

**SOCIETY FOR THE PROMOTION OF
COMMUNITY STANDARDS INC.**

P.O. Box 13-683 JOHNSONVILLE

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PATRON:

Prof. TV O'Donnell MD FRACP CBE,

FOUNDER: Patricia Bartlett OBE

Newsletter: Dec. 2005 Issue 102

**URGENT: SOCIETY NEEDS FINANCIAL
SPONSORSHIP & SUPPORT:**

All members 2006 subscriptions due ASAP.

New Members wishing to join Society see p. 8

Or join up on-line www.spcs.org.nz

Eight Vacancies on Board of Review

The Minister of Internal Affairs, the Hon. Rick Barker, recently called for nominations for the eight vacant positions on the nine member Film and Literature Board of Review, setting a deadline for receipt of nominations (21 December 2005). The terms of office of eight of the members, including that of the president, Rotorua-based barrister Ms Claudia Elliott, and the deputy president, Greg Presland, expired on 31 May 2004 – 17 months ago! They have all remained in office at the request of the former Minister, the Hon. George Hawkins, and will do so until they are reappointed, replaced, resign or are directed to leave. In answer to a written question Mr Barker has indicated that “the process [of appointments] should be completed by April 2006.” (Q 11043).

The Society strongly opposes the reappointment of any of the current Board members, whose classification decisions reflect an extremely liberal mindset. For example, this Board unanimously approved the following films for adult viewing for the purpose of “entertainment” in cinemas and/or for study by students in tertiary film and media courses: the brutal and explicit rape films *Baise-Moi* and *Irreversible*; the sexually *explicit 9 Songs*, and the gratuitous Japanese sex-violence film *Visitor Q* depicting necrophilia, incest and corpse mutilation.

The nine members of the current Board are: Ms Claudia Elliott (President), Greg Presland (Deputy President), Mark Andersen, Peter Cartwright, Dr Brian

McDonnell, Marion Orme, Dr Lalita Rajasingham, Stephen Stehlin, and former Māori Television's Acting Chief Executive Ani Waaka (her first three year term of office expires 31 August 2006).

PRESIDENTIAL APPEAL **SOCIETY'S URGENT NEED FOR** **FINANCIAL SPONSORSHIP**

The Society is the only organisation in New Zealand that serves as a public lobby-watchdog group on censorship standards. It is only able to support one person part-time to further its objectives: the position of our national secretary (David Lane). The goodwill of its many members has ensured the success of the Society over the last four years and for this we are most grateful. However, its impact will be very much diminished if it cannot secure significant ongoing sponsorship. The executive team is fully committed to advancing the Society's objectives in 2006. We are making an urgent appeal for financial sponsorship at any level (A/P or regular gifting). Please contact me personally if you can help.

Mike Petrus, SPCS President.

P.O. Box 13-683 Johnsonville

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Chief Censor's Office Identifies Film Complaints

The Chief Censors' Office - the Office of Film and Literature Classification (OFLC) - notes in its Annual Report 2005, recently tabled in parliament, that the two films most complained about by members of the public over the last year, were *9 Songs* and *Irreversible*. Both were films that the Society sought unsuccessfully to have banned or cut, by seeking reviews of the classifications by the Film and Literature Board of Review. In both cases the Board unanimously upheld the R18 classifications issued by the Classification Office. The Report states:

"Most complaints about 9 Songs centred on the fact it contained explicit sex scenes and was to be shown at cinemas....9 Songs attracted the most

inquiries and complaints of any individual publication in 2004/05.

"The film that attracted the second largest number of inquiries and complaints was Irreversible.... Complainants generally argued that the film should have been banned." [p. 43]

The Society's president, Mike Petrus, responds:

"These findings vindicate the very real concerns raised by the Society over both films and its decisions to seek a review of both classifications."

Chief Censor, Bill Hastings, used his discretionary powers to allow the brutal rape film *Irreversible* to be reclassified, following an application by the Australian distributor for its general R18 cinema release in New Zealand. The distributor did this soon after it had been screened as part of a film festival and Mr Hastings aided and abetted the dissemination of this sick R18 film throughout the Rialto Cinemas in New Zealand. The reclassification he permitted, led to a relaxation of its rating. The highly controversial nature of this film had already been highlighted in a successful appeal to the High Court by the Society, against a decision issued by the president of the Film and Literature Board of Review, Ms Claudia Elliott. She had refused to grant an interim restriction order, applied for by the Society, against the film, that would have, if granted, restrained its exhibition pending its review before her Board. The Hon. Justice Ronald Young ruled that the president had committed in error of law in applying a high threshold test in terms of whether or not she, in her role as President, should issue the order. Her decision was quashed by Young J. However, he chose not to issue an order remitting the matter back to the president which would have forced her to reconsider the restriction order. The Society remains convinced that the film should have been banned. The OFLC, the Board and the Courts lacked the will to ban it.

