of sub-section (1), be deemed to detain another person in or upon premises if—

- (a) knowing or believing that the other person is addicted to a drug of addiction; and
- (b) with intent to induce the other person to remain in or upon the premises—

he withholds or threatens to withhold from the other person supplies of a drug of addiction.

(8G) Abrogation of Obsolete Rules of Law

62. (1) The rule of law whereby a male person under the age law of fourteen years is conclusively presumed to be impotent is hereby abrogated.

Abrogation of obsolete rules law.

(2) Where a married person is living separately and apart from his spouse the existence of the marriage shall not constitute, or raise any

presumption of, consent by one to an act of sexual penetration with the other or to an indecent assault (with or without aggravating circumstances) by the other.

(3) Where a person is accused of a sexual offence, no rule of law or practice shall require the judge before whom the accused is tried to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the person with or upon whom the offence is alleged to have been committed, but nothing in this sub-section restricts the operation of any enactment requiring that the evidence of a witness be corroborated.!

Corroboration.

6. Sub-divisions (13) and (14) of Division 1 of Part I. of the Principal Act are repealed.

Repeal of No. 6321, ss. 68, 69 & 70.

7. (1) For section 359A of the Principal Act there is substituted the following section:

"359A. (1) Subject to this section, but notwithstanding anything else to the contrary in this or any other Act or any rule of law, where—

Time limit on certain prosecutions.

(a) a person is, after a preliminary examination before a magistrates' court, directed to be tried for an alleged offence against section 45; or

(b) a person is charged on indictment or presentment with an alleged offence against section 45 without a preliminary examination of him having previously been held before a magistrates' court in respect of the alleged offence—

the trial of the person for the alleged offence shall not be commenced more than three months after the person is directed to be tried or the charge is made (as the case may be).

(2) A Judge of the Supreme Court may if he thinks fit at any time and notwithstanding that the period fixed by sub-section (1) has expired grant an extension of the period, being an extension for a period not exceeding three months.

(3) More than one extension of time may be granted under sub-section (2) in relation to the commencement of the trial of an accused."

(2) An extension of time may be granted under section 359A (2) of the Principal Act as amended by this Act in respect of the commencement of the trial of a person who, immediately before the commencement of this Act, was, by virtue of section 359A of the Principal Act as then in force, unable to be tried for an offence of rape, attempted rape or assault with intent to rape.

Transitional provision.

8. For section 425 of the Principal Act there is substituted the following section:

"425. (1) Where on the trial of a person charged with rape the jury are not satisfied that he is guilty of rape or of an attempt to commit rape but are satisfied that he is guilty of—

Alternative verdicts for certain charges of sexual offences.

(a) assault with intent to commit rape;

- (b) indecent assault;
- (c) assault of a child under the age of ten years with intent to take part in an act of sexual penetration;
- (d) assault of a person who is of or above the age of ten years but under the age of sixteen years and to whom the accused is not married with intent to take part in an act of sexual penetration;
- (e) assault occasioning actual bodily harm; or
- (f) common assault–

the jury may acquit the accused of rape and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(2) Where on the trial of a person charged with rape with aggravating circumstances the jury are not satisfied that he is guilty of rape with aggravating circumstances or of an attempt to commit rape with aggravating circumstances but are satisfied that he is guilty of–

- (a) assault with intent to commit rape with aggravating circumstances;
- (b) indecent assault with aggravating circumstances; or
- (c) any offence of which he may be found guilty on a charge of rape–

the jury may acquit the accused of rape with aggravating circumstances and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(3) Where on the trial of a person charged with having taken part in an act of sexual penetration with a child under the age of ten years the jury are not satisfied that he is guilty thereof or of an attempt to take part in an act of sexual penetration with such a child but are satisfied that he is guilty of–

- (a) assault with intent to take part in an act of sexual penetration with such a child;
- (b) indecent assault;
- (c) assault occasioning actual bodily harm; or
- (d) common assault–

the jury may acquit the accused of the charge and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(4) Where on the trial of a person charged with having taken part in an act of sexual penetration with a person of or above the age of ten years and under the age of sixteen years and to whom the first-mentioned person is not married the jury are not satisfied that he is guilty thereof or of an attempt to take part in an act of sexual penetration with such a person but are satisfied that he is guilty of—

- (a) assault with intent to take part in an act of sexual penetration with such a person;
- (b) indecent assault;
- (c) assault occasioning actual bodily harm; or
- (d) common assault—

the jury may acquit the accused of the charge and find him guilty of whichever of those offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(5) Where on the trial of a person charged with an offence against section 52 the jury are not satisfied that he is guilty of the offence charged or of an attempt to commit the offence charged, but are satisfied that he is guilty of—

- (a) indecent assault;
- (b) assault with intent to commit the offence charged;
- (c) assault occasioning actual bodily harm; or
- (d) common assault—

the jury may acquit the accused of the offence charged and find him guilty of whichever of those other offences they are satisfied he is guilty and he shall be liable to punishment accordingly.

(6) Nothing in this section restricts the operation of sections 421 and 422."

9. Section 47A of the *Magistrates (Summary Proceedings) Act 1975* is amended as follows:

- (a) For the expression "47A. Notwithstanding" there is substituted the expression "47A. (1) Notwithstanding";
- (b) After the words "whether or not the examination relates to any other charge against the same or any other person" there are inserted the words "and whether or not it is alleged that there are aggravating circumstances"; and
- (c) At the end of the section there is inserted the following sub-section:

Amendment of No. 8731, s. 47A. Preliminary examination for certain offences.

"(2) Where a stipendiary magistrate orders pursuant to Rule (10) that an accused shall not stand trial for an offence, the order shall have effect according to its tenor."

10. In section 37A (1) of the *Evidence Act* 1958, after the words "whether or not the examination or proceedings relates or relate to any other charges against the same or any other person" there are inserted the words "and whether or not it is alleged that there are aggravating circumstances".

Amendment of No. 6246, s. 37A. Special rules of evidence in certain cases. Amendment of No. 7405. Offensive behaviour.

11. (1) In section 17 (1) of the *Summary Offences Act* 1966, for the expression—

"Penalty: \$100 or imprisonment for two months."—
there is substituted the expression—

"Penalty: \$1000 or imprisonment for two months;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months."

(2) For sections 18 and 18A of the *Summary Offences Act* 1966 and the heading immediately preceding those sections there are substituted the following sections and heading:

"Soliciting in Public Places.

18. Any person who—

(a) for the purpose of prostitution solicits or accosts any person in a public place or loiters in a public place; or

Soliciting, loitering, &c. for prostitution

(b) in a public place solicits for immoral sexual purposes—

is guilty of an offence.

Penalty: \$500 or imprisonment for one month;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months.

18A. A person who—

(a) loiters in or frequents any public place for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself for pecuniary reward with the first-mentioned person or any third person;

(b) in any public place invites or solicits any person to prostitute himself for pecuniary reward with the first-mentioned person or any third person; or Inviting prostitution.

(c) loiters in or frequents any public place for the purpose of, or with the intention of, being accosted by or on behalf of a prostitute—

is guilty of an offence.

Penalty: \$500 or imprisonment for one month;

For a second offence—\$1500 or imprisonment for three months;

For a third or subsequent offence—\$2500 or imprisonment for six months.

18B. In sections 18, 18A and 20 (1) a reference to a prostitute and a reference to prostitution include respectively a reference to a male or female prostitute and a reference to the prostitution of a male or female person. “Prostitute.”

18C. (1) A person who solicits or otherwise actively encourages another person to take part in an act of sexual penetration or gross indecency with him or another person or generally is, if— Soliciting, &c., certain acts.

(a) the second-mentioned person is under the age of eighteen years; and

(b) the second-mentioned person is, either generally or at the time of the solicitation or encouragement, under the care, supervision or authority of the first-mentioned person—

guilty of an offence.

Penalty: \$5000 or imprisonment for one year.

(2) In sub-section (1), the words "take part in an act of sexual penetration" shall be interpreted in the same way as they would be interpreted if they appeared in the *Crimes Act 1958*."

12. The *Vagrancy Act 1966* is amended as follows:

Amendment of No. 7393, ss. 10, 12. Living on earnings of prostitution. Suppression of brothels.

(a) In section 10 (2) (b), for the words "her prostitution" there are substituted the words "the prostitute to prostitute himself";

(b) In section 12 (1) (a), for the word "woman" there is substituted the word "person"; and

(c) After section 12 there is inserted the following section:

"12A. (1) In sections 10, 11 and 12 a reference to a prostitute and a reference to prostitution include respectively a reference to a male or female prostitute and a reference to the prostitution of a male or female person. “Prostitute”, “Brothel”, &c.

(2) For the purposes of sections 11 and 12, premises shall be treated as a brothel, bawdy-house or disorderly house if resorted to by people of both sexes, or of either sex, for the purpose of engaging in prostitution."

