



**FEDERATION OF  
COMMUNITY LEGAL CENTRES**  
(Vic) INCORPORATED

Classification Review Board,  
Level 1, 255 Elizabeth Street,  
Sydney, NSW

9th July, 1996

Dear Members of the Classification Review Board,

Re: "Rabelais" (July 1995) - Classification Review board Appeal 12th July, 1996 (in Sydney)

The Federation of Community Legal Centres (Vic.) Inc. is the peak organisation for 45 Community Legal Centres in the State of Victoria. We have a keen interest in ensuring that the ability of people to exercise their democratic right to freedom of speech is not undermined, and that individuals are not harshly dealt with by the criminal justice system in exercising their democratic rights.

The Federation of Community Legal Centres is concerned at the recent application of the provisions of the Australian Capital Territory Classification of Publications Ordinance to the Editors of the La Trobe University student publication "Rabelais" and the subsequent criminal charges laid against the editors. We believe that the ordinance is being given a far broader scope than was intended by the drafters of the Ordinance and that such an application of the Ordinance presents an unwarranted restriction on freedom of speech and a restraint on political debate that is unacceptable in a democracy.

The Political Nature of the Article

The article contained within "Rabelais" entitled "The Art of Shoplifting" must be examined within the context in which it was published. Student magazines are renowned for their political nature and often radical and confronting views. Undoubtedly, the object of student newspapers has been to challenge accepted notions and create political debate.

In the 1960's it was partly due to the fearlessness and questioning articles contained in student newspapers that the cruel realities of the Vietnam war were exposed and community awareness of the realities of the war increased. As a consequence, in time, the government was convinced that it would need to change its policies in relation to the war. The student newspapers were initially unpopular for presenting their alternative views on the war, but no matter how unconventional or confronting the articles may have been, the articles promoted public debate and were instrumental in bringing about change. Likewise, the article in "Rabelais", which is the subject of this application to the Board, is political in nature. The article "The Art of Shoplifting" is sandwiched in between a Chapter entitled "The Dubious Activities of CRA" and "Tehan stands

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by 'Disease' Slur". Both are clearly political in their content as are the other subjects listed in the contents section of the newspaper (excluding the film and book review). Further, the use of language in the article in question, highlights the political nature of the article. For example, the article commences with "Within **capitalism**.....1) **alienated from our labour** ... dependent on the ruling classes for commodities...2) excluded from the **division of labour**.... NEVER STEAL FROM SOMEBODY WHO COULD CONCEIVABLY BE A **COMRADE**...." Such language is clearly political and is reminiscent of the language utilised in Marx, Weber and other writings of political theorists from the communists through to the anarchists.

The ideas contained within the article, no matter how unsettling they may be for Retail Traders Association, are political in nature and serve to challenge the existing system of "capitalism" for its inequality. The article is requiring its readers to challenge accepted norms, probably, with a view to encouraging debate through the use of the extreme ideas communicated in the article. It should also be noted that the article was also written at a time when student funds were being withheld from elected student organisations, and when voluntary unionism was being fostered by the government. Such factors highlight the political nature of the article as opposed to any "criminal" intention.

The nature of student magazines should be taken into account by censorship authorities when making a decision to categorise them as "restricted", otherwise the hindering of freedom of thought, student exploration of life, issues and ideas free from interference and the debate that often results from such confronting articles would be undermined. An interesting analogy to draw with the article "The Art of Shoplifting" is the furore surrounding another publication which in its day was condemned, criticised and efforts were made to restrict its circulation. Germaine Greer's book "The Female Eunich", contained graphic accounts of the sexual relations between men and women and the power interplays. The book outlined the power imbalances between men and women from birth and was unrelenting in its attack on established codes of conduct and the existing ethical standards. The extreme views conveyed by the author promoted public debate and outcry. The book challenged accepted notions and went some way towards upending such notions and bringing about radical changes in outlook and a fight for equality that lead to women being accepted as individuals with rights.

As in the case of the "Rabelais" article, it is possible that no matter how unpalatable extreme views may be, they often cause persons to view what is accepted from differing perspectives and bring about a reappraisal of the way a society is structured. To inhibit such challenging literature may in fact be limiting public debate and shackling society's development.

#### The Provisions of the Classifications of Publications Ordinance

On examining the amendments to the Classifications of Publications Ordinance, it becomes clear that the Ordinance is now couched in such terms as to increase its scope well beyond its intended application when it was agreed to by the States and Territories. This is revealed in the explanatory statements which accompany the Ordinance.

In the Classification of Publications Ordinance no 59, 1983 an "objectionable publication" is defined in section 3 (c) as that which "promotes, incites or encourages terrorism". Terrorism was defined in the Australian Security Intelligence Organisation Act 1979. In the Explanatory

Statement No.2 of 1989 on the Classification of Publications (amendment) Ordinance 1989 the reason for the amendment of the definition by the substitution of the word "terrorism" was fleetingly explained by reason of the removal of the definition of the term "terrorism" from the Australian Security Intelligence Organisation Act 1979. In light of the difference in scale between the word "terrorism" and the word "crime", the lack of Parliamentary debate about a change giving increased scope of the definition of "objectionable publication" and hence a limitation on freedom of speech, the Federation submits that the Classification Review Board should be reticent to uphold the decision of the Chief Censor. Terrorism usually denotes the use of terror, violence and dangerous tactics to coerce governments to adopt a course of action. Terrorist activities often result in the loss of many innocent lives. By contrast a "crime" is something contrary to law and its scope can extend from a failure to wear a bicycle helmet, theft of a rattle, possession of marijuana, through to murder.

