In section 2 of the Act the term "indecent" is defined as:

"'Indecent' includes describing, depicting, expressing, or otherwise dealing with matters of sex, horror, crime, cruelty, or violence in a manner that is injurious to the public good."

In classifying or determining the character of a book the Tribunal must take into consideration certain matters. These are given in section 11 (1) as follows:

"(a) The dominant effect of the book . . . as a whole:
"(b) The literary or artistic merit, or the medical, legal, political, social, or scientific character or importance of the book . . . :
"(c) The persons, classes of persons, or age groups to or amongst whom the book . . . is intended or is likely to be published, heard, distributed, sold, exhibited, . . . given, sent, or delivered:
"(d) The price at which the book . . . sells or is intended to be sold:
"(e) Whether any person is likely to be corrupted by reading the book . . . and whether other persons are likely to benefit therefrom:
"(f) Whether the book . . . displays an honest purpose and an honest thread of thought or whether its content is merely camouflage designed to render acceptable any indecent parts of the book . . . ."

Subsection (2) of section 11 states:

"Notwithstanding the provisions of subsection (1) where the publication of any book . . . would be in the interest of art, literature, science, or learning and would be for the public good, the Tribunal shall not classify it as indecent."

In determining the character of a book the Tribunal invariably has found it necessary to consider the scope of the term "indecent" as it is used in the Act. Since the case of *Robson* v. *Hicks Smith and Sons Ltd.* 1965, NZLR 1113, the Tribunal has accepted the interpretation placed on the term by the Court. The facts of that case are of no importance in the present matter but as it was the first case (and the only one) that has been taken on appeal to the Supreme Court, which under section 19 (4) of the Act must comprise three Judges, the Court thought it desirable to discuss the relevant provision of the Act, which had not previously been interpreted.

Woodhouse, J. at p. 1122, referring to the definition of "indecent" as given in section 2, stated:

"This is not a comprehensive definition, and on this ground we were invited to hold that the term "indecent" was used in the Act with its ordinary meaning. But in my opinion there are two principal reasons against this submission. In the first place the definition itself deliberately includes, as indecent, noxious material which has a capacity to injure the public good. In this way a distinction seems to be drawn between such material and that which has a less harmful tendency whether it is otherwise noxious or not. To put the matter in another way, I think that if it has been thought necessary to include in express terms such description of sexual matters, for example as are injurious to the public good, then anything less than this can hardly be brought in by implication. Secondly, I think that this interpretation of the word is in accord with the development of legislation of this type. For many years the test of indecent material has not been equated with that which is merely unwholesome or offensive; it has involved something with a more malignant flavour, and the power of the material to contaminate."

Again, at p. 1123, he says:

"In the exercise of either of its functions the issue before the Tribunal must be decided in relation to the word "indecent" as that word is used in the Act, and this is a question of degree to be tested against that level of harm which can be recognised as injurious to the public good. It is a practical question involving an exercise of informed judgment. There must be an adequate understanding of contemporary standards and aspirations and the decision must be made in terms of the real world as it actually is today."

We would also like to refer to the judgment of Haslam, J. in which at p. 1120, in discussing section 11 (2) of the Act (see *ante*), he says:

"The words of subsection (2) leads me to the conclusion that the effect of the publication of a book upon the 'public good' is to be the primary element in its classification, and that this expression of variable content, designed to direct attention to the impact of a published work upon the community, is expressly left undefined, so that the Tribunal may exercise its statutory powers with due regard to changing conditions."

In applying these provisions of the Act to *The Little Red Schoolbook,* no question of the treatment of horror, crime, cruelty, or violence arises. The question of indecency arises in respect of the treatment of sex and it can be settled only by relating the section of the book dealing with sex to the rest of the contents of the book, and by relating the book as a whole to the situation in the community. The principal issues raised in the submissions and evidence will be discussed in relation to this premise.

First, the dominant effect of the book as a whole. The Secretary for Justice doubted whether this test would be of much assistance as only one chapter (that dealing with sex) was really in issue. With respect, we disagree. Although the greater part of the submissions dealt with that section of the book, the Tribunal is required to consider it only in its particular context, that is, the 1972 New Zealand edition of *The Little Red Schoolbook.* The Tribunal is not required to say, for example, what its attitude might be if the section on sex had been published on its own or in any other context.

Second, the relevance of the material in the book dealing with educational issues. This is the major part, about two-thirds, of the total contents. We heard a number of witnesses on this material, and we received some written statements as well. In the eyes of some, it is intended to be totally destructive of the school system and anti-authoritarian and therefore to be banned. In the eyes of others, it is intended to be constructive and to improve the school system for all concerned, pupils, teachers and parents. They see it as productive, potentially at least, of good. Even among the witnesses who generally supported the publisher's action in producing the New Zealand edition, there were caveats entered about some statements in it as inadequate, inaccurate, and too sweeping in their generalisations. Some letters sent to the Tribunal give the impression that their writers fear the book will incite schoolchildren to violent revolutionary action. Against this can be set the view that the book informs them how they can act within the system and advises them to try dialogue before direct action. Whatever view may be taken of this material—that it is irresponsible, that some of its statements are misleading, that it is in places contradictory, that fact and value judgments are confused—it does not of itself raise the issue of indecency. It does, however, remain relevant to the consideration of the possible indecency of *The Little Red Schoolbook* as a whole. It is convenient to note at this point that the section on drugs (including tobacco and alochol) gives advice and clear explanations about undesirable effects of drugs in a way that can only be beneficial, and this also contributes to our assessment of the book as a whole.

Third, the question of the honesty of purpose of those responsible for the book, in this case both the Danish authors and the New Zealand publisher. The Act requires us to consider whether the content is camouflage designed to render acceptable any indecent parts of the book. Having established that indecency can only arise in respect of the treatment of sex in the book we would have to find that well over 80 percent of the book was "camouflage". The general question of honesty of purpose is related to the next two issues discussed, but the matter was most fully canvassed by the Secretary for Justice in regard to the omission of any reference to certain provisions of the law. These concern the age of consent, the provisions of the Child Welfare Amendment Act 1954, relating to delinquent children, and the provisions of the Police Offences Amendment Act 1954, relating to the supply of contraceptives to those under 16 years of age. We noted that the publisher, in his evidence, declared his intention in any future edition to expand the reference to "16 age of consent" as it appears at present. The omissions referred to may in themselves be a matter of poor judgment and reinforce the view that the authors and publisher have adopted an amoral tone in their treatment of sex. Those omissions, however, do not have compelling weight in our overall assessment of the book.

Fourth, the issue of language. This centres on the use of certain words (commonly called Anglo-Saxon) for sexual organs and actions, and whether it would be better to have used exclusively the more clinical words of Latin derivation. While different views are strongly held as to which set of words is in more common use (i.e. the true vernacular), it would be difficult to maintain that in the context of a chapter which sets out to give a plain account of the physical side of sexual relationships in the language of young people these words can play a very significant part in determining the issue of the book's indecency.

Fifth, the question of the adequacy of the treatment of sex. The book specifically concedes at the beginning of the sex section that it "says nothing about love and very little about feelings". While many people might prefer it to have included consideration of the emotional, psychological and spiritual sides of the sex relationship, it is not necessary for a treatment of sex to be approaching inclusiveness before it becomes tolerable within the Act. Indeed, the Tribunal has become acutely aware in considering this book of the difference between weighing its acceptability within the Act, on the one