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Part IX

**Pornography**

## Chapter 47

# Sources of Information

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children and youths to pornographic material. This chapter provides an overview of the issues dealt with in this section of the Report and of the sources of information assembled by the Committee pertaining to its Terms of Reference.

### Definition of Pornography

At the outset of its inquiry, the Committee was faced with the problem of the definition of pornography. Pornography is not a legal term, and usage has rendered its meaning unclear. The word is derived from the Greek *pornographos*, the "writing of harlots". Various lexicons have attributed somewhat different secondary meanings to the word and these have changed through time.

At the turn of the century, one major reference source referred to pornography as the "licentious painting employed to decorate the walls of rooms sacred to bacchanalian orgies, examples of which exist in Pompeii".<sup>1</sup> Several decades later, another lexicon defined the word to mean "the discussion of prostitution; obscene writing".<sup>2</sup> Two of the more recently compiled and widely used lexicons attribute somewhat different secondary meanings to the word. One of these sources defines pornography as "the depiction (as in writing or painting) of licentiousness or lewdness: a portrayal of erotic behaviour designed to cause sexual excitement".<sup>3</sup> In the second widely used lexicon, the word is defined as a "description of the life, manners, etc. of prostitutes and their patrons; hence, the expression or suggestion of obscene or unchaste subjects in literature or art".<sup>4</sup>

While, as noted, pornography is not a legal term, the words 'obscenity' and 'obscene' are legal terms. Whether a publication is obscene under Canadian law depends on whether a court considers that a dominant characteristic of the

publication is the undue exploitation of sex, or of sex and crime, horror, cruelty, or violence. Under Canadian law, a pornographic publication is not necessarily legally obscene, whereas an obscene publication is invariably pornographic. The several legal principles established in determining whether a publication meets the legal definition of obscenity are reviewed in Chapter 48.

Where the words 'pornography' or 'pornographic' are used in this Report, they refer to "the depiction of licentiousness or lewdness; a portrayal of erotic behaviour designed to cause sexual excitement". Two working definitions of pornography were used in assembling research findings, the first relating to actions taken by enforcement agencies and the second involving the specification of the types of sexual acts depicted. The latter definition was grounded on a specific listing of the types of sexually explicit depictions in which children have been directly involved as subjects and to the contents of matter to which children may be exposed.

Much of this section of the Report is devoted to providing concrete illustrations of 'pornography', 'child pornography,' and 'obscene' or 'immoral or indecent' publications based on: the actions taken by officials charged with administering the relevant Canadian law; an analysis of the contents of recent issues of the most popular pornographic magazines; and the findings of the National Population Survey in which a representative sample of Canadians was asked about its purchasing habits and views in relation to pornography.

## Sources of Information

In undertaking its review, the Committee had no doubt about the deeply rooted concerns of Canadians about the exploitation of children in the making of pornography and the accessibility of pornography to children. In recent years, considerable public pressure has mounted seeking remedial action by legislators at all levels of government — municipal, provincial and federal. Concerned groups have sought to have new legislation introduced or existing statutes amended in order to eliminate child pornography and restrict the display of pornography. These concerns have been fuelled by the enormous growth in the circulation of pornography in retail outlets across Canada, the open display of magazines having sexually explicit depictions on their covers, and the recognition that the advent of audio-visual equipment will likely accelerate the growth of the pornography trade in the country.

In seeking documentation concerning the two main questions relating to the issue of pornography set out in its Terms of Reference, the Committee initially reviewed the major national reports dealing with these issues for the United Kingdom and the United States and the proceedings of the House of Commons Justice and Legal Affairs Committee pertaining to the Canadian law of obscenity. The Committee undertook an extensive bibliographical search of the general and research literature for Canada seeking to identify pertinent

sources of information. It also contacted senior officials of the main enforcement services having responsibility for the enforcement of the Canadian law.

On the basis of its review, the Committee found that there was virtually no complete or reliable documentation for Canada about the dimensions of the pornography trade, the circulation and accessibility of this material, its production and the making of child pornography. What the Committee did find was a small assortment of scholarly treatises dealing with particular social, legal or moral aspects of pornography. Most of these were general reviews drawing upon secondary sources, typically detailing experience abroad. In relation to its Terms of Reference, the Committee found no single Canadian document that addressed the main issues which it had been asked to investigate.

Despite the lack of documentation, the Committee identified a number of primary sources having information about different aspects of pornography which had neither been co-ordinated nor assembled. With the full co-operation of these private and public agencies, this information was drawn upon and is presented in the chapters that follow. In addition, the Committee directly conducted several surveys seeking information about: the importation of pornography; its accessibility in retail outlets; and the purchasing habits and views of a nationally representative sample of Canadians.

## The Issues Considered

In the remainder of this chapter, a brief review is given of the Canadian law relating to the importation, making, distribution, sale and public display of sexually explicit materials.

In Chapter 48, *Law of Obscenity*, a fuller review is given of the various obscenity-related offences in federal law. This chapter reviews the existing network of federal laws which, taken together, regulate the different manifestations of child pornography in Canadian legal experience. A number of case studies are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity.

In Chapter 49, *Provincial and Municipal Regulation*, a description is given of the regulation of the accessibility to children of pornographic material by provincial and municipal statutes. In the former category, the operation and guidelines of provincial film classification and/or censorship boards are considered, and a review is made of their application in relation to three films showing sexual violence and children in sexually explicit depictions. In the latter category, the use of provincial legislation by municipalities to regulate the display of pornography and its accessibility to young persons is reviewed.

In Chapter 50, *Enforcement Practice*, the enforcement of the various statutes enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) is reviewed. Specifically considered

are the mandate and operations of: Revenue Canada Customs and Excise Division; R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

On the basis of its initial review, the Committee learned that the major source of child pornography available in Canada was matter imported from abroad. With the co-operation of the main enforcement services involved — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise — information was compiled on 26,357 seizures between 1979 and 1981; these findings are given in Chapter 51, *Importation and Seizure*. The information obtained permitted an appraisal to be made of the detected volume of child pornography, regional trends and the types of materials involved.

Drawing upon findings provided by enforcement agencies, distributors and the surveys conducted, a description is given of the *Production and Distribution of Child Pornography* in Chapter 52. In addition, drawing upon case studies, different situations in which children may become involved with child pornographers are identified.

Before turning to a consideration of the circulation of pornographic magazines across Canada and their accessibility to children and youths, a detailed description is provided of the contents of the 11 best-selling pornographic magazines in Canada which had a combined Canadian sales total of over 14 million copies in 1981. The synopsis given in Chapter 53, *Contents of Pornography*, analyses the nature of the pictorial and written matter of these magazines which are readily accessible to Canadian children in a large number of retail outlets across the country.

The findings of three major surveys conducted by the Committee are provided in Chapter 54, *Circulation, Accessibility and Purchase*. This chapter focusses on the issue of accessibility to children of pornography. A review is given of the audited circulation statistics of the pornographic magazines whose contents were analyzed; the findings of the National Accessibility Survey of Retail Outlets focus on how pornographic magazines are displayed in stores across Canada. The findings from these two sources are complemented by those from the National Population Survey. Persons contacted in this survey were asked whether they had ever bought pornography, how old they had been when they had first made such a purchase, their knowledge and views about the display of pornography, and their opinions about its accessibility to children and youths.

In Chapter 55, *Associated Harms*, findings from several national surveys are presented concerning incidents involving exposure of pornography to children in which they were also sexually assaulted. The findings of the National Population Survey document the experiences of persons who were exposed as children to pornography against their will and the reported harms sustained. This chapter also draws upon case studies documenting these experiences.

While the Committee, with the valuable co-operation of a number of private and public agencies, assembled a considerable body of information about the circulation and display of pornographic magazines and the accessibility of this material to children and youths, it recognizes that information on certain important matters is still incomplete. In the Committee's judgment, however, the available findings constitute a reasonably firm basis upon which a number of actions can and should be taken by the Government of Canada which would afford children and youths greater protection from exploitation by means of pornography.

## Overview of Canadian Law

As with several other areas within the Committee's mandate, the legal regulation of the making, distribution, sale and public display of explicit sexual materials has both federal and provincial aspects. Further, Canada has assumed international obligations in this regard. Canada is a signatory nation to the *International Agreement for the Suppression of Obscene Publications*<sup>5</sup> and to the *International Convention for the Suppression of the Circulation and Traffic of Obscene Publications*,<sup>6</sup> both of which are instruments of the United Nations. Canada is also a signatory nation to the *Universal Postal Convention*,<sup>7</sup> which sets out the responsibilities of member countries in the Universal Postal Union concerning the transmission through the mails of obscene or immoral materials.

### Federal Legislation

The *Criminal Code* does not contain a specific offence relating to the making, distribution or sale of child pornography. The *Criminal Code* contains a variety of proscriptions relating to the making, distribution and sale of obscene materials, as well as a provision authorizing the seizure and forfeiture of obscene publications kept for sale or distribution.<sup>8</sup> The *Criminal Code* also makes it an offence to use the mails for the purpose of transmitting or delivering anything that is "obscene, indecent, immoral or scurrilous";<sup>9</sup> to print or publish, in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details (with specified exceptions) that, if published, are calculated to injure public morals;<sup>10</sup> to present an immoral, indecent, or obscene theatrical performance;<sup>11</sup> and to exhibit publicly a disgusting object or an indecent show.<sup>12</sup>

The *Customs Tariff*<sup>13</sup> prohibits the importation into Canada of books or visual representations of an "immoral or indecent character," and the *Customs Act*<sup>14</sup> authorizes the seizure and forfeiture of any goods unlawfully imported into Canada. The *Customs Act* further provides for the issuance of "writs of assistance" (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against that Act.<sup>15</sup>

The *Canada Post Corporation Act*<sup>16</sup> provides that all mail coming into Canada which contains or is suspected to contain material which is prohibited entry (for example, "immoral or indecent" visual representations under the *Customs Tariff*) shall be submitted to a customs officer for examination, and authorizes the officer to open such mail (other than letters). The Act further authorizes the issuance of "prohibitory orders", which have the effect of preventing the delivery of mail to or by persons committing or attempting to commit an offence by using the postal service<sup>17</sup> (for example, the offence under section 164 of the *Criminal Code*).

Parliament also has an important presence in the area of electronic broadcasting. Under the *Broadcasting Act*,<sup>18</sup> the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) is invested with plenary regulatory authority over radio, television, cable television, and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.<sup>19</sup>

### Provincial Legislation

The use of a child in the making of pornography has not been singled out in any Canadian jurisdiction as a specific category of harm which justifies state intervention into the child's family. Even so, where a child is used by his or her parent or guardian as a subject in a pornographic depiction, this would almost certainly render the child "in need of protection" under the child welfare legislation of each province and territory.

With respect to the access by children and youths to pornographic material, the provinces are empowered to regulate, by way of censorship, classification or other means, the public exhibition of films,<sup>20</sup> provided that the standards used by the provincial boards in so doing are prescribed by law.<sup>21</sup> Eight Canadian provinces have enacted legislation authorizing an administrative board to review films sought to be exhibited publicly within the province. Newfoundland and Prince Edward Island adopt and implement decisions made by the New Brunswick board. The Yukon and the Northwest Territories have adopted more informal systems of film classification.

The provinces also have constitutional jurisdiction to regulate the manner of display of pornographic materials disseminated within their borders. This regulation is typically accomplished by empowering municipalities within the province to enact "by-laws" outlining the conditions under which such materials must be displayed in retail outlets, with particular regard for the non-accessibility of these publications to children. By-laws of this sort have been enacted in a number of municipalities across Canada, including: Burlington, Ontario; Newmarket, Ontario; and Metropolitan Toronto, Ontario. A by-law enacted by the City of Hamilton, Ontario, which was designed to restrict access by young persons to sexually explicit magazines, was struck down on the basis that it was impermissibly vague in describing the sorts of magazines sought to be regulated.<sup>22</sup> The City of Victoria, British Columbia, has enacted a



by-law of even wider scope. Under the Victoria by-law, no business licence-holder or employee thereof may, in the course of such business, sell, lease, or offer for sale or lease, any film or video cassette that depicts real or simulated sexual activity combined with violence or coercion, or real or simulated sexual activity involving a person actually or apparently under the age of sixteen.<sup>23</sup>

## Summary

The law relating to the making and distribution of child pornography, and to the accessibility to children of pornographic material, involves difficult legal concepts and practical enforcement problems. When the Committee started its review, it found that there was a lack of reliable documentation about the operation of the existing law and in relation to the issues specified in its Terms of Reference. This section of the Report provides an analysis of the several legal principles which apply in this context, a description of how enforcement agencies in Canada operate to discharge their responsibilities under the law, and research findings on the importation and production of child pornography and on the accessibility to children of pornography.

