

Decision No. 27/88
Reference No.: IND 29/87

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: *Men Loving Men*:

Chairman: Judge R. R. Kearney.

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

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

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

Majority Decision of Judge R. R. Kearney, R. Barrington and A. J. Graham

This publication was privately imported at Wellington Airport and seized by the Collector of Customs, Wellington. The importer disputed forfeiture and the book has been referred to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Men Loving Men was considered by the Tribunal in June 1983 and in Decision No. 1065 it was classified as unconditionally indecent because it promoted and encouraged homosexual activity of a kind which was at that time a criminal offence in New Zealand. The Comptroller of Customs in his submission presented by Mr Wotherspoon sought a reconsideration by the Tribunal in respect of this publication in view of the major change to the law in relation to homosexual activity since the decision was issued.

Before dealing with the merits of the application there is a jurisdictional question which I need to consider.

Section 20 (1) of the Indecent Publications Act 1963 provides:

"20. Reconsideration of books and sound recordings—

(1) Any person, with the leave of the Minister or, if such leave is refused, with the leave of the Chairman of the Tribunal, may submit any book or sound recording to the Tribunal for reconsideration of any decision, classification, or determination made in respect of it if not less than 3 years have elapsed since that book or recording was last considered by the Tribunal or [the High Court], and the Tribunal may alter or confirm the previous decision, classification, or determination.

The application for a decision in respect of this particular publication was lodged with the Tribunal on 9 December 1987 and signed by the Assistant Comptroller of Customs. There is nothing on the Justice department file to show that the Minister of Justice has granted leave for this publication to be submitted for the Tribunal's reconsideration. I have little doubt that the Minister would have granted such leave in the circumstances but as the matter was not referred to him the statutory power which I have to grant such leave is in such a case not available to me. I simply record that in the unlikely event of the Minister refusing such leave I would have in terms of the authority given to me under section 20 (1) granted leave for such a submission to be made.

Mr Ireland, counsel for Lawrence Publishing in addition to oral submissions which he made presented a memorandum of submissions to the Tribunal and I set out hereunder those submissions in full:

"1. Lawrence Publishing represents in New Zealand Gay Sunshine Press the publisher of *Men Loving Men*. The book was previously considered by the Tribunal, together with *The Joy of Gay Sex*, in decision 37/82 dated 7 June 1983. In that decision both books were described as "... Homosexual sex manuals, akin to the style of heterosexual sex manuals, such as *The Joy of Sex*. They

cover all aspects of homosexual relations from physical lovemaking to the emotional considerations of such relationships. Both books are presented in a serious restrained manner." It is submitted that this is an accurate description of *Men Loving Men* and that although the book is now more than 10 years old it contains much useful information that should be available to gay men. The reason given for the Tribunal classifying the book previously as unconditionally indecent was that it "promoted and encouraged homosexual activity ... which, of course, is a criminal offence in New Zealand thereby liable to corrupt persons who might read them." It is submitted that these reasons are now not applicable and should not be followed.

2. The Tribunal may consider that an age restriction may be appropriate. It is my submission that the book may be useful to young people coming to terms with their sexuality and that the book should be available to persons aged 16 years and over being the age of consent."

Mr Ireland called two witnesses to give evidence in support of his submission that the Tribunal should reclassify *Men Loving Men* as indecent in the hands of persons under the age of 16 years. The first of those witnesses was Dr J. A. Broadmore a doctor of medicine, a member of the New Zealand Association of Sexologists and a doctor who works with rape victims and at the Aids clinic in Wellington. Dr Broadmore told the Tribunal that in her opinion the book aimed to give help and information to men and laid particular emphasis on the loving relationships which can be developed between homosexual men. Dr Broadmore's opinion of the publication was that although it was published in 1977 before Aids became the worldwide problem which it presents today and therefore carries no information about Aids or safe sex to prevent Aids it was nevertheless a tender and caring presentation of homosexual relationships and of considerable importance to the male homosexual community.

Mr W. K. Logan has spent many years working for the homosexual members of the community and is presently the longest serving member of the telephone switchboard counselling service in Wellington. In addition he is a founder member of the Aids Foundation. Mr Logan supported the granting of an age restriction to this publication although he acknowledged that it was somewhat dated in the presentation of certain of its material. In answer to a question from Ms Hulme, Mr Logan advised the Tribunal that as far as he was aware there was no book available which addressed the whole question of homosexual relationships and covered at the same time the question of Aids prevention and the problems associated with intravenous drug taking.

The Tribunal is unanimous in its view that the publication contains a great deal of information which would be helpful to those either in or contemplating commencing homosexual relationships. The publication is obviously one which has been very well researched and is sympathetically presented. There are however certain features in relation to it which concern the Tribunal and which in the final result have led the majority of the Tribunal to reach the conclusion that the original classification of unconditionally indecent must stand.

The first matter of concern is that the publication is now 11 years old and does not contain any treatment of the subject of Aids and the steps to be taken to avoid contamination by it. In that regard there is a section of the book devoted to group sex activities which would not be presented in the same format if the book were to be republished today.

The second aspect of the book which caused all members concern but which resulted in the majority reaching its decision not to change the classification was the section on S and M dealing with power roles, domination, discipline and sado-masochism. The Tribunal over the years has been consistent in its rejection of this type of material because it is