

1 HONG KONG LEGISLATIVE COUNCIL -- 11 July 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 11 July 1990

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, O.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE YEUNG KAI-YIN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS. ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS. ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.  
SECRETARY FOR SECURITY

ABSENT

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE POON CHI-FAI, J.P.

THE HONOURABLE LAU WAH-SUM, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation

L.N. No.

Electricity Ordinance 1990 1990.....	212/90	Electricity (Exemption) Regulations
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Electricity Ordinance 1990 Regulations 1990.....	213/90	Electricity (Registration)
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Electricity Ordinance 1990 1990.....	214/90	Electricity (Wiring) Regulations
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Electricity Ordinance 1990 Regulations 1990.....	215/90	Electricity Supply (Amendment)
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Electricity Ordinance 1990 (Amendment) Regulations 1990.....	216/90	Electricity Supply (Special Areas)
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Legal Practitioners Ordinance (Amendment) (No. 2) Rules 1990.....	220/90	Barristers (Qualification)
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Sessional Papers 1989-90

No. 79 -- 1989 Annual Report by the Commissioner of the Independent  
Commission Against Corruption

No. 80 -- Clothing Industry Training Authority Annual Report 1989

No. 81 -- Construction Industry Training Authority Annual Report 1989

Address by Member

1989 Annual Report by the Commissioner of the Independent Commission Against Corruption

DR. TSE: Sir, as Chairman of the Advisory Committee on Corruption, I am pleased to introduce the 1989 Annual Report by the Commissioner of the Independent Commission Against Corruption, which is tabled today in this Council.

The Operations Department of the Commission meets its obligations by investigating all allegations of corruption, regardless of their origin. In 1989 the number of reports alleging corruption was 2 423, an 8% increase on 1988. Two points of particular significance were: firstly, 1 573 of these reports were capable of investigation, the highest number in one year since the Commission was established in 1974. The main reason for the improvement in the quality of the reports was that the proportion of persons prepared to identify themselves when reporting alleged corruption was as high as 68%. As a result of this development, during 1989 the Operations Department had its largest case-load since 1974.

Secondly, although allegations of corruption involving the public services decreased by 1% compared with those in 1988, allegations in respect of the private sector increased by 15% to 1 326, again the highest number recorded since the Commission was established. Investigation of these corruption allegations involving the private sector tended to lead to other cases of corruption or to complicated commercial crime facilitated by corruption. The latter were often particularly difficult to investigate.

As a result of the increased number of allegations capable of investigation, the number of persons prosecuted and cautioned in 1989 was 487, the fourth highest so far. Because of the inevitable time lag between allegations of corruption being received and the Commission being able to complete investigations, the number of prosecutions in 1990 is likely to be even higher.

One consequence of the increase in allegations involving the private sector has

been that the Corruption Prevention Department is getting an increasing number of requests from private sector organizations to advise on measures to prevent corruption and fraud. During 1989, the Department so assisted 176 organizations, the highest number since the Department's private sector advisory service was established.

Another reason for the increase in the number of allegations capable of investigation is the publicity the Community Relations Department has been giving through direct contacts with the public and through the mass media. For example, the Department has been promoting the Commission's "hotline" telephone number as a means for the public to report their suspicions of corruption.

In the process of getting the message across to the private sector, the Department has had considerable help from commercial and industrial organizations. Another area worth noting is that the Department has focussed particular attention on getting the anti-corruption message across to the young.

In 1989 the public's response to the Commission's work was generally favourable. But there is some concern that there might be a resurgence of corruption as people try to make as much money as they can before leaving Hong Kong.

Sir, as a person who has been involved in the work of the ICAC for over 15 years in various advisory capacities, I am convinced that the Commission has contributed significantly to the making of Hong Kong as a better place to live and to do business. I am aware that the challenges facing the Commission in the years to come are great, but I have been assured by the Commissioner and his senior staff that they will meet those challenges with dedication and resolve.

Oral answers to questions

Detention of children in prison-like conditions

1. MRS. TU asked: Will the Government inform this Council whether it will review its policy of detaining young children in prison-like conditions pending enquiries about their right to remain in Hong Kong, and in cases where their mothers are detained as illegal immigrants, could the mothers also be released during investigations, on condition that adequate guarantees are provided by their families that they will not

go into hiding?

SECRETARY FOR SECURITY: Sir, I should like to make it clear that our policy is not to detain young children in prison unless there is no practical alternative.

Following recent court cases we have reviewed the detailed implementation of this policy. We do not normally detain young children nor their mothers when the latter surrender themselves as illegal immigrants. But in future we will ensure that we will not detain children where recognizance is provided, where the father or a close relative is willing and capable of looking after the child, and where the mother has given her consent.

Only where the above conditions cannot be met, or where there are strong reasons to believe that the child will be assisted to abscond, or where an illegal immigrant child is likely to be removed from Hong Kong within a few days will a child be detained. Our objective is to detain as few children as possible. But in practice, many mothers wish to keep their young children with them, particularly in the case of very young infants.

Mothers who have been arrested as illegal immigrants are another matter. They are not innocent parties. They have deliberately broken the law, evaded our immigration controls and may have lived illegally in Hong Kong for a substantial period of time, sometimes many years. If released, they may well seek to go into hiding again. They will therefore usually be detained pending repatriation.

MRS. TU: Sir, could the Secretary for Security inform this Council how many children are at present being detained for the reasons mentioned in paragraph 3 of his reply and what their age range is?

SECRETARY FOR SECURITY: Sir, as of 9 January, a total of 101 children were detained in Victoria Prison and six unaccompanied children were detained in children's homes run by the Social Welfare Department.

The children who are detained in prison are all below seven years of age and the very great majority of them -- some 94 out of 101 -- are below three years of age, and 75 of them below one year of age.

The six children who are detained in Social Welfare Department homes are all between 11 and 14 years of age.

Protective equipment for industries

2. MR. TAM asked (in Cantonese): Will the Government inform this Council:

(a) of the number of industrial accidents in the past five years which were related to the use of inadequate and ineffective protective equipment;

(b) why there are so few regulations in the Factories and Industrial Undertakings Ordinance requiring employers to provide their employees with specific protective equipment; and

(c) whether it will consider laying down comprehensive codes of practice setting out specific guidelines for safety standards and requirements for personal protective equipment for employees, similar to the practice in the United Kingdom?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of the question, the use of inadequate or ineffective protective equipment of itself is not a cause of industrial accidents. Serious accidents are caused mainly by falling objects, the fall of persons and machinery. Over the past five years, the Labour Department has not registered any industrial accident that involved protective equipment that is defective.

Recently, however, concern has been expressed about the ability of some locally made safety helmets to withstand the impact of falling objects. The Labour Department is investigating these reports, including the validity of the tests involved, and will consider whether or not it would be necessary to prescribe performance standards for the equipment.

As regards the second part of the question, at present there are 11 sets of industrial safety and health regulations that specify the provision and use of personal protective equipment. These regulations cover all areas of work where the industrial processes involved require the use of suitable protective equipment. To this extent it cannot be said that the range of industrial safety legislation is

inadequate. As regards the adequacy of the protection, five of the 11 sets of regulations, which deal with high risk operations, require the protective equipment either to be approved by the Commissioner for Labour or to meet the specifications laid down in the regulations or codes of practice. The remaining six sets of regulations specify that the protective equipment should be suitable to the work or activity involved.

Sir, as regards the last part of the question, the practice in the United Kingdom is for safety legislation to lay down broad principles, while codes of practice outline safe procedures, equipment standards and the range of acceptable variations. Hong Kong follows this approach. In the area of protective equipment, 19 codes of practice have already been introduced and more are being developed.

MR. TAM (in Cantonese): Sir, if it is intended to encourage employees to use protective equipment, why does the Government not require them to use those that meet the required safety standard so as to lessen the degree of injury in industrial accidents?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, it is the statutory duty of proprietors and owners not only to encourage employees to use suitable protective equipment but, wherever possible, to provide the most suitable form of equipment. Where the employer or proprietor of the business is in any doubt about how suitable a piece of equipment may be, guidance can be sought from the Labour Department whose factory inspectorate will provide standards and specifications for equipment from time to time.

It is true that certain sets of protective equipment have not had standards specified so far but I understand that the Commissioner for Labour is seeking to cover this point -- to provide detailed specifications in future codes of practice.

MR. HO SAI-CHU: Sir, may I refer to the Secretary's answer, the very last sentence of which says: "..... and more are being developed." Could the Secretary tell us how many more, and how long it will take?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as far as I can ascertain two more codes of practice are being developed. These cover industrial noise and asbestos dust, and I believe they should be promulgated within a matter of months.

MR. MICHAEL CHENG (in Cantonese): Sir, will the Government consider providing public education to employers and advising them to reinforce protective equipment so as to minimize industrial accidents?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I mentioned earlier in reply to Mr. TAM's first supplementary question, it is already the duty of owners of businesses and employers under the Factories and Industrial Undertakings Ordinance not only to provide appropriate and suitable types of protective equipment, but also to provide information, instruction and training to their employees. They are at present being helped in every practicable way by the Labour Department's factory inspectorate which runs publicity campaigns and provides promotional literature from time to time.

MR. TAM (in Cantonese): Sir, most of the provisions laid down in the Factories and Industrial Undertakings Ordinance only specify that employers should provide, and employees are required to use, suitable protective equipment. Is the word "suitable" too vague to provide clear guidelines? Will inspection and prosecution work be affected as a result?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I acknowledge that the use of the word "suitable" in legislation, especially in our Industrial Safety Regulations, may need amplification. As I said earlier, this amplification is provided by the factory inspectorate and they do it by obtaining information from various equipment catalogues, by referring to specifications, by looking up the manufacturing and safety standards of other countries and so on. Where this information is provided to employers and equipment manufacturers, then that information determines what is acceptable and suitable.

I also acknowledge, Sir, that even in those circumstances reliance on the use of the word "suitable" may not facilitate prosecution work in future. For the avoidance of doubt, the Labour Department is now in the process of laying down standards and firm specifications in existing and future codes of aid.

This parent question, Sir, arose from the ability of safety helmets to withstand impact from falling objects from a height. The Labour Department is currently looking into a series of international standards and will be considering how we can replace our suitability guidance notes with an appropriate safety standard for helmets.

MR. TIEN: Sir, will Government inform this Council whether the Vocational Training Council provides mandatory courses for workers to use modern protective equipment for different industries?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am afraid I do not have the answer to that question. I shall provide it in writing. (Annex I)

Recruitment of civil servants from overseas

3. MR. PAUL CHENG asked: In view of the Government's intention to step up its recruitment efforts to attract more Hong Kong emigrant workers in North America and Australia back to work for the Government as a means of addressing its 10-year projection that more civil servants would be needed at the directorate level, would the Administration inform this Council of the following in more specific terms :

(a) the basis and scope of that projection;

(b) the track record on overseas recruitment to date; and

(c) how the use of resources for recruitment in differing geographical locations is determined?

CHIEF SECRETARY: Sir, within the broad framework of the localization policy, we believe it is useful for us to have the benefit of Hong Kong people who have studied or worked overseas. While the majority of positions in the Civil Service will continue to be filled by local talent, those with international experience can play a very useful role in serving Hong Kong, in view of our open economy and the cosmopolitan character of our community. Against this background, I shall answer the three questions in the order raised.

First, the Honourable Paul CHENG refers to a 10-year projection of manpower needs at the directorate level. There is in fact no single 10-year projection for the entire directorate of the Civil Service. Because of different characteristics of different civil service grades, the manpower needs are done on a grade by grade basis, taking into account the age distribution of serving officers, wastage rates, growth trends and the vacancy position. Some grades do a longer range projection while some project for the short to medium term only.

Secondly, regarding the track record on overseas recruitment, the Government has always recruited from overseas when suitable local candidates are not available or are available in insufficient numbers. The majority of those appointees are Police Inspectors, surveyors, engineers, architects and lawyers. In the last five years, a total of 507 overseas officers have been recruited.

Since 1988, the Administrative Grade has mounted overseas recruitment exercises targeted at former Hong Kong residents and Hong Kong students overseas. In 1988-89, three candidates from the United Kingdom and three from United States of America were recruited, out of a total of 25 appointees. In the exercise that has just been completed in 1989-90, appointment is being offered to four candidates in the United Kingdom, five in the United States of America and two in Canada, out of a total of 37 candidates to be offered appointment.

In addition to the Administrative Grade, the Social Work Grade has also attempted a small scale exercise to recruit from Canada in 1989. So far no suitable candidate has been identified for appointment in that exercise. A second attempt will be made this year.

Sir, I now turn to the third question -- how the distribution of resources for recruitment in different geographical locations is determined. The distribution is determined on a need basis. Clearly we shall pay particular attention to Canada and Australia where we know there is a growing pool of former Hong Kong residents who may wish to return to Hong Kong to work after acquiring the right of abode there.

Recruitment in the United Kingdom is conducted through the Hong Kong Government Office in London where a small dedicated team of staff is stationed to handle all recruitment related matters for all civil service grades. In North America, the Economic and Trade Offices in San Francisco and Washington provide assistance. In

Australia and New Zealand where there is no Hong Kong Government Office, ex-civil servants are engaged to help in the co-ordination work, for example, sorting out applications, co-ordinating interview schedules and setting up interview facilities. After initial screening and written examinations, selection interviews with prospective appointees are usually conducted by senior officers from Hong Kong, in order to ensure that consistent standards are applied both locally and overseas.

Finally, Sir, may I take this opportunity to congratulate Mr. CHENG and thank him for increasing by one person the pool of talent available for government recruitment in the future.

MR. PAUL CHENG: Will the Government inform this Council how this overseas recruitment programme is measured against re-training and in-house staff development programmes for those already on staff as potential candidates, and whether comparative costings have been done between these two approaches?

CHIEF SECRETARY: Sir, as far as overseas training is concerned, we do carry out regular overseas training for our in-house members of the service; that has been going on for some time and I could provide the details for Mr. CHENG. (Annex II)

As far as our overseas recruitment is concerned it is at an early stage and I think we are not in a position at the moment to try to compare one form of international exposure with another in cost terms.

MR. PETER WONG: Sir, does the Government go through the process of advertizing locally, as is required for the private sector, to demonstrate the shortage here in Hong Kong before actually going overseas for recruitment?

CHIEF SECRETARY: Yes, we do.

MR. ARCULLI: Sir, would the Chief Secretary please inform this Council whether the length of time it takes to finalize an appointment is either an impediment or a deterrent to applications, and if so, what steps can be taken to streamline the procedure?

CHIEF SECRETARY: Yes, Sir, we are conscious of the fact that our procedures do take a considerable length of time. It is because this is a highly sophisticated process and the processing thereafter of the applications, in terms of security vetting and so on, does take longer than we would like. As a result of that, we have been known to lose people in the pipeline along the way. I know, Sir, that the Secretary for the Civil Service is looking at this problem and is hoping to streamline the procedure shortly.

MR. PETER WONG: Sir, considering the popularity of people applying for the so-called "right of abode" in Singapore, will the Chief Secretary confirm that he will also be looking at Singapore as a possible place for recruitment?

CHIEF SECRETARY: Yes, Sir, we have not ruled out any of the likely pools of talent available and we will be looking at all of them.

MR. PAUL CHENG: Sir, based on our experience to date, what has been the major criteria in successfully recruiting some of these people back to Hong Kong?

CHIEF SECRETARY: Sir, as I say, it is early days to try to come to any judgment about the criteria. What we are finding, certainly in terms of the present overseas pattern, is that the people who wish to return are people who have qualified overseas, who have worked for some time overseas, and are anxious to return to Hong Kong for either family or professional reasons. We find that the people coming back are people in their late twenties rather than those who come straight from university. But I think it is too early, Sir, in the process to come to any firm conclusions as to trends.

Written answers to questions

Poisoning by pesticide residues

4. MRS. LAM asked: Will the Government inform this Council whether it will

introduce measures to prevent poisoning caused by the consumption of agricultural produce containing excess pesticide residues by setting limits on such residues?

SECRETARY FOR HEALTH AND WELFARE: Government has already set limits on pesticide residues in agricultural produce having regard to recommendations by the Joint Food and Agricultural Organization/World Health Organization (FAO/WHO) Codex Alimentarius Commission.

Most of Hong Kong's fresh agricultural produce comes from or through Shenzhen. Following discussions with the Shenzhen Import and Export Inspection Commodity Bureau in 1988, farmers in China have been required to submit to the bureau written particulars of the kinds and concentrations of pesticides applied to their export vegetable crops, the dates of application and harvesting. This information, supplemented by random tests, allows the bureau to determine whether the vegetables are safe for food. If so, the produce will be cleared by them for export and tagged for identification.

Staff of the Department of Health stationed at border control points keep a close watch for untagged or inadequately-tagged vegetables to prevent them from being channelled into the local market. Such produce is detained and may, if found unsuitable for human consumption, be destroyed.

Inspection of imported produce for tagging is augmented by screening tests and sampling for laboratory analysis of any pesticide residues, both at border crossing points and also at the Cheung Sha Wan Vegetable Wholesale Market. Locally-produced vegetables are subject to similar routine sampling at various stages of the distribution process.

Together these measures should prevent poisoning caused by the consumption of agricultural produce containing excess pesticide residue.

Control of use of chlorofluorocarbons

5. MR. PETER WONG asked: Will the Administration inform this Council of the progress made in the control of the use of chlorofluorocarbons after the enactment of the Ozone Layer Protection Ordinance in 1 June 1989?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, considerable progress is being made in implementing the obligations imposed on us by the Montreal Protocol. From 1 July 1989 we banned local manufacture of CFC's and halons.

From the same date, we also froze the import of CFC's at 1986 levels, setting up a scheme to register importers and exporters of these substances, allocating a maximum import quota to them, and licensing each import and export shipment. We are committed to reducing use to 80% of the 1986 levels by 1993, and to 50% by 1998. We do not anticipate problem in achieving these targets.

From 1 January 1990 we banned the import of regulated CFC's and halons from countries which have not ratified the Montreal Protocol.

We are currently drafting legislation which will ban the manufacture and import of non-essential aerosol products containing CFC's and halons. We are therefore more than meeting our international obligations, and we will keep this Ordinance under constant review, so that we fall in line with any new international obligations that we are required to meet, and take full advantage of the availability of any new CFC substitutes.

Film archives

6. MRS. TU asked: Will the Government inform this Council whether consideration has been given to the setting up of film archives, what the legal and financial implications are, and when a decision will be reached?

SECRETARY FOR HOME AFFAIRS: Sir, the establishment of a film archives, with acquisition, preservation, documentation and education being its four basic functions, is under consideration by the Government.

Preliminary estimates indicate that the capital cost of setting up a film archives could be in the region of \$8 million and the recurrent costs around \$4 million a year. These estimates do not include the expenses for acquisition and restoration of films nor rental charges for office and storage facilities.

Besides the financial implications, the contractual relationship between the archives and the producers and distributors of the films, including copyrights, would need to be examined in detail. In this connection, a survey of film companies has recently been conducted and the results are being analysed in conjunction with the recommendations of a consultancy commissioned in 1989. It is expected that the results would be available in two to three months. This will pave the way for a decision on whether or not a film archives should eventually be set up.

#### Policy towards visitors from Eastern Europe and the Soviet Union

7. MR. BARROW asked: Will the Government inform this Council as to the current policy towards visitors from Eastern Europe and the Soviet Union and advise:

- (a) whether all countries of that region are treated in the same manner;
- (b) whether business and convention delegates can visit Hong Kong without having to go through bureaucratic procedures such as demonstrating a definable benefit; and
- (c) whether sightseeing and tourist groups can now be admitted?

SECRETARY FOR SECURITY: Sir, we have recently reviewed our policy on the entry of visitors from Eastern Europe and the Soviet Union. Changes will be introduced from 16 July as follows:

- (a) visitors from the German Democratic Republic (East Germany) will be treated in the same way as visitors from the Federal Republic of Germany (West Germany), that is, they will be able to visit Hong Kong for up to 30 days without a visa; and
- (b) visas for the purpose of tourism and sightseeing will be available to visitors from Czechoslovakia, Hungary and Poland.

Our policy on visits from the Soviet Union and other Eastern European countries (Bulgaria, Romania, Albania) will remain unchanged for the time being. Visas will be issued only to businessmen, sportsmen and entertainers of international reputation, delegates to conferences, conventions and trade fairs, merchant seamen, and a few other minor categories. Businessmen will need to demonstrate only that the purpose

of their visit is business; similarly for delegates to conferences, conventions and trade fairs.

#### British Nationality (Hong Kong) Scheme

8. MRS. TAM asked: With regard to applications for places under the British Nationality (Hong Kong) Scheme, will the Government inform this Council:

(a) what arrangements prospective applicants who are not British subjects need to make in order to be eligible to apply for the scheme as naturalized British Dependent Territories Citizens (BDTC); and

(b) what publicity the Government is undertaking in order to ensure that prospective applicants who are not British subjects are aware of the need to apply for naturalization as BDTCs before the enactment of the British Nationality (Hong Kong) Bill 1990?

