

R. R. KEARNEY, Chairman.
Indecent Publications Tribunal.
go2659

Decision No. 77/89
Reference No.: IND 51/89

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 publication: *The Modern Girls Guide to Safe Sex*:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 28th day of November 1989.

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

Decision

In late September 1989 Penguin Books imported 99 copies of the publication *The Modern Girls Guide to Safe Sex*. The publications were seized by the Collector of Customs at Auckland and the importer has subsequently disputed forfeiture. The publication was referred to the Tribunal with a request that I as chairman, should in terms of the powers given to me under section 14A of the Indecent Publications Act 1963, place an interim restriction order on the publication in such terms as I considered justified.

At the time when that publication was referred to me the author Kas Cooke was to appear on a Television New Zealand programme promoting safe sex and that programme screened on 30 September 1989.

The Tribunal noted that the Customs Department came in for a good deal of criticism for their action in seizing the publication and referring it to the Tribunal. The Customs Department has a statutory obligation to take such action where its officers believe that the publication or publications seized might require a restricted classification or unconditionally indecent classification. The Comptroller of Customs and the officers of the department have no power to make such classifications themselves and they have no option but to take the action which they quite properly took. This decision now formally endorses the interim decision and classifies this publication as indecent in the hands of persons under the age of 16 and that age restriction is required because of the provisions of the Contraception, Sterilisation and Abortion Act 1977.

Dated at Wellington this 22nd day of December 1989.

R. R. KEARNEY, Chairman.
Indecent Publications Tribunal.
go2661

Decision No. 79/89
Reference No.: IND 49/89

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: *Penthouse Couples*, Black Label Edition, No. 5; *Penthouse Letters*, No. 24; *Penthouse Variations for Liberated Lovers*, No. 17:

Chairman: Judge R. R. Kearney.

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

Hearing at Wellington on the 28th day of November 1989.

Appearances: M. J. Wotherspoon for Comptroller of Customs.

G. F. Ellis, counsel on behalf of the Australian publisher and New Zealand importer.

Decision

These publications were commercially imported through parcels post, Auckland on 18 August 1989 and were seized by the Collector of Customs. The importer subsequently disputed forfeiture and the publications were referred to the Tribunal for classification, prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Penthouse Letters, No. 24

The Comptroller of Customs through Mr Wotherspoon submitted that this publication would be harmful to younger readers and suggested an R18 classification, and that classification was supported by Mr Ellis.

The Tribunal agrees with the Comptroller's submission and accordingly classifies this publication as indecent in the hands of persons under the age of 18 years.

Penthouse Couples, Black Label Edition, No. 5

This publication unlike the standard *Australian Penthouse*, contains no written articles and is comprised of a series of picture scenarios featuring multiple model scenes of lesbian and heterosexual activity. There is very little text. In respect of this publication Mr Ellis represented the publisher only, as the publication is sold direct to the customer by mail order. Mr Ellis acknowledged that it was unrealistic not to anticipate an unconditionally indecent classification in respect of this publication in view of the Tribunal's classification for a similar publication from the same series in decision 67/89, but he submitted to the Tribunal that the Tribunal should not cancel or otherwise interfere with the existing serial order in respect of the *Australian Penthouse* publications. In decision 33/88 of 28 July 1988, the Tribunal issued a serial restriction order in terms of section 15A of the Indecent Publications Act 1963, classifying all Australian edition *Penthouse* publications as indecent in the hands of persons under the age of 18 years. We simply note in this decision that that order is not intended to cover *Black Label Australian Penthouse* and those copies of that particular format of this publication which have so far come before the Tribunal, clearly show a tendency to display a much more explicit portrayal of the models in this publication. The Tribunal accepts Mr Ellis's submission and will not at this stage cancel the serial restriction order. The Tribunal classifies this publication as unconditionally indecent.

Penthouse Variations for Liberated Lovers, No. 17

In decision 15/87 and more recently in decision 69/89, the Tribunal has found previous editions of this publication to be indecent. Mr Ellis did not argue in favour of any other decision in respect of this particular publication, but without conceding that such a decision was justified. For the same reasons as expressed in earlier decisions, the Tribunal classifies this publication as unconditionally indecent.

Dated at Wellington this 22nd day of December 1989.

R. R. KEARNEY, Chairman.
Indecent Publications Tribunal.
go2662

Decision No. 80/89
Reference No.: IND 50/89

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 publication: *Private*, Issues 70, 71, 72, 73, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85:

Chairman: Judge R. R. Kearney.

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