

**DECISION OF FILM AND LITERATURE BOARD OF  
REVIEW**

**UNDER** the Films, Videos and Publications Classification Act 1993  
("the Act")

**IN THE MATTER** of an application under section 47(2)(e) by The Kiwi Party  
(Incorporated) ("the applicant") for a review of the publication  
titled: *The Great Replacement*

## INTRODUCTION

1. The following members of the Board met in Wellington on 26 July 2019 to consider this application for review:

R Schmidt-McCleave (President)

N Dunlop (Vice-President)

Dr T Brown

Dr G Schott

J Peters

Dr M Waitoki

2. The publication subject to this review is a 74-page text file titled *The Great Replacement* disseminated just prior to the mosque shootings in Christchurch on 15 March 2019. It will be referred to as “the file”.
3. The shootings are believed to have resulted in the deaths of 51 persons, and injury to many others. The file purports to be authored by the perpetrator of those shootings. The Board proceeded on that basis. The Board notes that the personal profile of the author contained in the file, conforms to the identity of the person arrested and charged with the shootings.
4. On 23 March 2019, the Office of Film and Literature Classification (the “Classification Office”) classified the file as objectionable under the Act.
5. Any person who is dissatisfied with any decision of the Classification Office with respect to the classification of any publication is entitled, on application, to have the publication reviewed by the Board, provided that they have been granted leave by the Secretary for Internal Affairs<sup>1</sup>.
6. The applicant has been granted such leave by the Secretary.

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<sup>1</sup> Sections 47(1) and 52(3).

7. This means that the Board is required to conduct a review as soon as possible, to examine the file, and to determine its classification. There are three possible classifications: unrestricted or objectionable or objectionable except in one or more specified circumstances.<sup>2</sup>
8. The question of whether or not a publication is objectionable is a matter for the expert judgement of the Board, and evidence as to, or proof of any of the matters the Board is required to consider is not essential to its determination.<sup>3</sup>
9. The applicant does not have the right to appear before the Board, but does have the right to make submissions to it.<sup>4</sup> Submissions have been received from the applicant. The Board has the power to invite submissions from the Classification Office.<sup>5</sup> It made that invitation and submissions were received. The applicant and the Classification Office commented on the submissions of each other.
10. The Board did not consider it necessary to seek or invite other submissions, or to hold an oral hearing, obtain information, consult with others, or make inquiries. It was readily able to classify the file simply by reading it.

#### THE KEY LEGAL CONSIDERATIONS

11. Key legislative provisions referred to are set out in the schedule hereto.
12. The Board is first required to consider in terms of section 3(1) whether the file describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence. If the consideration results in a negative answer, then the Board must thereupon classify the file as unrestricted.<sup>6</sup>

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<sup>2</sup> Sections 23(2) and 55(1)(a).

<sup>3</sup> Section 4.

<sup>4</sup> Section 53(1).

<sup>5</sup> Section 54(1).

<sup>6</sup> Section 3(1) In *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 the Court of Appeal described section 3(1) of the Act as a “subject matter gateway” to being found to be objectionable, in that if a publication does not describe, depict, express, or otherwise deal with matters such as sex, horror, crime, cruelty, or violence, it cannot be classified as objectionable. Once a publication makes it through the subject matter gateway, the Board must then consider whether the

13. If the section 3(1) consideration just referred to results in an affirmative answer, then the next consideration is whether the publication is likely to be injurious to the public good.<sup>7</sup>
14. This then requires the Board to consider whether the file is *deemed* objectionable under section 3(2). This provision has been interpreted by the Court of Appeal,<sup>8</sup> which emphasised the high threshold to be overcome for the provision to apply, citing the importance of freedom of expression. The Court of Appeal emphasised that description and depiction of a prohibited activity do not of themselves necessarily amount to promotion or support of that activity.
15. If the Board decides that it must *deem* the file to be objectionable for the purposes of the Act, then it need not consider any further. It must classify the file as objectionable.
16. If the Board decides that the file is not *deemed* by the Act to be objectionable, then it must *determine* whether the file is objectionable, or should be given one of the

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subject matter is dealt with in such a manner that the availability of the publication is likely to be injurious to the public good.

