

and the general tenor of that which he did submit was that the publications were not likely to cause any harm or injury to the public good, that they were intended for the adult male homosexual market and that that market should have free access to this type of publication.

The Tribunal also had before it a written submission by a Wellington man who had a number of magazines—*Poncho*, *Play Guy*, *Blue Boy* and *Man Date* seized from him by Customs on his return from a holiday in Australia. This man's submission was that he failed to see how any injury to the public good could possibly arise by his private possession of these magazines or indeed by their sale to the general public over a certain age as was the case with heterosexual magazines. This man further went on to submit to the Tribunal that the availability of this relatively explicit gay material is of great assistance in the practice of safe sex and was an important contribution to the fight against AIDS. He further submitted that the suppression of such magazines could be a catalyst for anonymous promiscuous sex and invited the Tribunal to place an age restriction on such magazines.

The Comptroller of Customs, through Mr Wotherspoon, submitted to the Tribunal that some of the publications contain material of a kind which contravened the principles of the tripartite test as laid down in Decision 1054 of 18 March 1983 and in particular drew the Tribunal's attention to the excessive intimacy between the models displayed. The Comptroller was also concerned that in some of the publications a theme of bondage and/or sado-masochism was evident of a kind which in the Comptroller's submission required an unconditionally indecent classification.

The Tribunal finds it convenient to deal with these publications in different groups.

#### *Torso*

These magazines are published in New York and are clearly directed at the male homosexual market. The publications which are produced in magazine form contain a considerable amount of photographic material, mainly of the single male model, most of these photographs being of nudes with erect penis. Most of the written material, including the fiction section, is devoted towards the recounting of homosexual encounters between males. In each of the *Torso* publications which the Tribunal had to consider in terms of this decision there were aspects of the publications which caused the Tribunal concern. In some cases that concern has resulted in an unconditionally indecent classification, whilst in the remainder the Tribunal has given an age classification.

*Torso* August 1982, September 1982, February 1983 and September 1983 are each classified as indecent in the hands of persons under the age of 18 years. *Torso*, May 1983, August 1983, December 1983 and January 1984 are each classified as unconditionally indecent.

As previously mentioned, this particular publication gave considerable concern to the Tribunal and those publications which gained an R18 classification were in danger of receiving an unconditional indecent classification. Much of the written material is coarse in the extreme and many of the photographs barely escaped the finding by the Tribunal that they depicted male models in the act of masturbation. The publications that the Tribunal has unanimously found to be unconditionally indecent go past that borderline and show either or both scenes of multiple models engaged in sexual activity or single models engaged in what is clearly seen to be masturbation.

#### *Mandate*

This magazine is similar to *Torso* and is clearly directed towards the male homosexual market. Some of the written material in these magazines is of quite a high standard, but that which causes the Tribunal concern is that much of the photographic material borders very closely on a depiction of masturbation.

The Tribunal finds that the March 1978, January 1979 and April 1983 publications would be injurious to the younger readers and accordingly classifies each of these publications as indecent in the hands of persons under the age of 18 years.

The May 1984 publication, which is very similar to the other publications given the age classification, is classified by the Tribunal as unconditionally indecent. That which takes this publication past the borderline is contained in the centrefold photograph which shows a naked male with a wire tightly bound around an erect penis. The Tribunal has in previous decisions expressed its concern at similar depictions.

#### *Blueboy*, Vol. 1, No. 7

This publication which is clearly directed towards the male homosexual market contains a great deal of material which is of concern to the Tribunal. Multiple model scenes with intimacy are clearly aspects of the publication which would be injurious to the public good. The Tribunal classifies this publication as unconditionally indecent.

#### *Blueboy* September 1980

This publication, like many of the other male homosexual magazines, contains a great deal of material which is borderline, but in this particular publication an article entitled "Gay Tapes" contains material which is injurious to the public good and the Tribunal classifies that publication as unconditionally indecent.

#### *Honcho*

This magazine is also a homosexually orientated magazine, similar in format to *Mandate*, *Blueboy* and *Torso*. The Tribunal agrees with the submission of Mr Wotherspoon on behalf of the Comptroller of Customs that the major difference with this publication is that it has introduced the theme of bondage and/or sadomasochism to almost every issue. The Tribunal also finds that these particular magazines have a greater display of what the Tribunal considers to be excessive intimacy than do the other magazines have a greater display of what the Tribunal considers to be excessive intimacy than do the other magazines which have been given an age restriction. There is little in the way of a redeeming feature in respect of any of the magazines, and such written material as is contained in the magazines certainly can claim no real literary or other merit.

As indicated, each of these magazines are classified as unconditionally indecent.

#### *Literature of Flagellation Parts F to N*

This is a series of soft-covered books dealing with flagellation and many of the aspects of domination and bondage. The text is accompanied by a series of drawings and photographs which are generally of poor quality. The Tribunal is unanimous in its finding that these publications are injurious to the public good and classifies each part of the series as being unconditionally indecent.

Dated at Wellington this 16th day of May 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.  
go8130

Decision No. 12/88

Reference No.: IND 16/87

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: *Roue* No. 37, 39, 40, 41, 42, 43, 44, 45; *Roue Correspondence Special*; *Janus*, Vol. 5, No. 6, 12, Vol. 6, No. 2, 6, Vol. 8, No. 6; *Derriere*, No. 1; *New Janus*, No. 7:

#### **Submissions on Behalf of the Comptroller of Customs**

Chairman: Judge R. R. Kearney.