## References

### Chapter 47: Sources of Information

- <sup>1</sup> *Webster's Unabridged Dictionary*. An American Dictionary of the English Language. Albany. G. and C. Merriam, 1903.
- <sup>2</sup> *Chamber's Twentieth Century Dictionary*. London. W. and R. Chambers, Ltd., 1939.
- <sup>3</sup> *Webster's Third New International Dictionary*, G. & C. Merriam, 1961.
- <sup>4</sup> *The Shorter Oxford English Dictionary on Historical Principles*, Oxford. Clarendon Press, 1955.
- <sup>5</sup> This Agreement first came into force in Canada on March 11, 1912. A Protocol to amend the agreement was signed by Canada on May 4, 1949, on which date the Agreement became an instrument of the United Nations.
- <sup>6</sup> This Convention was originally signed by Canada on November 24, 1947. On May 4, 1949, it became an instrument of the United Nations.
- <sup>7</sup> The provisions of the *Universal Postal Convention* came into force in Canada on September 8, 1975. Article 33 of the Convention forbids the insertion of obscene or immoral items in the letter post, and the insertion in the letter post of articles of which the importation and circulation is prohibited in the country of destination.
- The Convention stipulates that articles found in the mail in contravention of these provisions shall be dealt with according to the law of the country in which they are found.
- <sup>8</sup> *Cr. Code*, s. 160.
- <sup>9</sup> *Cr. Code*, s. 164.
- <sup>10</sup> *Cr. Code*, s. 162 (1)(a). See also s. 162 (1)(b).
- <sup>11</sup> *Cr. Code*, s. 163.
- <sup>12</sup> *Cr. Code*, s. 159 (2)(b).
- <sup>13</sup> *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.
- <sup>14</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).
- <sup>15</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 145.
- <sup>16</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40.
- <sup>17</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 41.
- <sup>18</sup> *Broadcasting Act*, R.S.C. 1970, c. B-11.
- <sup>19</sup> See, for example, ss. 6 (1)(a), 6 (1)(c), and 6 (1)(f) of the *Radio (F.M.) Broadcasting Regulations*, chapter 380 of the Consolidated Regulations of Canada 1978; and ss. 6 (1)(a), 6 (1)(c), and 6 (1)(g) of the *Television Broadcasting Regulations*, Chapter 381 of the Consolidated Regulations of Canada, 1978.
- There appear to be no similar regulations with respect either to cable television or to pay television, at least as of April 1, 1983. On the issue of whether the Canadian Broadcasting Corporation enjoys Crown immunity from prosecution under the *Criminal Code* (particularly, under the *Code's* obscenity provisions) see *R. v. Canadian Broadcasting Corp.* (1981), 55 C.C.C. (2d) 444 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Martland, Ritchie and McIntyre, J.J.) December 1, 1980.
- <sup>20</sup> See *Nova Scotia Board of Censors and A-G Nova Scotia v. McNeil*, [1978] 2 S.C.R. 662.
- <sup>21</sup> *Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors*, not yet reported, March 25, 1983 (Ont. S.C.).
- <sup>22</sup> *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).
- <sup>23</sup> City of Victoria By-Law 82-107.

## Chapter 48

# Law of Obscenity

Child pornography does not have a specific status in Canadian criminal law. Rather, the making, importation, distribution or sale of child pornography are dealt with under the more general provisions of the *Criminal Code* relating to obscenity and sexual offences, as well as under federal legislation relating to prohibited importations and the use of the mails. This chapter reviews the network of federal laws which regulates the different manifestations of child pornography.

In undertaking its review, the Committee assembled case studies from a number of sources; these are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity. One of these sources was Project "P", jointly established by the Metropolitan Toronto Police Force and the Ontario Provincial Police.

### Section 159 of the *Criminal Code*

When considered in light of its extensive judicial interpretation, section 159 of the *Criminal Code* constitutes the major part of Canadian obscenity law. The section provides:

#### *Offences Tending to Corrupt Morals*

Corrupting morals — *Idem* — Defence of public good — Question of law and question of fact — Motives irrelevant — Ignorance of nature no defence — "Crime comic" — "Obscene".

159. (1) Every one commits an offence who

(a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatsoever, or

(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

- (a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatsoever,
- (b) publicly exhibits a disgusting object or an indecent show.
- (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage, or
- (d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method of restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

(4) For the purposes of this section it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but is a question of fact whether the acts did or did not extend beyond what served the public good.

(5) For the purposes of this section the motives of an accused are irrelevant.

(6) Where an accused is charged with an offence under subsection (1) the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

- (a) the commission of crimes, real or fictitious, or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Canadian courts have enunciated a number of legal principles applicable to the several offences outlined in sections 159(1) and 159(2), and to the definition of an "obscene publication" in section 159 (8). These general principles, developed and refined in court judgments over the years, serve to clarify and elaborate the provisions of section 159.

- In an obscenity prosecution under section 159, it is not the function of the court to determine whether publications alleged to be obscene hurt anyone, or cause any demonstrable harm. By enacting section 159 and related provisions, Parliament has already made that determination.<sup>1</sup>
- The definition in section 159(8) constitutes the sole test of obscenity with respect to "publications".<sup>2</sup>

- Before 1959, when section 159(8) was enacted, Canadian Courts, in the absence of a Canadian definition of obscenity, applied the test set out in the nineteenth-century English case, *R. v. Hicklin*, namely, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."<sup>3</sup>
- Further, a minority of the Supreme Court of Canada has held that section 159(8) should be regarded as prescribing an exhaustive test of obscenity where exploitation of sex is concerned, regardless of whether a "publication" is involved, and this has been taken up by other superior courts in Canada.<sup>4</sup>
- The obscenity provisions in the *Criminal Code* do not offend against the guarantees of freedom of speech and of the press in the *Canadian Bill of Rights*.<sup>5</sup> As one Canadian judge stated:<sup>6</sup>

"Freedom of speech in Canada is not unfettered. The *Canadian Bill of Rights* was intended to protect, and does protect, basic freedoms of vital importance to all Canadians. It does not serve as a shield behind which obscene matter may be disseminated without concern for criminal consequences. The interdiction of the publications which are the subject of the publications which are the subject of the present charges in no way trenches upon the freedom of expression which the *Canadian Bill of Rights* assures."

- In cases close to the border line of the legal definition of obscenity, tolerance is to be preferred to proscription.<sup>7</sup>

"To strike at a publication which is not clearly obscene may have repercussions and implications beyond what is immediately visible. To suppress the bad is one thing; to suppress the not so bad, or even the possibly good, is quite another. Unless it is confined to clear cases, suppression may tend to inhibit those creative impulses and endeavours which ought to be encouraged in a free society."

Section 159(8) of the *Criminal Code* provides that, "for the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

Although sections 159(1) and 159(2) refer to "any obscene written matter, picture, model, phonograph record or other thing whatsoever," section 159(8) refers only to *publications*. Consequently, legal issues have arisen concerning what constitutes a "publication", and whether the section 159(8) definition should be applied notwithstanding that the allegedly obscene matter is not a "publication".<sup>8</sup>

Section 159(8) states only that a dominant characteristic, not *the* dominant characteristic, of the publication must involve an undue exploitation of sex. In determining whether the publication has such a "dominant characteristic", consideration must be given to the work as a whole, not to isolated portions of it, and also to the expressed or implicit purpose of its author.<sup>9</sup>

The "undue exploitation" must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.

## Community Standard of Tolerance

Canadian courts have developed several general principles with respect to determining whether a dominant characteristic of a publication is the undue exploitation of sex, or of sex and crime, horror, cruelty or violence, and whether the contents of a publication exceed the Canadian community standard of tolerance. The phrase "undue exploitation of sex . . ." does not refer to the profit-making purpose, or otherwise, of the publication. Rather, it refers to the publication's undue exploitation of a sexual theme.<sup>10</sup> In determining whether a publication is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been exceeded.<sup>11</sup> The standard of tolerance is not synonymous with the moral standards of the community.<sup>12</sup> An assessment of what the community is prepared to tolerate *others* to read is the key determination.

It is a national standard of community tolerance, not a local one, which must be determined in relation to the content of the allegedly obscene publication:<sup>13</sup>

"(Community) standards are not set by those of lowest taste or interest. Nor are they set exclusively by those of rigid, austere, conservative, or puritan taste and habit of mind. Something approaching a general average of community thinking and feeling has to be discovered. Obviously, this is no easy task, for we are seeking a quantity that is elusive. Yet the effort must be made if we are to have a fair objective standard in relation to which a publication can be tested as to whether it is obscene or not. The alternative would mean a subjective approach, with the result dependent upon and varying with the personal tastes and predilections of the particular judge who happens to be trying the case."<sup>14</sup>

What the community is prepared to tolerate is influenced by the manner and circumstances of the distribution of the impugned publication:<sup>15</sup>

There are some publications which are so blatantly indecent that they would not be tolerable by the Canadian community under any circumstances. Some pictures are offensive to the majority of people to the point that the Canadian community would not tolerate them on a billboard, or on the cover of a magazine, or on a television screen where persons of all ages and sensibilities would be exposed to them, but would be prepared to tolerate them being viewed by persons who wished to view them. Some pictures would not be acceptable by Canadian community standards in a children's bedtime story-book or primer but would be in a magazine for general distribution. The Canadian community might be prepared to tolerate the exhibition of a motion picture to an adult audience, but would consider the exhibition of the same motion picture to a general audience, which included children, to be an undue exploitation of sex. Similarly, the general distribution of certain magazines to a neighbourhood store accessible to all ages would not be tolerable, whereas the distribution of such magazines to "adult" bookstores to which

children under a certain age were not admitted might not be objectionable. The packaging and pricing of a publication may also be relevant in considering whether Canadian community standards have been exceeded. The distribution of magazines in plastic covers marked "adult" in some respects might act as an attraction rather than a deterrent unless the price was high enough to place it beyond the reach of most children.

Community tolerance must be assessed in relation to the nature and circumstances of the offence with which the accused is charged. For example, where an accused widely distributes sexually explicit publications and is charged with "distributing" under section 159(1)(a), the proper test of "undue-ness" is whether the contemporary Canadian community would tolerate the distribution of the magazines in question to stores which made them available to the general public. In such a case, it is the community's standard of tolerance for publications given general distribution that has to be determined:<sup>16</sup>

This standard is not one based solely on the fact that publications will be available to children, nor on the fact that they will be available to persons of advanced years who have led a sheltered life, or, on the other hand, to persons who are broad-minded and permissive. It is the standard of tolerance based on the fact that the publication will be available to the general public which includes all of those groups. It is not proper to speak of the Canadian community standard in isolation. It must be considered in relation to the manner and circumstances of distribution.

Where the charge is distributing obscene publications and involves distribution by a wholesaler to a retailer, the manner and circumstances of display of the publications are not a relevant factor, since display is for the retailer to determine.<sup>17</sup> Where, however, a retailer is charged under section 159(2)(a), the manner and circumstances of display of the impugned publications would be relevant considerations.

Some material, such as explicit pornography involving young persons, should be deemed obscene regardless of the circumstances of its distribution. As one court noted:<sup>18</sup>

"In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate, even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

In determining whether a publication exceeds the Canadian community standard of tolerance, reference may be made to whether the depiction involves behaviours which are sexual offences (for example, gross indecency) under the *Criminal Code*. Analogies to the criminal law of sexual offences are relevant but not conclusive to a determination of obscenity.<sup>19</sup>

## Undue Exploitation of Sex

Community tolerance of the printed word should be deemed to be greater than community tolerance of pictorial representations.<sup>20</sup> Where a publication is intended to be a unified artistic whole (for example, a novel or a film, as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.<sup>21</sup>

In *R. v. Brodie*, an obscenity case which concerned D.H. Lawrence's novel, *Lady Chatterley's Lover*. Mr. Justice Judson (whose opinion was concurred in by a majority of the Supreme Court of Canada) stated:<sup>22</sup>

"Such an enquiry necessarily involves a reading of the whole book with the passages and words to which objection is taken read in the context of the whole book. Of that now there can be no doubt. No reader can find a dominant characteristic on a consideration of isolated passages and isolated words. Under this definition the book now must be taken as a whole. It is not the particular passages and words in a certain context that are before the Court for judgment, but the book as a complete work. The question is whether the book as a whole is obscene, not whether certain passages and certain words, part of a larger work, are obscene."

With respect to films, many factors must be considered in determining whether the film is obscene within the meaning of section 159(8):<sup>23</sup>

"The author's artistic purpose; the manner in which he has portrayed and developed the story; his depiction and interplay of character; his creation of visual effects by way of skilful cinematography, and so forth. It is in relation to all of these that the sexual episodes must be scrutinized. The important question is: Do the sexual episodes pay a legitimate role in the film, measured by the internal necessities of the film itself?"

Other factors taken into account in determining whether a film exceeds community standards of tolerance are: expert evidence of the film's artistic merit; whether the film has a restricted classification and therefore will not be exposed to young persons; and the treatment of the film by provincial film classification boards.<sup>24</sup>

In considering the question of the "undue exploitation of sex" in an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work and in the context of the novel's theme. On the other hand, a magazine typically has no "theme", in the literary sense. Accordingly, each page must be looked at more or less in isolation from the others, for it is rare that a reader will start at the beginning of the magazine and read through to the end.<sup>25</sup> As one Canadian judge put it, "offensive passages or pictorial presentations in a magazine cannot be saved merely by surrounding them with profound articles on foreign policy".<sup>26</sup>



## Admissibility of Expert Evidence

An expert is one who by study or experience has become specially skilled and competent to express an opinion on a scientific or artistic subject.<sup>27</sup> Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is not only admissible but desirable.<sup>28</sup> However, the Crown is not required to adduce evidence concerning the prevailing community standard of tolerance.<sup>29</sup>

In an obscenity trial, it is proper to admit into evidence the opinions of suitably qualified experts concerning the standards of tolerance in contemporary Canada. Public opinion surveys may also be admitted, provided that such evidence is admitted through those who are expert in the field of opinion research, and that approved statistical methods, social science research techniques, and interview procedures have been employed. Essential to the admissibility of this kind of evidence, however, is that the witness testifying be possessed of expert knowledge and that the segment of society whose characteristics are relevant to the question being studied has been properly selected. In obscenity cases, the community whose standards are being considered comprises all of Canada and the sample should therefore be nationally representative and should not be drawn from a single city. The sample being polled must be such that the opinions solicited constitute a prototype of opinions held across Canada.<sup>30</sup>

Although expert evidence concerning community standards or concerning a publication's artistic or literary merit is admissible in an obscenity trial, it is not necessarily conclusive. Expert evidence will be weighted according to its perceived cogency. Further, a court is not bound to adopt even the views of an expert standing uncontradicted; expert evidence may be rejected in its entirety.<sup>31</sup>

## Making, Distribution and Sale of Obscene Matter

Several distinctions should be noted concerning the different offences outlined in sections 159(1)(a) and 159(2)(a) of the *Criminal Code*. Section 159(1)(a) makes it an offence to make, print, publish, distribute, circulate or to have in possession for the purpose of publication, distribution or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. These offences are directed primarily, though not exclusively, at the maker, publisher or wholesaler of obscene materials. For purposes charged under this section, ignorance of the nature or presence of the impugned material is not a defence.<sup>32</sup> The law deems them to know the nature of the commodities which they either bring into existence or distribute commercially.

On the other hand, section 159(2)(a) makes it an offence for any person who *knowingly, without lawful justification or excuse*, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter,

picture, model, phonograph record, or other thing whatsoever.<sup>33</sup> These offences are directed primarily at retailers, who constitute the last link in the chain of commercial distribution. A retailer who sells a large selection of magazines, for example, may not be aware of the content of each magazine he or she sells. Accordingly, the section 159(1)(a) offence may only successfully be charged where knowledge on the seller's part is proved.

The following legal principles have been enunciated with respect to the different offences in section 159;

- Where an accused is charged with making an obscene photograph under section 159(1)(a), the Crown is not required to prove that the accused published, distributed or circulated the photograph, or that he intended to publish, distribute or circulate the photograph. The word 'makes' in section 159(1)(a) is very broad, and encompasses a single act of creation.<sup>34</sup>
- Further, where an accused is charged with making an obscene photograph under section 159(1)(a), that the photograph was intended solely for private use and was not circulated is a relevant consideration in determining whether the Canadian community would tolerate its making. In *Re Hawkshaw and The Queen*,<sup>35</sup> Chief Justice Howland of the Ontario Court of Appeal stated:<sup>36</sup>

"The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone's hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author's imagination and is only intended to be viewed privately might not be found by the trial judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination."

- The private and non-commercial showing of an obscene film to friends does not constitute "publication or circulation" within the meaning of section 159(1)(a) and is not a criminal offence.<sup>37</sup>
- If a person has in his possession obscene matter for the purpose of distribution, it does not matter whether the means of distribution be sale, consignment for sale, free distribution or otherwise. "Distribution" in section 159(1) includes all means of distribution.<sup>38</sup>
- The word "distributes" in section 159(1) is not limited to the commercial connotation of distribution by a wholesaler to a retailer. Rather, the word "distributes" is broad in its meaning and clearly applies to the act of a wholesaler in allocating and delivering magazines to retail stores.
- However, the act of distribution in such circumstances is complete upon delivery to the retail stores. Accordingly, on the question of whether the publications are obscene, the manner and circumstances of distribution

are relevant considerations, but the manner of display and sale by the retailers is not. The wholesaler typically has no control over the mode or manner of display of the magazines in such stores.<sup>39</sup>

- “Distribution” and “sale” are not synonymous terms. By differentiating between the activities respectively outlined in sections 159(1)(a) and 159(2)(a), Parliament drew a line through the chain from production to consumption at a point immediately preceding those who sell to the ultimate consumer. Accordingly, evidence of possession for *sale*, when unsupported by other evidence, is not evidence of possession for *distribution*. Parliament has made it clear that knowledge must be proved against the person who sells to the ultimate consumer. A sales clerk who sells arguably obscene materials cannot be said to be a “distributor” of them.<sup>40</sup>
- The renting out of obscene movies in the form of video cassettes constitutes distribution or circulation of them within the meaning of section 159(1) (a), notwithstanding that the cassettes would be used only in the home or at small parties.<sup>41</sup>
- With respect to the offences outlined in section 159(2)(a), the word “knowingly” does not require that the accused possess the legal knowledge of whether something is legally obscene. It is sufficient to prove that he had knowledge of its subject matter.<sup>42</sup> For example, where films are shown in the back of a bookstore, amid signs reading “Restricted to persons over 18”; where another film shown in the establishment had earlier resulted in a charge; and where the film in question had been approved for restricted viewing by the provincial theatres branch only after being edited, these factors indicate sufficient knowledge. In such circumstances, even if there is no actual knowledge, the doctrine of wilful blindness will operate.<sup>43</sup>
- The mere fact that a provincial theatres branch has approved a film does not constitute “lawful justification or excuse” under section 159(2)(a). The provincial board’s approval does not imply that the film is not obscene, but is merely evidence which the court may consider on the issue of obscenity.<sup>44</sup>

In each of the following case studies, the accused pleaded guilty. The studies are of interest not because they elucidate important legal doctrines, but rather because they illustrate the kinds of situations in which section 159(1) has been called upon to counteract involving the making, distribution and sale of obscene matter.

#### *Case Study 1*

In 1980, Project “P” was notified by a commercial film processing laboratory that, on three occasions, the accused had left film for processing at one of its outlets; these films yielded photographs of a male masturbating, ejaculating and urinating.

In his dealings with the film laboratory, the accused used an assumed name, but was identified by the licence number of his vehicle which one of the laboratory’s employees jotted down and reported to Project “P”. The accused, a male in his early forties, lived in a large Ontario town and had been on probation since being convicted in 1979 of performing an indecent act (exposing himself in a public place). The accused’s probation officer

indicated that the accused had only been to a psychiatric clinic twice since his conviction, and hence was in violation of a condition of his probation stipulating that he seek psychiatric care.

When interviewed, the accused admitted taking the photographs. A search of his car revealed numerous pornographic photographs, penis rings, a penis vibrator, lotions and women's underwear. These items were seized.

It was decided to charge the accused with breach of probation and with making obscene pictures, and to seek the extension of his probation period in order to gain some means of ensuring that he received psychiatric treatment. The accused pleaded guilty to both charges in Provincial Court. For making obscene pictures, he received two years on probation with the condition that he resume his psychiatric treatment; for his breach of the terms of his probation, the accused was fined \$300.

#### *Case Study 2*

In 1978 and 1979, Revenue Canada Customs and Excise sought to eliminate from the Canadian market a line of pocketbooks produced by a United States publisher. The pocketbooks contained no photographs or illustrations, but included written descriptions of acts of pedophilia, bestiality, bondage, whipping, buggery, incest and homosexuality. In 36 seizures conducted across Canada, about 750,000 copies of these books were seized.

The Canadian representative of the United States publisher (the first accused) retained the second accused, president of a Canadian printing firm (the corporate accused), to produce copies of the books in Canada. These domestic editions would not be subject to seizure by Customs.

The second accused received individual copies of the books to be reprinted. These copies were brought into Canada by means of falsified importation documents: when the books were submitted to Canada Customs by the United States publisher, slightly altered versions of their titles were recorded on the importation papers. Thus, the recorded titles did not appear on Revenue Canada's computerized listing of prohibited materials and the books were admitted into the country.

The corporate accused printed over 100,000 volumes comprising some 20 titles. The Canadian copies were identical to their United States counterparts, except that the corporate accused was listed as the publisher.

In 1979, searches were carried out at the premises of the corporate accused and the first accused, by R.C.M.P. Customs and Excise officers and by Project "P". The first, second and corporate accused were charged with making an obscene publication. A Justice of the Peace ordered that the seized books be retained pursuant to section 446(1) of the *Code*.

In Provincial Court, the corporate accused pleaded guilty and was fined \$5,000 with distress (the estimated amount of profit from the unlawful venture). The charges against the other two accused were withdrawn. All seized documents were ordered returned to the accused after the expiry of the appeal period; the court also ordered the forfeiture to the Crown of all of the obscene books.

#### *Case Study 3*

In 1980, the police force of an Ontario city requested the assistance of Project "P", in conducting a search of the business premises of a magazine and paperback book distributor. The distributor, subsequently the corporate accused, had come to the attention of the local police when they had seized

plastic-wrapped magazines and paperback books from a variety store. These publications appeared to be obscene. An invoice indicated that the corporate accused had distributed the impugned material to the store. The premises of the corporate accused were searched, and a large number of pornographic magazines were seized, along with documentation of their purchase, sale and distribution in Ontario. The corporation, and the individual who controlled it, were each charged with distributing obscene matter and possession of obscene matter for purposes of distribution. The Crown proceeded by way of summary conviction, and apparently withdrew both charges against the accused individual, and the "possession" charge against the company; the corporate accused pleaded guilty to the "distributing" charge and was fined \$500.

The magazines originally seized from the variety store were returned to the retailer because they were deemed by police not to fall within the section 159(8) definition of obscenity. The books were returned because they contained no photographs and hence would also be excessively difficult to prove obscene.

It was learned that the distributor had sent a document to the variety store proprietor; in this document, the distributor purportedly undertook to assume full responsibility "for any legal actions pertaining to censorship, providing that such actions be initiated summarily against a publication or publications handled exclusively by [the distributor]." The document further provides that the distributor's agreement to assume legal responsibility would be nullified if the retailer caused an adult publication to come into the possession of a minor. Finally, the document states that the distributor "has the right to retain legal counsel of their own choice, as well as the right of plea."

#### *Case Study 4*

In 1978, Project "P" was notified by the Post Office that an advertisement in the September issue of *Hustler* magazine offered sexually explicit slides and motion pictures, to be ordered by writing to a post office box in an Ontario city. The accused, who had placed the advertisement, had conducted a similar mail order operation in 1977, but at that time had only been selling non-obscene slides copied from the photographs in popular adult magazines.

Two months later, Project "P" learned of a new advertisement placed by the accused, this time in a photography magazine. The accused sought to exchange nude photographs with readers and listed a new post office box number.

Project "P" ordered material from the accused's first post office box and received rolls of exposed black and white film. When processed, the film yielded photographs explicitly depicting sex acts between males and females. The pictures had been rephotographed from "hard core" magazines.

In searching the accused's residence, police found and seized photographs, letters, invoices and photographic equipment. A search of the first post office box revealed cheques and orders for sexually explicit photographs and magazines.

The accused was charged with possession of obscene publications for purposes of distribution and with distributing obscene publications; ultimately, the latter charge was withdrawn. Upon pleading guilty to the remaining charge in Provincial Court, the accused was fined \$1000 (or three months' imprisonment), an amount agreed to by the Crown and the defence. The judge, however, stated that he would have been prepared to impose a \$3000 fine to express his concern over the mail-order distribution of obscene pictures, a marketing practice that gave children access to such matter.

## Approval by Customs or Provincial Theatres Branches

That Customs Department officials allow certain materials into the country does not afford a defence for an accused charged with an obscenity offence in relation to those materials. The legal test for obscenity is not the same as the test for prohibited entry under the *Customs Tariff*. Moreover, in an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department, to determine whether a publication is obscene. The determination of obscenity is essentially a matter of opinion, and if customs officials express an opinion that a matter is not obscene, it remains just an opinion and no more.<sup>45</sup>

Similarly, that a film has been approved by a provincial theatres branch does not afford a defence to an accused who is charged with an obscenity offence in relation to that film, nor does it constitute "lawful justification or excuse" within the meaning of section 159(2)(a).<sup>46</sup> The provincial board's approval does not imply that the film is not obscene (since provincial boards use tests different from that outlined in section 159(8) of the *Criminal Code*), but is merely evidence which the court may consider on the issue of obscenity.<sup>47</sup>

### Case Study 5

In 1981, R.C.M.P. Customs and Excise officers entered the accused's Toronto residence under the authority of a writ of assistance. The accused, a 40 year-old male, owned an unincorporated magazine distributorship which he operated out of the basement of his home. The R.C.M.P. officers were investigating a report that magazines and books prohibited under the *Customs Tariff Act* had been smuggled into Canada by the accused's firm and were being kept in his home for purposes of distribution. Upon conducting their search, the officers found that the material in question had cleared Customs; the accused was able to produce a Customs importation authorization (form B-3) issued him with respect to the books and magazines.

When consulted, Project "P" reported that the material should not have been admitted into Canada, and was allowed in only because the Toronto Customs Office had cleared it without checking with the Prohibited Importations Section in Ottawa, or examining the bi-weekly list of prohibited publications.

After being contacted by the R.C.M.P., Project "P" seized 600 magazines and 100 pocketbooks from the accused, and charged him with three counts of keeping obscene material for the purpose of distribution.

Among the pocketbooks seized were titles such as "Confessions of a Good Wife" and "Daughter-Loving Daddies"; the subject matter of these books included the sexual exploits of a 15 year-old girl, and the sexual relationship of a man and sheep. The magazines were of the "glossy" variety, had list prices of as much as \$8.95 apiece, and had been plastic-wrapped by the accused. The magazines that were seized had titles such as "250 Baby Dolls" and "Hot Box". All of the books and magazines had affixed price stickers, and thus appeared to be ready for distribution.

At trial before judge and jury in the Provincial Court, the accused, representing himself, pleaded not guilty to the three counts against him. The trial judge instructed the jury that they were free to find some, all or none of the seized material obscene. After deliberating for six hours, the jury found all of

the books and magazines obscene and found the accused guilty on all three counts. The judge fined the accused \$700 for each count, or upon failure to pay within eight months, six months' imprisonment for each count.

#### *Case Study 6*

In 1976, Project "P" conducted a search of the premises of a periodical distributing company headquartered in a small Ontario city. Various publications and documents were seized. The company supplied magazines (including *Hustler*) and paperback books imported from the United Kingdom and the United States to local distributors. Project "P" laid charges of distributing obscene publications against the company and its manager with respect to 13 magazine titles distributed nationally by them.