Mr Petrus responds:

"The widespread complaints over 9 Songs demonstrate that the Society is continuing to play an effective "watchdog" role in the field of film censorship. In its Annual Report 2005 the Chief Censor's Office brushes aside the public's expressed indignation over the sexually explicit content in the film by stating that in fact, any sexually explicit film classified R18 can be exhibited in a cinema. This illustrates how out of touch the Office is with mainstream New Zealanders who do not want such sexually explicit material in public cinemas."

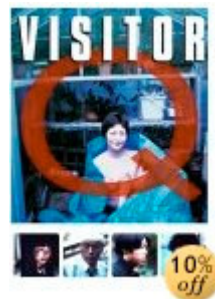
On 19 August 2005 the South Australian Classification Council refused classification to 9 Songs. Australia's classification guidelines say that scenes of real sex cannot be accommodated in the R18+ category. Films showing explicit sex can be classified X18+, but only if they do not include fetishes such as bondage. 9 Songs contains many scenes of explicit sex including ejaculation, plus two scenes of bondage. The only possible category for this film is "RC" (refused classification).

The Classification Office's decision this year to classify the publication Unbound (Volume 1 Number 4) containing a pro-paedophile material, as "objectionable", sits well with the Society.

The Society applied to the OFLC to have it classified soon after it had been tabled in the House of Representatives by the Rt Hon. Winston Peters. It was invited by the OFLC to make a written submission on the publication and did so, pointing out that the essay by Auckland bookseller Jim Peron, an "openly gay man", tended to promote and support paedophilia, in this case men having sex with boys.

Technical Victory for Society

Visitor Q: Court of Appeal Decision



On 15 March 2005 three Court of Appeal Judges - Anderson P, McGrath and Glazebrook JJ. heard the case of Society for the Promotion of Community Standards v Film and Literature Board of Review (Re Visitor Q) [Unreported CA 59/04].

<http://www.adls.org.nz/doclibrary/public/whiteboard/CA5904.pdf>

It issued its split decision (2:1) on 30 June 2005 upholding the Society's appeal against the judgment of Goddard J. dated 16 January 2004, on two grounds. It sent the Japanese sex-violence film Visitor Q, featuring necrophilia, incest, rape and other offensive content, back to the Board for reconsideration.

Its ruling on costs stated: “Neither of the parties to this appeal sought costs and none were awarded.”

In the High Court Goddard J. had simply dismissed the Society’s appeal against the decision of the Board that had classified the film R18 and limited its screening to film festivals and tertiary media studies courses. The Society had submitted that it should be classified “objectionable” (banned) or cut and appealed to the Court of Appeal on the basis that the Hon. Justice Goddard’s ruling contained errors of law.

The Court of Appeal ruled that the Board failed to provide any reasons why it came to the conclusion that attendees at the Incredible Film Festival (or indeed other film festivals) would be ‘informed of the various meanings attributable to the publication. They considered that it should have done so, given that the factual finding that attendees would be informed was central to the classification. [par. 124]

In paragraph 125 it stated: “the Board’s decision does not make it clear what the content of any educational material should be for future festivals. We consider that it should have done and that the decision is flawed because it did not. There was no requirement set by the Board for any educational material to accompany any showing of the film, even though, in the absence of that material, the material the Board considered the film to be likely to be injurious to the public good.”

The Court of Appeal considered these matters to be “sufficiently related to “meaning of specified persons and purposes”. It therefore set aside the decision of the Board, dated 1 November 2002, and sent the film back to the Board for reconsideration of its classification in the light of its findings.

