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**In Brief: SPCS v Minister of Internal  
Affairs in the High Court**



**Hon. George Hawkins**

The failure of the Minister of Internal Affairs George Hawkins over almost two and-a-half years to fulfil his statutory duty to recommend a Deputy Chief Censor (DCC), led the Society to file proceedings against him in the High Court on 28 March 2002. It sought a judicial review of the Minister's decision made on 9 May 2001 and endorsed the following week by the Cabinet, to close off the recruitment process leading to the appointment of a DCC. He did this he said, for the purpose of reviewing the position.<sup>1</sup> On 18 April 2002 he

<sup>1</sup> In response to a letter from the Society dated 31/1/02 asking for the reasons for the non-appointment of a DCC, the Minister replied: "The appointment process for a Deputy Chief Censor was ended due to concerns at the amount of time taken to fill the vacancy and because it was agreed that there was merit in considering the extent to which the position contributes to the effective

issued a media statement indicating that the position would be advertised in early May and an appointment made by 31 July 2002. The position was not filled until 17 September 2002 and over the intervening period the matter was dealt with in High Court three times.<sup>2</sup>

The Society (the applicant) is filing for costs against the Crown now that the Minister (the respondent) has provided the remedy it sought – compliance with the law. The Minister was represented in the High Court by Crown Office lawyer John Oliver. The Society was represented by Dr George Barton QC. It is expected that a date will be set shortly for a High Court hearing on the matter of costs. Mr Bryson, the Society's solicitor, is awaiting a response from the Minister to an Official Information Request before filing a claim for costs. For more details see report page 9.

Also See: *High Court Action: Internal Affairs Minister Focus* (SPCS media release 18/5/02)

<http://www.scoop.co.nz/stories/PO0205/S00184.htm>

*High Court action against George Hawkins* (19/8/02)

<http://www.scoop.co.nz/stories/PO0208/S00073.htm>

*High Court action: Minister & vacant censor* (16/9/02).

<http://www.scoop.co.nz/archive/scoop/stories/f3/5d/200209161741.312073a8.html>

**Bill Hastings is reappointed as  
Chief Censor for only one year**

The Minister of Internal Affairs George Hawkins has reappointed Bill Hastings as Chief Censor in the Office of Film and Literature Classification (OFLC) for only one year until 18 October 2003. On 12 June 2002 the Minister issued a press release stating: "I have faith in Mr Hastings's work and in the processes followed by the Office".

Under s. 81 (1) of the Films, Videos, and Publications Classification Act 1993 ("the Act") Hastings could have been reappointed for a maximum period of three years. He was appointed. Chief Censor on 18th of October

operation of the Office under the Act. Ministers made these decisions at a meeting of APH [Appointments and Honours Committee of Cabinet] on 9 May 2001." Letter dated 27/2/02. The APH decision was endorsed by Cabinet on 14/2/02. Society spokesperson David Lane described the Minister's reply in a SPCS Media release as "gobbledegook," reminiscent of the ministerial evasion in the British TV comedy *Yes Minister*" (18/5/02).

<sup>2</sup> 20 May, 19 August and 16 September 2002.

1999, having been DCC and Acting Chief Censor since the beginning of 1999. Up until the recent appointment of Ms Nicola McCully as DCC (see report below), he had been the only member of the executive for over three-and-a-half years. In 1999 Parliament removed the two-term six-year limit on the tenure of the Chief Censor, the DCC and classification officers.

There have been calls for the Minister to sack Bill Hastings, most notably from Peter Brown MP, the NZ First Party Deputy Leader. He is concerned at the significant rise in the numbers of films and videos that are available that contain sexually violent, degrading and offensive content.

Bill Hastings's reappointment for one year as Chief Censor was recommended by the Minister and approved by the Cabinet Business Committee on 20 June 2002 and formalised on 23 July by order in Council by the Governor-General.

### The new Deputy Chief Censor



Ms Nicola McCully

On 17 September 2002 Ms Nicola McCully was appointed as Deputy Chief Censor of Film and Literature. Ms McCully's appointment is for a term of three years. She brings eight years of censorship experience to her new role, most recently as manager of the Office's Classification Unit. Prior to working in censorship she worked with special needs children in a Christchurch primary school. Nicola lives with her female partner of 7 years on the south Wellington coast.

### Exposure to explicit sex and graphic violence takes its toll on our censors<sup>3</sup>

Chief censor Bill Hastings says that he has psychologists on call to counsel him and his staff, "particularly when [they] get a run of child pornography from the internet" to view and assess for classification. He says that without psychological help and the "coping techniques" he claims to have developed for himself, he would "just

<sup>3</sup> See: *Sex takes its toll on censors* (SPCS 2/9/02) <http://www.scoop.co.nz/mason/stories/PO0209/S00004.htm>

become a basket case". He and his staff are not "immune" from the negative effects of viewing such material. They rely on a regular "kind of antidote" paid for by taxpayers, to survive.<sup>4</sup> The 1999 Annual Report of the Classification Office describes the antidote as a "sanity saver" "allowance". The latter "acknowledges the potential harmful effects of examining, on a regular basis, material submitted to the Office by paying for classification officers to take stress-relief measures such as yoga, music and art classes.... The sanity saver package seems to have contributed to a happier group of censors..." (p. 6).

Hastings says: "We'll pay for staff to take out gym memberships and piano lessons – anything positive and nice and creative – as a kind of antidote." (Footnote. 4. *Critic* 5/8). Elsewhere, he has referred to his special "antidote" package as gym-work and night clubbing. He receives a salary of around \$150-160,000 p.a.

The fact that Hastings acknowledges the detrimental impact of the "objectionable" material censors regularly have to view and their efforts to minimise psychological injury by way of taxpayer funded antidotes; is good evidence that such material is "injurious to the public good". The Society has sought reviews of a number of classification decisions made by the Office in order to highlight its failure to properly apply the Act and safeguard the public from the damaging impact of exposure to such material. Society President Rev Gordon Dempsey says: "It is clear that years of exposure to objectionable material may have taken its toll on our Chief Censor and impaired his judgement as to what constitutes 'degrading, demeaning and dehumanising' material and the injury to the public good".

Peter Brown MP met with the Hon. George Hawkins in May 2002 to seek the Chief Censor's removal on the grounds he had "failed dismally to uphold the required standards of decency on behalf of the community."<sup>5</sup> Brown said that as a former Mayor, Mr Hawkins would be aware of the dangers to communities of the "unchecked dissemination of unadulterated violence, sex and wanton destruction which has become the hallmark of the current censor's approvals in recent times". [For more on Brown's criticisms see pages 9-10]

<sup>4</sup> *Classified: Objectionable* (The Critic 5/8/02).

<http://www.critic.co.nz/modules.php?op=modload&name=News&file=article&sid=218>

<sup>5</sup> Should the Chief censor be sacked? (SPCS 8/4/02)

<http://www.scoop.co.nz/archive/scoop/stories/ae/0e/200204091217.ec345ela.html>

Censor has lost the plot – he must now go over obscene decision (NZ First Media release 5/4/02)

<http://www.nzfirst.org.nz/press/pbn050402.htm>

Minister refuses to dismiss censor (NZ First 22/5/02)

[http://www.nzfirst.org.nz/press/pbn220502\\_2.htm](http://www.nzfirst.org.nz/press/pbn220502_2.htm)

Urgent!!

## Presidential Appeal for Funding

*Dear Society members and supporters*

**This year has been an extraordinary one in terms of successfully achieving many of our Society's objectives by way of the legal system, submissions to select committees, national media coverage, via relationships established with key MPs, publications on internet news sites and a number of speaking opportunities. We are so grateful to those of you who have financially supported the Society this year. However, we are facing a large shortfall in funding so would urge you to assist us asap so we can continue our work. The high profile legal cases we have taken on have been expensive. We have been prudent in our use of funds. Please send your cheque to: The Treasurer SPCS P.O.Box 13-683 Johnsonville. (See p. 18 re automatic bank payments).**

**Yours sincerely: Rev Gordon Dempsey (SPCS President)**

### **Porn film maker, expectant 'porn star' and the rights of the unborn**

In a media release<sup>6</sup> dated 14 October 2002 the Society supported the decision of the Hon. Justice Heath made in the Hamilton High Court on 11 October to grant an interim injunction preventing an Auckland hard-core pornographic film maker, Steve Crow, from filming any aspect of the birth of a baby if it was to be used for a porn film, including images *in utero* or those taken after birth. Crow had stated publicly that he intended to film the birth in the Waikato Hospital and use the footage as part of a hardcore porn film called "Ripe" starring the baby's mother "Nikki"(not her real name). However, he was granted the right by the High Court to carry out the filming if he and the mother, a former stripper gave an undertaking not to use the images in the making of any porn film.

Society spokesperson David Lane said: "The High Court decision is a recognition that the unborn child has rights as a *human being* to be protected from the exploitation inherent in the sleazy porn industry and be treated with dignity as a developing human being.

