

淫褻物品審裁處

OBSCENE ARTICLES TRIBUNAL

第I類 | 既非淫褻亦非不雅
Class I | neither obscene nor indecent

第II類 | 不雅
Class II | indecent

第III類 | 淫褻
Class III | obscene

此小冊子只作一般參考用途，
並不可視為法律或法庭常規的詳盡
及具有權威性的說明。

This publication is for general reference only and
should not be treated as a complete and authoritative
statement of law or court practice.

淫褻物品審裁處

淫褻物品審裁處由一位主審裁判官及兩位或以上審裁委員組成，主要負責兩項工作 — 為事物及物品**評定類別**及**裁定性質**。

物品的作者、印刷人、製造商、出版人、進口商、發行人、版權擁有人或設計、生產或發布的委託人，可向淫褻物品審裁處呈交有關物品，予以**評定類別**。律政司司長或其他獲授權的公職人員，亦可呈交物品，委託淫褻物品審裁處，予以評定類別。

除此之外，法官或裁判官亦可在法律程序進行期間，將物品或事物轉交審裁處，要求**裁定**：

- 該物品是否淫褻或不雅；
- 該事物是否不雅；
- 發布或公開展示該物品或事物，是否符合公眾利益。

電影乃受《電影檢查條例》或《電視條例》監管，淫褻物品審裁處不會予以評定類別。

根據《淫褻及不雅物品管制條例》，淫褻物品審裁處有權評定物品類別，為社會詮釋淫褻及不雅的含義。包括任何暴力、腐化或引起厭惡情緒的物品均被視為不雅。

按法例要求，審裁處在裁定及評定物品類別時，須考慮以下各項事宜：

- 社會上合理的人普遍接受的道德、禮儀及言行標準；
- 物品或事物整體上產生的顯著效果；
- 擬發布或相當可能發布的對象是甚麼人，屬那一類別或年齡組別；
- 如屬公開展示的事物，則須考慮展示地點及相當可能觀看該事物的人屬那一類別或年齡組別；及
- 該物品或事物是否有真正目的，還是用作掩飾不可接受的內容。

審裁處可將物品評定為：

- 第I類 — 既非淫褻亦非不雅；
- 第II類 — 不雅；或
- 第III類 — 淫褻。

如屬第II類物品，審裁處可附加條件，規限發布範圍。如果被評定為第III類物品，一律不得發布。

程序

評定類別

審裁處須於收到該物品5天內，以非公開形式及在申請人或其他人不在場的情況下，進行評定；並在鑑定了該物品屬淫褻或不雅的部分後，暫定類別。主審裁判官可把期限延長，最多5天。

審裁處可主動或應呈交物品人要求，重新考慮物品的評定類別，並予以更改或維持。如有人要求覆核，審裁處亦須覆核該暫定類別。

審裁處覆核或重新考慮物品的評定類別時，主審裁判官將會同4名或以上審裁委員，作公開聆訊。

要求評定物品類別、覆核聆訊或重新考慮物品的評定類別，均需繳付指定費用。

審裁處評定物品類別後14天內，可就法律論點向高等法院原訟法庭提出上訴。

裁定

由法庭或裁判官轉交的物品，須在21天內排期，作公開聆訊，鑑定物品中屬淫褻或不雅的部分。

審裁處作出評定後14天內，可就法律論點向高等法院原訟法庭提出上訴。

刑罰

發布、管有或輸入以供發布第III類物品，可被罰款港幣100萬元及監禁3年。向青少年發布不雅物品，首次被定罪，可被罰款港幣40萬元及監禁12個月。第二次或其後定罪，可被罰款港幣80萬元及監禁12個月。

如不遵從有關發布第II類物品的限制，首次定罪，可被判罰款港幣40萬元及監禁12個月。第二次或其後被定罪，可被罰款港幣80萬元及監禁12個月。

審裁委員

審裁委員組成審裁委員小組，由終審法院首席法官委任，任期3年，並可再獲委任。為了確保審裁處所採納的標準具代表性，並盡量符合社會規範，審裁小組的成員來自社會各階層，包括不同年齡組別、職業和專業。