The Board convened a meeting in Auckland on 22 August 2005 and viewed the film which two members had not previously seen (including Ani Waaka). It issued a unanimous decision on 1 September 2005 to essentially uphold the decision first issued by the Classification Office. Although it found that the film contained “a prevalence of sex including incest, crime including murder, rape., assault, drug use and necrophilia...” it agreed with the director of the now defunct Incredible Film Festival, who wrote:

“.. behind the shock value (Waaaay behind!) there is a deeply conservative vein running through the film that delivers an extraordinary reflection on the current social status of Japanese life”.

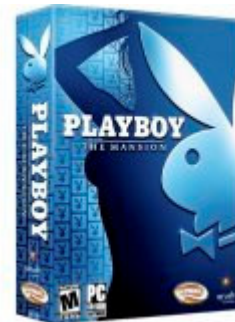
In other words the Board felt that there was sufficient social merit in the film content to counterbalance the prevalence of offensive and gratuitous content. The Society is shocked that every member of the Board has been prepared to flout the law to allow content that clearly falls within five of the six categories of “objectionable” activities listed in s. 3(2) of the Act, into NZ cinema and for student study courses.

The Board issued a descriptive note to accompany all advertising, warning: “sex scenes, necrophilia, drug use, bullying, violence and incest”.

It ruled that all screenings are strictly “limited for the purpose of study in a tertiary media or film studies course, or as part of a Film Festival organized by an incorporated Film Society, or the New Zealand Film Festival Trust and all persons who have attained the age of 18 years.... It is expected that students will be forewarned about the content of the film and will not be shocked by the subject matter. The film will no doubt be discussed and the viewers will be able to contextualise those elements of the film that cause concern.”

The film has yet to be screened in New Zealand. The Society believes it is unlikely that a NZ distributor will wish to purchase the rights for such a sick film and given the Society’s strength of opposition to it. Then again, in a deliberate move of provocation there may be a distributor who wishes to prove some point!

Society’s appeal against video sex game classification



The Chief Censor’s Office classified the controversial computer game Playboy: The Mansion R16 in a decision that was first registered on 25 February 2005. The publication is a console game contained within a DVD-ROM formatted for the X-box console. It is also available in PlayStation and computer game formats. It went on sale throughout New Zealand on 5 March 2005 via leading retail outlets and has also been made available for hire through mainstream video/DVD outlets. It allows children to practise interactive pornography. The Classification Office decision described “some of the presentations” of sexual activities as “dehumanising and demeaning [in] nature” and noted that they “could encourage sexist attitudes towards women by impressionable youths.” The OFLC decision (Ref. No. 500057) notes:

“As a reward for completing some objectives in gameplay access to photographs of actual Playboy models are available (copies of these photographs

are included on the file related to this publication). With their concentration on the women's breasts and buttocks they give the impression that they are designed to engage and sexually titillate the male viewer."

The game teaches players to take on the persona of a well-known promiscuous and geriatric male pornographer – Hugh Hefner, founder of the Playboy Empire - in order to set up a porn empire themselves. Players learn to recruit women for nude centrefold photo-shoots, arranging multiple sexual encounters in party environments where semi-nude female models and their clients get drunk, and selecting intimate locations where sex is to take place. The player can manipulate the environment to ensure that certain types of sexual encounters can take place.

On the same day the OFLC decision for the game was registered (25 Feb), the Society applied to the Secretary of Internal Affairs, Mr Christopher Blake, under s. 47 of the Films, Videos and Publications Classification Act 1993 ("the Act") to have the classification reviewed by the Film and Literature Board of Review ("the Board"). The Secretary granted the Society leave on 30 March 2005 and it promptly made its application to the Board to have the classification reviewed and it paid the required fee. The president of the Board, Ms Claudia Elliott, invited the Society to make written submission on the classification, which it did. However, the president used delaying tactics and did not convene a Board hearing until 9 June, allowing sufficient time for thousands of copies of the game to be sold to young people before the classification decision could be challenged before the Board.

The Society pointed out in its submissions to the Board that the British Board of Film Classification (BBFC) had classified the game R18. The Manufacturer of the game, Ubi Soft, had advertised it as suitable only to those 18 and over, as well as the website Amazon.com. The website playboyvideogame.com rated it R17+ and noted its "strong sexual content, nudity and use of alcohol". It is definitely not suitable for 16 year-olds.