CHIEF SECRETARY: Sir, any non-British subjects who wish to apply for British citizenship under the United Kingdom Nationality Scheme should apply for naturalization as (BDTCs(HK)) before the enactment of the British Nationality (Hong Kong) Bill 1990. This is a pre-requisite under the Bill. Anyone who has lived in Hong Kong for at least five years and is not subject to limit of stay can apply for naturalization as a BDTC, irrespective of race or nationality. Applications should be made to the Immigration Department. Spouses and children of prospective applicants are however not required to meet this nationality requirement.

It is expected that Royal Assent to the Bill will be obtained in late July. Accordingly, anyone who does not fulfil the nationality requirement but is interested in applying under the scheme is advised to apply for naturalization immediately.

Continuous efforts are being made to inform the public that prospective applicants who are non-British subjects should apply for naturalization as BDTCs before the enactment of the Bill. The Government publicized this when the Bill was published in April. The Director of Administration has stressed this in media interviews many times over the past three months. The public was reminded of this requirement in the press statement following the passage of the Bill through its Second Reading in the House of Lords on 29 June. A further reminder was given in

the television "Access" programme on 1 July.

The Bill is expected to receive Royal Assent before the end of this month and further reminders will be issued.

Motions

HOMOSEXUALITY

THE CHIEF SECRETARY moved the following motion:

"That measures be presented to this Council --

(a) to remove the criminal penalties relating to homosexual acts committed in private by consenting men who have reached the age of 21; and

(b) to extend to men and boys, where appropriate, the protection from sexual exploitation afforded by the Crimes Ordinance to women and girls."

He said: Sir, the motion which I rise to introduce today is simply phrased but its subject matter is a difficult one to deal with.

I know that many ordinary Hong Kong people, of all nationalities, from all walks of life, feel distinctly uncomfortable when asked to discuss in public highly personal matters such as sex. The degree of discomfort is increased when discussing what many regard as deviant behaviour, that is intimate physical relations between persons of the same sex. Yet, uncomfortable though it may be, I believe a debate on the subject of homosexuality is long overdue. Most would agree that the present situation is unsatisfactory and should not be allowed to continue.

I will divide my speech into three parts:

- first, an outline of the present situation;
- secondly, an examination of the arguments against decriminalization; and
- finally, a suggested way forward.

But before I begin I would like to make one general point to provide a context for this afternoon's debate. It is a point which will recur elsewhere in my speech, but which deserves, in my view, to be highlighted. What is at issue today is not simply the decriminalization of private homosexual acts between adult males. What is at issue is a matter of principle: the dividing line between the moral and the legal codes, where the individual's right to privacy begins and the Government's duty to interfere ends.

This is an important principle. Its implications extend beyond the immediate subject. And it is imperative that in addressing it we clear our minds of preconception, prejudice and emotion. If we do not, if we allow personal morality alone to dictate the scope of criminal law, then there is a real danger that the law will become an instrument for imposing moral values rather than preserving public order and protecting the citizen.

As regards the present position, no one knows the actual number of homosexuals in Hong Kong. Estimates of the number of exclusively homosexual men vary from 100 000 upwards.

Under present law, being a homosexual is not in itself a crime. But for a man to engage in a homosexual act is a crime. I should note in passing the anomalous fact that it is not a crime for a woman to do so. We, as a community, therefore offer our homosexual men a harsh choice -- either abstinence, or criminality, with no middle path. There is no reason to suppose that homosexual adults have any less desire to express their feelings in a physical way than heterosexual adults. The only conclusion we can come to therefore is that every year at least several tens of thousands of citizens are committing hundreds of thousands of criminal acts. They are committing those acts privately and consensually without doing harm to others but nonetheless criminally.

In theory then a large proportion of the male homosexual population of Hong Kong should be in prison. That they are not underlines just how unsatisfactory the present position is and highlights the consequences which this Council must be prepared to accept, if it decides against the motion.

It is not satisfactory that a criminal act goes unpunished. Imagine the public outcry if a blind eye were turned to the commission day after day, hundreds let alone hundreds of thousands of times, of any other criminal act. Yet, in our heart of hearts,

all of us know that these acts are committed and that it would be very difficult for the police to stamp them out. The manpower required would be enormous. The invasion of privacy that would result would be unacceptable. Success would bring in its wake disaster as our prison population doubled or trebled.

Very sensibly, but not satisfactorily from a legal point of view, our police make no such attempt. They crack down hard on unacceptable behaviour in public, and on abuse of minors. But acts in private between consenting adults have generally speaking for many years been ignored. It is significant that there has been no public outcry against this state of benign neglect. Significant because it demonstrates the tacit tolerance which the community accords the private practices of consenting adult homosexuals. Significant but not, I say again, satisfactory.

To borrow the words of an eminent French statesman (Jean Baptiste Co Hert): "If you enact a law and do not enforce it, you are condoning what you condemn." A vote against the motion before this Council will be a vote against condoning and in favour of enforcement. And henceforth the Government would be obliged to seek out and prosecute all, both high and low, who infringe against this law, despite all the problems I have mentioned.

I turn now to an examination of the arguments against decriminalization. Traditionally, three arguments have been put against decriminalizing homosexual acts between consenting adults in private. They are as follows:

- that it threatens social health and stability;
- that it is harmful to normal family life; and
- that it puts young boys at risk.

I would like to deal with each in turn.

Those who favour a strict sexual morality have frequently adduced historical examples of social decay in support of their arguments. The suggestion is that the tolerance or encouragement of sexual freedom leads to the decay of nations. This is ingenious but disingenuous. There never has been a direct causal relationship between sexual licence or inhibition, on the one hand, and the rise and fall of civilizations on the other. Sexual morality is the product of social development,

not its engine.

All societies have taboos against certain forms of behaviour. They are rarely rational; rather they tend to reflect an instinctive revulsion against deviation from the norm. A society which accepts freedom of worship must by definition accept the existence of a wide variety of moral codes, each with its own prescriptions and taboos, many conflicting, few susceptible to translation into a legal code for the welfare of society. Neither instinct, nor moral conviction is a sound basis for bringing private sexual practice within the scope of the criminal law.

In the same context, it is sometimes argued that the fabric of society may be undermined where homosexual behaviour leaves public officers and others vulnerable to blackmail. But vulnerability to blackmail may arise from a weakness for wine, women and gambling just as easily as from homosexual behaviour. Decriminalization reduces rather than increases the likelihood of extortion.

Severe social disapproval of homosexuality means that the possibility of blackmail can never be completely eliminated. But the present circumstances provide the victim with no defence whatsoever. In order to secure protection from one dreadful crime, blackmail, he must first himself confess to another, homosexuality. Yet, while the one has a real victim, the other involves mutual consent.

The second argument, that decriminalizing adult male homosexuality will threaten family life, is equally groundless. Certainly, marriages in which a wife discovers her husband to have homosexual tendencies frequently end in divorce. But so also do those where the wife is found to be lesbian, or either partner adulterous, and yet neither adultery or lesbianism is a crime. Where homosexual acts are criminal, the likelihood of a homosexual male feeling obliged to seek the respectability of a heterosexual marriage is greater, as is the risk of such an unhappy union eventually falling apart. Such marriages are more common than most of us would imagine and we should do everything possible to lessen the possibility of their taking place. Clearly decriminalization would help.

Lastly, I come to the question of minors. Let me say immediately that it is our firm intention to continue to protect the young. Indeed, we would like to strengthen that protection. I do not want to now embark on drafting legislation; sufficient to say that the protection afforded minors against abuse and exploitation should be no less extensive than that afforded young females. In this context, another myth

must be laid to rest. It is often argued that decriminalizing homosexual acts will encourage licence and experimentation; that freed of the fear of prosecution for sexual relations with a consenting adult male partner, the promiscuous homosexual will seek excitement in the seduction of young boys. Sir, this is nonsense.

All the evidence points strongly towards a clear distinction between men who seek other adult males as partners and those who are attracted by young boys. The evidence also suggests that those with adult partners seldom seek relations with young boys, and, vice versa, the paedophiliac seldom seeks intimacy with an adult male.

But on the other hand, maintaining laws against intimacy between consenting adult males drives the practice underground and weaves a web of conspiracy which does not discriminate between homosexuals and paedophiliacs. Indeed under the present law some homosexuals do seek sexual relations with boys in the belief that naivety and fear of the young people involved is more likely to protect them from either blackmail or prosecution. So it is my firm belief that decriminalizing acts between consenting adults will provide a greater degree of protection of young people than the present anomalous situation allows.

In recent years, a fourth argument against the decriminalization of homosexual behaviour has been deployed -- that it would result in the spread of the AIDS virus. Of course I appreciate the public concern over this matter, but I do not accept the argument. Homosexual behaviour occurs now. Homosexual men are one of the high-risk groups for AIDS. Maintaining existing laws tends to force them underground, makes preventive education and counselling more difficult and therefore hampers our efforts to counter the disease. Changing the law may not remove the social stigma, but it will certainly make it easier to identify and therefore help this group. The Secretary for Health and Welfare will have more to say on the subject of AIDS later in the debate.

I would now like to consider the way forward. I suggest that we should aim to achieve three objectives. First, to protect our youth and any other vulnerable group. Secondly, to make a clear distinction between public and private behaviour. Thirdly, to set sensible parameters for our criminal law and its enforcement by decriminalizing homosexual acts between consenting adults in private.

Achieving these aims will require legislative change and careful definition. Without wishing to pre-empt the vote of this Council, I would like to dwell for a

few moments on three key issues: those relating to consent, to privacy and to adulthood.

As regards consent, it seems to me that the same considerations apply to relations between homosexuals as between heterosexuals. A man who imposes his will on another by violence, threat of violence, fraud or use of drugs cannot be said to have the consent of his partner any more a man who forces himself on a woman. Beyond that there lies the same range of consensual behaviour from passionate mutual attraction, through seduction to prostitution as surrounds heterosexual relationships.

The limits of privacy will require careful attention. I do not think that our community is ready for brazen sexual behaviour by either heterosexuals or homosexuals. In public we expect and require all concerned to behave in a seemly fashion. Physical intimacy between partners of either sex is something to be expressed out of the public gaze. I will not attempt a legal definition, I leave that to the lawyers; suffice it to say that, in changing the law, it would not be our intention to offend against public decency.

Lastly, I come to the definition of adulthood. It is by no means a simple question. In determining the age at which the boy child becomes the adult man we must have regard to a number of factors.

We must ensure that the young, innocent and immature are protected against advances by the older and more experienced. The age set in respect of heterosexual relations is currently 16 and there is I suppose some logic in setting the same age for homosexuals.

But it may be argued that a man's pattern of sexual behaviour is not settled until rather later than this, and that a teenage boy may fall victim to seduction. General opinion varies, but medical authorities generally concur that sexual behaviour normally settles into its adult pattern after the age of 16.

Viewed from another perspective, the age of majority for both men and women for all contractual purposes (other than marriage?) is being lowered to 18. If a man is judged legally responsible for the conduct of business affairs at that age, should he not also be deemed responsible for matters of sexual choice?

Whichever age we choose, the choice will be arbitrary. There will be those on

one side of the dividing line who feel that they are being discriminated against in being regarded as criminals for an act which their elders may freely indulge in. That is inevitable.

In coming to a decision on the question of the age of consent I am sure that the community would wish us to err on the side of protecting the young and immature even if this means accepting a degree of inconsistency with our other laws on the age of majority. Above all we must ensure that the decision of young people to engage in homosexual liaisons is an informed and conscious one.

Finally, I think a comment on the question of human rights would be in order. Our community is becoming increasingly interested in the concepts of democracy and human rights. One of the aspects we have yet to explore is what should be the attitude of the majority to the minority. In a democracy the majority view should generally prevail and in a direct clash it must do so. While the majority can prevail, should they always seek to do so? Or where the nature of the minority activity is such as not to pose a direct threat to the majority, should it be permitted. Those communities with more experience of democracy than Hong Kong have come inescapably to one conclusion: that the majority should only impose its will on the minority in cases where the wider public interest overwhelmingly requires, and that otherwise there should be maximum flexibility. Indeed for many the degree of tolerance of minorities is a measure of the civilized quality of a society. While the International Covenant on Civil and Political Rights makes no specific reference to homosexuality our present law would, we believe, be open to challenge under the Bill of Rights endorsed by this Council in its debate two weeks ago.

I am sure that some Members will put forward the argument that the timing of this debate is wrong in principle and we should have waited until the Bill of Rights was in place before raising the issue. But we believe that there are fundamental social questions which need to be addressed in addition to the human rights consideration. We as a community need to take a view on these wider questions. To suggest that this debate should only take place after the Bill of Rights has passed is simply a way of clouding the issue before this Council. Sir, I am sure that the arguments on both sides will be cogently put this afternoon so that Members will be able to make up their minds on this issue and I can see no good reason for further delay.

Sir, in closing I would like to return to what I consider to be the central issue. In its heart this community has already accepted the burden of the motion. Homosexual

behaviour between adult males by consent and in private is already tacitly condoned by the community. The community is fearful that removing criminal penalties will encourage promiscuity. I hope that I have demonstrated that these fears are unfounded. The community has no real wish for the authorities to seek out and prosecute homosexual males who behave decently in public. I suspect that this is because the community instinctively recoils from the invasion of privacy which such a frightful enforcement would entail.

This instinct is correct. It is not in my view the role of the criminal law to enforce any particular moral code. Its role is to protect members of society against injurious actions by other members. Some elements of the criminal law coincide with moral injunctions, for example laws against robbery and murder. But there are other moral injunctions which are essentially personal, compliance or non-compliance with which in no way impacts on other members of society, and whose reward and punishment are no business of the state. Homosexual behaviour is one such example. It is a matter for personal choice between consenting adults and not for government regulation.

With these remarks, Sir, I beg to move.

Question on the motion proposed.

ATTORNEY GENERAL: Sir, we are today considering the provisions of the criminal law that apply to homosexual behaviour. I would like to make reference to what I consider to be the important legal policy considerations that relate to this issue. They have been touched on by the Chief Secretary and I should like to amplify them.

First, one of the main purposes of the criminal law is to protect from harm those who are in need of protection from the acts of others. Whilst I am well aware of the argument that harm is not a prerequisite for making certain conduct a criminal offence, and that offensive behaviour which causes no harm to others ought, of itself, to give rise to criminal sanctions, I prefer the argument propounded by the Wolfenden Committee, which some 30 years ago in England considered the very same questions which confront Members of the Council today. It was the view of that Committee that the proper function of the criminal law is:

"to preserve public order and decency, to protect the citizen from what is offensive

or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official, or economic dependence."

So I would emphasize the use of the words "public order and decency" in this context.

In my view the criminal law should not intervene in the private lives of citizens, or seek to enforce any particular pattern of behaviour, unless it is necessary to carry out the purposes just outlined. Most certainly those who are vulnerable need protection; but it cannot be credibly argued that adults of normal mental capacity who freely participate in sexual conduct in the privacy of their own homes need to be protected from such conduct by the criminal law.

The second legal policy consideration is a practical one. If part of the role of the criminal law is to preserve public order and decency, the law should command the respect and observance of the community. It inevitably falls into disrepute if it is continually ignored and flouted with impunity. The Chief Secretary has referred to the inescapable conclusion that every year there occur a great many criminal acts of homosexual conduct. The participants are rarely prosecuted, for the simple reason that the police cannot investigate without knowing where or when these acts occur. In practice it is only when one of the participants complains to the police that action can be taken. In the nature of things, consensual conduct in private is unlikely to be the subject of complaint. But even when a complaint is made, the chances of obtaining a conviction are slim, since corroborative evidence is unlikely to be available because of the consensual nature of the conduct. The result is that the law can only very rarely be enforced. To enforce the law would entail all the consequences described by the Chief Secretary of which perhaps the most significant would be what I am sure Members would regard as the most unacceptable -- namely an invasion of privacy. A law which is not enforced engenders disrespect for the law and for its processes.

Finally, Hong Kong has an international obligation to protect the individual from arbitrary and unlawful interference with his privacy. This right to privacy finds expression in both the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. A similar right to privacy contained in the European Convention of Human Rights has been interpreted by the European Court to include the right to freedom from interference in respect of consensual sexual

behaviour between adults in private. Whilst it cannot be said conclusively that Hong Kong laws in this area are arbitrary or unlawful since they have not been tested in the courts, the interpretation by the European Court of Human Rights of the equivalent provision in the European Convention makes it likely that, to the extent that the present law of Hong Kong interferes with the sexual activities of consenting adults in private, that law is at variance with the International Covenant on Civil and Political Rights. It hardly needs saying that the laws of Hong Kong are required, in accordance with our international obligations, to be consistent with those obligations.

Sir, I would ask Members to bear these legal policy points firmly in mind when considering the conflicting arguments that I feel sure will be advanced today and when they finally come to vote on this important motion.

Sir, I support the motion.

MR. ALLEN LEE: Sir, homosexuality is a sensitive issue. The fact is we have homosexuals in our community like any other community. For some strange reasons, a lot of people in Hong Kong believe that homosexuality is a western game; the local attitude is that it is extremely immoral. Therefore if people are caught in the homosexual act, they would have committed a crime. The main theme of today's debate is: should we as law makers remove the criminal penalties relating to homosexual acts committed in private by consenting men who have reached the age of 21.

Facing a community that is generally hostile towards homosexuality, it is not easy to objectively analyse the problem, to consider the controversy and come to a conclusion. It is a choice between morality and privacy and to a great extent, human rights also come into play. I have considered this issue long and hard. I have reached a conclusion some time ago that we should remove the criminal penalties even though personally it is difficult for me to accept homosexual acts. To many people it is hard to understand why some men are homosexuals; yet they are human beings and they find their pleasure in their own ways. It is my view that they should not be judged by us according to our own moral standard. I am sure we ourselves have different moral standards. In the old days in China, it was acceptable for a married man to have sexual relationship with a woman; yet it was a death penalty by drowning for a married woman to have sexual relationship with a man. What I am trying to point out here is: how do we legislate with regard to morality? If two men who are adults willingly commit a homosexual act in private, why should they be criminals?

Sir, I am not here to convince any of my colleagues to vote one way or another, nor to be long-winded to justify my thinking of why we should decriminalize the current law on homosexuality. I believe everyone must vote according to what they believe and according to their own conscience. I have stated my belief. Therefore I support the motion before this Council.

MR. CHEONG: Sir, I must congratulate the Chief Secretary for making a very serious and seemingly very brilliant attempt to rationalize his support for the motion that he moves. The point that he made very cogently is that the role of criminal law is not to enforce morality. On the face of it, it gives me a lot of food for thought, but if one thinks deeply about it, one may come up with different conclusions. For example, any relationship or sexual act between related individuals, like a mother and an adult son, is incestuous and I believe it is a criminal offence that involves not just the act itself but also the belief of morality. Now, if there is a criminal code against such an act, how could the Chief Secretary justify his point about trying to separate the criminal code from morality issues.

Sir, some of my honourable colleagues have reminded me that we are not debating the legalizing of homosexuality, but simply decriminalizing it. In my view, if anyone performs any act which is liable to attract penal sanctions as stipulated by the law, then that act by definition is unlawful. To remove these penal sanctions from the law signifies that the legislature accepts that that particular act should no longer be regarded as unlawful. Hence removing any sanctions from performing homosexual act would in my view be tantamount to saying that the law, and therefore the community, no longer thinks it is necessary to discourage or to prevent it. Such a course of action should not be undertaken, unless it has a fair degree of acceptance by the community. If the Administration can provide convincing evidence that the community widely accepts the change, then I am prepared to vote "aye" to the motion.

I have also been accused of being too conservative for not readily supporting the move to legalize the homosexual act. I was asked what my business is to oppose an act performed in private between two consenting adults. I did give this viewpoint a lot of thought and, on its face value, it is a forceful argument. However thinking deeper into the effect of applying this logic on other issues that have a moral undertone, it does lead to some startling, and perhaps at the moment unacceptable, conclusions by the community.

For example, if we accept the logic that whatever act two consenting adults perform in private is really a matter for them only and not for anyone else, then would the application of the same logic open the way for arguments on the same line to legalize the act of buggery between two consenting adult persons of whom one is a female. Worst still, would we need to consider legalizing incestuous acts performed between two consenting adults of mother and son or that of adult brothers and sisters. After all, if the motion is carried today and assuming Government will introduce a Bill and also assuming that the Bill will be passed by the legislature, then any act performed in private between two consenting adult brothers would become lawful. So should the same logic not apply to decriminalizing any act performed in private between two consenting brother and sister?

Sir, in my view, it is too simplistic to reason that what people do in private is totally their own affair. Society is no more than the aggregate of its individual members and how people feel and behave both in private and public reflects the general perception of what is right or wrong which in turn determines society's overall values. We acted to combat drugs, violent crime, corruption and so on because society accepts that it is wrong not to do so. Hence, acceptance or otherwise of homosexuality must involve the assessment of the value judgement of the community on this issue. We in the legislature should not pontificate on our own, devoid of feelings and reactions from society. If the Administration is serious about introducing a Bill to this Council on this issue, may I, Sir, respectfully suggest that views from a wide cross-section of the community should be sought. Incidentally, Sir, allow me to mention in passing that I find it lamentable that one is labelled as a conservative if one opposes this motion whilst claiming that supporting it represents liberalism and progress.

