

5. Re: Trades License,
Johnson & Franklin Wholesale Distributors Limited,
7488 Griffiths Avenue.
(Item 2, Manager's Report No. 28 (In Camera) Council Mtg. April 4, 1971)

As the result of a report submitted to Council regarding this Company, in which we advised that it had been convicted of an indictable offence under Section 150(1) of the criminal code, i.e., possession of obscene books for the purpose of distribution; and that a Chinese shopkeeper was convicted in Burnaby on March 29, 1971, on a charge under Section 150 of the Code for possession of obscene books for sale with the evidence disclosing that the books came from the above-mentioned Company; Council directed that the Licensee be asked to appear to show cause why its license should not be revoked by virtue of Council's powers under Section 458(3) of the Municipal Act which reads "The Council may revoke a license for reasonable cause after giving notice to the Licensee and after giving the Licensee an opportunity to be heard". Council also directed that this subject was to be heard at a public meeting.

Mr. William H. Deverell of Dowding, Deverell, Harrop, Wood & Powell, representing this Company had asked to be heard on June 14, 1971, but this meeting was cancelled because of the CFMM Conference. The next suitable date was June 28, but Council decided that there were to be no delegations heard on that evening so that it could deal with the Winston Street problem. Arrangements were then made for Mr. Deverell to appear on July 12 but the Agenda was so heavy that we asked him to appear at the following meeting which is on July 26.

We have now received the reasons for judgment of His Honour Judge F.C. Giles in the case of Regina v Tommy and Betty Chu. This case does not actually involve the Company although it does give a clear indication of the type of so-called literature they handled in this case and their connection with the retailer. The following quotations are from Judge Giles' reasons for judgment and are pertinent to the issue at hand:

Page 3 - "When Constable Brown told the accused he could be charged, Chu said: "Johnson and Franklin said it was okay - they would look after everything" (or words very close to this). Constable Brown gave evidence that Franklin and Johnson were the wholesale distributors of these books and magazines."

Pages 60 & 61 - "Chu's reliance upon and confidence in the Wholesaler, Johnson and Franklin, was total and absolute. When advised he might be charged he replied that Johnson and Franklin said that was "okay" and that "they would look after it". When asked by Constable Brown "Are you still going to sell these books?" the reply was to the effect that as long as the Company (Johnson and Franklin) brought them to his store, he was still going to sell them. After all, he stated cynically, "I'm in business to make money". He also said on cross-examination that he did not care whether the books were obscene or not.

Throughout the trial, Chu appeared smugly confident that Johnson and Franklin would come to his rescue and save him harmless.

It was clearly apparent that Chu's confidence in Johnson and Franklin's ability to protect him was far greater than his fear of the consequences of his transgression."

At the conclusion of the argument the Judge made the finding "that the said written matter and pictures were obscene, and that the accused, Tommy Chu, knowingly, without lawful justification or excuse, had the said written matter and pictures in his possession for the purpose of sale". Mr. Chu was convicted and sentenced to 3 months imprisonment and a fine of \$2,500. The default for the fine was set at 5 months and he was given time to pay until May 26, 1971. The Chus are no longer doing business in Burnaby.

We have also been advised that charges have been laid against the company and the officials and employees of the Company under Section 150(1)(a) of the Criminal Code - Count 1 is against the Company, and Count 2 is against the principals. The case is scheduled to be heard on August 9, 1971.