<sup>6</sup> See: *Unborn babies and Sleazy Porn Films* (SPCS Media release 14/10/02)  
<http://www.scoop.co.nz/archive/scoop/stories/9c/c7/200210141402.53c2721.a.html>

"Why should this child not-yet-born have to face the possibility of a life-long slurring as the 'porno baby', merely because a purveyor of hard-core porn wants to set his company's name in lights and make money by degrading the innocence of a newly-born?"

**"The decision," says Lane, "highlights the urgent need for legislation to be enacted in NZ that grants and clearly defines the rights of the unborn child. It is ironical that Justice Heath, in issuing the injunction, has treated the unborn child as if it had rights (which indeed it does) and yet section 159(1) of the Crimes Act treats the unborn "child" as not being a *human being* – which suggests it has no rights. Rights are only conferred on a child at birth under New Zealand law and yet Justice Heath has ruled that ultrasound scan images of the child cannot be used by the filmmaker."**

The Society pointed out that the decision unfortunately still gave Crow, director of Vixen Direct Ltd, NZ's largest distributor of hardcore porn (AO) videos, the go-ahead to do the filming on the condition that he undertakes not to show the baby in the film and this includes any footage of ultrasound scans of the foetus. Despite the fact that Justice Heath said that if Crow breached the order he would consider it "a very serious breach of court for which likely punishment would be imprisonment", the Society noted that Crow could circumvent the Judge's order. If he filmed the event for "private use" and then supplied the footage of the birth to an overseas filmmaker, it could still be used to make a porn film without Crow being held responsible.

Two hours after the SPCS press release was released the Minister of Health Annette King issued a directive to the Waikato District Health Board (WDHB) to prevent any filming of the birth going ahead. The same directive went

to all other district health boards in the country. SPCS issued a press release about an hour later congratulating the Minister for her decisive action<sup>7</sup> which she has admitted involved a degree of “moral judgement” on her part.

The Society had written to the Chairperson of the Waikato District Health Board prior to the Minister’s announcement, calling on all members to demonstrate some moral and ethical leadership and prevent Steve Crow from filming the birth, as he had already indicated that he intended to allow the editing of the film to be done overseas, thereby effectively circumventing the High Court injunction. Crow has stated that images of the foetus including its face and hands, close-ups of Nikki’s genitals while she is in labour and the birth process itself, would all be part of the porn film. He had indicated his intention to send the film overseas and that it could eventually, after editing, include footage of the birth of the baby and ultrasound scans.

The Society is seeking to highlight the rights of the unborn to be protected against exploitation by the sleazy porn industry and be treated with dignity as a developing human being. The Society is committed to upholding the dignity of the human person made in the image of God (see revised Constitution p. 16, point a).

On 24 October *The Dominion Post* reported that Steve Crow “has cancelled plans to film a woman giving birth because of concerns for her birth.” Nikki was reported as being “a bit angry” at the cancellation of the filming that was to have been carried out in a private clinic. To its credit, the WDHB now has in place a blanket prohibition on the filming or photographing of this birth at all WDHB facilities.

### **‘Porn baby’ Film Producer’s Video Banned following SPCS appeal.**

The Society was informed on 4 October by the Office of Film and Literature Classification that it was successful in its appeal to get a classification decision on a hardcore porn video – *The Matador Series 2* (or *Ally Gets on the Wild Side*) overturned and the publication classified “objectionable”. In an earlier decision dated 7 July 2000 the OFLC had classified it R18 with no excisions recommended and a descriptive note “contains explicit sex scenes”. SPCS believes that this is

<sup>7</sup> SPCS congratulates Minister of Health (14/10/02) <http://www.scoop.co.nz/archive/scoop/stories/b7/d8/200210141713.d2222fad.html>

a landmark case highlighting the failures of the OFLC to apply the law properly.

**The Society sought the review because of the failure of the Classification Office to follow through on the findings of a \$38,000 taxpayer funded research project involving this video and two others.<sup>8</sup> It is outraged that despite the fact that the vast majority of the 152 members of the public consulted in this project found the contents of the videos had the “effect” of degrading, demeaning and dehumanising women and treating them as inferior, the Chief Censor did nothing to review the classifications until the SPCS applied for the review.**

The Society made the application for reviews to the Chief Censor under s. 42(3)(b) of the Act on 4 January 2002. In the recent OFLC decision seven excisions were required to be made to *Matador Series 2* by the distributor, Steve Crow owner of Vixen Direct Ltd. He declined to make the cuts and the video is now classified “objectionable”. Now it is banned and it is an offence, punishable on conviction by a fine of up to \$2000, to possess this publication. The Society’s media release on the subject was reported on in an article in *The New Zealand Herald*.<sup>9</sup>

See: ‘Porn Baby’ Film Producer’s Video Banned <http://www.scoop.co.nz/archive/scoop/stories/52/df/200210210753.2f15e58a.html> (SPCS 18/10/02)

Banned Sex Video and ‘Porn Baby’ Film Producer <http://www.scoop.co.nz/mason/stories/CU0210/S00151.htm> (SPCS 21/10/02)

### **How the Government might reverse the effect of a unanimous Court of Appeal decision by changing the law.**

The Society presented its oral and written submission<sup>10</sup> to the Government Administration Select Committee<sup>11</sup> undertaking the Inquiry into the Operation of the Films, Videos, and Publications Act 1993 [“the Act”] and related issues, last year. The committee has yet to release its report. Among the 12 terms of reference of the inquiry are:

3. The definition of ‘objectionable’, as set out in Section 3 of the Act, to determine whether the Court of Appeal’s narrow interpretation of the words,

<sup>8</sup> “Public consultation on sexually explicit videos” summarised in OFLC *Annual Report 2001*, pp. 52-56.

<sup>9</sup> <http://www.nzherald.co.nz/storyprint.fm?storyID=3000231>

<sup>10</sup> Submission No. 27. Received 12/6/01; 27B Tabled 18/10/01; 27E received 29/10/01

<sup>11</sup> Dianne Yates (Committee Chairperson) (Labour).

‘matters such as sex, horror, crime, cruelty, or violence,’ in the *Living Word Distributors Limited v Human Rights Action Group*, adequately carry out the intent of the Act.

5. The issues to emerge from the Court of Appeal’s decision in *Living Word Distributors v Human Rights Action Group* as to whether: ...

(b) To include a ‘hate speech’ provision in the Act that would allow the Office to classify ‘hate speech’, and whether to amend the Human Rights Act 1993 to provide a penalty for the dissemination of ‘hate speech’.

Society spokesperson David Lane pointed out to the select committee that if the Act was amended to widen the “jurisdictional gateway” as defined in s.3(1), to include ‘hate speech’, it would reverse the effect of a unanimous decision of the Court of Appeal in the *Living Word* case.<sup>12</sup> This decision quashed an earlier decision by the High Court that had upheld the decision of the Film and Literature Board of Review to ban two Christian videos<sup>13</sup> that critiqued promiscuous homosexual lifestyle choices, examined the causal factors in the AIDS epidemic and documented the growth of the aggressive pro-“gay” political lobby in the United States. Lane noted that such lobbyists in NZ seem not to have accepted the judgement of the Court of Appeal on these video classifications and appear to be intent on having section 3(1) of the Act – defining the “jurisdictional gateways as ‘sex, horror, crime, cruelty and violence’ - widened to include “hate speech”, “sexual orientation and the sexual transmission of HIV”. They cannot tolerate any critical appraisal of their sexual lifestyle choices and label all such publications by definition as “hate speech”.<sup>14</sup>

The *Living Word* videos were not examples of “hate speech”. None of the seven judges (2 in the High Court and 5 in the Court of Appeal) involved in the *Living Word* case regarded the material as being “hate material”. Indeed, in various ways, every judge to have considered these videos made it clear that he would not have banned them. The videos were, as Thomas J describes them “essentially political tracts”.

By a simple change to the words “matters such as” in s. 3(1) of the Act to “matters that include” or “matters including” (or by substituting “includes”

<sup>12</sup> CA 58/00, dated 31/08/00

<sup>13</sup> *Gay Rights/Special Rights: Inside the Homosexual Agenda and AIDS: What You Haven’t Been Told*

<sup>14</sup> The Society has already documented in its press releases how the term “hate crime” was slipped into the Sentencing and Parole Amendment Bill and adopted into law on the strength of a single submission from a “gay” activist at the very end of the select committee hearings, effectively denying the general public any opportunity of critiquing this change. It has now been enacted into law.

for “such as”); those submitters intent on bringing ‘hate speech’ and issues of ‘sexual orientation’ into the “jurisdictional gateway”, seek to overturn the effect of the unanimous and landmark Court of Appeal decision in *Living Word*. The decision of the Court of Appeal was that the videos did not deal with “sex, horror, crime, cruelty, or violence” and the matter was remitted back to the Board for reclassification. Nine months later the two videos were classified “unrestricted”.

Counsel for the respondent in *Living Word*, the Human Rights Action Group (Wellington), argued that because the videos reported on sexual activities of gays, albeit in a non-explicit or salacious manner; the mere discussion of such practices meant they dealt with “sex” in terms of s.3(1) of the Act and therefore came within the jurisdiction of the Classification Office for the purposes of censorship. This view, accepted by the High Court on an appeal by the video distributor, was rejected unanimously by the Court of Appeal. It is the view of the Society that the Court of Appeal was right to interpret s. 3 (1) of the Act as “tending to point to [sexual] activity rather than to expression of opinion or attitude.”

