

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Messrs L. M. Greig (Chairman), D. M. Wylie, I. R. Cross, Mrs L. Edmond, and Miss W. M. Rolleston.

Hearing on the 12th and 19th days of October 1976.

Counsel: Mr P. E. Leloir for Comptroller of Customs; Mr G. Robertson for Penthouse International Ltd.; Mr R. A. Heron, and Mr N. Miller for Gordon and Gotch N.Z. Ltd.

DECISION

These two magazines were submitted to the tribunal by the Customs Department. They are the issues of February and July 1976 in the American edition of the magazine. Submissions and evidence were presented to the tribunal at hearings on 12 and 19 October. Since then the members of the tribunal have read and re-read the magazines and have deliberated on the determination and classification of the magazines on a number of occasions.

Penthouse magazine has been before the tribunal on six occasions, namely in 1966, 1969, March and October 1972, 1974, and June 1975. A distinction has been noted between the English and American editions. The English editions have, generally, fallen within the classification of indecent while the American editions have been held to be suitable for those over 18. At the same time there has been a clearly discernible change in the sexual content of both editions but the American editions have had the redeeming feature of a substantial section of more serious articles and features.

What we have to decide, in light of today's standards in New Zealand, is whether the present two magazines fall within the classifications previously imposed, or whether their style and content show a deterioration or change which would lead us to find them indecent simpliciter. In our view there can be no question of finding them not indecent.

The Customs Department in their submissions claimed that there was a marked deterioration in standard compared with issues previously before the tribunal. Comparison was made with *Oui* (Decision No. 854) which was held indecent and reference was made to certain articles and photographic sequences in the two *Penthouse* magazines. We note at once that the type of article to which Customs referred us have been included in previous issues submitted to us and we do not find any particular change in its style or content when compared with the more recent issues of the magazine submitted to us in 1974 and 1975.

The publishers and distributors of *Penthouse* made lengthy submissions and called evidence both on affidavit and viva voce. As with the recent *Forum* case a substantial part of the evidence we set aside as irrelevant to New Zealand conditions and as purporting to usurp our own functions. There remains however some evidence which we find helpful as to question of literary merit of some part of each magazine and as to the possibility of some general benefit, in the evidence of sociologists and psychologists, being gained by some readers in the presentation of the sexual material.

The essence of the submissions and evidence on behalf of the magazines is that they provide entertainment, information, and advice for adults with sex taking a significant part but without harm to the reader.

Clearly in both text and photographs there is a predominant emphasis, in each magazine, on sexual matters. This is always frank, sometimes fantastic and sometimes, in particular items, objectionable and indecent. The editors, in the July 1976 issue, say "To *Penthouse* sexual freedom is a way of life" and this is plainly both the policy and dominant effect of the magazine. There is in addition a quantity of non-sexual, serious, and informative material in each magazine. The balance of these sexual and non-sexual parts remain substantially the same as in past issues of the American editions which have been before the tribunal. What has changed, in our view, is the emphasis in photographs which increasingly concentrate attention on the female genitalia. In addition in the February 1976 issue there is a sequence of photographs which depict, albeit fantastically, a sadistic and lesbian episode.

It is this change which has caused us concern and which indicates a deterioration in the magazine because there has not been any discernible change in other parts of the magazine which would balance or redeem this. In our view this brings the magazines very close to crossing the borderline between the acceptable and unacceptable. At the same time two general observations may be made. The presentation of nudity is not indecent if it is not prurient or salacious. Fantasy or fantastic presentation can lessen the indecency of sadism or other sexual matters which, in other ways of presentation, are obscene and pornographic.

We think that these magazines are at the limit of acceptance but having regard to the whole of each magazine and to the matters which under the Act we are required

to consider, we hold that today in New Zealand they may be distributed subject to the same age restriction as applied before.

The tribunal accordingly finds each of these issues of *Penthouse* to be indecent in the hands of persons under 18 years of age.

Dated this 23rd day of December 1976.

LAURENCE M. GREIG, Chairman.

(Reference No. 19/2/22)

Interim Restriction Order

IN the matter of the Indecent Publications Act 1963, and in the matter of a reference to the Indecent Publications Tribunal of *Down under the Plum Trees*:

UPON receiving an application from the Secretary for Justice for an interim restriction order in respect of *Down under the Plum Trees* a book written by Felicity Tuohy and Michael Murphy and published by Alister Taylor of Waiura, Martinborough, and upon hearing counsel for the Secretary for Justice in support of the application, I hereby grant the application and make an interim restriction order in respect of the said publication, and I further order that the said restriction order shall come into force on the 22nd day of December 1976 and shall expire on the 21st day of January 1977, unless sooner extended.

Dated at Wellington this 22nd day of December 1976.

L. M. GREIG,
Chairman, Indecent Publication Tribunal.

Extension of Restriction Order

IN the matter of the Indecent Publications Act 1963, and in the matter of a reference to the Indecent Publications Tribunal of *Down under the Plum Trees*:

WHEREAS on the 22nd day of December 1976 I made an interim restriction order in respect of *Down under the Plum Trees*, a book written by Felicity Tuohy and Michael Murphy and published by Alister Taylor of Waiura, Martinborough, and whereas it will not be possible for the Indecent Publications Tribunal to determine whether the book is indecent or to decide as to the classification of the book prior to the expiry of the said order, now therefore I hereby extend the term of the interim restriction order to the 21st day of March 1977 unless sooner revoked.

Dated at Wellington this 23rd day of December 1976.

L. M. GREIG,
Chairman, Indecent Publication Tribunal.

The Milk Treatment Allowances Notice 1974, Amendment No. 5

PURSUANT to the Milk Act 1967, the Milk Prices Authority hereby gives the following notice.

NOTICE

1. (1) This notice may be cited as the Milk Treatment Allowances Notice 1974, Amendment No. 5.

(2) This notice shall come into force on the 1st day of January 1977.

(3) This notice is given after consultation with the Minister of Agriculture and Fisheries.

(4) This notice amends the Milk Treatment Allowances Notice 1974* (hereinafter referred to as "the principal notice") as varied by the Milk Treatment Allowances Notice 1974, Amendment No. 1†, the Milk Treatment Allowances Notice 1974, Amendment No. 2‡, the Milk Treatment Allowances Notice 1974, Amendment No. 3§, and the Milk Treatment Allowances Notice 1974, Amendment No. 4||.

2. The principal notice is hereby varied by revoking the Schedule thereto and replacing the same with the following Schedule.