

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

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

Hearing: 22 July 1980.

Appearances: Mr P. E. F. M. Leloir for Comptroller of Customs. No appearance or submissions on behalf of Mr R. Prosser.

Decision

This application concerns seven consecutive issues of the publication *Physique Pictorial*, imported by Mr Prosser and seized at Auckland in May 1980. As Mr Prosser has disputed forfeiture, the Customs Department has referred the publications to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Book type and length: Each of these issues is a soft covered booklet, 31 pages long, and measuring 13 cm × 21 cm in size.

Each issue contains black and white photographs (and in some cases cartoons) of men, almost invariably in a naked state. Accompanying each picture is a commentary on the identity, physical description and background of the male portrayed. In some cases there are references to films which the model has made, and which are available on order from the publisher. There are also codings in the commentary which inform the reader if the film contains bondage or anal erotic material.

Finally, in most of the photographs, there are handwritten symbols. Although the significance of these is not explained in detail, the July 1975 issue (Vol. 27) gives the following explanations:

SYMBOLS ON THE PICTURES. We offer a sheet giving a partial explanation, but we might be sued for libel if we wrote out a complete interpretation. If you are interested, perhaps you will sometime contact a traveller who has been "educated". These represent subjective character analysis.

Mr Leloir submitted that the issues fell within the third category of the "Waverley" decisions (103/77), namely "Photographs . . . which appear to be deliberately unnatural or artificial, and occasionally ugly, grotesque or contrived". Mr Leloir further submitted that in the photographs there was considerable emphasis on the genital area, and the magazines were designed to arouse prurient interest. As well he referred to the fact that in decision No. 16 the Tribunal classified the February 1963 issue of *Physique Pictorial* as indecent.

We accept Mr Leloir's submissions. Without doubt there is undue emphasis on displaying the genital and anal area of the models. In many of the cases the photographs are in an artificial and contrived setting. Further, in some of the photographs the models are portrayed in states of bondage in circumstances that amount to the depiction of deviant and lewd aspects of sex.

It seems to the Tribunal that the issues possess no literary, artistic or social merit, that the likelihood of corruption outweighs the likelihood of persons benefiting from reading any of the issues, and that the dominant effect of the issues is to cater for those who have a predilection for male homosexuality. We find for the above reasons that the issues of *Physique Pictorial* deal with matters of sex in a manner that is injurious to the public good and for that reason it should be classified as indecent.

There is also another ground for imposing such a classification, in that the issues seem designed to appeal to male homosexuals. In decision No. 16/65, which concerned similar publications, the Tribunal had this to say:

We think there is evidence that they are of an indecent nature: the poses in which the males are depicted, the letterpress and the advertisements appear to be intended to attract homosexuals or to promote or encourage homosexuality . . . We have in previous decisions referred to the difficulty of assessing the standard of the community, but since in our view four of these magazines are designed to appeal to or to encourage homosexuality which in New Zealand is a criminal offence, we are bound to hold them indecent within the meaning of the statute.

Although Mr Leloir conceded at the hearing that New Zealand society may have become more tolerant of male homosexuality and of gay views in general, he pointed out the law has not changed. He is quite correct. The provisions of sections 140, 141, 142, and 146 of the Crimes Act, have remained unamended since 1965. We are therefore compelled to endorse what was said by the Tribunal in decision No. 16/65

and rule that insofar as *Physique Pictorial* is designed to encourage or promote an activity which is criminal in New Zealand, it should also be classified as indecent on that ground.

Dated this 6th day of October 1980.

Judge W. M. WILLIS, Chairman.

Members of Bobby Calf Pool Committees Elected

PURSUANT to the Bobby Calf Marketing Regulations 1955, notice has been received by the New Zealand Dairy Board that the persons whose names are set out under the name of each Bobby Calf Pool Committee in the Schedule hereto have been duly elected as members of that committee.

Dated this 3rd day of October 1980.

M. G. BOYER,
Assistant Secretary, New Zealand Dairy Board.

SCHEDULE

Aorangi Bobby Calf Pool Committee—

Clarence Noel Houghton,
Owen Bradburn James,
William Hugh Allan,
John Frank Baxter,
Kevin Sydney Cowen,
Graham John Guy,
Gordon Brian Johnston,
John Archibald McMillan, and
James John Wood.

Apiti-Rangiwahia Bobby Calf Pool Committee—

Herbert William Digby,
George Peter Jensen,
David Albert Stuart,
Owen Roderick Bartlett, and
Noel Frances Clarke.

Ararimu Bobby Calf Pool Committee—

Ronald Charles Johnston,
John Watson Shaw,
Keith Clifford Atkinson,
George Lumsden McGregor, and
Howard John Sutton.

Ashhurst-Pohangina Bobby Calf Pool Committee—

Neville Stuart Whitehead,
Douglas Dudley Bockett,
George Alfred Wagstaff,
Graham Colin Capill,
Donald James Crawford,
Albert Grant Lassen,
Rodger Macrae,
Walter Henery Mai, and
Robert George Passey.

Banks Peninsula Bobby Calf Pool Committee—

Keith Thomas Vogan,
Ronald Peter Wright,
Alan David Moore,
Rex Neville Woodfield,
Phillip Ross Curry,
John Stephen Knapp,
Donald Edric Patten, and
Noel Desmond Waghorn.

Bay of Islands Bobby Calf Pool Committee—

Warren John Paterson,
Robert James Alderton,
Hugo Peter Blumhardt,
Laurence Harold Helsby,
Colin Murray Julian,
Clarence Kelvin Vesey.

Broadwood Bobby Calf Pool Committee—

Peter Adrian Reinhard,
William Maxwell Grounds,
Peter Pomare,
Joseph James Herbert,
Clarence Joseph Veza,
John Edward Long, and
David Arthur Pearson.

Buller Valley Bobby Calf Pool Committee—

Shamus Murphy,
Kevin Charles Slec,
William Norman Gardner,
Bruce Neville Hamilton,
Gerald David Hateley, and
Christopher McDonnell.