

## 第 390 章

### 淫褻及不雅物品管制條例

本條例旨在管制內容屬於或含有淫褻或不雅資料（包括暴力、腐化或可厭的資料）的物品，設立審裁處以裁定物品是否淫褻或不雅，或裁定公開展示的事物是否不雅，以及將物品評定為屬淫褻、不雅或非淫褻亦非不雅的類別，並為附帶事宜訂定條文。

[ 1987 年 9 月 1 日 ] 1987 年第 278 號法律公告

註：根據 1998 年第 25 號第 1(2)條，該條例對本成文法則的修訂當作自 1997 年 7 月 1 日起實施。上述第 1(2)條須符合第 383 章第 II 部列出的香港人權法案第十二條。

#### 第 I 部

##### 導言

#### 1. 簡稱

本條例可引稱為《淫褻及不雅物品管制條例》。

#### 2. 釋義

(1) 在本條例中，除文意另有所指外—

“手令” (warrant)指根據第 34(1)條發出的手令；

“司法常務官” (Registrar)指高等法院司法常務官；（由 1998 年第 25 號第 2 條修訂）

“申請” (application)指根據第 13 條提出的申請，“申請人” (applicant)亦須據此解釋；

“主審裁判官” (presiding magistrate)指根據第 7 條獲委任主審的裁判官；

## CHAPTER 390

### CONTROL OF OBSCENE AND INDECENT ARTICLES

To control articles which consist of or contain material that is obscene or indecent (including material that is violent, depraved or repulsive), to establish tribunals to determine whether an article is obscene or indecent, or whether matter publicly displayed is indecent, and to classify articles as obscene or indecent or neither obscene nor indecent, and for matters incidental thereto.

[ 1 September 1987 ] *L.N. 278 of 1987*

Note: Under s. 1(2) of 25 of 1998, the amendment to this enactment by that Ordinance is deemed to have come into operation on 1 July 1997. The aforesaid s. 1(2) is subject to article 12 of the Hong Kong Bill of Rights set out in Part II of Cap. 383.

#### PART I

##### PRELIMINARY

#### 1. Short title

This Ordinance may be cited as the Control of Obscene and Indecent Articles Ordinance.

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

“adjudicator” (審裁委員) means an adjudicator appointed to the panel of adjudicators under section 5;

“application” (申請) means an application under section 13 and “applicant” (申請人) shall be construed accordingly;

“article” (物品) means any thing consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures;

- “全面聆訊”(full hearing)指審裁處根據第 15 條舉行的全面聆訊；
- “青少年”(juvenile)指未滿 18 歲的人；
- “協助人員”(assisting officer)指根據第 34(2)條協助獲授權人員執行手令的警務人員或香港海關人員；
- “物品”(article)指內容屬於或含有供閱讀、觀看或供閱讀兼觀看的資料的任何物件，亦指任何錄音，以及錄有一幅或多幅圖像的任何影片、錄影帶、紀錄碟或其他紀錄；
- “評定類別”(classification)指審裁處根據第 III 部評定的類別，包括暫定類別，“經評定”(classified)亦須據此解釋；
- “督察”(inspector)指根據第 36B(1)條授權的公職人員；(由 1995 年第 73 號第 2 條增補)
- “暫定類別”(interim classification)指審裁處根據第 14 條暫時評定的類別；
- “審裁委員”(adjudicator)指根據第 5 條獲委任為審裁委員小組成員的審裁委員；
- “審裁委員小組”(panel of adjudicators)指根據第 5 條設立的審裁委員小組；
- “審裁處”(Tribunal)指根據第 6 條委出的淫褻物品審裁處；
- “獲授權人員”(authorized officer)指由根據第 34 條所發手令授權的人；
- “營業地點”(place of business)—
- (a) 就根據《公司條例》(第 32 章)成立的公司而言，包括其註冊辦事處；及
  - (b) 就《公司條例》(第 32 章)第 XI 部適用的公司而言，如任何人的姓名已向公司註冊處處長提交以根據該部登記，包括該人的地址。(由 1995 年第 73 號第 2 條增補)
- (2) 就本條例而言—
- (a) 任何事物因為淫褻而不宜向任何人發布，即屬淫褻；及
  - (b) 任何事物因為不雅而不宜向青少年發布，即屬不雅。
- (3) 就第(2)款而言，“淫褻”(obscenity)及“不雅”(indecent)包括暴力、腐化及可厭。
- (4) 除第 24(1E)及(1F)條外，就本條例而言，任何人有以下行為，不論是否為了牟利，均屬將物品發布—(由 1995 年第 73 號第 2 條修訂)
- (a) 將物品派發、傳閱、出售、出租、交給或出借予公眾人士或部分公眾人士；
  - (b) 就以下物品來說—
    - (i) 內容屬於或含有供觀看資料的物品；或