The March, 1976 issue of *Hustler* magazine contained photographs of the following:

- A scene of bestiality in which a dog mounts a nude woman from the rear;
- Three mice crawling about a woman's genital area;
- The after-effects of anal sex (i.e., excrement covering the man's penis and the woman's buttocks);
- A "diarrhoea dinner" (i.e., fried human excrement served on a dinner plate in preparation for consumption);
- A woman in the course of having her pubic hair shaved (a series of photographs);
- A woman with a cigarette in her vagina.

In Provincial Court, the accused company pleaded guilty to seven counts of distributing obscene magazines and was fined \$35,000. The charge against the company's manager was dismissed, as the Crown chose not to introduce evidence against him.

In 1976, two local distribution companies and their managers were charged with conspiracy to distribute 13 obscene publications. These two companies (apparently) had been supplied with the publications in question by the national distributor discussed above. In 1977, the accused companies appeared in Provincial Court and pleaded guilty to all charges against them. The first of the companies was fined \$25,000 or distress, while the second received a fine of \$75,000 or distress. Both accused admitted failing to examine the publications at the time that they distributed them; both also admitted that the magazines exceeded community standards of tolerance, but argued that these standards were difficult for them to discern in the absence of specific legislation or official guidelines.

## The "Public Good" Defence

With respect to the "public good" defence in sections 159(3) and 159(4), the accused carries the burden of establishing that his or her acts served the "public good". Where, for example, expert evidence indicates that the qualities of an obscene book would be appreciated only by the sophisticated reader, and that restricted distribution of the book to a group capable of deriving some advantage from it was neither claimed nor proved by the accused, the defence of "public good" is not made out.<sup>48</sup>

## Child Pornography and the Law of Obscenity

The making, distribution and sale of child pornography in Canada are dealt with primarily under the general "obscenity" provisions in section 159 of the *Criminal Code*. Prosecutions in which child pornography has in some way been a feature fall into two broad groups: cases in which a Canadian child or children have been used in the making of pornography; and cases in which publications containing explicit written or visual representations of young persons in sexual contexts have been charged as obscene.

The examples in the first category given in Chapter 52, *Production and Distribution of Child Pornography*, constitute the most illustrative Canadian legal cases in which a person was prosecuted for making child pornography. They illustrate both the variety of contexts in which this phenomenon occurs, and the various legal principles which apply, depending on which criminal offence is charged against the accused. The examples in the second category constitute the most illustrative Canadian legal cases in which a person or corporation was prosecuted, not for making pornography involving Canadian children, but for possessing child pornography for the purpose of distribution. These examples also serve to illustrate the different factual contexts and legal principles which apply to the distribution or intended distribution of foreign-made child pornography.

## Seizure of Obscene Publications

While section 159 of the *Criminal Code* sets out various obscenity offences for which the accused is liable to conviction and punishment, section 160 specifically mandates a procedure for seizing obscene publications. It provides:

160.(1) A judge who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is obscene or a crime comic, shall issue a warrant under his hand authorizing seizure of the copies.

(2) Within seven days of the issue of the warrant, the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

(3) The owner and the author of the matter seized and alleged to be obscene or a crime comic may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the said matter.

(4) If the court is satisfied that the publication is obscene or a crime comic, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.



(5) If the court is not satisfied that the publication is obscene or a crime comic, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

- (a) on any ground of appeal that involves a question of law alone.
- (b) on any ground of appeal that involves a question of fact alone, or
- (c) on any ground of appeal that involves a question of mixed law and fact.

as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XVIII and sections 601 and 624 apply mutatis mutandis.

(7) Where an order has been made under this section by a judge in a province with respect to one or more copies of a publication, no proceedings shall be instituted or continued in that province under section 159 with respect to those or other copies of the same publication without the consent of the Attorney General.

(8) In this section "court" means

- (a) in the Province of Quebec, the provincial court, the court of the sessions of the peace, the municipal court of Montreal and the municipal court of Quebec; (a.1) in the Provinces of New Brunswick, Alberta and Saskatchewan, the Court of Queen's Bench;
- (b) in the Province of Prince Edward Island, the Supreme Court; or
- (c) in any other province, a county or district court;

"crime comic" has the same meaning as it has in section 159: "judge" means a judge of a court.

The section only applies where a publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is found to be obscene within the section 159(8) definition. Accordingly, forfeiture of these copies will only be ordered after the Crown has proven beyond reasonable doubt that the publication is obscene and that copies of it are being kept for sale or distribution in premises within the jurisdiction of the court.<sup>49</sup>

Notwithstanding section 160(2), the onus of proving the above matters on a section 160 forfeiture application is on the Crown.<sup>50</sup> On a section 160 forfeiture application, the warrant of seizure must describe the publications in such a way that the police officers executing it are aware of the particular publications to be seized. Description of the publication by publisher is sufficient, but the warrant of seizure cannot be "open-ended"<sup>51</sup>. Where the Crown does not adduce evidence on a section 160 forfeiture application and does not place any of the seized material before the Court, there is no legal basis for the judge to make an order of forfeiture, and any order so made must be quashed and the seized material returned to its owner.<sup>52</sup>

Since proof that the publications are kept for sale or distribution is required in order for the court to make an order of forfeiture under section

160, it is proper for the court to inquire into how the proposed sale or distribution is to be made. Where there are no restrictions concerning how the publication is to be sold, and where it is intended to be for general sale, then the proper question on the issue of obscenity is: Would the contemporary Canadian community tolerate the sale or distribution of the publication to stores which made them available to any member of the public?<sup>53</sup> Applications under section 160 are in the nature of *in rem* proceedings against the publications themselves. Neither the occupier of the premises nor the author or publisher of the publication is convicted of an offence.<sup>54</sup>

## Use of the Mails

Section 164 of the *Criminal Code* provides:

164. Every one commits an offence who makes use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous, but this section does not apply to a person who makes use of the mails, for the purpose of transmitting or delivering anything mentioned in subsection 162(4).

The most recent reported prosecution under this section<sup>55</sup> involved an issue of the newspaper, "The Body Politic". The newspaper is mailed to subscribers, and the December, 1977 issue contained an article entitled, "Men Loving Boys Loving Men". The apparently fictional protagonists in the article are homosexual pedophiles who participate in acts of buggery and oral sex with young boys. The article extols the joys of a homosexual-pedophilic lifestyle and concludes with the comment that adult males so-inclined "deserve our praise, our admiration and our support".

The corporate accused (Pink Triangle Press) and three of its officers were acquitted at trial on the section 164 charges.<sup>56</sup> On appeal to the County Court, the acquittal was set aside and a new trial ordered, on the basis of the trial Judge's several errors of law.<sup>57</sup> The accused appealed against this ruling to the Ontario Court of Appeal.<sup>58</sup>

In dismissing the accused's appeal, the Court clarified the legal principles applicable to the section 164 offence:

From its plain words, section 164 applies to everyone, and publishers of subscription newspapers are not excepted.

Although the words "immoral" and "indecent" in section 164 are vague, it is through the use of such words in the law that the values of the community find expression in the courtroom. The Court should construe these terms in the context of Canadian community standards of tolerance.

Whether a matter is "immoral or indecent" within the meaning of section 164 is to be determined by whether the Canadian community standard of tolerance has been exceeded in the particular circumstances. Further, where the publication in question is a newspaper, which has no theme, an offensive passage will not be redeemed by the context of the rest of the newspaper. The

offensive passage must be looked at more or less in isolation from the rest of the publication.

In addition to the offence set out in section 164 of the *Criminal Code*, the *Canada Post Corporation Act*<sup>59</sup> contains provisions regulating the use of the mails. By section 39(2) of that Act, the Canada Post Corporation is authorized to open any undeliverable mail, including undeliverable letters. "Undeliverable mail" and "undeliverable letter"<sup>60</sup> include among other things, any mail or letter the delivery of which is prohibited by law, for example, mail or letters contravening section 164 of the *Criminal Code*.

Sections 40(1) and 40(2) of the *Canada Post Corporation Act* provide:

40. (1) All mail from a country other than Canada containing or suspected to contain anything subject to customs or tolls or anything the importation of which is prohibited shall be submitted to a customs officer for examination.

(2) A customs officer may open any mail other than letters, submitted to him under this section and may

- (a) cause letters to be opened in his presence by the addressee thereof; or
- (b) at the option of the addressee, open letters himself with the written permission of the addressee thereof;

and where the addressee of any letter cannot be found or where he refuses to open the letter, the customs officer shall return the letter to the Corporation and it shall be dealt with as undeliverable mail in accordance with the regulations.

These provisions authorize a customs officer to examine any mail (other than letters) suspected to be prohibited entry into Canada and also provides for the examination of letters sought to be mailed into Canada. The law relating to prohibited importations is discussed in Chapter 51.

The *Canada Post Corporation Act* provides for "prohibitory orders" to be issued. A prohibitory order is an official sanction which forbids the delivery of mail to or posted by certain persons. Section 41(1) of the Act provides:

41. (1) Where the Minister believes on reasonable grounds that any person

- (a) is, by means of mail,
  - (i) committing or attempting to commit an offence, or
  - (ii) aiding, abetting, counselling or procuring any other person to commit an offence,
- (b) with intent to commit an offence, is using mail to accomplish his object, or
- (c) is, by means other than mail, aiding, abetting, counselling or procuring any other person to commit an offence by means of mail,

the Minister may make an order (in this section called an "interim prohibitory order") prohibiting the delivery, without the consent of the Minister, of mail addressed to or posted by that person (in this section called the "person affected").

Sections 41(2) through 41(15) outline the procedure for appealing from an interim prohibitory order; the powers, duties, and composition of the Board of Review; the effect of prohibitory orders; and the conditions under which an order may be revoked or reinstated. Section 41(14) specifies that:

- ... while an interim or final prohibitory order is in effect, the Minister may
- (a) detain or return to the sender any mail addressed to, or anything posted by, the person affected; and
  - (b) declare any mail detained pursuant to this section to be undeliverable mail, and any mail so declared shall be dealt with in accordance with the regulations.

The term "offence" used in section 41(1) of the *Canada Post Corporation Act* includes the attempted importation of "immoral or indecent" matter under the *Customs Tariff Act*.<sup>61</sup> A summary of the customs-related offences in the *Customs Tariff* and the *Customs Act*<sup>62</sup> is provided in Chapter 51.

## Summary

1. Section 159(1)(9) of the *Criminal Code* makes it an offence to make, print, publish, distribute, circulate, or to have in one's possession for the purpose of publication, distribution, or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. That the accused was ignorant of the nature or presence of the allegedly obscene matter is not a defence to a charge under this section.
2. Section 159(2)(9) of the *Criminal Code* provides that everyone, who knowingly, without lawful justification or excuse, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record, or other thing whatsoever.
3. The *Criminal Code* provides the following definition of an obscene publication, namely, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty, and violence.
4. In determining whether a publication has such a "dominant characteristic", regard must be had to the work as a whole, and to the expressed or implicit purpose of its author.
5. The phrase "undue exploitation of sex . . ." does not refer to the profit-making purpose, or otherwise, of its author. Rather, it refers to the publication's undue exploitation of a sexual theme.
6. The "undue exploitation" must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.
7. In determining whether a publication is obscene in that it is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been

exceeded. The standard of tolerance is not synonymous with the moral standards of the community. An assessment of what the community is prepared to tolerate others to read is the key determination.

8. It is a national standard of community tolerance, not a local one, which must be determined in relation to the allegedly obscene publication.
9. Where a publication is intended to be a unified artistic whole (for example, a novel or a film as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.
10. In the context of an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work, and in the context of the novel's theme. On the other hand, a magazine typically has no "theme" in the literary sense.
11. Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is advisable, provided that such testimony is given by a person who, by study or experience, is specially qualified and competent to express an opinion on the issue in question.
12. The Crown is not required to adduce evidence concerning the prevailing community standard of tolerance in Canada.
13. That Customs officials allow certain materials into the country, or that a film has been approved by a provincial theatres branch, does not afford a defence to a person who is charged with an obscenity offence in relation to those materials or to that film. In an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department or a provincial theatres branch, to determine whether a publication is obscene. The test used in determining obscenity under the *Criminal Code* is not the same as those employed by the Customs Department or by provincial theatres branches.