## **Court of Appeal decision in *Living Word* has “put in doubt” his Office’s ability to do its job says Bill Hastings.**

Bill Hastings has stated: “The Court of Appeal’s interpretation of s3(1) [of the Act in *Living Word*] has put in doubt the Classification Office’s ability to classify as restricted or objectionable publications which for example:

- [1] Depict mere nudity which is to some degree “sexualised”;
- [2] Invade the privacy of people surreptitiously filmed changing clothes;
- [3] Contain offensive language and little else;
- [4] Treat a group of the public as inherently inferior by reason of a prohibited ground of discrimination [under the Human Rights Act 1993];

“All of which are status based and which therefore cannot easily relate to an “activity” now required to pass through a gateway. At the time of writing, the Government Administration Committee is holding an inquiry into the operation of the Act which includes consideration of whether s3(1) should be amended following the Court of Appeals decision.”<sup>15</sup>

<sup>15</sup> OFLC Annual Report 2001, pp. 16-17. Also see Classified: Objectionable (Interview with Bill Hastings) (5/08/02).

<http://www.critic.co.nz/modules.php?op=modload&name=News&file=article&sid=218>

The Society is astounded that our Chief Censor should so misinterpret the findings of the Court of Appeal in *Living Word* in this manner and that media commentators appear to have been taken in by such flawed reasoning. It is clear that the Chief Censor has little concern about items 1-3 as the Classification Office under his leadership has granted unrestricted classifications to numerous publications containing grossly offensive language and nudity that is “to some degree sexualised”.

Publications containing element 2 can be dealt with under privacy laws and element 4 under s. 3(3) of the Act as well as under the Human Act 1993. For as long as Hastings has been in the executive of the Classification Office (since December 1998) there has been a significant increase in the numbers of sexually explicit videos granted R18 classification that have the effect of “degrading, demeaning and dehumanising” women (a class protected under the HRA) and treating them as “inferior”. Numerous OFLC classification decisions document this fact, acknowledging that women are depicted as a mere “collection of orifices” for the “sexual gratification of men”. Excisions are very rarely required by the OFLC. It is hard to credit such decisions to an Office that has women holding four out of five of the management team positions.<sup>16</sup>

### **High Court injunction against Baise Moi interests Aussie P.M.**

The Society wrote to the Australian Prime Minister, John Howard, on 17 April 2002 informing him of Justice Hammond’s decision issued in the Wellington High Court on 12 April 2002, that imposed an interim restriction order on the film *Baise Moi*. The Society enclosed a copy of part of a transcript of a very revealing radio interview with Chief Censor Bill Hastings dealing with his views on the film’s classification.

In the interview on Radio 95 bFM (27/3/02) Hastings stated that, after having first viewed *Baise Moi*, he

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<sup>16</sup> *Annual Report 2001*, p. 94. Management Team Members: Ms Catherine Austin (Information Unit Manager), Ms Julia Ewing-Jarvie (Corporate Services), Ms Alison Hopkins (Registrar), Ms Nick McCully (Deputy Chief Censor), Mr Bill Hastings (Chief Censor).

formed the view that it broke every one of the censorship codes and should be banned.<sup>17</sup> In an interview two months later on Radio SupaNova he admitted: “I subsequently changed my mind” about the banning of *Baise-Moi*, noting that his first judgement was based on “first impressions”.<sup>18</sup> He also noted that he first heard about the film 18 months earlier (November 2000) from his colleague the Chief Censor of Ontario, Canada who had indicated that he had had “quite a few problems with it”. On his return to NZ from Ontario in February 2001 Hastings stated that he “decided that it might be prudent, given that I had this knowledge about the film, to call it in early so that if we needed to consult with experts in the public we would have the time to do it”. He said the “consultations and research his Office did” after he had seen it, prompted him to change his mind about the need for a ban.

The letter and transcript of Hasting’s Radio 95 bFM comments were copied by the Society to federal Attorney-General, Hon Daryl Williams AM QC MP, the Hon Michael Atkinson MP, Attorney-General of South Australia, and Hon. Bob Debus, Attorney-General of NSW. The Society urged the PM to seek an urgent review of the Australian OFLC classification of *Baise-Moi*, which was shortly to screen in Sydney and Adelaide.

In a news release dated 21 April 2002 the federal Attorney-General, the Hon. Daryl Williams, announced that he had “requested that the Classification Review Board review the R18+ classification of the French film *Baise-Moi* following a number of representations to me concerning the film.”

On 10 May 2002 the four-member panel of the (Australian) Classification Review Board announced in a press release that it had “unanimously determined that the film, *Baise-Moi* is Refused Classification. This means that the film cannot now be legally shown in Australia.”

### **Media Release from the Australian Classification Review Board 10 May 2002 – ban on Baise-Moi**

“The Classification Review Board today decided to refuse classification for the film *Baise-Moi*. This decision follows my request of 21 April 2002 for review of the decision of the Classification Board at first instance to classify the film R18+. In no way did my decision to seek a review reflect any

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<sup>17</sup> “Baise-Moi” should be banned says Bill Hastings (SPCS Media Release 28/08/02). Radio 95 bFM. Interview with Stephen Grey (12.16 p.m. 27/03/02). <http://www.scoop.co.nz/mason/stories/PO0208/S00114.htm>

<sup>18</sup> Tape transcript. Hastings interviewed by Stuart Kuss. SupaNova 100.6FM student radio WelTec. 15/05/02

concern about the handling of this matter by the Classification Board.

“The provisions of the Classification Act ensure that in contentious cases, there is an effective and independent mechanism for review. A four-member panel of the Classification Review Board met today and unanimously determined that the film, *Baise-Moi* is Refused Classification. This means that the film cannot now be legally shown in Australia.

“In the Review Board’s opinion, the film warrants a refusal of classification because it contains elements beyond those set out in the classification guidelines and legislation. In making its decision, the Review Board took into account the combination of:

- strong depictions of violence
- sexual violence
- frequent actual, detailed scenes; and
- scenes which demean both women and men

“Such depictions cannot be accommodated within the R18+ classification. In addition, the Review Board considered this film could not be accommodated in the X18+ restricted category. Although actual sex is permitted in the X18+ category, sexual violence and sexualised violence is not.”

See: ‘*Baise-Moi*’ NZ Ban Interests Aussie PM (23/5/02).  
<http://www.scoop.co.nz/mason/stories/PO0205/S00218.htm>

## **The Society makes legal history in the Reclassification of *Baise Moi***

The controversial French hardcore sex-violence film *Baise-Moi* was picked up in Canada by Remstar Distributing. Maxime Rémillard, co-president of the Montreal company, was reported as saying that she savours the controversy and hopes the film will “make a lot of money.” The film is currently being reclassified by the Film and Literature Board of Review for a second time following a successful win by the Society in an appeal to the High Court. The Society’s application to the High Court for an injunction order against the film was granted – the first ever under s67 of the Act since it came into force in 1993.

Last year the Society executive learnt that the Classification Office had classified *Baise-Moi* R18, but limited screenings to film festivals organised by incorporated film societies and to tertiary film and media

studies courses.<sup>19</sup> The Society unsuccessfully appealed this decision to the 9-member Film and Literature Board of Review (“the Board”) which granted it a general R18 classification, removing the additional restrictions.<sup>20</sup> The Society then appealed this decision on a question of law to the High Court under section 58 of the Films, Videos and Publications Classification Act 1993 (“the Act”). As an applicant granted leave for a review, it was entitled to seek for the imposition of an interim restriction order by the High Court in respect of the publication under section 67 of the Act and did so.

**The Society made legal history on a number of counts. Its two applications under sections 58 and 67 of the Act are the first to have been made under these sections of the legislation with respect to a film and both were successful.**

The Hon. Justice R.G. Hammond imposed the restriction order after hearing counsel for Mr Anthony Timpson, director of the Beck’s Incredible Film Festival, argue that it was not in the public interest to have the order imposed. Timpson had planned to screen the film at his festival in Auckland and Wellington, with the first screening scheduled for 13 April 2002. The Court order effectively blocked the public screening throughout NZ until the film could be re-classified by the Board. Justice Hammond also ruled that the substantive case involving the appeal should be set down for hearing.

The Society succeeded in the appeal. As *The National Business Review* reported in its story on *Baise-Moi* (24 July, 2002), the Society “made history by succeeding in its appeal [in the High Court] against the R-18 classification” which had been made by the 9-member Board of Review “In a lengthy discussion of the appeal... Wellington High Court Justice R G Hammond said the Censorship Board had erred in issuing the R-18 classification on grounds that it had failed to take into account the possibility that the classification might lead to general distribution of the film under those restrictions – an outcome it did not intend... The High Court accordingly upheld the appeal and sent it back to the Censorship Board of Review to be reclassified.”

