

Although there was no appearance by or on behalf of the importer at the hearing of the Tribunal the Tribunal received and considered a written submission provided by the importer and attached to that submission were a number of exhibits which were likewise read and considered by the Tribunal.

When this publication originally came before the Tribunal at its sitting on 20 February 1990 a final decision could not be reached by the members as a number of the members had not had the opportunity to consider the publication in any depth. Since that time all members have read the publication and the Tribunal is now in a position where it can bring down a classification in respect of the matter.

This publication as the name suggests gives some detailed descriptions of methods which might be employed to carry out frauds involving such areas as travel, business takeovers, credit cards, real estate and the like. A significant number of decisions issued by the Tribunal over recent years have found that publications which advocate what would be on the face of it appear to be criminal activity are unconditionally indecent as being injurious to the public good. In respect of this publication however the Tribunal is satisfied that the material contained therein is somewhat innocuous and perhaps even long out of date and there seems little danger, if any, that the publication would be the basis of criminal activity by any of its readers.

The Tribunal also notes that this is a single issue importation brought into New Zealand by a private importer and we are satisfied from the evidence of that importer provided in his written submission that he has no intention to use the document for any criminal purpose. The Tribunal accordingly classifies this publication as not indecent.

Dated at Wellington this 29th day of May 1990.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.  
go9792

Decision No. 16/90

Reference No.: IND 15/90

### 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: *Green Field Of Summer*. Publishers: Creators 1987 Japan:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 23rd day of May 1990.

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

### Decision

Although there was no appearance by or on behalf of the importer the Tribunal had received and considered a short submission from that person. The publication was privately imported through parcel post Auckland on 11 January 1990. The publication having been seized by the Collector of Customs the importer subsequently disputed forfeiture and the publication was referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

As pointed out by Mr Wotherspoon on behalf of the Comptroller of Customs an attempt had been made by the person sending the publication to disguise the actual content by placing it inside the pages of another magazine of a completely innocuous nature.

The magazine features a single male model in various poses and various stages of undress. The Tribunal members were all in agreement that the production was of a very high standard

and the photographs were beautifully presented in terms of their technical production and many of them would be classified as top quality art.

That feature of the magazine which caused the Comptroller of Customs to refer the matter to the Tribunal is that the model is in some of the photographs, although the genitalia has been deliberately obscured, in the process of masturbation and in one photo ejaculation is depicted.

Over the past 2 or 3 years the Tribunal has on a number of occasions had witnesses appear and also received written evidence from others advocating a restricted classification in respect of magazines depicting a single male model either holding or manipulating his penis in a pose of masturbation and those witnesses and those persons making submissions have directed the Tribunal's attention to what they perceive as a very real urgent need for the male homosexual community to have available to it magazines of this kind as against magazines illustrating anal intercourse. In a number of decisions over that same period the Tribunal has classified as unconditionally indecent magazines which depict male masturbation and ejaculation but it is fair to say that some of those decisions have been borderline and have almost invariably been reached because there has been little else about the publication which in any way might ameliorate the rather gross and crude presentation shown in the photographs.

In reaching a conclusion that this particular magazine should be classified as indecent in the hands of persons under the age of 18 years the Tribunal has taken into account a number of factors including:

1. That the publication is a high-quality production and would be quite obviously a very expensive magazine to purchase.
2. That the majority of the photographs depict a nude model in artistic poses which do not have sexual overtones.
3. That in those photographs which might otherwise be objectionable there has been a deliberate attempt by the publisher to mask the genital region.
4. That this is a one-off importation and not a commercial venture.

Insofar as that final matter is concerned, the Tribunal acknowledges that there is nothing to prevent the commercial importation of this magazine but even if that were a factor in this particular case it would not affect the Tribunal's ultimate decision to classify the book as it does as indecent in the hands of persons under the age of 18 years.

Dated at Wellington this 29th day of May 1990.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.  
go9793

Decision No. 17/90

Reference No.: IND 18/90

### Application for an Ex-Parte Interim Restriction Order

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 an application pursuant to section 14A of the Indecent Publications Act 1963, in respect of the following publication: *Birth Control*. Publishers: Franklin Watts, New York:

### Interim Decision

The Comptroller of Customs has presented this publication to the Tribunal for consideration of the granting of an interim restriction order, this publication having been imported through the port of Auckland on behalf of the Auckland City Libraries. The publication was seized by the Collector of