

[HIGH COURT OF AUSTRALIA.]

TRANSPORT PUBLISHING COMPANY }  
PROPRIETARY LIMITED . . . } APPELLANT ;

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT.

ACTION COMICS PROPRIETARY LIMITED APPELLANT ;

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT.

POPULAR PUBLICATIONS PROPRIET- }  
ARY LIMITED . . . . . } APPELLANT ;

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
QUEENSLAND.

*Objectionable literature (Q.)*—"Objectionable"—Undue emphasis on matters of sex—  
Likelihood of injury to morality or of encouragement to depravity—Love comics—  
The Objectionable Literature Act of 1954 (Q.), ss. 5 (1), 11. H. C. OF A.  
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*Evidence—Admissibility—Opinion evidence—Ordinary human nature—Character-  
istics of special category of persons.* BRISBANE.  
July 24, 30,  
31 ;

*The Objectionable Literature Act of 1954 (Q.)* by s. 5 defines "objectionable"  
as follows :—"In relation to literature or any part of any literature, regard  
being had to the nature thereof, the persons, classes of persons, and age  
groups to or amongst whom that literature is or is intended to be or is likely  
to be distributed and the tendency of that literature or part to deprave or  
corrupt any such persons (notwithstanding that persons in other classes or  
age groups may not be similarly affected thereby), objectionable for that  
SYDNEY,  
Nov. 7.  
Dixon C.J.,  
McTiernan,  
Webb,  
Kitto and  
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it—(i.) Unduly emphasises matters of sex, horror, crime, cruelty, or violence; or (ii.) Is blasphemous, indecent, obscene, or likely to be injurious to morality; or (iii.) Is likely to encourage depravity, public disorder, or any indictable offence; or (iv.) Is otherwise calculated to injure the citizens of this State.”

Pursuant to s. 10 of the Act, the Literature Board of Review made orders prohibiting the distribution in Queensland of eight periodicals consisting of a series of pictures accompanied by inset printed dialogue portraying stories of love, courtship and marriage. In most of these stories courtship was followed by marriage and in none of the pictures was there any suggestion of improper attire. In almost every story, which seldom occupied more than a dozen pages, there were pictures of a man and a woman embracing, and in some cases the closeness of the embrace and the utterances of the participants indicated that the embrace was a passionate one. In a considerable number of the stories the thesis was emphasised that a girl might feel assured of a happy marriage as a result of the ardent embraces and kisses of a casual acquaintance.

*Held*, by Dixon C.J., Kitto and Taylor JJ., McTiernan and Webb JJ. dissenting, that the literature in question was not objectionable within the meaning of the definition as unduly emphasising matters of sex or as being likely to be injurious to morality or to encourage depravity.

*Held*, further, by Dixon C.J., Kitto and Taylor JJ., that on the question of the tendency of the literature to deprave or corrupt the persons to or amongst whom it was or was intended to be or was likely to be distributed, opinion evidence was not admissible as to the content and nature of the literature.

*Per* Dixon C.J., Kitto and Taylor JJ.: Ordinary human nature, that of people at large, is not a subject of proof by evidence, whether supposedly expert or not. But particular descriptions of persons may conceivably form the subject of study and of special knowledge. Before opinion evidence may be given upon the characteristics, responses or behaviour of any special category of persons, it must be shown that they form a subject of special study or knowledge and only the opinions of one qualified by special training or experience may be received. Evidence of his opinion must be confined to matters which are the subject of his special study or knowledge.

Decision of the Supreme Court of Queensland (Full Court): *Literature Board of Review v. Transport Publishing Co. Pty. Ltd.*; *Ex parte Transport Publishing Co. Pty. Ltd.* (1955) Q.S.R. 466, reversed.

APPEAL from the Supreme Court of Queensland.

Pursuant to s. 10 of *The Objectionable Literature Act of 1954* (Q.), the Literature Board of Review, by order dated 20th December 1954, and published in the *Gazette* on 25th December 1954, prohibited the distribution in Queensland of certain literature for that it was in the opinion of the board objectionable. This literature included the publications, Real Love, Romance Story, Real Story, Real



Romances and Love Experiences, published by the Transport Publishing Co. Pty. Ltd. the publication, Darling Romance, published by Action Comics Pty. Ltd. and the publications, Popular Romance and New Romances, published by Popular Publications Pty. Ltd. Appeals by the publishing companies to the Supreme Court of Queensland (*Macrossan C.J., Mansfield S.P.J. and Hanger J.*), pursuant to s. 11 of the Act, were, by majority, disallowed: *Literature Board of Review v. Transport Publishing Co. Pty. Ltd.*; *Ex parte Transport Publishing Co. Pty. Ltd.* (1).

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From each of the orders of the Supreme Court of Queensland the companies appealed to the High Court. The appeals were consolidated.

*C. G. Wanstall* Q.C., and *D. M. Campbell*, for the appellant in each appeal.

*G. L. Hart* Q.C., and *M. B. Hoare*, for the respondent in each appeal.

*Cur. adv. vult.*

DIXON C.J., KITTO AND TAYLOR JJ. These are appeals from three orders respectively of the Full Court of the Supreme Court of Queensland discharging orders nisi to review an order of the Literature Board of Review in relation to certain periodicals mentioned in the orders nisi. The appeals were consolidated.

