had been achieved by that enlightened legislation. There are two passages from Mr Robertson's book which deserve particular mention. Mr Robertson devotes chapter 11 to a consideration of "the future of obscenity" and at page 311 on that topic he has this to say:

> "In New Zealand, however, a measure of openness and consistency has marked the operations of the Indecent Publications Tribunal, which is empowered, as an alternative to total prohibition, to classify 'indecent' reading matter as unsuitable for sale to persons under 18. Although material in this category may be publicly distributed and displayed, a criminal offence is committed by selling it to a minor. A ruling may be sought by publisher, police or Customs officers, and all parties are afforded an open hearing at which expert evidence, statements from readers and affidavits from authors are admissible."

And after considering the definition of indecency as set out in the Indecent Publications Act and the nature of the test to be considered by the Tribunal as likewise set out in that Act Mr Robertson goes on to say at page 312:

> "These factors seem to protect serious literature, although the Tribunal has declined to approve many popular English 'men's magazines', even for restricted sale on the grounds that 'entertainment value' is not a consideration which can outweigh a finding of indecency. The few monthly magazines of this sort which are deemed acceptable are reviewed at 2-yearly intervals and a former 'clearance' may be revoked in the event of any marked deterioration in standard.
>
> The New Zealand censorship model has worked in a more progressive fashion than its equivalents in South Africa and Eire, largely because of the provisions for public hearings and reception of expert evidence. There is no right of appeal to a jury, which might provide a more satisfactory touchstone of commonsense and common standards than 5 political appointees, who comprised in 1976 a solicitor, a university chaplain, the editor of the *New Zealand Listener*, a head mistress and a Maori housewife. The few 'indecent' magazines and books classified for restricted sale are granted competition-free monopoly of the market—*Penthouse* and *Playboy* leisurely compete for the custom of curious New Zealanders denied access to *Mayfair* and *Men Only*"

In fairness to Mr Robertson's thesis we should mention that he then goes on to evaluate the system which operates in South Australia and New South Wales and to relate that system of censorship as being:

> "The only common law jurisdictions to have 'solved' the problem of censorship in a way which deserves emulation in England."

It is neither our intention nor is it our province to enter into a consideration of the merits or demerits of our system or any other system of censorship.

It is important to consider the climate in which the Indecent Publications Act of 1963 was enacted. For those who have a more scholarly interest in that subject we would refer them to *The Indecent Publications Tribunal A Social Experiment* by Mr Stuart Perry, a member of the original Tribunal set up following the passing of the 1963 legislation. Those who take the trouble to read Mr Perry's book will we feel sure echo the amazement of the members of this Tribunal at some of the earlier legislative provisions which gave voice to and reflected a puritanical protectionism of New Zealanders of amazing rigidity. Mr Perry's book contains details of those early cases dealt with by the Tribunal commencing with *Another Country* by James Baldwin, Tribunal decision 1 of the 18th day of March 1964, and concluding with decision 12 delivered on the 12th day of May of that year in which the Tribunal classified as indecent in the hands of persons under 18 years of age the expurgated paperback edition of *Fanny Hill*. It is of historical significance to note that the decision No. 3 of the Tribunal was as is this decision a majority decision and it related to the book *Lolita* by Vladmir Nabokov. That decision by a majority was not prepared to impose an age restriction on the circulation of that particular publication.

The significance of the book *Lolita* in the history of New Zealand censorship is that it was controversy relating to a decision by the New Zealand Court of Appeal in respect of that book which prompted the enactment of our present legislation and the setting up of what was seen to be a specialised Tribunal. There is a touch of piquancy in the fact that the first president of the Indecent Publications Tribunal Sir Kenneth Gresson disqualified himself from participation in the *Lolita* hearing by the Tribunal as he had been a dissenting judge in respect of the Court of Appeal's decision on that book. Another original Tribunal appointee who likewise withdrew from the hearing was Professor I. A. Gordon who had been an expert witness in respect of the earlier Court proceedings in relation to that book.