Sir, I would like to register my regret that the Administration has seen fit to insist on a motion debate on this issue during such troubled times that Hong Kong faces. As a moral issue, it will tend to engender deep-seated divisions of views within the community. Such divisions can hardly resolve themselves easily. Why should the community be forced to accentuate the split on an issue which in my view ranks rather low in our priority list of things that needs to be done in order to ensure Hong Kong's future stability and prosperity?

Some colleagues have suggested to me that the issue will come up anyway because the rights of the individual performing an homosexual act are protected by the

forthcoming human rights Bill. I am sure this is true, but may I ask whether the rights of an adult son having a sexual relationship with his mother would be protected the same way? After all, the same consideration of safeguarding the rights of two individuals to perform whatever act between two consenting adults should apply. Also, on the strength of the same logic, should we not consider legalizing or decriminalizing polygamy if all adult parties consent to the arrangement? Sir, will Hong Kong likely be encouraged to degenerate into an all permissive society with loose moral values armed with human rights as a shield? Worst still, will anarchism likely to be encouraged in the name of human rights? If we are likely to see such a scenario unfolding then I shudder to think what the future of Hong Kong will be. I only hope and pray that such fears will not turn into reality.

Before I close, I would like to stress my view that the homosexual act is an unnatural act. It is my belief that it is not widely practised nor is it widely accepted by the majority of people in Hong Kong. I cannot offer any observation on whether communities in other countries readily accept this act or not, but I certainly do not feel it is right to argue that we have to move with times particularly when other democratic countries like the United Kingdom and the United States have legalized it; so why Hong Kong should not. This line of thinking may give the wrong impression to our community that progress and democracy is equated with accepting homosexual act as being lawful. And it also poses an important question as to whether the younger members of our community would be liable to run a greater risk of being exposed to, enticed or even goaded into taking part in the performance of the act so that they can prove to their contemporaries that they are progressive, liberal and democratic with it.

Sir, each and every society has its own cultural background, and its own moral values. We should not readily forsake our own moral values to opt for a change simply to conform with other values prevailing elsewhere.

Sir, I oppose the motion.

MR. CHAN (in Cantonese): Sir, with regard to the issue under debate, a clear majority of the members of the Wan Chai and the Eastern District Boards are opposed to the removal of criminal penalties. They take a rather strong view mainly because they are of the opinion that decriminalization will certainly have an adverse effect on the morality of the Chinese people. As for myself and the minority of district board

members who are in favour of decriminalization, we respect the majority view and have not strongly pressed for the removal of criminal penalties.

During the consultation with district board members, I have found out that as a matter of fact, there are two places in the Eastern District and in Wan Chai where people openly engage in homosexual activities. Those locations are the public lavatories in Tong Shui Road at North Point and underneath the Canal Road flyover. The issue has never been raised in district board meetings for discussion probably because no one has lodged a complaint. In response to my enquiry, the police confirmed that no complaint had ever been received, but from time to time policemen would inspect the above-mentioned places and suspects had been arrested. I wonder why people do not report or complain about such acts which are downright violations of the law. Is it because Hong Kong people nowadays are so open-minded that they only feel that the homosexuals whom they come across are very "queer", but the idea of reporting the cases to the police to bring the offenders to justice has never occurred to them.

I personally think that homosexuality is abnormal. As I have never seen people engaged in homosexual activities in the above-mentioned lavatories, it is hard to tell what my reaction will be. But if there were two persons conducting such acts in the staircase of my home, surely I would immediately report the case to the police. However, should such activities take place in the homosexuals' own flats and were inadvertently seen by me, I would just ignore them. Although conducting homosexual activities in a private place is also an offence, I sympathize with the offenders, because reporting to the police means that they will be left with a criminal record which may affect their future or jeopardize their chances of emigration, even if their intended destination is a nation which permits homosexual activities. On the other hand, reporting the cases to the police will not help them to become normal persons. Thus, why should I bother about them? Since their activities have nothing to do with the well-being of other people and will not do any harm to anybody, I do not think I have failed to fulfil my duties as a good citizen by not taking the initiative to report them to the police. Moreover, as I had indicated in this Council two weeks ago that I supported the Bill of Rights Bill, I cannot contradict myself.

Thus, I support the motion. But I must stress that part (b) of the motion is even more important, because extending the protection from sexual exploitation to men and boys can allay the worries expressed by the public about the possible consequences that may be brought about by the removal of criminal penalties.

MRS. FAN: Sir, the "decriminalization" of homosexual acts between consenting male adults in private, proposed by the Law Reform Commission in 1983, was translated into "legalization" of these acts by many reports in Chinese at that time. This may be the reason why the proposal was rejected by many people in our community. I was one of them. I do not think that homosexual acts are morally acceptable, and I do not wish to see these acts given the stamp of approval through gaining a "lawful status".

However, as the various arguments unfold themselves, the issue in question becomes much clearer. Removal of criminal penalties, or popularly known as "decriminalization", does not imply legal approval. The consultation paper on this topic issued by Government in June 1988 gave examples to illustrate this point. If I may quote, "Examples are prostitution and adultery. Although these acts do not amount to crimes, they are not lawful in the full sense. The law attaches to them certain unfavourable consequences. For example, an agreement to employ the services of a prostitute is not enforceable in the courts, and persons who publish advertisements relating to prostitutes may be convicted of conspiring to corrupt public morals. In this way it is made clear that the law does not condone these acts." To elaborate further, the paper said, "If certain types of homosexual acts were no longer to be crimes they too would be treated in the law as being "unlawful" and "immoral". This would show that the law disapproves of them and would mean unfavourable legal consequences would still attach to them. Moreover, certain criminal offences would still apply in relation to homosexual acts in private between consenting adults: it would continue to be an offence for one man to procure, that is, succeed in arranging any homosexual act between two other men, and people who attempted in public to assist or encourage men to take part in homosexual acts would be guilty of conspiring to corrupt public morals."

I further understand from that consultation paper that the removal of criminal offence on homosexual acts by consenting male adults in private is coupled with the retention of existing offence which applies to homosexual acts between males under other circumstances, the extension of protective measures to males from sex exploitation as they currently apply to females, and the strengthening of law on public behaviour making clear that homosexual acts are immoral. With this package, I believe the prevailing moral view of our community is fully recognized, and the young people in our society should not get the wrong message. However, care must be taken that young people are not misled to think that homosexual acts are morally

acceptable, so every available opportunity should be taken to make this clear. For this reason. I would not support any proposal that the age of consent should be lowered to 18 at this stage.

At this point, I believe it may be useful for Members to take note of the position of the Hong Kong Psychological Society. Members of that Society not only have access to numerous research data on the cause of homosexual inclination, but they also possess practical experience in working with clients of such inclination. If I may, Sir, I would like to quote from a statement which the Society issued some time ago.

"The Hong Kong Psychological Society believes that homosexuality is a sexual orientation, the causes of which are a subject of debate. Most research point to a constant four to five percent of all populations being homosexually orientated, with an additional five percent being primarily homosexually orientated at some stage in their lives.

The Hong Kong Psychological Society, in line with professional colleagues in other countries, does not view homosexuality in itself as a mental disorder; and does not believe that psychological treatment should be imposed upon persons in an attempt to alter their sexual orientation against their will.

We have noted the Law Reform Commission's report that it seems well supported by international data that legal sanctions have no effect on the incidence of homosexual activities. To criminalize the sexual expression of adult homosexuals engaging in relationship with other voluntarily consenting adults in private is contrary to considerations of human rights and mental health.

While urging continued, and indeed improved protection against all forms of sexual abuse, exploitation, coerced sexual acts, and sexual acts against minors, the Hong Kong Psychological Society fully supports the move towards decriminalization of homosexual acts between consenting adults in private."

Sir, although I am a member of the Hong Kong Psychological Society, I was not involved in the preparation and issuance of that statement. Nevertheless, when I had the opportunity to read it, I find myself agreeing with it.

Sir, I support the motion. Should it receive support of the Council today, I would urge the Administration to introduce the necessary legislative changes into

this Council at the earliest opportune time. We have deferred the matter long enough; there is no reason to drag our feet any more.

MR. CHUNG (in Cantonese): Sir, why should a debate on the decriminalization of homosexual acts be held at this time? The Administration owes us an explanation. I am glad that the Chief Secretary has provided an explanation just now. If this issue is to be discussed in terms of its implications on the making of law, I take the view that some fundamental points should be noted and discussed.

Firstly, it is no longer under taboo to say that homosexuality is one of the most personal matters among personal affairs. So long as homosexual acts are committed by mutual consent and not to the detriment of the interests of a third party or public affairs, these acts should be regarded as a kind of personal freedom. As it is not a criminal offence to engage in prostitution in private in Hong Kong, on what grounds can homosexuality be regarded as criminal acts?

Secondly, is there any law that can effectively prohibit homosexual activities, or can any concrete evidence be readily obtained to justify legal sanction against such personal behaviour as homosexual acts? This is a question that has no answer.

Thirdly, if homosexuality cannot be banned altogether, legislative safeguard seems to be the only reasonable alternative -- to reasonably consider the decriminalization of homosexuality. If homosexuality is not banned nor put under protection, the gay community will be left in a vulnerable position, subject to discrimination, "moral sanction", preferential concessions, or to individual extortion as the case may be. All these are far from healthy in a society under the rule of law.

Fourthly, it is an established fact that homosexuality exists. If homosexual activities under certain circumstances are decriminalized in Hong Kong on basis of social needs, such legislation will set some bounds within which the Administration and the judiciary can have the necessary power to regulate the situation.

However, in the minds of many people in Hong Kong, the decriminalization of homosexuality is no different from the legalization of homosexuality and bisexuality. If homosexual acts are decriminalized, it will have repercussions on individuals, families and many sectors of the community. According to public opinion,

homosexuality or bisexuality will at least give rise to six evils which are accompanied by a whole host of further troubles or hazards.

Firstly, both homosexuality and bisexuality are perverse behaviours which are stigmas that tarnish the normal development of one's personality and behaviour.

Secondly, judging by Chinese moral standards, homosexuality is not only a weird deviant behaviour but also an objectionable behaviour which corrupts ethics and proprieties.

Thirdly, homosexual and bisexual behaviour may be a threat to marriage life and have adverse effects on children.

Fourthly, "legalization" of homosexual acts or proclaiming by law that such acts are no longer a criminal offence will result in double standards in the existing institution of marriage thus reducing sexual relationship to chaos.

Fifthly, in the long run the extreme cases of homosexuality will disrupt family units and cause disputes over the right of succession.

Sixthly, there is more and more evidence provided by the medical profession to substantiate the belief that homosexuality will result in an increase in the incidence of AIDS. Unless there are effective preventive measures and remedies for the disease, such a way of sexual contact is an invisible killer, posing threats to individual and public health.

Sir, there are established facts and reasons to justify the holding of a debate on whether homosexual acts should be decriminalized. However, public opinion in Hong Kong convinces me that homosexual behaviour is not readily acceptable to our community. Laws are made for the community but not meant for any particular individuals. There is no need to accord legal approval to homosexual acts which are purely "private affairs", nor to proclaim by law that such acts are not to be interfered with. We should "leave homosexuality to its own devices". There are relevant criminal laws against nuisances caused to another, soliciting for an immoral purpose, assault or battery on the person of another and blackmail. Therefore, if I have to cast a vote on the issue at the conclusion of today's debate, I will vote against the motion on the basis of objective views and my own analysis. I will not support the motion.

MR. HUI (in Cantonese): Sir, in 1983, the Law Reform Commission put forward a recommendation to decriminalize homosexual acts committed in private by consenting adults. This extremely important and controversial issue has since remained outstanding mainly because there are not many advocates and the view held by the Government and the Law Reform Commission has never commanded the support of the majority of Hong Kong people. However, the Government has not given up any single opportunity to press for the matter. Realizing that the introduction of the Hong Kong Bill of Rights Bill may provide a chance to create conflicts among the opposition groups, the Government insists on conducting a motion debate today, disregarding the majority view in this Council that the time is not yet ripe for decriminalization. This clearly demonstrates that in order to safeguard the interests of a minority group and for the sake of administrative convenience, the Government is ready to sacrifice the moral standard of our predominately Chinese community and jeopardize the physical and mental development of our younger generation. I find this kind of mentality most regrettable.

As for this motion debate, I think we must weigh carefully the pros and cons of decriminalization. The fact is that by offering legal protection to the human rights and freedom of a minority group, that is, the homosexuals, we will sacrifice our traditional moral standard and allow the physical and mental development of our youth to be seriously undermined by the untoward consequences that may arise. Moreover, we have to take into account whether all homosexuals actually need such legal protection before they can engage in their activities in private. Could the Government not adopt other more positive remedial measures instead of resorting to this negative approach of amending the law? In this regard, I would like to bring up the following points:

(1) It is beyond doubt that under the principle of equality of all men before the law, the rights and freedom of the minority should also be protected. However, we have to bear in mind that human beings are capable of performing very destructive and unnatural acts at any time, and that the general public, the youngsters in particular, may not be mature enough in their thinking and cognizance to allow our society to be so liberal as to accept the so-called "deviant behaviour" of the minority. We, therefore, cannot but have certain reservations on this principle.

However, I am sure we need not worry that we will be in conflict with the future Hong Kong Bill of Rights if we object to the motion today. It is because,

as suggested by the white Bill, Article 14 of the Bill of Rights may provide a basis for intervention -- "no one may be subjected to an interference with his privacy, family, home or correspondence unless the law permits the interference for good reasons." We do not want to discriminate against the homosexuals or to interfere with their private lives. But in order to uphold the moral standard of our society and protect our youngsters from undesirable influences, it is only appropriate that the law should step in.

(2) I wonder whether we are putting too much emphasis on protecting the rights and freedom of the minority, so much so that the traditional moral standard of our community continues to fall. As the Honourable Stephen CHEONG has pointed out, incest like homosexuality is committed in private by a small number of people. If we believe that everyone can be accountable for his own actions without regard to social ethics, then there is a possibility that following the decriminalization of homosexual acts, there will come the demand for the decriminalization of incest, dealing yet another blow to our moral standard.

(3) As a matter of fact, although the proposed amendment only gives protection to "homosexual acts conducted in private by two consenting adults", some ill consequences which are hard to control will inevitably arise. An innate homosexual once confided to me that while he welcomed such a long-awaited legal protection, he was, possessed as he is of a pristine sense of rectitude, worried that some homosexuals, being able to practise homosexuality legally without any restraint, would try to induce curious adults who were not homosexual-orientated as well as immature youngsters who were willing to sell their bodies for material gains to "consent" to performing homosexual acts with them in private. We should think about these people who may be victimized due to a slip of their minds, as one single try will cast a shadow over their whole lives.

(4) Furthermore, since we have to deploy considerable social resources in promoting civic and environmental protection education so as to keep in line with the political development during and after the transitional period and the environmental improvement work which will be carried out in the long term, we have to think carefully whether we are still able to deploy adequate resources immediately after amending the law to impart the right concept about sex to the younger generation and to promote anti-homosexuality publicity and education programmes, bearing in mind that our social resources are always stretched to their limits, and that our youth problem is getting so complicated that it has already become a big headache for our

social workers.

(5) According to the experience of other countries, AIDS spreads faster in places where homosexual acts are legalized. In recent years, the Hong Kong Government has been putting in a lot of effort to educate the public on the prevention of AIDS with a view to containing the spread of the disease. To decriminalize homosexual acts now will go against the Government's original policy, and result in a waste of effort and public funds.

(6) The wording of today's motion exposes the weakness and diffidence of the Government in handling this issue. First, the meaning of the word "consent" is far from clear. It will definitely make it more difficult for the police to take action against homosexual acts which involve commercial deals or committed under coercion. Second, it is the intention of the Government to extend to men and boys the protection from sexual exploitation afforded by the Protection of Women and Juveniles Ordinance. This demonstrates that the Administration lacks the confidence and ability to curb the proliferation of commercial homosexual activities after homosexual acts are decriminalized. This is what we are most worried about.

(7) Prompted by the "one country, two systems" concept, Hong Kong people are trying hard to maintain a different social, political and economic system from that of mainland China; but in fact it is possible for us to narrow the gap between the two Chinese communities in the areas of moral standard and social culture. Although the criminal law of China does not contain any specific provisions on homosexuality, the arbitrary decriminalization of homosexual acts by the Hong Kong Government will create obstacles towards achieving the above goal, as the Chinese in these two places are not liberal or mature enough to accept homosexuality after all.

To sum up, I am of the view that if it is the intention of the Government to decriminalize "homosexual acts committed in private by consenting adults", it is of course very easy to amend the legislation concerned. But by so doing, we may have to suffer irretrievable losses in terms of our moral standard and social resources, and may seriously undermine the physical and mental development of our youth. If my honourable colleagues believe that amending the law will not lead to any ill consequences or that the Government will be more than capable of dealing with them, I shall have nothing to say but to remind them that we must be responsible for what we have said here today.

If the Government is really concerned about the interests of the homosexuals,

I wonder why since 1983 it has never seriously considered other alternatives to tackle the problem apart from blindly relying on introducing legislative amendment. For instance, the Government may provide counselling service to the acquired homosexuals to help them get out of the circle to which they actually do not belong; it may also introduce a registration scheme similar to the "Triad Renunciation Scheme" to provide a kind of safeguard for the homosexuals, and then offer appropriate assistance in accordance with the different needs of innate and acquired homosexuals. So far the Government has not been able to produce a full picture about homosexual activities in Hong Kong and this is already a serious breach of duty.

Finally, I would like to stress that I am sympathetic with the homosexuals. However, being a professional social worker, I must stick to a conviction, which is, everything can be changed, and will change for the better. I therefore urge the Government to take more positive measures before amending the legislation. Should anyone accuse me of being conservative and backward, or even acting in contradiction with the social workers' objective to safeguard human rights and freedom, I am prepared to accept it because I care for our younger generation and their physical and mental development far more than anything else.

Sir, with these remarks, I strongly oppose the motion.

MR. MARTIN LEE: Sir, in moving this motion before this Council today, the Government in essence is saying that it is no longer appropriate for it to decide unilaterally on difficult issues such as this, and it is requesting this Council to decide on the matter instead. This is a clear example of the Government's recognition of the desirability of consulting Members of this Council formally and publicly so that any Bill ultimately proposed to this Council is more likely to reflect Members' views on the issue in question.

Such a change in approach is long overdue. Recently in the consultation over the Bill of Rights, we have seen how much meaningful advice could be and was offered to the Government through such pre-drafting consultation. As a result of the extensive ad hoc group meetings -- which were open to the public -- the many written reports submitted, and the wide-ranging debate held in this Council, the Government now has a clear idea as to what the Bill of Rights must contain if it is to be acceptable to this Council and to the public.

Further, the entire consultation process on the Bill of Rights served as a vital public education exercise. Dozens of groups from across the political spectrum participated in the process, and everyone who was interested in the Bill had the opportunity to make representations on it. This open process contrasts sharply with the usual procedure of not allowing the public to know about or comment upon a piece of legislation until a completed Bill has formally been approved by the Executive Council and is a *fait accompli*. Such a procedure runs directly contrary to the stated aim of the Government of cultivating civic awareness among the people of Hong Kong. Sir, how can we ask our citizens to participate in public affairs and contribute to discussions of public policy if the Government and this Council shut our doors and refuse them any access to the law-making process?

Indeed, Sir, Hong Kong is no longer a place for the Government to draft Bills in private and then to have its appointed legislature rubber-stamp those Bills without any public comment or participation. Next year, we will have the first ever democratic elections to this Council. In addition, though this point is arguable given the type of functional constituency seats the Government has chosen, 1991 will for the first time see a legislature in which government appointees and officials are no longer in the majority.

Hence, the Government must begin to make the legislative process a more democratic one in which members of the public and their representatives in the legislature will be able to make their views known and to discuss potential legislation with the Government. Clearly, the time for such consultation is not after a Bill has been approved by the Executive Council, for to present such a finalized Bill to the Legislative Council without having publicly discussed the issue beforehand could lead to unnecessary confrontation. For the time for exchange of views must come before the drafting of the Bill when compromises are most easily reached. Such an exchange of views does not necessarily have to be with the entire Council; for it would often be more appropriate for a particular panel or ad hoc group to hold public hearings on important issues and invite the Administration officials or private experts to discuss potential legislation.

The opening up of the legislative process to the public is a critical step both in making this Council and the Executive more accountable to the public. Currently, far too many important policy decisions are taken behind the closed doors of the Legislative Council In-House, and sometimes votes are taken as well. We are supposed to represent the public, and yet we refuse to allow the public to know where we stand

on issues. Because the public does not know in which way we vote individually, we are not accountable to the public for our votes.

An excellent example of the lack of openness and accountability of this Council and the Administration was the recent decision not to lower the voting age to 18.

HIS EXCELLENCY THE PRESIDENT: Mr. LEE, I am afraid I have to interrupt you for a moment. We have very liberal rules in this Council, but you are meant to be speaking on the motion, please.

MR. MARTIN LEE: I am going to speak on it, Sir.

HIS EXCELLENCY THE PRESIDENT: Thank you.

