

IN THE MATTER OF: The Films, Videos and
Publications Classification Act
1993

AND

IN THE MATTER OF: An application under s47 by
the Family First New Zealand
Inc for a review of the book
"Into the River" by Ted Dawe

DECISION OF THE FILM AND LITERATURE BOARD OF REVIEW

The Board

1. The members of the Board who presided over the review were:

Dr Don Mathieson (President)
Andrew Caisley (Deputy President)
Clare O'Leary
Michael Stephens

2. Mr Garth Galloway was also intending to attend, but as a result of fog at Christchurch Airport he was unable to fly to Wellington in time for the hearing. Since fog had already caused the hearing scheduled for 8 November to be adjourned, the President considered it appropriate in the particular case, having regard for the need to reach a decision as soon as practicable, to determine under section 101 of the Film, Videos, and Publications Classification Act 1993 ("the Act") that the Board should sit in a division of four members. The hearing proceeded before the four members in attendance.
3. This is a decision of the majority, from which Dr Mathieson dissents.

Submissions

4. The Board received written submissions from:
 - a. Family First New Zealand Inc; and
 - b. The Office of Film and Literature Classification; and
 - c. Mr Ted Dawe.

Appearances

5. There were no appearances by any party.

Introduction

6. "Into The River" is a 279 page novel written by a New Zealand school teacher who advises the Board that he has *"been an English teacher all my working life, most of this has been spent working with disadvantaged young adults, principally males"*. Mr Dawe is a recognised New Zealand author who has been publishing since 2003. and this book won the New Zealand Post Margaret Mahy Book of the Year Award, as well as the Young Adult Fiction category of the 2013 New Zealand Post Children's Book Awards.
7. The book tells the story of a young boy of Maori and Spanish ancestry, Te Arepa Santos. He is born and raised in a fictional East Coast village, but wins a scholarship to a prestigious boy's boarding school in Auckland. The book centres around his experiences in his first two years at the school where he is academically successful, but as a result of a series of poor decisions ends up being expelled.
8. In the closing paragraphs of the book one of the teachers says to Te Arepa, as he is being driven away from the school for the last time: *"I do hope you have learnt something from your experiences. Life's not complicated; it's just a series of choices between right and wrong."*
9. During his time at the school Te Arepa is confronted with a number of these choices between right and wrong, and unfortunately the choices he makes ultimately lead to his expulsion.

Content of the Book

10. At the outset of their submissions, Family First New Zealand note that they have raised concerns about the book and sought this review because some of the language in the book, and some of the matters described and referred to in the book themes in the book will be regarded by some as highly offensive and upsetting.
11. In terms of whether the book is "objectionable", as that term is defined in s3 of the Act, the key matters to be considered are as follows:
 - a. Bad language – the submission from Family First New Zealand notes that the word *"fuck"* is said seventeen times in the book, the word *"shit"* sixteen times, the word *"cock"* ten times and the word *"cunt"* nine times. The Board did not independently check this assessment, but accepts that it is at least approximately accurate – and certainly sufficiently accurate to give a fair sense of the extent to which bad language features in the context of a 279 page book. The submission from Family First also notes that there are a number of other offensive words used including *"arse"*, *"Jesus, fucken idiot"*, *"pissing"*, *"bitchin"* etc;
 - b. Two sex scenes – there are two sex scenes described in detail in the book, both involving Te Arepa. He is either 13 or 14 at the time of the first

scene, and probably 14 at the time of the second scene. One scene involves a young single mother, and the other scene involves a school girl, who may or may not be over the age of 16. Neither of the sex scenes include any discussion or negotiation about safe sex or the use of condoms;