Frustrated at the delaying tactics used by the Board over the classification decision, the Society applied on 22 July 2005 to the president of the Board, under s. 49 of the Act, for an interim restriction order to be issued by her to stop the continuing supply to the public of the game by retailers. It was entitled under the Act to seek this order "at any time before the completion of a review conducted by the ... Board". However, Ms Elliott failed in her statutory duty to issue a decision on the application by initially responding to the Society as follows on 4 August:

".... the Board is working to get the classification decision finalised as soon as they can and that [sic] for that reason the Board President is not considering the application from SPCS for an

interim restriction order." (e-mail to SPCS via Board secretary, Mr Owen Davie).

However, in a private e-mail to the Board secretary dated 3 August 2005 (sent a day earlier) released to the Society under the Official Information Act, the president, Ms Elliott, wrote:

"Greg [Presland, Deputy president of the Board] is hoping to have the [classification] decision drafted this week. I am not satisfied that the letter [from the Society dated 22 July] constitutes an application [for an interim restriction order] but all that aside the [classification] decision will be out before an interim [restriction order] one would have much effect.". [Emphasis added]

Following legal advice the Society lodged a formal complaint on 5 August pointing out that the president was duty bound to accept or reject the Society's formal application for the order, but not ignore it or delay acting on it. It supplied to the president correspondence from Phil Knipe, Policy Manager in the Ministry of Justice, on the legal issues.

Ms Elliott was forced to comply with the law and issued a decision on 10 August 2005 calling on all interested parties including the distributor, who she wrongly named as Sony Pictures rather than Monaco Corporation, to be given the opportunity to make submissions concerning the Society's application for the order. She set a deadline of 4.00pm the next day (11 August) to receive submissions. The Classification Office made no submission. The Society made a robust submission. However, instead of promptly issuing a decision on the interim restriction order she did nothing and just issued the classification decision later that month. On 19 August the Society issued a press release noting that the Board had upheld the OFLC's R16 classification and ignored every concerns raised by the Society.

The OFLC's decision, reinforced now by the Board, ensures that "thousands of 16-year old school children will NOT be denied the opportunity of purchasing the smutty game and share the practice of interactive pornography with their friends". This classification was issued despite Hasting's office acknowledging in its decision that the game was demeaning to women.

The latest research reveals just how damaging the effect of viewing pornography can be on young people. An article in *The Dominion Post* reported that an Internal Affairs Department study published this year found that teenagers were the biggest viewers of child pornography. The study suggested there could be a link between viewing child porn and offending against children. Another study, by a Southland psychologist, into 150 cases of sexual abuse handled by Child, Youth and Family found that in a third of them the offenders were teenagers or children.

With a Chief Censor and his deputy happy for 16-year olds to buy computer games that allow children to

practise interactive pornography, is it any wonder that children as young as five are being treated at a counselling programme for sexual abusers? How many 16-year-olds would be aware that it is a serious offence to supply a R16 publication to a person under that age? Many male 16-year-old owners of such games have every opportunity to share them with other kids, including those younger than 16, without their parents or guardians knowing. The sexual titillation gained by players of such games, in a context where women are degraded and manipulated, sends out all the wrong signals to young men.

Further references: Players step into Hef's PJs for Playboy video game. *NZ Herald*. 21.12.04 <http://www.nzherald.co.nz/index.cfm?ObjectID=9004124>

The Chief Censor's Office Confronts *CRITIC* Drug Rape Article



Warning: Drink Spiking Sequence

On 23 September the Society faxed an application to the Office of Film and Literature Classification (OFLC), requesting that Chief Censor Bill Hastings grant it leave to have the annual "Offensive Issue" of the Otago University Student Association's magazine *CRITIC* classified. It applied under s. 13(1)(c) of the Films, Videos and Publications Classification Act 1993 ("the Act"), paid the required fee and set out its case for the magazine, which contained a highly offensive articles on drug rape and hard core pornography, to be classified "objectionable". Hastings refused to grant the Society leave, but instead he accepted it for classification by another route and by another applicant – the police. Following receipt on 28 September of a Notice of Submission from

Constable Andrew Ferguson, based on the Otago University Campus and made on behalf of the police under s 13(1)(ab) of the Act; Hastings notified the Society that he was refusing its application and returned its application fee. He noted that the Society would be invited to make a submission on the drug rape article only, which the police had submitted. The Society objected strongly and pointed out that it had submitted the *entire* publication for classification, not just *one* article! Hastings wrote again and agreed to receive submissions from the Society on the entire publication. His office set a deadline of 4 November 2005 for submissions to be received.