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The order of the Literature Board of Review was dated 20th December 1954 and published in the *Gazette* on 25th December 1954. It stated that the board in pursuance of the provisions of *The Objectionable Literature Act of 1954* by the order prohibited the distribution in Queensland of all and every the literature, being writings published periodically, specified in the schedule thereto for that the said literature was in the opinion of the board objectionable. The order was further expressed to apply with respect to all copies of every part number or series thereof whether published theretofore or thereafter.

Among the publications enumerated in the schedule were five published by the first of the above-named appellants bearing the respective titles of Real Love, Romance Story, Real Story, Real Romances and Love Experiences; one published by the second of such appellants bearing the title of Darling Romance; and two published by the third of such appellants bearing the respective names of Popular Romance and New Romances.

(1) (1955) Q.S.R. 466.



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The appellants instituted their appeals from the several orders of the Supreme Court as appeals of right, but on the hearing doubts were raised as to the sufficiency of the grounds for saying that the appellants were prejudiced by the respective orders of the Supreme Court to the requisite amount. In two at least of the three appeals it appeared as if the difficulty could not be surmounted by the appellants; but however that may be an application was made in all three cases for special leave to appeal, and having heard the cases argued, we think that sufficiently substantial grounds exist for granting special leave.

The Objectionable Literature Board is an administrative body even if some of its functions are quasi-judicial. But an appeal to the Supreme Court is given from any order of the board prohibiting the distribution of any literature. Section 11 of the Act provides that a person who feels aggrieved by an order made by the board in respect of any literature may appeal by way of order to review as if that order were an order made by justices. The provisions of Pt. IX of *The Justices Acts 1866 to 1949* are to extend and apply accordingly but with and subject to all necessary adaptations. The cardinal question of fact, however, upon which the order of the board must depend is placed wholly within the determination of the court. It is done by the final provision of s. 11, which is as follows: "The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act and, in respect of that determination, shall not be bound by the opinion of the Board." "Literature" is a defined word. It means any publication of any description but this general definition is elaborated with some particulars which refer specifically, among other things, to "any review, magazine, newspaper, or other writing published periodically": s. 5 (1). When these expressions are read with certain references in substantive provisions of the Act, e.g. in s. 10 (3) (a) (i) and (iii), they seem sufficient to establish that the board's power of suppression is not limited to a given number already in existence of a journal or periodical but extends to prohibiting the further publication of the journal or periodical so that no succeeding numbers may lawfully be issued. The publications prohibited by the board's order now in question are of a periodical description and the order has been understood accordingly as forbidding the issue of any further numbers. The criterion for determining whether "literature" is objectionable is supplied by a definition of the word "objectionable": s. 5 (1). It is a long



definition which if analysed will be found to fall into two parts the purposes of which are different. The second part seeks to set forth in four alternative categories the characteristics or qualities which a publication must possess to bring it within the definition. The first part sets out some of the matters which must be considered when the question is whether a publication possesses the characteristics or qualities described in one or other of these four categories. This first part of the definition of "objectionable" requires that regard shall be had to the nature of the "literature"; then regard must be had to the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed; finally regard must be had to the tendency of that literature to deprave or corrupt any such persons. There is added a parenthesis excluding the consideration that persons in other classes or age groups may not be similarly affected by the literature. The second part then makes the term "objectionable", in relation to literature, mean, regard being had to all the above, objectionable for that the literature (i) unduly emphasises matters of sex, horror, crime, cruelty, or violence; or (ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or (iii) is likely to encourage depravity, public disorder, or any indictable offence; or (iv) is otherwise calculated to injure the citizens of the State of Queensland.

The question for the determination of the Supreme Court upon which the substance of the appeals turned was whether the respective publications suppressed really fell within any of the alternative grounds which the definition gives for holding literature to be "objectionable". A preliminary difficulty in dealing with such an issue in a case of this description arises from the fact that the board does not specify the materials upon which it acts in making its order. The board has apparently proceeded upon the view that, if in performing its duty under s. 8 of examining and reviewing literature it forms the opinion that any given publication is objectionable literature, there is no need to call upon the party responsible for publishing it in Queensland or any other party interested to defend the publication, but on the contrary the board may without more ado prohibit the publication under s. 10, leaving any person aggrieved to his right of appeal. Perhaps this is what the Act means, but the result is that in the case of an order prohibiting a periodical from further publication, the court has not the advantage of knowing which issues or numbers the board examined or considered. In the present cases the difficulty was met by placing

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before the Supreme Court copies of a number of issues of each periodical in question. The board appeared by counsel upon the appeal and there seems to have been no dispute that the samples were adequate.

It is obvious that the question whether a publication falls within any part of the statutory definition of objectionable literature must depend upon its contents and that it is upon an examination and consideration of its contents that the question must be determined by the court.

In the Supreme Court *Macrossan* C.J. and *Mansfield* S.P.J. were of opinion that the publications were within the definition because they unduly emphasised matters of sex. *Macrossan* C.J. also considered that they were likely to be injurious to morality. Their Honours "had regard to" the nature of the literature and what they considered to be a tendency to corrupt members of an age group of females described as unstable adolescents. *Hanger* J. dissented. In arriving at their findings the majority of the court devoted much attention to a quantity of opinion evidence that had been called on the hearing of the appeal before the Full Court. The admissibility, as well as the weight, of much of this evidence is open to question. But in any case what matters is the judgment of the court on the literature itself and, however much assistance may be sought in extrinsic evidence, it can form no substitute for that judgment.

In the present case it happened that owing to the course the argument took in this Court we did not turn to the actual publications in question until we had listened to a discussion of the Act, the judgments of the Supreme Court, and parts of the evidence, where the terms that are commonly employed with reference to impure literature constantly recur, obscenity, tendency to deprave, to corrupt, to encourage depravity, matters of sex, injurious to morality, moral debasement and so on. When we did turn to the publications their actual character proved quite unexpected and produced almost a sense of contrast. The theme of them all nearly is love, courtship and marriage. Virtue never falters and right triumphs. Matrimony is the proper end and if you are not told that happiness ensues it is the constant assumption. They are, of course, intended for feminine readers. The pages contain nothing prurient, lewd or licentious. The tone is the complete contrary. The vehicle for this romance and sentiment is the only too familiar crude drawings with the inset print of dialogue, usually issuing from the lips of the figures. Needless to say, there are adventures, hazards, threats of violence, and escapes to excite the apprehensions of a fond



reader. Whatever sensations are aroused by the narrative must be short-lived. For a story seldom occupies more than a dozen pages. There are, of course, bad men and they are sometimes wealthy. But invariably the heroine escapes from them by the aid of the strong, embracing arm of a good young man upon whom fortune is yet to smile. Why then has this literature been considered unduly to emphasise matters of sex and exhibit a tendency to deprave ? It is because the lovers are depicted as loving passionately. They embrace and they embrace closely. Their kisses, though pure are full and perhaps prolonged. Their feelings for one another are intense and joy and happiness are represented as coming from a love that is as deep and passionate as it is devoted. Moreover, the eyes of the heroine are drawn with lids either drooping or unduly raised and her lips, though drawn in black and white, are obviously rosy as lipstick can make them. There is, too, an evident though crude attempt to infuse the subject with glamour, in the modern technical sense of that term. Another element frequently recurring is love at first sight ; and love at first sight is at times aided by the tacit acceptance of the “ pick-up ” as an ordinary social practice. The convention that requires formal introduction seems safely to be ignored by the heroines and there is no reason to suppose that it is observed in the circles in which they and the expected readers move. The stories and the pictures bear every mark of American origin. The drug store and the campus may be the place of meeting and the scenes through which the story takes the lovers thence are American and so is the idiom of the simple speech in which it is told. The whole atmosphere resembles that of the American cinema. The reason why these otherwise virtuous narratives have been held unduly to emphasise matters of sex and to be likely to be injurious to morality is because again and again they depict or describe love scenes in which the parties kiss and embrace and display an ardent passion one for another.

This does not appear to us to be within the range of any reasonable application of what is meant, in the definition of “ objectionable ”, by the phrases “ unduly emphasises matters of sex ” and “ likely to be injurious to morality ”. The connotation of these phrases doubtless is not very definite and any attempt to give them greater definition than the legislature has chosen to do would be hazardous. But it is evident from the context in which they occur that they relate to obscenity, indecency, licentiousness, or impudicity or the like. Every distinction between man and woman may be said to be a matter of sex but obviously it is in no such general

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sense that the expression is used. No doubt direct references to the physiological distinctions or to actual physical relations are in the contemplation of the phrase as it occurs in the provision, wherever the purpose or effect is immoral or perverted or implies some other aberration. But publications of the kind here in question seem to be quite outside its scope. What they contain is an affront to the intelligence of the reader but hardly a real threat to her morals. The stories are extremely silly, the letter press is stupid, the drawings are artless and crude and the situations are absurd. But we are not concerned with the damage done to the intellect or for that matter to the eyesight of the readers of these foolish periodicals. Our duty is to apply our judgment to the question whether regard being had to the nature of the literature, to the persons and age groups among whom it is to be distributed and to its tendency to deprave or corrupt them it is objectionable for that it unduly emphasises matters of sex or is likely to be injurious to morality or to encourage depravity. An examination of the literature is enough to satisfy us that the proper judgment upon the literature is that it is not "objectionable" within the definition on any of those grounds.

In reaching the contrary conclusion the majority of the Full Court of the Supreme Court seem to have been influenced in some measure by the extrinsic evidence. The limits of the admissibility of extrinsic evidence with reference to the issues raised in this case under the definition of "objectionable" may perhaps be difficult to define with precision and to apply with rigid accuracy but they are not wide. There is the issue as to the persons amongst whom the literature is distributed. That is of course to be proved by evidence. In the present case two newsagents gave evidence. The shop of one was opposite a suburban school. According to him he sold up to six a week of each title of the publications now in question, and they were bought by adult females whose age was from the late 'teens to thirty-five years, and not by schoolgirls. The other newsagent carried on business in the city of Brisbane. He sold six a week of each title (the number supplied) to customers he described as married women and the senior office girl type.

It is possible too that evidence from the trade may be found that could be given in an admissible form to prove amongst what people the literature is intended to or is likely to be distributed. But that is not a matter which arises in the present case.

