

the Corgi edition published by Transworld Publishers, a 1962 reprint of the original 1961 Corgi edition. The first of these was the edition considered under the Indecent Publications Act 1910 and its amendments by the Supreme Court (1960) NZLR 871 and by the Court of Appeal (1961) NZLR 542. Both editions were embellished with commendatory reviews.

The Right Honourable Sir Kenneth Gresson, who had delivered the dissenting judgment in the Court of Appeal, and Professor I. A. Gordon, a member of the tribunal who had given evidence as to literary merit as an expert witness in the Supreme Court, both withdrew from the hearing before proceedings began. While not disqualified, each felt that the confidence of the public in the tribunal would be better maintained if he did not sit in a matter in which he had already expressed definite and widely known views in earlier judicial proceedings.

The tribunal at the hearing consisted of Judge Blair, as Chairman, Mrs Cochran, Mr Schroder and Mr Perry. The chairman considered the terms of section 5 (2) of the Act and after hearing counsel ruled that it would be proper to proceed with the hearing with four members.

The function of the tribunal is, in terms of section 10, to "determine the character" of the book *Lolita* and to classify it pursuant to the Act. No evidence was submitted at the hearing. Mr Richardson as counsel assisting the tribunal invited us to read the judgments of the Court of Appeal relating to the book but of course to read such judgments in the light of the 1963 Act. We think that this is the correct approach. Counsel drew our attention in particular to the present definition of "indecent" and referred to the various matters which must be taken into account in classifying or determining the character of a book (section 11 (1)). Reference was also made to subsection 2 of section 11 which provides that where the publication of any book would be for the interests of art, literature, science, or learning and would be for the public good the tribunal shall not classify it as indecent.

It can be said at once that the tribunal having considered the provisions of the 1963 Act in relation to the book was not unanimous as to classification; the majority of the tribunal feel that *Lolita* should be classified as "not indecent" without qualification. The book is so classified accordingly. The chairman while of the opinion that the book should be made available to adults would have restricted it to persons over the age of 18. This view has not prevailed. Because of the history of the book in New Zealand it is thought proper that both the majority decision and the dissenting decision should be set out.

#### MAJORITY DECISION

We have been greatly assisted by counsel's temperate and helpful comments, and by the documents which he supplied. All members of the tribunal have read the full text of the judgments in the Court of Appeal, and we have given careful and respectful attention to the views there expressed. In so doing we have had to essay the onerous task of applying the tests prescribed by the Indecent Publications Act 1963, deriving such guidance as we have been able from a consideration of decisions made at different times, under different Statutes, and in different countries.

The Indecent Publications Act 1963 differs materially from the 1910 Act and its amendments, and some of the considerations which influenced the majority of the Court of Appeal do not now apply. In the last analysis, we do not conceive it to be our function so much to adopt or to distinguish decisions made in other circumstances as simply to decide, in the terms of the Statute now operative, whether or not we consider *Lolita* to be an indecent book.

*Lolita* is part of the literary work of a very distinguished writer: we consider his general standing in literature to be relevant to this issue, just as we are required to consider the book itself "as a whole". It is written by a man who has become a literary stylist in a language which is not his mother tongue, and which he uses with great skill and resource; the writer's breadth of learning is everywhere apparent. As in the case of many acknowledged literary masterpieces the author has taken a theme normally reserved for criminal court records and invested it with something of the dignity of tragedy. Besides this, it shows a satirical and at times humorous handling of the various institutions and characters of the American scene—small-town gas stations, motels, high schools.

It is important in our view that the central figure, a middle-aged man in the grip of his obsession for a child of twelve, is represented as a pitiable, remorseful creature. There is nothing romantic or admirable about him, and his course of conduct leads him to disaster. Far from condoning that conduct, the author throughout implicitly reprehends it. The novel is removed from the realm of the naturalistic by the fact that the character of Humbert has qualities of mind and heart not normally found in the criminal of this type. This gives an air of fantasy and remoteness to his ugly tale and perhaps even brings it into the realm of symbolic meaning.

Apart from its literary distinction, the book has sociological and psychological significance. It is not our view that the simple choice of theme, although it be perversion and although towards the end of the book there is included a sadistic murder, provides any justification for refusing to allow people to read this book. These things exist in real life, and unless the treatment is such as to stain the book with indecency, we do not consider we should be doing what the Statute requires if we were to classify it as unfit to read. In fact the treatment is restrained and skilful, and the book is true to one function of a good novel in that it is calculated to increase the reader's understanding of life and his sympathy for unfortunate

deviators from the normal. It points up the common dilemma of love (which Humbert patently feels for *Lolita*) dominated by obsessional lust; its outcome is the inevitable wages of sin, a kind of death for both persons involved.