- c. Drug taking – Te Arepa smokes marijuana; and at one point he is in an environment where it appears others are using ecstasy;
 - d. Other criminal activity – there are a number of references to criminal activity in the book. For example, at one point Te Arepa is involved in driving a car significantly in excess of the speed limit and at another point he receives a jacket which is almost certainly stolen property. A friend of his is involved in stealing money and phone cards and at one stage a young boy is beaten with a hockey stick by a senior student in circumstances that could presumably result in assault charges.
 - e. Teacher behaviour – one of the characters in the book is a music teacher at the school. Although it is mostly inferred, rather than directly described, the reader is left in no doubt that the teacher engages in a number of entirely inappropriate, unacceptable and at times unlawful behaviours. He is ultimately arrested for some of what he has done. He provides alcohol and drugs to some of the students, he has an inappropriately close (and probably sexual) relationship with one or more of the students, he has a practice of photographing young boys with or no clothes on and so on.
 - f. Bullying and racism – the book features a number of physically and psychologically abusive behaviours surrounding bullying and racism. In one of the scenes, in particular, a junior student is held down in his bed while a senior student repeatedly hits him with a hockey stick.
12. In light of the matters set out in paragraph 9 above, there can be no doubt that the book describes, depicts and otherwise deals with matters such as sex, crime, cruelty and violence. It therefore makes it through the subject matter gateway prescribed in section 3 of the Act.
13. The book will therefore be objectionable if *“the availability of the publication is likely to be injurious to the public good”* (see section 3(1) of the Act).
14. The Act prescribes that the test for “objectionable” may be met in two ways:
- a. A publication must be deemed objectionable if the text set out in section 3(2) is met; or
 - b. Even if a publication is not automatically deemed objectionable under section 3(2), it may nevertheless be objectionable if the test set out in section 3(1) is met, taking into account the matters required to be considered under section 3(3) and section 3(4).

- c. In conducting a review, the Board is therefore required to assess whether the publication falls within the test in section 3(2) and whether it is otherwise objectionable under section 3(1), taking into account the matters set out in section 3(3) and section 3(4).

The Section 3(2) Test

15. Section 3(2) deems a publication to be objectionable if the publication promotes or supports or tends to promote or support:
 - a. *The exploitation of children, or young persons or both for sexual purposes; or*
 - b. *The use of violence or coercion to compel any person to participate, or submit to, sexual conduct; or*
 - c. *Sexual conduct with or upon the body of a dead person; or*
 - d. *The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or*
 - e. *Bestiality; or*
 - f. *Acts of torture or the infliction of extreme violence or extreme cruelty.”*
16. There is no subject matter in the book which causes section 3(2) b - e to be relevant.
17. There is some subject matter in the book dealing with violence, both psychological and physical. However, the Board does not consider the violence crosses the threshold of being “extreme violence or extreme cruelty”. Accordingly the threshold set in section 3(2)(f) is not crossed.
18. Finally, although there are two sex scenes which involve at least one young person (Te Arepa), the scenes do not involve the exploitation either of, or by, Te Arepa. Furthermore, neither of the scenes otherwise promote or support, or tend to promote or support the exploitation of children or young persons.
19. There are also veiled hints that the music teacher may be photographing young boys either naked or partially naked, and collecting the photographs for some unspecified purpose. However, the subject is only alluded to very briefly.
20. As the submissions of the Office of Film and Literature Classification describe it *“the music teacher seems to be not only a drug dealer but also a producer and dealer of paedophilic/child exploitation images. Steph is the character that makes these links – his relationship with the teacher is dubious, probably sexual, but this not dwelt upon. Steph is the character who is worldly, sophisticated, experienced, casual and unaffected. As a character, his role is to open Te Arepa’s eyes to the temptations and follies of the contemporary urban environment. The teacher suggests Te Arepa ‘sit’ for him. Steph causally draws attention to the teacher’s*

portfolio: "yes I know... most of them are boys and most of them have no clothes on." The two boys have a silent understanding of the abhorrence of this. There is no doubt that they know what they are seeing is wrong".

21. We accept that this is a fair description of the way this matter is dealt with in the book. We also note that the scene occupies less than a page in the context of a 279 page novel. We also note that, ultimately, the music teacher is arrested. He figures in the book as part of the poor decisions that Te Arepa makes and as part of his downfall.
22. In these circumstances, the Board does not consider the allusions to the exploitation of young persons contained within the book promote or support or tend to promote or support such activity. On the contrary, we consider they are there as a genuine depiction of some of the dangers that young teenagers may have to face, and to warn of the dangers and wrongfulness of such behaviours.