## **SPCS appeals before the Board again on *Baise Moi* classification.**

Members of the Society’s executive presented an oral submission to the Board on the 3 September 2002 calling for the film *Baise-Moi*

<sup>19</sup> See: Hardcore film *Baise-Moi* given limited release. The Dominion 23 August 2001; Sex, standards and the censor by Paula Oliver NZ Herald 11/04/02  
<http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=1341742>

<sup>20</sup> Board Decision dated 13 March 2002 (26 pages).

to be banned or cut. Both the Board and the Classification Office had refused to recommend cuts in earlier classification decisions because they saw this as “impracticable” due the pervasive nature of the sexual violence in the film. Making excisions in their view would seriously disrupt the storyline.

The Board received a written submission<sup>21</sup> from Peter D. McKenzie QC counsel for the Society and one from the Society executive.<sup>22</sup> Society spokesperson David Lane played part of a tape to the Board in which Bill Hastings admitted that after he first viewed the film he took the view that it breached every aspect of the censorship laws and should be banned.<sup>23</sup> (Some time later Hastings changed his mind).

In a separate written submission supporting the Society’s position Hamish Dixon, a senior psychologist and Manager of Wellington STOP, an agency that treats adult and adolescent sex offenders and provides support to their families, wrote: “Release of this film sets a new benchmark in terms of sadistic sexual violence. If it is available for general release as an R18 movie it will be available for video release.” His preference is for it to be banned. He is convinced it “supports attitudes that may lead to increased sexual violence in our society” and is “likely to contribute negatively to our society as a whole” as it is “injurious to the public good”.<sup>24</sup>

<sup>21</sup> See: *Legal case for re-classification of Baise-Moi* (5/9/02). Submission of Counsel P.D. McKenzie QC on behalf of the appellant (August 2002). <http://www.scoop.co.nz/mason/stories/CU0209/S00013.htm>

<sup>22</sup> For further details see: *Film Board to Revisit “Baise-Moi” Classification* (SPCS Media Release 2/9/02) <http://www.scoop.co.nz/mason/stories/PO0209/S00006.htm>

“Film’s impact downplayed court told,” *The Evening Post* 13 June 2002.

<sup>23</sup> See Bill Hastings on ‘Banned’ Sex-Violence Films (24/9/01). Includes transcript of interview with Hastings on Radio 95bFM (10/4/02). <http://www.scoop.co.nz/archive/scoop/stories/cf/3f/2002/09241151.c6995db2.html>

<sup>24</sup> Letter dated 30/8/02. Hamish Dixon has been a consultant for a number of years to the Classification Office, advising staff on the injurious nature and impact of exposure to sexually explicit and violent material. He was one of the specialists consulted by the Office in 2001 on *Baise-Moi*.

## SPCS answers one misguided critic

On 16 May 2002 freelance writer Barbara Sumner Burstyn published an article defending the ‘rights’ of enlightened film-goers to view *Baise-Moi* which she acknowledged made her “sick” and was “certainly pornographic in many aspects.” The article was defamatory in its clearly implied suggestions that SPCS executive members who had applied for a review of the film’s classification had a lot in common with sex perverts.

The article was published in *The NZ Herald* and the Society raised an immediate formal complaint with the paper’s editor about its defamatory nature. He did not even have the courtesy to acknowledge the letter or reply. Rather than wasting time taking the matter up with the Press Council the Society secretary David Lane wrote a detailed critique of Burstyn’s article and got it published on three internet sites including the one that had first published her article (see references below). Her article began:

“For the moral high-grounders among us the decisions to ban the movie *Baise Moi* both in New Zealand and Australia must seem like a victory for all that is good in the world.”

It then degenerated into defamatory innuendo. For further details see references.<sup>25</sup>

<sup>25</sup> *Baise Moi, Plain Smut and Violence?* By Barbara Sumner Burstyn (16/5/02) <http://www.spectator.co.nz/POV/bs-baise.htm>

<http://www.scoop.co.nz/archive/scoop/stories/5f/ab/2002/05161900.2552b0b3.html>

*Film Festivals, Perverts, “Baise-Moi” and Censorship* (7/8/02). SPCS response to Ms Sumner Burstyn <http://www.scoop.co.nz/mason/stories/PO0208/S00019.htm>

<http://www.vision-nz.co.nz/censorsbm.htm>

<http://www.spectator.co.nz/feedback/feedback-baise-moi.htm>  
(August 2002)

*Film’s fate Decided Today*, *NZ Herald* 12/4/02

<http://www.nzherald.co.nz/storydisplay.cfm?thesection=entertainment&thesubsection=&storyID=1391788>

*Judge blocks controversial film*, *NZ Herald* 12/4/02

<http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=1391843>



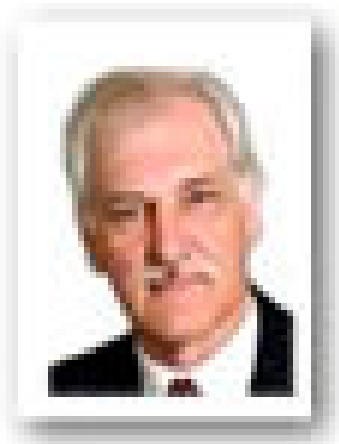
## Minister of Internal Affairs George Hawkins Replies “NO, NO, NO!”

On 9 September 2002 Peter Brown MP, Deputy leader of the NZ First Party asked the Hon. George Hawkins, Minister of Internal Affairs, the following question in the House.

“Will the Minister confirm that the current legislation clearly stipulates that there must be a Deputy Chief Censor, will he confirm also that there is a Cabinet paper in existence that indicates the Government wants to dispense with the position, that he has discussed that with the Chief Censor of Films; and was it the Minister’s intention to do that without amending the legislation, which is why the position has been left vacant for such a long time?”

**The Minister replied emphatically “No, no, no”.**

The Rt Hon. Winston Peters then raised a point of order, informing the Speaker of the House that the Minister was “blatantly misleading this House” and that he intended “to bring a breach of privilege against it.”



**Peter Brown MP**

**Sometime later George Hawkins sought the leave of the House to correct the first part of his answer. He admitted to an error and then confirmed that the legislation did in fact stipulate that there must be a DCC. Previously he had consistently answered in the negative to the same question put to him by SPCS in correspondence over two years.**

Just eight days after his turn-around in the House, the appointment of a new DCC was announced by Mr Hawkins, almost six months after the High Court action had been initiated by the Society (28 March 2002).

## The Chief Censor and publications featuring “sexual violence”

Chief Censor Bill Hastings, who until recently has been the sole member of the Classification executive since the beginning of 1999, has been responsible for approving for public screening and home video use, more degrading and sick films, DVDs, videos and computer games featuring sexual violence combined with explicit sex and graphic violence, than any other NZ Chief Censor.

From the Office’s inception in 1994 until 30 June 2002, labels have been issued for 34 such restricted publications stating “contains sexual violence”. From October 1993 to October 1999, a period of six years, nine publications containing “sexual violence” were approved, while from October 1999 to October 2001, a period of only two years, while he was Chief Censor, 21 were approved.<sup>26</sup>

Since October 2001 the Classification Office approved more sexually violent films and videos including the films *Baise-Moi*, *Bully*, *Visitor Q* and *The Piano Teacher*. Hastings has stressed that these classification decisions are only made when there is “consensus” among at least four of his senior classification staff and himself. The Office’s decision dated 20 August 2001 to allow the film *Baise-Moi* to screen uncut in film festivals organised by film societies that are incorporated societies and be used as a teaching tool in film media studies courses at tertiary institutions, was supported by Ms McCully who has been a member of the Classification Office since its inception in 1993.

Hastings and his deputy interpret the Act as permitting the release of films, videos and DVDs depicting necrophilia, explicit sexual acts involving human excrement (e.g. *Visitor Q*), sodomy (*Baise-Moi*), ejaculation by men onto the faces of women (*Matador Series*, *Shayla’s Web*) in a manner that demeans and degrades and dehumanises them, mutilation of corpses for purposes of sexual arousal (*Visitor Q*), infliction of extreme cruelty and sadistic sexual violence (sado-masochism e.g. *The Piano Teacher*) and the sexual torture of children (*Salo*).

It is an indictment on the Classification Office that despite the overwhelming evidence that films containing glamourised depictions of sexual violence, graphic violence (e.g. *Baise-Moi*) and degrading depictions of

<sup>26</sup> Bill Hastings, “*Baise-Moi*” and more sick films (SPCS Media release 19/9/02).

<http://www.scoop.co.nz/mason/stories/PO0209/S00100.htm>

women, in particular, are injurious to the public good, it continues to clear such films for general restricted (R18) release.

## Audience collapse at sexual violence

The Classification Office has granted so many general R18 classifications to films containing sexual violence that one wonders what's next in store for 'enlightened' NZ film festival goers, apparently keen to see degrading, sick and shocking films. Perhaps it will be another 'gem' from a Cannes Film Festival like *Irreversible*. It was one of the last films to be screened at this year's festival and proved so shocking that 250 people walked out, some needing medical attention.