But on the question of the tendency of the literature to deprave or corrupt any such persons important distinctions must be observed. For the question necessarily has two aspects or falls into two parts.



One is the content and nature of the literature and the other concerns the characteristics of the persons themselves. With reference to the second of these it may be said at once that ordinary human nature, that of people at large, is not a subject of proof by evidence, whether supposedly expert or not.

But particular descriptions of persons may conceivably form the subject of study and of special knowledge. This may be because they are abnormal in mentality or abnormal in behaviour as a result of circumstances peculiar to their history or situation. It is an illustration far away from the subject in hand but it appears that the manner in which men pursuing a special vocation would reason about a matter of business may be the subject of evidence. Thus it happens to have been a question much controverted whether persons skilled in marine insurance could be called, when the question is the materiality of a non-disclosure alleged to avoid a policy, in order to prove how the fact if disclosed would influence an underwriter. Practice has established the admissibility of such evidence: see *Halsbury*, 2nd ed., vol. 18, par. 373, p. 272; *Arnold on Marine Insurance*, 14th ed. (1954) vol. 2, s. 626, p. 626. But before opinion evidence may be given upon the characteristics, responses or behaviour of any special category of persons, it must be shown that they form a subject of special study or knowledge and only the opinions of one qualified by special training or experience may be received. Evidence of his opinion must be confined to matters which are the subject of his special study or knowledge. Beyond that his evidence may not lawfully go. As to the first of the two aspects or parts of the question, opinion evidence is not admissible. The contents and nature of the literature the court can see for itself and must judge accordingly: see *Galletly v. Laird* (1).

In the present cases opinion evidence was called with respect to a class described as “unstable adolescents”. Some further opinion evidence was called as to what doubtless should be regarded as comprised within the class of “unstable adolescents”, that is to say girls aged between fourteen and eighteen who had been committed at the instance of or through the State Children Department to a Salvation Army Home. A high percentage of these had already undergone some immoral sexual experience. How far any of the publications in question came to the hands of members of this class is not shown, though there is some evidence that one girl was seen with a copy.

Psychiatrists gave contradictory evidence on the question whether the pictures of the lovers kissing and embracing were or were not

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calculated to excite the imaginations of unstable adolescent girls and stimulate them to immoral behaviour. An officer of the State Children Department expressed his opinion to the effect that the same unstable group would suffer emotional disturbances from the reading of repeated episodes where such scenes were depicted. The matron of the Salvation Army Home condemned the literature because of the effect such reading would in her opinion produce on the girls in her charge. The love scenes would excite them and retard their rehabilitation and the pictures of "pick-ups" would do them particular harm. The foregoing does not even summarise the evidence; it is but a description of its nature. In fact both by affidavit and oral testimony it spread over every aspect of such literature and even further, without regard to the limits of admissibility and at times went to the point of irrelevance. The question of the admissibility of evidence of this class has a peculiar importance in an appeal from an order of the Literature Board of Review. For it is sufficiently plain on the face of the Act that the object of the appeal is to submit to judicial determination the true character of the literature as falling or not falling within the definition of "objectionable". Once the court permits the boundaries to be transgressed which the law places upon proof of the opinion of others in such a matter, it is very likely to be drawn from the issue by a flood of controversial argument as to the effect and desirability of the publications which will be advanced in the guise of expert testimony.

In the present cases an attempt to disentangle the admissible from the inadmissible evidence leaves very little that could be of real assistance. But two comments may be made. The first is that a proposal to test the question whether the literature is within the definition by ascertaining its possible or probable effect upon admittedly bad girls committed to a Home must be misconceived. Such a test cannot be considered decisive or even relevant to the application of the definition. That is not what is meant by "persons, classes of persons and age groups" in s. 5 (1). The second comment is that the evidence at best could be used only with reference to the matters to which regard is to be had and does not and indeed cannot otherwise affect and cannot control the issues under sub-pars. (i), (ii) and (iii) of the definition. Because the literature is outside those paragraphs the appeals should succeed. Special leave to appeal should be granted and the appeals allowed in each case. The orders of the Full Court of the Supreme Court should be discharged and in lieu thereof it should be ordered in each of the three



cases that the orders nisi to review be made absolute and the order of the Literature Board of Review quashed and set aside in so far as it relates to the publications mentioned in such orders nisi.

McTIERNAN J. The Literature Board of Review is an executive agency of the State of Queensland constituted under *The Objectionable Literature Act of 1954*. The long title of this is “An Act to Prevent the Distribution in Queensland of Objectionable Literature”. The Board in pursuance of the provisions of the Act, by its order, dated 20th December 1954, prohibited the distribution in Queensland of the following matter: “All and every the literature being writings published periodically specified in the schedule hereto for that the said literature is in the opinion of the Board objectionable”. The Board by this order declared that it “applies with respect to all copies of every part number or series thereof whether published theretofore or hereafter”. This order purports to be an exercise by the Board of the power conferred by sub-s. (1) of s. 10. This sub-section says: “The Board may by its order prohibit the distribution in Queensland of any literature for that that literature or some part thereof is, in the opinion of the Board, objectionable.” The part of the order stating the extent of its application depends upon s. 10 (3) (a), which provides: “An order of the Board prohibiting the distribution in Queensland of any literature—(i) shall apply with respect to all copies of that literature including, in appropriate cases, all copies of every edition, part, number, or series thereof.”