The OFLC has yet to classify the publication and yet thousands of free copies of the magazine were distributed on Otago University Campus and in Dunedin city and the offending drug rape essay wasa freely available on the internet for downloading by anyone, for some time.



Otago University, Dunedin

The Otago University Vice-Chancellor Professor Skegg criticised the drug rape article soon after the controversy over *CRITIC* was first reported by the media on 22 September. Constable Ferguson described it to the media as "basically Date Rape 101". Ms Nancy de Castro, who made a submission to the Classification Office on behalf of Rape Crisis Dunedin Collective (Inc.), expressed her organisation's outrage at the article. The NZ Drug Rape Trust issued a press release on 23 September describing it as "highly offensive and lacking in any ethical stance or justification", as well as laying a formal complaint with the Chancellor of Otago University. The Trust also made a submission to the Classification Office arguing that it should be classified "objectionable". The police made a brief submission dated 12

October 2005 in which they argued that the drug rape essay “gives specific detail on how to use various drugs to commit the crime of sexual violation and avoid detection”.

The Society made a 23-page submission to the Classification Office on CRITIC TE AROHI MAGAZINE Issue 23, 19 September 2005. (CRITIC is owned by Planet Media Dunedin Ltd a wholly owned subsidiary of the Otago University Student Association). The Society submitted that the issue should be classified “objectionable.” Its contents fall within s. 3(2)(b); s. 3(3)(a); s. 3(3)(c) and 3(3)(d) of the Act. The articles “Diary of a Drug Rapist” (pp. 24-26) and “Max Hardcore” (pp. 20-22) - were the focus of its submission.

Section 3(2)(b) of the Act states: A publication is “objectionable” if it “tends to promote or support or promotes and supports ... the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.” The Society submitted that CRITIC offers a how-to-do recipe for serial drug rapists and would-be drug rapists, assisting them on means of avoiding detection, maximising their pleasure and gains from sexually violating and raping women (e.g. recommending specific drugs helpful for committing anal rape) and degrading the woman’s partner and the effective targeting of Christian women.

The Society has argued that the editor of CRITIC, Ms Holly Walker, cannot take defense in the claim that she did not *intend* to promote drug rape. It contends that the detailed information the publication provides and the way these debased criminal activities are depicted is likely to have an *effect* on some readers - of *promoting* them: therefore it must be deemed “objectionable”. It fails to see how it has any educational or literary value. Its overall impact is ‘educational’ only in the sense of providing potential sexual offenders with skills and feeding their depraved fantasies. The article does not empower women to avoid sexual assault as it so grossly demeans, degrades and dehumanises women victims, that no decent-minded woman could see it as helpful. Rape victims who read it and learnt that victims are depicted as easy targets, “loud-mouthed slappers” and “sluts” just waiting to be serviced by a “real man”, are likely to be deeply shocked and humiliated, by such material. Victims who are so upset, are even less likely to report sexual offences committed against them.

J. E. St John, of Anderson Lloyd Caudwell Solicitors, Dunedin, the lawyer acting for Planet Media Dunedin Limited, the publisher of Critic-Te Arohi, submitted a 92-page report to the Classification Office, defending the magazine. It includes a five page letter of support dated 1 November from Associate Professor Greg Newbold, who concludes: “I believe the dominant effect of this article is that it discourages, rather than supports, drug rape by using the literary device of irony to satirise the rapist and increase the awareness of

potential victims. I do NOT believe, therefore, that the article can be considered injurious to the public good” [Emphasis added]. Newbold holds an academic position in the School of Sociology and Anthropology at the University of Canterbury.

The Chief Censor, Bill Hastings, and his deputy, Ms Nicola McCully, face a real dilemma over the classification of CRITIC. Both of these persons, who hold the only two statutory positions in the Classification Office, were directly responsible for allowing the explicit rape film BAISE-MOI to be viewed by adults uncut in NZ cinemas. They both knew before issuing their classification that the British Board of Film Classification (BBFC) had required the explicit violent sexual content in the violent rape scene – involving close-ups of genitalia and penetration – to be cut. The BBFC did this, as their report dated 26 February 2001 states, because “the portrayal [of rape] eroticises sexual assault” and the Board’s policy on sexual violence (published in its Classification Guidelines in September 2000) warns that “cuts are likely to be required at any classification level”. The BBFC also recognised that “the graphic presentation of violent non-consensual sex is unlikely to be acceptable to the British public at any level”.

