

previously been exposed, or exposed themselves, to the 'obscene' material. The Act is not merely concerned with the once and for all corruption of the wholly innocent, but equally protects the less innocent from further corruption, the addict from feeding or increasing his addiction."

Just as the House of Lords held that one of the purposes of the obscenity laws in Britain was to prevent possible further corruption of those who had been exposed to obscene material, so we feel that one of the objects of our Act is to prevent further corruptive material from coming on the market. Accordingly we do not accept Mr Beech's submissions that the "target market" of these publications is such that the likelihood of corruption will be minimised.

Dishonesty of Purpose—

In the Second Schedule hereto we have set out a large number of the publications which are duplicated in the 341 issues that were put before us. It can be seen from the Schedule that in some cases the same text is repeated under 4 different titles, and in many cases books have different authors, titles and years of copyright. The extent of the duplication is significant. It appears to us that the years of copyright in relation to any particular text are completely unreliable, and that the odds are extremely high that the details furnished as to authorship are likely to be inaccurate. The sheer number of duplications indicates to us that the publisher lacks an honesty of purpose. When the contents of Schedule A are added for consideration it can be seen that the list of unsatisfactory features grows disturbingly: there are grammatical errors; covers do not relate to interior contents; sometimes the author listed inside the publication is not the same as the one that appears on the cover of the book; sometimes the text inside a publication is muddled, and in one case the novel is not even finished. All these factors make it plain to us that the publisher has a dishonest purpose, revealed not only in the content but also in the mode of publication of these books.

The Importer's Submissions—

On his client's behalf Mr Beech made 2 broad submissions in support of the argument that we should not find these publications indecent. The first was that there should be few if any instances of censorship of the written word. Mr Beech relied heavily on the dicta of Jeffries J. in *Waverley Publishing Co. Ltd. v Comptroller of Customs* (supra) at page 646. That passage contains the reference to the report of the Committee on Obscenity and Film Censorship chaired by Professor Bernard Williams. In the course of that report recommendation 6 reads:

"The printed word should be neither restricted nor prohibited since its nature makes it neither immediately offensive nor capable of involving the harms we identify and because of its importance in conveying ideas."

In summary, Mr Beech said the overall effect of Jeffries J.'s comments were that the Tribunal was required to consider whether there was some special feature in the material under consideration which negates the position accepted by that Judge that perhaps the printed word was potentially less harmful than pictorial pornography. Otherwise the written text would not be indecent.

For a variety of reasons we do not intend to embark upon a lengthy examination of the impact of the written word relative to other forms of communication. Among our reasons are firstly, that we feel this is not the appropriate occasion. We are dealing in this hearing with material which has been cheaply and shoddily produced for the maximum commercial reward from its sexual content.

Secondly, we are not aware that English Courts have adopted Professor Williams' views as a matter of principle when assessing the indecency or otherwise of material brought before them. As far as we are aware each case is still decided (as this case will be) on the individual merits of the publications.

Thirdly, Jeffries J.'s remarks in the *Waverley* case were made obiter as virtually all the material dealt with on that occasion was pictorial. There were no novels considered in the decision and any writing that there was was incorporated into magazines. We would be most reluctant to regard ourselves as bound or significantly affected by the learned Judge's views when they were related to a different context altogether.

Accordingly therefore we do not accept in this case that the written word lacks any potential to cause significant injury to the public good. We find expressly to the contrary.

The second main argument advanced by Mr Beech was that the present publications did not offend against current community standards. It was argued that there were other materials freely available which had from time to time been the subject of scrutiny by the Tribunal. Among the publications referred to were *Penthouse*, *Pillow Talk* and a number of novels considered by the Tribunal some time ago.

It is relatively easy to deal with this submission. Mr Beech drew a comparison between some of the text of *Penthouse* and the text in these publications. That approach however is not correct, because the Tribunal must consider the overall impact of each publication.

