

## Justice

### Criminal Justice Act 1985

#### Confiscation of Motor Vehicle

Pursuant to section 84 (2) of the Criminal Justice Act 1985, an order was made in the District Court at Christchurch on Thursday, the 28th day of March 1991, against **Earl Kingsley Ritani**, for the confiscation of the following motor vehicle:

Mazda 929. Registration No. IF 6878.

C. J. HEATH, Deputy Registrar.

go4480

### Indecent Publications Act 1963

Decision No. 4/91

Reference No.: IND 35/89 and 23/90

#### 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 *Penthouse* magazines published by Penthouse International Ltd.: *Penthouse*, January 1988, Vol. 19, No. 5; *Penthouse*, May 1988, Vol. 19, No. 9; *Penthouse*, June 1988, Vol. 19, No. 10; *Penthouse*, July 1988, Vol. 19, No. 11; *Penthouse*, August 1988, Vol. 19, No. 12; *Penthouse*, September 1988, Vol. 20, No. 1; *Penthouse*, October 1988, Vol. 20, No. 2; *Penthouse*, November 1988, Vol. 20, No. 3; *Penthouse*, December 1988, Vol. 20, No. 4; *Penthouse*, January 1989, Vol. 20, No. 5; *Penthouse*, February 1989, Vol. 20, No. 6; *Penthouse*, March 1989, Vol. 20, No. 7; *Penthouse*, July 1989, Vol. 20, No. 11; *Penthouse*, September 1989, Vol. 21, No. 1:

*Chairperson*: P. J. Cartwright.

*Members*: R. E. Barrington, W. K. Hastings, K. A. R. Hulme and S. C. Middleton.

Hearing at Wellington on the 20th, 21st and 27th day of November 1990.

*Appearances*: W. Akel assisted by H. K. Wild for the publisher, Penthouse International Ltd. ("Penthouse International"); G. F. Ellis for Gordon & Gotch (NZ) Ltd. ("Gordon & Gotch") the representative of Penthouse International in New Zealand; Lowell P. Goddard, Q.C., senior Crown counsel representing the Comptroller of Customs ("the Crown"), assisted by Anthony Shaw; A. D. Ford for Society for Promotion of Community Standards Inc. ("the society").

#### Decision

##### Introduction

The 11 issues of the U.S. edition of *Penthouse* magazine (*Penthouse (U.S.)*) contained in IND 35/89 came before the Tribunal for consideration at a hearing on 4 October 1989. At that sitting Mr Ellis asked for and was granted an adjournment of the determination of the classification of these publications. Such adjournment was granted on the basis that further consideration and a detailed review of these publications would be made at a future special sitting of the Tribunal at a date and a time to be fixed.

Consideration of the 3 issues of the U.S. edition of *Penthouse* magazine (*Penthouse (U.S.)*) contained in IND 35/90 stands adjourned *sine die* by virtue of decision No. 23/90 which was delivered on 19 July 1990.

##### The Parties

Penthouse International has standing before this Tribunal under section 14 (5) and (6) of the Indecent Publications Act 1963 ("the Act").

Gordon & Gotch has standing before this Tribunal under section 14 (5) and (6) of the Act, as has been recognised by the Tribunal in numerous earlier hearings considering *Penthouse* publications.

The publications in both applications were seized by the Collector of Customs following private importations in 1989 and 1990. In her opening address Ms Goddard made it clear that whilst she and Mr Shaw nominally appeared to represent one of the Crown's Law Offices, viz. the Comptroller of Customs, that her role in these proceedings was primarily that of counsel assisting the Tribunal. The Tribunal accepted that that was an appropriate role.

The society has standing before this Tribunal as the result of a joinder application which was granted by the Tribunal in decision No. 62/90 delivered on 14 November 1990. In that decision it was noted that the society was "a legitimate participant in the public debate concerning indecent material" as was recognised by the Chief Justice in the preliminary hearing of *The Society for the Promotion of Community Standards v. Everard* 7 NZAR 33.

##### The Cases for the Parties

For Penthouse International Mr Akel submitted that the magazines should be classified as indecent only in the hands of persons under 18 years of age pursuant to section 10 (b) of the Act. He indicated that the publisher did not seek to make the magazines available to persons under 18 years of age because they were designed for adult readers.

If this submission was upheld by the Tribunal, or it classified with an age restriction any 3 issues published within a 12-month period, Mr Akel requested a serial restriction order pursuant to section 15A of the Act for 2 years from the date of the decision, restricting publication of all issues to persons 18 years and over.

If it would assist the Tribunal in giving an R18 serial restriction order, Mr Akel said that the publisher would provide a solicitor's undertaking to the Tribunal that it would seal all copies of (*Penthouse (U.S.)*) which were imported into New Zealand pursuant to the serial restriction order.

For Gordon & Gotch Mr Ellis indicated his client's support for Penthouse International in its application for an age restriction classification and serial restriction order pursuant to section 15A of the Act.

For the Crown Ms Goddard indicated her agreement with Mr Akel that the considerations to which the Tribunal would need to turn its collective mind in determining the classification of these publications were:

1. The contents of the magazine—sexual, literary and artistic.
2. The validity in 1990 of the "tripartite test".
3. Whether in fact (*Penthouse (U.S.)*) is injurious to the public good in New Zealand.
4. The indications of contemporary levels of tolerance and acceptability of sexual explicitness within the community in New Zealand.

For the society Mr Ford submitted "that the particular 14 editions of (*Penthouse (U.S.)*) now before the Tribunal should again all be classified as unconditionally indecent."

##### Brief History of Penthouse and Penthouse (U.S.) before the Tribunal

Until 1984 (*Penthouse (U.S.)*) was distributed in New Zealand by Gordon & Gotch. With some exceptions, the title was distributed under an R18 age restricted classification and covered by serial restriction orders under section 15A of the Act. The title has been considered by the Tribunal on numerous occasions since 1966, including major hearings in October 1976 and November 1983 when Penthouse International was represented by independent counsel. Gordon & Gotch also appeared and was represented in those