

That evidence went unchallenged because he did not appear to be cross-examined on his affidavit at the hearing (because it was stated that neither he nor his legal adviser could afford the cost of travelling to Wellington). In the absence of any evidence to the contrary we think we are bound to accept what Mr Nicholas says. We also note that when these matters are considered by the District Court, Mr Nicholas will be liable (if convicted) to a maximum fine of approximately \$51,000. In the combination of circumstances referred to we think it is inappropriate that the Tribunal should in this case impose any further penalty by way of costs.

We note that on occasion the English Court of Appeal has quashed orders imposing trial costs on convicted defendants when they are liable for serious punishment—see e.g., *R v Judd* (1971) 1 WLR 89; *R v Gaston* (1971) 1 WLR 85. Although the main sentences in those cases were substantial terms of imprisonment, we nevertheless feel the same principles should be applied in the present case because of the maximum penalty the importer might face on the criminal charge.

On the costs point Mr Beech also submitted that in pursuing his rights before the Tribunal the importer was only exercising a constitutional right to require the prosecution to prove every element of the offence of which he is charged, and that further the Tribunal was the only body which had the power to rule whether or not the books were indecent.

We accept in certain circumstances that the practice of imposing costs on a person who has elected to plead not guilty to a criminal charge or who had insisted on his rights to have a matter determined by a hearing, could be undesirable in that it could provide a deterrent to innocent persons to plead not guilty, or to test their rights in the appropriate forum.

However there have been a number of comments at appellate level in England on this point. See for example the comments of *Mackenna J.* in *Yoxall* (1972) 57 Criminal Appeal Reports 263 *R v Hayden* (1975) 1 WLR 852 and *Mountain* (1978) 68 Criminal Appeal Reports 41. Those cases show that the English Courts have little compunction in making awards of costs against convicted persons if they have persisted in defending what have obviously been hopeless cases. Had the importer's financial position been stronger, the Tribunal would have given careful consideration to making a costs order against him.

Accordingly we rule all the publications unconditionally indecent save for, *The Woman's Pleasure*, *Call Me Dick* and *Housewives in Heat*, which we classify as indecent in the hands of persons under the age of 18 years.

An interim decision was given on 17 June 1983. As it shows the reasons for delays a copy is annexed.

Dated at Wellington this 13th day of September 1983.

District Court Judge WILLIS.

SCHEDULE A

MISCELLANEOUS INACCURACIES NOTED IN THE "PLEASURE BOOKS" IMPORTATION

Campus Hustler, author Robert Brown. Copyright 1978. Title of publication with comment on back page refers to a red haired sex bomb called Pam who hooks her way through college. The main character in the book is called Susan Watkins and she has blonde hair (p. 93). We feel in relation to this publication that reference should be made to:

College Hooker, author Rene Burton. Copyright 1979.

Comment. This is the story of the 18-year-old red haired girl called Pam who prostitutes herself in order to pay for her college education. We think this is clearly a case in which the content of this book was meant for the cover designed for *Campus Hustler*.

Celluloid Sex, author Marie Alden. Copyright 1976. Although Alden is listed as the author on the outside, on the inside cover the author is listed as Sybil Norfolk.

Daddy's Little Girls, author Charity Minx. Copyright 1977. The main characters are Andrea and Peggy Yen who are sisters. While the narrative on the back cover says "Peggy and Andrea are 2 sisters who delight in turning each other on. When they decide to add a man to their love games, the most likely candidate turns out to be dear old dad". In fact the sisters' parents go for a holiday at the start of the book, and return at its close. The girls do not have any sexual relations with their father.

Down on the Farm, author Rochelle. Copyright 1977. The back cover described Bridget and Pauline as 2 horny sisters who go to a farm for a vacation. In fact the female characters in the book are forcibly abducted.

Army Fraulein/French Tricks, author Tina West. Copyright—This story finishes in mid-sentence at page 180. It is to be noted that in *The French Way* the book continues on for 182 pages (as opposed to 180 pages), and the story is completed.

The Family Gets Together, author Dirk Benton. Copyright—This book is described as *Get Together* on the inside cover.

