(c) To hear and determine any questions relating to the character of a book or sound recording referred to it by a Court in any civil or criminal proceedings (including proceedings under section 25 of this Act), and to forward a report on its finding to that Court".

I am able to record that almost invariably the Tribunal reaches a consensus decision on classification. In the majority of the cases it is then my function to detail the reasons for that classification in a written decision.

It is pertinent at this point to record that in the event of an appeal against a Tribunal ruling that that appeal in terms of section 19 of the Act is to the High Court where it will be heard by "at least three judges" of that court. It is of considerable significance in the light of the Court of Appeal's decision in the Lawrence case to further record that there is no further right of appeal from the decisions of the full Court of the High Court to the Court of Appeal.

When the Tribunal deferred its decision in respect of the publications *Knave* and *Fiesta* it did so with the knowledge that the Court of Appeal decision in the Lawrence case would shortly be available for its consideration as in fact proved to be the case. Within the framework of the legislation as had been interpreted over the years both by the Tribunal and by the Courts I had reached a conclusion that subject to what the learned Judges of the Court of Appeal might direct in their decision that I would find that the publications *Knave* and *Fiesta* were indecent. I had on the occasion of the Tribunal hearing into those publications and on a subsequent occasion when the Tribunal was receiving submissions in respect of the publications *The Girls of Penthouse, Australian High Society* and *Genesis Girls/Girls Spring 1986* expressed the view that the publishers of magazines depicting female nudes were endeavouring to push the benchmark past a point where they could safely expect them to receive at worst a restricted classification and that the Tripartite Test was because of this much more explicit portrayal of the female nude either no longer relevant or in need of restatement. It would have been my finding that the interpretation of "indecency" in section 2 of the Act when considered together with the prescription contained in the other provisions of the Act (in particular sections 10 and 11) and measured against previous Tribunal and appeal decisions required the Tribunal to classify those publications as indecent.

Had that option been available to me it would have meant that there would have at least been a majority decision of 3 to 2 that these particular publications be classified as indecent. I say at least as it has been unnecessary for the 2 other members constituting the majority decision to declare themselves in relation to that matter. That I have seen fit to do so results from my personal concern that there are now major fetters created by the Lawrence decision to the continued efficient operation of the Tribunal. It is obviously important that I should detail how it is that that should be so.

In his decision in the Lawrence case the learned District Court judge highlights the problems which would arise if each individual Judge in applying the precepts contained in the legislation was to approach his or her determination as to indecency on a subjective basis. With that appraisal of the problem no member of this Tribunal has any quarrel. What has always presented some difficulty (and now since the Lawrence decision, as we see it, almost insurmountable difficulty) is to find that a particular publication is indecent in that its publication would be "injurious to the public good". The majority of the Tribunal in reaching their decision are satisfied that where the challenged publications fall outside what might be called the Tripartite Test cases that there can be no innovative or original finding of indecency or a change in existing prescriptions of indecency unless there is clear and explicit evidence that injury to the public good would result from such publications being either freely available or available subject to restriction.

During the last 12 months I have read a great deal of the literature available in this country on the subject of censorship, pornography and indecency. Included in that have been the findings of various commissions and committees of inquiry set up in other parts of the world. That reading together with discussions which have been held by the members of this Tribunal have led me to a clear conclusion that the concept of "injury to the public good" as now judicially interpreted by the Court of Appeal in the Lawrence case is one which in many cases would be almost impossible to prove to the degree necessary for new rulings to be made by the Tribunal. There is I believe a strong argument based on the Lawrence decision against the Tribunal even using as a benchmark its previous decisions on classification but until such time as that particular ruling is made in another jurisdiction this Tribunal will continue to regard itself as permitted to apply its earlier decisions and it does not intend to depart from those unless there is clear evidence that standards of indecency as publicly accepted have changed to the extent that the Tribunal has to modify its decisions in relation to particular publications.

On the occasion of the Tribunal's original meeting to consider the classification of the publications *Knave* and *Fiesta* and more particularly at the further meeting of the Tribunal called specifically to consider the effect of the Lawrence decision on the Tribunal's determination another area of concern was raised for consideration by members of the Tribunal. This particular concern is one which has been mentioned in earlier decisions of the Tribunal but on each such occasion when that has occurred there has been a direct or implied finding that the issues raised are not within the scope of the Tribunal's jurisdiction.

The concern to which I refer is the view that in presenting in pictorial and or written form a representational view of women as the sexual play thing of men such presentation denigrates all women and because of that brings the publication within the scope and meaning of the term "indecent" as defined by section 2 of the Act. I am in no doubt that there would be from the Tribunal a majority if not a unanimous decision that the material in question is plainly denigrating in that way in respect of all women. The majority is satisfied however that the legislation as presently enacted does not give jurisdiction to the Tribunal to rule against that material on that ground. It is the majority view that the words used in defining "indecent" in that section do not permit such a finding.

In a consideration of much of the material which comes before the Tribunal a member or members is or are moved to express disgust or dismay at the unwholesome coarse, lewd and denigrating aspects of that which is portrayed particularly in picture or cartoon form. Those reactions are however, whilst no doubt justified and reflecting generally held community standards not necessary indicia as to whether a particular depiction or representation is indecent *per se*. One's emotional response although perhaps some sort of reasonable indicator as to the worthiness of the publication can never replace that interpretation which Parliament itself decrees shall be the test. That which has concerned the members of the Tribunal has been what it sees as the limiting features of the Lawrence decision which the Tribunal finds puts a much stricter more difficult to prove interpretation of "indecency" than that formerly accepted by the Courts. Therein lies the problem. When the publisher of these 2 publications gave evidence and in particular when Mr Smith presented the very carefully prepared submission on the matter to the Tribunal the distinction between that which may be unwholesome pornographic lewd or coarse on the one hand and that which is indecent as per the legislation on the other hand were seen as 2 quite different concepts. Whilst the latter would invariably include elements of the former the former by itself does not necessarily lead to a finding that the material is indecent in terms of the Act.

Those features in relation to the New Zealand position which Mr Geoffrey Robertson found as distinctive and worthy of support are largely to be found in the provisions of section 11 of the Act which provides as follows:

"11. (1) In classifying or determining the character of any book or sound recording the Tribunal shall take into consideration—

(a) The dominant effect of the book or sound recording as a whole:

(b) The literary or artistic merit, or the medical, legal, political, social, or scientific character or importance of the book or sound recording:

(c) The persons, classes of persons, or age groups to or amongst whom the book or sound recording is or is intended or is likely to be published, heard, distributed, sold, exhibited, played, given, sent, or delivered:

(d) The price at which the book or sound recording sells or is intended to be sold:

(e) Whether any person is likely to be corrupted by reading the book or hearing the sound recording and whether other persons are likely to benefit therefrom.

(f) Whether the book or the sound recording 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 or sound recording.

(2) Notwithstanding the provisions of subsection (1) of this section, where the publication of any book or the distribution of any sound recording would be in the interests of art, literature, science, or learning and could be for the public good, the Tribunal shall not classify it as indecent.

(3) When the Tribunal decides that any picture-story book likely to be read by children is indecent in the hands of children under a specified age that picture-story book shall be deemed to be indecent in the hands of all persons.

(4) Where any Court is required to classify or determine the character of any document (other than a book) it shall take into consideration, with such modifications as are necessary, the matters set out in subsections (1) and (2) of this section."

In his decision in the Lawrence case the learned President of the Court of Appeal Sir Owen Woodhouse after setting out section 11 in full makes this finding at page 8 of his judgment: