

This present application is in respect of a lengthy manuscript which includes some photographs. The author, Mr D. W. Shirley, who appeared before the Tribunal but made no submissions, said, when questioned by the Tribunal, that he wished to publish the book as a paperback and he expected that the price would be about \$4.

Submissions were made by the Secretary for Justice through Counsel Mr Barker, and these emphasised that the secretary was not urging the Tribunal to any particular decision.

The author claims to be a self-appointed crusader against censorship wherever it is imposed, and particularly censorship on the grounds of "indecent", and his book is intended to be an account of this crusade, as well as, it appears, a weapon for waging the crusade. The greater part of the book is a straightforward account of the author's experiences in running his bookshop in Auckland and his encounters with the law through the police, the courts and Mt. Eden prison. It becomes in this way a vehicle for expounding his views on sexuality, philosophy, religion, political science, and human behaviour generally. Although there are evidences of what, in a younger person would be regarded as adolescent fervour leading to a lack of understanding of the long evolution of man and the societies and communities in which he lives, the case which the author makes for freedom of expression is competently argued, and there are no grounds for limiting or preventing the free expression of opinions and arguments on a matter of such general public interest as censorship.

But the manuscript does not stop there. It also contains a number of long and detailed descriptions of sexual episodes, some grossly deviant, and accounts of sexually explicit conversations. This and the inclusion of 73 photographic illustrations, most of which have no real relationship to the text, and are frankly pornographic, changes the character of the work.

As the Secretary for Justice said in his submission: "The problem is to balance and reconcile in terms of the present law these two elements in the manuscript—the experiences of the crusader against censorship and an impassioned argument against the present law on the one hand, and the possibly deliberate coat-trailing in the form of sexual episodes and photographs on the other."

It is the considered judgment of the Tribunal that the inclusion of this material so changes the dominant effect of the book that it becomes more an appeal to prurience than a crusading work to persuade those who support some control of the standards of social decency, of the error of their methods. In effect, therefore, the honesty of purpose of the book is at the least suspect. This does not imply that we cast doubt on the genuine belief of the author in the crusade he is promoting.

His main argument appears to be that no pornographic material can be "indecent" in terms of the Indecent Publications Act because material of this kind is not injurious to the public good. He quotes a number of authorities in support of this thesis. The Tribunal in previous decisions has referred at length to the interpretation of the word "indecent" by Woodhouse, J. in the case of *Robson v. Hicks, Smith and Sons Ltd.* 1965 N.Z.L.R. 1113 and has accepted this interpretation. In decision No. 470, *The Little Red School Book*, reference was also made to the judgment of Haslam, J. in the same case, in which he reached the conclusion that the primary element in the classification of a book under the Act was its effect upon the "public good". He went on to say that "this expression of variable content, designed to direct attention to the impact of a published work upon the community, is expressly left undefined, so that the Tribunal may exercise its statutory powers with due regard to changing conditions." The learned Judge was here referring to the words of subsection (2) of section 2 of the Act where the Tribunal is specifically ordered not to classify a book as indecent if publication would be in the interests of art, literature, science, or learning, and would be for the public good. But in looking to the contrary effect "injurious to the public good" in defining the meaning of "Indecent" under section 2, the Tribunal should similarly have regard to changing conditions.

No one would suggest that the evolution of man as a social animal has reached its zenith, and that the mores of our communities will not continue to evolve. But it has been a long struggle to reach a degree of conscious control and sublimation of primitive instincts to fight, . . . to kill, to copulate, to take whatever catches one's eye, under the urge of unconscious and uncritical animalism. The public good and community well-being are built on this kind of evolution and the Tribunal cannot accept that the describing and depicting of sexual activities in the way in which they are described and depicted in this book would not be injurious to the public good.

The Secretary for Justice has suggested that if the Tribunal finds the manuscript indecent or indecent in certain hands simply because of the presence of the photographs or of particular passages in the text, it might feel it both proper and useful to indicate these parts with reasonable precision. Mr Shirley, when invited to make any comments on this suggestion said that he could not agree to, as he put it, "emasculate" the work by removing the objectionable passages and photographs. We think we have made our reasons for finding the work indecent sufficiently clear so that no further comment from us is necessary.

The Tribunal classifies this book as indecent.

R. S. V. SIMPSON, Chairman.

6 December 1973.

Ministry of Works—Schedule of Civil Engineering, Building, and Housing Contracts of \$20,000 or More in Value

Name of Works	Successful Tenderer	Amount of Tender Accepted \$
<i>Civil Engineering—</i>		
Adjustable aluminium sun louvers: Monro State Building, Nelson	H. C. Cotton and Sons Ltd.	44,725.00
Auckland-Hamilton Motorway: resurfacing Mount Wellington - Otahuhu Creek	Bitumix Ltd.	158,599.40
Burwood Farm Settlement Road: Wash Creek tributary bridge	J. F. Morgan	20,384.70
<i>Building—</i>		
Otara No. 2 Secondary School: S68 type Mk II	Colson Builders Ltd.	970,985.00
James Hargest High School: "Nelson"-type audio visual blocks 13	R. Richardson Ltd.	115,961.00
RNZAF base, Ohakea main barracks: renovations to A and F wing ablutions	T. C. Buys	39,474.00
<i>Housing—</i>		
Contract No. 12/1257: eight single units at Bishopdale	B. J. Aldridge Construction Ltd.	106,711.00
Contract No. 15/532: two single units and four multi units at Palmerston North	Dolan Bros. Ltd.	69,227.00
Contract No. 36/427: four single units at Napier	R. A. Wakely	55,688.00

N. C. McLEOD, Commissioner of Works.