

3. Heterosexual scenarios in which there are a high degree of intimacy (e.g., fellatio or cunnilingus or intercourse) depicted in the couple's actions.

Mr Ellis submitted that if the Tribunal applied those tests to *High Society* it would be found that the publication did not offend against those tests.

Mr Ellis did concede that there was an element of multiplicity in an article about screen star Joan Collins but submitted that the photos which might otherwise offend the Tripartite Test were old photos which were in themselves unobjectionable and in terms of the overall nature of the article gave some social significance to the photographs. In any event Mr Ellis submitted there was not that "high degree of intimacy" mentioned in the Tripartite Tests of a kind which would have permitted a valid objection against the publication. Mr Ellis submitted that the photographs being of a well-known public figure should be considered as being presented more in an historical than indecent way. In the event that the Tribunal did find, for example, the photographic content objectionable then the Tribunal should, Mr Ellis submitted, apply the balancing exercise which it had frequently in the past applied, namely "what proportion of objectionable content there was in comparison with non-objectionable material?" When that test was carried out the answer he submitted was that the overall quality and content was such as to permit of a decision that a restricted classification only was required.

Two members of the Tribunal find that the publication justifies a classification of indecent and they reached that conclusion after having initially met following the original hearing to give full consideration to Mr Ellis's submission the members having previously read the publication. Later the Tribunal had a further meeting where it considered the affect of the Court of Appeals decision in *Howell v. Lawrence Publishing Company Ltd.*, CA 77/84 and at that further meeting it again gave very careful consideration to Mr Ellis's submission having once again looked at the material contained in the publication.

The Tribunal agrees with Mr Ellis that the document theme of the publication is the portrayal of the female nude with a concentration of photographs of the genitalia. The models are in many of the presentations depicted in contrived poses, the whole purpose of which is clearly to focus attention on the vaginal area. The Joan Collins article features a number of photographs of the actress with a male model although there is no patent sexual activity depicted in the bulk of those. What was more objectionable in the Tribunal's determination was a largely pictorial presentation under the title "Some Like It Hot" which depicts a female nude model in posed contortions with 1 and sometimes 2 fire torches. The Tribunal found that presentation lewd and suggestive and obscene to a degree where the term indecent as prescribed by the Act had real application.

When the Tribunal looked at the written content it found a predominance of material of an explicitly pornographic nature. This material far from balancing any of the objectionable pictorial material is in many respects in the Tribunal's finding at least equally and probably in some cases more objectionable than that pictorial material. A page of pars carrying the headline *Funny Boners* presented material of a kind which the Tribunal found to be grossly indecent. And finally, one cartoon on the final page before the book cover was found by the Tribunal to be so grossly obscene that it might well have by itself justified an indecent classification.

In a minority decision in respect of the publication *Fiesta* and *Knave*, decision No. 10/86, two members of the Tribunal give consideration of the classification to be placed on *High Society*. At page 4 in their decision the minority say:

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 23-33 *Baby Boobies*, a sequence of photographs showing a woman in baby like positions depicts women as childish or childlike 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.

The majority finds for the same reasons as expresses in its majority decision No. 10/86 in respect of *Fiesta* and *Knave* that it is not able to classify the publications *High Society* as indecent. The majority found that there were many features to the publication to which strong objection could be taken but on an overall appraisal of the publication the material did not call for a classification of indecent in terms of the Tripartite Test. In the light of the Court of Appeal decision in *Howell v. Lawrence Publishing Company Ltd.* CA 77/84 the majority found that there was no evidence before it of the kind necessary to establish injury to the public good. The majority is satisfied however, on the criteria which has long been established before the Tribunal that the publication justifies that it be classified as indecent in the hands of persons under the age of 18.

The second publication *Genesis Girls/Girls* is in a different category to *High Society*. The publication consists almost entirely of pictorial presentations of 8 female nudes. A proportion of those presentations are of the sexually contrived pose but in the main they are not as explicit as many of the photographs in *High Society*. The literary content is trivial and largely unobjectionable. The Tribunal is satisfied that the explicitness of some of the poses justifies that it be classified as indecent in the hands of persons under the age of 18.

Dated at Wellington this 13th day of November 1986.

Judge R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

Decision No. 10/86
Reference No. IND 5/86
IND 6/86

Before the Indecent Publications Tribunal

IN the matter of an application by the Comptroller of Customs for decision in respect of the following publications: *Fiesta*, Vol. 19, No. 12, Vol. 20, No. 1 and 2; *Knave* Vol. 17, No. 11 and 12, Vol. 18, No. 1, all published by Galaxy Publications Ltd.:

Chairman: Judge R. R. Kearney.

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

Hearing: 29 March 1986, Wellington.

Decision: 24 October 1986, Wellington.

Appearances: Mr. J. B. M. Smith for publishers Galaxy Publications Ltd., importer Gordon & Gotch (NZ) Ltd., Mr K. Wild for Comptroller of Customs.

DECISION

THE magazines *Fiesta* and *Knave*, the subject of this decision were submitted to the Tribunal at the request of the importer Gordon & Gotch Ltd. for consideration and classification. We note that this particular importer and distributor frequently requests of the Comptroller that material be submitted in this way to the Tribunal and we comment that the importer is to be commended for its sensible and responsible approach to these matters.

The Tribunal in decision No. 916 of April 1979 classified Vol. 11, No. 12, of *Fiesta* magazine as being unconditionally indecent but as the Comptroller of Customs points out in his submission the magazines presently before the Tribunal for consideration and classification do in their favour "lack the lesbian pictorial sequences and more explicit letters from readers contained in the earlier magazine".

The Comptroller submits that the imbalance between sexual content and any redeeming serious writing contained in these publications is such that the magazine circulation could be restricted for sale by an age classification.

When these matters came on for hearing on the 29th day of March 1986 evidence was given before the Tribunal by Mr David Halliday the managing director of Galaxy Publications Ltd. Mr Halliday was questioned by members of the Tribunal following which a lengthy and detailed submission was presented by Mr Smith.

In a memorandum dated 2 May 1986 I advised the parties that the Tribunal had found there were some aspects of the publications upon which the Tribunal had been unable to reach a clear decision. The parties were advised that the Tribunal would reconvene in June of this year to further consider the publications.

When Parliament enacted the Indecent Publications Act of 1963 it provided for New Zealanders an unique system of censorship. In his book *Obscenity* published in London in 1979 Mr Geoffrey Robertson an English barrister commented to his readers that much