

Moral guardians without a reliable compass ...

People have different moral values which can evolve over time. This makes it difficult to reach a consensus on what constitutes public decency. So it is not surprising that the first stage of a consultation on an overhaul of the city's obscenity laws unearthed diverse views among the public.

Ahead of the crucial second round of consultation, which was expected to begin six months ago, the judiciary has seized the initiative. It has laid the groundwork for reform of the Obscene Articles Tribunal to make it more representative by doubling its pool of adjudicators and capping their service at nine years.

The judiciary has been openly critical of the tribunal's operations and the Control of Obscene and Indecent Articles Ordinance. This reflected public concern over a series of confusing tribunal decisions. Perhaps the most striking decision came not from the tribunal but the publisher of the Chinese-language edition of *National Geographic*, which, in late 2008 and again in May last year, sealed the respected scientific monthly magazine in transparent plastic with a warning about explicit content. The contents in question, computer-generated images of a naked Neanderthal woman and a photograph of half-naked ethnic minority women in a bathing ritual celebrating the coming of spring, were unlikely to offend reasonable people. Moreover, *National Geographic* took no such precaution with the English-language editions. Such is the uncertainty and confusion created by the tribunal's rulings.

A series of questionable decisions over the years has exposed the tribunal's inability to deliver consistent and predictable judgments. Examples include an interim ruling that explicit photos of pop stars engaged in private sex acts, published in two magazines, were neither indecent nor obscene. This was overturned on appeal and the photos judged indecent. Another was the classification of harmless articles on sex published by a Chinese University student newspaper and reprinted by the newspaper *Ming Pao* as indecent. In this case the Court of First Instance overruled the tribunal.

Such surprising interpretations do nothing for the city's image. The judiciary says the tribunal's role in classifying articles under the obscenity laws is inappropriate for a judicial body also responsible for dealing with referrals by a court. Officials proposed a two-tier system with a separate classification board. But the consultation revealed public support for the existing system, subject to membership being more representative of the community and the adoption of procedures to enhance transparency and consistency.

That is a minimum requirement given the wide-ranging scope of the review, which includes regulation of articles on the internet. The second stage of the consultation must aim at a system that is not only representative of community values but also fair and capable of delivering consistent, predictable and well-reasoned judgments. Under the present arrangements, the way forward is to have a much higher number of adjudicators in classification hearings, instead of a magistrate plus just two for interim classifications and four for full hearings. Such small numbers expose tribunal decisions to individual biases. The judiciary's initiative in increasing the pool of adjudicators from 270 to 500, with 100 to be added in the next few months, is a modest step in the right direction to "address some immediate operational issues". More importantly, it is a reminder that meaningful reform is needed to safeguard Hong Kong's reputation as a free society.

... expose city to ridicule for a nervousness about nudes

A police visit has turned a sedate art exhibition into the talk of the town. Jonathan Thomson – whose artworks featuring nude females have attracted the force's interest because of a single complaint – has suddenly received more publicity than the best-run advertising campaign could generate. The art historian – who is also an artistic consultant to French fashion powerhouse Louis Vuitton – appears more amused than worried. He is right; it's the authorities who should be worried about the way in which they go about enforcing the city's obscenity laws.

Like similar incidents over many years, the police raid has again threatened to make Hong Kong an international laughing stock. The officers have referred the case to the Television and Entertainment Licensing Authority, and the Obscene Articles Tribunal will visit the gallery to determine whether the artworks are indecent, obscene or not at all.

The 67 works by Thomson – a former deputy secretary general of the Arts Development Council – may be artistic or erotic. Some might even think them pornographic. But it's a debate best left to art lovers and critics. Police officers do not have the expertise to make such determinations. Since the works are all displayed inside a Mid-Levels art gallery, there is little chance children would wander in to see the provocative nudes. It is puzzling why police should waste manpower to make the visit on the strength of a single complaint. Surely the police have more serious matters to attend to.

From the start, the complainant should have been referred to the Tela and the tribunal, which could then act to make a judgment. The tribunal may decide some or all of the works are indecent and that the public needs better protection, such as requiring the gallery to block window viewing or restrict admissions to adults. Alternatively, it may decide the complaint is invalid and quietly drop the matter. The public interest would then have been served.

Either way, police officers have no business visiting the art gallery. In doing so, they have created a wholly unnecessary – and embarrassing – controversy.