

transsexual, transvestite or what is commonly called straight, the same rules apply and no distinction is made by the Tribunal in respect of any particular sexual orientation.

Dated at Wellington this 8th day of February 1990.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.
go5280

Decision No. 87/89

Reference No.: IND 54/89

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:
Genesis, December 1989, Vol. 17, No. 5:

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 for publisher and importer and intended distributors.

Decision

This publication was commercially imported through parcel post, Auckland on 15 September 1989 and was seized by the Collector of Customs. The importer having subsequently disputed forfeiture the publication was referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

In decision 6/89 of 3 May 1989 the Tribunal issued a serial restriction order in terms of section 15A of the Indecent Publications Act 1963, classifying the publication *Genesis* as indecent in the hands of persons under the age of 18 years. That decision had been reached after a number of similar applications over the past 2 years had been either deferred or declined. The Tribunal, in finally deciding to issue a serial restriction order, took into account that the publishers were prepared to overprint the video review segment of the magazine a section which contains pictures of heterosexual and female sexual activity. As the Comptroller of Customs advised the Tribunal in his submissions presented by Mr Wotherspoon this particular issue has not had the video section overprinted and in addition features a segment entitled "Harley and Sally", which includes a significant number of pictures of a male and female model engaged in sexual activity. Mr Ellis advised the Tribunal that the video section on the copies of *Genesis* sought to be imported commercially did in fact have the overprinting of the video review section and he provided the Tribunal with sample copies of that overprinting.

The overprinting was not as complete as the Tribunal had originally anticipated but was of such a nature that the Tribunal may well have allowed this particular issue to have an R18 classification. In the end result it was not necessary to make a finding in respect of that because the Tribunal is satisfied that the "Harley and Sally" sequence is of such a nature as to make the whole publication in respect of this issue injurious to the public good.

Mr Ellis on behalf of his clients stressed 2 matters. Firstly, (as he has raised on a number of similar applications) that there is only a breach of one of the legs of the tripartite test and that factor should not result in a finding that the publication as a whole is thus unconditionally indecent. Secondly, that the serial order was made on the consideration over several years of this particular title and that the publisher has gone to some lengths to comply with the requirements of the Tribunal and that in the event that the Tribunal finds that this particular issue should be classified as unconditionally indecent it should not result in the Tribunal revoking the serial restriction order.

Contemporaneous with this decision there will be issued another decision in respect of Indecent Publication file 65/89 in respect of *Genesis* Holiday Issue 1989 in respect of which similar submissions have been advanced by Mr Ellis.

The Tribunal is satisfied as indicated that the December 1989 issue is unconditionally indecent and so classifies it but it is prepared at this stage to reserve the question of whether the serial restriction order should be revoked knowing that the Customs Department will bring to the attention of the Tribunal any further publications which in the Comptroller's view should not be distributed throughout New Zealand in respect of the restriction order.

Dated at Wellington this 21st day of December 1989.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.
go5281

Decision No. 85/89

Reference No.: IND 63/89

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:
Modern Primitives:

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. Written submissions received from private importer.

Decision

This publication was privately imported through parcel post, Auckland on or about 12 October 1989 and was seized by the Collector of Customs. The importer having subsequently disputed forfeiture the publication was referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

The publication is an extremely well presented one and is an extensive publication dealing with the historical and social aspects of tattooing, piercing and scarification. A significant proportion of the publication is devoted to genital and body piercing with a number of explicit photographs illustrating the text. In previous decisions including 57/89 the Tribunal has expressed its concern that naive persons in possession of such material might place themselves at considerable physical risk in the event that they sought to carry out some of processes which are illustrated and the Tribunal has classified such publications as unconditionally indecent because of that risk or indecent except in the hands of persons who have a genuine professional or academic interest in those publications.

The Tribunal was impressed by the submission submitted by the private importer who informed the Tribunal that he has previously worked in a professional capacity with ear piercing and tattooing and that he at the age of 60 has approximately 40 years experience in that work. The price of the publication is such that it puts it outside the range of publications which might casually be purchased. The Tribunal is satisfied with the submission made by the importer that he is indeed a person with a genuine professional interest in the subject and accordingly the book may be returned to him in the terms of the decision we make.

This publication is classified as unconditionally indecent except in the hands of persons who have a genuine professional or academic interest in the subject matter of the publication and such will need to satisfy the Comptroller of Customs of that genuine interest before they may be permitted to have possession of a copy of this publication.