*Irreversible*, directed by Franco-Argentinian director Gaspar Noe, describes a woman's rape and her boyfriend's bloody quest for revenge. Examining a drug-crazed man's violent pursuit of revenge against a twisted pimp he believes is responsible for raping and disfiguring his girlfriend, the film is undeniably shocking and disturbing. The script consists almost entirely of expletives directed against homosexuals and women, and a scene in which Italian actress Monica Bellucci is raped lasts a horrifying 10 minutes. Shown anti-chronologically -- the violent conclusion first followed by sequences taking the viewer back through events -- the film delivers a stomach-churning opening punch set in "Rectum," a sado-masochist gay club.

Fire wardens had to administer oxygen to 20 people at Cannes who fainted during the film - which includes a 10-minute depiction of sodomy and also contains graphic scenes of rape and murder. *Baise-Moi*, which our Chief Censor failed to ban or impose cuts to, also has a lengthy explicit violent rape scene complete with penetration shots and depictions of sodomy.

*Irreversible* has received mixed reviews from critics, but those remaining in the audience at the end of the early Saturday morning screening at Cannes gave it a five-minute standing ovation. Italian actress Monica Bellucci, whose character is raped and beaten in the film, said it was good to let people feel a range of emotions. "This is a film that people love or they hate, but it's good to have these kind of extremes," she said.

Critics had walked out of Thursday's screening of *Irreversible*, describing it as "sick" and "gratuitous". Fire brigade spokesman Lieutenant Gerard Courtel said: "In 25 years in my job I've never seen this at the Cannes festival. The scenes in this film are unbearable, even for us professionals." Even Monica Bellucci admits she cannot watch some of the scenes without looking away.

Before playing the part, she watched films such as *The Accused* and *Deliverance* to toughen herself up.

Ms Bellucci insists that her father, who was at the premiere, enjoyed it. "It was hard for him to watch, but he loved it," she said. The film has also gained praise from critics impressed with its artistry, clever camera work and unrelenting examination of the pure anger that drives revenge.

See: *Cannes film sickens audiences* (26/5/02 BBC News).

<http://news.bbc.co.uk/1/hi/entertainment/film/2008796.stm>

*Cannes VIPs Walk Out of 'Irreversible' Violence* (24/5/02 Yahoo! Movies)

<http://movies.yahoo.com/news/va/20020524/102229780700.html>

## The Prostitution 'Reform' Bill "Prostitution is a human rights violation"

The Society was invited to present its case against the Prostitution Reform Bill (PRB) to the newly-constituted Justice and Electoral Select Committee in a public hearing on 25 September 2002. **It was one of only four groups out of 221 submitters recalled to address the committee.**<sup>27</sup> The Society made its first oral submission last year and its presentation was widely reported on in the media.<sup>28</sup> The PRB, if enacted into law, would repeal those sections of the Crimes Act (1961) dealing with brothel keeping, living off the earnings of prostitution, and pimping and s.26 of the Summary Offences Act outlawing soliciting. It would also repeal the Massage Parlours Act (1978) and there would be no requirement for brothels to be licensed. Anyone over 18 years of age could operate a brothel including former criminals. The select committee is required to report the Bill back to Parliament on 29 November 2002.

Society secretary David Lane who presented the submission, supported by Society president Rev. Gordon

<sup>27</sup> *Legal prostitution seen as bad for sex workers* by Audrey Young 26/9/02 NZ Herald.

<http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=2897050>

<sup>28</sup> See <http://www.vision-nz.co.nz/prb1.htm> (submission presented 26/4/01). Supplementary submission can be accessed at <http://www.vision-nz.co.nz/prb3.htm>

Dempsey and Vice-President Dr David Hutchison, pointed out our Government's obligations under United Nations Conventions to "suppress prostitution". He accused the architects and proponents of the Bill of failing to provide any framework of control that would assist women and children to exit an 'industry' that exploits them and is injurious to the public good. He quoted Sheila Jeffreys, Associate Professor of Politics at Melbourne University, a feminist author who has done extensive research on prostitution as stating:

"Legalisation [and decriminalisation] is actually institutionalising, promoting and teaching the abuse of women and creating an ever expanding industry which normalises that abuse."

Lane said: "Prostitution involves the exploitation and abuse of women and children which are human rights violations. It can never be treated under law on the same basis as the wider employment service industry as the Bill proposes, as it is fundamentally different in nature. It involves the subjugation of the 'service provider' by the client in a way that is comparable to forms of slavery."

**For sale: 30-min. video message on the *Prostitution Reform Bill* featuring Roslyn Phillips, Festival of Light research officer (South Australia) (\$20)**

Roslyn came to NZ from Adelaide last year to present evidence against the PRB before the Government Administration Select Committee of Parliament. SPCS helped organise her itinerary involving public speaking engagements in Wellington and Christchurch and radio interviews. This informative video interview filmed in Wellington was broadcast on Trinity Broadcasting Network and Wellington Television last year. **To purchase a copy send cheque for \$20 made out to "SPCS" to The Treasurer, SPCS P.O. Box 13-683 Johnsonville. No charge for posting.**

### **Prostitutes, pimps and City Council policies on busking and soliciting**

The Society recently wrote to the mayors of 20 cities and asked them to clarify their Council's intended policies and by-laws to control the inevitable rise in street soliciting by prostitutes (including children) and the associated activities of pimps, should the Prostitution Reform Bill be enacted into law.

This increase in prostitution has occurred in NSW where the 'industry' was decriminalised in 1995, as well as in every country where it has been either decriminalised or legalised. (The Society presented evidence for this last week to the select committee examining the Bill). A series of 26 questions were put to mayors by the Society in an effort to gauge to what extent Council's have addressed the issues they could soon have to face.

*The Dominion Post* (21/10/02) covered the Society's investigation noting: "The Society ... is calling for councils to introduce policies to control prostitutes – just as Wellington has done with buskers. Buskers have to get licences in Wellington, and the times and places they are allowed to perform are controlled. The same should go for prostitutes..." Actually the Society is not asking for Councils to adopt specific policies at this stage. Rather it is seeking to highlight the fact that few have given any serious consideration to the negative impact decriminalising prostitution will have on communities and the potential need for policies to be put in place in terms of zoning brothels, and controlling street soliciting and pimping.<sup>29</sup>

**Audio-tape Message of former Race-Relations Commissioner, Gregory Fortuin to SPCS AGM 2002.** A wonderfully inspiring account of his life story and his challenge to our leaders to seek for a compassionate and forgiving approach to social justice and the enforcement of laws that will uphold the dignity of the human person. **Cost \$10 (incl. Post). Send cheque made out to "SPCS" – P.O. Box 13-683 Johnsonville.**

### **Porn proved harmful**

CALGARY (LSN/CWN) – A Canadian study involving more than 12,000 participants has found that viewing pornography is harmful to both the viewer and society.

In a meta-analysis (a statistical integration of all existing scientific data), researchers found that using pornographic materials leads to several behavioural, psychological and social problems.

One of the most common psychological problems is a deviant attitude towards intimate relationships such as perceptions of sexual dominance, submissiveness, sex

<sup>29</sup> *Prostitutes, pimps and Council policies* (2/9/02)  
<http://www.scoop.co.nz/mason/stories/PO0210/S00012.htm>

role stereotyping or viewing persons as sexual objects. Sexual aggressiveness, sexually hostile and violent behaviours are social problems as well as individual problems that are linked to pornography.

“Our findings are very alarming,” said co-author Dr Claudio Violato, director of research at the Foundation for Family Research and Education and a professor at the University of Calgary. “This is a very serious social problem since pornography is so wide-spread nowadays and easily accessible on the Internet, television, videos and print materials.” (Source: *NZ Catholic* 2002).

**Formal Notification**  
**Special Society Meeting called**  
**to Update the Constitution**  
**7 p.m. Friday 15 November**  
**Followed at 8 p.m. by Guest Speaker**  
**JOHN TERRIS QSO JP**  
***Hutt City Mayor & Former MP***

*President VoTE (Viewers of Television Excellence)*

**All Welcome**

**Topic: “Violence on Television”**  
**Connolly Hall, Guilford Tce**  
**[SPCS special mtg 7 p.m.]**  
**Enq. Tel. 970-1067**

The Society executive has given much thought to ways the current Society Constitution could be improved. A special meeting is to be held 7.00 p.m. to which all current members are invited to consider changes proposed by the executive. See p. 16 for some of the proposed changes. Comments welcome.

## Defending a Rapist and Murderer

**Russell Fairbrother**, a high-profile Hawke’s Bay lawyer before joining Labour’s back bench at the last election, attracted controversy when he defended Dartelle Alder, who was convicted of killing and raping jogger Margaret-Lynne Baxter. Fairbrother suggested that the crime was partly explained by inequalities between Maori and non-Maori. The Society issued a stinging attack earlier this year on this fallacious and insulting line of ‘defence’ in a media release. It sought to

highlight the manner in which many members of society have lost their conscience and faculties of reasoning. It concluded:

While weeping relatives and victims listened as the “horrific facts” about the Flaxmere murder case were read out in the High Court last year, Alder is reported to have sat “emotionless” and “barely flickered” at sentencing.

