

satisfied that it carries with it a real potential for harm to some individuals and is generally injurious to the public good.

Finally there is a very brief section on drugs as a means of enhancing sexual pleasure and although the editors stress the need to exercise caution in respect of such matters the Tribunal is satisfied that the inclusion of that particular material is also potentially dangerous to some individuals within the community and therefore injurious to the public good.

As previously indicated the majority of the Tribunal is satisfied that it would not be in the interests of the community to change the classification and it confirms its previous classification in terms of section 20 (1) of the Act as unconditionally indecent although not for the principal reasons advanced in relation to the earlier decision.

Dated at Wellington this 23rd day of June 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

go11439

Decision No. 28/88

Reference No.: IND 21/87

Before the Indecent Publications Tribunal

In the matter of the Indecent Publications Act 1962, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publication: *Genesis*, October 1987.

Chairman: Judge R. R. Kearney.

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

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

Appearances: M. J. Wotherspoon for Comptroller of Customs. G. F. Ellis, counsel for Publisher and Distributor.

Decision

This publication was imported by Gordon & Gotch (NZ) Ltd., through the port of Auckland as a sample shipment and referred to the Collector of Customs by the importer. In order that the publication could be placed before the Tribunal the document was in effect seized by the Collector of Customs and the importer having disputed forfeiture the magazine has been submitted to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

The magazine is as described by Mr Wotherspoon on behalf of the Comptroller of Customs a *Penthouse* type publication with a range of articles, letters, photographs, interviews and that which has caused the Tribunal some concern a video review section.

The majority of the photographs in the magazine are of naked or semi-naked females in largely unobjectionable poses. There are however a minimum number of photographs in which the genitalia are exposed and the models pose in contrived positions. The Comptroller of Customs is concerned with the article "Video X: Couples Films" which is a review on X-rated videotapes available in the United States. This particular video review has been the subject of comment by the Tribunal in other decisions and in Decision 12/84 the Tribunal stated "there are photographs (mostly in the section dealing with reviews of X-rated videos) which would probably fail the "tripartite test" developed in respect of *Penthouse*. However there is only one such picture in each of the four issues. In the main, the photographs are reasonably restrained and are no worse than those which would appear in pictorial sections of *Penthouse* and while accepting that the photographs are of a type to which we have objected they are very different in size, detail and number."

The Tribunal is concerned to note that the number of

photographs in this section which are at least borderline have increased.

Mr Ellis on behalf of the publisher and distributor points out that the magazine which has previously received an R18 classification has remained constant in the balance of material and he further submits that a serial order should be granted by the Tribunal once sufficient copies of the magazine have been reviewed. In his written submission to the Tribunal Mr Ellis states:

"As in the previous submissions attached, it is again submitted that such instances as there may be of "multiplicity" and "intimacy" are incidental and in their context unobjectionable. Those items alone do not set the tone or dominant effect of the magazine and, it is submitted, do not on their own justify total censorship when the great bulk of the contents are, on the basis of previous decisions and criteria, acceptable with an age restriction.

Counsel also refers to the Tribunal's Decision Number 11/86 in respect of the publication *Genesis Girls/Girls*, Spring 1986. That magazine from the same Publishing House is indicative of the typical and consistent standard of *Genesis* in its pictorial presentations of female nudity. In that Decision, the Tribunal said:

"A proportion of those presentations are of the sexually contrived pose but in the main they are not as explicit as many of the photographs in *High Society*. The literary content is trivial and largely unobjectionable. The Tribunal is satisfied that the explicitness of some of the poses justifies that it be classified as indecent in the hands of persons under the age of 18".

Counsel submits that a classification of R18 is again appropriate."

The Tribunal has asked Mr Ellis to enquire of the publishers what steps the publishers are prepared to take if any to meet the concerns of the Tribunal for example by deleting from the magazine for the New Zealand market the whole of the video review section or including such a review but with the material censored to meet the concerns of the Tribunal.

The Tribunal is satisfied that this magazine contains material which would be injurious to the younger reader and accordingly classifies it as indecent in the hands of persons under the age of 18 years. At the request of both the Comptroller of Customs and the publisher and distributor the Tribunal is prepared to make an interim restriction order in terms of section 14A of the Indecent Publications Act 1963 and will give final consideration to imposing a serial order on the publication when the further issues are available for consideration by the Tribunal as required by section 15A of the Act.

Dated at Wellington this 23rd day of June 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

go11440

Decision No. 29/88

Reference No.: IND 1/88

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*, Issue 110, published by: Desmodus Inc., USA:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 14th day of April 1987.