

The Indecent Publications Act 1963 clearly uses the word 'injurious' rather than 'offensive' or 'prurient', and I am quite certain that the authors of that Act would have said 'offensive to certain people' if that's what they had intended. But they didn't. And in my opinion hundreds of titles have been banned over the years because of the Tribunal's deliberate misinterpretation of the Act."

The Tribunal does not ban publications "simply because they might offend certain religious/feminist groups". The Tribunal has during the 5 years that I have been its Chairman and I believe during the whole of its existence endeavoured to judge the issues before it in terms of the prescription provided by Parliament in the Indecent Publications Act 1963, being guided by the decisions of the Court of Appeal and the High Court and keeping in mind at all times the long history of decisions of the Tribunal itself.

Mr Douglas in his submission and in his editorial comments in his magazine quite frankly and openly advocates that New Zealand should move away from what he sees as "its victorian attitudes" and that its citizens should be allowed the freedom to read what they choose including most if not all forms of pornographic literature including photographs depicting sexual activity between adults.

In his submission Mr Douglas advised the Tribunal that the publication *Taboo* has 2 main functions, firstly "that of the contact magazine, to introducing liberal-thinking to each other" and secondly to display a concern for what life is really like "including the 'kinky' side of life". Mr Douglas submits that a puritanical society courts deviants and his oft expressed belief is that society would be far better if it allowed its children to freely and openly explore and give reign to their sexuality without repression. In issue 5 of *Taboo* at page 22, Mr Douglas presents an article written by himself under the title "Kids and Sex". In his submission he invites the Tribunal to carefully read and consider this article. It strongly advocates freedom of sexual contact and activity between children and attaches blame to the Churches and religion for its suppression of sexual freedom and suggests that such suppression is responsible for a great deal that is wrong with society today including in particular, sexual violence.

Towards the conclusion of his submission Mr Douglas quite openly suggests that there is possibly something underhand in the way that his publication comes before the Tribunal for consideration and I quote from his submission:

"One of the things which strikes me as unusual with this particular hearing is that *Taboo* issue 5 was listed with you within 3 weeks of its publication date. I think this is the first time any magazine has appeared before you so quickly. Usually there is a delay of several months. It suggests to me that Patricia Bartlett has someone pulling strings for her. Who? And for what reason? I may be entirely off the mark, but without wishing to paint myself paranoid, I can't help wondering just what the power structure is at the Indecent Publications Tribunal. After-all, I have often referred to Jim Bolger as "the Catholic bumpkin", and I have been scathing of his kow-towing to the American military. It does just cross my mind that there might be more to this issue than meets the eye. There must be several opposition MPs who would appreciate seeing an end of an anti-National magazine published by an outspoken editor/publisher. I have no commercial advertisers to crack the whip over me, no bosses, in fact *Taboo* might just be the only totally independent, commercially available, large (relatively speaking) circulation magazine in New Zealand. And it's growing. It could become a threat. I ask you, is it just slightly possible that certain behind-the-scenes characters might want to ban *Taboo* for reasons unrelated to sex?"

The Tribunal members are certainly not aware of any "power structure" at the Indecent Publications Tribunal and its 5 members are staunchly independent. They would individually and collectively resist most strongly any interference with their function as Tribunal members, be it overt or covert. Mr Douglas's speculation that the Tribunal will adjudicate on his publication motivated by "fear of the adverse publicity Patricia Bartlett will rain down upon you if you pass such a magazine" is without foundation. The Tribunal is of course constantly aware of public opinion frequently expressed in relation to pornography and its members take note of and consider such expression no matter from whom it may come.

I have mentioned in this decision Mr Douglas's submission before turning to the other submissions made because it was the first submission received by the Tribunal. I wished to highlight and answer some of those concerns expressed by Mr Douglas.

The Reverend Gordon Dempsey's submission is only 2 pages in length and it concentrated on drawing to the attention of the Tribunal, those aspects of the publication with Reverend Dempsey's society submits should result in an unconditionally indecent classification. The society also submits and requests that an order should be made in terms of section 15A of the Act declaring the publication indecent for a period of up to 2 years.

The Reverend Dempsey was questioned by Mr Fenemor (whose submission will be referred to later in this decision) and he was asked by Mr Fenemor to provide some further information relating to those persons who were the subject of a public opinion poll which had been carried out and a report prepared for the society. The Reverend Dempsey produced a copy of the report to Mr Fenemor and subsequently made that report available to the Tribunal. Mr Fenemor presented a 7-page written submission to which was appended a copy of a 3-page letter from Mr Douglas as managing director of Aztec Publishing Ltd. to the editor of the *Listener* dated 25 August 1989. Mr Fenemor, whose company Rock's Marketing Services Ltd. has the contract for distributing *Taboo* magazine, advised the Tribunal that his company distributed a wide range of magazines covering such subject matter as "Children, Motoring, Fishing, Gardens, and Cooking". Mr Fenemor informed the Tribunal that in the course of distribution his company receives requests from retailers for other magazines and that the strongest and most frequently requested was *Taboo*. It was as a result of those requests that Mr Fenemor approached Mr Douglas regarding the distribution of his company's publications. Mr Fenemor's submission strongly supported Mr Douglas as a man of strong principles and an honest belief in the cause that he espouses. Mr Fenemor advised the Tribunal that 18 000 copies of *Taboo* are distributed to 2000 outlets whilst a further 2000 copies go out from the publishers to direct subscribers. Mr Fenemor advised the Tribunal that because of the sensitive nature of the publication there are several self-imposed precautions which have been taken in order to ensure that the publication is purchased by the "targeted market". These include all publications being distributed in sealed plastic bags in order to prevent browsers and/or children from viewing them in retail areas. All magazines carry a self-imposed R18 rating. All retailers are encouraged to display these magazine out of the reach of children.

Mr Fenemor advised the Tribunal that in the event that *Taboo* magazine is then found indecent that some market feedback has been brought to his company's attention and that:

"I have been told that numerous 'hard core' magazines that are only currently available from areas, such as hotel public bars, etc., shall be 'dropped' onto the market to fill the gap left by the non-appearance of magazines like