MR. MARTIN LEE: The Administration ought to have put forward a motion similar to the one we have today, asking Members if measures should be presented to this Council to lower the voting age to 18. If the Administration had done so, we would have had a full-fledged discussion on the issue and members of the public would have been invited to air their views. Instead, the issue was decided behind the closed doors of the Legislative Council In-House, and members of the public had no opportunity to learn Members' views or to know who voted for or against the change.

On the question before us today, I will support the motion, but I will not repeat at length the arguments that have already been voiced in this Council today and elsewhere. In particular, I am much impressed by the logical and persuasive speeches by both the Chief Secretary and the Attorney General in defending human rights. I look forward to hearing them speak with equal conviction on the abolition of capital punishment which is passed every time a person is convicted of murder but is never carried out and the abolition of other laws which clearly offend against the International Covenant on Civil and Political Rights and the forthcoming Bill of Rights Bill such as using a loud hailer in a public place without the prior consent of the Commissioner of Police or raising donations in a public place without the prior consent of the Director of Social Welfare. Sir, in brief, I believe that the present law under which adults can be imprisoned for life for a private, consensual act is

not appropriate. Many people in the community may strongly disapprove of homosexual acts between consenting adults but that is not sufficient justification for retaining harsh criminal penalties or any penalty for such acts. For this same reason, the Catholic Church in Hong Kong has taken the position that although homosexuality between consenting adults is immoral, it should not remain a crime for which the state ought to punish people.

Indeed, there are many acts which members of the community may strongly condemn -- such as infidelity to one's spouse or dishonesty with one's friends -- but it will not be right for the state to impose penalties on them. As to the issue of AIDS, there is no evidence to show that criminally penalizing homosexuality will prevent the spread of the disease, especially since such criminal penalties will often prevent people from receiving counselling, testing, or education.

Sir, for the above reasons, I support the motion, and I look forward to future motions in which this Council or committees of this Council will have the opportunity to discuss policy matters in public before the requisite legislation is drafted.

MRS. TAM (in Cantonese): Sir, the motion before this Council today is most contentious and it is difficult to decide either for or against. We have to balance our personal moral judgment against the present state of development of society and then make a decision. Having regard to my personal moral values I find it difficult to agree that homosexual behaviour is an acceptable form of sexual expression.

However, in the course of deliberation, I have adverted to the trend of social development and the actuality of circumstances. Some of the factors that call for special consideration are: the general respect and support society is giving to human rights; the enforcement and efficacy of the existing legislation on homosexual behaviour and the implications the reform of homosexual law will have on the protection of young persons.

Considering these factors in an objective light, I have finally decided to support the motion put forward by the Administration. Yet there are three areas which I would like to lay special emphasis on:

1. Homosexuality is abnormal behaviour which goes against natural human conduct. For religious and moral reasons, I can never accept or support such behaviour.

Homosexuality should not be approved by law without reservations. To remove criminal penalties relating to homosexual acts committed in private by consenting men who have reached the age of 21 is an expression of respect society has for the freedom of choice implicit in individual behaviour, subject, of course, to the behaviour in question being neither harmful nor prejudicial to another or to the community.

2. The public should be given a clear message and made to understand that the proposal regarding decriminalization of homosexuality is not equivalent to legalization and that the interests of young people should continue to be safeguarded.

The decriminalization of homosexual acts subject to qualifications such as age, consent of the participants and the place where the act takes place, does not mean that such behaviour will be totally accepted and approved under the law. Suitable measures should continue to be provided by way of legislation for the protection of young persons.

The Administration should further enhance young persons' awareness of the protection they are entitled to under the law. This is to ensure that they will not be seduced or driven, out of curiosity, into homosexual acts.

3. The reform of homosexual law may give rise to other problems.

New problems affecting the traditional institution of family and marriage may arise as a result of removal of criminal penalties against homosexual behaviour. Although at present we are unable yet to prove the direct bearing of the one on the other, it is imperative that we be made aware of the cost which, to a certain extent, will be unavoidable if the law to be amended is controversial in point of moral or ethical values and the pros and cons of such a reform, as argued by the critics, are finely balanced. One possibility which cannot be totally neglected is that our institution of family and marriage may more easily be threatened upon reform of homosexual law.

One final point I would like to add is with regard to the competent age of consent under the law and whether it should be the same as the general age of majority. I consider applying a uniform age of majority a reasonable step in the long run. I still hope that the existing inconsistencies in regard to the age of majority can, in the end, be reconciled.

To conclude, Sir, to respect the heightened awareness of society in general of human rights values and having regard to the difficulty encountered in enforcing the existing legislation against homosexuality, I think the motion deserves a vote of support. This is on condition that the interests of young persons will not be threatened and that they will continue to be protected under the law against sexual abuse or exploitation by others to engage in sexual crimes. With these remarks, I support the motion based on the reasons above.

MR. ANDREW WONG (in Cantonese): Sir, I rise to speak in support of the motion moved by the Honourable Sir David FORD.

The consultation exercise in respect of decriminalization of homosexuality has been a drawn-out process which extended well over two years; it is time that it be now brought to a close. The exercise started in June 1988 when the Government published a document entitled Homosexual Offences: Should the Law be Changed? -- a Consultation Paper. Although the consultation paper sets out three options, namely, (1) a change to the existing law, (2) no change to the existing law, and (3) reduction of penalties, yet the whole purport of the paper, together with the original arguments advanced and conclusions drawn by the Law Reform Commission, has driven home the point that the law as it stands has already far exceeded the role the criminal law is designed for in a free society.

Allow me to quote a couple of cogent passages from the paper which will best express the arguments I am to advance in support of the motion:

Paragraph 13 of the paper, citing the Wolfenden Report, had this to say --

"In recommending that homosexual behaviour between consenting adults in private should no longer be a criminal offence, the Wolfenden Committee commented that this sphere of crime should not be confused with moral or religious views on sin. Matters of private morality should not, in the Committee's view, be the law's concern. It was argued that it is important to respect the individual's freedom of choice in matters of private morality and to recognize that in such matters the mature individual can be expected to bear responsibility for his own actions without the threat of punishment from the law."

Paragraph 16 of the paper quoted a Law Lord as saying in a case before the House

of Lords --

"I read the Act (an Act of Parliament which deals with homosexual offences -- the subject of today's motion before Council) as saying that, even though it may be corrupting (which is a question of morality), if people choose to corrupt themselves in this way that is their affair and the law will not interfere. But no licence is given to others to encourage the practice."

Sir, I could go on and on to explain the relationship between morality and the criminal law. But I only have limited time. So instead, allow me to quote from Chapter 22 of the Gospel According to St. Matthew --

"Then the Pharisees went away and agreed on a plan to trap Jesus in his own words. Some of their followers were sent to him in company with men of Herod's party. They said, 'Master, you are an honest man, we know; you teach in all honesty the way of life that God requires, truckling to no man, whoever he may be. Give us your ruling on this: are we or are we not permitted to pay taxes to the Roman Emperor?' Jesus was aware of their malicious intention and said to them, 'You hypocrites! Why are you trying to catch me out? Show me the money in which the tax is paid.' They handed him a silver piece. Jesus asked, 'Whose head is this, and whose inscription?' 'Caesar's', they replied. He said to them, 'Then pay Caesar what is due to Caesar, and pay God what is due to God.'"

It is hard to tell where the boundary of morality ends and the criminal law begins; the same observation could also be made of religion and politics. Yet somehow a boundary must be drawn otherwise politics and religion will get blurred at the edges, overlap and then merge into one, just as what it had been like during the Dark Ages of the west or the feudal times of China. All this will lead to authoritarianism and tyranny which will in turn tear at and completely destroy the fabric of a free society.

Sir, those who are most articulate in the defence of morality would do well to hear the following parable from Shuo Fu Bian of Lie Zi --

Jin Wen Gong led his forces on an expedition against the State of Wei.

Gong Zi Chu, raising his head to the sky, let out a guffaw.

Gong asked, "Why are you laughing?"

Chu said, "My neighbour who was accompanying his wife to her parents' home met a mulberry-growing woman on the way. He took a fancy to the woman and chatted her up. Looking round, he saw someone else was likewise making passes at his wife. This is what I was laughing at."

Gong took the cue and called off the expedition. Even before his forces arrived back at base, forces from another state were already invading his northern borders.

Sir, today I attack others; tomorrow others will attack me. Today, with crusading zeal, I pillory and punish homosexuals. Tomorrow, in the name of morality -- arbitrarily invoked though it may be -- others will attack us for being dissidents either in word or deed or both. Do we want to get convicted and go to jail for holding a dissident view? Do we want to get convicted and go to jail for having unchaste intentions derived from horse-racing (gambling) or dancing? Are we to be convicted and jailed for failure to make revolution or for lack of patriotic fervour? Could this be a tomorrow we are looking forward to?

Sir, I support the motion.

MR. ARCULLI: Sir, may I take this opportunity to commend the Administration for giving this Council the opportunity to discuss what is obviously a controversial subject that has generated one heated debate after another since the Law Reform Commission was asked in 1980 to consider whether laws regarding homosexuality should be changed.

There are several aspects of the motion before the Council today that I would like to speak on. But before I do that, Sir, may I firstly make a few comments. I have said on a number of occasions that my colleague, the Honourable Stephen CHEONG, would have made an extremely persuasive and powerful advocate because he can certainly stand an argument on its head. In referring to example such as incest, he has obviously sidestepped those key words referred to by the Honourable Attorney General when he referred to the Wolfenden Committee and emphasized the words "public order and decency". The example of incest would offend, in my view, the word "public decency". Secondly, Sir, may I also commend my learned colleague, the Honourable Martin LEE, for a masterful sidestepping of Standing Orders. (Laughter) Back to the context of

what I wish to say, Sir. Firstly, in my view the motion does not seem to provide us with a full picture of the legal and social consequences of any change in the existing law. It seems to conform with the second of three options proposed in the 1988 consultation paper issued by the Government. However, it is not clear whether the nine offences listed in Appendix A of that paper as being offences to be retained will form part of any change in the existing law. Likewise, although the second part of the motion calls for the extension of protection to both men and boys from sexual exploitation given to women and girls by the Crimes Ordinance, yet no details have been given as to the extent of such protection. Indeed, whether the protective measures set out in Appendix B of the 1988 consultation paper will be applied to men and boys is unclear. I believe it will be helpful to Members if the Honourable Chief Secretary were to give us a firm indication as to the current thinking of the Administration before we vote on the motion.

Another aspect that I want to draw Members' attention to is that the motion does not deal with the existing offence of buggery. At present the law prohibits buggery, consensual or not, whether the participants are male or female, and the maximum penalty is life imprisonment. Indeed as recently as 28 May 1990 in the case of *R. v. Young* the Court of Appeal in England held that consent was not a relevant factor in the offence of buggery. In that case the defendant was sentenced to four years' imprisonment which was reduced to 18 months by the Court of Appeal. Therefore, even a man committing buggery on his consenting wife would be guilty of an offence. The Law Reform Commission recommended at page 136 of its 1983 report that "heterosexual buggery of a consenting woman in private should not be an offence after she has attained the age of 16 years", meaning that the law should no longer prohibit any fully consensual sexual conduct in private between a man and woman where both are over 16 years old.

The 1988 consultation paper did not raise the matter but reference in Appendix A to non-consensual buggery and buggery with a girl under 16 as offences to be retained might be misunderstood so as to imply that consensual buggery as outlined by the Law Reform Commission may be permissible. Sir, I am not advocating that this Council can decide on this issue today but again it would be helpful if the Honourable Chief Secretary could deal with an apparent disparity in this regard. This is particularly when Option Two of the 1988 paper does not deal with what the law ought to be as to consensual buggery between a man and a woman. Does the Administration intend for it to continue to be an offence? I believe Members should be given more information so that we know what we will be voting on.

A third issue which I believe also warrants my honourable colleagues' attention is the Government's employment policy towards homosexuals. A civil service circular dated 5 January 1982 to the Hong Kong Civil Service states that no known homosexual should be appointed, irrespective of rank or grade, and that a serving officer if convicted of a homosexual offence faced immediate dismissal. This policy was found unacceptable by the Law Reform Commission which said in its report, and I quote, "male homosexuality creates no greater risk to security than to most other forms of conduct which, whatever the state of the law, an individual wishes to keep secret, whether it be adultery, alcoholism, gambling, or an illegitimate child. Equally, women are as susceptible as men to pressures brought about by the threat of disclosures of this nature". The Commission also said that "if the present policy is retained, the vulnerability to blackmail and the risk of security breaches will persist to some extent among homosexual employees of Government". I would be grateful once again if the Honourable Chief Secretary would inform Members whether this policy would continue to stand and, if so, whether it would be reviewed in the light of any proposal to decriminalize consensual homosexual acts.

Sir, my reason for raising these issues is based on the belief that the rationale of the proposal to decriminalize consensual homosexual acts in private between adults lies in the intention that inequalities in the law regarding homosexual acts should be removed. Is it right that homosexuals, whether men or women, should be discriminated against for their behaviour which is not tolerated by the law simply because most of us are heterosexuals? Is it fair and satisfactory that their sexual proclivities could be seized upon as an opportunity by others to commit more serious crimes such as blackmail, corruption or bribery?

Sir, the Law Reform Commission estimated seven years ago that the population of homosexual, including both men and women, would amount to as many as 500 000 among all nationalities and in all walks of life in Hong Kong. If this estimate remains accurate, it would mean that close to 10% of our citizens, or perhaps more, fall into this category. It is therefore rather unsatisfactory that such a significant minority of our community, who may be otherwise law-abiding citizens, have to fear prosecution day in and day out for their homosexual acts, which if conducted consensually in private do no harm to other people. Whilst I agree that we should try our best to preserve and strengthen the communal life of the family, I believe a balance should be and could be struck between maintaining our moral values and protecting the right of every citizen, homosexual or not, to respect for his private

life.

Sir, subject to my earlier comments, I support the motion.

MR. BARROW: Sir, I arrived back from Europe this afternoon just in time to hear on the car radio the Chief Secretary's wide ranging persuasive speech in support of his motion and having since heard the remarks of other Members, there is really nothing to add.

The concerns expressed by some Members are understood but I do feel that it is both impractical and unrealistic to leave matters as they are, particularly taking into account the forthcoming Bill of Rights, and I therefore support decriminalization.

Finally, on one specific point made by the Honourable HUI Yin-fat, I cannot see the logic of his concerns that decriminalization might make the excellent work of the police in containing commercial vice more difficult. And possibly the Chief Secretary might like to comment on that point later.

With these words, Sir, I support the motion.

MR. PAUL CHENG: Sir, so far, we have seen that there are two basic "camps" in the argument for and against decriminalization of homosexual acts conducted by two consenting adults in private. There are those of us who have analysed the motion from the point of view that emphasizes protection for the rights of the individual. There are others who have analysed the same motion from the perspective of protection against corrupting the morals of our community.

It is important that we look at this issue with both Part (a) and Part (b) of the motion in mind. For it is in Part (b) that we can find an answer for those of us raising such questions as those raised by my honourable colleague HUI Yin-fat. It seems to me that I am hearing real worry over the possibility that a large number of "closet homosexuals" are going to come out in the open soliciting sex on our streets and committing sexual aggression. Yet, Part (b) of today's motion is designed to afford the same protection from sexual exploitation to boys and men as is currently the case for girls and women.

Some have said that by removing the criminal penalties relating to consensual homosexual acts in private, we will see a rise in the spread of AIDS. I support another view. I believe decriminalizing these acts will remove a deterrent to possible AIDS carriers coming forward for medical testing and help. Moreover, it is just not true that "AIDS is most rife in countries where homosexuality is legal". Statistics refute this.

Although I can agree with the moral and religious argument against homosexuality, I do not agree that, as a consequence, consensual homosexual acts committed in private should stay within the realm of criminal law. I am not advocating something which will in turn permit an individual to corrupt the minds of young people or to offend the sensibilities of others. I am endorsing legislation which acknowledges the logicity of decriminalizing an act that takes place in private by two consenting adults.

About a decade ago, a homosexual by the name of Dudgeon who was living in Northern Ireland invoked the European Convention on Human Rights. At that time the law of Northern Ireland was not in line with that of England and Wales; British law does not deem homosexual acts to be a criminal offence so long as they take place in private between two consenting male adults over 21 years of age. Dudgeon argued that his right to respect for private life was infringed by the fact that homosexual conduct was punishable as a criminal offence. The European Court of Human Rights accepted his argument; thus, enabling the Government of Great Britain to bring Northern Ireland's law into line.

"..... the right to respect for private life ....." That is really what this debate is all about today.

High standards of governance of Hong Kong should embody the protection of individual rights so long as they do not infringe on public safety, social order, or national security. In other words, Government should work to protect the rights and freedoms of each person within the constraint that it protects the rights and freedom of all the people it serves. We supported this position as a legislative body just a short time ago during the draft Bill of Rights debate. To decide to make homosexuality an exception to this position that we supported just a few weeks ago is unjust and illogical.

It is worth repeating: legislation should whenever possible protect "the right to respect for private life". We must admit the fact that we cannot legislate morality. Law cannot control private behaviour by the very fact that behaviour in private is not visible to the public. We only make a mockery of law when we try.

The law as it currently stands is next to being impossible to enforce. The Government Security Branch points out that most homosexual acts taking place in private never come to light. This is because enforcement of the law against such acts would require enormous police resources and a complete disregard for an individual's right to privacy. The result is that we have an unenforceable law which stimulates the disrespect for the law and the legal system. To avoid this, we must do our best to legislate measures that enable the exercise of individual rights restricted to the extent necessary for accommodating the rights of others.

Our debate today is not a battle over whether or not we should loosen morals. No, this is a battle over whether or not we will protect the right of individual privacy. Government has the responsibility of ensuring public safety and social order. That should not extend to interference with personal and individual activities which are not adversely influencing the public order. To decriminalize an act that takes place in private with the mutual consent of the adult parties is not a step to loosen morals; it is a step to support the integrity of the law.

With these remarks, Sir, I support the motion.

4.36 pm

HIS EXCELLENCY THE PRESIDENT: There are still a number of Members who wish to speak on the motion. Members might like a short break at this point.

5.01 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

MR. DAVID CHEUNG: Sir, first of all, I would have to ask my colleagues to bear with me as I shall be slightly long-winded today.

Before I proceed, I would like to quote some definitions on homosexuality.

Dr. Ernest WHITE, an English psychiatrist, defines homosexuality as "a form of deviation characterized by the attraction of a man or a woman to members of the same sex accompanied by sexual behaviour."

Dr. Irving BIEBER, an American psychiatrist well-known for his research into homosexuality, defines it as "a pathological, bisexual, psychosexual adaptation consequent to pervasive fear surrounding the expression of heterosexual impulses."

Dr. Charles SOCARIDES, another well-known American psychiatrist, defines a homosexual as "an individual who engages repetitively in sexual relation with a partner of the same sex or experiences the recurrent desire to do so."

According to these definitions, homosexuality is deviant, pathological and a form of sexual behaviour which is repetitive and recurrent. It is definitely against the natural order of the universe and the course of humanity. Should we, as a legislature, openly sanction or endorse behaviour which is deviant, pathological and unnatural?

People favour decriminalization of sexuality on the basis of human rights. Sexual preference, to them, is the right of every individual and, therefore, should not be interfered with, not even by law.

The Government is very astute in putting forward this motion immediately after the motion on the Bill of Rights has been carried. As much as I support the Bill of Rights, I did argue in the motion debate that the Bill must not be seen as an insurance or a protective umbrella for wrongdoings. From whatever angle we look at the issue, the right a person has does not give him/her the right to do what is wrong or socially unacceptable, even in private.

It is indeed a pity that the concept of right and wrong has become increasingly blurred in society these days. Human indulgence, moral decline and degeneration have changed the once black and white areas into grey ones, resulting in rights and wrongs becoming more difficult to define and categorize. We must be firm and assertive in deciding what is right and wrong. Under no circumstances should it be muddled.

The single most powerful argument for decriminalization is that it is a private matter between two consenting adults. Privacy is strongly emphasized. Private morality should therefore not be the law's concern. Both the Chief Secretary and

the Attorney General, and many of my honourable colleagues have explained it very clearly. While I respect and support privacy, adulthood and consent, I cannot see how privacy can change the nature of the act. If the nature of the act itself is wrong or unacceptable, if it is an offence to commit it in public, the fact that it is done in private does not necessarily make it right. Can society accept two consenting adults who engage themselves in under-table dealings in firearms, one willing to buy, the other willing to sell? Dealing in firearms will not be the same in nature with homosexuality, but my point is that privacy does not make a wrong thing right. Besides, whatever is done by people, even in private, has strong social implications. No one can be absolved from social responsibilities. We may be like islands but we live in a common sea. Our lives touch one another in different ways and we may have to forego certain desire of our own for the good of society as a whole.

Public opinions in Hong Kong do not favour decriminalization, nor homosexuality. Fourteen district boards have voiced their opposition; the two surveys done by Commercial Radio Hong Kong reflected the majority opposing decriminalization; the Breakthrough Organization's survey reviewed that the majority feared that decriminalization would bring bad social effects to the Hong Kong community. In the seventies in America, a poll done by a well-known magazine Medical Aspects of Human Sexuality showed that of the 2 500 psychiatrists interviewed, 70% indicated that they believed that homosexuality represented an abnormal sexual adaptation. Even the professionals hold such a view. The criminal laws replaced should therefore reflect the broad moral values of the community. The law exists to protect the vast majority.