- “assisting officer”(協助人員) means any police officer or any member of the Customs and Excise Service assisting an authorized officer under section 34(2) in the execution of a warrant;
- “authorized officer”(獲授權人員) means any person authorized by a warrant issued under section 34;
- “classification”(評定類別) means a classification by a Tribunal under Part III and includes an interim classification and “classified”(經評定) shall be construed accordingly;
- “full hearing”(全面聆訊) means a full hearing of a Tribunal under section 15;
- “inspector”(督察) means a public officer authorized under section 36B(1); (*Added 73 of 1995 s. 2*)
- “interim classification”(暫定類別) means an interim classification made by a Tribunal under section 14;
- “juvenile”(青少年) means a person under the age of 18 years;
- “panel of adjudicators”(審裁委員小組) means the panel of adjudicators established under section 5;
- “place of business”(營業地點) includes in relation to—
- (a) a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32), its registered office; and
  - (b) a company to which Part XI of the Companies Ordinance (Cap. 32) applies, the address of any person whose name has been delivered to the Registrar of Companies for registration under that Part; (*Added 73 of 1995 s. 2*)
- “presiding magistrate”(主審裁判官) means a magistrate appointed to preside under section 7;
- “Registrar”(司法常務官) means the Registrar of the High Court; (*Amended 25 of 1998 s. 2*)
- “Tribunal”(審裁處) means an Obscene Articles Tribunal appointed under section 6;
- “warrant”(手令) means a warrant issued under section 34(1).
- (2) For the purposes of this Ordinance—
- (a) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and
  - (b) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile.
- (3) For the purposes of subsection (2), “obscenity”(淫褻) and “indecent”(不雅) include violence, depravity and repulsiveness.
- (4) For the purposes of this Ordinance, other than section 24(1E) and (1F), a person publishes an article if he, whether or not for gain— (*Amended 73 of 1995 s. 2*)
- (a) distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;
  - (b) in the case of an article—
    - (i) consisting of or containing material to be looked at; or

**8. 審判權**

- (1) 對於由法院或裁判官根據第 V 部轉交的任何物品或公開展示事物，審裁處可裁定—
- (a) 該物品是否淫褻或不雅；
  - (b) 該事物是否不雅；或
  - (c) 就物品的發布或任何事物的公開展示而根據第 28 條提出的免責辯護理由是否已證明成立。
- (2) 對於根據第 13 條呈交的物品，審裁處—
- (a) 如認為不能加以適當描述以根據第 19 條發出評定類別公告，可拒絕所提出的評定類別申請；或
  - (b) 可按以下方式評定該物品的類別—
    - (i) 如認為既非淫褻亦非不雅，評定為第 I 類；
    - (ii) 如認為屬不雅，評定為第 II 類；或
    - (iii) 如認為屬淫褻，評定為第 III 類；及
  - (c) 可在評定物品為第 II 類時，就該物品的發布定下條件。
- (3) 為施行第(1)(c)款，可就根據第 28 條提出的免責辯護理由接受專家的意見，以確立或否定該項理由。

**9. 豁免權**

任何—

- (a) 審裁處的成員；及
  - (b) 出席審裁處聆訊的證人、訴訟的一方、代表或其他人士，
- 在審裁處進行的法律程序中，或在審裁處行使職能時，享有的特權及豁免權，與他在法庭上會享有的相同。