The publications specified in the schedule to the order include “Real Love”, “Romance Story”, “Real Story”, “Real Romances”, and “Love Experiences”. All these were printed by Transport Publishing Co. Pty. Ltd. Another publication specified in the schedule is “Darling Romance”, which was printed by Action Comics Pty. Ltd. Two others are “Popular Romance” and “New Romances”, printed by Popular Publications Pty. Ltd. Each of the companies appealed, under s. 11, by way of order to review, from the order of the Board to the Supreme Court of Queensland. This section, in its second paragraph, provides: “The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act and, in respect of that determination, shall not be bound by the opinion of the Board.”

The appeal was heard by the late Chief Justice (*Macrossan C.J.*), the present Chief Justice (then *Mansfield S.P.J.*) and *Hanger J.*

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The Court, by a majority, dissentient, *Hanger J.*, determined that each publication is objectionable under and within the meaning of the Act, dismissed each appeal and discharged the order to review by which it was brought (1). Each company appealed to this Court or alternatively applied for special leave to appeal, against the order of the Full Court of Queensland affecting it.

The main question for decision is whether the publications in question or some of them are objectionable under and within the meaning of the Act.

Each of them is "literature" according to the definition in sub-s. (1) of s. 5. The criteria to be applied in determining the issue whether literature is objectionable are stated in this subsection. "'Objectionable'—In relation to literature or any part of any literature, regard being had to the nature thereof, the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed and the tendency of that literature or part to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby), objectionable for that it—(i) unduly emphasises matters of sex, horror, crime, cruelty, or violence; or (ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or (iii) is likely to encourage depravity, public disorder, or any indictable offence; or (iv) is otherwise calculated to injure the citizens of this State." The first question is, what is the nature of the publications in question? The titles of the publications have been mentioned. They also have sub-titles. "Real Love" has the sub-title "Romances from Life"; "Romance Story" has the sub-title "Intimate Love Stories"; "Real Story" has the sub-title "True to Life Love Stories"; "Real Romance" the sub-title "Romantic Stories that could be Yours"; "Love Experiences" the sub-title "Candid Confessions Illustrated"; "Darling Romance" the sub-title "Real Stories of True Love"; and "New Romances" the sub-title "Exciting Real Life Stories of Love".

Each publication consists of consecutive drawings in panels of young persons in postures of enthusiastic affection, often kissing and fondling, and indulging in absurd slang and erotic patter. The motif is an accent on sex.

The second question is, who are "the persons classes of persons and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed"? These are not issues which, like that of the nature of the publications, can be assessed merely



by perusal of the publications. I think that it is necessary to have evidence of persons qualified to inform the court. First, upon the application in each case for the order nisi to review the order of the Board, it was deposed on behalf of the applicant company that the publications "are intended for circulation amongst teenagers and all other classes and age groups of people and are purchased not only by teenagers but by all other classes and age groups of people". Secondly, evidence was given at the hearing of the appeal to the Full Court of Queensland by persons whom the judges regarded as qualified to give evidence on these issues. *Mansfield S.P.J.* made a sufficient and correct view of this evidence, which I adopt. "The evidence of the witnesses who swore affidavits and who were cross-examined at the hearing "(I enclose their names in brackets)," leads me to the conclusion that the persons, classes of persons, and age groups amongst whom the subject literature is or is likely to be distributed consist of the following—1. A group of unstable female adolescents (Dr. Stafford). 2. Adolescent girls between fourteen and eighteen years of age who have been committed to the Salvation Army Girls Industrial Home at Brisbane, most of whom were committed for offences of a sexual nature, and particularly those who were below average intelligence, emotionally unstable or irresponsible (Matron Geddes). 3. A group of psychopathic adolescent girls, corresponding to group No. 1 (Dr. Matchett). 4. Normal persons, both adolescents and adults, of average intelligence (Dr. McGeorge). 5. Females 'in their late teens' or any age, actually, above that, married women and the 'not so young', excluding middle aged women (Allan Thomas Stacey). 6. Senior office girl class, many of whom are married women (Aubrey Imrie Panton). 7. Young men aged twenty years or upwards, of average intelligence and education (John Wallace Metcalfe)." The third question is: Have these publications "the tendency to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby)"? (1).

The tendency of a publication is generally a question for the court to decide upon what the publication contains. Evidence of its tendency is not admissible. But in the case of such a special issue as whether any of these publications has a tendency to deprave or corrupt particular groups or classes, I think the evidence of persons qualified to speak on the issue is admissible, not, of course, to determine the issue, but only as evidence relevant to it. Evidence was tendered on behalf of the appellants and the Literature Board on this issue and that as to the distribution of the publications.

