

Decision

In his submission Mr Wotherspoon explained that these publications were uplifted from the residence of a private importer and seized by the Collector of Customs at Auckland. The publications have been referred to the Tribunal prior to the commencement of condemnation proceedings.

Due to the volume of the publications (45 publications) they have been divided into 3 categories.

Category A

Title	Publisher
Children Love, No. 19	Color Climax Corp
Children Love, No. 22	Colour Climax Corp
Lolita, No. 19	Unknown
Lolita, No. 22	Unknown
Lolita, No. 24	Unknown
Lolita, No. 43	Unknown
Lolita, No. 52	Unknown
Lolita, No. 53	Unknown
Lolita, No. 54	Unknown
Lolita Chick, No. 10	Unknown
Lone x Poul,	Escandinavia
Nymph Lover, 3	Unknown
Tiener Club, 13	Unknown

These publications contain photographs of children engaged in various forms of sexual activity. clearly these children are in the pre-pubescent and pubescent age groups. Explicit sexual intimacy between an adult (mostly, but not exclusively, male) model and the child/children appears to be the predominant feature of the photographs in these publications, (e.g., *Nymph Lover*, No. 3 and *Children Love*, No. 19). In others, e.g., *Lolita* No. 53), where the children appear largely in single model photographs, there is a high degree of concentration on depicting their genitals. Again in the same publication, as if to seek appeal to a certain type of viewer, sexually explicit activity between an adult and a child/children is depicted in coloured photographs. The written text in the majority of these magazines appears to have little (if any) honesty of purpose or thought. All these publications appear to have been produced or printed overseas.

The Tribunal requires no persuasion. The publications in category A represent the very lowest form of hard core pornographic literature of a kind which is unquestionably injurious to the public good.

The Tribunal classifies each of the publications in category A as unconditionally indecent.

The Tribunal wishes to record its appreciation for the thorough and extremely well-prepared submission presented by Mr Wotherspoon on behalf of the Comptroller of Customs. Certainly the Tribunal did not require any persuasion to classify each of the publications in category A as unconditionally indecent. However a very good purpose was served by Mr Wotherspoon presenting such a well-prepared submission which adverted, in particular, to activity of a criminal nature under the Crimes Act 1961. It is appropriate to cite the following extract from Mr Wotherspoon's submission:

"It is universally recognised that children, due to their age and dependency, require special measures of protection. The New Zealand Government did on 19 December 1978 ratify the International Convention on Economic, Social and Cultural Rights (previously adopted by the UN General Assembly by resolution of 16 December 1966), Article 10, paragraph 3 of which reads:

'3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their

normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.'

Measures according such protections are clearly reflected in various pieces of New Zealand legislation, e.g., the Status of Children Act 1969 (section 3—All children of equal status), Factories and Commercial Premises Act 1981 (section 12—Prohibits employment of young persons between certain hours of the day), the Children and Young Persons and Their Families Act 1989, the Crimes Act 1961, etc. It is their vulnerability and therefore the ease of exploitability which necessitates such measures.

There is little doubt that activity of the type depicted in these publications, if engaged in in New Zealand, would constitute offences under the Crimes Act 1961 (in particular sections 132, 133 (b) and (c), 134). The fact that these publications are compiled overseas should not, it is submitted, detract the Tribunal in assigning to this type of material a special and more stringent test in the interests of avoiding potential social harm. In its report on pornography, the Ministerial Committee of Inquiry into Pornography (January 1989) drew special attention to child pornography as an insidious and serious problem, the causes and effects of which make chilling reading. To quote, in part, the committee said:

'Photography, film or video depictions of children in sexual poses or engaged in sexual activities are clearly a record of actual child sexual abuse. Furthermore, their production is often an integral part of a sexually abusive situation . . .

The harmful effects of sexual abuse of children in a 1-to-1 situation, where pornography may be made, though it is less likely to be commercial, have been extensively documented . . .

(See paragraph itemised 3.4.4. at page 45 of the report.)

It would, it is respectfully submitted, be totally out of step with the perception of the ordinary person in the street if the fact of and the manner in which child sex is depicted or otherwise dealt with in these publications is considered anything but absolutely indecent and as being injurious to the public good. . . ."

Category B

Title	Publisher
Anal Sex, No. 5	Colour Climax Corp
Anal Sex, No. 17	Colour Climax Corp
Fucking	Ole Petersen
Lesbian Love, No. 5	Colour Climax Corp
New Cunts, No. 35	Colour Climax Corp
Porno Shock, (No. 2)	Silwa Film Vertrieb GMBH
Seventeen, No. 69	Book Press B V
Seventeen, No. 73	Book Press B V
Seventeen, No. 115	Seventeen
Seventeen, No. 116	Seventeen
Seventeen, No. 117	Seventeen
Seventeen, No. 118	Seventeen
Seventeen, No. 131	Seventeen
Seventeen, No. 136	Seventeen
Seventeen, No. 143	Seventeen
Seventeen, No. 144	Seventeen
Seventeen, No. 145	Seventeen
Seventeen, No. 146	Seventeen
Seventeen, No. 147	Seventeen
Seventeen, No. 148	Seventeen
Seventeen, No. 149	Seventeen
Teenage Sex, No. 5	Unknown
17 Exclusief Debbie (16)	Seventeen
17 Exclusief Debby En John	Seventeen