

4. The Court of Appeal did not even see the document in question. The Tribunal has the opportunity to examine all publications upon which it is required to deliberate, and does not usually make decisions on an ethereal basis.

As we have argued the *Lawrence* is not binding in this instance, what then is the basis for our decision on these 3 magazines? There are 2 arguments and we shall outline them separately.

Firstly these magazines deal with matters of sex in a manner that is injurious to the public good because of the manner in which the female nude form is depicted. In counsel's submission on *Knave* and *Fiesta*, it was argued that they created no demonstrable injury to the public good. Their responsible editorial policies were said to vigorously exclude any material identified by recent expert opinion in Britain and Canada as being potentially harmful. The British opinion referred to is that of the Williams Committee on Obscenity and Film Censorship which reported in 1979. However, commentators have since noted that the feminist attack on pornography has developed since that report was written (and this is certainly the case in New Zealand). Using guidelines based on that report therefore ignores some of the most recent arguments. We intend to take judicial notice of the feminist arguments, and we would welcome the opportunity in the future to have these arguments fully tested.

Some of the portfolios of women in these magazines are injurious to the public good because of: the contrived positions the women are placed in, women are in full labial display presumably for male viewers; the surrounding context of the photographs, and the symbolic representation of women depicted. Such portfolios promote social values which degrade, not just the single model posing, but all women as a social class. Women are portrayed as a subordinates who are always sexually available and have limited choice.

The dominant effect of the magazines (one of the matters to be taken into consideration by the Tribunal under section 11 (1) of the Act) is the subordination of women. The total effect of such presentation suggests that women have an inferior social status and lack autonomy; for example *High Society*, pages 28-33, "Baby Boobies", a sequence of photographs showing a woman in baby-like positions depicts women as childish or childlike and implies girls are available for sex.

In addition a number of portfolios dehumanise the adult female form, for example *High Society*, pages 51-57 "Some Like It Hot" sequence has one photograph of the fire-eating woman tethered about the neck, with suggestions that she is an animal.

When women are depicted for sexual purposes as either childlike or as pets/wild animals this degrades all women as a class of sexually mature adults. Such depiction promotes the value that women are there to be taken and used. Women's own self-determination is undermined. Publications which promote social values degrading a class or group of people would be considered harmful to the public good (and discriminatory) if that group were a racial or religious group. Similarly when the group is determined by sex.

We do not consider that for the requirement of injury to the public good to be satisfied, the harm must be manifest by action. Injury may occur in the province of attitudes or perceptions, particularly if these are widely shared, and consistently suggest that one class is less superior than another.

To those who would argue against the proposition that some of the portfolios in these magazines cause harm to women because they undermine women's dignity, self-respect and sense of control, and therefore the publications should be declared not indecent; we suggest that the onus on the Tribunal is to protect the most vulnerable—those to whom the injury may occur—and therefore these magazines should be declared indecent. It is possible that if it were men who were being revealed in such positions, they would also believe themselves as a class to be degraded. (In a volume of *Fiesta*, Vol 19, No. 12, the only photographs of nude men are shown with their faces hidden, in comparison with the photographs of women.)

Secondly even if the above argument is not available to the Tribunal, we believe these magazines to be indecent in the ordinary meaning as an "affront to the commonly accepted community standards".

These magazines are an affront because of some of the reasons already outlined, and also because women are presented dehumanised as sexual objects, similar to things or commodities, and women's body parts are exhibited such that women are reduced to those parts. This is an affront to at least half the community.

We note in passing that earlier copies of *Fiesta* (Indecent Publications decision 916, April 1979) were declared unconditionally indecent by the Tribunal, and were found to not provide the appropriate balance of serious and honest writing to redeem the rest of the content. Although not bound by previous decisions on the same publications we do not believe there has been a sufficiently discernible change in type of content in *Fiesta* for a different decision today.

We have argued that these magazines should be declared indecent. This is not to say that we would consider all books containing photographs of nude women in sexually explicit poses to be indecent *per se*. We believe that the question of whether material is degrading and demeaning of either sex could usefully be an additional matter which the Tribunal might be directed to take into consideration along with the other matters in section 11 of the Act.

Indecent Publications Minority Decision.

R. BARRINGTON and H. B. DICK.

Decision No. 11/86
Reference No. IND 7/86

Before the Indecent Publications Tribunal

IN the matter of the Indecent Publication Act 1963 and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publications: *Australian High Society*, Vol. 1, No. 1, published by Gloria Leonard by authority of High Society Magazine, New York; *Genesis Girls/Girls*, Spring 1986 edition, published by Cycle Guide Publication Inc., New York:

Chairman: Judge R. R. Kearney.

Members: Mrs H. B. Dick, Mrs R. Barrington, Mr A. J. Graham and Ms K. Hulme.

Hearing: 11 June 1986.

Decision: 13 November 1986.

Appearances: Mr G. F. Ellis for importer Gordon & Gotch (NZ) Ltd., K. Wild for Comptroller of Customs.

DECISION

GORDON & GOTCH (NZ) LTD. imported copies of *Australian High Society*, Vol. 1, No. 1, and *Genesis Girls/Girls*, Spring 1986 into New Zealand with the intention of having those publications considered by the Indecent Publications Tribunal for a decision as to whether those publications are indecent or not and/or for a decision as to the classification of those publications.

High Society, Vol. 1, No. 1, is stated on its cover to be a collector's first edition and the publishers clearly have in mind that it should be distributed both in Australia and in New Zealand by Gordon & Gotch Ltd. as such distribution is referred to in the publisher's note on page 4 of that volume. The publisher does, however, in her note to readers refer to the introduction of this magazine to Australia and no reference is made in that introductory note to New Zealand.

It should be noted that there are major differences in the censorship laws of most Australian states and the Federal Territories to those which pertain in New Zealand by virtue of the Indecent Publications Act 1963.

The Comptroller of Customs pointed out the *Australian High Society* consisted primarily of photographs of single female models both naked and partially clothed. The Comptroller submitted that these pictorial features far outweighed the written content which consisted of an interview, jokes, 3 articles and a short story. That which the Comptroller suggested required the imposition of an age restriction on *Australian High Society* was that positioning of models in a contrived way and in such a position as to give maximum emphasis to the genitalia area.

Mr Ellis on behalf of the importer and potential distributor advised the Tribunal that the purpose of the importation was as indicated above to have the matter referred for decision and classification. Mr Ellis submitted to the Tribunal that there were many similarities between this publication and *Penthouse* magazine although it might be found that the quality of the written material and of the production itself was not up to that of the *Penthouse* publication. The comparison to be drawn between this publication and others was more closely related to the publication *Genesis* and in particular to those copies which were the subject of an R18 classification by the Tribunal in its decision No. 12/84. Although the dominant theme was the portrayal of female sexual organs Mr Ellis submitted that the publication had balance provided by its editorial content, its life style articles, its investigative journalism and its cartoons and humour. In this regard Mr Ellis submitted that the material came within the Tribunal's decision No. 1053 insofar as that decision classified the February, May, June, November, and December issues of *Penthouse* as indecent in the hands of persons under the age of 18. In reference to decision No. 1053 and also decision No. 1054 Mr Ellis submitted that this magazine did not offend against that which has been termed the "Tripartite Test" which is set out in both decisions 1053 and 1054 in the following terms:

1. Scenarios involving more than two models and in which sex and violence and intimacy and/or deviant aspects of sex are depicted among the models;
2. Multiple model scenes which depict lesbian acts;