

Mrs Sargisson submitted that an appropriate order for CTV might be \$150,000. But she conceded that a proportion of the costs were incurred at a date earlier than it would have been reasonable in her client's estimate for the Corporation to have advised estimated charges. We can only say that an order for an amount of \$150,000 could not have been justified.

Another issue which we had not had to consider, is whether the Corporation ought to be ordered to pay costs in respect of its actions (or lack of them) not as a party but in its capacity of owners of transmission equipment (section 71(3)). We might well have hesitated to make an order for costs which was fortuitously based on whether or not the Corporation had expressed enough interest in its appearance and be a party in the proceedings when the costs were allegedly incurred because of defaults by the Corporation in its section 71(3) capacity rather than in its participation in the proceedings as a party.

Each party will have to bear its own costs.

The application for costs is delined.

Dated the 31st day of August 1983.

Signed for the Tribunal:

B. H. SLANE, Chairman.

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Decision No. 1076  
Reference No. Ind. 14/83

*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 decision in respect of the following publications:

*Sexual Knowledge*. Publisher RBW Press (Sales) Ltd., U.K.

*Mini-Skirts Views*. Publisher Toni Books, London.

*Sexual Harmony*. Author Tuppy Owens.

Judge: W. M. Willis, (Chairman).

Mesdames: H. B. Dick, L. P. Nikera.

Messrs: J. V. B. McLinden, I. W. Malcolm.

Hearing: 16 August 1983.

Appearances: C. F. Hillman for Comptroller of Customs.

Written submissions for importer, B. A. Armstrong.

DECISION

WE were informed by Mr Hillman for the Comptroller of Customs that the above publications were imported commercially by Mr Armstrong through the Hamilton parcels post and were seized on 4 November 1982. As Mr Armstrong has disputed forfeiture of the books the department has referred the publications to the Tribunal for classification prior to the commencement of condemnations proceedings pursuant to the Customs Act.

*Mini-Skirt Views* is a paperback published by Toni Books of London. Its physical dimensions are 135 mm × 210 mm and it contains numerous black and white photographs of different models. The publication is of low quality and a great many of the photographs are contrived to expose the genital area.

In many pictures transparent or flimsy clothing is worn to obscure a direct view of that area. There is no text accompanying the photographs.

Mr Hillman suggested the content of the publication could render it indecent.

The importer, Mr Armstrong, submitted that the Tribunal had passed more explicit publications, and there were yet more publications not vetted by the Tribunal which had far more explicit content than the photographs in the books being considered. As well he stressed the need for the Tribunal to find that the publication was "injurious to the public good" and requested that in the event of the Tribunal ruling the publication indecent, that it give its reasons why the publications was so injurious.

The present publication is directly comparable to 2 other books of photographs that come before us entitled *Kinky Cats*, Vols. No. 2 and 5, published by Bens Books of London. On that occasion in Decision No. 979, the Tribunal said:

"There is no significant text in either of the publications which are concerned with the cheap, and in our view, tasteless presentation of black and white photographs of females in various settings . . .

There is heavy emphasis on photograph of genital area, and almost all the photographs show the model in a "contrived" position.

However, as stated before, the genital area in almost every case is covered by clothing, or by having the area obscured by 'touching' the photographic negative. There is no significant text, and there is no material of a non-sexual nature.

Notwithstanding the absence of exposed genitalia, the Tribunal feels after very careful consideration *Kinky Cats* edition No. 5 is injurious to the public good because of the patently offensive and contrived positions of the models. The repetitious portrayal of the female pelvic area in such positions, combined with the absence of any other redeeming factor in the publications, leaves the Tribunal in no doubt that the publisher intended to highlight sex in a lewd manner, and one which we find unacceptable."

In that decision both publications were declared unconditionally indecent.

We think that the present publication should also be classified as indecent because of the strong similarity between it and the contents of *Kinky Cats*. We have already referred to the large number of photographs which are centered upon the pelvic area of the female models. We are in no doubt that the dominant effect of the publication is to portray the models in lewd and salacious positions. We think that this publication falls directly within the parameters of the dicta of Jeffries J. in *Waverley Publishing Co. v Customs* 1980, 1 NZLR 631, 646 wherein the learned Judge said:

"However, I think 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 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; and
- (4) The likelihood of corruption far outweighs the possible benefits."

In addition we think the publisher has a dishonest purpose. This emerges not only from the cheap presentation of the publication, and the offensive poses of the models, but also from the fact that in the front of the book there is a foreword to the effect:

"All characters in this book are portrayed by professional models, stories, and pictures are fictitious. The realism has been achieved by the assistance of makeup artists."

Plainly this text does not relate to the content of *Mini-Skirt Views* as it has no text or story. We believe that this publication has been a "cut and paste" job by the publisher in order to extract as much profit as possible by the commercial exploitation of offensive sexual material.

For all the above reasons we declare *Mini-Skirt Views* as unconditionally indecent.

*Sexual Knowledge*. This publication is a paperback sex manual. It is 150 mm × 200 mm and is 171 pages in length. The book was first published in 1972 by Stephenson Verlag, Flensburg in conjunction with the Institute of Sexology in Munich. The author was Gunter Hunold who is apparently an assistant professor at the institute.

The present publication is the English edition with copyright vested in 1975 to H. H. Publications Ltd., London. The book features largely the same models throughout and contains text on a wide variety of subjects. There are numerous colour photographs of high quality, and although they are frank and explicit we feel that they are appropriate to the subject-matter of the publication.

Mr Hillman for the Comptroller of Customs drew our attention to the fact that 2 previous books by the author had come before the Tribunal. The first was *Sexual Pleasures A-Z* and was classified by the Tribunal as unconditionally indecent in Decision 856. The second was *Sex Encyclopaedia* classified as conditionally indecent (16 years age restriction) in Decision 926.

Mr Armstrong obviously misconceived the situation because he was under the impression that *Sexual Pleasures A-Z* had been previously passed by the Tribunal. He said that he had requested copies of that publication from his distributor, but was sent *Sexual Knowledge* as apparently the other publication was out of stock. In light of Mr Armstrong's misconception of the Tribunal's previous ruling, it is perhaps fortunate for him that there was a substitution of books. Mr Armstrong submitted that this publication should be classified in the same way as *Sex Encyclopaedia*, i.e., with an age restriction of 18 (which was another misconception as the Tribunal's classification was R16, this point is referred to later).

We read the previous decisions referred to by the parties, but in absence of being able to view the publications concerned we find the previous rulings of limited value. In Decision No. 856 the Tribunal said of *Sexual Pleasures A-Z*:

"It is arranged in alphabetical form with entries up to 200 words, lavishly illustrated with colour photographs. It is very different in tone and treatment from books such as *The XYZ of Love* . . . and *The Joy of Sex* . . . to which the Tribunal has given restricted classifications, and it cannot make claims on