

*Appearances:* Mr G. F. Ellis, appearing for publishers and parties having an interest in Parade Magazine; Mr P. J. Eggleton for Comptroller of Customs; no appearance from importer, Waverley International Ltd.

## DECISION

THESE publications were imported by airmail through the port of Auckland in June 1986. The publications were seized by the Collector of Customs in Auckland and the importer has subsequently disputed forfeiture. The books have been referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966. The publication *Busen* is a collection of photographs of portfolios of single female models with an emphasis on large breasts. The Tribunal has on previous occasions found similar publications to be indecent in the hands of persons under the age of 18 years but on this occasion the Comptroller of Customs invites the Tribunal to consider this particular publication as being unconditionally indecent because of "a large proportion of photographs that feature crude displays of female genitalia". In decision No. 6/84, dated 13 December 1983, similar publications *Busen Exclusive*, No. 11, 13 and 19, were given an age restriction classification of 18 but the Tribunal agrees with the Comptroller that in this publication there is a significant proportion of photographs that feature crude displays of female genitalia. These displays go well past the explicit displays portrayed in the magazines *Fiesta* and *Naive*, Tribunal decision 10/86, of 29 March 1986, and the Tribunal is unanimous that many of the photographs depict matters of sex in a manner that is injurious to the public good. In the Tribunal's finding those photographs are clearly intended to show and do show the model having just completed either masturbation or sexual activity with another person and the Tribunal accordingly classifies that publication as unconditionally indecent.

The Comptroller in his submission in respect of the Parade Publications submits that they are comparable to issues 3, 4 and 5 of "Adult Fantasy" which were considered unconditionally indecent by the Tribunal in its decision No. 2/86 of 29 April 1986. With that submission Mrs Barrington for the same reasons as set out in the minority decision in respect of the publications *Fiesta* and *Naive* Tribunal decision 10/86, of 24 October 1986, would classify the publications as unconditionally indecent. The remaining four members of the Tribunal accept that the magazines contain written material that is coarse and offensive and that there is really little to commend the magazines but they agree with the submission made by Mr Ellis that in no case is the tripartite test previously formulated and followed by the Tribunal infringed and there is nothing in the way of evidence before the Tribunal which could satisfy it that the material contained in these magazines is harmful to or likely to cause injury to the public good. The majority are satisfied however that the magazines contain a considerable amount of material which would be injurious to young persons and accordingly classifies each of those publications of the Parade Publications as being indecent in the hands of persons under the age of 18 years.

Dated at Wellington this 11th day of December 1986.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

Decision No. 21/86

Reference No. IND 11/86

*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: *Gai Pied Hebdo Magazine*, No. 196, published by Editions du Triangle rose:

*Chairman:* Judge R. R. Kearney.

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

*Hearing:* At Wellington on 24 October 1986.

*Appearances:* No appearance of importer Out Magazine, Auckland; Mr P. J. Eggleton for Comptroller of Customs.

## DECISION

THIS magazine was commercially imported through the port of Auckland in March 1986. The magazine was seized by the Collector of Customs in Auckland and the importer has subsequently disputed forfeiture. The magazine was therefore submitted to the Tribunal for determination and classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966. The

magazine which is written in French and produced in France appears to the Tribunal, as is suggested by the Comptroller of Customs, to be a current affairs type magazine "aimed quite squarely at the male homosexual market". A large number of the advertisements and drawings contained in the magazine depict males who are either in contrived or exaggerated poses or who are indulging in homosexual activity. The principal concern of the Comptroller of Customs and mentioned to the Tribunal by Mr Eggleton in his submission was in respect of advertisements appearing on pages 32, 34, 35 and 37 of the publication and to 2 drawings which appear on pages 24 and 25 of the publication.

Although there was no appearance on behalf of the importer, Out Magazine, the Tribunal had before it a submission made by an officer of Lawrence Publishing Company NZ Ltd. which produces Out Magazine and we set out that submission in full hereunder:

"We object in the most strongest term to the suggestion that the above title could remotely be considered indecent. The Chairman has elected to ignore the decision of the Minister of Justice that he does not consider the publication indecent. However, as the Tribunal only acts as a 'rubber stamp' (proof can be provided as to the actual number of publications submitted and those declared indecent to be out of proportion) for the Customs Department, it is running true to form by declaring this publication indecent.

The whole exercise is a waste of our time and money as also the taxpayer. The Tribunal is not representative of New Zealand and as we shall prove in a court of law has acted outside the law on previous decisions. We currently have 3 appeals before the High Court and as we are assured by the best available legal counsel that Court will find in our favour.

The Tribunal has a history of declaring indecent any and all publications that have as a possible readership the 'gay market', under section 19 of the Act this is now being challenged in the High Court.

For us to make a submission could be construed to mean that we accept the bias of the Tribunal towards gays. The Tribunal has no gay person on it. It has based decisions on the Crimes Act despite a High Court decision that the Tribunal cannot rely on other Acts to make decisions.

Any average person looking at the list of titles being considered 24 October 1986 would think they were looking at Oliver Cromwell times. Such purile publications makes a sham of the Tribunal.

Have you not heard that it is immoral to decide for others what they shall read and not read. The Tribunal function is to classify not ban, however recent history of the Tribunal is against the intention of the Act.

We are welcoming the opportunity of defending an action brought against us by the previous chairman to prove our allegations beyond doubt in a Court of Law.

History will prove us right."

It is correct that over the years many of the Tribunal's decisions relating to male homosexual publications have found such publications unconditionally indecent and so classified them on the principal ground that they depicted, advocated and supported homosexual activity of a kind which was clearly illegal in terms of the then criminal law in New Zealand. In many such decisions there was no need to make any further determination or classification in respect of the material although a perusal of some of those earlier decisions reveals references to the objectionable display of multiple models engaged in sexual activities. The Tribunal will no doubt in the very near future have to consider the question whether there is any distinction to be drawn in terms of the Indecent Publications Act between the display of homosexual activity and the display of heterosexual activity. The need for the Tribunal to consider that question on this occasion does not arise. The reason why that question does not arise (or perhaps more correctly need to be dealt with) on this occasion is that the Tribunal is unanimous that some of the photographs contained in the advertising material on pages 32, 34, 35 and 37 and the drawings on pages 24 and 25 when all considered together require a classification of unconditionally indecent. Many of those show the models in the act of masturbation while some show two male persons engaged in oral and other sexual activity. Some of these depictions are of a kind which if translated into heterosexual activities would; firstly because of the nature of their coarse and crude presentation, and secondly because they are totally lacking in any suggestion of their being serious depictions of sexual activity of a sexually therapeutic or educative kind, warrant the classification of unconditionally indecent. In our finding the publication is injurious to the public good in the manner contemplated by the Indecent Publications Act. We classify this publication as unconditionally indecent.

Dated at Wellington this 11th day of December 1986.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.