<sup>7</sup> Ibid.

<sup>8</sup> The relevant decisions of the Court of Appeal are *Moonen v The Film and Literature Board of Review* [2000] 2 NZLR 9 (*Moonen 1* and *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 (*Moonen 2*). In both *Moonen* decisions, the Court of Appeal espoused the importance of the New Zealand Bill of Rights Act 1990 (BORA) and the fact that the Board must be mindful that, in applying the Act, it must act consistently with BORA. Section 14 of BORA states that everyone has “the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.” Under section 5 of BORA, this freedom is subject “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Further, section 6 of BORA provides that “[wherever] an enactment can be given a meaning that is consistent with the rights and freedoms contained [in BORA], that meaning shall be preferred to any other meaning.” In *Moonen 1*, the Court of Appeal made the following statement which the Board recognises is key to its consideration of the section 3(2) “deeming” provision for objectionability (at [29]):

“The concepts of promotion and support are concerned with the effect of the publication, not with the purpose or the intent of the person who creates or possesses it. The concepts denote an effect which advocates or encourages the prohibited activity, to borrow the words of Rowles J of the British Columbia Court of Appeal in an allied context in *R v Sharpe* (1999) 136 CCC 3d 97 at para 184. Description and depiction (being the words used in s 3(3)(a) of the Act) of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.”

other classifications (unrestricted or objectionable except in specified circumstances).

17. When making a *determination* as to whether the file is objectionable, the Board must give particular weight to the matters set out in sections 3(3) and must consider the matters set out in section 3(4).

## SUBMISSIONS

18. The applicant submits that, for a number of reasons, the process used by the Classification Office to classify the file was unlawful. The Board does not have regard to these submissions. It proceeds on the basis that there was a classification both able and required to be reviewed.
19. The applicant's submissions to which the Board has regarded are those to the effect that the Classification Office reached the incorrect conclusion when classifying the file.
20. Some five pages of the submissions discuss the nature of the right to free speech, and the inappropriateness of free speech being subject to censorship. The discussion ranges over philosophical, legal, historical and political subject matter.
21. The applicant describes the file as a political manifesto. It submits that the Classification Office "*...had no remit to ban a political manifesto, as the purpose of the Act is to police permissiveness and to set a line, prohibiting what is morally reprehensible to New Zealanders and injurious to the public good.....The Manifesto is the dispassionate exposition of a political philosophy and as such is of a different order to those matters which come within the [purview] of the Act.*"<sup>9</sup>
22. The applicant submits that the decision of the Classification Office "*was founded on the anti-free speech ...concepts of 'hate' and 'dangerous' speech, which are not part of the law of NZ. These concepts are part of the ideological attack on Western*

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<sup>9</sup> Paragraph 21 of the submissions dated 3 July 2019.

*values being conducted by the cultural Marxists, so as to prevent discussion of the social policies they advance.* <sup>10</sup>

23. The applicant submits that the Classification Office has made *“clumsy attempts to focus on the very few passages in the Manifesto which refer to practicalities, so as to bring the Manifesto into the realm of being an instruction manual and hence enabling acts of violence. The very few ‘practical’ suggestions in the Manifesto are largely obvious in the extreme, such as mosques being a convenient place to target Moslems. What this demonstrates is that rather than engaging in the political philosophy stated in the Manifesto, the Censor has simply cobbled together rationales that support a stance already taken.*”<sup>11</sup>

24. The applicant submits that *“The imposition of Draconian penalties, of up to 10 years’ imprisonment, for having in one’s possession a political manifesto, is a sanction akin to those imposed by totalitarian regimes to suppress democratic processes.”*

