

-Revised-
**SUBMISSION IN RESPONSE TO
THE CONSULATION PAPER ON
THE 2000 REVIEW OF THE CONTROL OF OBSCENE
AND INDECENT ARTICLES ORDINANCE**

BY

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The Council of the Hong Kong OAT Adjudicators Association has called a special meeting to discuss the Consultation Paper on the 2000 Review of the Control of Obscene and Indecent Articles Ordinance. Our comments are summarized as follows:

Adopt identification for newspapers containing indecent materials

We would propose that the newspaper publishers should be self-discipline to have sealed separate supplement for pages containing possible indecent materials in a newspaper (such as *Cable TV Magazine* doing). By not officially classify the newspaper is an indecent article, newspaper and magazine resellers will not expose to the possible legal liability by selling indecent newspapers to the people under age of 18.

Increase the penalties

Agreed with the proposal.

Provide additional guidance to the OAT

Agreed with the proposal.

Revise the definition of the term “Article”

Agreed with the proposal.

Adopt new Nomenclature for classification

We had no objection on new nomenclature for classification. But we still believed that sub classes IIa and IIb or equivalent are required. Because ages of 7 and 17 are quite different, therefore one class cannot good enough to cover ages of 0 to 18.

Adopt a two-tier classification system

Agreed to have one Obscene Articles Classification Board to classify articles. But in order to maintain the standard and consistence, one of the experienced OAT adjudicators should be appointed as the Chairman to

guide the 4 Advisers to classify articles. Panel of Advisers should be drawn from sectors of the community wider than mentioned in the Consultation Paper.

We were strongly against the proposal to adopt the jury system by selecting adjudicators from the list of jurors to attend OAT hearings. Under the current and proposed system, OAT decision is considered final. In such a case, the defendant will have no appeal channel except judicial review.

At the present jury system, High Court of First Instance cases, judgments can be appealed to the Court of Appeal and then to the Court of Final Appeal. Appeals are not restricted to judicial reviews only but also judgments. Appeal courts can overrule judgments made by the jury system Court of First Instance.

In the Court of Appeal and the Court of Final Appeals, judges are experienced judges. Since OAT decisions are final, therefore the proposed new OAT should not use the jury system. Only experienced adjudicators should attend the hearing of appeals from the Classification Board but not those adjudicators with no experience selected from the list of jurors.

Furthermore, the proposed new jury system OAT may take up huge resources of the Judiciary. The appellants will also have no fair justice because those adjudicators selected from 270,000 persons on the list of jurors make the decision of the case, which is then considered final. There are no other higher courts that can overrule the jurors' decision. Also consistence of classification may be a big problem under the proposed system.

We would like to propose to have the existing OAT system by using the appointed adjudicators to deal with court cases. A new Classification Board can be formed to deal with classification works. Furthermore, all cases, no matter referred by other courts or other departments, articles should be presented to the new Classification Board before taken to the new OAT for determination.

Empower TELA's inspectors to seize articles

Agreed with the proposal.

Encourage Schools to draw up lists of publication recommended

Agreed with the proposal.

Issue serial publication orders against a serial publication

Agreed with the proposal.

Consider regulations on the Internet

Agreed with the proposal.

Clarify the legal liability of conveyors of information

Agreed with the proposal.

Enhance publicity and public education efforts

Agreed with the proposal.

Make technical amendments to the COIAO

Agreed with the proposal.

END