If a homosexual act in private between two consenting adults is decriminalized, it would open the flood gates leading to what I call "unimaginable consequences".

First, what is hidden at present will be made open. The value and life style of a minority group would be disseminated through society. Not only that, it is rather obvious that if adolescents are exposed to a homosexual life style or are effectively influenced by those who are themselves homosexuals, then this may affect the young people's sexual orientation and have long-term damaging effects on the youths.

My honourable colleagues who support the motion have expressed their fears along these lines. Though the Law Reform Commission say that decriminalization does not necessarily imply legal approval, to the young minds, what is the difference? It will pass a deadly-wrong-yet-straight-forward message to our youths that such acts

are acceptable to society and therefore can be practised. All they have to do is to wait till they are 21. They might fight for 21 to be reduced to 18. Furthermore, by decriminalization, Government is also contradicting itself. On the one hand, Government encourages more moral and proper sex education to be done in schools but, on the other, encourages permissiveness of the homosexual act.

Dr. John A. HOWARD, a university president in the United States said:

"We cannot continue to operate a society on the assumption that there are no ultimate truths and wrongs to guide the lives of people and to be taught faithfully to each new generation of children. The consequences of the relativistic view that has prevailed mock us in many quarters."

Second, the flood gate of possible very damaging opportunities will also be opened. Dr. J. W. McCORMICK, a Canadian psychiatrist, in abstaining himself from supporting the amendment to Ontario's Human Right Code (Bill 7) making sexual orientation a prohibited ground for discrimination, argues that by doing so, the Government of Ontario

"has left open the opportunity for serious attempts to secure rights for homosexual persons to marry one another, claiming spousal status for tax and social benefits purposes, inherit a partner's property upon intestacy and most importantly, to seek society's consent to their begetting, adopting and raising children within the setting of a homosexual relationship between the parenting adults. I do not believe that such attempts, if successful, would be in the best interest of our society as a whole."

Do we want to leave such opportunities open? Decriminalization may not lead to it immediately but, it is always possible in the future.

Sir, the issue of AIDS. Though AIDS is not solely the result of homosexual activities which we all agree, it is nevertheless widely attested that homosexuality is closely related to the spread of AIDS which seriously affects public health. Do we want AIDS to spread or be it not solely because of decriminalization?

By opposing decriminalization, I am not unconcerned about homosexuals. Neither will I condemn them. As individuals, they contribute to society like everybody else. To put them in prison is no solution either. I am against decriminalization because

I want a clear moral standard backed up by legal constraints to be maintained. This will give a clear message to society that homosexuality is not an acceptable form of behaviour from society's point of view. It will also prevent the flood gate from being opened which might lead to all kinds of undesirable possibilities.

Sir, I would like to propose here that homosexuals should be encouraged to seek psychotherapy. For those who are willing, criminal charges should be waived as we try to encourage people with triad background to come out to clear their record. Many people argue that sexual orientation cannot be changed or shifted. In the Government's consultative paper, it also states that there is no immediate cure for homosexuality. I do not think this is true. Again I would like to quote Dr. Charles SOCARIDES again. He wrote to the prestigious American Handbook of Psychiatry and said:

"to assume that homosexuality is experientially derived means that once the anxiety which originally caused the inhibition of development and the later appearance of homosexuality is removed through suitable psychological measures, the attainment of heterosexuality and heterosexual love is possible. This has been verified in approximately one-third to one-half of all such patients who were motivated to undergo depth therapy and to seek change."

There are other doctors who also write about possible changes. They are Drs. Lawrence HATTERER, a Dutch doctor Gerard van Den AARDWEG, Leanne PAYNE and Colin COOK. This shows that people with homosexual inclinations can be helped on condition that they are willing and become motivated.

To conclude, I wish to say I support the option to maintain homosexual acts in private between two consenting adults as criminal offence but the penalties should be reduced. An all-out publicity campaign should be mounted to encourage homosexuals to come out to seek help so as to change their sexual orientation. For those who deliberately choose to practise homosexual behaviour, which, according to the previously listed definitions, is deviant, pathological, abnormal and unnatural, I find it hard to sympathize with them.

Finally, as a Christian, I would like to say if we ever believe that there is in the universe a supernatural being who is in full control not only of the universe and also of the destiny of humanity, we must not elicit the wrath of such a supernatural being by doing what is not acceptable to him. If I am labelled as a conservative or even an ultra-conservative, so be it. I would rather be called a conservative

than to have my hands in the opening of the flood gate which will lead to unimaginable, uncontrollable consequences.

With these remarks, Sir, I strongly oppose the motion, but I would urge that part (a) and part (b) be voted on separately.

MR. CHOW (in Cantonese): Sir, 10 years ago, the Law Reform Commission proposed decriminalizing homosexual acts committed in private between two consenting male adults. It is only until today that this Council be given a chance to debate on this issue. Hong Kong has experienced a great deal of changes over the past decade, but all along I have been in support of the above-mentioned proposal put forward by the Law Reform Commission. It is hoped that the public would also support the recommendation of decriminalizing homosexual acts.

Some people, owing to inborn or acquired factors, have developed certain behaviour patterns or habits which are different from those of the majority. Some people hold the chopsticks with their left hands when eating while most people use their right hands to do so; some people like homosexual activities but the majority prefer heterosexuality. Consequently, our society considers that the former is abnormal and unnatural and that only the majority's behaviour is normal. The question is, should we ban certain types of the so-called abnormal behaviour simply having regard to social preference? What are the criteria for such a ban? If we really need such a ban, what measures should be taken to enforce it? Should we use the moral approach or the legal approach? Under what circumstances should the legal approach be adopted?

Let us come back to the example of the left-handed chopstick users. When parents discovered that their children hold the chopsticks with their left hands in the course of learning, some would take no action at all. Some would persuade them to change to the right hand and some would use their own chopsticks to hit the children on their left hands without warning, but obviously they would not chop off their children's left hands! However, according to the existing law, homosexuals are liable to a sentence of life imprisonment for buggery. What are the reasons for forbidding our children to become left-handed chopstick users? Why do we ban homosexual acts? What are the reasons for us to go even further to punish the homosexuals?

The theme of today's debate is not about whether we should give legal recognition

to homosexuality. Nor are we discussing whether homosexuality should be morally supported. The theme of the debate today is merely whether we should punish the men committing homosexual acts. Undoubtedly, we must draw up some criteria to decide what activities should be forbidden and punishable by our law. I can think of two categories. One type covers the acts of self destruction. The other type relates to activities which would have an extended impact on third parties. Of course, there is also the problem about the extent of the impact. Acts having an extended impact on third parties may directly infringe upon other people's rights and freedom. Such acts include murder, rape and so on. These activities may directly undermine the interest of other people or of society as a whole. The indiscriminate discharge of untreated pollutants is an example. There are some acts which may have indirect impacts on others and make other people uncomfortable. Streaking is an example. Only the last type of activities may be related to moral values. The Law Reform Commission's recommendation is in support of banning and punishing those having homosexual activities in public. The question is, do homosexual acts in private between two male adults have any indirect effect on others? Of course, one may argue that homosexual activities between two men in private are against his moral values and that any knowledge of such would make him feel very disgusted and uncomfortable. However, should we punish the people concerned just because of this indirect impact on others? I know that some natives of the Shandong Province like to eat deep fried scorpions and cicadas. This kind of so-called "food" send cold shivers down one's spine with mere imagination of it. But should our law ban this preference just because it has indirect effects on us?

Up till now, I still fail to find any valid rationale for imposing lawful penalties against those engaged in homosexual activities. Most people would relate their arguments to Chinese moral concepts. Even though I admit that homosexual activities contravene the moral values of our society today, I cannot agree to imposing legal sanctions against homosexuals. It is against our moral values to have pre-marital sex and adultery, and our moral education encourages showing respect for the elderly and teachers. Nevertheless, violation of these moral norms should not be punishable by law. The assertion that the present-day Chinese moral concepts are against homosexuality is very questionable, as homosexuality is not a crime in mainland China and Taiwan, the two largest Chinese communities in the world. As early as the 1930s, the criminal code of the Republic of China had already so provided. Homosexuality is not a rare phenomenon. Opinions differ as to whether such activities are immoral or not. Scholars pointed out that according to Chinese classics, homosexuality was found as early as in ancient China. Incidents of such were recorded in the books

of the Shang Dynasty. This means that homosexuality had existed in China 3 000 years ago. Stories concerning homosexuality included "sharing a peach" in the Spring and Autumn Period and the Warring States, and "cutting off a sleeve" involving Emperor Ai of the Han Dynasty. It is known that homosexuality was very popular in the Sui and Tang Dynasties, some even claim that Emperor Tai Zong of the Tang Dynasty was a homosexual too. Homosexuality has existed in major Chinese communities for a long time, and it has not been regarded as a crime. It is doubtful as to whether one could say that homosexuality is immoral. I even suspect that only the Chinese in Hong Kong today are morally against homosexuality and regard it as illegal. Such a situation could be attributed to Britain's forcible occupation of Hong Kong. In 1865, legislations concerning homosexuality were enacted in Hong Kong in accordance with the British criteria. In the light of the decriminalization of homosexual acts in the United Kingdom (England, Wales and Scotland) in 1967, 1980 and 1982, attempts were made to apply these revised standards to Hong Kong. Nevertheless, objections were raised on the grounds that they are against Chinese moral concepts. In recalling, after the Manchus had toppled the Ming Dynasty, the Han people were forced to have their foreheads shaved and keep pig-tails. Those who resisted would be beheaded. But after the Qing Dynasty was overthrown and in the early years of the Republic of China, people were reluctant to cut off their pig-tails. In some places, people were not willing to cut off their braids until a bowl of noodles was awarded to anyone who agreed to do so. Undeniably, morality does exist and has immense influence. Nevertheless, whether a particular moral concept is reasonable or not is subject to discussion in the light of the changing environments and will not remain unchanged for 50 years. Some have pointed out that homosexuality is the major culprit in the spreading of AIDS. But I must say this is an unfair criticism. We should know that AIDS, like other venereal diseases, spreads through sexual contact. The carrier of the virus, whether he be a homosexual or heterosexual, may pass it on to his partner through sexual contact. Were we to contain the spread of AIDS, we might perhaps have to ban all sexual behaviour. Therefore, those who roar against the decriminalization of homosexual acts today should be glad that they are not born homosexuals. If our laws are to punish those who are born to be the so-called "criminals", I wonder whether it is their misfortune or the misfortune of our self-claimed civilized, rule-by-law society!

Sir, with these remarks, I support the motion.

MRS. FONG: Sir, the homosexuality issue is very much more delicate and complex than

it appears at first sight. The problem is not just one of law. It is an issue about which there are very major public sentiments.

Before I start, let me say that I consider homosexuality to be part of human behaviour. I also consider that every person may have homosexual tendencies, in varying degrees, during the various stages of their lives. The tendencies may be very minor and unnoticeable, even by the persons who have them, or they may be recognized and suppressed. However, in some cases the tendency may be so strong that the person who has it is driven to homosexual acts. The fact is that homosexuality has existed throughout the centuries and in all parts of the world, despite generally broad-based moral condemnation.

I fail to see why homosexual acts committed in private by consenting adults should be considered as criminal offences. If the act does not bring harm to anyone, who then are we trying to protect? My concern in respect to homosexual acts focuses very strongly on the issue of whether anyone gets hurt. In doing so, it is tied strongly to three issues, namely:

- First, that the removal of criminal penalties for specific homosexual acts should not imply legal approval or public acceptance of those acts;
- Second, that homosexuality is such a complicated issue from many points of view, including the psychological and emotional aspects, that I question whether age 21 is sufficient for a person to be capable of deciding on their actions;
- Third, how can one determine whether there was consent? Will persons who were harmed ever come forward to challenge their aggressors and risk exposure and potential marginalization by the community.

In my opinion, when sexual acts take place, homosexual or otherwise, and when no consent has been given by one party, the victim is in almost every case the loser. Even if the victim has sufficient courage to bring the case to court, the victim is further victimized through cross examinations, exposing his or her private life, even possible irrelevant aspects, with the objective of discrediting him or her. The result is that the person suffers over and over again through the entire trial and thereafter. Nothing is gained by the victim other than to see justice being upheld and to avoid the aggressor similarly abusing others.

Accordingly, I believe that while we go forward with legislation on the issue of decriminalization of certain homosexual acts, we should focus on how cases of alleged sexual offences, homosexual or otherwise, could be handled to avoid the victim either not bringing charges due to the inevitable negative exposure, or the victim's life being strongly damaged in the course of a trial conducted along the lines trials are conducted today.

Sir, with these remarks, I support the motion.

MRS. LAU (in Cantonese): Sir, the decriminalization of homosexual acts is a very complicated and controversial issue. Views from various sectors of the community are divergent on the issue. Those for and those against the issue are holding different arguments and points backed up by their own rationale.

The arguments for and against the decriminalization of homosexual acts are basically a choice between morality and legal considerations. From the moral standpoint, the decriminalization may induce more people to engage in such sexual activities out of curiosity and may make people even more confused about social and moral concepts of right and wrong, thus causing serious repercussion to social ethics. From a legal point of view, existing legislation governing homosexual acts committed in private is difficult to enforce. Homosexual acts committed between two consenting men in private are difficult to detect because there is no third party involved and both parties commit the acts on a voluntary basis. Such offences are rarely detected. Even if prosecutions are made against the offenders, sentences given by the courts have been lenient. Viewed from a legal perspective, it is doubtful whether these laws which are difficult to enforce in practical terms are still worth keeping. Such being the case, there is no need for homosexual acts committed between two consenting men in private to continue to be criminal offences if these acts do not result in any harm to others. Moreover, lesbian activities among women have all along not been prohibited by laws. Under the premise of equality between men and women, the relevant legislation should be amended correspondingly and this type of homosexual behaviour should be decriminalized.

Sir, after careful consideration, I support the principle of removing criminal penalties for homosexual acts committed between two consenting male adults in private. However, I still have misgivings about the impact on moral values brought by the decriminalization of these homosexual acts. I have always disapproved of

homosexuality because our community has never been able to accept such perversion which is against human nature. I worry that the decriminalization of homosexual acts committed in private may give rise to a misleading concept among members of the public, in particular the immature young people. I therefore believe that the Government should, before the decriminalization, inculcate in the minds of the general public, in particular our young people, a correct concept of sexual orientation by means of education so that they will understand that decriminalization of homosexual acts does not mean the legalization of such behaviour nor consent nor encouragement from our community towards such behaviour lest some people may attempt homosexual acts in a fit of curiosity or in pursuit of excitement.

Apart from sex education, I am of the view that heavier penalties should be imposed for non-private and non-consensual homosexual behaviour. For instance, the existing penalty of two years' imprisonment for an act of gross sexual indecency between two men committed not in private or an act of encouraging other people to take part in homosexual activities of similar nature is too lenient and should be increased. The purpose is to make clear that, though decriminalization of homosexual behaviour committed in private has been supported, it does not imply that the law approves of such perversions.

Sir, up to the present moment, the medical profession has not yet come to an affirmed conclusion on whether homosexuality is an incurable illness. Some people regard homosexuality as an inborn behaviour problem while some people consider it a psychological state affected by external factors. Whether homosexuality is inborn or acquired, there is no reason from a legal point of view that it should be dealt with by criminal law. This is one of the reasons that I am in support of the decriminalization of homosexual acts.

Inborn physiological problems may be incurable, but there is medical evidence to substantiate that homosexual orientation developed from acquired psychological factors may be overcome. Although the course of medical treatment is difficult, there are successful cases of this kind. I therefore suggest that while proposing the decriminalization of certain homosexual acts, the Government should provide psychological counselling service for the homosexuals. In this way, those who are homosexually orientated because of acquired psychological factors will have a proper way to rectify their deviant behaviour and the public will come to know that homosexuality is a pathological and deviant behaviour which requires medical treatment. A correct concept of homosexuality will then be established.

Sir, another area of concern is that the decriminalization of homosexual acts may facilitate the spread of AIDS which has been closely associated with homosexuality, thus posing a threat to public health. Analysis on existing AIDS cases and AIDS carriers in Hong Kong indicates that homosexuals account for a considerable proportion of the AIDS victims. This indication does cause fear among people that decriminalization of homosexual acts may expedite the spread of AIDS. This may not necessarily be so, but as long as there is such a risk, we should take stringent preventive measures. The Administration has to pay attention to this issue and take proper steps in order to prevent the disease from threatening public health.

Another misgiving arising from decriminalization of homosexual acts is that it may lead to an increase in prostitution activities among homosexual males and young people may be instigated to commit homosexual acts. The Government's proposal to extend the existing statutory protection on women and girls to men and boys in its measures to decriminalize homosexual acts is a desirable one.

Sir, though I support the decriminalization of homosexual acts committed between adults in private, I believe there is a need for the Government to inculcate a correct attitude towards homosexuality in the minds of the general public to avoid undermining social morals and public health. Any inopportune measures to decriminalize such perverse sexual acts before the public acquire a correct attitude towards homosexuality will definitely have undesirable effects and the consequence can be very serious. Therefore, the Administration should be very careful in its deliberation and adequate preparation should be made before any measure is taken to decriminalize homosexual acts.

Sir, with these remarks, I support the motion.

DR. LEONG: Sir, since it is the tenth to tell a story, allow me to start off with a love story which dated back to some 2 000 years ago.

It was not an ordinary story but a love story.

It happened in the Han Dynasty which was one of the most glorious and prosperous periods of Chinese civilization.

Emperor Ai ( ) was in love with Dong Xian ( ). His lover was not a woman, it

was a man -- a "male concubine". One night, the duo were resting together. In the dead of the night, the emperor intended to get up, apparently to obey the call of nature. However, one of his long sleeves was caught under the back of his partner who was soundly asleep. In order not to upset Dong's dream -- the partner's dream, the emperor decided to cut off his sleeve, sacrificed his gown and got up after cutting the sleeve.

It was a gesture of tender loving care on the part of the emperor which few members of the fair sex would not envy and if not for the fact that his lover was a man, this story could certainly be one of the greatest love stories ever told in human history.

Sir, I am not trying to suggest to you and my honourable colleagues that I am an admirer of homosexuality. Nor is it my intention to demonstrate to you how two males could really be attracted to one another. But it only shows that homosexuality is not a modernday invention and was as prevalent in the East as well as in the West.

Let us look at the issue of homosexuality from a medical standpoint. I would like to pose three basic questions:

- (a) Is homosexuality a disease?
- (b) What is the relationship between homosexuality and some transmittable diseases?
- (c) What is the standpoint of the medical profession in relation to the existing law?

Is homosexuality a disease?

Our psychiatrist colleagues have told us that homosexuality per se is only a variation of sexual orientation and not a disease. Notice that I have used the word "variation" and not "deviation" as deviation of a sexual orientation has a moral connotation. I have also not used the term "abnormal sexual orientation" as such would have both moralistic as well as medical and mental overtones.

As early as 1973, the American Psychiatric Association deleted homosexuality per se from its Statistic Manual of Mental Disorders. In 1981, the Parliamentary Assembly of the Council of Europe passed a resolution recommending the World Health Organization to delete homosexuality from its International Classification of Diseases.

Many homosexuals are subjected to considerable stress as a result of strong disapproval from the general public, the condemnation of homosexuality by religious authority and certain draconian laws forcing these people to keep their sex lives secret. They are in fear of likely discrimination in employment and ostracism by relatives.

Homosexuals who attempted to escape into marriage, while allowing themselves occasional encounter or anonymous indulgence with prostitutes or strangers, are in particular danger of being blackmailed, prosecuted or physically assaulted. It is also a well-known motive for suicide.

Since homosexuality is not a disease but a variant of normality, should these unfortunate afflicted suffer all these harassment?

What is the relationship between homosexuality and some transmittable diseases?

Sir, I would like to spend some time on the relationship between homosexuality and AIDS and the decriminalization of homosexual acts.

As a start, statistics have shown that there is probably as much or more heterosexual transmission of AIDS world-wide as there is homosexual transmission. This is especially obvious in Africa and Haiti where the major mode of spread of this deadly disease is from men to women and women to men.

Even though homosexual acts are causes of AIDS, it is most misleading to argue that a law which makes homosexuality a crime can protect the public against the spread of AIDS.

AIDS is not about sexual preference but about sexual practices. The crucial distinction is not between homosexual and heterosexual sex but between safe and unsafe sexual practices.

It should be clear that a law which makes homosexuality a crime cannot be relied upon to encourage safer sexual practices among heterosexuals.

The most effective way of controlling this disease is through education.

Certain sections of the present law are indeed out of touch with time.

I do admit that the current law against homosexual acts has successfully protected the public from being offended by what they consider to be immoral and abnormal. But one particularly worrying phenomenon is that it encourages homosexuals to keep their sexuality secret and any diseases in them to themselves.

The task of making sure that those who most need this education get it could be made extremely difficult by a law which prevents open discussion about homosexuality and drives the homosexual community underground.

