

*Taboo*. These publications apparently include photos/articles pertaining to such vile acts such as child sex."

In both the submissions presented by Mr Douglas and Mr Fenemor emphasis is placed upon the fact that sexually explicit videos are legally available for hire, while magazines which reproduce pictures from such videos are classified as indecent. The Tribunal has previously, carefully and deliberately refrained from anything other than passing comments on such submissions but we now believe that some expression of the Tribunal's view of this matter should be provided. The Indecent Publications Tribunal has a long history of precedent and a number of decisions have been the subject of review by the High Court. The Court of Appeal has also considered in a number of decisions the test of indecency and in particular the phrase "injurious to the public good". The phrase is found in the interpretation of the word "indecent" in section 2 of the Indecent Publications Act 1963 and it is a definition, which the Tribunal is required in the terms of its governing legislation, to give effect to. That section provides:

"'Indecent' includes describing, depicting, expressing, or otherwise dealing with matters of sex, horror, crime, cruelty, or violence in a manner that is injurious to the public good."

The Act also prescribes the functions of the Tribunal in section 10 as:

"Functions of Tribunal—The functions of the Tribunal shall be—

- (a) To determine the character of any book or sound recording submitted to it for classification:
- (b) To classify books and sound recordings submitted to it as indecent or not indecent or as indecent in the hands of persons under a specified age or as indecent unless their circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be:
- (c) To hear and determine any question 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 of its findings to that Court."

and the matters to be taken into consideration by the Tribunal are set out in section 11 of the Act:

"Matters to be taken into consideration by Tribunal or Court—

- (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 interest of art, literature, science, or learning and would 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."

The members of the Tribunal are well aware that video recordings and films depicting quite explicit sexual activity are freely available for viewing by adults and the members are quite aware that in the case of video recordings that these can be and are indeed watched by children. The history of the development of film and video censorship has proceeded along quite separate lines from that of the written word, photographic displays and comic books and although the Tribunal members note the disparity between its decisions and those of the other censorship authorities it finds itself to a large extent guided by its own previous decisions and bound by the decisions of the Court of Appeal and the High Court. Persons closely associated with the work of the Tribunal including members of the legal profession, publishers, importers and distributors will be well aware that the Tribunal's classification of indecent is not a fixed and rigid stance and that there has been throughout its history a broadening of its perception of what is "injurious to the public good" and it is correct as Mr Douglas says in his submission that many books which would have been considered indecent and so classified by the Tribunal 5 years ago are today given an age restriction classification only. As Chairman of the Tribunal I have consulted my fellow members and they concur that it is not for the Tribunal to make a dramatic movement in the benchmark of acceptability and if there is to be a dramatic change in the prescription, then it should be done by legislation and not by judicial intervention unless there is evidence which warrants such change being made. Tribunal members are of course, guided and not dictated to by me in matters of that kind but although that guidance does not pass without substantial questioning by members, my understanding is that no member at this stage wishes to take a stand and oppose the continuation of the precedential approach of the Tribunal.

*Taboo* magazine in issue 5 contains 20 pages of advertisements under the heading "Keylink", some with photographs of adults seeking to correspond and meet other adults with many of those advertising seeking to engage in a great range of sexual and intimate activities. The remainder of the 94 pages of the publication are comprised of a significant number of photographs of naked or partly clad females with a concentrated emphasis on the genitalia, many of which photographs are as explicit and revealing as the most explicit of that kind that the Tribunal has seen in the last 5 years. There are also a number of photographs displaying male and female models, female models and transvestite models engaged in explicit sexual activities. The publication as indicated earlier in this decision contains an editorial by Mr Douglas espousing the cause of sexual freedom and applauding promiscuity, the remainder consists of essays, articles, letters and comments and newspaper reports on a