

Dated at Wellington this 13th day of September 1990.

W. P. JEFFRIES, Minister of Justice.

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Indecent Publications Act 1963

Decision No. 52/90

Reference No.: IND 29/90

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 publications: *Wicked Women*, Vol. 1; *Wicked Women*, Vol. 1, No. 6; *Wicked Women*, Vol. 1, No. 8. Publisher: Wicked Women Publications:

Chairperson: P. J. Cartwright.

Members: R. E. Barrington, W. K. Hastings, and S. C. Middleton.

Hearing at Wellington on the 28th day of June 1990.

Appearances: No appearance by or on behalf of the importer. P. Parkinson (in support of written submissions filed by Allanah Ryan on behalf of the Lesbian and Gay Archives of New Zealand). M. J. Wotherspoon on behalf of the Comptroller of Customs.

Decision

These publications were submitted by the importer to the Collector of Customs, Auckland with a request that they be placed before the Indecent Publications Tribunal for classification.

Background

The background to the referral of these publications to the Tribunal is explained in a brief written submission by G. A. Ireland, counsel for the Lawrence Publishing Company NZ Limited. Mr Ireland described *Wicked Women*, published in Sydney, as being an erotic lesbian magazine. He explained that the editors of *Wicked Women* wrote to his client company asking for advice on how to obtain a classification for the magazine because the editors were interested in distributing it in New Zealand. The company asked the editors to supply 3 different recent issues of *Wicked Women* to enable them to be referred to the Tribunal for consideration and for the seeking of a serial restriction order. It is on this basis that these publications have been referred to the Tribunal. In concluding his brief memorandum of submissions Mr Ireland indicated that A. Ryan and P. Parkinson would be making submissions to the Tribunal on these publications and that the Lawrence Publishing Company supported those submissions.

In support of the written submission filed by Allanah Ryan, Mr Parkinson, a professional librarian, urged the Tribunal to apply an age restriction classification to the publication rather than to classify them as being unconditionally indecent. Mr Parkinson commended to the Tribunal equality of treatment in the classification of these magazines. Mr Parkinson can be assured that the past approach of the Tribunal in not making any distinction in respect of any particular sexual orientation will continue to be applied. Mr Parkinson referred to some of the matters to be taken into consideration by the Tribunal under section 11 of the Act. He considered the dominant effect of these magazines was one of arousal only. In the context of literary or artistic merit Mr Parkinson considered that the magazines contained plenty of worth-while comment, both social and otherwise, on a variety of subjects. At \$5 the price was not excessive. He considered it was unlikely that the magazines would flood into corner dairies. Furthermore because of the specialised audience for whom the magazines had been produced, Mr Parkinson argued that people in general were unlikely to be corrupted by reading these

magazines. The Tribunal wishes to record its appreciation to Mr Parkinson for his helpful submissions.

In her written submission on behalf of the Lesbian and Gay Archives of New Zealand, Allanah Ryan explained that she is a lecturer in sociology at Massey University. Her teaching and research interests are in the areas of gender and sexual relations. She explained that she has published several articles on pornography and recently edited an issue of *Sites* (a journal addressing cultural politics) on sexual politics in New Zealand. Currently Ms Ryan explained that she is enrolled in a Ph.D. on AIDS and safe sex and is investigating various aspects of sexual desire, relationships and signification around this topic.

For the Comptroller of Customs Mr Wotherspoon explained that these publications are directed to the lesbian market, are sado-masochistic in nature and contain some photographs of bondage, spanking and multiple models. The articles and letters and the publications themselves are in the main of a sexual nature, Mr Wotherspoon submitted. Taking the magazines as a whole it was Mr Wotherspoon's view that an age restriction may be more appropriate than an unconditionally indecent classification. In concluding his brief submission Mr Wotherspoon indicated his belief that this was the first occasion on which publications of the nature of *Wicked Women* had come before the Tribunal. He indicated also that there had been considerable debate among the officers of his department before their submission was refined.

In discussing the factors which she expected would be taken into account in the classification of *Wicked Women*, Ms Ryan conceded that "the tripartite test" includes mention of "multiple model scenes which depict lesbian acts". Ms Ryan asked for it to be noted that there is a very real difference between material that is produced in the context of pornographic magazines for the titillation of heterosexual men and magazines which are produced by, and for lesbians. Further Ms Ryan asked for it to be noted that the intended audience for *Wicked Women* is among lesbian women. She said there is not a large commercial market for this magazine because it is unlikely to appeal to heterosexual men who might in other contexts find sexual pleasure in lesbian sexual images. In relation to the issue of "the public good" Ms Ryan put forward the view that the public good should not be an issue in this context because the magazine is unlikely to be widely available outside of a section of the self-defined lesbian community.

Ms Ryan argued that there were 3 very strong reasons why the Indecent Publications Tribunal should find these publications not indecent. She said:

"4.1 The sexual content of magazines by, and for, lesbians plays an affirming role for lesbians. Most images of lesbianism and lesbian sex in the mainstream media are of the kind that depict it as at best a lesser option than heterosexual relations and at worst as depraved, sick and perverted. Lesbians using sexual material designed by, and for them, are able to take pleasure in their sexuality. It is one of the few places where, in semi-public context, lesbians see expressed their lives as they are lived and desired. These publications may play a particularly important role among young lesbians who, familiar only with the stereotypes and negative imagery that abounds around lesbianism, will see in magazines such as *Wild Women* (sic) affirmation of their sexual preference and positive models for being sexually active. Lesbian-affirming magazines therefore have an important role to play in the development among young lesbians of self-esteem and a sense of their place among a community of women.

4.2 Most lesbian sex magazines not only contain images and stories designed to arouse, but also carry discussion of the role of sexuality and sexual images in lesbian lives. There are often detailed debates about the role of different