

to be Acting District Court Judges, to exercise civil and criminal jurisdiction in New Zealand and the jurisdiction of the Children and Young Persons Courts for a term of 2 years on and from 13 October 1988.

Dated at Wellington this 13th day of October 1988.

GEOFFREY PALMER, Minister of Justice.

go12286

Indecent Publications Act 1963

Decision No. 37/88

Reference No.: IND 29/88

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 publications: *Drummer* 116; *Friction* July '88; *Colt Studio Presents* No. 11:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 28th day of July 1988.

Appearances: M. J. Wotherspoon for Comptroller of Customs. No appearance on behalf of importer.

Decision

Although there was no appearance on behalf of the importer, the Tribunal received a letter from Mr Ireland, counsel for the importer, explaining why he was unable to make submissions on behalf of the importer in person, and accompanying that letter Mr Ireland provided the Tribunal with a memorandum of his submission on behalf of Lawrence Publishing Co of NZ Ltd. Those submissions were considered by the Tribunal, along with the submissions presented by Mr Wotherspoon on behalf of the Comptroller.

These magazines were commercially imported through parcels post at Auckland on 25 May 1988 and were seized by the Collector of Customs at Auckland. The importer has subsequently disputed forfeiture and the publications have been referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Drummer 116

The Comptroller of Customs, in his submission, draws to the attention of the Tribunal the numerous occasions in the past when a *Drummer* publication has been submitted for consideration and classification. In particular, the Comptroller draws the Tribunal's attention to the emphasis on bondage and sado-masochism as referred to by the Tribunal in its Decisions 20/87 and 19/88. Mr Wotherspoon, in his submission, invites the Tribunal to consider that this particular issue has throughout its articles and photographs which depict bondage and sado-masochism and submits to the Tribunal that this is also an issue which should be considered as unconditionally indecent. Mr Ireland in his memorandum of submissions refers the Tribunal to the submission presented by him on 12 April this year in respect of other issues of *Drummer*, and reminds the Tribunal that its Decision 20/87 in respect of Issue 104 of *Drummer* is presently the subject of an appeal, and that appeal has yet to be set down for hearing. In his memorandum of submissions Mr Ireland states:

"Lawrence Publishing has appealed Decision 20/87 (issue 104) since it feels the Tribunal has not given full and proper consideration as to how representations of sado-masochism or bondage are injurious to the public good. *Drummer* is a long-running news entertainment magazine "for the complete leatherman". It is published monthly.

In the April submission I quoted from "Men loving men" for

the authors' view on S & M, in particular, their comment that "as usually practiced [it] is entirely voluntary and of equal pleasure and sharing for both partners". Other writers on gay sexuality have similar views. For example Dr Charles Silverstein and the acclaimed writer Edmund White note in their work "The joy of gay sex" that S & M and bondage is essentially a role playing exercise relating to tough guy, good versus bad fantasies. They say, like cowboy fantasies, and we might add current parallels of Rambo, Robocop, etc, few act them out, "most men who are into S & M are not into real violence". The writers conclude the whole leather, S & M, bondage scene for those so inclined is "an exciting arena for ritual and sensual ceremony".

I ask that the Tribunal reconsider its attitude to such issues. If the Tribunal feels inclined towards an unconditionally indecent classification again, I ask that along with a R18 restriction, you may feel less unease if circulation restrictions are also imposed, for example, not to be displayed for sale or that the publication be only available by mail order."

The Tribunal has given very careful consideration to Mr Ireland's submission, as it has on previous occasions, but it remains firm and unanimous in its view that the presentation of sado-masochism and bondage in this particular publication is clearly injurious to the public good. The Tribunal considered whether it should defer the classification of this particular volume until after the appeal decision in respect of Issue 104 had been delivered, but it was decided that it was more appropriate for this decision to be delivered at this time. In the event that the appeal decision is favourable to the appellant, then this issue of *Drummer* and any other issues which have been declared by the Tribunal to be unconditionally indecent can be referred back for reconsideration and classification.

Friction July '88

This publication contains mainly fictitious stories of homosexual encounters, along with a number of letters and advertisements. The pictorial sequences are largely of black and white sketches and photographs of single males. The Tribunal agrees with the submission of Mr Wotherspoon on behalf of the Comptroller of Customs that this particular publication is more carefully presented and there is a lack of genital manipulation or multiple model scenes which are frequently found in other homosexual publications. Mr Ireland in his submission advises the Tribunal that this particular monthly magazine, first published in April 1987, had not previously been before the Tribunal for consideration and classification. Both Mr Ireland and Mr Wotherspoon submit to the Tribunal that an age classification is appropriate, and the Tribunal is in agreement with those submissions. The Tribunal accordingly classifies this publication as indecent in the hands of persons under the age of 18 years.

Colt Studio Presents No. 11

Previous issues of this publication have been classified as indecent in the hands of persons under the age of 18 years and Mr Wotherspoon, in his submission draws the attention of the Tribunal to some of the photographs which show naked males with straps tightly bound around the genitals. There are also several photographs of models who have nipple or genital piercings displayed.

In his submission Mr Ireland advises the Tribunal that this particular publication retails for \$25.00 in the Out Bookshop. Mr Ireland submits that this is a quality colour production and that all that is required in respect of it is an R18 classification. The Tribunal, whilst expressing once again its concern at the portrayal of males with their genitals strapped in the way described and genitals showing piercing, is satisfied that such depiction is not of a kind as to justify a totally indecent classification, as has in fact been applied to magazines which have a predominant display of such material.

The Tribunal accordingly is satisfied that this material is harmful to the younger reader and classifies this particular