25. The Classification Office, in the person of the Chief Censor, submits that *“The publication promotes and supports criminal acts including mass murder, terrorism and the killing of children to a high extent and degree. It presents this justification in a manner that is intended to glorify the writer and inspire others towards terrorist violence. It identifies other possible groups, individuals and locations for attack, and references means of carrying out attacks.”*<sup>12</sup>

26. The Chief Censor submits that the publication is not a *“dispassionate exposition of political philosophy”* as contended by the applicant. He emphasises that it is not a theoretical document of the same nature as historical treatises and autobiographies. He submits that rather, it *“...is inexorably linked with the worst act of murder and terrorism in New Zealand which it justifies as both rational and necessary. More significantly it directly encourages the intended audience to carry out further acts of criminal violence and terrorism.”*<sup>13</sup>

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<sup>10</sup> Paragraph 54.

<sup>11</sup> Paragraph 55

<sup>12</sup> Paragraph 58 of the submissions dated 11 July 2019

<sup>13</sup> Paragraph 60

27. The Chief Censor submits therefore that the objectionable classification is a “...*demonstrably justified limit on freedom of expression*...”<sup>14</sup>

28. The Chief Censor states that the Classification Office considered imposing a tailored restriction on the file, allowing access to researchers, analysts and journalists, but decided against that.<sup>15</sup> He noted that members of the public who believe they have a legitimate interest in possessing the publication have the ability to apply to the Chief Censor for an exemption under section 44 of the Act.<sup>16</sup>

#### THE FILE

29. The file is headed “*The Great Replacement-Towards A New Society-We March Ever Forwards.*”

30. It commences with a Dylan Thomas poem featuring the refrains “*Do not go gentle into that good night*” and “*Rage, rage against the dying of the night.*”<sup>17</sup>

31. There follows a two-page introduction section which asserts that, as a result of low relative European birth rates and mass migration, the European people are being subjected to an assault which will ultimately result in their complete ethnic, cultural and racial replacement. This is described as “*white genocide.*” It is said “*We must crush immigration and deport those invaders already living on our soil. It is not just a matter of our prosperity, but the very survival of our people.*”

32. The next 13 pages comprise a series of questions posed to the author and answered by the author. Amongst others, the questions include:

- Why did you carry out the attack?
- Was there a particular event or reason you decided to commit a violent attack?
- Did you carry out the attack for fame?
- Why did you target those people?

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<sup>14</sup> Paragraph 65

<sup>15</sup> Paragraph 66.

<sup>16</sup> Paragraph 67.

<sup>17</sup> *Do not go gentle into that good night*

- For how long did you plan this attack?
- Why did you choose this time to attack?
- Why did you choose to use firearms?
- Why did you choose New Zealand as a place to attack?
- Was there any reason you attacked that (those) mosque(s)?
- Do you consider it a terrorist attack?
- Do you feel any remorse for the attack?
- Do you believe those you attacked were innocent?
- Did you intend to survive the attack?
- Were there other targets planned in your attack?
- Were your beliefs influenced by any other attackers?
- If convicted do you expect to stay in prison?

33. Then there are a series of “*Answers to my people/supporters questions*”, including “*What do you encourage us to do?*”

34. The next 4 pages comprise “*Answers to detractors and to those that oppose my beliefs/methods.*” Questions posed and answered include:

- Won’t your attack result in calls for the removal of gun rights in...New Zealand?”
- Democracy is the only solution, why are you committing to force?
- Violence isn’t the answer, why are you using force?
- What makes you believe you are European, not just an Australian?
- Children are always innocent... do you think you are a monster for killing an innocent?



35. There follows Section 1 which over 5 pages addresses comments to conservatives, Christians, Antifa/Marxists/Communists and Turks.

36. There follows Section II which extends over 43 pages addressing a wide range of topics including:

- The Rape of European Women Invaders
- Diversity is weak
- Radicalization of Western men
- The failure of Assimilation
- Kill High Profile Enemies
- The Danger of the Invader
- There is no sheltered meadow
- Emotions rule over facts
- Protect your people, remove the poison
- Do not allow your enemies to grow unchecked
- Don't leave the cities, Run towards the fight, Not away
- Accept Death, Embrace Infamy
- There is no democratic Solution
- NGOs are directly involved in the genocide of European people
- If you lose history will write you as monsters, regardless of your tactics. Win first, write the narrative later.
- Do nothing, Win nothing, Achieve nothing.
- Globalist capitalist markets are the enemy of the racial autonomists
- Break the back of cheap labour.

37. The next section, Section IV, is the concluding section. There is no section III. This section ends:

*“As for me, my time has come. I cannot guarantee my success. All I know I know is the certainty of my will and the necessity of my cause. Live or die, know I did it all for you; my friends, my family, my people, my culture, my RACE.*

*Goodbye, god bless you all and I will see you in Valhalla.*

*EUROPA RISES”*

**Does the publication describe, depict, express or otherwise deal with matters such as sex, horror, crime, cruelty or violence?**

38. As referred to in paragraph 12 above, this is the initial “gateway” issue for the Board to consider under section 3(1).

39. The Board considers that question must be answered affirmatively. The file deals with topics of horror, crime, cruelty and violence at length.

**Should the publication be *deemed* objectionable?**

40. As referred to in paragraphs 13 and 14 above, in the light of the affirmative answer to the previous question, the next practical issue for the Board to consider is whether or not the file should be *deemed* objectionable pursuant to section 3(2).

41. The matters referred to in paragraphs (a)-(e) of section 3(2) do not apply to this case. Arguably, paragraph (f) applies. The issue is therefore whether the file promotes or supports, or tends to promote or support, acts of torture or the infliction of extreme violence or extreme cruelty.

42. In considering this issue, the Board has regard to the judicial interpretation of the subsection referred to in footnote 8 above and, particularly, the high threshold for section 3(2) to apply.

43. The Board does not consider that, taken as a whole, the file promotes or supports, or tends to promote and support *torture* and *cruelty* in terms of paragraph (f). The tone of the file does not encourage or condone suffering, although suffering is bound to be a consequence of what it advocates. Less clear is whether, in terms of paragraph (f), the file promotes or supports, or tends to promote and support *extreme violence*.

44. With some hesitation, the Board concludes that the file does not do that either. The file is more focussed on achieving an outcome, albeit necessitating violence, than in glorifying violence *per se*. Paragraph (f) appears to be directed at the veneration of violence, rather than at actions which involve violence. This is suggested by reference to torture, cruelty and violence all in the one paragraph. Those three features should be read together rather than separately. And the fact that section 3(3) elaborates in much more detail as to what constitutes an objectionable publication, suggests that a narrow and specific interpretation of paragraph (f) is intended.

45. In reaching the conclusion that the file is not caught by paragraph (f) of section 3(2), and is therefore not *deemed* objectionable, the Board emphasises that it in no way condones the file, nor is it insensitive to the awful events which unfolded in Christchurch on 15 March 2009. The Board is engaged in a process of statutory interpretation. As will become clear below, the Board is sickened and appalled by the contents of the file, which advocates the killing of innocent persons for the purposes of ethnic cleansing.

**Does the publication come within section 3(3) taking account of section 3(4)?**

46. Having decided that the file cannot be *deemed* under section 3(2) to be objectionable, the Board must move on to decide whether it should nonetheless be *determined* objectionable under section 3(3). In making that determination it is required to give particular weight to the matters in section 3(3) and to consider the matters listed in section 3(4).

*Section 3(3) factors*

47. It is certainly arguable that, in terms of section 3(3)(a)(i), the file describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty. It is also arguable that, in terms of section 3(3)(c), the file degrades or dehumanises or demeans any person. Finally, it is arguable that, under section 3(3)(e), the file represents that members of particular classes of the public are inherently inferior to other members of the class on the grounds of the Human Rights Act 1993 prohibited ground of race. Examples showing each of these grounds can be discerned throughout the file.

48. The Board does not, however, make findings either way on the above three provisions. That is because the Board wishes to focus on what is overwhelmingly obvious about the file, namely that, in terms of section 3 (3)(d) it, to an extreme extent and degree, promotes and encourages criminal acts and acts of terrorism.
49. The file is a call to arms, quite literally. It advocates the assassination in New Zealand and elsewhere of “invaders”, that is to say “non-Europeans” who have immigrated into “European” lands.
50. It is clear that, in the view of the author of the file, New Zealand is a “European” land. Muslims, by the author’s definition, are “non-Europeans” and therefore must be removed from New Zealand as they are “invaders”. The author of the file considers that, unless this is done, then inexorably “non-Europeans” such as Muslims will replace “Europeans”, and that will mark the demise of “Western civilisation”.
51. This is undoubtedly a message of crime, most particularly of murder. It is also a message of terrorism.<sup>18</sup>
52. The fact that the message is wrapped in articulate language, with a superficial modicum of reason, renders it even the more pernicious in the Board’s view.
53. The following passages from the file illustrate why the Board has reached the view that, to an extreme extent and degree, the file promotes and encourages criminal acts and acts of terrorism. Although the file is not paginated, reference will be made to page numbers as if the file was paginated.
- In response to the question “Why did you carry out the attack” the answer given is “*To directly reduce immigration rates to European lands by intimidating and physically removing the invaders themselves... [and] To incite violence, retaliation and further divide between the European people and the invaders currently occupying European soil.*”<sup>19</sup>

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<sup>18</sup> The Board adopts for current purposes one of the definitions of terrorism contained in section 5 of the Suppression of Terrorism Act 2002, namely “*An act...intended to cause... [the death of, or other serious bodily injury to, 1 or more persons]...and is carried out for the purpose of advancing an ideological [or] political cause...with the intention...to induce terror in a civilian population....The definition goes on to say that...“the fact that a person engages in any protest, advocacy, or dissent...is not, by itself, a sufficient basis for inferring that the person...is carrying out an act for [such] a purpose....”*”

<sup>19</sup> Pages 5 and 6.

- *“Why were we allowing these soldiers deaths to be in vain....Without a single shot fired in response?”* <sup>20</sup>
- *“...I decided to do something...To commit to violence.”* <sup>21</sup>
- In response to the question “Why did you use firearms?” the answer given is *“I could have chosen any weapon or means...Gas, fire, vehicular attacks, plane attacks, any means were available.”* <sup>22</sup>
- In response to the question “Why did you choose New Zealand as a place to attack?” the answer given is *“...I soon found out that New Zealand was as target rich of an environment as anywhere else in the West.”* <sup>23</sup>
- In response to the question “Do you consider it a terrorist attack?” the reply is *“By the definition, then yes. It is a terrorist attack. But I believe it is a partisan action against an occupying force.”* <sup>24</sup>
- In response to the question “Do you believe those you attacked were innocent?” the answer is *“There are no innocents in an invasion, all those who colonise other peoples lands share guilt.”* <sup>25</sup>
- In response to the question “What do you encourage us to do?” the reply is *“Make your plans....get equipped and then act. The time for meekness has long since passed, the time for a political solution has long since passed.”* <sup>26</sup>
- In response to the question “Children are always innocent, do you think you are a monster for killing an innocent?” the reply is *“Children of invaders do not stay children, they become adults and reproduce, creating more invaders to replace your people...Any invader you kill, of any age, is one less enemy your children will have to face. Would you rather do the killing or leave it to your children?”* <sup>27</sup>
- *“Kill The Rapists, Hang Their Families”* <sup>28</sup>
- *“Kill High Profile Enemies”* <sup>29</sup>
- *“The Unarmed Invader Is More Dangerous Than The Armed”* <sup>30</sup>
- *“Stop Running, Start Fighting”* <sup>31</sup>

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<sup>20</sup> Page 9.

<sup>21</sup> Ibid.

<sup>22</sup> Page 11.

<sup>23</sup> Ibid.

<sup>24</sup> Page 12.

<sup>25</sup> Page 13.

<sup>26</sup> Page 19.

<sup>27</sup> Page 22.

<sup>28</sup> Page 32.

<sup>29</sup> Page 39.

<sup>30</sup> Page 43.

<sup>31</sup> Page 46.

- *"Kill Your Local Anti-White CEO"*<sup>32</sup>
- *"Kill Your Local Drug Dealer"*<sup>33</sup>
- *"You burn the nest and kill the vipers, no matter their age...but know that it is necessary and any invader you spare, no matter the age, will one day be an enemy your people must face."*<sup>34</sup>
- *"Crush these traitor NGOs, kill their leadership....give the traitors what traitors deserve: a traitors death."*<sup>35</sup>
- *"Do not fret on the manner of how victory is achieved, all methods are possible, in the face of ethnic genocide, all morality is ambiguous"*<sup>36</sup>
- *"We attack as soon possible, we attack with force and we achieve stability and play defense as the boomers pass, not during their passing, not after."*<sup>37</sup>
- *"It is far better to encourage radical, violent change regardless of its origins."*<sup>38</sup>
- *"[actions such as] attacking or ever assassinating weak or less radical leaders/influencers on either side of social conflicts."*<sup>39</sup>
- *"Incite conflict.....Destabilize, then take control."*<sup>40</sup>
- *"Above all be ready for violence, and when the time comes, strike hard and fast."*<sup>41</sup>

54. All of these examples, in the Board's view, show the extent and degree to which, and the manner in which, the file promotes or encourages criminal acts or acts of terrorism.

#### *Section 3(4) factors*

55. As stated, in determining whether a publication is objectionable, section 3(4) of the Act requires the Board to consider the matters set out in that subsection.

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<sup>32</sup> Page 48.

<sup>33</sup> Page 49.

<sup>34</sup> Page 53.

<sup>35</sup> Page 60.

<sup>36</sup> Page 61.

<sup>37</sup> Page 63.

<sup>38</sup> Page 66.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.


<sup>41</sup> Page 70.

56. As to section 3(4)(a), as the Board has made clear, it considers the publication a clear and unequivocal call to arms. It is an invitation for those persuaded by its rhetoric to take up arms, to fight back against the “*invaders*” and to incite violence and conflict. That is clearly evident in the examples the Board has referred to above.
57. In terms of the impact of the medium in which the file is presented (section 3(4)(b)), the file is a simple PDF document able to be shared easily and widely, both electronically or by printing, copying and distributing it. The Board views this factor, the ease of its availability if it is not classified objectionable as being relevant to a determination of whether the file should be classified objectionable.
58. Section 3(4)(c) refers to the character of the publication in question, “*including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters*”. The Board considers that, in and of itself, the file contains no such character worthy of consideration. While it is true that, retrospectively, the file has attracted a certain significance because of the horrific events that transpired shortly after its publication, it has no intrinsic value in the Board’s view. Leaving aside the many examples of incitement to violence cited above, the file is elusive, contradictory, somewhat bland in parts, a meshing of other people’s writings and thoughts, and has no particular stand-alone value in the Board’s view. The Board therefore rejects the applicant’s submissions to the effect that the file is a bona fide and genuine political manifesto. In no way is it a “*dispassionate exposition of a political philosophy*” as submitted by the applicant.
59. As to section 3(4)(d), and the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available, the Board sees nothing specific in the file as to a restriction on availability. As stated, the Board considers the file a call to arms to anyone who may pick it and read it and feel some connection to its contents.
60. The Board considers it has fully addressed above section 3(4)(e), and the purpose for which the publication is intended to be used. The file was intended by its author to be read very close to the events which unfolded in Christchurch on the afternoon of 15 March 2019. The author wanted the file to be a provocation to enable other

people to be embroiled in its hateful message and to pull others in. The central purpose of the file was to spread that message as a passport to violence, to achieve dissemination of the contents of the file and spark dissent in society.