This is making almost anti-homosexual legislation that is detrimental to the control of the spread of AIDS. Frankly speaking, Sir, this piece of legislation is not a replacement for the condom in the spreading of AIDS.

The spread of AIDS is quite unrelated to the presence or absence of homosexual law.

It is obvious that homosexuals are more prone to various diseases related to their sexual activity, including AIDS. The problem is for us, the medical people, to help them. Insisting on the current law is definitely not a way to help. Decriminalization is more helpful and wiser.

Sir, there is no firm evidence to support that decriminalization is likely to result in serious untoward consequences in Hong Kong, socially or medically.

Historical and epidemiological studies on homosexuality available so far suggest that the condition is most likely a self-limiting one. The proportions of homosexuals in various societies have been found to be more or less the same, before or after decriminalization.

What then is the standpoint of the medical profession in relation to the existing law?

Sir, as the representative of the medical profession on this Council, I would like to draw your attention to the following position of the Hong Kong Medical Association which represents the profession:

1. Criminal penalties for homosexual acts in private between consenting adults should be removed. It is felt that the arm of the law should not interfere with the private sexual behaviour of adult individuals;
2. The present law discriminates against the male homosexuals, as female homosexual activities occurring in private are not punishable by law;
3. The word "abominable" should be dropped as it serves no useful purpose and only reflects a prejudicial attitude;
4. The punishment for buggery without consent should be the same as punishment for rape;
5. The punishment for indecent assault in homosexual acts should be the same as the punishment for indecent assault on females.

Sir, I want to emphasize here that the position of the Medical Association should in no way be taken to imply that we condone homosexual activities.

While we recognize that these activities, whether occurring in public or in private are abhorrent to most people, we, nevertheless, feel that the present law should be changed so that no particular injustice is done to a section of the population over whose sexual inclination they have no control.

Finally my honourable colleague, Mr. Jimmy McGREGOR, who is in Europe enjoying himself, has also asked me to say that he supports the proposal to decriminalize homosexual acts.

He also wishes me to indicate that he is not a homosexual himself despite his claimed undoubted good looks and gentle nature and also the occasional derogatory remarks hurled in his direction.

With these remarks, Sir, I support the motion.

MISS LEUNG (in Cantonese): Sir, with regard to the motion of the Chief Secretary, I feel that it is most worthwhile to first cite part of the preambles to the International Covenant on Civil and Political Rights and International Covenant on

Economic, Social and Cultural Rights as well as Article 17 of the former Covenant. Let us remind ourselves of a motion passed two weeks ago in support of the enactment of a Bill of Rights Ordinance.

The contents in common of the preambles to the two Covenants are as follows:

"The States Parties to the present Covenant

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved .....

Article 17 of the International Covenant on Civil and Political Rights is as follows:

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks."

Sir, under the current legislation, homosexual acts between two males in whatever circumstances will constitute a criminal act, irrespective of whether they are adults, or whether they consent to commit these acts in private. Since many males are having homosexual activities and committing such acts, many homosexuals are acting in contravention of the stringent law and are now regarded as criminals.

Apparently, grave and inexcusable sex discrimination is applied under existing legislation. Let us defer discussing the question of whether homosexual acts should constitute a crime or not. Why is it that homosexual acts between two males are regarded as a crime whilst lesbian acts between two females are not? Is it again

a question of moral values left over by history?

Since these stringent provisions are still valid in Hong Kong, the preambles of the above-mentioned Covenants as well as Article 17 of the International Covenant on Civil and Political Rights are quite meaningless to these homosexuals, or may even sound sheer nonsense to them. All along, their "inherent dignity and equal and inalienable rights" have not been fairly recognized. As for their rights which "derive from the inherent dignity of the human person", needless to say, there is only limited recognition. They cannot strive for the same degree of freedom as other human beings, nor can they enjoy the "freedom from fear and want". Furthermore, it is just because they are homosexuals that they are treated differently and their privacy can be "arbitrarily interfered" with and their honour and reputation "unlawfully attacked".

Sir, notwithstanding that most people are heterosexuals and there is only a small group of people who have homosexual inclinations, I consider that it is not necessary to proceed against, nor do we have the right to oppose, let alone penalize, these homosexuals. As long as they consent to have the homosexual acts done in private and they are adults, the majority should let them have their way and respect their behaviour. The majority's likes do not mean all people's likes. Hence, the majority's likes should not be imposed on all people. I firmly believe that every person has "inherent dignity" which should be recognized and respected by all others.

Sir, medical knowledge tells us that it is normal for some people to have sex inclination towards a member of their own sex. They have such inclination mainly because of their innate irresistible desire of a physiological and genetic origin. Of course, some homosexuals have acquired such inclination due to psychological factors. Furthermore, as revealed by medical knowledge, homosexuality is not a disease nor an illness. Dr. the Honourable LEONG Che-hung has just said that in every society, whether modern, old, western or Chinese, there are homosexuals. This is a fact that cannot be ignored.

Sir, it is well known that Hong Kong is an international city consisting mainly of Chinese. Some objections have been raised against today's motion of decriminalizing homosexual acts. The opponents maintain that such degenerating acts are imported from the west. Some have pointed out that such western abominations are definitely contrary to Chinese traditional values. It is apparent that such arguments cannot stand.

To our understanding, the true Chinese culture is probably the most tolerant among the world's cultures in its attitude towards homosexuality. In the past, there had never been any Chinese statute condemning homosexuality and no provision to the effect that such acts were criminal. Today, where Chinese culture holds sway, say, in mainland China, Taiwan, Korea and Japan, no criminality is attached to homosexuality.

In ancient China, records of homosexuality and homosexual acts could easily be found, not only in literary works but also in historical books. The accounts were rather explicit. The following three works bear testimony to this. In the Warring States Period, Xun Kuang in his philosophical works Xun Zi: Fei Xiang had the following narration: "Nowadays, nobles and high officials, or even rustic pedlars, are all wearing meretriciously beautiful clothes. Not only putting on women's dresses and ornaments, they also affected feminine manners, sentiments and emotions." In a historical book of the Northern and Southern Dynasties, that is, History of the Southern Dynasties: a biography of Xiao Shao, it was recorded that "when Shao was young, he was doted on by Yu Xin and they had "torn-sleeve" (homosexual) love". Further, in Yu Tai Xin Yong, a collection of poetic works of the Liang Dynasty, there was a poem describing the "catamite" of Xiao Gang, King Jian Wen. "Catamite" means the pretty male partner who took the female role during the commission of homosexual acts.

Sir, with these remarks, I support the motion and I urge the Government to take speedy action.

MRS. SO (in Cantonese): Sir, on the question of whether homosexual acts in private between male adults should be decriminalized, I think that we should first consider its impact on the development of behaviour pattern of the young people.

According to Chinese traditional values, though homosexual behaviour is not the most repugnant offence, it is obviously not in compliance with moral standards. Notwithstanding the fact that Hong Kong has developed into a cosmopolis and is open to European and American influences, the general public's attitude towards this issue contrasts greatly with that in the western countries. Whether from moral or religious viewpoint, the majority disapproves of such behaviour. Invariably, the arduous problem confronting us is how to ensure that the young people would not be coerced or induced into engaging themselves in homosexual acts in the face of an ever changing community.

In the consultation paper released by the Government in 1988, it is emphasized that the removal of criminal penalties for certain types of homosexual acts does not imply legal approval of those acts. Such acts will still be treated in the law as being "unlawful" and "immoral". However, it is doubtful whether such explanations based purely on legal viewpoints could be clearly understood by the general public.

For all the efforts of the Government in launching extensive publicity campaigns against AIDS in recent years, there are still misconceptions about the disease in the community. It is indeed a formidable task to make the general public, particularly the young people, understand that decriminalization of certain types of homosexual acts is in no sense equivalent to legalizing such acts. Even though other relevant legislation will be amended as proposed to enhance protection for young people under 21 years of age, once homosexual acts in private between male adults are decriminalized by law, it may blur young people's conception of this issue. The amendments to the laws may thus be misinterpreted by young people as legalizing homosexual acts. They may therefore become curious about it and more vulnerable to evil temptations. It would go contrary to the original intention of protecting young people.

Though the existing provisions on homosexuality have never been strictly enforced, they should be retained in order to ensure that the law is in line with moral values of the community. Nonetheless, penalties can be reduced.

Sir, with these remarks and as a Christian, I oppose the motion.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: It is now six o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be completed.

Question proposed, put and agreed to.

MR. SIT (in Cantonese): Originally I did not intend to speak. But after listening to my honourable colleagues' comments on homosexuality, I would like to share some of my views with them.

We know that there is a very venomous invective, namely, "You beast in clothes" in common use among the Chinese. Why would we use such an invective again another? It is because we believe that human beings are superior to and more advanced than other animals. We can feel joy, laugh, cry but beasts cannot. Human beings, as primates, are the paragon of animals. But are there homosexual activities among animals? My biology knowledge is limited to secondary level. I was not informed by books or my teacher that there were homosexual activities among animals because what my teacher perceived was heterosexual behaviour. Is homosexuality a desirable practice or against human nature? I believe homosexuality is indeed against nature. From the religious point of view, homosexuality is against God's purpose of creating men and women. We do sympathize with homosexuals. As Dr. LEONG said earlier on, homosexuals should not be regarded as sick people. If not, what are they? To protect the interests of the majority is the principle of legislation. The law is meant to punish and deter people who break it so as to maintain the purity of our community. If homosexuality is to be decriminalized, we will have to consider the possible impacts and repercussions on society and its mores. Given that prosecutions of homosexuals have been few and far between, why should we let the motion before Council pass just for the benefit of a small minority? It is known that human beings are the cleverest. We are much more advanced than other animals, and have invented many things. But today in this Chamber I have learnt a lesson that human beings not only excel animals in thinking, inventiveness and creativity but also in homosexuality. Now, I find it necessary to rephrase "You beast in clothes" because we are much worse than beasts. Or conversely, we are much more advanced than beasts because we have done something beasts dare not do. With these remarks, I am against decriminalization of homosexuality. Thank you, Sir.

MR. TIEN: Sir, this is a rather special type of debate, in which conviction and conscience are wholly in charge.

I have no difficulty in theory or in practice with the second proposition, that is, part (b) which seeks to ensure that men and boys, just like women and girls, are afforded full protection of the law -- as far as sexual exploitation is concerned. Nowadays, men and boys are equally vulnerable to sexual exploitation and above all

young boys can be lured by unscrupulous persons into sexual abuse and prostitution. Such a reform is long overdue.

Sir, but turning to (a), my attitude is very much more complex. I see here a distinction between what might be described as the moral or cultural aspects and the more evidently legal elements in the problem of males committing homosexual act.

What is normal and natural is the union of man and woman; in short I adhere to the traditional notion that heterosexual relations are the correct relations. I believe that this is the view of the overwhelming opinion of people everywhere in the world and especially Chinese attitudes in Hong Kong. The term "deviant" is and should be applied to homosexuality.

I particularly believe that Asian or oriental cultures are in broad terms unsympathetic, or even hostile to homosexual behaviour. I am very aware of course that in Asian history, especially Chinese and Japanese courts of the emperors, it is possible to discover examples of deviance. This cannot be denied. But in oriental cultures, there is an overwhelming hostility to this behaviour by the population as a whole.

It does not matter whether a person in the Chinese cultural tradition is rich or poor -- whether he is a worker at grass-roots level, a highly educated upper class professional or a multi-millionaire -- he is most likely to be unsympathetic to homosexual deviance. So, without knowing anything about the proposals before this Council today, the man or woman-in-the-street of Hong Kong will react adversely to suggestions to relax any laws about homosexuality.

It would be wrong to argue that rights for homosexuals are part and parcel of rights generally. In my view, the Bill of Rights is not relevant here. The Bill of Rights should be seen as a political document. Such matters as the "rights" of, say, drug dealers, gamblers and deviants should be excluded. The argument for so-called "gay rights" assumes that "gay" persons have a moral claim to public acceptance or approval.

I dispute this claim. It has not found favour in this region, for example in India, Singapore and Malaysia.

Asian societies have refused to go along with this line of development. "Gay

rights" can stay in San Francisco; we do not want it to be in Hong Kong.

"Gay rights" represents a scale of values which is out of harmony with our moral values. It is out of harmony with Asian cultures in their broad tradition, as well as their hope for their future well-being. I just do not see why we should inherit occidental prejudices in morality and culture.

Sir, today we are apparently being asked a narrow legal rather than a moral question. The case for decriminalizing homosexuality between consenting men over 21 years of age is a clear matter of expediency. What does the argument boil down to? The proposal simply argues this: "if you cannot effectively police it you should not regulate it". All because it is just not possible to control what goes on in private residences and because our judges, mostly non-Chinese, impose light penalty of only a few hundred dollars and a few months' imprisonment.

What the argument on narrow legality ignores, however, is that what goes on in private often spills over into the public arena. Thus homosexuality, if now permitted by law in private, may well lead to greater solicitation of young boys in public places. Legal acts often lead to illegal acts.

Let us also recall the recent case of a young boy who was accused of the murder of a man under circumstances which suggested sexual exploitation. Homosexual deviance has frequently also been associated with other crimes, such as blackmail. If the law were relaxed, these other crimes could well be on the increase.

I accept that although it is biology which has created the problem, yet in many cases, for example at boarding school, homosexuals have been made, not born to the condition. There are tragedies in this situation such as closet homosexuals, bisexuals and people whose sexual orientations are unclear even to themselves. I think the current law is correct as it stands.

Other laws, for example laws controlling drug-trafficking, gambling and crimes associated with prostitution, have not been very successfully policed either. No one can predict the consequences of the entry or the exit of the law into or out of moral and cultural matters.

I argue that morality is relative and what suits western habits in general does not necessarily suit eastern habits. The proposal before us today suggests a kind

of cultural imperialism. Because the trend in, say, the United States towns is for "gay rights", we should not blindly follow. We do not need to buy this particular export. It has not made for much in the way of social harmony in the United States and elsewhere. Families have suffered, society has ultimately also suffered. Many of my colleagues have mentioned the problem of AIDS caused by homosexuals.

Sir, if we accept this proposal, such a decision will send a wrong message to the people of Hong Kong. This would indicate some sort of approval of the idea, not the law, about this sensitive matter. People will not see the subtleties.

What we should say is that we do not wish to approve something when, in fact, we do not approve of it at all. For it is not just a question of "yes" or "no" to a rather ambiguous law. It is a question of whether the Hong Kong public will see this Council as condoning or encouraging something which it feels our people find overwhelmingly repugnant.

Sir, after having said all that, I do however see merit in a more realistic approach. By this I mean that we should not change the law but should consider reducing the maximum penalty of life imprisonment.

I support paragraph 49 of the consultation paper on this subject published in June 1988 and I quote "A middle course might be based on a partial acceptance of the case for change. Some people might conclude that a reduction in sentences might be the right balance. It would bring the law into line with the present policing practice and the pattern of sentencing by the courts while avoiding the undesirable consequences which might be associated with removal of the criminal penalties for homosexual acts in private between consenting adults".

Sir, with these remarks, I do not support proposal (a); but do accept proposal (b) in this motion.

MRS. TU: Sir, at this point in the debate there is very little left to be said; so my words would be very few. Those who are strongly against this motion should get down on their knees and say, "Thank God, I am not as other men who are born homosexuals." They are, indeed, fortunate not to be so afflicted. The measures proposed in the motion today will ease the pressures, including blackmail, on those who exercise their sexual preference with other consenting adults in private. These

measures also propose heavier penalties against those who pervert and exploit others whether the victims are young or old, male or female. I hope the proposed laws will be carried out more effectively than the present laws in order to protect our young people from exploitation. The privacy of the individual should be protected. At the same time the public must be protected from criminal activities. I believe the proposals today cover both these conditions and therefore I support the motion.

MR. PETER WONG: Sir, I have asked fellow accountants whether they have a view on homosexuality. The answer is that accountants as a whole are asexual and therefore I am permitted to express my own view this evening.

I am in agreement with the motion to decriminalize homosexual acts in private between consenting adults and accept the arguments put forward by the Law Reform Commission in 1983.

I note that the non-enforcement of the Ordinance against acts committed in private and the light sentences imposed in recent years on those who have been caught in public committing such acts have not at the time produced strong public outcry one might expect if they had outraged public perceptions. Certainly, I have not heard it in these chambers.

I find derisory the argument that homosexual love will destroy traditional family values. Surely, our traditional values are based on firmer foundations than that suggested, and I am confident that decriminalization should allow us to treat the problem with openness and humanity.

Times have changed since this crime came onto our statute books and in order to realize the principles of human rights, I feel that we should live and let live. Continuing to treat it as a crime certainly does not assist those born or caught up with such a problem.

I voted against the passage of the Age of Majority (Related Provisions) Ordinance 1990 because I found the arguments for retaining different ages for various acts unconvincing and illogical. Again, I find the argument that homosexual acts should be allowed for men of 21 and over to be illogical when 18 is considered to be old enough for almost everything else.

Sir, subject to this qualification, I support the motion.

SECRETARY FOR HEALTH AND WELFARE: Sir, the motion before us is in two parts. It is on decriminalization of homosexual acts and, of equal importance, on protection of young males from sex abuse and exploitation. I think these two parts are necessarily interlinked and must be viewed together. I shall attempt to examine these burning issues and hopefully, too, to thrash out the ashes of popular cliches in the process, from the health and social welfare perspective.

Some of the main arguments against and objections to decriminalization appear to come from the belief that it might lead to an explosion of homosexual activities, thereby destabilizing society; that it could in turn lead to the spread of the AIDS virus; and that lawmakers have a duty to protect the community from corrupting influences. These are, no doubt, genuine expressions of concern. The most striking thing to me about the turmoil of view is that the complexity of the issue could be easily and is often masked by the simplicity of perception, dogma and bigotry. However, the fact that we are prepared to debate this issue openly man-to-man, or shall I say woman-to-man, is something of a breakthrough for Hong Kong. I think we have come of age.

Although I am no expert myself, I am advised on good authority -- which authority supports my honourable friends Dr. C. H. LEONG's and Mr. Ronald CHOW's combined expert views on the subject -- that homosexual behaviour, like other patterns of human behaviour, is an interplay between genetic biological make-up and social environmental factors. Aetiological studies suggest that this sexuality could be both natural and/or nurtured; and is either ego-syntonic or ego-dystonic. There is no evidence to suggest that we can prevent homosexual behaviour merely by punishing it under the law, any more than we can prevent adultery by statutory penalty. Thus, if one liquidates the rhetoric of the objections raised, it is easy to see that the law is archaic. To take refuge behind the status quo is to escape reality and evade social responsibility.

Homosexual activities are often said to be associated with AIDS. It is true to say that AIDS is a global health problem and the virus is transmitted through sexual contact, blood contact and homosexuals are one of the high risk groups. Whilst homosexuals occupy a fair proportion of the reported cases, transmission takes place heterosexually as well, from male to female and also female to male. On expert

authority, I believe that it has been long known that AIDS can be acquired through heterosexual contact, and, indeed, it has been said that no virus can survive in evolution if transmitted only by homosexuals. In accordance with the World Health Organization recommendation, prevention of AIDS and reduction in the infection rate can be achieved through education and publicity and other measures to modify sexual behaviour. Homosexual activities per se are not believed to be responsible for spreading the disease, and it would be wrong to assume that the disease can be prevented by the mere existence of the law which is purported to punish homosexual acts.

Whilst decriminalization may not remove social stigma, it will enable practising homosexuals not to live in fear of blackmail and to come to terms with their own sexuality and with society.

However, I believe that it is of cardinal importance that decriminalization should not be mistaken as a move to condone offensive behaviour which is repugnant to the community. In this respect, I believe that the law should be consistent in its approach to males and females alike. To that extent, I would support any measure which introduces appropriate punishment for sexual offences arising from homosexual activities comparable to those arising from heterosexual activities; for example, exploitation, indecent assault and other sexual offences, particularly when such offences are committed against young persons.

Sir, with these remarks, I support the motion.

CHIEF SECRETARY: Sir, when I started this debate I said that this was a difficult subject for Members. But I must say listening to it I have not been conscious of that difficulty. I am most grateful to Members for the way in which they have spoken out fearlessly and with great conviction on their points of view. As has been said, I think it has been a most stimulating debate and will do much to enhance the credibility of this Council.

I cannot, Sir, in the short time available, respond to all the points that have been made, but I would like to select just a few by way of comment.

First, Mr. Stephen CHEONG, in a forceful and very convincing speech, made a number of points which, I think, cannot go uncommented upon. He made much of the comparison

between other sexual offences which would still remain criminal offences. But I think he misses the point that in those offences, for example incest, the primary reason of maintaining them as criminal offences is to protect the family and the members of the family. And that is a reasonable principle on which to maintain a criminal code. Of course, homosexual behaviour between consenting male adults in private does not affect the family relationship as I have described in my opening speech. He also suggested that now was not the right time -- I think that was echoed by Mr. Y.F. HUI -- and that the subject itself was not significant enough to deal with now -- the sort of attitude which says "Please do not bother to raise the subject; it is all too difficult and we do not want to discuss it at this time". Firstly, I am sure the 100 000-odd homosexuals in our community will not agree that it is not an important subject. They are being forced into criminal behaviour by the existing pattern of the law. And secondly, I think there is a wider issue which I touched on in my opening address, and that was that we are dealing with a matter of principle here -- a matter as to whether people's private moral behaviours should be sanctioned by the law.

