

Although *Key Magazine* initially may have carried only advertisements for lonely persons who wished to "cuddle" and the like, it (not unlike its former readers and advertisers, we imagine) has progressed rapidly to the stage of the direct solicitation for sexual relations.

One of the issues we have to decide is if the dominant effect of the publication is injurious to the public good, according to the test of indecency adopted by the majority in the High Court in *Waverley Publishing Company Ltd. v Comptroller of Customs* [1980] 1 NZLR 631. We note in passing that this test is higher than one which requires the material to be considered indecent according to the current standards of the community. The material must go beyond that and must be injurious to the public good.

In support of such a submission the Police stated:

"Various illustrations are offensively explicit and over all, human sexuality is dealt with in a debasing, coarse and rude manner."

Insofar as the contents of the advertisements could be criticised, Mr Douglas argued that:

"In fact, human sexuality is dealt with AS IT IS, painful though that may be to some."

Mr Douglas also submitted that the photographs in the publication were not in the least offensive to the people who buy the magazine, and that they were no more explicit than those on view each month in *Penthouse*. (Of the former submission we note that a similar submission was rejected by the House of Lords in *DPP v. Whyte* [1972] 3 All ER 12.)

We have more to say about the photographs later.

In as much as the advertisements deal, in many cases, in a brutally frank fashion with the satisfaction of a basic human passion, the views expressed by the Police and Mr Douglas may both be right. In a civilised society the demands of raw human passions are normally restrained in public. However, when the constraints of social veneer are removed or where the individual has the protection of anonymity what then emerges is not always pleasant.

We feel, in keeping with the standards that exist in the community, that if the test of indecency was that which is "an affront to commonly accepted standards of decency" (as expressed by Richmond, J., in *Police v. News Media Ownership Ltd.* [1975] 1 NZLR 610, 624) that we could regard this magazine as indecent. This is because we feel most people in the community would find a magazine that permitted the direct solicitation of sex by advertisement as offensive or debasing and contrary to normal standards of decency.

As already stated we are required to go further than that and find that the advertising, and the presentation of the publication is injurious to the public good. We feel we are able to take that further step in this case. We find that not only is this publication undesirable in the general sense already expressed above, but we find that its dominant effect which is really to act as a carrier in the spread of promiscuity, is injurious to our social fabric, and therefore injurious to the public good.

There are two main aspects of the publication which worry us. The threat to the family unit, and the possibility of the abuse of information obtained from a publication of this type.

We express concern that this publication contains some 60 advertisements from couples, many of whom are married, who wish to meet other couples or single persons for sexual encounters. There are numerous other advertisements by married persons in what might be called "singles" columns, which presumably means those persons want some extra-marital sex without their partners being aware, or being involved.

No doubt if the partners to a marriage want to indulge in extra-marital sexual promiscuity for whatever reason, they are completely free to do so in our present society. Normally, the parties are sensible enough to be discreet and conduct their affairs in private.

However concealed from public scrutiny that activity may be, it is a virtually inescapable conclusion that trauma and damage to the family unit may result, especially where children are involved. Most responsible people would regard it as abhorrent that children were brought up in an atmosphere of parental "swinging" and partner swapping. Even without the existence of children in the relationship, we can see the encouragement of promiscuity of this kind among couples as leading to marriage break-ups because of the formation of new associations, etc.

We do not think it is any defence to this aspect of the publication to say that the persons who advertise would become involved in this type of activity anyway. That is impossible to disprove, but it is possible to say that *Key Magazine* can only promote and encourage the opportunity

for such promiscuity, because the very purpose of the publication is to give those people who contemplate that type of activity, an opportunity to extend their behaviour in a way that would otherwise normally be constrained by the social ethics of society.

We should add that we recognise many publications may incite or be concerned with the encouragement of behaviour that might be termed sexually promiscuous. Not all those publications could be said to be injurious to the public good as illustrated by the following quote from a recent decision concerning a publication called *Sex and the Single Girl* (Decision No. 1003):

"Insofar as the publication could be said to undermine (in an indirect fashion) our modern society's attitude to marriage through its advocacy of promiscuity and permissiveness, the book could be said to be corruptive, especially to younger readers.

While we apprehend the possibility that younger readers might be corrupted, we have had difficulty in assessing the likelihood of corruption arising because of the intangible nature of the danger with which we are dealing.

After reflecting on the values and standards present in modern New Zealand society we feel it would be an overreaction to describe this publication as a threat to the place of marriage or responsible sexual relationships. We think the publication is aimed at young men in their late teens through to their 20s, and it would have limited appeal to most other readers.

It is our view that many young men go through a stage in their lives when they have casual relationships (which could hardly be described as abnormal) with the opposite sex.

This book has been written to cater for that limited market and we predict the adolescent reader being interested in the philosophy expounded in the book, only as a passing phase in his development."

The present publication is of course different from that above. Sexual contact is virtually guaranteed through *Key Magazine*, and it is this aspect that separates it from other publications, and which in our view puts it beyond the pale of acceptance.

The other aspect of the publication which we think is injurious to the public good is that it provides an ideal starting point for persons wishing to abuse the information that they might procure from the publication and for the encouragement of certain criminal offences. We refer here to the possibility of prostitutes advertising for customers, and to the possibility of advertisers being subject to pressures of extortion and blackmail through their sexual indiscretions.

Mr Douglas informed us, and we accept, that he tries to prevent the insertion of advertisements that might contravene the law. We not only have Mr Douglas' assurance on this point, but the magazine itself contains *inter alia* the following caution:

"The publishers will not knowingly accept any fraudulent or illegal material, but as we are not able to research in depth the intent of every advertisement, all advertisers shall be and will remain solely responsible for the content of their advertisement and shall indemnify the publishers against all liability thereof. Persons using the service of our magazine take full responsibility for their own actions. No advertising can be accepted from or on behalf of a prostitute." (Our emphasis.)

Mr Douglas also informed us that he would not carry advertisements concerning male homosexual activity. This was not because of any prejudice on his part, but in keeping with his philosophy that advertisements for illegal activity would not knowingly or deliberately be carried.

This is no doubt a wise position for the publisher to take and we therefore feel that the publication does not immediately fall into the category of a magazine promoting illegal sexual activity, as did the material considered by the House of Lords in *Shaw v. Director of Public Prosecution* [1961] 2 All ER 446.

However, it is virtually impossible for a publisher to ascertain whether any sinister intent lies behind even the most seemingly innocent advertisement requiring personal services. A reported example that can illustrate the problem can be found in *Police v. Lavalle* [1979] 1 NZLR 45 (CA). In that case Lavalle had inserted an advertisement in a local newspaper offering a live-in position to a female on the basis of "good wages, easy work". Although the advertisement in itself was innocent, Lavalle was really interested in encouraging prostitution and was convicted of an offence of that nature.

One would imagine that the chances of a prostitute attempting to advertise in a publication almost solely concerned with soliciting response for sexual activity as in the present case