## References

### Chapter 48: Law of Obscenity

- <sup>1</sup> *R. v. Prairie Schooner News Ltd. and Powers* (1970), 1 C.C.C. (2d) 251 (Man. C.A.).
- <sup>2</sup> *Dechow v. The Queen* (1977), 35 C.C.C. (2d) 22 (S.C.C.).
- <sup>3</sup> *R. v. Hicklin* (1868), L.R. 3 Q.B. 360.
- <sup>4</sup> *Dechow v. The Queen*, *supra*, note 2; *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued sometime in 1983-84 judicial term.
- <sup>5</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>6</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*, at 271, *per* Dickson J.A.  
Whether the obscenity provisions in the *Criminal Code* contravene the *Canadian Charter of Rights and Freedoms* has yet to be judicially determined.
- <sup>7</sup> *R. v. Dominion News and Gifts Ltd.* (1963), 40 C.R. 109 at 127 *per* Freedman J.A. (Man. C.A.), *aff'd* *Dominion News and Gifts Ltd. v. The Queen* (1964), 42 C.R. 209 (S.C.C.).
- <sup>8</sup> See, for example, *Dechow v. The Queen*, *supra*, note 2; and *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).
- <sup>9</sup> *R. v. Times Square Cinema Ltd.* (1971), 4 C.C.C. (2d) 229 (Ont. C.A.); *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).
- <sup>10</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>11</sup> *R. v. Sudbury News Service Ltd.* (1978), 39 C.C.C. (2d) 1 (Ont. C.A.) *R. v. Penthouse International Ltd.* (1979), 46 C.C.C. (2d) 111 (Ont. C.A.).
- <sup>12</sup> *R. v. Penthouse International Ltd. et al.*, *ibid.*
- <sup>13</sup> *R. v. Kiverago* (1973), 11 C.C.C. (2d) 463 (Ont. C.A.).
- <sup>14</sup> *R. v. Dominion News and Gifts*, *supra*, note 7 at 126 *per* Freedman J.A.
- <sup>15</sup> *R. v. Sudbury News Service Ltd.* (1978), 18 O.R. (2d) 428 at 435 *per* Howland C.J.O. (Ont. C.A.).
- <sup>16</sup> *R. v. Sudbury News Service Ltd.*, *ibid.*, at 438-39 *per* Howland C.J.O.
- <sup>17</sup> *R. v. Sudbury News Service Ltd.*, *ibid.*
- <sup>18</sup> *R. v. McCormick*, *supra*, note 8 at 23 *per* Ferguson Co. Ct. J.
- <sup>19</sup> *R. v. MacMillan Co. of Canada*, *supra*, note 9; *R. v. Goldberg and Reitman* (1971), 4 C.C.C. (2d) 187 (Ont. C.A.).
- <sup>20</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>21</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.* (1974), 16 C.C.C. (2d) 185 (Man. C.A.).
- <sup>22</sup> *R. v. Brodie* (1962), 132 C.C.C. 161 at 179 (S.C.C.).
- <sup>23</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.*, *supra*, note 21 at 194 *per* Freedman C.J.M.
- <sup>24</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.*, *ibid.*; *R. v. Goldberg and Reitman*, *supra*, note 19.
- <sup>25</sup> *R. v. Penthouse International Ltd. et al.*, *supra*, note 11.
- <sup>26</sup> *R. v. Penthouse International Ltd. et al.*, *ibid.*, at 117 *per* Weatherston J.A.
- <sup>27</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.

- <sup>28</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*, *But cf. R. v. Penthouse International Ltd.*, *supra*, note 11, esp. at 117.
- <sup>29</sup> *R. v. Cameron*, [1966] 4 C.C.C. 273 (Ont. C.A.); *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).
- <sup>30</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>31</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*
- <sup>32</sup> *Cr. Code*, s. 159 (6).
- <sup>33</sup> Emphasis added.
- <sup>34</sup> *Re Hawkshaw and The Queen*, *supra*, note 4.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Ibid.*, at 516.
- <sup>37</sup> *R. v. Rioux*, [1970] 3 C.C.C. 149 (S.C.C.); *R. v. Leong* (1961), 37 C.R. 317 (B.C.S.C.).
- <sup>38</sup> *R. v. National News Co.*(1952), 16 C.R. 369 (Ont. C.A.).
- <sup>39</sup> *R. v. Sudbury News Service Ltd.*, *supra*, note 15.
- <sup>40</sup> *R. v. Dorosz* (1971), 14 C.R.N.S. 357 (Ont. C.A.). See generally *Fraser v. The Queen*, [1967] 2 C.C.C. 42 (S.C.C.).
- <sup>41</sup> *R. v. Video Moviestop* (1982), 67 C.C.C. (2d) 87 (Nfld. S.C.).
- <sup>42</sup> *R. v. Cameron*, *supra*, note 29. See also *R. v. McFall* (1975), 26 C.C.C. (2d) 181 (B.C.C.A.).
- <sup>43</sup> *R. v. McFall*, *ibid.*
- <sup>44</sup> *R. v. McFall*, *ibid.*
- <sup>45</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1; *R. v. 294555 Ontario Ltd.* (1978), 39 C.C.C. (2d) 352 (Ont. C.A.).
- <sup>46</sup> *R. v. McFall*, *supra*, note 42; *R. v. Daylight Theatre Co.* (1973), 13 C.C.C. (2d) 524 (Sask. C.A.).
- <sup>47</sup> *R. v. McFall*, *ibid.*
- <sup>48</sup> *R. v. Delorme* (1973), 15 C.C.C. (2d) 350 (Que. C.A.).
- <sup>49</sup> *R. v. Penthouse International Ltd.*, *supra*, note 11; *R. v. Mid-Western News Agency Ltd.* (1965), 47 C.R. 227 (Sask. Dist. Ct.).
- <sup>50</sup> *R. v. H.H. Marshall Ltd.* (1982), 69 C.C.C. (2d) 197 (N.S.C.A.).
- <sup>51</sup> *Re Laborde and The Queen* (1972), 7 C.C.C. (2d) 86 (Sask. Q.B.).
- <sup>52</sup> *R. v. H.H. Marshall Ltd.*, *supra*, note 50.
- <sup>53</sup> *R. v. Penthouse International Ltd.*, *supra*, note 11.
- <sup>54</sup> Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 447.
- <sup>55</sup> In *R. v. Lambert* (1965), 47 C.R. 12 (B.C.C.A.), it was held that the section 164 offence is not limited to publications. Accordingly, the section applies to a mailed letter containing obscene matter, even though the letter's contents were intended to be kept private. But see *R. v. Goyer* (1916), 27 C.C.C. 10 (Sask. C.A.).
- <sup>56</sup> *R. v. Pink Triangle Press* (1979), 45 C.C.C. (2d) 385 (Ont. Prov. Ct.).
- <sup>57</sup> *R. v. Pink Triangle Press* (1980), 51 C.C.C. (2d) 485 (Ont. Co. Ct.).
- <sup>58</sup> *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.).
- <sup>59</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54.
- <sup>60</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 2(1).
- <sup>61</sup> *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.
- <sup>62</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).

## Chapter 49

# Provincial and Municipal Regulation

Although the question of access by children and youths to pornographic material is (apart from the national role of Canadian Radio-television and Telecommunications Commission in regulating the content of radio, television, cable television and pay television) mainly a matter within provincial jurisdiction, it is closely bound up with the federal law of prohibited importations and obscenity. A sexually explicit film or magazine may be prohibited entry into Canada as being "immoral or indecent" under the *Customs Tariff*, thereby pre-empting provincial regulation of that film or magazine. The federal law of obscenity operates notwithstanding provincial theatres branch rulings; an obscenity charge may be laid against a film being publicly exhibited with the prior knowledge and concurrence of a provincial theatres branch.

With respect to the access by young persons to pornographic magazines, the relationship between federal and provincial law is also pertinent. If a sexually explicit publication imported into Canada is deemed neither to be "immoral or indecent" under the *Customs Tariff* nor "obscene" under the *Criminal Code*, it may legally be distributed and sold throughout Canada, notwithstanding that its content may make it inappropriate for the perusal of young persons. In response to this situation, some Canadian municipalities have, under provincial enabling legislation, enacted by-laws designed to prevent such publications from being readily accessible to minors.

In this chapter, provincial and municipal initiatives are reviewed concerning the regulation of sexually explicit films and magazines.

### Publicly Exhibited Films

Eight provinces have enacted legislation to regulate the public exhibition of films. These provinces are: Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Although Newfoundland has passed legislation which provides for the establishment of a film censorship board,<sup>1</sup> this board has yet to be established. Currently, both Newfoundland and Prince Edward Island adopt the rulings of the New Brunswick board.



More informal film classification procedures have been adopted in the Yukon and the Northwest Territories. In the Northwest Territories, two film classification officers stationed in Yellowknife are responsible for ensuring that all films exhibited have been approved by a provincial classification board. Their current practice is to adopt the rulings of the Alberta board. If controversy precedes the arrival of a certain film, the officers examine how the eight provincial boards have treated the film, and tend to adopt the approach taken by a majority of them. In such cases, the officer may request a pre-screening of the film. Films not yet reviewed by the provincial boards are rejected. The film classification officers also have the authority to seize films under a Yellowknife ordinance. To date, no obscenity charges under the *Criminal Code* have been laid in the Northwest Territories in connection with the exhibition of a film.

In the Yukon, there is no official responsible for screening, classifying or censoring films. According to information received by the Committee, theatre owners act upon the classifications sent by the distributors with every film. These classifications are identical to those used by the British Columbia board.

Table 49.1 provides a summary of the legal mandate, nature, policy and practice of each of the eight provincial boards. This information has been drawn from several sources, including: provincial enabling legislation and regulations; annual reports and other literature published by the boards; and direct communication with board officials. Information gained directly from the respective boards is listed under the following headings: adult policy, child policy, complaints, community involvement, police policy and treatment of three specific films.

*Adult Policy.* The board's policy concerning the depiction of sexual and violent themes involving adults; the types of scenes that the board would eliminate; and the treatment of the balance of the film, where such cuts are made.

*Child Policy.* The board's policy concerning the depiction of sexual and violent themes involving children; the types of scenes that would cause the board to edit or ban the film; any differences between this policy and that pertaining to sexual or violent depictions involving adults.

*Complaints.* The number of formal or informal complaints or inquiries received by the board concerning films being exhibited and special classifications. In some cases, the boards gave the precise number of complaints received over a certain span of time, while in other instances they were only able to provide estimates of the frequency of complaints received.

*Community Involvement.* The activities in which the board and its members participate in order to gauge, and remain responsive to, community standards.

*Police Policy.* Based on statements by the boards and law enforcement agencies, the policies of law enforcement agencies within the province concerning the laying of charges for violations of laws governing the exhibition of films.

*Treatment of Three Specific Films.* Information obtained concerning the responses of the eight boards to three films: *Caligula*, *Pretty Baby* and *Beau Père*.

**Table 49.1**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Source of Board's Legal Authorization
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p><i>Theatres, Cinématographs and Amusements Act</i>, R.S.N.B. 1973, c. T-5, as amended by S.N.B. 1977, c. M-11.1; S.N.B. 1978, c. D-11.2; S.N.B. 1979, c. 41, S.N.B. 1979, c. 71, S.N.B. 1980, c. 32.</p> <p>S.O.R. 1963, as amended by N.B. Reg. 64-32, 65-59, 67-123, 68-90, 69-92, 71-67, 75-100, 75-130, 79-100, 82-39, 82-153.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p><i>The Theatres and Amusements Act</i>, R.S.N.S. 1967, c. 304. As amended by S.N.S. 1972. c.54.</p> <p>N.S. Reg. 97/78 as amended by N.S. Reg. 36/81; N.S. Reg. 96/81; N.S. Reg. 130/82; N.S. Reg. 16/83; N.S. Reg. 48/83.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p><i>An Act Respecting the Cinéma</i>, R.S.Q. 1977, c. C-18 Consolidating the following: S.R. 1964, c. 55, as amended by S.Q. 1967 c. 17, S.Q. 1967 c. 22., S.Q. 1969, c. 26, S.Q. 1975, c. 14, O.C. 4130-75 of 17.09. 75, (1975) 107 G.O. II, 5127.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p><i>The Theatres Act</i>, R.S.O. 1980, c. 498. Reg. 931, R.R.O. 1980 as amended by O. Reg. 138/81, O. Reg. 438/81; O. Reg. 600/81; O. Reg. 29/82.</p>
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p><i>The Amusements Act</i>, R.S.M. 1970, c. A70, as amended by S.M. 1979, c. 28.</p> <p>M.R. 49/75, as amended by M.R. 103/76; M.R. 65/78; M.R. 2/79; M.R. 115/80; M.R. 111/82.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p><i>The Theatres and Cinématographs Act</i>, R.S.S. 1978, c. T-11. S. Reg. 1 (O.C. 1873/81).</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p><i>Amusements Act</i>, R.S.A. 1980, c. A-41.</p> <p><i>Amusements Act General Regulations</i>, Alta. Reg. 72/57 as amended by Alta. Reg. 261/82; Alta. Reg. 8/83.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p><i>Motion Picture Act</i>, R.S.B.C. 1979, c. 284, as amended by S.B.C. 1981, c. 20; ss. 48-9.</p> <p>B.C. Reg. 221/70, as amended by B.C. Reg. 92/79; B.C. Reg. 358/79; B.C. Reg. 459/81.</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

<b>Province/ Name of Board</b>	<b>Government Branch</b>
<i>New Brunswick</i> New Brunswick Film Classification Board	Department of Youth, Recreation and Cultural Resources
<i>Nova Scotia</i> Amusement Regulations Board	Department of Consumer Affairs
<i>Quebec</i> Bureau de Surveillance du Cinéma	Ministry of Cultural Affairs (Ministère des Affaires Culturelles)
<i>Ontario</i> Ontario Board of Censors	Department of Consumer and Commercial Relations
<i>Manitoba</i> Manitoba Film Classification Board	Department of Tourism, Recreation and Cultural Affairs
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Saskatchewan Consumer and Commercial Affairs
<i>Alberta</i> Alberta Motion Picture Censor Board	Alberta Culture, Division of Cultural Development
<i>British Columbia</i> British Columbia Film Classification Branch	Ministry of the Attorney General

