

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Judge W. M. Willis (chairman).
 Mesdames L. Edmond, H. B. Dick, L. P. Nikera.
 Mr J. V. B. McLinden.

Hearing: 22 July 1980.

Appearances: Mr P. E. Leloir for Comptroller of Customs.
 Mr M. D. O'Brien for Importer, Gordon and Gotch (N.Z.) Ltd.

Decision

These three editions of the Australian edition of *Penthouse* have been referred to the Tribunal for classification by the Importers. The Comptroller suggests that these three issues should receive an R18 restriction and also recommends that it is a suitable case for the Tribunal to issue a two-year restriction order. For the importer Mr O'Brien pointed out the virtues of these issues and suggested that there was no reason for any age restriction.

These are the first issues of the Australian Publication to come before the Tribunal and the importers seek a classification prior to the general distribution within New Zealand. These three magazines differ from their American and English counter-parts. The photographs which are a feature of the English and American publications and which probably draw the most criticism are not as explicit in the Australian edition. It can be said with some degree of certainty that the majority of the photographs are modest by comparison with some in other journals which come before the Tribunal for consideration. The text contains *Forum* type letters and there are articles sexually slanted which one finds in similar publications. However, by far the greater proportion of each issue is devoted to matters of a serious nature to which no possible objection could be taken. In the main they have no sexual overtones and appear to be articles relating to matters of general public interest within Australia.

The Tribunal now has the benefit of a recent High Court decision *Waverley Publishing Company Limited v. The Comptroller of Customs*. The Tribunal draws attention to a portion of the judgment of Jeffries J. One of the submissions of the appellant was that the Tribunal had failed to place any or sufficient weight on the clear distinctions between the publications by branding a number of them together as "picture books". In dealing with this particular submission His Honour said:

In my view, there is validity in the appellant's third argument that there is a distinction in the group of publications between straight-out picture books and magazines which provide greater scope for the inclusion of genuine alternative material to the sexual theme. I think the Tribunal itself recognised this principle in decision No. 881 of 23 December 1975 (*New Zealand Gazette*, 13 January 1977, p. 23). The Tribunal then had before it two issues of *Penthouse* and one of those issues (February 1976) was passed to us for comparative study. The decision was indecent in the hands of persons under 18 years of age. I thought it almost beyond argument that some photographs and text in that issue, isolated from the magazine as a whole, were indecent, but the magazine was not banned because the issue was looked at in its entirety. Because of the overwhelming dominance of prurient sex in the five publications nominated by counsel as magazines none are saved by this judgment.

Later in his judgment he said that he thought a book or sound recording is likely to be indecent and injurious to the public good if:

1. It is predominantly concerned with the prurient and lewd aspects of sex; and
2. The exact subject-matter is described, depicted or expressed in a patently offensive manner so as to concentrate attention and reaction on the prurient and lewd aspects of sex; and
3. The work looked at in its entirety had negligible literary or artistic merit, and is otherwise not redeemed by its medical, legal, political, social or scientific character or importance.
4. The likelihood of corruption far outweighs possible benefit.
5. The sincerity of purpose which produced the item is gravely in question.

Looking at these copies of *Penthouse* and looking at the matters referred to by the learned Judge the Tribunal is of the view that they are not concerned with the prurient and lewd aspects of sex; that the exact subject-matter is not described, depicted, expressed in a patently offensive manner so as to concentrate attention on the prurient and lewd aspects of sex; that the work looked at in its entirety does not have

negligible literary or artistic merit; that there is no likelihood of corruption which would far outweigh possible benefit; that there is a distinct sincerity of purpose in each of these magazines.

Having taken into account all the matters set out in s. 11 and bearing in mind the comments made above, the Tribunal is satisfied that these three issues should be classified as not indecent. The Tribunal is not prepared to make a two-year restriction order if for no other reason than that these are the first three issues to be imported into New Zealand. The Tribunal would prefer to see later issues before it gives any consideration to a restriction order.

Dated at Wellington this 25th day of August 1980.

Judge W. M. WILLIS, Chairman.

Decision No. 955

Reference No. 13/80

Decision of the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publication: *The Adopters*, by William Hegner and published by Simon and Schuster Inc., 630 Fifth Avenue, New York 10020, U.S.A.

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Judge W. M. Willis (chairman).
 Mesdames L. Edmond, H. B. Dick, L. P. Nikera.
 Mr J. V. B. McLinden.

Hearing: 22 July 1980.

Appearances: Mr P. E. Leloir for Comptroller.

Decision

A sample copy of this book was imported commercially and was seized at Auckland. The importer has disputed forfeiture: hence the reference to the Tribunal.

This is a paper-back book of American origin and is, we think, adequately described in Mr Leloir's submission.

This book is the story of a couple who are childless. The husband is a promoter of "teletons" for his own advantage. The couple adopt two children, a girl of thirteen and a boy of fifteen, who are gradually initiated into being sexual playthings. The story uses the downfall of the husband as the basic plot to provide insights into the motives and actions of all the characters.

Frankly, the Tribunal considers the book has no real plot but appears as a vehicle to tell the story of incestuous relationships. It concentrates on the sexual and has no literary or artistic merits. Its appeal is clearly to the salacious nor is it redeemed by any medical, social, or scientific matter. Written submissions were made by the importer, Shop Six, and it was suggested that the book has been seen and released by the Customs Department with an R18 recommendation over the years. The submission further went on to suggest that Customs Officers are no longer permitted to release books likely to be restricted. The Tribunal would have thought that to be elementary as it is the sole forum for classification of books and sound recordings. The Tribunal is, however, more impressed with the second submission that "in the light of what can freely be seen on television and in the cinema and because children and young teens who are not much interested in reading 'adult novels' that in 1980 the Tribunal might consider novels of this genre scarcely require any restriction at all". The Tribunal has recently been given a decision of the High Court, *Waverley Publishing Company Limited v. Comptroller of Customs*. In that case the Court was called upon to hear an appeal in connection with various publications containing pictorial matter as well as written text. I quote from the Judgment of Jeffries J. where he says:

Because of the universality of comprehension of the graphic form, with its concomitantly more direct and powerful emotional appeal, this medium has proved more vexing for those who must control indecency than the written word. Verbal indecency became a social issue with the rise in literacy following universal education. Perhaps that particular medium is now perceived as less potentially harmful than representational photography, and cinematic films. Confirmation of this observation is to be found in the Report of the Committee on Obscenity and Film Censorship which had Professor Bernard Williams as its chairman. It reported in November 1979; Cmnd 7772. Recommendation 6 of its general proposals is:—

The printed word should be neither restricted nor prohibited since its nature makes it neither immediately