place to which any member of the public has access, a publication which the Tribunal has classified R18. The penalty for this offence is a fine of up to $500. In *London Bookshop in Kirkcaldies Ltd* v. *Police* [1980] 1 NZLR 292, the Court of Appeal interpreted section 21 (1) (f) and held that the display of R18 books on a table in a shop fell within the ambit of "exhibits", and that mere supervision of the table by staff was insufficient to prove a defence of "no immoral or mischievous tendency". If section 21 (1) (f) of the Act is enforced, (and we are aware that difficulty in enforcing a classification is not a matter the Tribunal can take into account when classifying a publication: *Secretary for Justice* v. *Taylor* [1978] 1 NZLR 252), persons will be free from involuntary exposure to sexually explicit material which the Tribunal has classified R18, and the freedom of expression will be preserved subject to this reasonable and justified limitation.

The Tribunal must now assess whether it is legally capable of altering the tripartite test in this manner to reflect the psychological evidence and evidence of community standards, especially in light of binding High Court precedent. It should be stated at the outset that it was the Crown's view that the Tribunal's application of a test such as the tripartite test was consistent with the Bill of Rights, but that equally the Tribunal had to decide whether community standards had changed to the extent that the existing tripartite test no longer adequately reflected them. The High Court has commented on the tripartite test and on the duty of members of the Tribunal to use their own expertise in reaching a decision. With respect to the tripartite test, Quilliam J in *Gordon & Gotch* stated at 83-84:

> "For myself I see no objection to the establishment by the Tribunal of criteria which are designed to assist it to a conclusion as to whether a document is injurious to the public good. I do not accept that there can properly be any slavish adherence to a formula in such matters. The danger of using a formula is that it tends to become in itself the test without reference to the principle which alone can be the proper basis of a decision. I therefore consider that the use by the Tribunal of the tripartite test is not itself wrong in principle, but that the use made of that test could become wrong in principle, but that the use made of that test could become wrong if it is not appropriately adapted to the particular case or to changing standards and attitudes within the community."

Clearly, then, guidelines such as the tripartite test are appropriate. The caution against slavish use of guidelines is consistent with that the Tribunal has done in this case. We have adapted the guidelines to match what we perceive to be changed community standards. We emphasise again that they are merely guidelines as to the current meaning of the words "injurious to the public good" in the definition of "indecency" in section 2 and are no substitute for the statutory criteria in section 11.

With respect to the ability of the Tribunal to draw on the expertise of its members in creating guidelines which assist in determining whether material is injurious to the public good, it is worth noting that section 3(2) of the Indecent Publications Act requires at least 3 or the 5 members of the Tribunal to have special qualifications in the law, literature and education respectively. Jeffries J in *Gordon & Gotch* stated that one of the consequences of this special membership provision was that:

> "Any member of the Tribunal would be entitled to give the exact evidence on injury to the public good in the law of indecent publication before any other Court or tribunal, in this country or outside it, if called as an expert ... It is surely undesirable for members of the Tribunal to remain oblivious of their own experience and knowledge which put them on the Tribunal in the first place." (at 90).

His Honour stated further at 92 that:

> "The Tribunal, it could be said, is driven to search the whole range of its collective experience as well as any evidence which might be placed before it, but most certainly it is not limited to the evidence and the absence is not of itself to be determinative."

Greig J made similar comments at 98:

> "the membership of the Tribunal has a continuity but also a slow change. There is thus at any time a depth of cumulative experience, together with an inflow of fresh thought and experience. The Tribunal, therefore, is able to reflect the change in the community at large. The Tribunal in this country takes the place of the judge and jury which is the corresponding situation in other parts of the Commonwealth in indecency legislation. But it still represents the community in the exercise of its function to determine and classify the books and other documents before it. It is to apply its specialised expertise and its collective community knowledge and experience in its deliberations."

The membership provisions of the Act therefore qualify the Tribunal to decide what is injurious to the public good on the basis of its own members' expertise (excluding of course subjective personal preference) and on the basis of evidence placed before it. The new guidelines set out above are supported by the evidence adduced at hearing, but authoritative publications to which the Tribunal was directed by counsel, and by the "whole range of collective experience" of all the current members of the Tribunal. Further it was Greig J who said in *Gordon & Gotch* at 99 that the public good "is a concept whose boundaries are always changing as society itself changes". We have endeavoured to reflect as accurately as possible the current boundaries of "the public good". In this respect we have considered the views of a broad spectrum of society as well as those of experts. We have noted views which express a liberalising trend consistent with freedom of expression as well as views which reflect a more conservative, or hardening, trend towards justifiable limitations of the freedom of expression. The new guidelines are an attempt to balance these views and to mould them into a workable test. Their application may well produce results different from those produced by the old tripartite test; equally, their application could in many cases produce the same results. There will inevitably be a "shakedown" period, but this cannot deter us from our basic task of accurately reflecting the public good.

Finally, it could be perceived that the second limb of the new guidelines is an attempt by the Tribunal to incorporate a feminist viewpoint of the kind attempted by the minority decision in *Re Fiesta and Knave* (1986) 6 NZAR 213, and disapproved of by Jeffries J in *Gordon & Gotch*. A careful reading of His Honour's decision in *Gordon & Gotch* demonstrates, however, that this would indeed be a misperception. The criticism of Jeffries J was both substantive and procedural. Much of the substantive criticism was limited to the perceived illogicality of the question posed for the Court: "whether the representational view of women which denigrates all women is indecent within section 2 of the act" (page 94). No submission before the Tribunal in this case relied on this argument. His Honour did state however that:

> "In my view to attempt to link pictorial or verbal representation of women to denigration of all women is to go too far. ... To avoid as far as possible misunderstanding I affirm that if a publication is of such a character it gravely concerns the Tribunal over classification then they must decide whether it is injurious to the public good of which women constitute approximately one half." (page 94).

There are at least 3 possible interpretations of this statement. Does it mean that if a publication is injurious to only one sector of society, it does not injure the public good because it does not injure everyone? Or does this statement mean that one cannot link a denigrating representation of women in a