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Structure of Board
<i>New Brunswick</i> New Brunswick Film Classification Board	Three or more persons including a chairman. (At present, there are six part-time members).
<i>Nova Scotia</i> Amusement Regulations Board	Chairman and nine part-time members.
<i>Quebec</i> Bureau de Surveillance du Cinéma	Director and other members appointed by the Lieutenant-Governor.
<i>Ontario</i> Ontario Board of Censors	Director serving as Chairman, an Assistant Director serving as Vice-Chairman and such other persons as the Lieutenant Governor in Council appoints. At present, there are 30 members serving on a part-time basis. At least five members must be present in order to classify a film.
<i>Manitoba</i> Manitoba Film Classification Board	Up to 15 part-time members, including a chairman and vice-chairman. Each film is viewed by three members who vote on its classification.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Director (Chairman of the Board) and between one and four other members (at present there are two other members).
<i>Alberta</i> Alberta Motion Picture Censor Board	Chairman and four members. Majority rule.
<i>British Columbia</i> British Columbia Film Classification Branch	Film classification director and two other appointed employees designated as film classifiers. Majority rule.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Functions of Board
<i>New Brunswick</i> New Brunswick Film Classification Board	Classify or prohibit films. Can request cuts, preferring the distributor to make them.
<i>Nova Scotia</i> Amusement Regulations Board	Classifies or prohibits. Does not cut. Requires the distributor to make cuts.
<i>Quebec</i> Bureau de Surveillance du Cinéma	Classify or prohibit films. Can request cuts, making the distributor to make cuts. Has the power to refuse to grant a visa of approval.
<i>Ontario</i> Ontario Board of Censors	Has the power to reject any film, to censor any film and when authorized by the person who submitted the film, to edit any portion of the film that it does not approve for exhibition. Board prefers the distributor to make cuts. Board also classifies all the films submitted to it.
<i>Manitoba</i> Manitoba Film Classification Board	Pure classification. The board does not edit or reject films. Also, under the Act, if deemed desirable, the Lieutenant Governor in Council may co-operate with the governments of other provinces in Canada in appointing joint film classification board. (As yet no such initiative has been taken.)
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Has the power to reject films, and to remove any portion of a film that it does not approve for exhibition. Classifies films. Board prefers to recommend cuts to the distributor.
<i>Alberta</i> Alberta Motion Picture Censor Board	Has the power to reject films and to eliminate any subtitles, words or scenes that it considers objectionable before approving the film. Board also classifies films. Rejected films may be re-submitted after a period of no less than six months.
<i>British Columbia</i> British Columbia Film Classification Branch	Has the power to reject films, to make approval contingent upon the cutting of the film by the person who submitted it, and to classify films. Board also will make cuts requested by the distributor.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Adult Policy
<i>New Brunswick</i> New Brunswick Film Classification Board	Will not allow scenes of penetration, ejaculation or excessive sex and violence. The British version of Caligula was shown with no cuts requested.
<i>Nova Scotia</i> Amusement Regulations Board	Will not allow scenes of penetration, ejaculation, or excessive sex and violence. Refused to license the version of Caligula altered for Ontario.
<i>Quebec</i> Bureau de Surveillance du Cinéma	No written policy formula has been adopted, in view of Quebec's "constantly changing pluralistic society"; however, the Board is guided by two general principles: (i) judgment is not passed on films according to their themes, but upon the manner in which they are treated, on both the psychological level; and (ii) the goals of protecting minors and maintaining freedom of choice for persons 18 years of age and older. Caligula (American version) shown with cuts.
<i>Ontario</i> Ontario Board of Censors	Will not allow: explicit portrayal of sexual activity; undue and prolonged scenes of violence, torture, blood-letting; ill-treatment of animals; undue or prolonged emphasis on genitalia; sexual exploitation of children. British version of Caligula shown with cuts.
<i>Manitoba</i> Manitoba Film Classification Board	Permit issued by Board is not a licence to show the film in Manitoba. Police can and have charged films shown with a licence. Film will be classified as "Restricted Adult" if it contains depictions of any of the following: oral sex; fellatio; buggery; cunnilingus; penetration; bestiality; masturbation; ejaculation; actual portrayal of child pornography; graphic portrayal of genital close-ups; extreme acts of violence with sexual activity. British version of Caligula approved and shown.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	The Board views scenes in the context of the whole film. Penetration, ejaculation and long scenes depicting sexual acts are cut. British version of Caligula shown in Saskatchewan.
<i>Alberta</i> Alberta Motion Picture Censor Board	The Board does not cut films. Will not allow scenes of penetration, ejaculation and violence. The British version of Caligula was shown. Police charged movie Caligula.
<i>British Columbia</i> British Columbia Film Classification Branch	Does not allow scenes of penetration, ejaculation, intercourse and violence. American version of Caligula approved and shown.

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Child Policy
<p><i>New Brunswick</i> New Brunswick Film Classification Board</p>	<p>In determining what movies should be classified, rejected or cut, the same standards apply for adults and children when involved in sex scenes. If a movie were to be submitted with more explicit scenes involving children, Board Policy would be reviewed. Adults can take youth to restricted movie. <i>Pretty Baby</i> and <i>Tin Drum</i> passed and shown in New Brunswick.</p>
<p><i>Nova Scotia</i> Amusement Regulations Board</p>	<p>The Board will not pass films that physically or sexually exploit children. <i>Pretty Baby</i> and <i>Tin Drum</i> approved.</p>
<p><i>Quebec</i> Bureau de Surveillance du Cinéma</p>	<p>The general goal of the Board is to reconcile the objectives of protecting minors and of allowing freedom of choice for adults. <i>Pretty Baby</i> and <i>Beau Père</i> approved and shown.</p>
<p><i>Ontario</i> Ontario Board of Censors</p>	<p>Rejects anything that sexually exploits children in any manner. Cuts or banning of films are made on the basis of Board policy. Under the Act, no person apparently under 12 years of age not accompanied by a person apparently 16 years or more of age shall be permitted to purchase a ticket of admission or be granted admission to an exhibition of moving pictures in a theatre: (a) after 7:30 p.m. on any day; (b) during the school term of public and secondary schools in the municipality in which the theatre is situated, except — (i) during school holidays between the hours of 9:00 a.m. and 7:30 p.m., and (ii) during any other day during the term between the hours of 3:30 p.m. and 7:30 p.m. <i>Pretty Baby</i> and <i>Beau Père</i> banned. Cuts to <i>Tin Drum</i> and then played.</p>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Child Policy
<p><i>Manitoba</i> Manitoba Film Classification Board</p>	<p>Films showing excessive sex and violence are limited to persons 18 and over. Films portraying children under 15 in sexual situations are classified as adult parental guidance. Films portraying minors in sexually explicit scenes are classified as restricted adult. <i>Pretty Baby</i>, <i>Blue Lagoon</i> and <i>Beau Père</i> have been shown in Manitoba.</p>
<p><i>Saskatchewan</i> Saskatchewan Film Classification Board</p>	<p>Criteria same for adults and children when children are subject matter of film. <i>Pretty Baby</i> rejected in 1978. This ruling was appealed and upheld. As a result, the current Board was set up. Categories to be clearly displayed at theatres. <i>Beau Père</i> submitted and approved in 1982.</p>
<p><i>Alberta</i> Alberta Motion Picture Censor Board</p>	<p><i>Pretty Baby</i> shown. <i>Beau Père</i> passed but not shown.</p>
<p><i>British Columbia</i> British Columbia Film Classification Branch</p>	<p>Seeks to protect children by ensuring theatres have signs posted clearly indicating classification of film being shown. Under restricted category, children can enter with a parent. <i>Beau Père</i> and <i>Pretty Baby</i> passed and shown.</p>



Table 49.1 (Continued)

Provincial Regulation and Classification of Films

Province/ Name of Board	Film Classification/Categories
<i>New Brunswick</i> New Brunswick Film Classification Board	<i>General:</i> Suitable for all ages. <i>Adult:</i> Suitable for adults 16 and over. Not theatres' responsibility to keep children out. <i>Restricted:</i> To 18 years and over; adults can take youths in. Adult means parent or legal guardian.
<i>Nova Scotia</i> Amusement Regulations Board	<i>General:</i> Admission to all persons. <i>Adult:</i> Those 14 years and older admitted. Under 14 must be accompanied by an adult. <i>Restricted:</i> No one under 18 admitted.
<i>Quebec</i> Bureau de Surveillance du Cinéma	<i>A: Film pour Tous</i> — viewers of all ages admitted. <i>B: Film Pour Adolescents et Adultes</i> — only viewers at least 14 years of age admitted. <i>C: Film Réservé aux Adultes</i> — only viewers at least 18 years of age admitted.
<i>Ontario</i> Ontario Board of Censors	<i>Family viewing</i> , all ages. <i>Parental guidance advised.</i> <i>Adult accompaniment required</i> for age of 14 restricted to 14 and over unless accompanied by adult. <i>Restricted</i> — no one under 18 admitted.
<i>Manitoba</i> Manitoba Film Classification Board	<i>General:</i> Family viewing, all ages. <i>Mature:</i> Parental discretion, all ages. <i>Mature:</i> Suitable for family viewing. <i>Mature:</i> Not suitable for children. <i>Adult:</i> Parental guidance parent must accompany children. <i>Restricted:</i> no one under 18 admitted.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	<i>General:</i> No age restrictions. <i>Adult:</i> Parental guidance advised. <i>Restricted Adult:</i> No child under 18 admitted, unless accompanied by a parent. <i>Special X:</i> No one under 18 admitted.
<i>Alberta</i> Alberta Motion Picture Censor Board	<i>General:</i> No age restrictions. <i>Parental Guidance:</i> Parental guidance advised, no age restrictions. <i>Mature:</i> Under 14 must be accompanied by adult. <i>Restricted Adult:</i> No one under 18 admitted.
<i>British Columbia</i> British Columbia Film Classification Branch	<i>General:</i> No age restrictions. <i>Mature:</i> Parental guidance advised. <i>Restricted:</i> No person under 18 admitted unless accompanied by a parent or responsible adult. Theatre must display sign indicating content of film.

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Appeal Procedure
<i>New Brunswick</i> New Brunswick Film Classification Board	No statutory authorization.
<i>Nova Scotia</i> Amusement Regulations Board	No statutory authorization.
<i>Quebec</i> Bureau de Surveillance du Cinéma	Every person who has submitted a film to the Board may, if not satisfied with the decision rendered, appeal therefrom to the Board sitting in review. Appeals are initiated by means of a registered letter addressed to the chairman. The Board will then examine the film and arrive at the final decision.
<i>Ontario</i> Ontario Board of Censors	Appeal procedure is set by the Board rather than by statute or regulation. Distributors objecting to the Board's recommendation may make submissions in writing to the Board within 15 days of mailing or delivery of the Board's report. Such submissions will include the preferred classification or treatment of the film together with reasons for the submission. The Board will review any such submission forthwith considering the reasons set out by the distributor. The Board or any member may view (or review) the film. The Board may request a meeting with the distributor to discuss his submission. A decision will be rendered within 10 working days after the receipt of a submission. The Board's Office Manager will advise the distributor of the Board's decision and reasons (including any minority view).

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Appeal Procedure
<p><i>Manitoba</i> Manitoba Film Classification Board</p>	<p>The Minister may appoint an appeal board consisting of at least five persons. The Minister is also empowered to co-operate with the governments of other provinces of Canada in appointing a joint appeal board consisting of not more than 10 persons nominated by the Minister and by the other governments represented on the joint film classification board.</p>
<p><i>Saskatchewan</i> Saskatchewan Film Classification Board</p>	<p>Appointed committee hears all appeals. Its decisions are final.</p>
<p><i>Alberta</i> Alberta Motion Picture Censor Board</p>	<p>Appeal board consists of three appointed persons. Appeals are made within 30 days of Censor Board's decision to condemn the film. Appeals must be made in writing, must state the reason for appealing, and must contain a declaration that the film has not been altered since it was received back from the Board of Censors.</p>
<p><i>British Columbia</i> British Columbia Film Classification Branch</p>	<p>Appeal board consists of a chairman and two other persons appointed by the Lieutenant Governor (Act section 3(1)). Every person who appeals to the appeal board shall file with the Director a notice of appeal in the form prescribed by the Director, and shall pay the prescribed fee. The appeal board's decision and order is final and binding on the Director and every other person affected by it.</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Advertising
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>A theatre owner must display at the entrance to the theatre a sign at least 8" x 12" indicating the classification of the film to be exhibited. If films of more than one classification are to be exhibited, the classification with the more mature age requirement must be displayed. A theatre owner shall clearly indicate in the advertisement the film's classification.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>No statutory authorization.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p>No pictorial or cinematographic film shall be the subject of an advertisement in a newspaper, as defined in <i>The Press Act</i>, in which an advertisement cut, drawing or engraving is used, unless such cut, drawing or engraving be part of a poster or of a film previously approved by the Board.</p> <p>Every person who wishes to use a poster (as defined by regulation) for advertising a pictorial or cinematographic film performance, is required to submit the same for the approval of the Board, before the poster may be loaned, rented or transmitted to be exhibited. The class of spectators determined in the visa issued by the Director must be posted in a conspicuous place at the entrance to every moving picture or drive-in theatre where the film is exhibited. When films with different classifications are shown at the same performance only the most restrictive classification may be posted.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>All advertising matter in connection with a film classified by the Board as adult or restricted entertainment shall indicate that the film is so classified. Appointed inspectors under the authority of the Director have the power to seize, remove and hold any advertising that they believe on reasonable and probable grounds was exhibited or was or is used contrary to the Act. The Board has the power to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition thereof. No person shall use or display any advertising matter in connection with any film or the exhibition thereof unless a sample of the advertising has been submitted to and approved by the Board. Theatres exhibiting "restricted" or "adult" entertainment films must have signs of prescribed size and shape hung under their canopies to specify the classification of the film. Advertising shall also indicate any other information that the Board requires.</p>

Table 49.1 (Continued)