審裁委員須向終審法院首席法官發出通知，才可辭去職務。如有以下情況，終審法院首席法官亦可將其姓名從審裁委員小組名單中刪除：

- 不再通常居於香港；
- 因任何罪行而被定罪；
- 被宣布為破產人；或
- 終審法院首席法官認為其疏忽職守或不能執行職責。

有意成為審裁委員的人，可向工商及科技局通訊及科技科查詢（電話：2189 2222）。

儲存庫

所有經審裁處評定類別的物品，均存於儲存庫內。市民可查閱儲存庫內的資料，每次收費港幣420元。

服務承諾

- 審裁處於5個工作天內為呈交的物品評定類別。
- 審裁處收到法庭或裁判官所轉交的物品後，21天內排期聆訊。
- 情況許可下，司法機構會盡快回覆市民的來信。無論如何，我們會在收到來函後10天內先予簡覆，並在30天內給予詳盡答覆。
- 為了讓服務更完善，我們歡迎各方提出意見及建議，來信請寄香港金鐘道38號高等法院司法機構政務長收。

如何聯絡我們？

地址：香港西灣河太安街29號東區法院大樓九樓

電話：2886 6807

傳真：2568 1324

辦公時間

淫褻物品審裁處、審裁處登記處及會計部

星期一至五 上午九時至下午一時

下午二時至五時

星期六 上午九時至中午十二時

- 當發出八號風球或黑色暴雨警告信號時，淫褻物品審裁處將會押後聆訊，登記處及會計部將暫停辦公。
- 若有關警告信號於上午六時前取消，審裁處將恢復聆訊，登記處及會計部亦會照常辦公。
- 若有關警告信號於上午六時至十一時取消，審裁處、登記處及會計部將於下午二時三十分恢復聆訊及照常辦公。

- 若有關警告信號於上午十一時或以後取消，審裁處、登記處及會計部將全日休庭及暫停辦公。
- 若你有案件因風暴或暴雨警告而受到影響，請留意電台及電視台有關審裁處、登記處及會計部恢復辦公的報導，或致電審裁處登記處查詢。

司法機構

二〇〇六年二月

(第五版)

THE OBSCENE ARTICLES TRIBUNAL

The Obscene Articles Tribunal, consisting of a Presiding Magistrate and two or more adjudicators, carries out two main tasks with respect to articles and matter – **classification** and **determination**.

It **classifies** articles submitted by such parties as authors, printers, manufacturers, publishers, importers, distributors, copyright owners or any person who commissions the design, production or publication of the articles concerned. Those who commission any aspect of an article may also submit that article for classification, as may the Secretary for Justice or any authorised public officer.

Additionally a court or magistrate may, in the course of proceedings, refer an article or matter to the Tribunal, asking it to **determine** whether:

- the article is obscene or indecent;
- the matter is indecent; or
- the publication of the article or the public display of the matter is intended for the public good.

Films are not classified by the Tribunal, but are dealt with under the Film Censorship Ordinance or the Television Ordinance.

Under the control of Obscene and Indecent Articles Ordinance, the Tribunal's power to classify articles effectively provides society with an effective means of interpreting in practice the notions of obscenity and indecency. Indecency is here deemed to include violence, depravity and repulsiveness.

In arriving at the determination and classification of an article, the Tribunal is called upon by law to take account of:

- the standards of morality, decency and propriety that are generally accepted by reasonable members of the community;
- the dominant overall effect of an article or matter;
- the persons, classes of persons, or age groups intended or likely to be targeted by an article's publication;
- in the case of matter publicly displayed, the location of such display and the persons, classes of persons, or age groups likely to view it; and
- whether the article or matter has an honest purpose or whether instead it seeks to disguise unacceptable material.

The Tribunal can classify an article as follows:

- Class I – neither obscene nor indecent;
- Class II – indecent; or
- Class III – obscene.

The Tribunal may impose conditions or restrictions relating to the publication of a Class II article. Class III articles are prohibited from being published.