“One wonders,” says Society president Rev Gordon Dempsey, “why the conscience of many barely flickers sufficiently to compel them to take action against the influences in society that breed the mindset that gives rise to sexual violence and torture. Objectionable material that gratuitously depicts these degrading matters for the purpose of ‘entertainment’ is just one of the many cancers that society must remove.”

He asks: “If the purpose of the Alder’s killing was to silence the victim in an attempt to escape responsibility for ‘conduct of the most heinous kind’, what can be said about the purposes of those who allow the same conduct to invade out theatres and television programming and pass as ‘entertainment’? Can we just sit idly by like Alder, trying to evade our social responsibilities, and show no remorse for the cancers we have allowed to proliferate in our society?”

*Playing the race card and conduct most heinous* (SPCS Media release 26/6/02).

<http://www.scoop.co.nz/mason/stories/PO0206/S00169.htm>

## The Civil Union Bill

Labour MP **Russell Fairbrother** will seek to have same-sex and de facto relationships given the same legal recognition as marriage through a private members bill. He will sponsor the Civil Union Bill that homosexual MP Tim Barnett is helping to draft and it will go into the ballot of private member’s bills. If selected it will probably be voted on as a conscience issue. The bill, if enacted into law, would allow homosexual, lesbian and heterosexual de facto couples to have their relationships legally recognised.

According to Fairbrother, the bill is not the same as legalising same-sex marriage, but “mimics legal aspects of conventional marriage”. It would give same-sex couples the same legal rights as married couples on issues such as next of kin protection. Fairbrother has been reported as saying: “I think it’s a great piece of legislation. I can’t see why the moral right would oppose

it.” He said he did not see any logical reason to differentiate between same-sex and heterosexual relationships. Proponents of the bill claim that same-sex couples are excluded from about 100 statutory entitlements granted to married couples.<sup>30</sup>

The Society will be vigorously opposing this bill and seeking to highlight the unique and special character of marriage which by definition must involve a man and a woman. It is opposed to same-sex couples having rights under the law to adopt children. It recognises that the push by “gay” activists to pass this bill is part of a their concerted effort to get legal recognition for “same-sex marriage”. The Society takes the view that there are other legal means by which same-sex couples can safeguard their mutual interests without the need for legislation that degrades the unique character of marriage.

## **Ban & reclassification by Review Board of the film Bully**

Following the temporary banning<sup>31</sup> of the film *Bully* on 10 May 2002, members of the SPCS executive presented the Society’s oral submission on the reclassification of the film to the Review Board on 16 August. The Board has yet to issue its reclassification decision.

A copy of the VHS/PAL Video Recording of the film *Bully* (USA 2001), directed by Larry Clark, was submitted to the Film and Video Labelling Body Inc (FVLB) by the film’s “distributor” Anthony Timpson who trades under the name “2Brothers”. Timpson was director of the 2002 Beck’s Incredible Film Festival (BIFF) and applied to the Chief Censor for a 75% fees waiver for the classification application fee,<sup>32</sup> as he was entitled to do as the film was only intended for a festival release<sup>33</sup> by 2 Brothers. However, he was granted the fees waiver on the 21 February even though the NZ distributor, Essential Films Ltd, appears to have had plans to release the film through cinemas. (see later discussion). The FVLB was notified on 20 March by the Classification Office to issue a label for the video *Bully* with a new descriptive note at the R18 level: “Contains

<sup>30</sup> *The Dominion Post* (26/10/02) p.A23

<sup>31</sup> *Banning “Bully” a paedophile’s daydream* (SPCS Press Release 20/5/02)  
<http://www.scoop.co.nz/mason/stories/PO0205/S00198.htm>

<sup>32</sup> Fax dated 20/2/03

<sup>33</sup> It was screened five times in the Film Festival (April 11 to May 22) in Auckland (12, 20 & 26 April; 1 May) and in Wellington (3 & 9 May) but, as a result of an interim restriction order issued on 10/5/02 by the President of the Board of Review, following an application by the Society on 7 May; it was blocked from two screenings in Wellington (11 & 19 May).

violence, sexual violence, drug use and sex scenes.” This was based on the Office’s decision (Ref. No. 200269) that was published in the March List of Decisions on 15 April 2002.

*Bully* was first screened in NZ in Auckland as part of the Festival on Friday 12 April, three days before the OFLC classification decision was published. The Act allows for 30 working days for applicants to apply for a review after publication of the list pursuant to s48 of the Act. The Society applied under s. 47 of the Act for a review of the classification on 22 April and was granted leave by the Acting Secretary of Internal Affairs on 29 April. The Society, as applicant for review, was entitled to apply to the President of the Board for an interim restriction order under s49 of the Act, which it did on 7 May. The order was issued by the Board President on 10 May, temporarily banning the film from part of the Wellington sector of the Film Festival and until such time as the Board had reclassified the film.<sup>34</sup>

**The 30-working day review period for Bully expired on 28 May. The Society acted within the law by making all its applications for review and the injunction, well within the legal time-frame. It did not act out of “maliciousness” as suggested by some of the Society’s detractors, or seek to target a festival which happens to be a “one person operation” according to its organiser (Anthony Timpson).**

Essential Films the NZ distributor for *Bully* licensed the ‘Festival-only rights’ of the film to distributor “2 Brothers” (Ant Timpson) for limited screenings at the BIFF to be held in Auckland and Wellington only.

Mr Kelly Rogers, Chief Executive of Rialto Entertainment Ltd, (a leading independent distributor of quality arthouse films in NZ) of which Essential Films is a subsidiary, wrote in a submission to the Film Board dated 9 May 2002 opposing the interim restriction order applied for by the Society:

“... we intend screening BULLY in NZ in commercial cinemas ... Essential Films and Rialto have been in business for over a decade in NZ, are a reputable company, and have a joint venture with Village Force Cinemas in the running of the Rialto Cinema circuit throughout New Zealand.” [Emphasis added]

“...the nihilism and stark realism of BULLY could be used in classrooms as a preventative measure for wayward teen behaviour....In some ways it’s the modern equivalent of those old educational warhorse films from the 40s and 50s, which showed the horrors of promiscuity and teen rebellion”.

<sup>34</sup> “*Bully*” banned from film festival (SPCS 11/5/02)  
<http://www.scoop.co.nz/archive/scoop/stories/6f/8e/200205130752.e8d17tb6.html>

It is noteworthy that Kelly Rogers made his commercial plans clear before the festival had even finished. The Society considers his appraisal of the effects of the film's content matter erroneous. In a later submission to the Board dated 26 July 2002 with respect to the reclassification of the film, Kelly Rogers wrote:

"we [Rialto Entertainment] are presently attempting to release the film [Bully] in a controlled environment: that is, the cinema theatres."

In his application for a waiver of fee for the classification of *Bully* Timpson wrote:

"These films will be screening only as part of the 2002 Incredible Film Festival programme. This Festival has always made an effort to include films that will never get a large screen cinema release or even a video release. Its modus operandi is to bring a demographically and psychographically disparate audience together to witness populist foreign cinema that otherwise would not be seen by New Zealand audiences." [Emphasis added]

The Society has challenged the Chief Censor to explain how such a statement could be accepted as a legitimate basis of an application for a fee waiver when the distributor Essential Films granted 'Festival-only rights' to Timpson and intended to release the film onto the "large screen cinema".

The Festival brochure described the film as

"Unflinching in its portrayal of nudity, sex, rape, and violence, BULLY threatens to be an unrelenting freakshow of parading teen flesh and debauchery..."

Film reviewer A.O. Scott described the film on July 13, 2001 in *The New York Times* as "morally corrupt... Some of his detractors have called [the film's director] Mr. Clark a pornographer, but this is an insult to honest smut-peddlers, who treat their subjects with more respect than he does."

### **Temporary ban & reclassification by Review Board of the film *Visitor Q***

Following the temporary banning of the Japanese film *Visitor Q* on 11 April 2002, members of the SPCS executive presented an oral submission on the reclassification of the film to the Review Board on 6 June. The Board has yet to issue its reclassification decision. The film features necrophilia, brutal rape and strangulation, sexual activity in association with human excrement, mutilation of corpses,

and a host of other degrading activities listed in s.3(2) of the Act.

A copy of the VHS/NTSC Video Recording of the film *Visitor Q* (Japan 2001) directed by Takahi Miike was submitted to the Film and Video Labelling Body Inc (FVLB) by the film's distributor 2Brothers (Ant Timpson) which is sub-distributing the film for Goldview Co. of Japan. . Timpson applied to the Chief Censor for a 75% fees waiver for the classification application fee, and was granted the fee waiver on the 21 February. The OFLC classified *Visitor Q* as R18 in its decision (Ref. No. 200267) dated 14 March 2002 which was published on 15 April. It was "limited for the purpose of study in a tertiary media or film studies course or as part of the 2002 Incredible Film Festival or as part of a film festival organised by an incorporated film society."

*Visitor Q* was to have had its NZ premiere on Friday evening 12 April at the Auckland Civic Theatre on the second day of the Beck's Incredible Film Festival 2002. Following an application to the Review Board President from the Society an interim restriction order was imposed against the film on 11 April 2002.

