

that they contain material which would be injurious to younger readers and classifies each as indecent in the hands of persons under the age of 18 years.

*Amazons*, Issue No. 13.

*Amazons*, Issue No. 14.

*Bounce*, No. 37.

*Peaches*, No. 44.

*Peaches*, No. 45.

*Peaches*, No. 46.

*Peaches Photo Gallery*, No. 6.

*Peaches Photo Gallery*, No. 7.

*Amazons Special (Clyda-Superboobs)*.

In respect of *Amazons Special (Big Black Mammias)*, the content is more restrained and the Tribunal classifies this publication as indecent in the hands of persons under the age of 16 years it clearly containing material injurious to persons under that age.

The following publications are classified by the Tribunal as unconditionally indecent for the reasons which are briefly stated hereunder.

*50 + Plus*, Special No. 16.

This contains a comic strip which is clearly indecent and injurious to the public good and it also has what the Tribunal considers an over emphasis on the genitalia area of the models displayed.

*Bounce*, No. 38.

This contains a number of sequences involving multiple models engaged in sexual activities portrayed in a fashion which the Tribunal finds is clearly injurious to the public good.

*Bounce Continental*, No. 1.

This too contains an emphasis on genitalia which the Tribunal finds injurious to the public good and other material depicting sexual activity which justifies the indecent classification.

*Peaches Continental*, No. 3.

*Peaches Continental*, No. 4.

*Peaches Continental*, No. 5.

In the Tribunal's finding these differ significantly from those editions of *Peaches* which have received an R18 classification and their portrayals of the models and their activities are such that the Tribunal finds it would be injurious to the public good for those publications to be released.

Dated at Wellington this 6th day of June 1989.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

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Decision No. 47/89 (1)  
Reference No.: IND 29/89

### 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: *Kingsize*, Vol. 19, No. 1 and 182 other magazines published by Parliament Publications:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 5th day of July 1989.

Minority Decision of R. E. Barrington and S. C. Middleton

This decision was referred to in the majority decision of the Tribunal (decision No. 47/89) and has arisen because of the Tribunal's concern that many of these magazines can only be described as coarse and crude but yet they cannot be declared

indecent. The Comptroller of Customs submission on these magazines referred to the view that a significant number of the photographs in them placed undue emphasis on the female genitalia with many of the models being posed in what are clearly contrived positions to accentuate women's genitalia. It is this kind of pictorial depiction which denigrates women, that is at issue here.

The issue of whether a publication is indecent within the meaning of the Act if it portrays women in a denigrating manner has been considered by the High Court within very narrow parameters; viz whether a publication containing a representational view of women which denigrates all women is indecent (*The Comptroller of Customs v. Gordon and Gotch (NZ) Ltd.* Jeffries J. at page 22).

The arguments raised by the High Court in this narrow discussion against the application of a test of denigration were: that there were definitional problems with "representational view". In *The Comptroller of Customs* the focus was on "representational" as meaning symbolic. Further arguments were whether a representation of a few members of a class could denigrate all of that class. This was thought to be a logical fallacy, and prostitution was used as an example of an activity which while participated in by individuals could not be said to denigrate all women; whether procedural fairness was provided for in the consideration of the magazines *Knave* and *Fiesta* because the possibility of the feminist viewpoint being applied had not been argued before the Tribunal. A further argument was that there was a distinction between "denigrate" in the sense of "to blacken" and degrade, debase or deprave. Attempts to link pictorial representation of women to denigration were regarded as vague, imprecise and illogical.

Over 2 years have lapsed since *The Comptroller of Customs* decision, and the argument as to whether there is a case to be advanced on the basis of denigration has still yet to be put before the Tribunal. This is partially because section 11 of the Indecent Publications Act does not provide a similar denigration factor to section 13 (2) (d) of the Films Act.

The extent and degree to which the manner in which the film denigrates any particular class of the general public by reference to the colour, race and ethnic or national origins, the sex, or the religious beliefs of the members of that class.

An almost identical provision is provided in section 21 (e) of the Video Recordings Act.

In *The Society for the Promotion of Community Standards v. Everard* the Court had a further opportunity to consider the issue of denigration under legislation which legitimately provided for it as a balancing factor to be applied to the film medium. McGechan J. commented at page 53.

In the end the view that the film denigrates women rather amounts to a general proposition that a film showing certain women undertaking exotic sexual practices blackens all women. I do not accept that proposition. If it is to be censorship policy, with the repercussions that could follow, parliamentary action is required.

From this it appears that the issue of denigration and whether it applies to films and videos requires parliamentary amendment.

To return to publications and further reasons why an argument based on denigration has not been advanced before the Tribunal. It may also be because to avoid the obiter of Jeffries J. in *The Comptroller of Customs* that an argument from the portrayal of one woman to then be applied to all women is an illogical fallacy, would require an argument on the basis of the portrayal of one specific person. As very few of the publications considered by the Tribunal are printed in New Zealand this is difficult.

It may also be that denigration was perceived to be too high a test, and whether material is "demeaning" in the sense of "lowering the dignity" may be easier to argue. Whatever the