On the face of it Parliament had achieved significant changes in the approach to censorship in New Zealand. Section 11 in particular prescribed a charter within the framework of which publications could be tested and classified. There was no disguising Parliament's intention in enacting the legislation. It was clearly to circumscribe and to limit censorship.

Like "grandfather's axe" the Tribunal exists today as it did at its inception. Personnel have of course changed from time to time and it is many years since the last of the original Tribunal members retired. There has been in our respectful view a continuity in the decision-making functions of the Tribunal with its existing members being ever conscious of the whole history of its decision-making processes and of the vast input of representations from counsel and from others. Any detailed consideration of the decisions over the intervening years reveals that which will cause no surprise, namely, that material which would have earned an indecent or restricted classification in the 1960s was often deemed not indecent or perhaps available for limited distribution in later years. That this should be so, simply reflects the importance which the Tribunal has placed upon that charter provided by Parliament which is principally contained as previously noted in section 11 of the Act. It is patently evident from even a casual reading of the Tribunal's decisions that they have reflected what might in a general way be called changes in public attitude even regrettably perhaps changes in commonly perceived standards of morality and decency.

There is a whimsical feature to that which now divides this Tribunal in its decision in respect of these publications. The present Tribunal membership echoes the words and feelings of many of their more recent predecessors in bemoaning the fact that their censorship duties today consist almost entirely of a consideration of magazines depicting nude females, homosexual magazines and trashy and ill-written pseudo-Victorian novels. When we compare the material which we now consider with the material presented to that first Tribunal the two can only be stated as being diverse in the extreme. Mr Perry's book which sets out the Tribunal's first 12 decisions illustrates that diversity. The publications considered included:

1. *Another Country.*
2. *No Adam in Eden.*
3. *Lolita.*
5. *Dead Fingers Talk.*
6. Three novels—*Close of Play*; *Slippery Errors*; *Death by the Day.*
7. *De Sade and Apollinaire.*
8. *The Snake.*
10. *Lady Chatterley's Lover.*
11. *The Carpetbaggers.*
12. *Fanny Hill.*

The whimsy is this: Parliament clearly intended that the Indecent Publications Tribunal should confine its attention to those important aspects of literature which fell within the interpretation of "books". Again that which Parliament clearly considered as of less importance (being mainly documents) were not to trouble the Tribunal but were to be left with the Courts to determine whether they were indecent or not. Parliament could never have foreseen how that demarcation would in 1986 lead to major problems for the Tribunal in the carrying out of its classification function. That which would otherwise have provided at least one more vote to the dissenting members of this judgment was removed from my judicial consideration by the majority decision of the Court of Appeal in *Howell* v. *Lawrence Publishing Company Ltd.* CA 77/84 delivered on the 1st day of May 1986.

It is important that we detail here the history of that particular litigation. Lawrence Publishing Company Ltd. imported into New Zealand 20 copies of *Greystone Illustrated 1983* calendars on 21 October 1982. These were seized by the Comptroller of Customs on the grounds "that he had reasonable and probable cause to suspect that they should be forfeit to Her Majesty the Queen as being indecent documents within the meaning of the Indecent Publications Act 1963".

The importer purchased the calendars which contained photographs of nude males with their genitals clearly displayed. Its decision to import had been made after a consideration of other material which had been declared by this Tribunal not to be indecent. The importer contested the seizure by the Comptroller of Customs and because the calendars were documents and not books the issue for determination was sent not to the Tribunal but to the District Court in Auckland. The learned District Court Judge in his decision of the 28th day of April 1983 found that the calendars were not indecent as that term fell to be interpreted in the Indecent Publications Act 1963 and at the conclusion of his decision after reviewing what on the face of it were conflicting decisions of the full Court of the High Court and the Court of Appeal concluded with these words: