

and seized at Auckland in October 1981. As the importer has disputed forfeiture the Customs Department has referred the publication to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Both publications are paper back, the final edition measuring 155 mm × 235 mm and is 1,129 pages in length. According to the author's preface the book began in 1974, although it was not published until 1981. The annual study took 5 years of what the author described as "extremely intensive work". From the detail to be found in the book we have no reason to doubt her.

The book is undoubtedly a serious study of male sexuality. Shere Hite is a person who might be called an authority in the study of human sexual relations. Prior to this publication she was editor of *Sexual Interest: By Women for Women*, and is best known for her original work *The Hite Report*. This latter publication came before the Tribunal in November 1978 and was ruled upon in decision No. 913. The book was part and parcel of a large number of other publications covered in that decision. In its brief comment the Tribunal stated:

"Items 9 (*The Hite Report*) and 10 are both well-known publications, the first being the result of a widespread and apparently scientific investigation and the other a U.S. Federal Government Enquiry. Both we consider require an 18 years age restriction. In the case of the first because the explicitness and detail of *The Hite Report* make it unsuitable for younger persons." (Our parenthesis.)

Mr McNeice suggested that we impose a similar age restriction in respect of this publication. Before we discuss the particular classification of this book it might be appropriate to note that we often impose age restrictions on serious sexual text because of their frank analysis of the subject and because of the presence of accompanying photographs. The rationale is that younger readers might find the books attractive for the wrong reasons (especially where photographs are provided).

The points in favour of imposing such a restriction for the above reasons in the present case are that at times the text is explicit, and diverse sexual practices are discussed. This is because of the author's approach of setting out actual extracts from responses she received from persons surveyed. If there were no restriction on the book then retailers could put the publication on open display and there is an element of danger that the book could attract a "browsing audience" of young and immature readers. We must note, however, that we do not see any real likelihood of corruption arising in this manner.

The points in favour of imposing no restriction are numerous. The most compelling is that we think this publication:

"... would be in the interests of ... learning and would be for the public good ..."

within the meaning of section 11 (2) of the Act. The Tribunal is aware that some care must be used in making such a finding, because once it is made, the provisions require the Tribunal to classify the book as not indecent notwithstanding the provisions of section 11 (1). We think that Hite put the importance of sexual understanding very aptly in her preface when she said:

"Is men's view of the world changing? Are men changing their ideas of who they are, how they see the world, and how they would like the world to be—or is it more true to say 'The more needs change, the more they remain the same'? Is there a hope that men and women will begin to set aside the presiding cultural patterns that are clearly resulting in a mutual unhappiness? What do we want to create from here on? How can life be better for all of us, and how can relationships be closer and more satisfying, more loving and more deep? These are the questions to which this book is dedicated.

To discuss sex is to discuss our most basic views of who we are and what we want life to be, what kind of a society we believe in. The re-evaluation of the meaning of sexuality and relationships can have enormous implications for how we construct our society, and how we live with other people and within ourselves."

In the environment of a growing concern for open discussion of issues of all kinds we think that this book should be freely available on retail book shelves so that it is accessible to members of the public who wish to purchase it.

We would probably have reached the same conclusion as to classification if we had considered the publication in relation to the factors under section 11 (1). In case we are incorrect in saying the publication falls within the provisions of section 11 (2) we wish to make the following observations:

1. The price of the book will effectively preclude it from the reach of immature readers. Although we had no information from the publisher on this point we note that the price on the back of the final English edition is £9.95. This means

that the New Zealand sale price is likely to be in the \$25-\$40 range (probably in the upper reaches of that range). When we consider that a member of the public can purchase at least 4 *Penthouse* or *Playboy* magazines for \$25 we think it unlikely that impressionable persons would outlay such a large sum on the present text when cheaper more consumer orientated publications with glossy photographs are readily available.

2. There is no doubt that the book has strong social and scientific character and importance, and that this dominant effect is to put forward a censored discussion of sexual behaviour. It clearly has honesty of purpose.

3. The book is aimed at adults and it not presented in such a way that it would automatically attract younger readers (i.e., with photographs and drawings). Indeed, the lengthy text we feel would act as a deterrent to the less mature reader.

4. While there is a danger, if the book is on open display, that it will be read by younger persons who may be looking for the wrong point in the publication, we do not think that this aspect should be taken too seriously. In fact, we mention it only to indicate that it was an element we considered in reaching our decision. In our view it is extremely unlikely that young persons will be corrupted by the present publication through the practice of "browsing" through it in public bookshops. We think, pursuant to section 11 (1) (e), that the likely benefit of the book being on public display far outweighs the likelihood of corruption.

In deference to the Tribunal's earlier decision on *The Hite Report* (which imposed an age restriction of 18 on the publication in decision No. 913) we should like to express our reasons why we intend to rule the present report as not indecent.

The first point is that in the intervening period since the original report, Hite has become better known and more accepted as an authority in her field. Her reputation, therefore, properly justifies us in giving her work credibility. We are perhaps in a better position to assess her impact as a writer and researcher as a result of the lapse of time and subsequent developments than was the Tribunal when her original work first appeared before it.

Secondly, there is the feeling prevalent in our society (and already advertised to) that a sensitive issues, including sex, should be more fully and openly discussed so that misunderstanding and simple ignorance can to some extent be dispelled. We think it is proper that we should reflect that view.

For all the above reasons we declare *The Hite Report on Male Sexuality* to be not indecent.

W. M. WILLIS, District Court Judge, Chairman.

Decision No. 1038

Reference No. Ind 8/81

Before 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 publications:

Penthouse (U.S. Edition) Volume 1f, Nos. 9 and 10 (May and June 1980), published by Penthouse International Ltd. of New York:

Judge W. M. Willis (Chairman), Mesdames H. B. Dick, L. P. Nikera, Messrs J. V. B. McLinden, I. W. Malcolm.

Hearing: 21 July 1981, 25 May 1982.

Decision: 7 October 1982.

Appearances: Mr Leloir for Comptroller of Customs. Written submissions from Importers, Mr J. Smyth and Mr B. Armstrong.

DECISION

WE were informed by Mr Leloir for the Comptroller of Customs that both these issue were privately imported by persons at Hamilton and were seized on 6 January 1981. As the importers disputed the forfeiture of these publications the Customs Department referred them to the Tribunal for a classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Initially the Tribunal gave an interim decision in which it indicated that it doubted its jurisdiction to consider the Comptroller's submission. The Tribunal sought to refer the problem to the High Court for its advice pursuant to section 13 of the Indecent Publications Act. (Decision No. 1005).

However, in the intervening period it has become necessary for the Tribunal to reconsider *Penthouse* as a whole, after the