Hastings and McCully did the very opposite. They defended the right of the NZ public to view explicit sexual violence for the purpose of “entertainment”. Hastings spent six months pursuing evidence that might lend weight to justifying the film’s release uncut. His consultations with the public and rape crisis groups cost the tax-payer \$6,901.93. He also made lengthy submissions to the Board opposing the Society’s attempt to have either cuts made to the film or have it banned. He did this at a time when he knew that the Australian Classification Review Board had unanimously refused classification for Baise-Moi because of the nature of its explicit and gratuitous depictions of sexual violence (decision 10 May 2002).

CRITIC tends to promote sexual violence. BAISE-MOI arguably, tends to promote the same activities. CRITIC constitutes print media. BAISE-MOI is a film having enormous and long-term impact on the viewer. How could a Chief Censor who has cleared numerous explicit rape films for public entertainment in recent years, possibly arrive at a balanced and fair-minded decision with respect to the classification of an essay on drug rape? The society awaits the Classification Office’s decision on CRITIC. **The Chief Censor’s term of Office expires in August 2006!**

References: Saturday, 24 September 2005. Society Submits “How-to Guide to Drug Rapists” to Chief Censor. <http://www.spcs.org.nz/content/view/38/1/>

Drug Rape Trust Appalled By Article

Friday, 23 September 2005. Press Release: Drug Rape Trust The NZ Drug Rape Trust.

<http://www.scoop.co.nz/stories/PO0509/S00257.htm>

The Society executive acknowledges with deep sadness the passing of two of its patrons in 2005: Sir **John Kennedy-Good** KBE QSO and **Marilyn Pryor**. It extends, on behalf of all its members, its sincere condolences to Lady Kennedy-Good and Mr Geoff Pryor and their respective families and loved ones.

The society executive expresses its sincere gratitude to God for our patrons' years of faithful service to the Society. Both Sir John and Marilyn endured much suffering through ill-health but were wonderfully sustained by their strong faith in Christ, their loved ones and the prayers of many friends. We salute them as honoured members of the community of faith. Marilyn will be remembered for her tireless efforts as a campaigner against the evil of abortion and her advocacy on behalf of the unborn (1970-80). Sir John will be remembered fondly for his community leadership, integrity, and for his contributions to setting up the Society in its early years

“BAISE-MOI” UPDATE



Chief Censor Ignores Court of Appeal on Baise-Moi

In “The Chief Censor’s Year In Review” Bill Hastings has chosen to completely ignore the significant ruling of the Court of Appeal regarding Baise-Moi (translated “Rape Me”), the second successful win in the courts by the Society against the Film and Literature Board of Review with respect to this offensive and sick publication. In his selective review contained in the Annual Report 2005 of the Office of Film and Literature Classification (OFLC), that was tabled in parliament on 9 November, Hastings claims:

“There were ONLY TWO JUDICIAL DECISIONS OF NOTE this year concerning the classification system. The first, Society for the Promotion of Community Standards v Elliott [Unreported, Wellington Registry, CIV-2004-485-1741, Mckenzie J, 27 August 2004] concluded that it was inappropriate to apply a high threshold test in terms of whether or not the President should issue an interim restriction order restraining the exhibition of film pending its review before the Board of Review.

“In the second, Society for the Promotion of Community Standards v Film and Literature Board of Review (Re Visitor Q), the Court of Appeal, in a 2:1 decision, decided that the Board had made a legal error in its classification of Visitor Q, and sent the film back to the Board for reconsideration [Unreported, CA 59/04, Anderson P, McGrath and Glazebrook JJ, 30 June 2005]. The mistake the Board made was that it failed to give reasons why it thought that attendees of film festivals would be informed of the film’s various meanings with educational material and why being informed of the film’s various meanings was sufficient to counter the injurious effects that the Board decided the film would otherwise produce.” [p. 13. Emphasis added]

The OFLC Annual Report covers the period 1 July 2004 to 30 June 2005. Perhaps the Chief Censor felt the Court of Appeal decision issued on 9 December 2004 on Baise-Moi was not at all significant. If so, the Society strongly disagrees. It set the standard for censors to adhere to in all subsequent classifications. Hastings’s position seems inconsistent with the effort his Office has made in the past to hail the earlier decisions of the Board on Baise-Moi, as some sort of vindication of his Office’s robust compliance with the law when it comes to classification decisions. As a former Deputy President of the same Board he might well be delighted every time there is agreement.

In earlier Annual Reports, issued prior to the Court of Appeal decision on Baise-Moi, Hastings discussed the case in some detail. The OFLC News Archive (25.11.02) still provides a comprehensive report on the history of the classification of Baise-Moi only up to the point where the Board had issued its first classification on 1 November 2002 and the Society had open to it a judicial review by the High Court. The report notes: “Baise-Moi has had more media coverage and informed public debate than any film in recent memory.” The OFLC has chosen not to update its very selective overview.

See: <http://www.censorship.govt.nz/news09.html>

The Society submits that the 19-page Court of Appeal decision dated 9 December 2004 that upheld its appeal against the High Court decision issued by Goddard J on 11 November 2003 [(Goddard J, CIV-2002-485-235); is very significant. In a unanimous

decision at par. 48 the Court of Appeal did “allow the [Society’s] appeal in part”. It corrected the determination of the Board dated 1 November 2002 (pars. [12] and [123]), that had been erroneously approved by the High Court. The Court of Appeal, represented by Anderson P, Chambers and O’Regan JJ, using its discretionary powers, substituted a revised decision for that issued by the Board, after concluded that theirs had contained a legal error.

The Board’s decision dated 1 November 2002 was the second of its flawed classification decisions issued on *Baise-Moi* that the Society had successfully appealed against. The Board’s first decision dated 13 March 2003 was found by Hammond J. to contain legal errors, following an appeal brought by the Society. Hammond J. issued his decision on 23 July 2002 (AP76/02) and it required the Board to make a fresh classification decision, taking account of his ruling. He found that the Board made a legal error by not considering *Baise-Moi* in other mediums. Earlier, on 12 April 2002, he had imposed an interim restriction order against *Baise-Moi*, temporarily preventing its exhibition, on application by the Society. This was the first time ever in New Zealand the High Court had issued an interim restriction order against a film under s. 67 of the Act.

The Court of Appeal would have been responsible for putting egg all over the faces of all the Board members if it had remitted the matter involving *Baise-Moi* back to it, in its decision dated 9 December 2004. To do so would have meant that the Courts would have issued a *second* decision requiring the Board to issue yet another corrected classification. To avoid such a fiasco, the Court of Appeal used its special powers to effectively quash (in a technical sense) the Board’s decision and then correct it themselves. For this the president, Ms Claudia Elliott and her fellow Board members should be very grateful to the Court.

The Society’s actions in bringing this matter before the Court of Appeal resulted in a loophole being blocked that would have allowed the film *Baise-Moi* to be accessed by the adults when available in video or DVD format for home use. The Court of Appeal at par [51] criticised the Board for ignoring the clear directive given to it by Hammond J. It also highlighted the fact that the Hon. Justice France had ruled that “It appears the Board has not taken on board the ruling of the High Court” adding in its own words – “In our view, the Board ought to have done so”.

These are the same Board members whose terms of Office expired on 31 May 2004 and who the Society is calling the Minister to replace.

Reference: “Technical victory for morals group”
Dominion Post, Friday Dec. 10 2004 (Re Baise-Moi)
SPCS press release Thursday, 10 November 2005
<http://www.scoop.co.nz/stories/PO0511/S00092.htm>

Membership of the Society for the Promotion of Community Standards Inc. (SPCS)

Membership is by way of donation and is open to all those who support our objectives contained in our constitution which can be viewed at

www.spcs.org.nz

Note: You can join SPCS on-line

Our recommended membership donation fee for 2006 is a minimum of \$35 and this will be receipted on request. Please make cheques out to SPCS (or full name of Society).

Send to:

**The Society treasurer, Mr Des Chambers,
P.O. Box 13-683 Johnsonville.**

If you can recommend a new Society member(s) then please provide us with their contact details so we can send them a complementary copy of our newsletter.

**NEW MEMBERS PLEASE COMPLETE
(Cut or photocopy)**

or join up on-line Go to: www.spcs.org.nz

Name

.....

Address

.....

.....

E-mail

Tel.

**Please send ASAP to: The Secretary
SPCS. P.O.Box 13-683 Johnsonville**

**Note: 2006 Membership Fee covers our
financial year 1 Jan. to 31 Dec. 2006.**