

**MEMO**

To : Clerk to the Panel on Home Affairs

From : Assistant Legal Adviser 4

Your ref. : CB2/PL/HA

Our ref. : LS/P/HA/98-99

Tel No. : 2869 9468

Date : 23 April 1999

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**Control of obscene and indecent articles**

**Instruction**

Members of the Panel on Home Affairs have expressed concern over the publication of articles and photographs of a violent, indecent or obscene nature in newspapers. The Legal Service Division is requested to advise members of the Panel on the legislative measures regulating the area of their concern.

**Meaning of “article” under the Control of Obscene and Indecent Articles Ordinance (Cap. 390)**

2. The Control of Obscene and Indecent Articles Ordinance (Cap. 390) (“the Ordinance”) (Annex I) controls, among other things, articles which consists of or contain material that is obscene or indecent.

3. The term “article” is defined under section 2(1) of the Ordinance to mean “any thing consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures”. Thus, a picture in the newspaper is an “article” and is regulated by the Ordinance.

### **Prohibition on publishing obscene or indecent articles**

4. Section 21 of the Ordinance makes it an offence, subject to certain statutory defence, for a person to publish an obscene article. Any person who contravenes the provision is liable to a fine of \$1,000,000 and imprisonment for 3 years.

5. Section 22 of the Ordinance makes it an offence, subject to certain statutory defence, for a person to publish an indecent article to a person who is a juvenile. Any person who contravenes the provision is liable to a fine of \$400,000 and imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and imprisonment for 12 months on a second or subsequent conviction.

### **Classification system**

6. Section 13 provides for a system under which a publisher, etc., if in doubt as to whether an article is obscene or indecent, may submit that article to the Registrar of the High Court (“the Registrar”) for classification by a Obscene Articles Tribunal (“a Tribunal”).

7. Section 6 of the Ordinance empowers the Registrar to appoint such number of tribunals as may from time to time be necessary for the purposes of the Ordinance. A tribunal so appointed is known as an Obscene Articles Tribunal.

8. Section 8 of the Ordinance provides that a Tribunal shall have jurisdiction to determine, among other things, whether an article referred to it by a court is obscene or not. In relation to an article submitted to it under section 13, a Tribunal may, among other things, make a classification that the article is -

- (a) a Class I article if it is of the opinion that the article is neither obscene nor indecent;
- (b) a Class II article if it is of the opinion that the article is indecent and impose conditions relating to the publication of that article; or
- (c) a Class III article if it is of the opinion that the article is obscene.

### **Meaning of “obscene” or “indecent” under the Control of Obscene and Indecent Articles Ordinance (Cap. 390)**

9. Section 10 of the Ordinance provides that, in determining whether an article is obscene or indecent, a tribunal shall have regard to -

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap. 392) in respect of a film within the meaning of section 2(1) of that Ordinance (Annex II);
- (b) the dominant effect of an article or of matter as a whole;
- (c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;
- (d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and
- (e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.

#### **Effect of classification**

10. Section 24 provides restrictions on publishing Class II articles. Those restrictions include that the article is to be sealed in a transparent wrapper or completely opaque wrapper.

11. Section 26 prohibits publishing, etc. of Class III articles.

#### **Appeal**

12. Section 30 of the Ordinance provides that any party to any proceedings before a Tribunal may appeal to the Court of First Instance against a decision of that Tribunal on a point of law.

(Stephen Lam)  
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