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Advertising
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>The Board is empowered to control and regulate advertising of films and slides intended to be classified for exhibition. The Board, or any peace officer or inspector, may order the removal from all public places of any advertisement relating to any film or slide if the advertisement is of an immoral, obscene or indecent nature or depicts any murder, robbery, criminal assault or the killing of any person.</p> <p>All advertising instructions as to film classification and content initiated by the Board shall be carried out by the persons to whom the instructions are issued. Theatres must clearly and prominently display a notice in the form and of a size approved by the Board showing the classification of the film being exhibited. The classification must also be displayed in any newspaper or other advertising medium used to advertise the film.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>The Board may require a person to submit to it any poster, lithograph or other advertisements depicting scenes from, and intended to be used or displayed in connection with a film to be exhibited in Saskatchewan; and the Board may prohibit the use or further use of any such posters, lithographs or advertisements that it considers unfit for public exhibition or display.</p> <p>No person shall insert or cause to be inserted in a newspaper or other periodical an advertisement describing or in any way dealing with a film, that:</p> <ul style="list-style-type: none"> <li>(a) gives details of a criminal action or depicts criminals as admirable or heroic characters;</li> <li>(b) is immoral or obscene or suggests lewdness or indecency;</li> <li>(c) offers evil suggestions to the minds of persons or children; or</li> <li>(d) is for any other reason injurious to public morals or opposed to the public welfare.</li> </ul> <p>The Board may require any person to submit before publication, for its approval or rejection, the proofs or proposed advertisements.</p> <p>The Board shall determine whether the public should be warned of potentially offensive scenes, language or violence contained in any film. No film that has been classified may be publicly exhibited unless:</p>

Table 49.1 (Continued)

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Advertising
Saskatchewan Film Classification Board (Cont'd)	<p>(a) all graphic or written advertisement for the film distributed or posted after the date of classification include the correct classification and any warnings; and</p> <p>(b) the classification and any warnings are displayed in a part of the theatre so as to be readily seen by the public before paying admission.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p>When so requested, a film exchange shall submit to the Board of Censors all advertising material of a particular feature picture for approval or otherwise.</p> <p>The Board of Censors has the power to examine all posters, heralds, hand-bills, cuts, newspaper and periodical advertising matter in connection with films and film displays, and approve or disapprove of same.</p> <p>Any person using or displaying any advertising matter after it has been condemned or disapproved of by the Censor Board, shall be liable on summary conviction to a fine of not less than \$25 and not more than \$200, with costs. Advertising must prominently display the film's classification, and any other comments the Board considers advisable.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>Director may approve, prohibit or regulate advertising. No person shall use or display advertising matter in connection with a film or its exhibition unless a sample of the advertising matter is first approved by the Director.</p> <p>The Director may require, as a condition of approval of the advertising matter that it contain words describing the classification of the film together with other comments the Director considers advisable.</p> <p>All advertising matter in connection with a film shall be submitted to the Director before the film is exhibited.</p> <p>The advertising of "Mature" films must convey the words "Adult Entertainment" in all media of communication used for advertising.</p> <p>Advertising of all "restricted" films must display the province's "Restricted" symbol and the words "No Admittance to Persons Under Eighteen". In radio advertising for such pictures, the words "Restricted Admission" must be clearly spoken.</p> <p>Before approving any advertising in connection with a film, the Director may order that a warning caption be displayed in all advertising and thereupon the words supplied by the Director shall be used in all such advertising.</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Film Trailers
<i>New Brunswick</i> New Brunswick Film Classification Board	Any film determined by the Board to be a trailer shall only be exhibited in the following manner: <ul style="list-style-type: none"> <li>• trailers classified by the Board as restricted entertainment shall only be exhibited with films classified as restricted entertainment;</li> <li>• trailers classified by the Board as adult entertainment shall only be exhibited with films classified as adult or restricted entertainment;</li> <li>• trailers classified by the Board as general entertainment may be exhibited with any film approved by the Board.</li> </ul>
<i>Nova Scotia</i> Amusement Regulations Board	No statutory authorization.
<i>Quebec</i> Bureau de Surveillance du Cinéma	The Bureau examines and classifies trailers.
<i>Ontario</i> Ontario Board of Censors	The Board screens trailers.
<i>Manitoba</i> Manitoba Film Classification Board	No statutory authorization.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	In practice, the Board recommends editing of unsuitable trailers.
<i>Alberta</i> Alberta Motion Picture Censor Board	No statutory authorization.
<i>British Columbia</i> British Columbia Film Classification Branch	The Director shall supply a "restricted film strip" for each trailer (and print) of a film classified as "restricted" entertainment. The "restricted film strip" shall be inserted in the trailer (or print) at the Director's office under supervision.

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Drive-in Theatres
<i>New Brunswick</i> New Brunswick Film Classification Board	No drive-in theatre shall be established having any building, fence or construction within 15 metres from the centre of the public highway.
<i>Nova Scotia</i> Amusement Regulations Board	No screen tower shall be so placed so that any projection screen is visible from a highway.
<i>Quebec</i> Bureau de Surveillance du Cinéma	Films for adults only shall not be exhibited in outdoor theatres.
<i>Ontario</i> Ontario Board of Censors	The Director can approve plans for construction of a drive-in theatre only if the application for construction is submitted with a copy of the resolution of the council of the local municipality authorizing the construction.
<i>Manitoba</i> Manitoba Film Classification Board	No statutory authorization.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	No licence is to be granted for a new drive-in theatre unless the screen tower is placed so that its viewing surface is not visible from a numbered provincial highway.  A film designated by the Board as "not to be shown in drive-in theatres" shall not be shown in a drive-in.
<i>Alberta</i> Alberta Motion Picture Censor Board	No statutory authorization.
<i>British Columbia</i> British Columbia Film Classification Branch	Certain films are classified as "Restricted Entertainment — Designated Theatres Only" and cannot be shown at drive-ins.



**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Complaints
<i>New Brunswick</i> New Brunswick Film Classification Board	Receives about 10-12 formal complaints a year. Numerous informal calls or inquiries are received about the classification or acceptance/rejection of certain films.
<i>Nova Scotia</i> Amusement Regulations Board	Receives about six complaints a month.
<i>Quebec</i> Bureau de surveillance du cinéma	No information received.
<i>Ontario</i> Ontario Board of Censors	70 oral and written complaints for the one year period prior to July, 1982.
<i>Manitoba</i> Manitoba Film Classification Board	Receives one to two per month. Yearly total, 10 - 14.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Registry of complaints implemented in January, 1982. Verbal complaints received at the rate of one or two a month.
<i>Alberta</i> Alberta Motion Picture Censor Board	10-15 written complaints annually, and 10-15 oral for a total of 20-30 annually. The Board will investigate complaints and alter ratings in response to complaints.
<i>British Columbia</i> British Columbia Film Classification Branch	1980 — 30 1981 — 41  The movie Caligula received a total of seven complaints.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Community Involvement by the Board
<p><i>New Brunswick</i> New Brunswick Film Classification Board</p>	<p>Meets with various groups to discuss the role of the Board. Invites responses from the public at these presentations and anyone else who wishes to express their opinion. Attends conference every two years for Theatre Branch Directors/ Chairmen to determine what is happening in other provinces.</p>
<p><i>Nova Scotia</i> Amusement Regulations Board</p>	<p>Public speaking engagements, conferences, letters and phone calls. Members consult friends, neighbours and business associates. Informal research.</p>
<p><i>Quebec</i> Bureau de Surveillance du Cinéma</p>	<p>1. Regional inspection Service: five travelling inspectors cover all of Quebec, throughout the year, visiting more than 500 film houses each month. In each of his/her regions an inspector must gather all possible information concerning the current state of public opinion, viewer reactions and the opinions expressed in the local and regional press. This is followed by regular written reports designed to inform the director of public opinion.</p> <p>2. Public Relations Service: a direct dialogue with the public:</p> <p style="padding-left: 40px;">(a) a record is made of the date of every call received by the Board, the name and address of the caller and the nature of the call. Many calls are followed up with a letter from the Board explaining its position, and also with Board publications.</p> <p style="padding-left: 40px;">(b) Every letter from a citizen or group is answered.</p> <p>3. Research and Documentation Service:</p> <p style="padding-left: 40px;">All relevant articles, reports or studies from over 150 magazines and newspapers are collected, catalogued, and filed to be kept available for the Board's reference, and to enable the Board to gauge public opinion.</p> <p>4. In order to inform and educate, the Board puts out six regular publications:</p> <p style="padding-left: 40px;">(a) Monthly list of films according to classification;</p> <p style="padding-left: 40px;">(b) Monthly list of full length films and short subjects according to country of origin and language;</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Community Involvement by the Board
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma—(Cont'd)</p>	<p>(c) Bi-annual list of film houses in Quebec;</p> <p>(d) Cinéma in Quebec (a list of addresses);</p> <p>(e) The Journal of Films and Viewer Categories (published every 18 months for the last 70 years).</p> <p>(f) Bi-monthly report published from September to June (20 issues per year) reproducing articles, reports, and studies from reputable periodicals. It is divided into three sections: i) Society; ii) Cinéma and Audio-visual Issues; and iii) Censorship.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>Board puts on presentations to various groups and invites feedback. Survey and public opinion polls. Monitors letters and complaints received. Reviews newspapers.</p>
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>The Board puts on presentations. Membership of Board rotated from different sectors of the community. Considers opinions of personnel and feedback from presentations.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>The Board puts on presentations to any interested groups. Community standards developed as a result of input from presentations, other Boards, phone calls and theatre managers.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p>The Board monitors what is happening in other provinces. The Board uses feedback from the community in trying to reflect community standards. Board puts on presentations for benefit of schools, groups and parents.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>Talks and lectures to various groups. The Board is receptive to public opinion. The Director is in constant touch with other Provincial boards.</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)		
<p><i>New Brunswick</i>  New Brunswick Film Classification Board</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>289 283 120 0 6</p>
<p>35 mm only.</p>			
<p><i>Nova Scotia</i>  Amusement Regulations Board</p>	<p><i>Year 79/80:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>283 281 114 0 2</p>
<p>35 mm only. Cuts by distributor only; Board does not make cuts.</p>			
<p><i>Quebec</i>  Bureau de Surveillance du Cinéma</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>970 970 247 0 0</p>
<p>Annual report does not specify whether these figures refer to both 16 and 35 mm feature films, or only to 35 mm films.</p>			
<p><i>Ontario</i>  Ontario Board of Censors</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>1154 1143 337 64 5</p>
<p>(With six films pending decision at end of fiscal year. 35 mm and 16 mm).</p>			

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)		
<p><i>Manitoba</i> Manitoba Film Classification Board</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>399 399 70 0 0</p>
<p>35 mm only.</p>			
<p><i>Saskatchewan</i> Saskatchewan Film Classification Board</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>403 400 168 10 3</p>
<p>35 and 16 mm. Current policy is to have the distributor make the cuts; consequently, they do not monitor the number of films needing cuts.</p>			
<p><i>Alberta</i> Alberta Motion Picture Censor Board</p>	<p><i>Year 80/81:</i></p>	<p>Total Examined Approved: Restricted Cut Rejected</p>	<p>644 635 196 0 9</p>
<p>35 mm only. Films submitted to Alberta have been classified elsewhere, and as such, necessitate few if any cuts.</p>			
<p><i>British Columbia</i> British Columbia Film Classification Branch</p>	<p><i>Year 1980:</i></p>	<p>Total Examined Approved Restricted Cut Rejected</p>	<p>672 669 159 14 3</p>
<p>35 and 16 mm.</p>			

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Police Policy
<i>New Brunswick</i> New Brunswick Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
<i>Nova Scotia</i> Amusement Regulations Board	Police laid one charge in 1979. Police can lay charges without consulting Crown Counsel.
<i>Quebec</i> Bureau de Surveillance du Cinéma	No information received.
<i>Ontario</i> Ontario Board of Censors	Police can lay charges without consulting Crown Counsel.
<i>Manitoba</i> Manitoba Film Classification Board	One charge in 1979. None for 1980 and 1981. As of January, 1981, police must consult with Crown Counsel.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
<i>Alberta</i> Alberta Motion Picture Censor Board	No charges in 1979 and 1980. One charge in 1981. Attorney General can and will instruct police to lay charges.
<i>British Columbia</i> British Columbia Film Classification Branch	No charges, 1979-81. Police do not lay charges unless approved by Crown Counsel.

**Table 49.1 (Concluded)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Review of Three Films			
<i>New Brunswick</i> New Brunswick Film Classification Board	Caligula Pretty Baby Beau Père	A x x	NA — — never submitted	S xBV x
<i>Nova Scotia</i> Amusement Regulations Board	Caligula Pretty Baby Beau Père	— x —	NA x — never submitted	S — x
<i>Quebec</i> Bureau de Surveillance du Cinéma	Caligula Pretty Baby Beau Père	x x x	NA — —	S xAV/WC x x
<i>Ontario</i> Ontario Board of Censors	Caligula Pretty Baby Beau Père	x — —	NA — x x	S xBV/WC — —
<i>Manitoba</i> Manitoba Film Classification Board	Caligula Pretty Baby Beau Père	x x x	NA — —	S xBV x x
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Caligula Pretty Baby Beau Père	x — x	NA — x —	S xBV — —
<i>Alberta</i> Alberta Motion Picture Censor Board	Caligula Pretty Baby Beau Père	x x x	NA — —	S xBV x —
<i>British Columbia</i> British Columbia Film Classification Branch	Caligula Pretty Baby Beau Père	x x x	NA — —	S xAV x x

Notes:

1. Key to classification of three films is: A—approved; NA—not approved; S—shown; AV—American Version; BV—British Version; and WC—with cuts.

2. When this table was compiled certain sections of Quebec's *An Act Respecting the Cinéma*, R.S.Q. 1977, c. C-18, had yet to be proclaimed in force (Sections 12 to 35, 38, 39 and 42 to 44). Also, section 94 of *An Act Respecting the Cinéma*, S.Q. 1975, c. 14, has never been proclaimed in force; this latter section repeals the original *Cinéma Act*, R.S.Q. 1964, c. 55. Should the sections in question be proclaimed, certain aspects of the process by which film exhibition is regulated in Quebec would be altered significantly (particularly the procedure for appealing or reviewing film classifications).