The Explanatory Notes reveal that little thought was given to the consequences of the change in wording in the 1989 Ordinance. In addition, the Ordinance interpretation by the Chief Censor under which the "Rabelais" article was categorised as "objectionable" seems to be at direct odds with the stated intention of the then Victorian Attorney General in the passing of the Victorian Classification of Films and Publications Act 1990 when he said in Parliament on 2nd May, 1990 that:

"This Bill strikes a balance between, on the one hand the rights of adults in a free society to see what they wish and of creative artists to depict what they please without fear of intervention of the State and on the other hand, constraints to be imposed on the exercise of these rights for the good of society as a whole."

Furthermore, in the Explanatory Statement of the ACT to the Classifications of Publications Ordinance 1983 No. 59 of 1983 it states in discussing the Ordinance:

"It is designed to ensure maximum freedom for adults to view what they wish in their homes..."

It should be noted that the "Rabelais" article is viewed by adults. Most university students are 18 years of age and over. If they are free to determine the fate of a country by voting then they should be free to choose what they read, write, purchase and analyse. As adults they are entitled to explore ideas and challenge political theories and make choices of their own. In an endeavour to appease Retail Traders the classification principles set out as a guide to the censors in classifying articles should not be overlooked or undermined. They state "Adults in free society should be free to see, hear and read what they wish provided there is sufficient protection for young people...." A large proportion of the Ordinance is directed at protecting children from exposure to sexually explicit materials (Section 3 (b) and 18). This also highlights the type of literature the Ordinance intends to hold within the purview of an "objectionable" publication and underlines the fact that a student newspaper which is political in its intent should not be classified as "objectionable" and therefore restricted.

#### The Dangerous Scope of the Provisions of the Ordinance

The provision "promotes, incites or instructs in matters of crime" is exceedingly broad. It will catch within its net a whole range of activities that are written on or about that are conducive to

public debate and are informative. In an era when increasingly, Conservative governments are trying to regulate and control public debate, public criticism and scrutiny of their actions, a broad provision such as 'crime' needs to be given limited application. In Victoria, in the last week in October, 1995 the Parliament passed the Australian Grand Prix Act. The legislation allowed for the "prohibition...of any activity" in a designated area during the Grand Prix race period. This legislation effectively made it a criminal activity for the Save Albert Park protesters to protest in the manner that they had been in the lead up to the race. The legislation outlawed the right to protest on land that was Crown land. Presumably, if any protestors distributed flyers about a protest march or protest activities against the race they could be potentially prosecuted for distributing a publication which was classified as "objectionable" under the Ordinance. More and more governments are keen to regulate and discourage the voice of dissenters, despite the contributions and insights that such dissenters can provide (This was adequately highlighted in the recent December 1995 Report of the Burdekin Inquiry into Human Rights and Mental Illness).

It is likely that a government may choose to outlaw certain activities that were once lawful. The potential for abuse of freedom of speech were the Ordinance or similar provisions of the new Commonwealth Act to be applied to restrict publication of materials which "promote, incite or instruct in matters of crime" could be great. In Victoria, where the government has a majority in both houses it is relatively easy for legislation to be passed speedily and without much public notice. For example, from October, 1992 until June 1994 the Victorian Parliament passed thirty-four Acts removing jurisdiction from the Supreme Court thereby reducing avenues of redress for members of the community.

#### Why the Issue Regarding "Rabelais" is of Broader Public Concern

One of the important fundamentals of a democracy is the ability of members of the public to express themselves on issues that concern them. Some safeguards have been developed over time to protect individuals liberties such as the law of defamation. This law bides well with liberal democratic principles that people should be free to do as they please as long as it does not infringe upon another person's liberties.

Freedom of speech serves a number of purposes. It keeps our elected representatives informed of minority and majority public viewpoints both during and between elections. In this way they can gauge community opinion and attitude. It informs people of different viewpoints, perspectives, provides information, educates and makes all members of the community feel they can contribute to society. It is through freedom of speech and the free expression of ideas without unnecessary constraint, that society learns, progresses, and is informed. Sometimes what is said may be unpalatable, but history has often seen that the debate caused from such issues can bring forth progress.

A government desirous of restricting criticism of its policy may seek to activate the provisions of the Classification of Films and Publications Act 1990 (Vic). The potential use of the Act will be far wider if it can be used in a manner similar to that used to silence and chastise the "Rabelais" editors. One of the worst experiences an individual can have is to be exposed to the rigours of the criminal justice system- police questioning, public stigma and the fear of imprisonment or hefty fines when one is impecunious and has a promising career ahead. Such

prosecutions arising from the publication of an article designated "objectionable" by the Chief Censor enables intimidation and reticence to speak out from other members of the community who fear that if they express political views they may face a similar fate.

No matter how unsavoury the subject of discussion may be, or how contrary to what we might want to hear, this cannot provide the basis for preventing freedom of speech. If this were the case we would censor information about Somalia or Bosnia on the basis of how shocking it is and we would not be able to learn from our mistakes or raise money to assist these people. It is appropriate to note the comments of Adlai Stevenson in 1952, "My definition of a free society is a society where it is safe to be unpopular."

Much discussion in society revolves around politics. Almost any topic can be labelled political, for politics impinges on almost every walk of life. A film review or art review can end up being political so easily, even an article on 'the Art of Shoplifting' can be political and create debate that is useful and raises important issues, such as the one at hand.

Please feel free to discuss this matter further should the need arise.

Your faithfully,

Liz Curran  
Community Liaison Project Worker For Law Reform