

Decision No. 13/87  
Reference No. IND 26/86

*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: *Male Call*, No. 5, published by Undercounter Publications; *Macho Collection*, Vol. 1, No. 1, publisher unknown; *Abducted*, published by Falcon Presentations; *House Master*, publisher unknown; *Wes*, publisher unknown; *John Holmes Superdong*, Vol. 1, No. 1, publisher unknown:

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, K. A. R. Hulme, R. E. Barrington and A. J. Graham.

Heard at Wellington on the 6th day of April 1987.

Appearances: P. J. Eggleton for Comptroller of Customs. No appearance on behalf of importer.

DECISION

THESE magazines were privately imported as unaccompanied baggage through Christchurch Airport. The magazines were seized by the Comptroller of Customs and the importer has disputed forfeiture. The magazines were referred to the Tribunal by the Comptroller prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966. The Comptroller of Customs invited the Tribunal to consider classifying each of the publications as unconditionally indecent. In his submission Mr Eggleton, on behalf of the Comptroller, submitted that the photographic content in each of the publications was largely of models clearly posed so as to give maximum emphasis to the male genitalia. Mr Eggleton submitted that the magazines lacked any literary merit and that they were grossly indecent and injurious to the public good.

The Tribunal unanimously agrees with the Comptroller's view insofar as *Macho Collection*, Vol. 1, No. 1, *House Master*, *Abducted*, *John Holmes Superdong*, Vol. 1, No. 1, and *Male Call*, No. 5 are concerned. The Tribunal found that these particular publications:

1. Lacked any literary or artistic merit whatsoever.
2. Contained, in some instances, depictions of multiple homosexual activity.
3. In one instance (*Macho Collection*) had many photographic depictions of bondage, and;
4. In a general way were coarse and lewd to an extent that taken with the other aspects these publications would be injurious to the public good.

The four magazines are classified as unconditionally indecent.

The Tribunal found that the publication *Wes* did not require an unconditionally indecent classification and it is satisfied that a classification of the publication as indecent in the hands of persons under the age of 18 years is all that is required and it so classifies it.

Dated at Wellington this 1st day of September 1987.

Judge R. R. KEARNEY, Chairman.

Decision No. 14/87  
Reference No. IND 28/86

*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: *The Leathermans Handbook 2*, *Hombre Scene*, Vol. 1, No. 1 and 5;

*Di's Dilemma*, *Off-Shore Duty & Others*, published by Modernismo Publications Ltd.; *The Zeus Collection*, *Zeus Presents Robert La Tourneaux*, *Zeus in Bondage*, *Zeus Presents Joe Paducah*, *Zeus Cowboys*, published by Hudson Communications Ltd.; *Mandate*, June 1980, October 1980, November 1980, January 1985, February 1985, March 1985, April 1985, May 1985, July 1985, September 1985, October 1985, November 1985, *The Men of Mandate*, Vol. 1, published by Modernismo Communications Ltd.; *The Physical Man*, No. 2, published by Mans Image Publications; *Riders*, published by Modernismo Publications Ltd.; *All Muscle*, published by Fox Studio Presentation; *The Zeus Collection*, *The Cavallo Portfolio*, published by Hudson Communications Ltd.; *Torso*, January 1983, April 1983, June 1983, published by Varsity Communications Inc.; *Playguy*, Vol. 5, No. 7, Vol. 5, No. 8, Vol. 5, No. 9, Vol. 6, No. 11, Vol. 7, No. 2, Vol. 5, No. 5, Vol. 5, No. 11, Vol. 5, No. 12, Vol. 7, No. 4, Vol. 7, No. 5, Vol. 7, No. 6, Vol. 8, No. 6, Vol. 8, No. 3, published by Playguy Mag Inc.; *Exposures*, published by Rho Delta Press:

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, K. A. R. Hulme, R. E. Barrington, and A. J. Graham.

Heard at Wellington on the 6th day of April 1987.

Appearances: P. J. Eggleton for Comptroller of Customs. G. A. Ireland for Lawrence Publishing Co. (NZ) Ltd.

DECISION

THESE publications were commercially imported by air freight through the port of Auckland on 25 August 1986 and were seized by the Comptroller of Customs. In a letter to the Manager of Lawrence Publishing Co. Ltd., the importer, dated 6 October 1986, the Collector of Customs at Auckland gave notice of seizure under the Customs Act 1966 in respect of these books on the basis that they were considered indecent within the meaning of the Indecent Publications Act 1963. The importer disputed seizure and the publications were referred to the Tribunal for classification and decision.

Mr Eggleton on behalf of the Comptroller of Customs submitted to the Tribunal that all the publications were of a tawdry nature and contained material such as to warrant either an age restriction or a classification as unconditionally indecent.

As part of the case for the importer Mr Ireland presented to the Tribunal a prepared statement by Mr B. M. Sheppard, a director and shareholder of Lawrence Publishing Co. (NZ) Ltd. who also for the last 9 years has been the editor of *Out* magazine which is published by Lawrence "as a service to the gay community".

In his submission on behalf of the importer Mr Ireland advised the Tribunal that the magazines were not randomly imported and that they were imported with the following in mind:

- "(a) The Court of Appeal decision in *Howley v. Lawrence Publishing Co. (NZ) Ltd.*
- (b) The passing of the Homosexual Law Reform Bill.
- (c) The New Zealand Film Censor has been passing for some time video tapes depicting explicit male homosexual relations."

Mr Ireland submitted that the importer was justified in the light of those developments in considering that the publications would not be regarded as indecent under New Zealand law. Mr Ireland submitted that the bulk of the decisions banning the sale or distribution of homosexual publications had been based on the then criminal law which provided that homosexual acts were a criminal offence. Mr Ireland reminded the Tribunal of the submission made by Mr W. Lindberg for the New Zealand Aids Foundation in respect of the publication *Advocate Men* which was before the Tribunal for consideration that same day, and in particular the submission that the magazines benefit the community insofar as they support and encourage "safe sex" practices for homosexual men. Mr Ireland further submitted that the majority of the magazines were of a high quality production and that they displayed an honesty of purpose. Whilst acknowledging that some people would be offended by the magazines Mr Ireland submitted that that is not the test which is simply whether the publications are injurious to the public good.

The Tribunal appreciated that its decision in respect of these publications would be of importance to publishers and importers and it has given very careful consideration to the submissions made and has proceeded to examine the publications bearing in mind the directions given to the Tribunal by the High Court in two decisions recently delivered by the full Court, namely *The Comptroller of Customs v. Gordon and Gotch (NZ) Limited* M 648/86 and *Lawrence Publishing Co. (NZ) Ltd. v. The Comptroller of Customs* M 341/85. The Tribunal was very mindful of the comments of His Honour Quilliam J in delivering the judgment of the court in the Lawrence case when he said at page 5 of his decision:

"At the time the decision was given homosexual acts between males was still a criminal offence and this may have materially influenced the result. With the passing of the Homosexual Law Reform Act 1986 that situation has changed, but this fact alone is not to be regarded as determinative of the present appeal."