Family Love, author Charlotte Barry. Copyright 1978. This book has constant misspelling of one of the principal character's names, i.e., Berney and Bernie.

Fun in the Family, author Steve Tudor. Copyright 1978. The spelling in the publication is atrocious. There is a lack of context between pages 91–92 and 93–94.

Hot Ride, author Alan James. Copyright 1977. This seems to be another example of the cover description of the book disagreeing with the content. The back cover refers to "... his lovely mistress and her 2 willing daughters" (my emphasis). In there is only 1 daughter called Malinda.

Hot Tongue, author Big Rose. Copyright 1977. While the main character described in the book is called Carol, the back cover refers to "Vicki's favourite sport was sex ...".

In Heat, author Gina Clayton. Copyright 1977. The back cover refers to "Patty was a horny young lady who was easy to please". There is no character called Patty in the book and the main character is a girl called Alice Stuart.

Innocent But Eager, author Susan Tolan. Copyright 1978. The main female characters are called Linda and Carole. In the first few pages of the book their characters appear to become confused so that Linda is now described as Carole and vice versa.

Juicy, author Susan May. Copyright 1978. The main character is described as Ellie Harlowe. The spelling of her name changes alternately through the book, see e.g., page 145.

Loving Cousins, author Holly White. Copyright 1978. On the inside cover the author is described as Harry Somers.

Marriage Go Round, author Charity Minx. Copyright 1978. There is a break in the story of this book at page 30.

Married Woman, author Holly White. Copyright 1978. The back cover refers to "Margot was married ...". There is no such character in this book.

A Night to Surrender, author Holly Mimms. Copyright 1979. The main character Lucy Walters has her name changed to Lucy Watters, see e.g., page 26 and page 31.

Office Playmate, author Ariel Ryan. Copyright 1978. The back cover appears to have nothing to do with the content of the book. The cover reads "... Lisa was a lucky girl ... on her first day in New York she landed a job and a handsome stud ...", whereas the main character is called Miss Susan Watkins.

Plain Jane, author Bonnie Peters. Copyright 1978. The main character is called Marianne Foster. Yet the back cover describes the book as "... Jane wanted her pleasure to be the best ...". There is no character called Jane in the book.

Prisoner of Lust author Sandy Taylor. Copyright 1979. The book opens describing a family whose surname is Ellen; the Ellen name changes to Allen (see page 21 and page 23 *et al*).

Quick Lips author Fancy Love. Copyright 1978. This book is virtually the same as *After Hours Secretary/Part Time Lover*, the last few pages of text after page 185 change. In our view this indicates that there is a dishonesty of purpose in the publication.

Ripe and Juicy, author Mary Love. Copyright 1978. On the inside of the book the author is listed as Carol Russell.

Schoolgirl Fantasies, author Fokie. Copyright 1978. An insurance investigator called Jay Walker meets an airline hostess called Miss Cook, on a ship. The back cover does not correspond with the story referring to "... a young college co-ed decides to do her thesis on sex ...".

The Senator's Pet, author Smokey Mimms. Copyright 1978. This is a story about American congressmen. One of the main characters is initially described as Arthur Havstone. At page 33 *et al* Havstone changes to Haystone.

Sin Park, author Mary Love. Copyright 1978. The content of the book has nothing to do with the comment on the back cover "... the thing about a family living in a trailer was a complete lack of privacy". The story does not concern a family or any person that lives in a trailer.

Sister Tricks, author Mary Love. Copyright 1978. The back cover again is different from the content of the book. The comment starts off "... Dee didn't like to sleep alone. Besides it was much more fun to jump in the sack with daddy ...". There is no one called Dee in the book nor is there any father/daughter sex. The principal character is called Vicki.

Sue's Sweet Sister, Mary Jove Joseph. Copyright 1978. The back cover refers to "... Lisa and Sue are identical twins 18 years old as wild as the wind ...". There are no such characters in the book.

The Turned on Teacher, Steve Tudor. Copyright 1978. A principal character called Jack Dalton is married to a woman whose name seems to change from Jane to Marta (see pages 7–9).