The Section 3(1) Test

23. Having determined that the publication is not automatically deemed objectionable under section 3(2), it is necessary to determine whether the publication is otherwise objectionable under section 3(1). In undertaking this assessment the Board must be particularly guided by the matters set out in section 3(3) and section 3(4).
24. The Board is also mindful of the guidance provided by the Court of Appeal in Living World Distributors Limited v Human Rights Action Group Inc (Wellington) [2000] 3 NZLR 570, particularly regarding the need for there to be a likelihood of injury to the public good, and for that risk to be linked to the depiction of sex, crime, or other subject matter.
25. The Board accepts that the book does describe, depict or otherwise deal with a number of the matters identified in s3(3)(a) of the Act.
26. In particular, the book can be said to describe or depict a scene that involves the infliction of serious physical harm where one of the junior boys in the school is repeatedly hit by one of the senior boys in the school using a hockey stick. The assault leaves the victim with severe bruising to much of his body. The Board also accepts that insofar as the book alludes to a teacher taking a series of photographs of naked young boys, it deals with conduct of a sexual nature that is potentially degrading or demeaning. Some of the physical bullying which occurs through the book can also be said to be physical conduct of a demeaning nature. The Board also accepts that the book describes and depicts sexual conduct by young persons – in particular the two sex scenes involving Te Arepa.
27. Accordingly, in terms of section 3(3)(a), the Board is satisfied that the threshold is crossed and an evaluative exercise concerning the extent and degree to which those manners are dealt with, and also taking into account the factors set out in section 3(4), needs to be undertaken.

28. The Board also considers that section 3(c) is engaged because some of the behaviours in the book, particularly by senior students towards junior students are demeaning of those junior students. There are also displays of racism directed at Te Arepa which can be described as demeaning of him. Those displays of racism might also engage section 3(3)(e).
29. However, the Board's task is not merely to identify the description or depiction of matters listed in section 3(3). It must then evaluate the extent or degree to which those matters are dealt with, and the manner in which they are dealt with. The Board is also required to consider the dominant effect of the publication as a whole, the impact of the medium in which the publication is presented, the character of the publication and the other matters listed in section 3(4).
30. With respect to those factors listed in s3(4) of the Act, the Board considers:

a. The dominant effect of the publication as a whole.

As noted earlier in this decision, this is a book about the challenges which young people face, and the decisions they must make, growing up in a contemporary urban environment. There is no doubt that issues such as bullying, underage drinking, drug taking, and underage sex are very real, albeit undesirable, features of contemporary urban life. These features are neither new, nor exclusive to New Zealand. Nevertheless, they are challenges which many of our school children will face and about which they will be required to make choices.

The book focusses on the reality of those choices and the consequences of poor decisions, both individually and cumulatively. The book paints a series of superficially glamorous or exciting opportunities for Te Arepa, but also shows the consequences of making poor decisions and highlights the way in which a series of poor decisions can lead down a path to destruction.

To take the second sex scene for example, Te Arepa is at a school drama camp rehearsing for the upcoming school production. During an unauthorised 'midnight swim' Te Arepa is swimming with a fellow cast member with whom he had been beginning to develop a friendship. In the course of a paragraph, Te Arepa takes the relationship from one of developing friendship to a sexual encounter. When the girl does not resist he has sex with her. The sex is described in a couple of sentences and fleetingly Te Arepa is excited. Literally within a sentence however the consequences of his poor decision are immediately apparent to Te Arepa.

"There was a look of panic on [the girl's] face as she turned towards the shore... He knew then that he had been wrong... His rush to 'accomplish something' had somehow spoiled the fun he was having. The jump from kid games to adult activity had taken that away. Suddenly he felt regret. It had gone too far, too soon. Something had been broken."

Furthermore, the growing friendship which had been developing, and which Te Arepa destroyed through his reckless behaviour, is not repaired in the balance of the book. The issue remains a cause of regret for Te Arepa throughout. The girl will have to deal with the result of any unsafe sexual contact also, and although the book does not directly address this, most young women would think about this aspect of the encounter.

The book does not sensationalise, glamorise or otherwise favourably portray the sex, violence, cruelty, demeaning behaviour and other undesirable conduct which it describes. The main characters in the book all experience negative outcomes from their involvement in these behaviours, both by way of being arrested or expelled, and also by being left isolated, unsatisfied, empty and otherwise emotionally and psychologically unhappy. Because of this, the Board considers the dominant effect of the publication will be to promote thought, discussion and debate amongst readers about real choices and issues that they and their colleagues are likely to have to confront. Where other forms of media that young adults are exposed to, and particularly contemporary popular music and video games, may promote or glamorise or sensationalise sex, crime and violence, this book realistically portrays the negative consequences that can follow. The Board therefore considers the dominant effect of the publication is to provide a useful 'reality check' for young people.

b. The Impact of the Medium in Which the Publication is Presented

The publication is a 279 page novel presented with a dark and moody cover that, except for the "parental advisory explicit content" warning, does not in any way reference the sex scenes, crime, drugs or other undesirable behaviours which feature in the book. There is no appreciable risk that any person will be "accidentally" exposed to the undesirable behaviours or language, since exposure requires sufficient dedication to read the entire novel. Furthermore, because exposure basically requires the reading of the whole novel, the undesirable behaviour will be seen in context, and with the negative connotations which the book associates to the behaviours.

c. The character of the publication, including any merit, value or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters.

