

We think that these single page mail order forms could not be classified as books although they obviously may be documents. In that regard we note in passing that in *Police v. Brian* (1971) NZLR 119 Roper J held that a book displaying a single page could constitute a document.

It was suggested to us by the defendant to the District Court proceedings that the Tribunal had jurisdiction to classify the forms because both he and the informant had consented to that course. Unfortunately the consent of the parties to have the matter heard by the Tribunal was irrelevant because section 17 of the Indecent Publications Act would have required that the Tribunal should have dealt with the matter anyway. The provisions of the Act make it mandatory for the Court to refer the question of indecency to the Tribunal, which has exclusive jurisdiction to consider that issue so far as it relates to books and sound recordings. But as we have ruled that these mail order forms are not books we are required by the terms of the legislation to decline jurisdiction and to rule that they must be considered by the District Court.

Turning now to the *TRANZ* magazines, it is convenient to relate the submissions of the informant and of the importer in full. For the informant Mrs Gaskell said this:

"The above mail order forms are in the nature of advertisements for magazines, books, photographic journals and films on the subject of transvestism. Each mail order form is in black and white and has an illustration or photograph on it, usually showing a male in female clothing or underclothing. Each leaflet contains some text, designed to titillate the reader and to tempt him to buy the advertised publication.

The six *TRANZ* magazines are, again, in black and white and consist of text, photographs and advertisements for the paraphernalia of transvestism and publications dealing with that subject. The text of the magazine includes letters from readers relating their experiences and feelings as transvestites. There is also a personal contact column in which people can advertise their willingness to meet others of like inclination and preferences.

The standard of the *TRANZ* magazines is variable, but tends to be lightweight in content and amateurish in presentation. The photographs range from unobjectionable to very explicit shots of male genitalia. The motive for these publications is to stimulate interest through sexual fantasies relating to transvestism, female domination and homosexuality. In my submission, there is no redeeming artistic or literary merit in these magazines.

It is submitted that because of the contents of these publications, the Tribunal may consider them indecent."

Mr Wotherspoon, for the defendant said:

"The *TRANZ* magazine is published for a special interest group those who have a personal interest in transsexual matters. It is not for public distribution and sale in New Zealand and can only be subscribed to from Britain. It does not therefore present any danger to the public good. It does not set out to have literary or artistic merit but rather it is designed to be a forum for sharing experiences. The magazine is not designed to arouse but to inform. Finally it is submitted that explicit shots of male genitalia are not indecent. It is further submitted that these photographs are not purient, do not involve copulation and other models are not involved to suggest any intimacy of "group" scenes.

The readers of *TRANZ* are unlikely to be corrupted by the contents of these magazines because to be aware of the publication they are likely to have a prior knowledge of and an interest in the material that *TRANZ* contains.

It is submitted that these publications present no danger to the public good and that the Tribunal should not consider them to be indecent."

We think, generally speaking, the submissions of Mrs Gaskell must be accepted as being correct, although there are few of what she described as "very explicit shots of male genitalia".

We are unable to accept Mr Wotherspoon's submission that these publications could not be obtained in New Zealand for public distribution and sale. In any event, the fact that they are obtained by a private subscription does not mean that they cannot be classified as indecent.

We accept that in certain circumstances explicit shots of male genitalia are not indecent but this obviously depends upon the context in which the photographs are presented. In this case we see the material as being part of a publication which is injurious to the public good in that it seeks to promote aberrant sexual practices.

We are also unable to accept Mr Wotherspoon's submissions that the readers of *TRANZ* are unlikely to be corrupted by the contents of the magazine. It is enough to refer to the dicta of Lord Wilberforce in *DPP v. Whyte* (1972) 1 All ER 12 at 19 (HL) and what we said in Decision No. 1033, dated 8 October 1982, *Penthouse* U.S. Volume 13 to show that this argument has been rejected on previous occasions.

In our view the dominant effect of the *TRANZ* publications is that it would be injurious to the public good and so they ought to be classified as unconditionally indecent.

Dated at Wellington this 1st day of March 1985.

W. M. WILLIS, Judge.

3

Decision No. 2/85  
IND 21/84

*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:

*Knockabout Comix 6*—published by Knockabout Comics, England;  
*Deviant Slice Funnies*—published by Print Mint Inc., U.S.A.;  
*Knockabout Comics No. 5*—published by Knockabout Comics, England;  
*Dirty Laundry Comics*—published by Last Gasp Eco-Funnies, U.S.A.;  
*Knockabout Comics No. 4*—published by Knockabout Comics, England;  
*Occult Laff Parade No. 1*—published by the Print Mint Inc., U.S.A.;  
*DOA Comics No. 1*—published by Saving Grace, U.S.A.;  
*The Checkered Demon*—published by the Last Gasp, U.S.A.;  
*Deviant Slice*—published by the Print Mint Inc., U.S.A.

Chairman: Judge W. M. Willis.

Members: Mesdames H. B. Dick, L. P. Nikera; Messrs J. V. B. McLinden, I. W. Malcolm.

Hearing: Wellington, 13 December 1984.

Appearances: D. Campbell for importer, Blue Funk Press, K. Wild for Comptroller of Customs.

#### DECISION

We were informed that these publications were single copies of a shipment of sample copies stopped at Auckland. The Comptroller of Customs, sparsely worded submission does not tell us the date of interception. The submission suggests that these publications are indecent because of previous rulings for this type of publication by the Tribunal.

A Mr Donald Campbell appeared for the importer, which was an entity calling itself Blue Funk Press. He was not a principal of that organisation, but we gathered that he either worked for them on a full-time or freelance basis. He advised us that he had selected the comics from a reference catalogue, and had not known of the contents of the publications until he had a chance to inspect them at the hearing.

His principal submission was that the comics should not be held indecent because they would be used in his research as an artist/comic writer. When we asked him to provide details of his background in this area he said that he had been interested in comics for a number of years and in fact had published and sold two issues.

In response to further questioning he stated that he was a self-taught artist and had no formal qualifications. Unfortunately Mr Campbell had not brought any of his work with him when he came to the hearing. We invited him to provide the material when he returned to Auckland and he did so. He informed us in the letter accompanying his work that his basic theme was human folly. The material supplied to us is clearly of an amateur nature, but we have no doubt from its content, and from Mr Campbell's actions in attending the hearing and sending the material when requested, that he is genuinely trying to convey his views about our society in his work.

Under section 10 of the Indecent Publications Act one of the functions of the Tribunal is to:

"... classify books... as indecent unless their circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be."

We think that prima facie we have the power to release some or all of the imported publications into Mr Campbell's possession for the purposes specified by him. Two matters arise for consideration before such a course can be followed and we deal with these in turn:

Firstly, are the publications suitable for the purpose stated by Mr Campbell?

It has to be borne in mind that Mr Campbell selected these publications from the titles which were listed in a catalogue. He had no opportunity to assess the publications' content prior to them