

the female anatomy. Noting that previous editions of most of these magazines had been considered by the Tribunal in the past and classified as indecent in the hands of persons under the age of 18 years, Mr Wotherspoon in his submission to the Tribunal on behalf of the Comptroller of Customs suggested that the Tribunal might likewise consider classifying these publications as indecent in the hands of persons under the age of 18 years.

In a brief written submission presented prior to the sitting of the Tribunal, Mr Cheeseman identified 4 of these publications as being further issues of titles which were given an R18 classification in decision No. 47/89.

All of these publications concentrate on the female genital area and the photographs, almost without exception, to use the words of the writers of minority decision No. 47/89 (1) have "... photographs of women with their legs displayed in the most torturous positions with their fingers straining open the outer lids of their vulva lips to concentrate as much of readers attention as possible, on the inner vaginal area, and if it were possible up to the cervix of the vaginal canal; . ." The Tribunal endorses the view expressed in decision 47/89, that if the prescription within which the Tribunal acted contained a provision that material which was demeaning of women could, in appropriate cases, be considered unconditionally indecent, then probably all of these publications would receive an unconditionally indecent classification. Therefore, in the light of decision No. 47/89 and previous decisions, the Tribunal is unable to find that these particular publications are injurious to older readers and accordingly classifies each as indecent in the hands of persons under the age of 18 years.

In respect of all of these publications the Tribunal adds the further restriction on their sale or distribution that none of them be publicly displayed.

Dated at Wellington this 19th day of July 1990.

P. J. CARTWRIGHT, Chairperson.

Indecent Publications Tribunal. 5
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Decision No. 39/90

Reference No.: IND 35/90

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: *Coping With Birth Control*. Publisher: The Rosen Publishing Group, New York; *Teen Guide to Birth Control*, Publisher: Franklin Watts, London:

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

Decision

On or about 28 February 1990 these 2 publications were commercially imported for Whitcoulls Ltd. Having been seized by the Collector of Customs the importer subsequently disputed forfeiture. Upon application being made to the then chairman of the Tribunal, Judge R. R. Kearney made an interim restriction order under section 14A of the Act classifying these 2 publications as indecent in the hands of persons under the age of 16 years.

These publications are informative books containing detailed information on the various methods of birth control. The publications now come before the Tribunal for a substantive classification.

A written submission, dated 26 June 1990, was presented by the Wellington Public Library but unfortunately it was not received in the office of the Tribunals Division of the Justice Department until Friday, 29 June 1990, 1 day after the sitting of the Tribunal on 28 June 1990. It is appropriate that this submission be reproduced in full:

"We have just today received formal notice that the Indecent Publications Tribunal will consider on 28 June 2 titles that we ordered through Whitcoulls from overseas publishers.

These titles from your 5 June 1990 list are:

102 35/90 *Coping With Birth Control*.

103 35/90 *Teen Guide to Birth Control*.

We understand from a telephone conversation with a member of your staff that the chairman has given these books an (R16) rating which will be confirmed by the Tribunal.

Under the terms of the Contraception, Sterilisation and Abortion Act this may appear to be an appropriate ruling, however we do see some anomalies in the application of such rulings and believe that the Tribunal may be interested in the practical implications for libraries.

The content of these particular books is obvious from the titles. There are however many books available to young adults (the term used in libraries to denote persons between the ages of 12 and 18) which contain the same information but within other contexts, for example 'teen' magazines and books on leaving home, puberty, health and growing up.

Similar information is available also within books held in our general collections. Articles in encyclopaedias are a simple example, but either instances are to be found in books on health and lifestyle, books on general science and books in some areas of the social sciences.

It has never been suggested that these items should be removed from libraries or that any form of restriction should be placed upon their use. The latter would be impracticable.

The difficulty that we experience in this area stems from the interpretation that the Tribunal has placed upon the term 'instruct' in the Contraception, Sterilisation and Abortion Act. The view of libraries has been that the Act was intended to discourage active instruction (with or without persuasion) not to put barriers in the way of information to the individual inquirer.

Legal opinion given to us at the time of the passing of the Act indicated that a binding interpretation would be achieved only through Court action; the issue has never been taken to this extreme.

I apologise again for the lateness of this submission."

The Tribunal acknowledges that some difficulties arise by virtue of section 3 of the Contraception, Sterilisation and Abortion Act 1977. However unless or until section 3 of that Act is repealed the Tribunal has no option other than to ensure that there is compliance.

This decision now formally endorses the interim decision and classifies these publications as indecent in the hands of persons under the age of 16 years. That age restriction is required because of the provisions of the Contraception, Sterilisation and Abortion Act 1977.

Dated at Wellington this 19th day of July 1990.

P. J. CARTWRIGHT, Chairperson.

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