Several Members introduced the concept that what we were doing was something imported from the west. Mr. Y.F. HUI and, most forcefully, Mr. James TIEN made the same point. They adduced in support of that the evidence that in India, Malaysia and Singapore homosexual acts are still criminal. I think it is a very interesting point that, firstly, in those countries the best evidence that we have is that the criminality has derived from their colonial tradition rather than any conscious decision made in recent times and that in our most obvious neighbours -- Japan, the Philippines, South Korea and the People's Republic of China -- there is no criminality of homosexuality in the law. So it is hardly a western concept. And in any event I think Hong Kong at this point in time should be able to make its own decision about how it imposes its own laws. We are a cosmopolitan society; we do not necessarily need to draw from either the east or the west in coming to a conclusion about what should be made criminal and what should not.

I am grateful to Mr. Martin LEE for his support, but in passing I might add that perhaps only Mr. LEE could discuss homosexuality in terms of the unacceptability of consenting adults deciding on legislation in private. (Laughter)

Mr. ARCULLI asked for three points of clarification. I will try, if I can, to deal with those although I do not think I can give him a complete answer on all of them. He asked firstly how we intended under part (b) of the motion to extend to

men and boys the protection from sexual exploitation which is presently afforded under the Crimes Ordinance. On that point I think I can give him reassurance that the Appendix B in the Law Reform Commission's report which covers this point would be the basis of our proposals brought forward to the Executive Council and subsequently to this Council to bring the law in line should we decriminalize homosexuality. I hope I can give him that reassurance.

Mr. ARCULLI also raised the question of heterosexual buggery and there the situation is that we again have a recommendation from the Law Reform Commission which is that it should be legalized provided that the woman consents, is over 16 and not a defective. And again I should add that it is our intention to bring forward proposals to that effect to the Executive Council and subsequently to this Council.

Mr. ARCULLI finally raised the point on the Civil Service Regulations which would appear to discriminate strongly against homosexuals. It would certainly be our intention to review that in the light of any decision made by this Council and subsequently.

Sir, I would like also to take up a couple of points made by Mr. Y.F. HUI and Mr. David CHEUNG about the protection of the young. They spoke very strongly that the young should be protected. I, of course, do not deny them the right to make their judgments on behalf of the young. They are in a position of some influence as far as the young are concerned. I would only draw attention to a survey the results of which were published in the South China Morning Post this morning which gave a very clear indication that the younger members of our community are very much in support of decriminalization. I suspect it results from a much more enlightened view of the problem and the difficulties created by our present criminal law than may be the case with some of the older members of the population.

Sir, I would like, in conclusion, just to say the key issues we are addressing today. I would like to clear a few points which have been made by other Members and I would like to stress them. A vote in favour of decriminalization does not signify that he who is so voting condones homosexual behaviour. A vote in favour simply signifies recognition that personal moral codes may differ and can co-exist in a society. Nor does a vote in favour signify approval; it signifies only recognition of an individual's right to personal acceptance. Nor does it signify the rightness or wrongness of such act, but only suggests whether such acts committed between consenting adults and in private merit the mobilization of the full machinery of law

enforcement.

Sir, I think we must accept that we cannot let time stand still on this issue. To suggest that we leave things as they are, which has been satisfactory, I suppose, in the minds of some for some years, ignores the reality, because if we vote today against this motion, we cannot ignore the law as it now stands. I made the point in my opening speech that we will have to take note of that; we will have to redeploy the police and other personnel in the task of investigation and the gathering of evidence in the prosecution or trial of people who are committing the offence. This will mean that every allegation, regardless of who makes it or against whom it is levelled, will have to be pursued. And I think the seductive argument which was put forward by Mr. David CHEUNG and supported by Mr. TIEN that we could go to some halfway stage, so to speak, by retaining criminality but reducing the penalty of the offence misses that crucial point that we cannot stand still.

Sir, I do not believe that this community or the Members of this Council are ready to accept the invasion of privacy which would result from a "No" vote in this Council today.

Sir, I support the motion.

HIS EXCELLENCY THE PRESIDENT: Before I put the question I would like to comment on what one Member has suggested: he would wish to vote separately on the two parts. I have to say that that cannot be done unless there was an amendment to the motion but there has been no such amendment. So I will put the motion with both parts together.

Mr. CHEUNG, are you rising on a point of order?

MR. DAVID CHEUNG: Yes, Sir. May I request a division in voting?

HIS EXCELLENCY THE PRESIDENT: I think it is now too late to move an amendment because once the full cycle has been carried out a Member cannot speak again unless it is on a point of order. It is always open, of course, either to a Member to propose an amendment or for a Member, in speaking as at least one Member has done, to say

that he supports one part even though he does not support the whole. So I will put the motion as it stands on the Order Paper.

Question on the motion put.

The President said that he thought the Ayes had it.

MR. TIEN: Sir, I request a division.

HIS EXCELLENCY THE PRESIDENT: A Member has requested a division. I propose to allow a division. The Council will therefore divide. The Clerk will call out one by one the names of Members of the Council. You should say "Aye" if you are in favour of the motion, "No" if you are against the motion, or you may abstain from voting.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr. Allen LEE, Mr. CHEUNG Yan-lung, Miss Maria TAM, Mr. CHAN Ying-lun, Mrs. Rita FAN, Mr. Peter POON, Mr. CHENG Hon-kwan, Mr. Martin LEE, Mr. SZETO Wah, the Secretary for Security, Mrs. Rosanna TAM, Dr. Daniel TSE, Mr. Andrew WONG, the Secretary for Economic Services, Mr. Edward HO, Mr. Ronald ARCULLI, Mr. Martin BARROW, Mr. Paul CHENG, the Secretary for Health and Welfare, Mr. Ronald CHOW, Mrs. Nellie FONG, Mrs. Peggy LAM, Mrs. Miriam LAU, the Secretary for Education and Manpower, Dr. LEONG Che-hung, Miss LEUNG Wai-tung, Mrs. Elsie TU and Mr. Peter WONG voted for the motion.

Mr. Stephen CHEONG, Mr. CHUNG Pui-lam, Mr. HO Sai-chu, Mr. HUI Yin-fat, Mr. NGAI Shiu-kit, Mr. PANG Chun-hoi, Prof. POON Chung-kwong, Mr. Michael CHENG, Mr. David CHEUNG, Mr. Daniel LAM, Mr. Kingsley SIT, Mrs. SO CHAU Yim-ping and Mr. James TIEN voted against the motion.

The Secretary for Home Affairs, the Secretary for Planning, Environment and Lands, the Secretary for Transport, Mr. TAI Chin-wah, Mr. TAM Yiu-chung and Mr. LAU Wong-fat abstained.

The President announced that there were 31 votes in support of the motion, 13 votes against it and six abstentions. He declared that the motion was carried.

RADIATION ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE moved the following motion:

"That the following regulations, made by the Radiation Board on 8 June 1990, be approved --

(a) Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1990; and

(b) Radiation (Control of Radioactive Substances) (Amendment) Regulations 1990."

She said: Sir, I move the resolution standing in my name on the Order Paper in respect of the Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1990 and the Radiation (Control of Radioactive Substances) (Amendment) Regulations 1990.

Section 13(1) of the Radiation Ordinance empowers the Radiation Board to make regulations subject to the approval of the Legislative Council. Many of the amendments to the regulations in this current exercise are technical in nature.

Following the recent increase in the level of fines for offences under the Radiation Ordinance approved by this Council, the two sets of amendment regulations seek to introduce a three-fold increase in the level of fines for various offences under the regulations. These fines have not been revised since the regulations came into force in 1965 because the number of offences prosecuted was very small. However, we consider it necessary to increase the fines in order to maintain their deterrent effect.

Under the Radiation (Control of Irradiating Apparatus) (Amendment) Regulations 1990, regulation 2 seeks to update the existing terminology and definitions which are considered out-moded. These include changing the term "dental X-ray machine" to "dental irradiating apparatus" and the reference of "maximum permissible dose" to "dose-equivalent limit", introducing the terms "diagnostic irradiating apparatus" and "therapeutic irradiating apparatus" and defining these new terms in accordance with internationally accepted standards.

Regulation 7 amends regulation 17 to extend the offences of licensees in relation to the improper use of protective materials and safety practices in case of irradiating apparatus to all persons so as to ensure that these provisions could be enforced to provide the necessary protection from radiation hazards irrespective of whether a licence is in force. In practice, the Radiation Board has at times found

it difficult to identify the licensee in enforcing this regulation when a licence is either not renewed or is in the process of being applied for.

Regulation 8 updates and spells out explicitly filtration requirements for dental and diagnostic irradiating apparatus and limits on radiation leakage rates from the protective housing of X-ray tubes. These specifications are in accordance with internationally accepted standards.

Regulation 8 also seeks to repeal regulation 20 which is inconsistent with provisions in the principal Ordinance. Regulation 20 was enacted in 1970 with an intention to prohibit the manufacture, sale or possession of any television set which emits ionizing radiation at a rate exceeding 130 nanocoulombs per kilogram per hour or the equivalent of five microsieverts per hour. However, sections 2 and 7 in the principal Ordinance when taken together will imply that any person who wishes to manufacture, sell or possess such television sets may apply to the Radiation Board for a licence. The board is of the view that such inconsistencies should be removed and in the light of sufficient controls over such equipments in the principal Ordinance, regulation 20 should be repealed.

Under the Radiation (Control of Radioactive Substances) (Amendment) Regulations 1990, amendments are introduced to repeal an outdated definition of "vessel" and to substitute the term "maximum permissible dose" by the new term "dose-equivalent limit" as proposed in the Radiation (Control of Irradiating Apparatus) (Amendment) Regulations.

In addition, the regulations seek to repeal regulation 7(6) which currently prohibits the carrying of passengers in vehicles or vessels which are at the same time conveying radioactive substances and requires that such substances be placed in a separate compartment from the crew. These provisions are considered to be unrealistic when the radioactive substances conveyed at any one time are in small quantities and of very low radioactivity. Instead, the board feels that the existing permit arrangements under regulation 7(1) will provide the basis for more rational controls over the conveyance of radioactive substances on vehicles or vessels. Accordingly, the statutory requirement that radioactive substances should not be carried in the same vessel with other dangerous goods under regulation 7(7) is also removed. Appropriate conditions on the conveyance of radioactive substances on vehicles or vessels will however be imposed by the board in the issue of the permit.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

HANG LUNG BANK (ACQUISITION) (AMENDMENT) BILL 1990

CORPORAL PUNISHMENT (REPEAL) BILL 1990

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

HANG LUNG BANK (ACQUISITION) (AMENDMENT) BILL 1990

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Hang Lung Bank (Acquisition) Ordinance."

He said: Sir, I move that the Hang Lung Bank (Acquisition) (Amendment) Bill 1990 be read the Second time.

The purpose of the Bill is to amend the Hang Lung Bank (Acquisition) Ordinance so that the Hang Lung Bank, which has been sold by Government, can be put back on the same footing as other banks in the private sector. The Bill seeks to repeal a number of provisions relating to the management and control of the Bank by the Government because these provisions are no longer appropriate.

On the other hand, it is necessary to leave some existing provisions of the Ordinance intact. Of these, sections 6(3) to (5) provide for certain transactions to be disclaimed by the Bank if so directed by the Financial Secretary. It is in the public interest that such a right be preserved because Government has given the purchaser of the Bank certain indemnities and warranties in respect of liabilities incurred by the Bank before its acquisition by Government.

In addition, since there is a possibility that some rights to compensation conferred by sections 8(2) and (3) of the Ordinance would not be time-barred, the Bill also leaves these provisions intact, together with parts of section 9, which allows regulations relating to such compensation to be made.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

#### CORPORAL PUNISHMENT (REPEAL) BILL 1990

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to provide for the repeal of the Corporal Punishment Ordinance."

He said: Sir, I move that the Corporal Punishment (Repeal) Bill 1990 be read the Second time. The Bill seeks to repeal the Corporal Punishment Ordinance which gives the courts the power to award sentences of corporal punishment.

At present judicial corporal punishment may be imposed for a wide range of offences. In practice, the courts have used it very sparingly; in the last five years, corporal punishment has been awarded by the courts on only 23 occasions, and on no occasion so far in 1990. I believe that the courts consider that corporal punishment is unnecessary and outdated, and that there are other sentencing options available which better achieve the penal objectives of punishment, deterrence and rehabilitation.

That also is the view of the Administration following a review of the adequacy of alternative sentences and punishments available to the courts to deal with offenders, and in the light of the results of a public opinion survey which we commissioned from a private market research company. Although many members of the public support the retention of corporal punishment, most also consider that it is less effective as a punishment than imprisonment or other forms of punishment.

I would emphasize that the proposal to repeal the Corporal Punishment Ordinance does not represent a relaxation of our efforts in the fight against crime. We believe that there are more effective alternatives.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 8 November 1989

Question on Second Reading proposed.

MR. ARCULLI: Sir, the Judicial Service Commission (Amendment) Bill seeks to expand the membership of the Commission, to provide for an increase in the quorum and to provide that resolutions should be passed with no more than two dissenting votes. Having regard to the likely controversy and the representations of the legal profession, a Legislative Council ad hoc group was formed to study the Bill.

A number of issues are of concern to the legal profession as well as the Legislative Council ad hoc group. They are: the advice of the Judicial Service Commission; the Attorney General's membership on the Commission; the issue of quorum; the appointment of members of the legal profession as well as the number of dissenting votes permissible. The ad hoc group held a total of five meetings, including two with the Administration and one with the legal profession to discuss the issues.

After thorough deliberation, the Legislative Council ad hoc group has managed to satisfactorily resolved the differences between the Administration and the legal profession with the exception of the number of dissenting votes permissible in the making of a resolution.

The points on which there has been agreement are:

- (a) that the quorum shall be seven rather than six;
- (b) that membership of the Commission be expanded from six to nine;
- (c) that the appointment of a representative each from the Bar and the Law Society will be made by the Governor after consulting the Committee of the Bar Association and the Council of the Law Society.

This will be the subject matter of a first set of amendments that I shall be moving and indeed it has the support of the ad hoc group as well as the Legislative Council In-House. The unresolved issue of whether there should be one or two dissenting votes will be the subject of a second amendment to be moved by me as well.

Sir, according to a provision in the Joint Declaration, judges of the courts of the future Hong Kong Special Administrative Region (SAR) shall be appointed by the Chief Executive in accordance with the recommendations of an independent commission. The importance of the present Bill does not merely lie in the fact that the Judicial Service Commission advises the Governor in the appointment of judges before 1997, it is likely to form the basis of an independent commission in the future SAR which will by then, if not before, assume an executive role. With this in mind, I hope the changes that we propose today will help underline the independence of the judiciary.

Sir, with the above remarks and subject to Committee stage amendments, I support the Bill.

CHIEF SECRETARY: Sir, the Bill now before this Council is a revised version of a Bill which was first introduced in June 1988. As I explained in my speech on moving the Second Reading of this Bill, it already modifies the earlier Bill as a result of views exchanged with the legal profession at the suggestion of the ad hoc group on the first Bill.

Further discussions with the ad hoc group on the present Bill and, through the ad hoc group, with the legal profession have been carried out since this Bill was introduced. The outcome is reflected in Mr. ARCULLI's speech today. The main outstanding issues as he pointed out concern the number of members required to form a quorum; the mechanism whereby the Governor should consult the profession regarding the appointment of barrister and solicitor members of the Judicial Service Commission; and the number of dissenting votes to be allowed in making a recommendation. The Administration is quite prepared to accept the amendments to the Bill in respect of the first two matters.

As to the number of dissenting votes to be allowed mention has been made of the fact that resolutions of the Commission must at present be unanimous. This arrangement

can give rise to a situation in which a single member could veto a decision of the remainder. That is not a satisfactory situation, and the unanimity rule is felt to be unworkable in really difficult cases. It is our view that a substantial majority on the Commission should be able to prevail over the views of a minority and tender advice accordingly.

If, then, the principle of majority voting is accepted, Sir, the only question that remains is the size of the majority. The Government has always accepted that there should be a substantial majority. The Government's original proposal, contained in the Bill introduced in 1988, was for a two-thirds majority. The legal profession have argued that if the present requirement for unanimity is to be modified, it should be modified only to the extent of allowing resolutions to be passed with not more than one dissenting vote. That, Sir, simply does not go far enough towards the object of moving away from the present requirement for unanimity. Indeed, given that the membership of the Commission is to be expanded from six to nine members, it is hardly any improvement on the present situation.

The Bill will enable the Commission to tender advice provided that there are no more than two dissenting votes. Thus, if all nine members of the Commission are present, seven will have to agree before a resolution can be made effective. This limited move away from unanimous voting towards substantial majority voting is something which is needed now, and it will be even more necessary in the future. At present the Commission advises you, Sir, and you are not bound in law to accept its advice. In future, as has been pointed out by Mr. ARCULLI, the Governor, or after 1997 the Chief Executive, will be bound to accept the Commission's advice. That is because the Joint Declaration provides that "Judges of the HKSAR courts shall be appointed by the chief executive of the HKSAR acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons". That provision, Sir, is now reflected in the Basic Law. An extremely difficult situation could arise if the Commission were unable to pass effective resolutions. To adopt the "8 out of 9" voting formula which will be suggested by Mr. ARCULLI instead of the formula proposed in the Bill will increase the chances of that extremely difficult situation arising. It is our judgement that the formula proposed in the Bill meets our twin objectives of moving away from the unanimity rule, whilst retaining the requirement of a substantial majority.

With these remarks, Sir, I move that the Bill be read a Second time.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### LAWS (LOOSE-LEAF PUBLICATION) BILL 1990

Resumption of debate on Second Reading which was moved on 27 June 1990

Question on Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### BUILDINGS (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 27 June 1990

Question on Second Reading proposed.

MR. CHENG HON-KWAN: Given the highly complex geological conditions in some areas of the north-western New Territories, the Government is taking the right step to empower the Building Authority to tighten geotechnical control over building works in these areas. This is the purpose of introducing the Buildings (Amendment) Bill 1990 into this Council.

I agree that to ensure safe development of a site in such a geologically complex area, a good understanding of the geological features underlying the site is essential. It is therefore necessary to require submission of ground investigation plans for the approval of the Building Authority prior to commencement of ground investigation works. This is a procedure additional to what is required for normal building sites, hence extra time is required for such approval. As at the time of submission of such plans, no precise information is available and what is proposed in the submission is only presumed and subject to verification. Therefore, the Building Authority

should take a sensible approach and not cause unnecessary delay in processing the ground investigation plans. After all, the final investigation results will be given in the geotechnical report which will accompany the submission of the foundation plan at a later stage.

Although the Bill seeks to empower the Building Authority to require the submission of performance reviews of foundation works, I would remind him of the need to continue the performance reviews for a prolonged period until at least the superstructure is completed with a substantial portion of loads already imposed onto the foundation.

This amendment Bill, if enacted, will provide better control over the geotechnical aspects of building works in the karst marble area of the north-western New Territories.

Sir, I support the Bill.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).  
EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1990

Resumption of debate on Second Reading which was moved on 27 June 1990

Question on Second Reading proposed.

MR. TAM (in Cantonese): Sir, from my personal observation as a Member of the Legislative Council for the past few years, the legislative process of this Employment (Amendment) Bill has been, comparatively speaking, rather speedy, in the way consultation, drafting and enactment has been processed, as compared to the extremely slow progress of other Employment (Amendment) Bills.

On 3 July 1989, the authorities concerned consulted the Labour Advisory Board on the contents of this amendment Bill for the first time, and the Board was again consulted on 16 October 1989. Today, the Bill is to be scrutinized and passed in this Council. To say that the period of time spent is short is only partly true,

because one whole year has elapsed. However, it appears relatively short in comparison with the amendment process of amendment Bill on long service payment. Referring to the sequence of events the proposed amendment to improve the existing provisions on long service payment was first submitted to the Labour Advisory Board for consultation on 31 October 1988. It has, however, yet to be formally committed to the stage of drafting of the amendment Bill. There is still a long way to go for that Bill, and it is seemingly not within the foreseeable future that the amendment to long service payment can be passed in this Council.

While cherishing the hope that other amendments to the Employment Ordinance may also be passed speedily, the experience gained from the handling of this Employment (Amendment) Bill, however, would easily make people worry that the Government will again avail itself of the opportunity to introduce some policies to the detriment of the local workers' interest. A friend of mine from the trade union has pointed out to me that at its meeting on 29 May 1990 the Executive Council gave approval to the Employment (Amendment) (No. 2) Bill 1990, and on the same day it also made the decision on the relaxation of importation of labour. God knows whether it is a mere coincidence or a deliberate act. The big hammer of the relaxation of importation of labour and the carrot of an increase in the paid annual leave were laid before the eyes of all workers at the same time. It is bitterly terrifying to see that the big hammer has broken the workers' rice bowls. The carrot is hardly adequate to feed them well.