**The review period of 30-working days expired on 28 May so the Society acted within the law in making its applications for a review and a restriction order.**

### **SPCS and the NZ Film Festival**

The Society was granted leave to have the classifications of two films from the NZ Film Festival – the Mexican film *Y Tu Mama Tambien* (transl. "And Your Mother Too") and the Austrian/French film *The Piano Teacher* (*La Pianiste*) – reviewed by the Board. It presents its oral submissions to the Board on 18 & 19 November. The first was classified R18 in a decision dated 20 May that was published on 17 June with a descriptive note "Contains drug use, sex scenes and offensive language" (OFLC Ref. No 200673). The second was classified R18 in a decision dated 17 June that was published on 12 July with the descriptive note: "Contains violence, sexual violence and explicit sex scenes" (OFLC Ref. No. 200672).

The Society applied for interim restriction orders against the two films shortly after leave had been granted for the reviews<sup>35</sup> and prior to their screening on the opening night of the NZFF in Auckland (Friday 12 July). Both applications were made within the 30-working-day appeal period allowed for under the Act. The President did not grant the restriction orders on the basis that she was unable to find that the Society had made an "arguable case" as it "had not had the advantage of viewing" the films. The Society argues that this reasoning is specious. The President had no basis upon

<sup>35</sup> Applications for review dated 2 July (*Y Tu*), 9 July (*Piano*). Leave granted on 8 & 9 July respectively.

which to assume that the Society had not seen the films. Both had been shown overseas prior to the NZ Film Festival. Furthermore, it does not follow that if an applicant for review has not seen a film he cannot produce an arguable case. The statutory obligation is on the President, having seen the film, to determine if there is an arguable case based on the evidence presented and the content of the film. The president did not address any of the central concerns raised by the Society concerning the film contents. For further information see references.<sup>36</sup>

## Chief Censor on sexual violence

Bill Hastings quoted from: *Censorship is no easy matter* by Graham Reid. NZ Herald 1/12/01.

<http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=231022>

The act does not require proof that something be injurious to the public good, says Hastings - the phrase is "likely to be". Increasingly, research is telling us how likely it might be. **"There are now journals and so on which pretty well define that for anyone with a propensity to sexual violence, that [propensity] will be heightened by exposure to sexually violent images. "Other studies show that negative attitudes towards women can be maintained by exposure to demeaning images."**

In the light of these comments the Society executive is asking why the Classification continues to give adults free access to grossly "objectionable" material that tends

<sup>36</sup> *Film festival too hot for R18 says watchdog group* by Peter Calder NZ Herald 10/7/02

<http://www.nzherald.co.nz/storydisplay.cfm?storyID=2051225&thesection=news&thesubsection=general>

*Films beat bid to stall session* by Peter Calder NZ Herald 13/7/02.

<http://www.nzherald.co.nz/entertainment/entertainmentstorydisplay.cfm?storyID=2097434&thesection=entertainment&thesubsection=film&thesecondsubsection=general>

*Ban on film relies on timing* by Peter Calder NZ Herald 12/7/02

<http://www.nzherald.co.nz/entertainment/entertainmentstorydisplay.cfm?storyID=2097155&thesection=entertainment&thesubsection=film&thesecondsubsection=general>

*Under seige from the dot-joiners* by Michelle Hewitson 13/7/02 NZ Herald

<http://www.nzherald.co.nz/entertainment/entertainmentstorydisplay.cfm?storyID=2097238&thesection=entertainment&thesubsection=film&thesecondsubsection=general>

*Ruling on disputed festival opener promised by noon* by Peter Calder NZ Herald 12/7/02

<http://www.nzherald.co.nz/entertainment/entertainmentstorydisplay.cfm?storyID=2097238&thesection=entertainment&thesubsection=film&thesecondsubsection=general>

to promote sexual violence and graphic violence in contravention of s3(2) of the Act.

## Censorship is fascism

In an article entitled "Film festival censorship simply fascist", Scott Wilson, Spokesman on Free Speech for the Libertarianz Party, bemoans "the banning" of the films *Visitor Q*, *Baise Moi*, and *Bully*, calling it "a jackbooted attempt by book-burning busybodies to control free speech".<sup>37</sup> In a detailed rebuttal<sup>38</sup> Society spokesperson David Lane began by asking the question: "Who are these individuals whose "fascist" decisions imposed the "banning" order and provoked Wilson to such a vituperative outburst?"

## SPCS Annual Meeting 2002

Society President Rev Gordon Dempsey reviewed the year's achievements at the AGM held on 16 May at Connelly Hall, Guilford Tce. Thorndon. The guest speaker was Race Relations Commissioner Gregory Fortuin. He gave a stirring address which is available on tape (see advert p. 11). A good account of the meeting by Bryan Kirk was published in *Challenge Weekly*.<sup>39</sup>

## NZ Council for Civil Liberties debate

Society spokesperson David Lane recently debated local film-maker Stuart McKenzie on the subject of censorship at the AGM of the NZ Council for Civil Liberties. The well advertised debate focused on the controversy surrounding the 'banning' of the French film *Baise-Moi*. A large crowd attended the debate which was adjudicated by well known lawyer Tony Ellis President of the NZCCL. The lunchtime debate was held in the Victoria University Law School Lecture Hall.

## Kim Hill interview re SPCS

On Saturday morning 15 July 2002 Radio NZ Kim Hill interviewed Society spokesperson David Lane for 30 minutes on the subject of the SPCS, censorship and the recent controversy involving the film festivals. The audio of the full interview is available on the RadioNZ website homepage.<sup>40</sup>

<sup>37</sup> See: Scott Wilson, Libertarianz attacks SPCS *Film festival censorship simply fascist* (14/5/02).

<http://www.scoop.co.nz/archive/scoop/stories/42/5b/200205141521.d632b522.html>

<sup>38</sup> SPCS response to Scott Wilson

*Baise Moi, 'Fascists' and free speech* (19/5/02)

<http://www.scoop.co.nz/mason/stories/PO0205/S00185.htm>

<sup>39</sup> *SPCS Year in Review* by Bryan Kirk

<http://www.challengeweekly.co.nz/Iss21-2002.htm>

<sup>40</sup> <http://www.radionz.co.nz>

## Public Meetings and Interviews

David Lane spoke on behalf of SPCS on the topic “*In the Realm of the Censors: Can the State Ban Morality?*” to the Catholic Luncheon Club on 3 July; to the Kapiti Rotary Club on 29 August and to the Paraparaumu Rotary Club on 16 September. All meetings were well attended. David was interviewed live twice by Geoff Robinson on Radio NZ, twice by Bob McCoskie of Radio Rhema, and several times by Newstalk ZB concerning the Society.

### Films that set out to shock and offend

*The Evening Post* Editorial

Thursday, May 23, 2002, p. 10.

**The Society for the Promotion of Community Standards, commonly thought to have fallen into a state of dormancy after the retirement seven years ago of its founder, the late morals campaigner Patricia Bartlett, is proving itself to be very much alive and kicking. By assiduously exploiting the legal mechanisms available to it under the Films, Videos and Publications Classification Act, the society recently forced the withdrawal of three films - Baise Moi, Visitor Q and Bully - from the Beck's Incredible Film Festival, much to the chagrin of the festival organiser. Baise-Moi's R18 rating is being challenged in the High Court and the other two films are prevented from being screened pending a reassessment of their censorship rating by the Film and Literature Board of Review.**

The sudden flurry of censorship activity raises difficult questions in a society that generally prides itself on its tolerance and liberalism. Freedom of expression is a cornerstone principle of an open, democratic society. Prohibitions on what people may see, read and hear go against the grain, partly out of the fear that the banning of books and films may lead to the curtailment of even more fundamental rights. The Bill of Rights Act guarantees the freedom to seek, receive and impart information of any kind and in any form - a protection that the courts have held extends to even the most noxious material, such as literature promoting sex with minors. Against that backdrop, it seems odd to be re-running the great censorship battles of the 1960s and 70s when the formidable Miss Bartlett was in full flight.

At the same time, society accepts there must be limits on the type of material that is available for public dissemination. The censorship legislation, for instance, attempts to codify a social consensus on what is unacceptable, such as torture, bestiality, the sexual exploitation of children, or the use of violence or coercion to compel someone to indulge in a sexual act.

### **Special Meeting of SPCS to ratify proposed changes to Constitution.**

**Connelly Hall, Guilford Tce,  
Thorndon, Wellington.**

**7.00 p.m. Friday 15 November**

It is proposed that the “objects for which the Society is established” (Rule 2) be changed to:

- a). To encourage self-respect and the dignity of the human person, made in the image of God.
- b). To promote recognition of the sanctity of human life and its preservation in all stages.
- c). To promote the benefits of lasting marriage, strong family life and wholesome personal values as the foundation for stable communities.
- d). To focus attention on the harmful nature and consequences of sexual promiscuity, obscenity, pornography and violence.
- e). To uphold and press for the proper enforcement of applicable law and its amendment where the law is ineffective.
- f). To support responsible freedom of expression which does not injure the public good by degrading, dehumanising or demeaning individuals or classes of people.