Procedures

Classification

Classification of articles is conducted in private and without the applicant or any other person in attendance. Having identified the particular part(s) of an article that give rise to obscenity or indecency, the Tribunal makes an interim classification within 5 days of the article's being submitted. The Presiding Magistrate may extend that period by a further period of not more than 5 days.

A classification may be reconsidered by the Tribunal itself or at the request of the person submitting the article in question. The classification may be altered or confirmed. An interim classification must be reviewed if an application for review is made.

When the Tribunal hears reviews or reconsiders a classification, the Presiding Magistrate is joined by four or more adjudicators in a full public hearing.

A prescribed fee has to be paid for the classification, review or reconsideration of articles.

A party may appeal on a point of law to the Court of First Instance of the High Court against a decision of the Tribunal within 14 days of that decision.

Determination

Determination of articles referred by a court or a magistrate is conducted in open court, and a case will be listed for hearing within 21 days. The Tribunal identifies the part(s) of the article which give rise to obscenity or indecency.

A party may appeal on a point of law to the Court of First Instance against a decision of the Tribunal within 14 days of that decision.

Penalties

Anyone who publishes, possesses or imports for the purpose of publication a Class III article is liable to a fine of \$1 million and to imprisonment for 3 years. Anyone who publishes an indecent article to a juvenile is liable to a fine of \$400,000 and to imprisonment for 12 months on first conviction and \$800,000 and imprisonment for 12 months for a second or subsequent conviction.

Anyone who fails to observe conditions or restrictions on publishing Class II articles is liable to a fine of \$400,000 and imprisonment for 12 months on first conviction and to a fine of \$800,000 and imprisonment for 12 months on a second or subsequent conviction.

Adjudicators

Adjudicators form a panel and are appointed by the Chief Justice. They serve for 3 years and are eligible for re-appointment. To ensure that the standards used by the Tribunal are representative and as close to social norms as possible, adjudicators are appointed from all walks of life and sectors of society and come from different age groups, professions and occupations.

They may resign by giving notice to the Chief Justice, who may also remove an adjudicator from the panel if the adjudicator:

- ceases to be ordinarily resident in Hong Kong;
- is convicted of any offence;
- is declared bankrupt; or
- neglects or is unable to perform his / her duty in the opinion of the Chief Justice.

Anyone wishing to become an adjudicator should contact the Communications and Technology Branch of the Commerce, Industry and Technology Bureau for details (Tel: 2189 2222).

Repository

All articles classified by the Tribunal are kept in a repository. Members of the public can search the repository on payment of the prescribed fee of \$420 per search.

Performance Pledge

- The Tribunal will classify an article submitted to it within 5 working days.
- The Tribunal will list a case for hearing within 21 days from the date of receipt of the referral from a court or magistrate.
- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will issue an interim reply within 10 days and a full response within 30 days of receiving such correspondence.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

How to contact us?

Address: 9/F, Eastern Law Courts Building, 29 Tai On Street,
Sai Wan Ho, Hong Kong

Telephone: 2886 6807

Facsimile: 2568 1324

Business Hours

The Tribunal, Registry and Accounts Office

Monday to Friday 9:00 a.m. to 1:00 p.m.

2:00 p.m. to 5:00 p.m.

Saturday 9:00 a.m. to 12:00 noon

- Proceedings in the Tribunal will be adjourned and the Registry / Accounts Office will close when tropical cyclone signal No. 8 or a black rainstorm warning is issued.
- The Tribunal will resume hearing and the Registry / Accounts Office will open as usual in the morning if such signal or warning is cancelled before 6:00 a.m.
- The Tribunal will resume hearing and the offices will open at 2:30 p.m. if such signal or warning is cancelled between 6:00 a.m. and 11:00 a.m.

- Proceedings will remain adjourned and the offices will remain closed for the whole day if such signal or warning is cancelled after 11:00 a.m.
- If the hearing of a case in which you are involved is affected as the result of a tropical cyclone or rainstorm, please listen to radio and television announcements about re-opening times, or call the Tribunal Registry for enquiries.

Judiciary
February 2006
(5th Edition)