

the order for condemnation of the documents prayed for in the information."

Holland J upheld the District Court Judge's decision on appeal. At page 17 his Honour said:

"My conclusion as to the content of the video tapes does not differ from the conclusions of the District Court Judge earlier set out. If the matter was one solely for my personal view to prevail I should have no hesitation in stating that the importation of these video tapes was an importation of documents which were indecent and injurious to the public good. It is not, however, a matter for my personal view and rightly so. If asked I should declare a large number of television programmes exhibited today to be injurious to the public good. I believe that the impact of audio visual film or video is so great that quite different standards should apply to them from those which may be appropriate to books. My views may well be quite different from the views of other Judges. Those differences become irrelevant if a Judge decides a matter on evidence before him and not on his purely personal impression.

Hence I substantially discount my purely personal views obtained from viewing the video tapes. I am simply unaware as to whether these tapes or any of them describe, depict, express or otherwise deal with matters of sex, horror, crime, cruelty or violence *in a manner* that is *injurious* to the public good. This onus of proof was on the Collector of Customs. It may well be that evidence could have been produced persuading me of the view but it has not been done."

5. Decisions of the High Court are of course, binding upon the Tribunal. The ratio of this case is that depictions of explicit sex, including those depicting some elements of bondage, are not *necessarily* indecent, ie, they are not necessarily injurious to the public good.

6. I can advise the Tribunal that Lawrence Publishing does not import "Drummer" in commercial quantities. In fact the company would dispute that it "imports" the magazine in a technical sense at all. Lawrence has a reciprocal arrangement with overseas publishers whereby each publisher swaps a copy of their own magazine in return for a copy of the others. This is how the company obtains its copy of "Drummer". Nevertheless the company does not regard the publication as being injurious to the public good. The magazine deals with and depicts acts between consenting adults and the company would uphold the rights of such people to gain information from others similarly inclined. The market in New Zealand for such publications would be extremely small. It is difficult to see how a small number of such publications can be injurious to the public good in general."

The Tribunal has given very careful consideration to the submission made by Mr Ireland and we have read the additional material which he presented for the Tribunal's consideration.

After reviewing its earlier decisions and measuring those against those submissions made by Mr Ireland and the evidence earlier presented to the Tribunal by Mr Logan, the Tribunal's view of this type of material remains unchanged. The Tribunal is satisfied that the presentation of the theme of bondage and sado-masochism in the way that it is done in the magazine *Drummer* before the Tribunal is plainly injurious to the public good. The Tribunal accordingly classifies both of these volumes as unconditionally indecent.

Mach

The Tribunal had before it four copies of this magazine, which is very much along the same lines as *Drummer*.

For the same reasons as stated by the Tribunal in this decision

in relation to the publication *Drummer*, the Tribunal finds each of these editions of *Mach* to be unconditionally indecent.

New Directions, Lovebirds, Playbirds and Companion

These are all glossy girly type publications with photographs, stories, articles, jokes, cartoons, letters and advertisements. The bulk of the material deals with the female nude and/or sexual activity.

Each of the magazines places particular emphasis in the photographic sections of the female nude on the genitalia which although falling just short of justifying an indecent classification are indicative of the rather sexually tawdry nature of these magazines. Those features which bring about an unconditionally indecent classification, are that in each of the magazines various lesbian acts and/or heterosexual scenarios are depicted in which there is a high degree of sexual intimacy. The magazines have nothing to commend them by way of literary, artistic or social merit which might otherwise balance the tawdry content and the Tribunal classifies each of these magazines as unconditionally indecent.

Dated at Wellington this 27th day of May 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.
908817

Decision No. 20/88

Reference No.: IND 11/88

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 publication: *Drummer*, No. 112; Published by Desmodus Inc., USA:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 11th day of April 1988.

Appearances: M. J. Wotherspoon for Comptroller of Customs and G. A. Ireland, counsel for Lawrence Publishing Company of New Zealand Ltd.

Decision

This publication was commercially imported at Auckland in January 1988. The Collector of Customs at Auckland seized the magazine and the importer subsequently disputed forfeiture. The magazine has therefore been submitted to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966. At the Tribunal hearing on 11 and 12 April 1988 other issues of this particular magazine were before the Tribunal for consideration. For the reasons expressed in Decision No. 19/88 the Tribunal finds this issue of *Drummer* to be injurious to the public good and classifies it as unconditionally indecent.

Dated at Wellington this 13th day of June 1988.

R. R. KEARNEY, Chairman.
Indecent Publications Tribunal.
908818

Decision No. 21/88

Reference No.: IND 10/86

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 publication: *Adult Fantasy*, Vol. 2, No. 2; *Parade*, Vol. 3, No. 7; *Glamour Girls*, Issue 1; *Park Lane*, New Issue, No. 1; *Model Celebrities*, Issue 11.:

Chairman: Judge R. R. Kearney.