**10. 審裁處指引**

- (1) 審裁處在裁定物品是否淫褻或不雅，或裁定公開展示的事物是否不雅時，或在評定物品類別時，須考慮以下各項—

**8. Jurisdiction**

- (1) In relation to any article, or any matter publicly displayed, referred to it by a court or magistrate under Part V a Tribunal may determine whether—
- (a) the article is obscene or indecent;
  - (b) the matter is indecent; or
  - (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.
- (2) In relation to any article submitted to it under section 13 a Tribunal may—
- (a) refuse an application to make a classification in respect of any article if it considers that article cannot be adequately described for the purpose of giving notice of classification under section 19; or
  - (b) make a classification that the article is—
    - (i) a Class I article if it is of the opinion that the article is neither obscene nor indecent;
    - (ii) a Class II article if it is of the opinion that the article is indecent; or
    - (iii) a Class III article if it is of the opinion that the article is obscene; and
  - (c) in respect of any classification that an article is a Class II article and at the time of making that classification, impose conditions relating to the publication of that article.
- (3) For the purposes of subsection (1)(c) the opinion of an expert as to the ground of defence in section 28 may be admitted either to establish or negative that ground.

**9. Immunity**

Any—

- (a) member of a Tribunal; and
- (b) witness, party to any proceedings, representative or other person appearing before a Tribunal,

shall have the same privileges and immunities in any proceedings before a Tribunal or in the exercise of a Tribunal's functions as he would have before a court.

**10. Guidance to Tribunal**

- (1) In determining whether an article is obscene or indecent or whether any matter publicly displayed is indecent, or in classifying an article, a Tribunal shall have regard to—

- (a) 一般合理的社會人士普遍接受的道德禮教標準，且就物品而言，考慮該等標準時並可考慮檢查員根據《電影檢查條例》(第 392 章)第 10 條就該條例第 2(1)條所指的影片所作的決定；(由 1988 年第 25 號第 33 條代替)
- (b) 物品或事物整體上產生的顯著效果；
- (c) 如屬物品，其發布對象、擬發布對象或相當可能發布的對象是那些人，或是那一類別或年齡組別的人；
- (d) 如屬公開展示的事物，該事物正在或將會在何處公開展示，以及相當可能觀看該事物的是那些人，或是那一類別或年齡組別的人；及
- (e) 該物品或事物是否具有真正目的，或其內容是否只是掩飾，以使其任何部分成為可予接受者。
- (2) 在審裁處進行的法律程序中，可就審裁處根據第(1)款必須或可以考慮的事項接納專家的意見，以確立或否定該事項。

[比照 1963 No. 22 s. 11 N.Z.]

## 11. 權力 審裁處——

- (a) 根據第 V 部行使審判權時，具有《裁判官條例》(第 227 章)授予裁判官的權力，而為此目的，該條例內凡提述裁判官之處，即當作包括提述審裁處；
- (b) 根據第 III 部行使審判權時，可在符合該部及第 VIII 部的規定下，決定本身的處事程序，尤其可—
- (i) 收取及考慮任何資料，不論該資料是以口頭證供、書面陳述、文件或其他方式提出，儘管該資料在民事或刑事訴訟中並非可接納的證據；
- (ii) 藉主審裁判官簽署通知書，要求任何人出席審裁處的聆訊、提出證供及交出文件；
- (iii) 主持宣誓；
- (iv) 向出席審裁處聆訊的人進行經任何形式宣誓或未經宣誓的訊問，並要求他回答由審裁處提出或在審裁處同意下提出的所有問題；

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap. 392) in respect of a film within the meaning of section 2(1) of that Ordinance; (*Replaced 25 of 1988 s. 33*)
- (b) the dominant effect of an article or of matter as a whole;
- (c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;
- (d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and
- (e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.
- (2) The opinion of an expert as to any of the matters to which a Tribunal must or may have regard under subsection (1) may be admitted in any proceedings before a Tribunal either to establish or negative that matter.

[*cf. 1963 No. 22 s. 11 N.Z.*]

## 11. Powers

### A Tribunal—

- (a) when exercising its jurisdiction under Part V shall have the powers of a magistrate under the Magistrates Ordinance (Cap. 227) and for that purpose references in that Ordinance to a magistrate shall be deemed to include references to a Tribunal;
- (b) when exercising its jurisdiction under Part III may, subject to that Part and Part VIII, determine its own procedure and in particular may—
- (i) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings;
- (ii) by notice in writing signed by the presiding magistrate, require any person to attend before it at any hearing and to give evidence and produce documents;
- (iii) administer oaths and affirmations;
- (iv) examine on oath, affirmation or otherwise any person attending before it at any hearing and require such person to answer all questions put by or with the consent of that Tribunal;