

2. The rates of levy payable in accordance with the year ending 31 March 1984 shall be as follows:

- Beer, 0.39c per litre.
- Spirit, 12.87c per litre of alcohol.
- Fortified wine, 2.36c per litre.
- Unfortified wine, 1.44c per litre.

Dated at Wellington this 28th day of March 1983.

J. K. McLAY, Minister of Justice.

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*Notice Declaring Pinus Contorta a Class B Noxious Plant
(No. 2983, Ag. 12/10/10/2)*

1. Pursuant to section 19 of the Noxious Plants Act 1978, the Noxious Plants Council hereby declares *Pinus contorta* to be a class B noxious plant in that part of New Zealand lying within the boundaries of:

- (1) The South and East ridings of Taumaranui County.
- (2) The Ohakune, Karioi and Manganui ridings of Waimarino County;
- (3) The Erehwon and Ruanui ridings of Rangitikei County and
- (4) The Tongariro riding of Taupo County.

2. This notice shall come into effect on the day after the date of notification in the *Gazette*.

Dated at Wellington this 21st day of March 1983.

J. A. CHALLIS, Secretary, Noxious Plants Council.

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Decision No. 1053.

Reference No. Ind. 36/82.

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. January 1982 to December 1982 inclusive (Vol. 13, No. 5 to Vol. 14, No. 4) published by Penthouse International Ltd., New York:

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

Hearing: 16 December 1982.

Decision: 16 March 1983.

Appearances: Mr Leloir for Comptroller of Customs. Mr Heron for importers, Gordon & Gotch (N.Z.) Ltd. Written submissions from Society for Promotion of Community Standards Inc.

DECISION

Twelve *Penthouses* for the year January to December 1982 have been referred to us by the Comptroller of Customs in accordance with section 14(1) of the Indecent Publications Act. It should be noted that this is the third reference of the U.S. edition of *Penthouse* to the Tribunal in 1982. In Decision 1038 the Tribunal classified a private importation of the May and June 1980 *Penthouse* issues as indecent. The commercial importer had not imported those issues because of the danger of such a classification. In the second Decision, No. 1033, the Tribunal was referred 3 consecutive issues of *Penthouse* (September, October, November 1981) and was asked by the commercial importer to make an age restriction order pursuant to section 15A of the Act so that for the next 2 years the issues of the magazine might be classified as indecent in the hands of persons under the age of 18. For the reasons specified in Decision No. 1033, the Tribunal refused on that occasion to make the section 15A order sought. Much of what was said in the decisions referred to is applicable to the present issues, and we would expect the principles expressed earlier to be read in conjunction with this decision.

Before making any general comment on the US edition of *Penthouse* we propose to outline the special points of concern we find in each issue. Some of the magazines are grouped because we think they share more or less the same characteristics. (Although we refer only to pictorial items, we are not overlooking or discounting the other extreme features of *Penthouse* such as *Forum*, *Call me Madam*, and *Sweet Chastity*. Rather we find the photographs' effect to be cumulative on the impact of the features described.)

1. The August 1982 edition. This has a portfolio of photographs running from pages 113 to 127, entitled *The Bank Robbery*. The photographs depict a male and 2 female models in various setting in a bank robbery and its aftermath. In concept and execution this article is similar to that which was contained in the November 1981

issue entitled *To Rush in with Love*. In classifying that issue indecent the Tribunal stated in decision 1033:

"We find that the scenes are not only offensive and tasteless, but also that they are injurious to the public good because:

- (a) Of the mixture of sex and violence depicted;
- (b) Of the needless multiplicity of models and the degree of intimacy among them;
- (c) Of the lesbian and prurient aspects of sex presented."

We would reiterate the same view in respect of the present article. Mr Leloir submitted that this issue (August 1982) should be classified indecent. Mr Heron initially submitted that none of the 1982 publications had the aggressive element combining violence and lesbianism which the November 1981 issue had, but conceded, when asked to comment on this particular portfolio, that it appeared to fall within that category.

2. The January, March, July, and September issues. The common element of these issues is that they all feature lesbian love scenes. In the January issue the portfolio is entitled *The Waiting Game* and is contained from pages 131 to 143.

In the March 1982 issue the article is entitled *A Woman Left Lonely* and runs from pages 110 to 123.

In the July 1982 issue the article is entitled *Marlene and Brinkie* and runs from pages 58 to 67.

The September 1982 issues contains the feature *White Tie and Tales*. This article runs from pages 108 to 121.

In all these features there is a high degree of physical intimacy between the models. Most are gross and explicit, and show touching and kissing by one model of the other's genitalia and breasts.

"In Decision No. 1033 we imposed an age restriction on the *Penthouse* October 1981 issue notwithstanding it contained a portfolio of photographs of 2 young women fighting in a mud pit. While we were prepared to find the pictures bizarre and tasteless, we did not condemn the whole magazine because of it. We did note, however, that we would have found the material to have progressed from the crude and tasteless to that which was injurious to the public good if there had been lesbian overtones to that portfolio. Such is clearly the case in the features mentioned in this section."

3. The February, April, and October 1982 issues. The common aspect of these magazines is that they feature heterosexual scenes. The February issue features the same couple as appeared in the September 1981 issue which we gave an age restriction. In that decision we said that although some of the photographs ran close to the line of indecency, we were not prepared to say they were so offensive that we found them to be injurious to the public good. Although the present photographs of the couple are more explicit, we feel there has still been some restraint exercised in comparison with the 2 other heterosexual portfolios to be referred to.

In the April issue the article is entitled *Ron and Robin* and runs from pages 103 to 117. We feel this contains a much higher degree of intimacy between the models. The photographs depict oral sex, fondling of the genitalia and other intimacy between both models.

In the October 1982 issue the article is *A Room of Their Own* running from pages 108 to 121. The scenes depict fondling of the female models' breasts and cunnilingus by the male model, and suggested fellatio by the female model. Again we feel the degree of intimacy between the models is significantly higher than appears in the February 1982 issue.

4. The May, June, November, and December 1982 issues. Apart from a single portfolio in the November issue, all these magazines contain what used to be the "standard" *Penthouse* pictorial content. This was a centrefold feature of a female model, accompanied elsewhere in the magazine by 2 further features of single female models.

Although the present photographs vary in degrees of explicitness, we are not prepared to condemn any of the publications because of the scenes in which the single models are depicted.

The November portfolio referred to is an article entitled *Realm of the Senses* and runs from pages 76 to 85 of the magazine. These pictures depict scenes between a number of models, but the photographs have been taken through frosted glass. It appears to us that the photographs have been taken in an artistic way, and not in a method calculated to arouse prurient interest. We think it is relevant to refer here to what was said by the Tribunal in Decision No. 881 which concerned the February and July 1976 issues of *Penthouse*. The Tribunal said of a scene which depicted, albeit fantastically, a sadistic and lesbian episode:

"The presentation of nudity is not indecent if it is not prurient or salacious. Fantasy or fantastic presentation can lessen the indecency in sadism or other sexual matters which, in other ways of presentation, are obscene and pornographic."

We think that this portfolio of photographs falls clearly within that statement. It can be distinguished from the *To Rush in With*