The Act also sets out processes by which concerned citizens can take action if they object to a censorship classification. Much as it might irritate film festival organisers, the Society for the Promotion of Community Standards is doing no more than it is entitled to do under legislation passed by Parliament.

Public debates on censorship serve the useful purpose of refining and fleshing out public attitudes on important moral questions. But in a sense, the debate over censorship begs a very important question. Films such as *Baise-Moi* and *Visitor Q* (a Japanese film notable for an explicit sequence involving sex with a corpse) invite attention from morals campaigners because they highlight - even celebrate - violence, perversity and degradation. Their potential to shock and offend is unabashedly used as a selling point by organisers of events such as the Beck's Incredible Film Festival. Society might well ask whether it has lost its way when such festivals rely so heavily on films that focus relentlessly on the dark side of the human condition.



## **PROPOSED CONSTITUTION**

**For Discussion Special Society Meeting  
7.00 p.m. Friday 15 November 2002  
Connolly Hall, Guilford Tce, Thorndon**

### **NEW ZEALAND**

#### **The Incorporated Societies Act 1908**

Copy of Rules: 1-

1. The name of the Society shall be:

#### **SOCIETY FOR PROMOTION OF COMMUNITY STANDARDS INCORPORATED**

2. The objects for which the Society is established are (see inset p. 16 objects a-f).

### **3. MEMBERSHIP**

**Individual Membership** of the Society is gained by way of application in writing and payment of the appropriate subscription/fee

**Family membership** is available by written application and payment of the appropriate fee, to families consisting of one or two adults and up to four children, who will be registered under one family name.

**Group membership** is available by written application and the payment of the appropriate fee to groups of five or more adult members, which will be recorded under the Group's name.

**Forms and Records.** The Secretary of the Society shall devise and provide application forms and record the names and addresses of all members, family members and group members. A list of the total number of current Individual Members, individual Family Members and individual Group Members shall be kept by the Society. The Secretary shall keep membership records of the proceeding five years.

**Cessation of Membership.** An Individual, Family or Group ceases to be a member of the Society by – resignation, or non-payment of the annual subscription, or contravening the objects of the Society. The Executive Committee has power to remove membership.

### **4. MEETINGS**

General meetings of the Society shall be notified to all members through the Society's Newsletter and by public advertisement. For Annual General Meetings and Special Meetings this advice must be

given at least fourteen days prior to the meeting.

### **5. OFFICERS OF THE SOCIETY**

The following officers shall be appointed to the Executive Committee at the Annual General Meeting:

President  
Vice President  
Secretary  
Treasurer  
And a Committee of six.

The President or deputy shall act as chairperson at the meetings of the Society.

The Executive Committee shall meet at least five times per year.

**Power to Co-opt:** The Executive Committee members shall, by a majority vote of its members, have power to co-opt Committee members and to fill any vacancy in office during the year.

**Auditor.** An Auditor shall be appointed annually either by the AGM or by the Executive Committee.

### **6. QUORUM**

The quorum for various meetings shall be:  
The Executive Committee: four – including four Officers.  
AGM and Special Meeting: 15 including two officers and three Committee members.

### **7. VOTING**

Those entitled to vote at meetings of the Society are only those who are listed as members on the current Membership List.

Voting at meetings shall be by voices, show of hands, or by secret ballot of those members present. The Chairperson shall have the casting vote. Where required the Executive Committee shall provide for distance voting.

### **8. FUNDS**

The funds of the Society are under the authority of the Executive Committee and are to be administered by the Treasurer who shall report to the committee the state of the funds at each Executive Committee meeting.

Any recommendation from the Executive Committee to borrow money shall be determined by at least a two-thirds majority vote at either an AGM or a Special General Meeting of the Society called for such purposes.

The Executive Committee shall appoint at least three of its office holders signatories to the Society accounts.

**9. COMMON SEAL**

The Secretary shall have custody of the Common Seal which is to be affixed to any legal document of the Society in the presence of any two current Office holders.

**10. WINDING UP**

On the winding up the affairs of the Society the disposition of all assets shall be in terms of Section 24 of the Incorporated Societies Act (1908) and the resolution may be passed by a bare majority.

**11. RULES – INTERPRETATION AND ADDITIONS**

If any matter shall arise which is not covered by these rules, it shall be determined where appropriate by the Executive Committee whose decision shall be final.

Additions, amendments or rescinding of any rules of the Society may be made only by the AGM or by a Special General Meeting of members called for such a purpose.

**12. Local Branches [Addition to be discussed]**

Every branch using the name of the Society shall be formed under the rules of this Constitution and will be subject to the authority of the Executive Committee which has the right to remove any branch from the Society.

Each branch is free to pursue the Aims and the Objectives of the Society with the proviso that (a) copies of all minutes must be submitted promptly to the Executive Committee, and (b) all public statements and reports issued by branches must have prior approval of the Executive Committee, and (c) the Executive Committee shall not be responsible for any debts incurred by any branches.

**AUTOMATIC PAYMENTS TO SOCIETY**  
If you would like automatic payment forms to be sent to you so that your bank can be authorised to make regular payments into the Society's account, then please contact the Acting Secretary: Mr Des Chambers, SPCS PO Box 13-683 Johnsonville.  
**Thanking you for your financial support**

**IF YOU WISH TO SEND A DONATION OR JOIN THE SOCIETY FOR PROMOTION OF COMMUNITY STANDARDS INC.**

**Please complete this slip cut out/or photocopy it and mail it to: The Treasurer SPCS P.O. Box 13-683 Johnsonville.**

**Note: The membership list is strictly confidential to the SPCS executive.**

**Strike out line which does not apply.**

**Please place my/our name on your membership list.**

**I/WE are already members**

**NAME**  
.....

**ADDRESS** .....

.....

.....

**E-mail contact & Tel. No. (Optional)**

.....

.....

**My membership donation is \$.....**

**Note: Membership of SPCS is by way of donation. Cheques should be made out to "The Society for the Promotion of Community Standards Inc." and sent to P.O. Box address above. PLEASE INDICATE IF YOU WANT A RECEIPT SENT TO YOU Yes/No (circle/delete)**

**I want to recommend the following person as a potential SPCS member: Contact details:**

.....

.....

.....

***Formal Notification***  
**Special Society Meeting called  
to Update the Constitution**  
**7.00 p.m. Friday 15 November**

**Followed at 8.00 p.m. by Guest Speaker**  
**JOHN TERRIS QSO JP**  
**Hutt City Mayor & Former MP**  
**President of VoTE**  
**(Viewers of Television Excellence)**

**All Welcome**

**Topic: “Violence on Television”**  
**Connolly Hall, Guilford Tce**  
**[SPCS special mtg 7 p.m.]**  
**Enq. Tel. 970-1067**

The Society executive has given much thought to ways the current Society Constitution could be improved. A special meeting is to be held 7.00 p.m. to which all current members are invited to consider changes proposed by the executive. See p. 16 for some of the proposed changes. Comments welcome.

***PRESIDENTIAL APPEAL FOR FUNDING***

***Dear Society members and supporters***

This year has been an extraordinary one in terms of successfully achieving many of our Society's objectives by way of the legal system, submissions to select committees, national media coverage, via relationships established with key MPs, publications on internet news sites and a number of speaking opportunities. We are so grateful to those of you who have supported the Society this year financially. However, we are facing a large shortfall in funding so would urge you to assist us asap so we can continue our work. The high profile legal cases we have taken on have been expensive. We have been prudent in our use of funds. **Please send your cheque to: The Treasurer SPCS PO Box 13-683 Johnsonville.** (See p.18 re automatic bank payments).

**Yours sincerely: Rev Gordon Dempsey (SPCS President).**

“As a means of assisting our Society financially, one of our Wellington members, Silvio Famularo, is offering for sale at discounted prices, two unique videos he has recently produced for teaching people how to use computers. We are recommending them to SPCS members and others keen to learn new computer skills. These videos are extremely easy to follow and full of many useful tips that even many highly experienced computer users could benefit from. At \$30-00 each (+ \$3 postage per order) they are very reasonably priced. We have absolutely no hesitation in recommending them. For each video sold through this mail out, \$10-00 will be donated directly to the SPCS. They come with a 30-day guarantee (see Silvio’s contact details below).” ..... SPCS executive.

## **Learn Computing The Easy Way By Video**

**Silvio’s Easy to Follow  
Computer Lessons**

**Two videos currently available**

- I “Computer Basics Volume 1”*
- II “Email Through Outlook Express  
A Guide for Beginners”.

**\$30-00 each, plus \$3-00 postage per parcel**  
For each video sold through this mail out, **\$10-00** will be donated to the SPCS.

For further information contact

**Silcol Productions**

P. O. Box **7090**, Wellington. Tel 04-389-9871. Email [silviof@xtra.co.nz](mailto:silviof@xtra.co.nz)

**Send cheques for \$33.00 (incl. postage) made out to  
“Silcol Productions” to above address**

**30-day money-back guarantee**