61. The Board considers it has covered above all relevant circumstances relating to the intended or likely use of the file (section 3(4)(f)).
62. All that being so, the Board determines that the file is objectionable because it describes, depicts, or otherwise deals with, horror, crime, cruelty and violence in such a manner that the availability of the file is likely to be injurious to the public good. It is injurious to the public good because of the extreme extent and degree to which it promotes and encourages criminal acts and acts of violence.
63. Classification of the file as objectionable is a reasonable limit on the section 14 BORA right to freedom of expression which is demonstrably justified in a free and democratic society.
64. The Board hereby directs the Classification Office pursuant to section 55(1)(e) of the Act to enter the Board's decision in the register.

**Dated** at Wellington this 12<sup>th</sup> day of August 2019

  
Rachael Schmidt-McCleave/Nigel Dunlop  
President/Deputy President



## SCHEDULE: STATUTORY PROVISIONS

### FILMS, VIDEOS, AND PUBLICATIONS CLASSIFICATION ACT 1993

#### 3 Meaning of objectionable

(1) For the purposes of this Act, a publication is **objectionable** if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

(1A) Without limiting subsection (1), a publication deals with a matter such as sex for the purposes of that subsection if –

(a) the publication is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and

(b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

(1B) Subsection (1A) is for the avoidance of doubt.

(2) A publication shall be deemed to be objectionable for the purposes of this Act 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 in, 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.

(3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—

(a) describes, depicts, or otherwise deals with—

(i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty;

(ii) sexual violence or sexual coercion, or violence or coercion in association with sexual conduct;

(iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature;

(iv) sexual conduct with or by children, or young persons, or both:

(v) physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain:

(b) exploits the nudity of children, or young persons, or both:

(c) degrades or dehumanises or demeans any person:

(d) promotes or encourages criminal acts or acts of terrorism:

(e) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993.

(4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

(a) the dominant effect of the publication as a whole:

(b) the impact of the medium in which the publication is presented:

(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:

(d) the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available:

(e) the purpose for which the publication is intended to be used:

(f) any other relevant circumstances relating to the intended or likely use of the publication.

# FILM AND LITERATURE BOARD OF REVIEW

## SUMMARY DECISION

1. This was an appeal to the Board under section 47(2)(e) of the Films, Videos and Publications Classification Act 1993 (the Act) by the applicant, the Kiwi Party Incorporated, for a review of the decision of the Office of Film and Literature Classification (the Classification Office) dated 23 March 2019.
2. The publication at issue is a 74-page text file titled "*The Great Replacement - Towards A New Society-We March Ever Forwards*" disseminated just prior to the mosque shootings in Christchurch on 15 March 2019.
3. In its decision, the Classification Office classified the file as objectionable under the Act.
4. The applicant sought a review of that decision and was granted leave by the Secretary of Internal Affairs to seek such review.
5. After reading submissions from the applicant and the Classification Office and reviewing the file itself, the Board has determined that the file should be classified as objectionable under the Act.
6. The file is a call to arms, quite literally. It advocates the assassination in New Zealand and elsewhere of "*invaders*", that is to say "*non-Europeans*" who have immigrated into "*European*" lands.
7. In terms of section 3 (3)(d) of the Act, the file, to an extreme extent and degree, promotes and encourages criminal acts and acts of terrorism.
8. The Board considers that the file describes, depicts, expresses or otherwise deals with horror, crime, cruelty and violence in such a manner that its availability is likely to be injurious to the public good (section 3(1)).

9. Classification of the file as objectionable is a reasonable limit on the section 14 BORA right to freedom of expression which is demonstrably justified in a free and democratic society.