

against any persons as a means of sexual gratification or for any other purpose are clearly in the Tribunal's view injurious to the public good. When such elements of violence are displayed against females, and particularly young females, as portrayed in these two publications, the risk of injury to the public good is far greater.

The Tribunal classifies both of these publications *Derriere* and *Martinet* as unconditionally indecent.

Dated at Wellington this 27th day of May 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal. 1
go8816

Decision No. 19/88

Reference No.: IND 26/87

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: *Drummer*, Volume 10, No. 91 and 96, Publisher: Alternate Publishing; *Mach*, Volume 1, No. 1 and 2, Publisher: Alternate Publishing; *Mach* 7, Volume 3, No. 7, Publisher: Alternate Publishing; *Mach* 10, Volume 2, No. 10, Publisher: Alternate Publishing; *New Direction*, Volume 14, No. 4, 5, ?, 177, 181, and 182, Publisher: Gadoline Ltd.; *Lovebirds*, No. 83, 86, 88, 89, 90, 93, and 94, Publisher: Sheptonhurst Ltd.; *Playbirds*, No. 105, 106, 109, and 110, Publisher: Sheptonhurst Ltd.; *Companion*, June, July, August, September, October, November, December 1984, January, February, March and April 1985, Publisher: Gentlemen's Companion Inc.

Before the Indecent Publications Tribunal

Chairman: Judge R. R. Kearney.

Members: A. J. Graham, K. Hulme, R. Barrington, and S. C. Middleton.

Hearing at Wellington on the 12th day of April 1988.

Appearances: Mr Wotherspoon on behalf of the Comptroller of Customs; G. A. Ireland for Lawrence Publishing Company of New Zealand Ltd. in respect of publication *Drummer*; Mr Highly of Exchange Traders, the importer of all magazines.

Decision

These publications were commercially imported at Dunedin in 2 shipments in May and June 1987 and were subsequently seized by the Collector of Customs, Dunedin.

The importer, Exchange Traders of Dunedin, a business operated by Mr Highly, have disputed forfeiture of the goods and therefore they have been referred to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

As the Tribunal has mentioned in earlier decisions, Mr Highly operates a direct sale and mail order business mainly dealing, as we understand it, in books and magazines including heterosexual and homosexual orientated publications. On this occasion Mr Highly was unable to stay over for the second day of the Tribunal hearing but he very kindly indicated his faith in and acceptance of the Tribunal's decisions and reminded the Chairman that many of these publications are already freely available on the New Zealand market. At a previous sitting of the Tribunal in respect of earlier publications imported by Exchange Traders, Mr Highly informed the Tribunal that a considerable amount of the material sent to him from overseas was in fact unsolicited, although it was selected by his agents in those overseas countries, particularly Australia on the basis that the material would be likely to receive at least a restricted classification from the Tribunal.

Mr Ireland, counsel for Lawrence Publishing had prepared and presented to the Tribunal a memorandum and submissions in

respect of the publication *Drummer*, and that memorandum and those submissions were supported by Mr Logan.

Drummer

This is a paper-back magazine. The whole of the contents of which is clearly aimed at the male homosexual market, and it consists of photographs and text which is almost entirely directed towards male homosexual activity. Appearing throughout these magazines is the theme of bondage and sado-masochism. In a number of its earlier decisions, the Tribunal has found the combination of bondage and sado-masochism to be unacceptable and clearly material which would be injurious to the public good. Such a finding is set out in Decision No. 14/87, a decision of the Tribunal delivered on 1 September 1987 in respect of "The Zeus Collection" and "Mandate" October 1985.

As Mr Ireland points out in his memorandum of submissions the last issue of *Drummer* considered by the Tribunal was Issue 104, which the Tribunal found to be unconditionally indecent because of the emphasis in the magazine on "bondage and sado-masochism". Decision No. 20/87. Mr Ireland informed the Tribunal that Lawrence Publishing has appealed that decision which has yet to be heard by the High Court.

In the memorandum of submissions presented by Mr Ireland, he informed the Tribunal that Lawrence Publishing has appealed that earlier decision, because in its opinion, the Tribunal has not given full and proper consideration as to how representations of sado-masochism or bondage are injurious to the public good. Mr Ireland pointed out that to his knowledge no evidence has been tendered to the Tribunal to establish this. Mr Ireland submitted that the question is not one of "judgmental or legislative facts" as referred to in *Jefferies J's* judgment in *Comptroller of Customs v. Gordon and Gotch*. In addition Mr Ireland drew to the attention of the Tribunal the decision of Holland J, in *Collector of Customs v. Hewitt* and referred the Tribunal in particular to three passages from His Honour's decision. We set out that part of Mr Ireland's submission in full hereunder:

"4. In the High Court case of *Collector of Customs v. Hewitt*, Holland J heard an appeal from the District Court concerning some video tapes imported from Australia. The case was heard before the passage of the Video Recordings Act 1987 and accordingly the question of whether the tapes were indecent or not fell to be decided under the provisions of the Indecent Publications Act. District Court Judge Willy described the tapes as containing (inter alia) scenes of "a limited amount of violence and forced sex ... one or more of the participants is under physical restraint". It was accepted by the Judge that the videos would be used in the importer's own home. On page 27 the Judge summarised his decision as follows:

"These are four video tapes purchased by a mature couple openly in a country which has a social make-up not very different from that of our own. They are manufactured for the purpose of being displayed on a video machine which in turn is capable of being used in conjunction with a television set in a private home. There is no evidence other than these videos will be watched by the owners of them and I infer their invited guests. There is no evidence one way or the other of the sort which was presented in the *Lawrence Publishing Co.* case that anybody who is likely to view these videos will be or is likely to be corrupted by that exercise."

and on page 28:

"In my view the inquiry in this case is a narrow one which I express as follows: is it injurious to the public good for adults to view explicit sexual material in the privacy of their own home? On the evidence before me I am not satisfied that the prosecution has proved on the balance of probabilities that such is so. Accordingly I decline to make