13. In section 69 (1) (g) of the *Magistrates' Courts Act* 1971, for the expression "section 55" there is substituted the expression "section 44 (1)".

Amendment of
No. 8184,
s. 69(1).
Offences triable
summarily.

By Authority: F. D. ATKINSON, Government Printer, Melbourne



Sexual Offences Act 1967

1967 CHAPTER 60

An Act to amend the law of England and Wales relating to homosexual acts.

[27th July 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. -(1) Notwithstanding any statutory or common law provision, but subject to the provisions of the next following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.

Amendment of law relating to homosexual acts in private.

(2) An act which would otherwise be treated for the purposes of this Act as being done in private shall not be so treated if done—

- (a) when more than two persons take part or are present; or
- (b) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(3) A man who is suffering from severe subnormality within the meaning of the Mental Health Act 1959 cannot in law give any consent which, by virtue of subsection (1) of this section, would prevent a homosexual act from being an offence, but a person shall not be convicted, on account of the incapacity of such a man to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that man to be suffering from severe subnormality.

1959 c. 72.

(4) Section 128 of the Mental Health Act 1959 (prohibition on men on the staff of a hospital, or otherwise having responsibility for mental patients, having sexual intercourse with women patients) shall have effect as if any reference therein to having unlawful sexual intercourse with a woman included a reference to committing buggery or an act of gross indecency with another man.

(5) Subsection (1) of this section shall not prevent an act from being an offence (other than a civil offence) under any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

1955 c. 18.
1955 c. 19.
1957 c. 53.

(6) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of twenty-one years.

(7) For the purposes of this section a man shall be treated as doing a homosexual act if, and only if, he commits buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.

2. –(1) It shall continue to be–

Homosexual
acts on
merchant
ships.

- (a) an offence under section 12 of the Act of 1956 and at common law for a man to commit buggery with another man in circumstances in which by reason of the provisions of section 1 of this Act it would not be an offence (apart from this section); and
- (b) an offence under section 13 of that Act for a man to commit an act of gross indecency with another man, or to be party to the commission by a man of such an act, in such circumstances as aforesaid,

provided that the act charged is done on a United Kingdom merchant ship, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other United Kingdom merchant ship.

(2) Section 11 of the Criminal Justice Act 1925 (venue in indictable offences) shall apply to an act which is an offence by virtue of this section as if it were an offence when done on land.

(3) In this section–

"member of the crew" in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in that ship;

"United Kingdom merchant ship" means a ship registered in the United Kingdom habitually used or used at the time of the act charged for the purposes of carrying passengers or goods for reward.

3. –(1) The maximum punishment which may be imposed on conviction on indictment of a man for buggery with another man of or over the age of sixteen shall, instead of being imprisonment for life as prescribed by paragraph 3 of Schedule 2 to the Act of 1956, be–

Revised
punishments for
homosexual
acts.

- (a) imprisonment for a term of ten years except where the other man consented thereto; and

- (b) in the said excepted case, imprisonment for a term of five years if the accused is of or over the age of twenty-one and the other man is under that age, but otherwise two years;

and the maximum punishment prescribed by that paragraph for an attempt to commit buggery with another man (ten years) shall not apply where that other man is of or over the age of sixteen.

(2) The maximum punishment which may be imposed on conviction on indictment of a man of or over the age of twenty-one of committing an act of gross indecency with another man under that age or of being a party to or procuring or attempting to procure the commission by a man under that age of such an act with another man shall, instead of being imprisonment for a term of two years as prescribed by paragraph 16 of the said Schedule 2, be imprisonment for a term of five years.

(3) References in this section to a person's age, in relation to any offence, are references to his age at the time of the commission of the offence.

(4) Accordingly the said Schedule 2 shall be amended as follows: –

- (a) in paragraph 3(a) for the word "Life" there shall be substituted the words "If with a boy under the age of sixteen or with a woman or an animal, life; otherwise the relevant punishment prescribed by section 3 of the Sexual Offences Act 1967";
- (b) in paragraph 3(b) for the words "Ten years" there shall be substituted the words "If with a boy under the age of sixteen or with a woman or an animal, ten years";
- (c) in paragraph 16(a) for the words "Two years" there shall be substituted the words "If by a man of or over the age of twenty-one with a man under that age, five years; otherwise two years";
- (d) in paragraph 16(b) for the words "Two years" there shall be substituted the words "If the attempt is by a man of or over the age of twenty-one to procure a man under that age to commit an act of gross indecency with another man, five years; otherwise two years".