The point is neatly covered in the same judgment of Jeffries J. from which extracts have already been cited to us by Mr Beech. At page 645, 1.45 the learned Judge said of *Penthouse*:

"I thought it almost beyond argument that some photograph 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 . . ."

Pillow Talk is a magazine that was considered by the Tribunal in Decision No. 969 (a) dated 15 December 1980. Although Mr Beech sent us a copy of *Pillow Talk*, it was not one of the issues we considered in that decision. It was apparent that *Pillow Talk* at the stage it was considered by the Tribunal was not wholly concerned (as are these novels) with the prurient presentation of sex. A brief excerpt from our decision in relation to *Pillow Talk* will clarify that point:

"Topics dealt with in the articles include divorce and readjustment, sport and sex, guilt, sex in the law, the language of prostitution, sexual fantasies, sex in the church, and methods of contraception. The advice given is sensible and reassuring, obviously of a kind to help people who have real doubts and anxieties about sex . . ."

Plainly the content and object of the respective publications are different and we do not think Mr Beech can rely upon anything in a subsequent issue of *Pillow Talk* to substantiate a submission that we should rule the great majority of these novels as anything other than unconditionally indecent.

Mr Beech then listed 5 publications which had been considered by the Tribunal in its earlier decisions. Although Mr Beech submitted the classification in those cases had been "not indecent", that is not the correct position. All the books referred to were classified as indecent in the hands of a person under the age of 18. In a number of the cases (i.e., *Love on a Trampoline*) the publication seems to have been marginal. For example in Decision No. 463 there were a total of 7 publications considered of which 5 were ruled unconditionally indecent and *Love on a Trampoline* and another were declared indecent with the age restriction referred to already.

In support of this aspect of his submissions, Mr Beech produced evidence by way of affidavit from a Mr Dennis William Shirley, the proprietor of Shop 6 (an Auckland bookshop). Mr Shirley has been a bookseller for approximately 11 years and had read 5 of the titles of the present importation and compared them with the 5 titles referred to in Mr Beech's submission.

Mr Shirley had come to the conclusion that all the novels were virtually indistinguishable in terms of literary merit and content. There are obvious criticisms that could be made of that evidence, e.g., Mr Shirley did not appear to be cross-examined on his affidavit; it is not for a witness to assume the function of the Tribunal; the publications referred to by Mr Beech were dealt with by the Tribunal many years ago, and there have been many novels recently which we think comparable to the present publications, which we have ruled unconditionally indecent (see for instance the publications referred to in Decisions 1043, 994, 1029, 953).

From the comparisons we have been able to make we think that there is a marked difference between the standard of language used in most of the present publications compared to those earlier works referred to. In the circumstances we are unwilling to accept that the classification of the present publications as indecent would be inconsistent decision making, or contrary to contemporary standards.

Three Exceptions—

In the course of its perusal of the books the Tribunal came to the view that there were 3 that might be classified differently from the others.

It is not that these 3 publications have any clear redeeming features, for none of them would really have a claim to literary merit, rather these books lack the explicit sexual narrative of the others and for that reason we would be prepared to put an age restriction on them. The publications concerned are *Housewives in Heat*, *The Woman's Pleasure* and *Call Me Dick*.

Costs—

In our interim Decision No. 1066, which related to the importer's application for an adjournment in this case, we referred to the possibility that if the Tribunal were to find a majority of these publications manifestly indecent the Tribunal might well impose an order for costs on the importer. We noted that the cost to the taxpayer in relation to the Tribunal's involvement in this affair was approximately \$22,000. It is obvious that the importer was concerned about what was said because he tendered evidence and submissions to the effect that there were a variety of reasons dictating against an award of costs in this case.

Mr Nicholas swore an affidavit in which he said, *inter alia* that he was on the verge of bankruptcy with debts totalling some \$24,000 and that he owed \$16,000 to the Inland Revenue Department which he was paying off at \$30 per week. (It was not clear whether the sum of \$24,000 incorporated the debt to the Inland Revenue Department).