

Hot Male Review, Vol. V, No. 6; *Skin Flicks*, Vol. 9, No. 4; *Dam Pumping Meat*.

These male homosexual magazines depicting explicit sexual activity are classified as unconditionally indecent.

Over 150 Pix of Eating Pussy, Vol. 1, No. 1.

This magazine depicting heterosexual and lesbian sexual activity is classified as unconditionally indecent.

Wet Snatch, Vol. 2, No. 3; *Busen 30*; *Punk Pussy*, Vol. 1, No. 1; *Tattoo*, Vol. 1, No. 1; *Oriental Tickle*, No. 1; *Carnal*, Vol. 1, No. 1.

These magazines depicting female models concentrate on the open vagina and each contains masturbation sequences or photographs and these publications are classified as unconditionally indecent.

Bizarre TV's, Vol. 1, No. 2.

This transvestite magazine contains photographs of bondage and oral sex which the Tribunal finds as unconditionally indecent.

Bound to Submit, Vol. 1, No. 3; *Heels of Dominations*, Vol. 1, No. 2; *Mistress of Domination*, Vol. 1, No. 2; *Reflections*, Vol. 10, No. 4; *Under Her Thumb*, Vol. 1, No. 3; *Women Who Dominate Men*, Vol. 1, No. 2.

All of these publications contain significant elements of bondage and domination of a nature which the Tribunal is satisfied is injurious to the public good and it classifies each of these publications as unconditionally indecent.

The importer has asked for a significant number of serial restriction orders and the Tribunal grants a serial restriction order in respect of the magazine *Girls Life*, classifying it as indecent in the hands of persons under the age of 16 years. In so far as the other magazines are concerned the Tribunal wishes to see further editions of those before it will reach a conclusion on whether a serial restriction order can be granted.

Dated at Wellington this 9th day of July 1990.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal. 5
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Decision No. 28/90

Reference No.: IND 64/89

Before the Indecent Publications Tribunal

In the matter of the Indecent Publications Act 1963, and in the matter of an application by the Society for Promotion of Community Standards Inc. for a decision in respect of the following publications: *Private Lives*, Vol. 1, Issues 2, 5 and 6. Publishers: Aotearoa Publishing and Distribution Ltd., Upper Hutt:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 28th day of November 1989 and the 20th day of February 1990.

Decision of R. E. Barrington to be Appended to the Majority Decision

This was an unusual case to come before the Tribunal in that P. M. Bartlett in her capacity as director of the Society for Protection of Community Standards Inc. was granted leave by the Minister of Justice for the society to submit issues of *Private Lives* for a decision as to whether the publication was indecent or not and for a decision on its classification. Most publications arrive before the Tribunal after the intending importer disputes the Customs Department seizure of their publication, so the majority of cases are between the Customs Department and individuals, importers, distributors or

publishers, not between a New Zealand organisation and a publisher.

In this particular instance the organisation, the Society for Promotion of Community Standards Inc., was represented by the Rev. Gordon Dempsey. The society chose not to employ legal counsel. The Upper Hutt publishing company, as defendants, were represented by experienced legal counsel, who provided written and oral submissions and called outside witnesses including the Chief Film Censor. The Chief Film Censor gave fulsome evidence, but the issues before the Tribunal were not argued in an equally balanced way as the Society for Promotion of Community Standards was represented only by lay individuals. The arguments before the Tribunal were not fully tested, and were certainly not tested to the extent that it would be necessary if this were to be the case for a new benchmark in the progress towards better interpretation and application of the meaning of "indecent" in section 2 of the Indecent Publications Act.

The Film Censor's very presence as a witness before the Tribunal identified the unsatisfactoriness of the present law which permits a representative from one censoring body of a different kind of medium to be publicly critical of another censoring body. The Film Censor works under different legislation than the Indecent Publications Tribunal.

The first recommendation of the Ministerial Committee of Inquiry into Pornography was "that the Indecent Publications Act 1963, the Films Act 1983 and the Video Recordings Act 1987 be repealed and replaced by 1 comprehensive statute dealing with the classification and rating of the works to which those Acts currently apply" (page No. 93 of the report). The time is long overdue for there to be 1 piece of legislation covering publications, films and videos. Extensive reforms to the present regime established by the 3 Acts are necessary to achieve consistency. This case makes that very clear.

Defence counsel for the publisher argued that there should not be a slavish adherence to the tripartite test for publications such as these. This is not the first time these arguments have been made by counsel to the Tribunal, and the Tribunal has previously heard arguments that the separation of 1 of the ingredients of the tripartite test and its application in isolation should not of itself be sufficient for a publication to be declared indecent. Such arguments are becoming more persuasive, and it could well be that the Tribunal in the near future should re-examine the whole justification for the tripartite test. However this should be within the context of a total review of various criteria to be applied and a review of the list of factors which must be taken into account when a classification decision is made (essentially section 11 of the Act). The current state of affairs which means that depiction of particular sexual non-violent acts (often encompassed by applying the tripartite test) can be seen on video, does not *ipso facto* mean that publications depicting such situations should be given an indecent classification. Publications such as *Private Lives* are on view and obtainable from public places, in dairies as these magazines were, and with virtually no control over who picks them up or looks through them. This is different from viewing a video in private.

An issue on which the Tribunal would like to hear further arguments is the extent to which photographic material in not portraying sexual acts in a caring way may be harmful to the development of young people's attitudes towards sexual practises (and therefore possibly injurious to the public good). It can be argued for instance that photographs such as those in *Private Lives* showing women with semen running down their faces, in their mouths and over their bodies, or with penises inserted simultaneously in both the vagina and rectum, do not do a great deal to foster a positive sexual identification for young women who are still establishing their own sexual needs. It could be that the dominant effect of such a work is demeaning to the individual portrayed, and perhaps even to a