4. –(1) A man who procures another man to commit with a third man an act of buggery which by reason of section 1 of this Act is not an offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years. Procuring others to commit homosexual acts.

(2) The Act of 1952 shall have effect as if offences under the foregoing subsection were included among those specified in paragraphs 1 to 18 of Schedule 1 to that Act (indictable offences triable summarily with the consent of the accused).

(3) It shall not be an offence under section 13 of the Act of 1956 for a man to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of section 1 of this Act is not an offence under the said section 13.

5. –(1) A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be liable–

Living on earnings of male prostitution.

- (a) on summary conviction to imprisonment for a term not exceeding six months; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.

(2) A person accused of an offence under this section cannot claim to be tried on indictment under section 25 of the Act of 1952 (right of accused to trial by jury for summary offences punishable with more than three months imprisonment).

(3) Anyone may arrest without a warrant a person found committing an offence under this section.

6. Premises shall be treated for purposes of sections 33 to 35 of the Act of 1956 as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.

Premises resorted to for homosexual practices.

7. –(1) No proceedings for an offence to which this section applies shall be commenced after the expiration of twelve months from the date on which that offence was committed.

Time limit on prosecutions.

(2) This section applies to–

- (a) any offence under section 13 of the Act of 1956 (gross indecency between men);
- (b) any offence under section 32 of that Act (soliciting and importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act;
- (c) any offence of buggery by a man with another man not amounting to an assault on that other man and not being an offence by a man with a boy under the age of sixteen.

8. No proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions against any man for the offence of buggery with, or gross indecency with, another man, for attempting to commit either offence, or for aiding, abetting, counselling, procuring or commanding its commission where either of those men was at the time of its commission under the age of twenty-one:

Provided that this section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any such offence, or the remand in custody or on bail of a person charged with any such offence.

Restriction on prosecutions.

9. –(1) A man charged before a magistrates' court with an offence under section 32 of the Act of 1956 (soliciting and importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act shall be entitled to claim under section 25 of the Act of 1952 to be tried by a jury; and accordingly–

Choice of mode of trial for certain offences.

- (a) in the said section 25 (as amended by Schedule 3 to the Act of 1956) for the words "section 30, 31 or 32 of the Sexual Offences Act 1956" there shall be substituted the words "section 30 or 31 of the Sexual Offences Act 1956 or an offence under section 32 of that Act where the immoral purpose is other than the commission of a homosexual act";
- (b) in paragraph 32 of Schedule 2 to the Act of 1956 (offences under the said section 32), in column 4 before the words "The accused" there shall be inserted the words "Except as provided by section 9 of the Sexual Offences Act 1967".

1956 c. 69.

(2) The Act of 1952 shall have effect as if offences under section 13 of the Act of 1956 (gross indecency between men) were included among those specified in paragraphs 1 to 18 of Schedule 1 to the Act of 1952 (indictable offences triable summarily with the consent of the accused); and paragraph 16(a) and (b) of Schedule 2 to the Act of 1956 shall have effect subject to section 19 of the Act of 1952 (summary trial of indictable offences specified in the said Schedule 1).

10. –(1) Except as provided by the following provisions of this section, sections 1, 3, and 4 of this Act shall have effect in relation to acts done before the passing of this Act as they apply in relation to acts done after its passing.

Past offences.

(2) Except as provided by the next following subsection, this Act shall not have effect in relation to any act which is, or apart from this Act would be, an offence where the defendant to an indictment for that offence has been committed for trial before the passing of this Act or, as the case may be, a court-martial for the trial of that offence has been ordered or convened before the passing of this Act.

(3) The foregoing provisions of this section shall not operate to increase the punishment for any offence committed before the passing of this Act.

11. –(1) This Act may be cited as the Sexual Offences Act 1967 and the Act of 1956 and this Act may be cited as the Sexual Offences Acts 1956 and 1967.

Short title, citation, interpretation, saving and extent.

(2) In this Act "the Act of 1952" means the Magistrates' Courts Act 1952 and "the Act of 1956" means the Sexual Offences Act 1956.

1952 c. 55.
1956 c. 69.

(3) Section 46 of the Act of 1956 (interpretation of "man", "boy" and other expressions) shall apply for the purposes of the provisions of this Act as it applies for the purposes of the provisions of that Act.

(4) References in this Act to any enactment shall, except in so far as the context otherwise requires, be construed as references to that enactment as amended or applied by or under any subsequent enactment including this Act.

(5) This Act shall not extend to Scotland or Northern Ireland.