

3 February 2005

REPORT ON APPLICATION FROM SIMON BRADY FOR LEAVE TO APPLY TO THE FILM AND LITERATURE BOARD OF REVIEW TO REVIEW THE CLASSIFICATION OF THE DVD *PUNI PUNI POEMY*

1. In an application received by the Department on 25 January 2005, Simon Brady seeks leave of the Secretary for Internal Affairs to apply to the Film and Literature Board of Review (the Board) to review the classification of the DVD *Puni Puni Poemy*.

Office of Film and Literature Classification Decision

2. The Office of Film and Literature Classification (OFLC) classified *Puni Puni Poemy* as:

Objectionable.

Reasons for Seeking a Review of the Decision

3. Mr Brady advances two reasons for seeking a review:
 - That the decision is wrong in fact because it gives insufficient regard to the satirical nature of *Puni Puni Poemy*. The publication is an ironic, multi-levelled parody of clichés in Japanese animation, with much of the humour self-referential, a running joke being the incompetence and degeneracy of its own cast and staff. Nothing depicted can be taken at face value, but the OFLC decision does just that in commenting that various scenes “serve no purpose” or are “titillatory”, when in fact they are obviously parodies. For example, immediately prior to the implied rape of the sisters, the alien leader attributes various perversions to the audience and describes how the scene is designed to pander to them.
 - That the decision is wrong in law because it applies an incorrect test for “promotion and support”. Considerable attention is given to the publication’s depiction of sex, but only token attempts are made to explain what it is about these depictions that constitutes promotion and support as defined by the Court of Appeal in *Moonen v Film and Literature Board of Review* (2000) 2 NZLR 9 [*Moonen 1*].

4. The applicant also notes that the Australian OFLC did not ban the publication, but instead classified it as “MA 15 (Sexual references)”.

Who May Apply to the Board?

5. Under section 47(2) of the Act, the following persons may apply to the Board for a review of a classification decision made by OFLC:
- a. Where the publication has been submitted to the Classification Office pursuant to section 13 or section 42 of the Act, the person who submitted that application;
 - b. Where the publication has been submitted to the Classification office by the labelling body pursuant to section 12 of the Act, the labelling body;
 - c. Where the publication has been referred to the Classification Office by a court pursuant to section 29(1) or section 41(3) of the Act, any party to the proceeding in respect of which the referral was made;
 - d. In all cases, the owner, maker, publisher, or authorised distributor of the publication;
 - e. **With the leave of the Secretary, any other person.**

Application of the Guidelines for Granting Leave

6. In order to determine whether or not Mr Brady ought to be granted leave to apply to the Board, I considered four matters under the Guidelines for Granting Leave:
- Whether or not the application was received in time;
 - Whether or not the application is "vexatious";
 - Whether or not the application is "frivolous"; and .
 - Whether or not the applicant establishes a *prima facie* case for review.

These matters are discussed below:

Was the application received in time?

7. Under section 48(1)(b) of the Act, and in terms of the Guidelines, an application to the Board for review of a classification must be lodged with the Secretary for Internal Affairs within 30 working days after the OFLC decision is recorded in the relevant monthly list of decisions. In this instance, the application was recorded in the list produced on 18 January 2005 and received on 25 January. The period of 30 working days does not expire until 1 March 2005 so clearly the application was received in time.

Is the application “vexatious”?

8. I considered the application in order to determine whether or not it is “vexatious” (not made in good faith or motivated by malice) in terms of the Guidelines. I found no evidence in the application to suggest that it is vexatious.

Is the application “frivolous”?

9. Two members of my staff viewed *Puny Puny Poemy* and reported to me on whether the application was “frivolous” (trivial, needless or unfounded, or so untenable that it could not possibly succeed) under the Guidelines. They made no assumptions as to the merits of the DVD or the possible outcome of any review of the classification. I am satisfied that there is nothing about the application or the publication to suggest that the application is frivolous. In my view, the interpretation of the DVD by the applicant as a parody is not so untenable as to rule out consideration of the classification by the Board.

Has the applicant established a *prima facie* case for review?

10. I consider that the case made by the applicant, that the publication is a parody and that OFLC applied an incorrect test under section 3(2) of the Act when assessing “promotion and support” for activities involving sex, are sufficient to establish a *prima facie* case for review. This opinion is not a reflection on the appropriateness of the current classification or on the outcome of any review of the classification.

Reduced Application Fee

11. The fee for an application to the Board to review a film or DVD is normally \$1,500. This fee may be reduced to \$200 under Part II of the Schedule to the Films, Videos, and Publications Classification (Fees) Regulations 1994, where the Secretary for Internal Affairs is satisfied under regulation 5 of these regulations:

that the submission or application is made by **a person or organisation that has no commercial, occupational, professional, or other interest in the publication to which the submission or application relates, other than -**

- a. **An interest no greater than the public generally; or**
 - b. An interest as the owner of the publication; or
 - c. An interest arising from the fact that, -
 - i. In the case of an organisation, the objects or aims of the organisation give that organisation a special concern regarding the censorship of publications; or
 - ii. In the case of a person, the person is a member of such an organisation.
12. The application from Mr Brady does not indicate that he has any commercial, occupational or professional interest in *Puni Puni Poemy*. Mr Brady states that he is an “enthusiastic amateur collector of Japanese anime”, but this is clearly a hobby only and in other respects he has no greater interest in the publication than the general public. In my view, Mr Brady qualifies for the reduced application fee of \$200.

Decisions

13. In light of the above findings I have decided to:
- a. **grant** leave to Simon Brady to apply to the Film and Literature Board of Review to review the classification of the DVD *Puni Puni Poemy* because

the application for leave satisfies the Guidelines for Leave of the Secretary for Internal Affairs in that the application for leave was received in time, is neither vexatious nor frivolous, and establishes a *prima facie* case for review;

- b. **approve** payment by Mr Brady of the reduced review application fee of \$200 in recognition that he has no commercial, occupational or professional financial interest, nor any greater interest than the public generally, in the publication.

Christopher Blake
Secretary for Internal Affairs