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The qualifications of Dr. Stafford, the witness mentioned above, are that he is a qualified medical practitioner, a registered specialist of psychology in Queensland, and since 1938 has been Director of the Psychiatry Clinic. He based his evidence on the records of sixty to seventy unstable adolescents on whom he has observed the effect of reading similar publications. This witness was of the opinion that the publications would have a tendency to deprave or corrupt adolescents of that type. Matron Geddes, another witness referred to above, is a Captain in the Salvation Army and has long experience as Matron of Girls' Homes. *Mansfield S.P.J.*, as he then was, said the evidence of Matron Geddes "was factual and was not based on the descriptions by the subjects of their reactions. Her evidence, therefore, if believed, established that the literature would have a tendency to deprave or corrupt the individuals referred to above in group 2" (1). Both His Honour and the late Chief Justice appear to have regarded the evidence of these two witnesses as more satisfactory than the evidence of other witnesses on these issues.

If there were nothing before the Court but the publications themselves, I would reach the same conclusions as these witnesses. In my opinion all these publications would deprave and corrupt young people so injudicious as to fancy them as literature, and so misguided as to cultivate a habit of reading them. Some of the publications, of course, are less evil than others, but all are distinctly evil. I think that it is correct to say that all of them are calculated to excite the amorous passions of adolescents and immature persons, and to infect those who are sweethearts with brutish standards of behaviour, unworthy of the custom of courtship and the institution of marriage.

Having regard to the nature of the publications, the classes who read them or for whom they are intended and their tendency to deprave or corrupt such persons, the next question is whether they are "objectionable" upon any of the grounds mentioned in the Act?

The plot of most of the stories is two young people seeking happiness in marriage. But the manner in which they pursue the ideal is not characteristic of decent young people. The friendships begin and are carried on by conduct that is right outside the bounds of propriety. The publications debase courtship: the drawings in many cases are calculated to convey that courtship justifies conduct which appears to be bestial rather than a manifestation of love. Illicit intercourse is nowhere explicitly represented as



a motive, but the pictures and the stories are likely to inflame the venereal passions of the classes of young persons likely to devour this trash. As *Macrossan* C.J. said of these publications: "But a considerable number of them also emphasise the thesis that an acceptable means of achieving this ideal "(marriage)" is a casual acquaintance made by a young girl with a man hitherto a complete stranger to her the ardour of whose embraces and kisses provides the assurance of the constancy of his affection" (1).

In my opinion it is correct to find that these publications unduly emphasise matters of sex and are likely to be injurious to morality and to encourage depravity. For these reasons they are all objectionable literature within the meaning of the Act.

The other grounds of appeal are devoid of substance. I agree with what *Macrossan* C.J. (in whose opinion thereon *Mansfield* S.P.J. concurred) said about those grounds.

I would dismiss the appeals if competent and, if not, I would refuse special leave to appeal.

WEBB J. I agree with the statement of the law in the majority judgment, except on two matters, my views on which and the evidence lead me to a different conclusion from that reached by the majority. The two matters are (1) the meaning of the phrase "unduly emphasises matters of sex" in the definition of "objectionable" in relation to "literature" in s. 5 of *The Objectionable Literature Act of 1954*; and (2) the persons who may constitute a class of persons for the purposes of that definition.

As to (1): From the context in which the phrase "unduly emphasises matters of sex" occurs I think it is broad enough to include emphasis on conduct short of obscenity or indecency such as embracing and kissing; otherwise the phrase would, I think, be redundant, as what is "obscene" or "indecent" is also expressly included in the definition. Further, as the phrase is not placed in the same category as "obscene" or "indecent", but in a category which includes "horror", "crime", "cruelty" and "violence", whilst "obscene" and "indecent" are in the same category as "blasphemous", resort to the principles *eiusdem generis* and *noscitur a sociis* is not permissible. If the legislature intended to exclude the application of these principles without expressly saying so it could hardly have done so more effectively. I share the view of the majority of the Full Court of Queensland, which view, summarised, is that literature which by constant pictorial repetition purports to illustrate the behaviour of males as such towards females

(1) (1955) Q.S.R., at p. 478.

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as such, and in so doing unduly emphasises the emotional and physical aspects of such behaviour, or unduly emphasises their distinctive physical or physiological attributes, is literature which unduly emphasises matters of sex.

As to (2): I think that the expression "classes of persons" in the definition of "objectionable" is not to be restricted to normal persons, and that, say girls committed to an industrial home, even for sex offences, although they are to some extent already depraved or corrupt, may still constitute a "class". As the definition expressly provides for "age groups" I am unable to see what classes of persons, other than those possessing abnormal characteristics, mental, psychological or sexual, could be intended: no other discripen suggests itself to me. Moreover literature having a tendency to deprave or corrupt does not lose that tendency while its distribution is limited to a group of persons already to some extent depraved or corrupt. I think it is not too much to say that a purpose of this legislation is not merely to prevent the pure from becoming impure, but also to prevent the impure from being kept impure.

So much for the law. As to the facts: Looking first at the literature without regard to the evidence as to its effect, as I think we must, it appears to me to unduly emphasise matters of sex, inasmuch as by constant pictorial repetition it emphasises both the emotional and the physical aspects of the behaviour towards each other of the males and females depicted, and also their distinctive physical and physiological attributes, and that, as *Macrossan* C.J. noted, the times and places of the incidents depicted are so selected as to add to that emphasis, which in the result is undue.

It may be that all this does not apply to every "strip" considered without regard to the series of which it is part. It is true that the board's prohibition extends to the series, but we are confined to a consideration of the literature actually in evidence.