The authorities concerned may say that this trade union friend of mine is too mean and cynical in disputing the good intention behind these acts. Yet all these coincidences are too perfectly matched. The unexpected speedy enactment process seems to tie in with the decision of relaxation of importation of labour in time so that workers can be given a bit of consolation. Consolation is still after all consolation. We will not be carried away by the carrot.

Here are some of my comments on the contents of the amendment Bill:

To take the Bill at face value, the proposed amendments seem to increase the annual paid leave of the workers considerably. However, I must point out that owing to the proposals that the leave entitlement will be phased in and stringent requirements will be set for the qualifying period of service, workers will not be benefitted much by the scheme. So far as labour welfare is concerned, we are still unable to keep abreast with other areas of comparable level of development in Asia. According to

the amendment Bill, only those workers with nine years' service are entitled to 14 days' annual paid leave, but such entitlement will only come into effect by 1994, that is four years later; and workers have to complete a period of three years' service before they can get increased annual leave on the basis of seven days' annual paid leave. A survey of the situations in the so-called "three small dragons of newly industrialized countries" will show us how hard the workers in Hong Kong toil at their tasks, and also reveal the limitation of the proposed amendments.

Upon completion of one year's service, workers in Singapore at present are entitled to seven days' annual paid leave which will be increased by one day with each additional year of service, and they can earn up to a maximum of 14 days of annual paid leave. In Taiwan workers with one to two years' service are entitled to seven days' annual paid leave; for three to four years' service the leave entitlement is 10 days; for five to nine years' service it is 14 days; and for those with 10 years of service, each additional year of service can earn one more day of annual leave with a maximum entitlement of 30 days of annual paid leave. Upon completion of one year's service workers in South Korea are entitled to eight days' annual paid leave which will be increased by one day with each subsequent additional year of service.

Sir, in a speech delivered at the Second Reading of the Bill the Secretary for Education and Manpower claimed that the Administration strived to make local labour legislation compare favourably with the best standard of labour legislation in the region. Judging by the foregoing comparisons, local labour legislation is still a long way behind the standard legislations of the other "three small dragons"! Nevertheless, in regard to the slight improvement that this Bill may bring to the existing backward situation, I will support the passage of this Bill.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I would like to join Mr. TAM in expressing my thanks to honourable Members for the speed with which they have completed the examination of this important piece of legislation.

Mr. TAM raised three points and I would like to deal with each one of them.

As regards improving the eligibility of younger workers to long service payment, the Labour Advisory Board has endorsed certain proposals last April and drafting instructions for the legislative amendments to give effect to these proposals are now being finalized. All being well, I expect to introduce a Bill into this Council

next Session.

I am afraid Mr. TAM may have attributed far too Machiavellian a motive to the timing of the Executive Council's consideration of the Employment (Amendment) (No.2) Bill 1990 and the Government's proposal for importing labour. I can assure him that this was purely coincidental. That said, the Government is committed to a continuous programme of improvements in the employment conditions and proposals will continue to be made to the Labour Advisory Board and to this Council.

Finally, Sir, Mr. TAM mentioned that the proposed increase in paid annual leave still compares unfavourably with other countries in the Asia-Pacific Region. While it is true that Taiwan and South Korea provide for a little more than 14 days of paid annual leave for employees with over nine years of service, our proposal to provide 14 days paid annual leave for employees with nine years of service will, if accepted, place Hong Kong on all fours with Singapore and Taiwan.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bills

Council went into Committee.

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1989

Clauses 1 and 2

MR. ARCULLI: Sir, I move that clauses 1 and 2 be amended as set out on the first sheet of the paper circulated to Members.

Proposed amendments

Clause 1

That clause 1(1) be amended, by deleting "1989" and substituting "1990".

Clause 2

That clause 2(b) be amended, in proposed subsection (1)(c) by deleting "not more than".

That clause 2(c) be amended --

(a) in proposed subsection (1A) --

(i) by deleting "Chairman" and substituting "Bar Committee"; and

(ii) by deleting "President" and substituting "Council";

(b) in proposed subsection (1B) --

(i) by deleting "Chairman" and substituting "Bar Committee"; and

(ii) by deleting "President" and substituting "Council".

That clause 2(d) be amended --

(a) in proposed subsection (3) by deleting "5" and substituting "6"; and

(b) in proposed subsection (3A) by deleting paragraph (a).

That clause 2(e) be amended, in proposed subsection (5)(c) by deleting subparagraph (i).

Question on the amendments proposed, put and agreed to.

Clause 2

MR. ARCULLI: Sir, the Bill as at present drafted provides that a resolution may be carried even if there are two dissenting voices. In other words, a candidate can be appointed to the Bench even if representatives of both branches of the legal profession objected to the nomination. The question therefore is: Should an appointment that does not command the respect of the legal profession be made? The

same situation can arise if the Chief Justice and the Attorney General are opposed to the appointment. Can there be any doubt that the more support a candidate has, the more acceptable his appointment will be?

The ad hoc group is of the view that there is merit in the arguments put forward by the legal profession. Let us not forget that in the existing Ordinance, a resolution is carried only if it is passed by all members present. It will be moving too quickly from the existing rule of unanimity if two dissenting votes are allowed. Moreover, there seems to be no evidence to substantiate any concern that the legal profession has in any way abused the existing rights of veto. I myself am particularly concerned that if a candidate does not receive the support of two out of the following four members of the Commission, namely, the two representatives from the legal profession, the Chief Justice or the Attorney General he or she would nevertheless be appointed. The ad hoc group's recommendation was submitted to the Legislative Council In-House on 22 June 1990. The views of the Legislative Council In-House however were divided.

I regret that the ad hoc group has not been able to get the Administration to compromise on this issue. In view of the diverging views, it has been decided that the matter will be put to vote at Committee stage. My honourable colleagues will be requested to exercise their judgement on whether one or two dissenting votes should be allowed. Personally I am in favour of the ad hoc group's recommendation that only one dissenting vote should be permissible for the Commission to carry a resolution.

For the reasons I have given, I would respectfully ask my honourable colleagues to support these amendments.

Proposed amendments

Clause 2

That clause 2(d) be further amended, in proposed subsection (3A) --

- (a) in paragraph (b) by deleting "5" and substituting "6";
- (b) in paragraph (c) by deleting "6" and substituting "7";
- (c) in paragraph (d) by deleting "7" and substituting "8".

That clause 2(e) be further amended, in proposed subsection (5)(c) --

(a) in subparagraph (ii) by deleting "5" and substituting "6";

(b) in subparagraph (iii) by deleting "6" and substituting "7";

(c) in subparagraph (iv) by deleting "7" and substituting "8".

Question on the amendments proposed.

CHIEF SECRETARY: Sir, the further amendments to clauses 2(d) and 2(e) moved by Mr. ARCULLI, if accepted, as he has pointed out, would mean that resolutions of the Commission can only be passed if there is not more than one dissenting vote. In passing, Sir, I would make the point that the Administration has moved away from its original position in the Bill of a two-thirds majority to its present position. It is not true that we had no flexibility. We believe if there was one dissenting vote, that would put a power of veto too strongly in the hands of a very limited number of members of the Judicial Service Commission and does not go far enough towards the object of moving away from the present requirement for unanimity. I explained in my reply to the debate on the Second Reading why we considered it essential to move away from the unanimity rule, while retaining the requirement of a substantial majority. The formula proposed in the Bill meets these objectives. The amendments by Mr. ARCULLI do not.

Sir, I oppose the motion.

MR. MARTIN LEE: Sir, I am happy to defer to the Chief Secretary in the order of speeches, but I will not defer to the reason he gave for opposing Mr. ARCULLI's amendments.

Sir, the Administration's opposition to the amendments were summarized in a paper as follows:

"Since the membership is to be expanded, it would appear logical that two dissenting voices should be allowed. Moreover, there is a concern of the Judiciary about the veto power of the legal profession."

Let me deal with the second reason first, which is the concern of the Judiciary. Sir, this reason, although couched in rather vague terms, clearly shows that there are some judges or magistrates who are worried that they may not get an appointment if both the barrister member and the solicitor member of the Judicial Service Commission (JSC) were to oppose it.

Let us analyse this possible objection. Say, Mr. X wishes to be appointed to the High Court and he is opposed by both the barrister and solicitor members of the JSC. Now they are either right in opposing Mr. X or they are wrong. If they be right in their judgement in opposing, clearly there cannot be any good reason why Mr. X should still get it. But if they be wrong in their judgement, then I would say it must mean that they are blocking an otherwise good candidate from being made a judge of the High Court. And in such an imagined situation I would agree that it would not be right.

But the point is that there is not an iota of evidence to show, Sir, that such fear is well grounded. I have been a member of the JSC for four years and I cannot remember during my term, under the existing law which does not allow for any dissenting vote at all, of ever having blocked any single appointment by casting my dissenting vote alone though I could have blocked it alone. I have checked with other barrister members who had served with the JSC and none of them could likewise recall any instance where a particular candidate had his appointment blocked by his exercising his single dissenting vote alone.

I therefore submit, Sir, that such fear, if it exists at all, is ill-founded.

The question I pose for this Council is this: Is it really in the public interest that a person should be appointed a High Court judge, a district judge or a magistrate when there are two dissenting votes consisting of, for example, the Chief Justice and the Attorney General or, as Mr. ARCULLI put it, a combination of the CJ or the AG or the barrister or the solicitor, that is, any two of the four voting against him. Indeed, if both the barrister and solicitor members of the JCS were to oppose a particular appointment and he is still appointed, then it is certain that he will not enjoy the support or respect of both branches of the legal profession, because the barrister and solicitor members of the JSC would have discreetly consulted their colleagues before voting on any proposed appointment.

Sir, the other point is that when someone is not supported that does not mean

that the vacancy would be left unfilled. In practice, the JSC would always look at some other candidate or candidates either at the same meeting or the following meeting or meetings and vacancies are invariably filled, ultimately.

As to the first reason given, which is that since membership is to be expanded it would appear logical that two dissenting voices should be allowed, we must remember that at the present, no dissenting vote is allowed at all, so that the barrister or the solicitor, or the CJ or the AG, voting alone, could have blocked any possible appointment and there is no suggestion that the unanimity rule has not worked well in practice so that the change is necessary.

Sir, this is the most crucial point, namely, that there is no suggestion at all from the Chief Secretary that this rule of unanimity is not working well even though it does not allow for any dissenting voice at all.

Sir, Mr. ARCULLI's amendments would allow for appointment to be made with one dissenting vote and it is already a compromise on the present system which is working well. Why then must there be two dissenting votes allowed for?

Sir, I suggest that no good reason has been advanced at all because this ill-founded fear has not been justified.

The Chief Secretary in his speech just now said that a problem could arise when only one dissenting voice is allowed. But what does it mean in practice, Sir? Even if we have a mad man or woman on the JSC who consistently votes "no" to any candidate coming before the JSC, it is still acceptable because one dissenting voice would not block the appointment.

What the Chief Secretary is really saying is that there could be two such mad men or women or one mad man and one mad woman on the JSC. Is it conceivable that this would happen? But of course anything is possible under the sun, I suppose. But should we not start with one dissenting voice only and see how it works? And if it really should prove necessary, and if we should have the misfortune of consistently having two mad men or women or one mad man and one mad woman appointed to the JSC, then perhaps the Chief Secretary should present a Bill to amend that rule.

After all, Sir, it must be axiomatic that the smaller the number of permissible dissenting votes the better the quality of the judges or magistrates that the JSC

should appoint. Let me now quote from the Chairman of the Bar as follows:

"If you allow two dissenting votes you are pulling the rug under the entire rationale of having a JSC."

For we may not be able, Sir, to have the best possible candidate to sit on the bench.

For these reasons, Sir, I support Mr. Ronald ARCULLI's amendments.

MR. ANDREW WONG: Sir, I speak in support of Mr. Ronald ARCULLI's amendments not because I happen to be a member of the ad hoc group tasked to study the Bill and therefore have to show some solidarity, but because I consider the Administration's argument is essentially flawed.

Let me elaborate a bit. The Administration has argued that with the expansion of the membership of the Judicial Service Commission (JSC) from six to nine, it will become more difficult to achieve unanimity and consequently the unanimity requirement for resolutions to be carried should be relaxed.

I personally do not believe that it would be any more difficult for nine persons to achieve unanimity than six persons as long as it remains a small group and the number of members of the small group is larger than one and smaller than, say, a dozen. But even granted that it might be more difficult for nine to reach consensus, the Administration's original proposal is tantamount to a slap on its own face. The Bill originally proposes:

- (1) where there are nine members, for any resolution to pass, at least seven must be in favour;
- (2) where there are eight members at least six must be in favour;
- (3) where there are seven members at least five must be in favour; and
- (4) where there are six members (mark here, six members) at least 4 must be in favour.

Sir, I am truly baffled. If under the existing law six can achieve unanimity, why should the future be any different given that the mixed membership of lay,

government, legal and judicial has always existed.

Sir, now that the Administration has agreed to the ad hoc group's recommendation that the quorum of the JSC should be raised from six to seven out of nine, it has unwittingly saved its face. However, the line of questioning still remains. How much more difficult is it to achieve unanimity in the case of seven members, eight members, nine members than six members?

I submit, Sir, that the whole question should be viewed as a relaxation of the rule of unanimity -- and it should be so viewed from unanimity to a special majority -- and, if so, how special should that special majority be? I further submit, Sir, that unanimity, if relaxed, should be relaxed to a very very special majority, that is, a very substantial majority and not to something akin to a simple majority (which the Administration's original proposal represents) -- out of six, if four in favour, two against, that would still carry; it would be simple majority because if it is a three-three situation, it is a tie. Sir, a relaxation of the requirement for a resolution to pass from unanimity to "all except one" is already, in itself, a major break from the existing practice, as the nature of the requirement has been changed from unanimity to majority. To relax it further to "all except two" would do grave injustice to both the importance of the JSC and the good sense and integrity of the gentlemen (of course also the gentle ladies) sitting on that important body, which will become even more important in future.

Sir, I support the amendments.

Question on the amendments put.

Voice votes taken.

HIS EXCELLENCY THE CHAIRMAN: It is unclear to me listening to the voices. I will ask again.

Voice votes taken again.

HIS EXCELLENCY THE CHAIRMAN: It is still unclear. I therefore propose to call a division. The Council will divide. The Clerk, as last time, will call out the names of Members one by one. You should say "aye" if you support the amendment proposed by Mr. ARCULLI; you should say "no" if you are against the amendment or you may abstain

from voting.

Mr. Stephen CHEONG, Mr. CHAN Ying-lun, Mr. CHENG Hon-kwan, Mr. CHUNG Pui-lam, Mr. HUI Yin-fat, Mr. Martin LEE, Mr. PANG Chun-hoi, Mr. SZETO Wah, Mr. TAI Chin-wah, Mr. Andrew WONG, Mr. Edward HO, Mr. Ronald ARCULLI, Mr. Paul CHENG, Mr. David CHEUNG, Mr. Ronald CHOW, Mrs. Miriam LAU, Miss LEUNG Wai-tung, Mrs. Elsie TU and Mr. Peter WONG voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr. Allen LEE, Mr. CHEUNG Yan-lung, Miss Maria TAM, Mrs. Rita FAN, the Secretary for Home Affairs, Mr. HO Sai-chu, the Secretary for Planning, Environment and Lands, Mr. NGAI Shiu-kit, the Secretary for Transport, Prof. POON Chung-kwong, the Secretary for Security, Mrs. Rosanna TAM, Mr. TAM Yiu-chung, Dr. Daniel TSE, the Secretary for Economic Services, Mr. LAU Wong-fat, Mr. Michael CHENG, the Secretary for Health and Welfare, Mrs. Nellie FONG, Mrs. Peggy LAM, the Secretary for Education and Manpower, Mrs. SO CHAU Yim-ping and Mr. James TIEN voted against the amendments.

Mr. Peter POON and Mr. Martin BARROW abstained.

The Chairman announced that there were 19 votes in favour of the amendments, 26 votes against them and two abstentions. He declared that the amendments were negatived.

Question on clause 1, as amended, proposed, put and agreed to.

Question on clause 2, as amended, proposed.

HIS EXCELLENCY THE CHAIRMAN: I shall pause and explain here that clause 2, as amended, as a result of that last debate, means clause 2 as amended by the first amendment proposed by Mr. ARCULLI which was passed by the Committee.

Question on clause 2, as amended, put and agreed to.

Clauses 3 to 5 were agreed to.

LAWS (LOOSE-LEAF PUBLICATION) BILL 1990

Clauses 1, 3 to 7 were agreed to.

Clause 2

ATTORNEY GENERAL: Sir, I move that clause 2 be amended as set out in the paper circulated to Members. The amendments make clear that the Loose-Leaf Edition is published by the Government Printer, thus making the clause consistent with the present law and practice.

Proposed amendment

Clause 2

That clause 2(1) and (3) be amended, by deleting "publish" in each place where it occurs and substituting "cause to be published".

That clause 2(5) be amended, by deleting clause 2(5) and substituting --

"(5) In the loose-leaf edition and in every booklet each page shall include the statement "Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong".".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

BUILDINGS (AMENDMENT) BILL 1990

Clauses 1 to 13 were agreed to.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1990

Clauses 1 to 5 were agreed to.

Schedule was agreed to.

Council then resumed.

### Third Reading of Bills

THE ATTORNEY GENERAL reported that the

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1990 the original short title of which was the

JUDICIAL SERVICE COMMISSION (AMENDMENT) BILL 1989 and

LAWS (LOOSE-LEAF PUBLICATION) BILL 1990

had passed through Committee with amendments and the

BUILDINGS (AMENDMENT) BILL 1990 and

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1990

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

### Private Bill

#### First Reading of Bill

MORRISON SCHOLARSHIPS FUND BILL 1990

Bill read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

#### Second Reading of Bill

MORRISON SCHOLARSHIPS FUND BILL 1990

MR. SZETO WAH moved the Second Reading of: "A Bill to provide for the continuation of the Morrison Scholarships Fund, to make new provision for the administration thereof and to provide for related matters."

MR. SZETO (in Cantonese): Sir, I move that the Morrison Scholarships Fund Bill 1990 be read the Second time.

The Morrison Scholarships Fund was set up for my Alma Mater the Queen's College where I had spent my school life 39 years ago. Those were the days that bring me memories of joy and grief. Just like blending wine with medicine, the feelings of joy and grief have been so exquisitely mixed that an irresistible aroma has come forth. The medicine has lost its bitterness, the wine turned mellow. Whenever I feel tired and lonely, I would take a good drink of it and it will refresh me and warm my heart. It is indeed an honour for me to introduce this Bill for my Alma Mater this afternoon.

The Morrison Scholarships Fund was established in 1973 while the Morrison Scholarships Fund Incorporation Ordinance was enacted as early as 1934. The Morrison Scholarships Fund Bill 1990 as now introduced seeks to replace the 1934 Morrison Scholarships Fund Incorporation Ordinance for two major reasons. Firstly, the Fund has grown from its initial amount of \$3,000 to a gigantic sum of \$22 million which now requires more prudent management procedures. Secondly, as one of the bodies which supplied a trustee no longer operates in Hong Kong, the trustees have to be reincorporated with a new membership.

Dr. Robert MORRISON is the first Christian missionary who came to China. He was born in 1782 as the son of a farmer. When he was still young, he worked very hard. Though he worked 13 to 14 hours everyday, he studied Latin, Greek and Hebrew by himself. In 1804 when he was 22, he joined the then newly formed London Missionary Society and began to learn Chinese. In 1807 when he was 25, he left Britain. After a long voyage of seven months, he arrived in China and never returned to his homeland again. He translated the Bible into Chinese, compiled the 4 800-page "Chinese-English Dictionary" as well as set up schools. In 1817 when he was 35 years of age, he was awarded a doctorate in theology by the Glasgow University. In 1834 he passed away at the age of 52 in Guangzhou and was buried in Macau. It is appropriate to say that he had devoted his whole life to religion, education, the exchange of Chinese and western culture as well as to China.

Some people say that religion is the spiritual opium of the people. Others allege

that missionaries are the vanguards of imperialist invasion. History however tells us that HUNG Hsiu-ch'uan and Dr. SUN Yat-sen were Christians and they were indirectly influenced by Dr. Robert MORRISON.

In the process of drafting the Basic Law, some people were of the opinion that the term "New Territories" denotes colonialism and should not be used in the Preamble in defining the boundaries of Hong Kong. As a result, the whole paragraph was deleted because there was no replacement for it. However the term "the New Territories" has to be used in Chapter III which provides for the "lawful traditional rights and interests of the indigenous inhabitants of the New Territories". This is a remarkable example of going back on one's own words and self-contradiction. In reality, the word "Queen's" smacks of colonialism more than the term "the New Territories". I hope my Alma Mater will not have to change its name after 1997.

One will make history by facing up to history. Anyone who distorts history will definitely be eliminated by history.

Sir, I move that the debate on the Second Reading of this Bill be adjourned.

Question on the adjournment proposed, put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: I am grateful to Members for persisting through a long session with some complicated procedural points. And now in accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 18 July 1990.

Adjourned accordingly at twenty-four minutes to Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Laws (Loose-Leaf Publication) Bill 1990 and Morrison Scholarships Fund Bill 1990, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

