

would be infinitely higher than an indirect solicitation through an ordinary newspaper. We feel there is a very real danger of such advertisements being placed in this magazine and there is very little Mr Douglas could do, if he wanted to, to police the situation. On his own admission, as emphasised in the extract set out already, "... we are not able to research in depth the intent of every advertisement. . .". The job of policing and detecting sexual offending is already difficult enough for the Police without another possible avenue for soliciting being thrown open for them to try to cope with.

The other concern we expressed was that there was a possibility of those advertising or using the magazine's services being subjected to the pressures of extortion and blackmail because of their sexual indiscretions with unscrupulous people. Many of the advertisers refer to the desirability of a photograph being enclosed with a reply. Some advertisements refer to photography as one of the erotic diversions solicited (e.g., advertisements M446 and C118).

In very many cases the advertisement states "discretion assured", "discretion expected", etc. Not surprisingly many of the advertisers seeking sexual partners wish to maintain their anonymity until they are written to.

There is no doubt in our minds that unscrupulous persons could easily obtain evidence of sexual activity which could compromise persons using the services of the magazine. Mr Douglas has no way of controlling that activity either, and that is more or less acknowledged in his words, as already quoted "Persons using the service of our magazine take full responsibility for their own actions".

Blackmail and destruction of a person's reputation because of their sexual propensities or behaviour is notoriously difficult to detect, and would be easy, through the medium of the present magazine, to perpetrate.

It is very easy to see how the advertisement placed in, or replied to, in a moment of weakness or stupidity, could turn to disaster when subsequent threats are made of complaints to the Police, exposure to a spouse, or the publication of compromising photographs to friends and family. We have no doubt that many persons would prefer to pay than be exposed when confronted with their sexual indiscretions. We also have no doubt that there are those who are willing to manipulate and blackmail people for their sexual indiscretions. Those matters seldom emerge into public, but for a recent example of the former type of situation see *Barsdell v. Kerr* [1979] 2 NZLR 731 (where the facts involved an alleged payment of \$20,000 by an employer comprising money paid on 3 different occasions to the husbands of women who had been sexually assaulted by an employee, so that the sums paid were paid to procure silence from the aggrieved parties).

This type of publication is an invitation for blackmailers to procure their unfortunate sources of revenue. We are convinced not only by this factor but also the other matters we have raised that the whole concept and the dominant effect of this publication is injurious, and indeed potentially dangerous to the public good.

2. THE SOCIAL MERIT OF THE BOOK

There are 2 general matters we must consider as being advanced by the publisher under this head. The first is that he submitted that instead of the publication being injurious to the public good, the magazine actually benefited a section of the community. As he stated in his written submissions:

"The main benefit of *Key Magazine* to the public is that it introduces lonely people to each other. A point you may not detect from a cursory glance at the advertisements is that many of the advertisers are desperately lonely. Several lasting and sincere relationships have been formed as a result of meetings arranged through 'Key Contacts'."

We would say that in the main the object of *Key Magazine* is to introduce promiscuous people to each other. We are not prepared to accept for 4 major reasons Mr Douglas' submission that the main benefit of *Key Magazine* was that it introduced lonely people to each other.

The first reason is that if Mr Douglas' submission was correct one would expect to see numerous advertisements of an innocuous or innocent nature, wherein people just wanted to meet others for company. The publication does contain some of these (e.g., L178), but the vast majority evidence a desire by the advertiser or advertisers to indulge in sexual activity. What evidence there is therefore overwhelmingly suggests that the advertisers are merely bent on enlarging or varying their existing sexual appetites.

The second matter is that we think it is inconsistent that a publication that purports to introduce people to each other, should carry numerous photographs almost all of which

accentuate the exposed genital areas of the models. We refer in particular to the photos appearing on pages 7, 10, 14, 18, 23, 31 and 34.

Those photographs are more in keeping with the view that we have taken of the magazine, namely, that its function is to encourage promiscuity and to pander to the physical desires and wants of those persons concerned with it.

The next matter is that if the magazine is bona fide for the purpose of simply introducing people to each other, we are not able to see why advertisements of the number, type, and nature that are carried for couples, should be in the present publication. Although of course we accept that couples need to make friends outside their own relationship. It is perfectly obvious from the advertisements that the majority of couples there are not lonely, but are merely seeking to indulge in sexual experimentation, and multiple partner situations.

Our final ground for rejecting Mr Douglas' submission is that in a section of the magazine called "Kinky Korner" advertisements for deviate forms of sex appear. We feel this is yet another indication along with all the other factors that the publication is simply designed to cater for those wanting to satisfy their sexual pleasures. Mr Douglas has failed to point to anything which in our opinion could constitute social merit so as to counteract the deleterious effect of this publication on the community.

The second matter is that Mr Douglas was able to rely on the supporting evidence of Dr Aloma Colgan, who is a Director of the Human Relations Centre at Auckland. In respect of *Key Magazine* No. 6, Dr Colgan said:

"In its restricted form, I feel the magazine is not harmful. Its appeal is mainly to the older age groups, and caters to fantasies in behaviour that is not uncommon in our society. In a recent nationwide survey conducted by the Human Relations Centre, we found that 17 percent of males and 10 percent of females had engaged in group sex experiments, and that 30 percent of men and 20 percent of women had engaged in sex with one additional partner (Troilism). For many more it remains a popular fantasy.

Much has been written about these experiments 'open marriage' and 'swinging', particularly in the United States. In general it seems that, providing the marriage is stable, no harm results. In many cases such arrangements actually serve to keep marriages together. Given the shaky state of modern monogamous marriage, I feel that we must view such experiments with tolerance, accepting them as just one of the many alternatives to traditional marriage that have arisen over the last 10 years. I feel that Mr Alan Douglas has handled this new social phenomenon in a conscientious and responsible manner, in publishing a booklet warning of the consequences of open relationships."

Evidence of expert witnesses was relied on by the publisher of *Forum* magazine when that was before the Tribunal (Decision No. 877). The Tribunal said on that occasion:

"While we have heard and given careful consideration to the evidence presented to us we have expressed our reservations as to the usefulness or relevance of a great deal of that evidence in making our decision. No doubt evidence can be useful and relevant in considering some of the matters listed in section 11 (1). In this case expert medical and psychological witnesses can guide us in matters of medical, social, or scientific character or importance and general evidence may be of some use in assessing the purpose and motives of the persons associated with the publication and distribution of the magazine. In the end, however, it is the Tribunal which must exercise its own judgment and experience in determining the character in classifying the magazines or books before it. Evidence by others as to the desirability of censorship, the standards of the community here or elsewhere and the witnesses' views as to indecency generally or in relation to the book in question are unacceptable and indeed impertinent if considered as an endeavour to replace the function of the Tribunal."

In that case the Tribunal was impressed with the evidence of Dr Colgan indicating that the material under consideration could be helpful to those experiencing problems. Each case, however, must be dealt with on its own merits. In this case we are not dealing with a publication which provides the reader with an opportunity to engage in sexual fantasy but with a publication that will introduce him or her to the real thing. We are at a disadvantage in considering Dr Colgan's evidence because she did not appear before us to be questioned about the statements in her letter. It is not open to us therefore to speculate on her comments on the