Then, as to the effect of this literature, we now come to the evidence of the witnesses.

In my opinion the reaction to literature of this type of adolescents mentally, psychologically or sexually abnormal, can properly be the subject of expert testimony by those who as psychiatrists, State officials or persons in charge of recognised institutions for the reception and reform of such adolescents have had experience of such reaction. For the respondent board evidence of this kind was given. But for the appellants the evidence was not so comprehensive. It is true that the appellants called two psychiatrists, one with twenty-seven years' practice before he retired and the other



with five and one-half years' practice. However the former admitted he had not personally observed the reaction of adolescents to literature of this type and the latter did not claim to have done so. Both had much to say as to the quality of the literature and the effect it should have on individuals, but neither had much to say as to how individuals were in fact affected according to their experience. All the witnesses were closely questioned by the Bench during cross-examination and the majority of their Honours preferred the evidence for the board. In this matter they had an advantage that we do not possess of seeing the witnesses give their evidence and so of judging of its value, not only on what the witnesses said but how they said it. That was a considerable advantage in dealing with evidence and witnesses of this kind. In the circumstances I have decided to accept the evidence for the board, as being the more reliable, but only so far as it dealt with the effect of literature of this type on adolescents. It is for the court to find what is the quality of the literature apart from its effect on individuals; but throughout their evidence witnesses on both sides trespassed extensively on the court's domain. Having read all the evidence I see no reason why I should prefer the appellants' evidence which, as I have already stated, was not as comprehensive as the board's evidence: it was not based on the same wide and varied experience in dealing with abnormal adolescents.

I proceed to set out some of the evidence which the majority of the Full Court preferred and which, subject to what I have already said, I accept. Each of the three witnesses who gave this evidence made an affidavit and was called for cross-examination, which, though thorough, did not seem to result in any material contradictions of the affidavits.

Basil Frederick Robert Stafford deposed that he was a duly qualified medical practitioner and a registered specialist of psychiatry and had practised psychiatry as a specialist since 1929. He had perused the prohibited publications. In his opinion they relied for their appeal on what was commonly known as "sex". In his experience a psychological appreciation of the implications of the word "sex" was important. It had three implications (i) general appreciation of masculinity and femininity; (ii) sexual intercourse; (iii) behaviour that stimulates the implications of (i) and in a certain group of unstable adolescents would tend towards (ii). He had in mind illustrations of physical contacts such as kissing and fondling which to a certain group of unstable adolescents were probably more significant as sex behaviour than either of the two concepts of sex mentioned in (i) and (ii). The

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group of unstable adolescents he had in mind was principally female and the group was numerous. The publications relied for their attractiveness on the emphasis placed upon the behaviour mentioned in (iii). They constituted a danger to emotional rather than to intellectual instincts. The presentations pictorially and otherwise continually suggested a "modus operandi" in regard to associations, particularly physical, between male and female; and the whole essence of the publications was that the physical contact was something glamorous and desirable. The illustrations emphasised this aspect of sex. The episodes portrayed the idea that despite what might be the misbehaviour of the characters involved no harmful results would ensue. Such a concept was divorced from reality and could bring about a sense of false values in moral standards. The publications portrayed undisciplined social behaviour of adolescents. The underlying theme of sex throughout these publications was conveyed by constant repetition and in an insidious, rather than in a blatant manner, so that their influences tended to impinge unconsciously on the senses. In adolescence susceptibility to sexually receive influences is especially acute and the imagination is specially active, and in his opinion these publications would in the group of unstable adolescents engender the desire to seek similar experiences to those portrayed and stimulate them to forms of immoral sex behaviour. The influence of the publications was accentuated by the pictorial form of presentation which depicted at a glance behaviour of the type referred to in such a fashion as more readily to bring about desire and stimulation in unstable adolescents than the written word, and so extended the scope of their appeal to illiterate and semi-illiterate unstable adolescents, to whom pictorial representations would be more attractive because it facilitated their understanding of the story and concentrated their attention on the subject matter of the illustrations, which emphasised physical contact between male and female. In his opinion the publications represented a danger to emotional instincts and instilled a sense of false values and concentrated on one particular phase of human relationship to the exclusion of all others, thus tending to destroy the sense of balance and stability in the individual which is necessary to a well-ordered society. They constantly reiterated one theme which by its continued repetition must affect the formative processes of character building balance and stability throughout adolescence. Such consequences to the individual must also injuriously affect society in general and the person closely associated with such individuals in particular.



In reply to the Bench during cross-examination Dr. Stafford said that in his reference to adolescents he had in mind a group of sixty to seventy girls between thirteen and nineteen years of age with whom he had come into contact. He did not claim that they were a cross-section of adolescents between thirteen and nineteen : he thought they were a special group of unstable adolescents.

Ormond William Butler, Deputy Director of the Queensland State Children Department, deposed that he had been an officer of the Department since 1918. The children of whom he spoke were all under eighteen. He had perused the literature in question here. In the course of censoring literature addressed to children he had frequently destroyed literature of this type as he considered it undesirable for children. It would appeal to the age group thirteen to nineteen years and would be sought more by the girls than by the boys. The constant repetition of the sex theme could tend to emotional disturbances. The pictorial form would make a greater impression than in the narrative form. The literature would have a weakening effect on moral values as it would arouse unwholesome curiosity with regard to sex impulses which could have an outlet in seeking similar experiences to those portrayed. It over-stressed the importance of the relationship between the sexes and thus gave a sense of false values. Girls committed to the care of the Department by the courts for sexual offences had had publications of this nature in their belongings and were avid readers of this type of literature.