The book is intended to be, and has been recognised as, a serious work of children's literature. It raises important social issues about bullying, underage sex, drug taking, underage drinking and other undesirable behaviours. It is intended to be, and is, challenging and thought provoking to a young readership.

d. The Person, or Class of Persons, or Age Groups of the Persons to Whom the Publication is Intended or is Likely to be Made Available

In his submission, the author said that:

"I see this is a book for the older end of the young adult readership. Being over 250 pages long there is little chance of it falling into the hands of the unwary, however if teenagers under the age of 15 want to read it, then I believe that they should be allowed to".

The Board accepts that the publication is intended for teenagers. There is little or no likelihood of primary school aged children reading it, because of its length, the absence of any pictures and the dark and somewhat foreboding cover. Mainly readers will be secondary school age children – some of whom, as an unfortunate reality, will be exposed to the sorts of issues and choices which Te Arepa must face.

e. The Purpose for Which the Publication is Intended to be Used

Again in his own submission, the author notes that:

"The driving force behind [young adult] fiction is the concept that young people by reading about scenarios involving choice, sex, drugs, thieving, bullying etc have the opportunity to think through these in the relatively 'safe' environment of a novel, so when they encounter the real thing, later in life they will do so with a measure of for-thought."

The Board accepts that the book is likely to serve the purpose of raising for thought and debate important issues about choices that young people face. The fact that for the principal characters in the book, the poor choices they make have unrelentingly bad consequences, makes the book somewhat bleak and depressing to read – but it is nevertheless sobering, engaging and thought provoking. As noted above, it provides a useful and important 'reality check' that is sadly lacking in other contemporary media where sex, crime and violence are glamorised and glorified.

f. Any Other Relevant Circumstances Relating to the Intended or Likely Use of the Publication

As noted elsewhere in this decision, the Board considers that this book is both intended to, and likely to, promote discussion and debate about important issues concerning sex, (including important issues such as consent, the use of condoms and the emotional consequences of casual sex) and violence (including the damaging effects of bullying behaviour and racism). These continue to be very real issues in New Zealand, and raising the subject for debate in a way that is intended to, and likely to, engage the attention of young males in particular, has the potential to generate positive outcomes.

Summary

31. Overall, when considering the section 3(1) test in light of section 3(3) and 3(4), the Board considers that although this book does describe, depict or otherwise deal with matters such as sex, crime, cruelty and violence it does not do so in such a manner that the availability of the publication is likely to be injurious to the public good. Subject to the age limitation referred to below, the Board considers the matters dealt with in the book are dealt with in a way that is likely to educate and inform young adults about the potentially negative consequences that can follow from involvement in casual sex, underage drinking, drug taking, crime, violence and bullying. The Board considers that the book serves a useful social purpose in raising these issues for thought and debate and creating a context which may help young adults think more deeply about choices they may be called upon to make and both the immediate and long term consequences of those choices.

Section 3A

32. In their submissions, Family First New Zealand Inc refer to section 3A(2) of the Act and provide a comprehensive appendix noting the number of times various offensive words appear during the book. They list approximately 55 examples. Some of these examples are relatively benign. For example, at the beginning of the book two young Maori boys crawl through some mud and then take their clothes off and wash them, and themselves, in a river. While they are drying off in the sun afterwards one notes to the other that it is a "*good chance to tan our white arses*".
33. On other occasions however there is language that is highly offensive, with characters being referred to as "*cunts*" and "*wankers*". Having said that, it must also be noted that the language occurs in the context of character portrayals that are not unrealistic and that such language is used widely among young men in particular.
34. In terms of section 3A(2) the Board may only age restrict a publication under that section if it contains highly offensive language "*to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specific age, to cause serious harm to persons under that age*". This is a high threshold, and given the standards of language in contemporary society, and given the nature of the publication (a substantial novel unlikely to be read by primary school aged children anyway), it is not clear that the publication would be likely to cause serious harm if not age restricted.
35. However, the Board does not consider it ultimately needs to make a decision expressly on the applicability of section 3A, because of the decision it makes below regarding section 3B.

