

1987; *Genesis*, August 1987; *Genesis*, November 1987; *Genesis*, February 1988; *Genesis*, June 1988; *Oriental Kittens*, Vol. 3, No. 2; *Oriental Kittens*, Vol. 4, No. 3; *Oriental Delight*, No. 11, October 1982; *Oriental Delight*, Vol. 15, November 1984; *Black and Tan*, Vol. 4, No. 1, August 1977; *Hong Kong Hookers*, No. 4, 1981; *Asian Dolls*, No. 5, February 1986; *China Lady*, No. 1, 1983:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 26th day of April 1989.

Appearances: M. J. Wotherspoon for Comptroller of Customs, G. Ellis for Gordon and Gotch (NZ) Ltd. No appearance on behalf of importer.

Decision

These publications were either imported through the port of Auckland or seized at the importers private address or his second-hand booksellers shop in or about the month of August 1988. The Collector of Customs having seized these publications 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.

Mr Ellis, counsel for Gordon and Gotch (NZ) Ltd., advised the Tribunal that he wished to be heard in respect of the publications *Gem* and *Genesis* which appear in the list of matters subject for consideration by the Tribunal on this particular file. For reasons which will later become obvious we deal with those particular publications at the end of this decision.

Some of the publications were quite modest in the presentation of the naked female figure but they nevertheless were of a nature which would be in the Tribunals decision injurious to younger readers. For each of the following publications the Tribunal has granted a classification of indecent in the hands of persons under the age of 16 years.

Golden Girls, No. 5.

Bra Busters, No. 2.

Naked Nymphs.

The publications *Oui*, April 1974 and *Oui*, January 1975 are as indicated by their date of issue old publications and the Tribunals are satisfied they do contain material of a kind which would be injurious to younger readers and classifies each of these as injurious to persons under the age 18 years. For the same reason the Tribunal classifies the following 2 publications as indecent in the hands of persons under the age of 18 years.

Joy Stickers, No. 5.

Black and Tan, Vol. 1, No. 4, August 1977.

The Tribunal classifies the following list of publications as unconditionally indecent for the reasons briefly stated hereunder.

Oriental Kittens, Vol. 3, No. 2.

Oriental Kittens, Vol. 4, No. 3.

Oriental Delight, No. 11, October 1982.

Oriental Delight, No. 15, November 1984.

Hong Kong Hookers, Vol. 4, 1981.

Asian Dolls, No. 5, February 1986.

China Lady, No. 1, 1983.

These 7 publications depict nude or near naked oriental female models with many of the photographs showing an explicit genital emphasis. The magazines contain verbal text and very little which could be considered of a redeeming nature. The books depict models in poses of masturbation and some of the issues shows models either inserting or using sexually stimulating articles in their vagina.

Gem, October 1986 and *Gem*, April 1988

In addition to those 2 volumes of *Gem* the Tribunal had before it at this sitting under file No. 12/89, *Gem*, Vol. 30, No. 4, January 1989. Mr Ellis advised the Tribunal that these copies of *Gem*, although not specifically imported by his client, would have previously been distributed under what was an informal classification of indecent in the hands of persons under the age of 18 years. That was a procedure which prevailed until early in 1988 when the Customs Department's attention was drawn to the fact that it had no power to give informal classifications, only to refer matters which might require classification to the Tribunal for that purpose. Mr Ellis submitted to the Tribunal that it had now seen sufficient copies of *Gem* to enable it to make a serial restriction order in terms of section 15A of the Indecent Publications Act 1963. Mr Wotherspoon advised the Tribunal that the Comptroller of Customs would not oppose the making of such an order if the Tribunal considered that appropriate.

The Tribunal is satisfied that there is material in each of publications of *Gem* before it at this sitting of a nature which would be injurious to younger readers and classifies each of these publications as indecent in the hands of persons under the age of 18 years. The Tribunal is also satisfied that Mr Ellis is correct in his submission that there is such a consistency of production in respect of this magazine that it should be granted a serial restriction order. The Tribunal accordingly issues a restriction order in respect of the serial publication of the magazine *Gem*. That serial restriction order classifies each such publication as indecent in the hands of persons under the age of 18 years.

Genesis

In addition to the publications under this particular file 4/89 the Tribunal had also had before it *Genesis*, Vol. 16, No. 3, October 1988 and *Genesis*, Vol. 16, No. 4, November 1988, under file 15/89 for which a decision will later be issued.

As Mr Ellis and his client Gordon and Gotch (NZ) Ltd. and the American publishers of the magazine have been aware for some time, the Tribunal has been concerned about one particular segment of this publication. That segment is a short sequence of photographs with a small piece of accompanying text dealing with video reviews or extracts from such videos. That section contains pictures of heterosexual and lesbian sexual activity and the Tribunal has previously indicated that it would not be prepared to grant a serial restriction order for that publication because of the continued inclusion of the video section.

In December 1988, Mr Ellis confirmed to the Tribunal that the publishers had very responsibly indicated that they were prepared to overprint the video section which was a cause of concern to the Tribunal in such a way as to effectively mask its content. In the light of that undertaking Mr Wotherspoon has advised the Tribunal that the Comptroller of Customs would support the making of a serial restriction order in terms of section 15A.

The Tribunal is satisfied that the publication *Genesis* contains material which would be injurious to younger readers and accepting that the undertaking will be carried out within a matter of months by the publisher, it classifies each of the editions before it at this meeting and outstanding from its December meeting, as indecent in the hands of persons under the age of 18 years. The Tribunal for the same reason, is satisfied that the publication can now be granted a serial restriction order in terms of section 15A of the Indecent Publications Act 1963, and it classifies the publication *Genesis* in terms of that section as indecent in the hands of persons under the age of 18 years.

Dated at Wellington this 3rd day of May 1989.