We find that, in terms of section 11 subsections (1) and (2) the book is clearly not indecent and we accordingly would make no order declaring it to be so.

We now come to a consideration of section 10 (b) which sets out as one of the functions of the tribunal:

"To classify books and sound recordings submitted to it as indecent or not indecent or as indecent in the hands of persons under a specified age or as indecent unless their circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be."

Counsel specifically drew our attention to this provision, although without making any submission that it should be applied in this case.

In view of the majority of the tribunal no order restricting circulation to persons above a specified age should be made in the case of either of the editions of this book.

This is not a book which adolescents, unprompted, would be likely to read "for the dirt". Prompted, some would be likely to explore, and this, in itself, is not necessarily unhealthy. Ignorance is not to be confused with innocence: by whatever means and from whatever motives children will gradually find out about sex and the existence of perversion. It is not the locked cupboard but a developing discrimination that will provide the remedy against any harm that books can do. If we thought that *Lolita* was a pornographic book written to corrupt, our decision would be different.

Once attention is drawn, as the result of some official act, to a book as the possible object of a restriction on grounds of indecency, curiosity is likely to be aroused. Had *Lolita* been allowed free entry into New Zealand without comment, we believe it would have found its way into the hands of few adolescents, and of those fewer would have persevered. It is conceivable that any book dealing with sex and crime will be harmful in some way to some person. To classify it as forbidden fruit, unless it can be effectively kept from him, is surely to intensify that risk. Moreover, the majority of the tribunal do not believe that such a restriction could be fully effective. Parents could not be relied upon to keep copies locked away: nor would all of them think it desirable. Booksellers cannot require production of birth certificates, and by no means all libraries can determine the age of their borrowers by a glance at the proffered cards. We conceive that to impose such a restriction as that contemplated by the subsection would in many cases result in the creation of a desire to read from unhealthy motives books which, taken up and examined by chance, would have no depraving or corrupting influence. *Lolita* in our view is such a book. Nevertheless had we regarded it as desirable for the public good, we should have felt bound to impose a restriction, with whatever misgivings as to its effectiveness.

The majority, therefore, is disposed to make no order restraining circulation to persons below a particular age.

#### DISSENTING DECISION

I do not propose to set out the relevant sections in full. For my purpose it is sufficient to say that a book is indecent if having regard to the matters set out in section 11 (1) and also in section 11 (2) it can be said that such a book deals with matters of sex, horror, crime, cruelty, or violence in a manner which is injurious to the public good. As I see it a real difficulty in any case under the Act is that some of the important phrases used in the Act mean different things to different persons. Whether a particular book is written in a way that is "injurious to the public good" is almost entirely a matter of individual opinion. The same can be said of the phrases "the dominant effect of the book as a whole", "whether any person is likely to be corrupted by reading the book", and "whether the book displays an honest purpose". In applying these phrases to a book under examination the personality, education, and background of the individual judges of the book will decide how these phrases are to be interpreted. There is ample room for sincere differences of opinion. In *in re Lolita* (1961) NZLR 542 at 550 Gresson P, in commenting on the value to be attached to evidence in such cases as this stated that both evidence relating to literary merit or to a tendency to deprave "will be of little assistance to the Court which must necessarily make its own valuation". These words recognise the point I have tried to make namely that in any application under the Act the evaluation by members of the tribunal is necessarily a personal one.

I proceed now to consider the book under the headings laid down in section 11 (1).

#### (a) *The dominant effect of the book as a whole*

In my view sex or rather a sexual aberration pervades the whole book. This is a novel about the life of a man who, having developed an abnormal sexual appetite for young girls, meets in his middle age *Lolita*, a young school girl. The main theme of the novel is his obsession and lust for this child and his tortuous pursuit of her. It is an imaginative story of the mind and habits of a sexual pervert. The theme is a repulsive one; in my view the book is saved from utter damnation by the treatment of the theme, by its characterisation, by its humour and its pathos, and by good writing.

#### (b) *Literary or artistic merit or the medical, legal, political, social, or scientific character of the book*

As the book is a work of imagination it can have no medical, or scientific value. Indeed it would be imprudent to regard