Section 3B

36. Although s3B of the Act was not expressly raised in the Family First New Zealand submission, the Board is required to conduct a “de novo” hearing and to form its own view about the way in which the publication should be treated. In doing so, the Board has given consideration to section 3B of the Act which says that a publication may be age restricted if it deals with physical conduct of a degrading or demeaning nature in certain circumstances. (see section 3B(3)(a)(iii)). The circumstances include where *“the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to cause them to be greatly disturbed or shocked...”*. (see section 3B(4))
37. As noted earlier, this publication includes extensive references to bullying, including the severe beating with a hockey stick by a senior school pupil of a junior school pupil.
38. It also contains references to racist behaviours and attitudes and other behaviours that are undesirable and demeaning or degrading of the young characters in the book, although since much of this behaviour is of a psychological, rather than a physical nature, it falls outside the ambit of matters which the statute permits the Board to base a decision on, and accordingly we have considered only the physical conduct.
39. Many of the scenes are described in a powerful way, which may be commendable from a literary point of view. However, the power of the description also means that, in the Board’s view, there is a very real likelihood that if read by children under the age of 14, it would cause them to be greatly disturbed or shocked. In forming this view, the Board does not imply any criticism of the writer, since as he notes in his own submission that he was writing for the young adult reader.
40. However it does mean that the Board considers this is a publication to which s3B(2) applies, and that it is appropriate to classify it as restricted publication pursuant to s3B(1) and s23(2)(c)(i) of the Act as a publication the availability of which should be limited to persons who have attained the age of 14 years.
41. We note that this aspect of the decision means that it was not finally necessary to form a view about whether the offensive language contained in the book justified an age restriction in its own right, since even if it did the Board would have adopted the same age restriction.

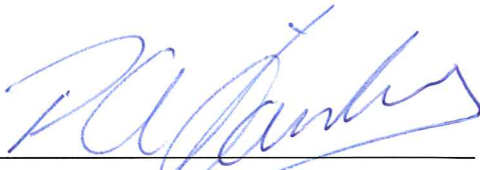
Summary

42. “Into the River” contains scenes, and deals with themes, that most people would find offensive and upsetting. Those themes include bullying, underage casual and unsafe sex, drug taking and other matters. The book also includes the use of offensive language by a number of the characters.
43. However, the book is only “objectionable” under section 3 of the Act if it promotes or supports, or tends to promote or support certain activities prescribed in section

3(2), or if it otherwise deals with certain activities in a manner which is likely to be injurious to the public good.

44. Having read the book, and considered the helpful submissions received from Family First NZ, the Office of Film and Literature Classification and the author, the Board does not consider "Into the River" can be said to have a tendency to promote or support the activities it depicts. On the contrary, the Board considers that it usefully and extensively describes and illustrates the short and longer term negative consequences that such behaviours can have.
45. Significantly, by the end of the book, the music teacher has been arrested and the two main characters have been expelled, or left school in circumstances where they would otherwise have been expelled. The two best friends have been forced apart by the expulsion and have no realistic prospect of seeing each other again. Promising academic careers have been ruined, friendships have been broken and lives are in tatters. Most importantly of all, the main character is left isolated and alone. Although Te Arepa may be too tough to admit regret, the reader cannot help but draw the conclusion that he has made a series of wrong decisions and has wasted the opportunities that were available to him.
46. Accordingly, although the book describes a number of unacceptable, offensive and objectionable behaviours, it does not in any way promote them. On the contrary, the book clearly sets out to discourage and discredit such behaviours. Accordingly the Board does not consider the book generally to be "objectionable" as that term is defined in the Act.
47. Having said that, there are scenes within the book that are powerful and disturbing, and in the opinion of the Board run a real risk of shocking and disturbing young readers. Whilst those aged 14 and above are likely to have a level of maturity that enables them to deal with this, those below the age of 14 may not. Accordingly, the Board considers the publication should be age restricted to those who have attained the age of 14 years.
48. Finally, the Board notes that the cover of the book contains a warning that there is explicit material in the book. The Board considers this appropriate and useful.
49. Accordingly, the Board hereby classifies the book under section 23(2)(c) of the Act as objectionable except if the publication is restricted to persons who have attained the age of 14 years. Pursuant to section 27 of the Act, the Board also requires that any further publication of the book carry the same descriptive note as the present publication, reading "parental advisory explicit content".
50. The Board hereby issues directions to the Office of Film and Literature Classification in terms of section 55(1)(c) of the Act to:
 - a. Provide the applicant with a copy of this decision; and
 - b. Enter the Board's decision on the register; and

- c. Publish this decision in the next list produced in accordance with section 40 of the Act, after the end of the month in which this decision is given.



P A Caisley
Deputy Chairman