Jean Geddes, Matron of the Salvation Army Girls' Industrial Home, Brisbane, and an officer of the Salvation Army for seventeen years deposed that the girls at the home were between fourteen and eighteen years of age and are committed to the Home by the courts, the majority for sexual offences. Literature of the kind in question had a special attraction for the girls particularly those below average intelligence and those emotionally unstable or irresponsible. It was emotionally exciting to such girls and proved disturbing to their morals and thoughts. She had known such girls to read such literature from cover to cover and over and over again. She often found the girls with it in their possession. She noticed that the girls accustomed to read it had been excited and unbalanced in the presence of males working about the Home and their general conduct was unco-operative and defiant, but that their behaviour improved when they were deprived of this literature the effect of which was increased by the pictorial form, more particularly in the case of sub-normal girls. The impression made on the girls by this form of literature was more lasting than that made by moving

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pictures as it could be reverted to and read over and over again. The pictorial types were more disturbing than the written as they portrayed males and females in attitudes that appealed to and stimulated the sexual senses and engendered in unstable adolescents the desire to have similar experiences leading in her opinion to illicit sexual intercourse in many cases. *In girls who have had early sexual experience this type of literature tended to stimulate their sexual desires and keep before their minds their sexual experience which it was the desire of the Home by training and education to erase. The rehabilitation of such girls was greatly retarded by the reading of publications of this kind.*

The girls were much more interested in the pictorial representation of amatory embraces than in any merits contained in the stories.

I am satisfied, after considering all the evidence, that, as Dr. Stafford said, literature of this kind depends for its appeal on sex, and that it could constitute a danger to the emotional instinct of unstable female adolescents, as it would engender in them a desire to seek similar experiences to those depicted, and so would stimulate in them immoral sex behaviour. Further, as Dr. Stafford's evidence was based on the reactions to literature of this kind of sixty to seventy unstable female adolescents, and it can safely be concluded that the number of such adolescents, including those in industrial homes and similar institutions, is much greater than seventy, then, although all these persons are abnormal sexually, they are still capable of being and should be regarded as a class of persons within the definition of "objectionable" in relation to "literature". The bad effect that literature of this type has on discipline and in retarding the rehabilitation of girls in institutions is shown by the evidence of Matron Geddes.

It might seem regrettable that there should be a total prohibition of the distribution of literature which prejudicially affects only a restricted class of abnormal persons. But an "age group" of normal persons in whose interest a total ban might unquestionably be imposed need not be more considerable in numbers. Indeed it is conceivable that the sexually abnormal class might be larger than the particular age group, as it overlaps all age groups, and the "age group" in the definition would be restricted to adolescents. Just as I cannot see how "classes of persons" in the definition of "objectionable" could refer to other than persons mentally, psychologically or sexually abnormal, so I am unable to see what "age groups" other than adolescents are within that definition. However, whatever regrets we might have because of a total prohibition in this case is tempered by the realisation that the



community would not suffer much, as the literature amounts to little if anything more than an insult to the intelligence of its readers.

Before concluding I should say that I think it is at least arguable that as the Literature Board of Review is not required to act judicially, as was the board in *Medical Board of Victoria v. Meyer* (1); and as the Supreme Court is not confined to the determination of questions of law, as was the Full Court in *Webb v. Hanlon* (2), but has the same full power of decision as that possessed by the Literature Board of Review, which clearly acts administratively and not judicially, neither these appeals nor the applications for leave to appeal come within s. 73 of the Commonwealth Constitution or s. 35 of the *Judiciary Act*. The question of jurisdiction was not raised by counsel or by any member of this Court at the hearing. Still if I had no doubt that this Court lacked jurisdiction I would be bound to decline jurisdiction: see *Watson v. Federal Commissioner of Taxation* (3). But in the absence of argument and in view of the fact that in the application for the order to review the applicant must make a prima facie case of error or mistake in law or fact or an absence of jurisdiction (s. 209 of *Justices Acts* and s. 11 of *The Objectionable Literature Act of 1954*), which might appear to suggest that the Supreme Court on appeal is to act judicially and not administratively, I am not satisfied that the jurisdiction is lacking and so I assume for the purpose of these proceedings that it exists.

I would dismiss the appeals if they are as of right and refuse special leave if they are not.

*Special leave to appeal granted. Appeal allowed with costs. Order of the Full Court of the Supreme Court of Queensland discharged. In lieu thereof order that the orders nisi to review be made absolute with costs and that the order of the Literature Board be quashed and set aside in so far as it relates to the publications mentioned in such order nisi.*

Solicitors for the appellant in each appeal, *Cannan & Peterson*.  
Solicitor for the respondent in each appeal, *H. T. O'Driscoll*,  
Crown Solicitor for the State of Queensland.

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(1) (1937) 58 C.L.R. 62.  
(2) (1939) 61 C.L.R. 313.

(3) (1953) 87 C.L.R. 353.