



**BERMUDA
1973 : 48**

OBSCENE PUBLICATIONS ACT 1973

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[19 June 1973]

[preamble and words of enactment omitted]

Interpretation

1 (1) In this Act—

"article" means any description of article constituting, containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures;

"Commissioners" means the Broadcasting Commissioners established under section 2 of the Broadcasting Commissioners Act 1953 [*title 24 item 11*];

"public" includes any section of the public;

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"publicly" in relation to the publication of any article, means the publication of that article in any premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise.

(2) For the purposes of this Act, a person publishes a thing if—

(a) in or by writing or otherwise he distributes, circulates, sells, lets on hire, gives or lends that thing, or offers it for sale or for letting on hire; or

(b) in the case of a thing containing or embodying matter to be looked at or a record, he shows, plays or projects that thing or record.

[Section 1 amended by 1995:28 effective 30 June 1995]

Obscenity

2 (1) An article shall be deemed to be obscene for the purposes of this Act if its effect, taken as a whole, is to outrage contemporary standards of decency or humanity accepted by the public at large in Bermuda.

(2) A thing shall be deemed to be an obscene article for the purposes of this Act if it is calculated to be used by a person, whether by itself or in conjunction with another thing or with information or directions available to him, so as to give him access to, or to facilitate his gaining access to, an article which is itself obscene.

(3) A thing shall be deemed to be obscene for the purposes of this Act if it is child abusive material or child pornography within the meaning of Part X of the Criminal Code.

[Section 2 substituted by 1995:28 effective 30 June 1995; amended by 2007:8 s.7 effective 7 May 2008]

Offences involving obscene articles

3 (1) Subject to subsection (2) and section 7, any person who,—

(a) imports an obscene article;

(b) publicly publishes an obscene article;

(c) has an obscene article for publication for gain (whether gain to himself or to another); or

(d) publishes an obscene article to, or in the presence of, a person under the age of 16 years,

commits an offence:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$5,000 or both such imprisonment and fine;

Punishment on conviction on indictment: imprisonment for 2 years or a fine at the discretion of the court.

(2) For the purpose of proceedings against any person for an offence under of subsection (1)(c)—

(a) he shall be deemed to have an article for publication for gain if with a view to such publication he has the article in his ownership, possession or control;

(b) the question whether the article is obscene shall be determined by the reference to such publication for gain of the article as in the circumstances it may reasonably be inferred he had in contemplation.

(3) A person shall not be convicted of an offence under subsection (1) if he proves that he had not examined the article in respect of which he is charged and had no reasonable cause to suspect that his importation or publication of it, or in the case of an offence under of subsection (1)(c) his having it, would make him liable to be convicted of an offence against this section.

(4) For the purposes of the Criminal Code [*title 8 item 31*] an offence under this section shall be deemed to be an offence in respect of which an offender may be arrested without warrant.

(5) A court convicting any person of an offence under this section may order any article in respect of which an offence has been committed to be forfeited.

[Section 3 amended by 1995:28 effective 30 June 1995]

Offence of advertising obscene article

3A A person who publishes an advertisement, notice or statement—

(a) intending thereby that an obscene article shall become available to any person; or

(b) so that an obscene article in fact becomes available to any person,

commits an offence:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$5,000 or both such imprisonment and fine:

Punishment on conviction on indictment: imprisonment for 2 years or a fine at the discretion of the court.

[Section 3A inserted by 1995:28 effective 30 June 1995]

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Functions of Broadcasting Commissioners

4 (1) The Commissioner shall—

- (a) keep under review the operation of this Act with a view to ascertaining whether in their opinion any amendment of the Act is necessary or desirable, having regard in particular to any changes which there may be in the attitudes of persons in Bermuda;
- (b) report to the Minister any amendment of the Act which they recommend;
- (c) advise the Minister on any other matter concerning the operation of the Act which he may refer to them.

(2) In this section "Minister" means the Minister responsible for Telecommunications.

Search and seizure of obscene articles

5 (1) Any police officer or customs officer may seize, remove and detain any article which he has reason to suspect to be an obscene article in respect of which an offence under this Act is being or has been committed.

(2) If a magistrate or justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that in or on any premises or place specified in the information any person has, or for the time being has, any obscene article for publication for gain, he may issue a warrant under his hand empowering any police officer named in the warrant to search the premises or place within fourteen days of the date of the warrant.

(3) Nothing in this section shall derogate from any powers of search and seizure under any provision of law apart from this section.

(4) If in respect of any article seized under this section—

- (a) no prosecution is commenced for an offence under section 3; and
- (b) no application is made under section 6 for an order for forfeiture,

within six months after the date on which such article was seized, the person from whom such article was seized may, within three months after the expiration of such period as aforesaid, apply to a magistrate for an order directing that such article be returned to him.

Forfeiture and disposal of obscene articles

6 (1) If a magistrate is satisfied on application that any article is an obscene article in respect of which an offence under this Act has been committed, he shall order such article to be forfeited.

(2) An order shall not be made under subsection (1) unless the magistrate has given notice to any person appearing to him to have an interest in or right over the article in question of the intention to make an order and such person is given an opportunity to show cause why the order should not be made.

(3) Any articles ordered to be forfeited under this Act shall be disposed of in such manner as the court or magistrate may direct.

Defence of public good

7 (1) A person shall not be convicted of an offence under section 3 and an order for forfeiture shall not be made under this Act if it is proved that the importation or publication of the article in question is justified as being for the public good on the ground that it is in the interest of science, literature, art or learning, or of general concern.

(2) Whether the importation or publication of an article is justified as being for the public good is declared to be a question of fact.

DPP's consent

8 No prosecution in respect of any offence under section 3 or section 3A shall be instituted except by or with the consent of the Director of Public Prosecutions.

[Section 8 amended by 1995:28 effective 30 June 1995; and by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Amendment of Criminal Code

9 *[omitted.]*

Regulations controlling publication of magazines

10 (1) In this section—

"magazine" means any printed publication whether or not containing illustrations which is published periodically, that is to say, as part of a regular series, whether weekly, fortnightly, monthly or yearly or by reference to any other period, but does not include a newspaper;

"newspaper" means a daily or weekly printed publication the principal contents of which consist of public news, observation thereon and advertisements or any combination thereof.

(2) The Minister may, for the purpose of controlling the publication of salacious material in or through magazines in Bermuda, after consultation with the Commissioners make regulations—

(a) classifying magazines or assigning to the Commissioners powers and duties in relation to the classification of

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magazines and requiring application to be made to the Commissioners for the classification of magazines not already so classified;

- (b) imposing differential restrictions and conditions as to the sale or offering for sale to the public of magazines of any particular class, including prohibitions against the sale or offering for sale of magazines of a particular class to particular sections of the public selected by reference to the criterion of immaturity of age; and
- (c) providing penalties for the breach of any such regulation, not exceeding upon summary conviction a fine of two hundred and fifty dollars, imprisonment for a term of three months or both such fine and imprisonment.

(3) The affirmative resolution procedure shall apply to the making of regulations under this section.

Broadcasting Commissioners may adjourn application for classification of magazine

11 (1) Where, in pursuance of regulations made under section 10, an application has been made to the Commissioners to classify any particular magazine but the Commissioners, upon consideration thereof, are of the opinion that they cannot properly classify the same by reason of it appearing to them to be an obscene article, the following provisions of this section shall have effect.

(2) The Commissioners may adjourn the consideration by them of any application for classification of a magazine to which subsection (1) applies for any period not exceeding fourteen days and shall forthwith upon doing so refer the application to—

- (a) the Minister; and
- (b) the Attorney-General.

(3) During any period during which consideration of an application is adjourned in accordance with subsection (2), and during any further period thereafter while proceedings under section 3 or section 6 are pending in respect of the magazine concerned, any person who sells or offers for sale to the public any copy of such magazine commits an offence:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$5,000 or both such imprisonment and fine.

[Section 11 amended by 1995:28 effective 30 June 1995]

[Amended by

1980 4

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1995 28

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