3. The recent introduction in the Quebec legislature of Bill 109, *An Act Respecting the Cinéma and Video Industry*. Given its first reading on December 17, 1982, this proposed legislation, if passed, would make several important changes to the law, including widening its ambit to encompass the growing video industry.

With respect to the information derived from the boards' annual reports, several points should be noted. In comparing the numbers of films viewed by the boards for 1980-81, only the figures pertaining to full length feature films were considered. For some provinces, information was available only on the number of 35 millimetre films reviewed. Where available, information on both 16 and 35 millimetre films is included. Further, the number of films listed as having been cut refers only to those films edited by the boards themselves. Since some boards request the film distributors to make excisions, the total number of films released in edited versions is greater than that indicated in Table 49.1. Finally, the "restricted entry" category refers to the most restrictive film classification in each province.

### Approval and Showing of Specific Films

The provincial boards' review and classification of three films, *Caligula*, *Pretty Baby* and *Beau Père* provides an indication of their approaches to different controversial film depictions of explicit types of sexual behaviour. The film *Caligula* contains scenes of explicit sexual acts and of violence, including: stabbings, decapitations, mass murder, rape and the mutilation of male and female genitalia. In addition, the film portrays acts of incest, necrophilia, group sex, male and female homosexuality, oral-genital sex, sexual intercourse and buggery. The film exists in two different versions, an American (14,130 feet in length and running 156 minutes) and a British (13,230 feet in length and running 146 minutes). The British version contains 20 fewer minutes of explicit sex and violence than does the American, and includes 10 minutes of plot development scenes not found in the American version.

The films *Pretty Baby* and *Beau Père* deal with themes of child sexual abuse and exploitation. The former production concerns a 12 year-old prostitute and contains scenes of full and partial nudity involving the child actress who appeared in the title role. *Beau Père* concerns an incestuous relationship between a 15 year-old girl and her father and contains at least one scene in which the breasts of the young actress playing the incest victim are exposed.

The showing of *Caligula* was approved by seven of eight provincial boards, five of which approved the British version (one with cuts) and two the American version (one with cuts).

*Pretty Baby* was approved by six of eight boards without cuts. *Beau Père* was not submitted for approval to two boards, was not approved by one and was approved by five boards. The findings in relation to the showing of these three films indicate that:

1. Policies vary considerably from one part of the country to another;
2. Sexually explicit scenes depicting violent assaults have been shown in most parts of Canada; and
3. Movies dealing with themes of child sexual abuse and exploitation have been shown in most provinces across Canada.



**In considering these findings, the Committee believes that more uniform and specific criteria must be developed and applied in relation to the film depiction of children and youths in scenes involving child sexual abuse and exploitation. In this regard, we believe that there must be a safeguard in all parts of Canada that films of this kind be prohibited — absolutely. Such movies depict children in sexual scenes which are degrading and exploitative.**

## Municipal By-laws

The *Constitution Act, 1867* confers on the provinces jurisdiction to make laws relating to “Property and Civil Rights in the Province”,<sup>2</sup> “Shop, Saloon, Tavern, Auctioneer, and other licences in order to the raising of a Revenue for Provincial, local, or Municipal Purposes”,<sup>3</sup> and “generally all matters of a merely local or private nature in the province”,<sup>4</sup> and empowers each province to enforce its validly enacted laws by means of fine, penalty or imprisonment.<sup>5</sup> One form which this legislative jurisdiction has taken is the provincial regulation of businesses which provide adult-oriented entertainments (for example, body-rub parlours and escort services) or which offer for view or sale sexually explicit publications (e.g., magazines, “peep-shows” and video cassettes). Typically, a province establishes this regulatory scheme by enacting broadly worded laws that grant municipalities the authority to license, regulate and govern certain businesses or occupations.<sup>6</sup> It is then left to each municipality to specify, through the enactment of municipal by-laws, the precise form which this regulation will take with respect to different kinds of businesses operating within the municipality.

For example, Ontario’s *Municipal Act*<sup>7</sup> provides that “by-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours . . .” and that a by-law passed under this section “may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a license is required under this section *from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof*”.<sup>8</sup>

The Ontario *Act* then proceeds to define “adult entertainment parlour” and related terms. An “adult entertainment parlour” means “any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations”.<sup>9</sup> “Goods” is defined as including books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other viewing or listening matter.<sup>10</sup> “Services” includes activities, facilities, performances, exhibitions, viewings and encounters;<sup>11</sup> “services designed to appeal to erotic or sexual appetites or inclinations” is defined as including: services of which a principal feature or characteristic is the nudity or partial nudity of any person; and services in respect of which the word “nude”, “naked”, “topless”, “bottomless”, “sexy”, or any other word or any picture,

symbol or representation having like meaning or implication is used in any advertisement.<sup>12</sup>

This provincial enabling legislation has been used by Ontario municipalities not only to regulate the operation of businesses which are quintessentially "adult entertainment parlours" (e.g., "sex shops"),<sup>13</sup> but also to regulate the accessibility to young persons of sexually explicit publications sold or displayed within the municipality (e.g., in variety stores). In Ontario, the Town of Newmarket, the City of Burlington and the Metropolitan Council of Toronto, among others, have enacted such by-laws. In British Columbia, the City of Victoria has passed a by-law of wider scope.

At their best, the various municipal by-laws reviewed by the Committee are an effective method of regulating certain business and other activities in a manner specified by the council of a given municipality.<sup>14</sup> Delegated legislation of this sort must, however, accord with certain legal principles in order to withstand challenges to its validity in the courts.

First, a municipality has no greater power than the legislature which created it. It cannot enact, nor can a province validly authorize it to enact, a by-law which in pith and substance relates to a matter exclusively within federal constitutional jurisdiction.<sup>15</sup> It was on this ground that the Supreme Court of Canada declared *ultra vires* a Calgary by-law relating to the use of city streets for the purpose of prostitution. The essential character of the by-law was a prohibition on prostitutes from working the streets and the by-law was accordingly deemed to have invaded Parliament's exclusive legislative power in relation to the criminal law.<sup>16</sup>

Second, even where the "pith and substance" of a municipal by-law concerns a matter clearly within provincial legislative jurisdiction, the power of the municipality to legislate in the area must be set out in provincial enabling legislation. The municipality has only such powers as the legislature chooses to confer on it.

Third, a municipal by-law must be explicit enough so that a citizen who seeks to comply with its terms is able, by reading the by-law, to ascertain his or her obligations under it. As Mr. Justice Kelly of the Ontario Court of Appeal has observed:<sup>17</sup>

When a municipal council purports to legislate under the powers found in the *Municipal Act* and thereby creates obligations to be observed by its citizens, the failure to observe which attracts punishment, it is to be expected that the by-law creating such obligations will itself be so explicit that a well-intentioned citizen seeking to observe the provisions of the by-law may, from a reading of the by-law, without the enlargements of its requirement by the order of a municipal servant, be able to satisfy himself that he has complied with its requirements.

Non-compliance with this principle proved fatal to the validity of a Hamilton, Ontario by-law designed to keep "erotic goods" (including magazines) out

of the view of young persons.<sup>18</sup> "Erotic goods" were defined in the by-law as "goods appealing to or designed to appeal to erotic or sexual appetites or inclinations". The Ontario Court of Appeal declared that part of the by-law which dealt with the display of erotic magazines to be invalid, since it left the store owners without any guide as to the kind of magazines comprehended by it.<sup>19</sup>

## Summary

On the basis of its review of the guidelines and procedures adopted by provincial film classification, review or censorship boards, the Committee found that:

1. These policies and procedures vary widely across Canada with the result that there is no reasonably uniform national standard.
2. Sexually explicit scenes depicting violent assaults have been shown in most parts of the country.
3. Movies whose themes include child sexual abuse and exploitation have been approved and shown in most parts of the country.

In relation to these findings, the first of their kind known to the Committee seeking to compare the guidelines of provincial boards and the application of their review procedures, the Committee recommends that more uniform and specific criteria be developed with respect to the showing of films depicting child sexual abuse and exploitation. The findings are clear and unequivocal that existing guidelines and their application constitute a porous, uneven and inconsistent method of regulating the showing of films of this kind.

Elsewhere in the Report, the Committee recommends that the designation of sexual offences in the *Criminal Code* be more directly based upon the specific types of sexual acts committed against children and youths. In relation to this recommendation, the Committee also recommends that the depiction of these types of sexual acts in which children and youths are portrayed should serve as the basis for the approval-disapproval and/or the classification of films to be shown in theatres.

In light of its recommendations of amendments to the *Criminal Code* given in Chapter 3:

The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

## References

### Chapter 49: Provincial and Municipal Regulation

- <sup>1</sup> *The Censoring of Moving Pictures Act*, R.S.Nfld. 1970, c. 30.
- <sup>2</sup> *Constitution Act, 1867*, Section 92 (13). See also Section 92 (8).
- <sup>3</sup> *Constitution Act, 1867*, Section 92 (9).
- <sup>4</sup> *Constitution Act, 1867*, Section 92 (16).
- <sup>5</sup> *Constitution Act, 1867*, Section 92 (15).
- <sup>6</sup> See generally Rust-D'Eye, *Municipal Licensing: Enabling Legislation and By-Laws*, [1979-81] *Advocates' Quarterly* 423.
- <sup>7</sup> *Municipal Act*, R.S.O. 1980, c. 302.
- <sup>8</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222. Emphasis added.
- <sup>9</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(a).
- <sup>10</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(b).
- <sup>11</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(e).
- <sup>12</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(f).
- <sup>13</sup> "Body-rub parlours" are separately provided for. See ss. of the *Municipal Act*, R.S.O. 1980, c. 302.
- <sup>14</sup> See generally Rust-D'Eye, *supra*, note 6.
- <sup>15</sup> *Ibid.*, at 429-32.
- <sup>16</sup> *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).
- <sup>17</sup> *R. v. Sandler*, [1971] 3 O.R. 614 at 620 (H.C.J.).
- <sup>18</sup> *City of Hamilton By-Law No. 79-144*.
- <sup>19</sup> *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).

## Chapter 50

### Enforcement Practice

This chapter reviews the enforcement of the various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) and the administration and operation of agencies involved in this area of enforcement. The agencies in question are: Revenue Canada Customs and Excise; the R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

#### Revenue Canada Customs and Excise Division

##### Criteria For Seizure

The mandate of the Customs and Excise Division of Revenue Canada includes the administration of the *Customs Act* and the *Customs Tariff*. It is the responsibility of Revenue Canada Customs and Excise to prevent immoral or indecent matter from entering the country. According to Revenue Canada:

The criteria used for determining the admissibility [of sexually explicit or pornographic materials] . . . are based on the related sections of the *Criminal Code* which deal with "obscene" matters and on court decisions made under the *Criminal Code* and under the *Customs Act*. Since the administration reflects the standards of the community at large, these criteria which are national rather than local, have changed over the years and certain magazines which might have been prohibited in the past as indecent are now admitted.<sup>1</sup>

Since September, 1972, the power to prohibit the entry of goods under the pornography-related provisions of the *Customs Tariff* has been decentralized and has comprised part of the authority delegated to line officers (i.e., Customs inspectors) at each of the nation's more than 270 Customs ports. In order to facilitate uniform standards of administration at all ports of entry, guidelines and instructions have been provided to all local port officers and district offices. The relevant policy document stipulates:

9.(2) For the purpose of assisting field officers in making judgments, the following guidelines are to be followed:

The following material will be dealt with at the field level for initial classification and will be prohibited:

- (i) Illustrated material containing hard-core pornographic pictures which lewdly and explicitly display the male and female sexual organs, sexual intercourse, sexual perversions and such acts, including bestiality.
- (ii) Reading material, including hard-core fictional text dedicated entirely to sexual exploitation and containing no redeeming features. The primary source of material of this character is the paperback, or so-called "pocket" publications.

The following material will be referred to headquarters for initial classification:

- (iii) That type of material, the so-called "grey area", with illustrations depicting similar subjects to those described in 9.(2)(i) but in a less explicit fashion, with emphasis, however, mainly on sexual activities and apparently designed to appeal in the same way as hard-core type pornography. In this category are the pseudo or so-called "Nudist" and "Film" magazines which make pretensions to being *bona fide* but which include lewd or other pornographic displays.
- (iv) Any publication which despite its format or alleged scientific, medical or artistic purpose appears to be in essence an indecent or immoral publication in disguise.
- (v) Any material which might reasonably be considered treasonable or seditious.
- (vi) Any publication whose contents appear to counsel, procure or incite a person to possess, cultivate or traffic in narcotics.
- (vii) Any publication which appears to advocate, promote or incite hatred against any identifiable group, that is, by colour, race, religion or ethnic origin.
- (viii) Any publication concerned with violence which counsels, appears to incite, advises, recommends or persuades persons to commit acts of violence which are prohibited by the *Criminal Code*.

Generally speaking, items which do not fall within the foregoing categories may be allowed to be imported including the so-called "naughty" or "spicy" girlie type magazines where the models are partially clad so that the genitals are not exposed and perversions are not depicted. Cultural and educational publications and *bona fide* nudist magazines, although illustrated with nude males or females, but not including indecent poses or over-emphasis on the sexual organs, are also considered admissible. Non-illustrated fictional reading material (or with inoffensive illustrations) which does not fall in the category of hard-core pornography described in 9.(2)(ii) should be allowed to be imported. It is thus the policy to prohibit only hard-core material of the latter type and this will be done at the field level. In case of doubt the material may be forwarded to headquarters for guidance.<sup>2</sup>

In these guidelines, there is no explicit reference to child pornography as a class of material whose entry into the country should be barred. However, the guidelines are sufficiently broad in scope, and their ambit sufficiently clear, to

make it extremely unlikely that any child pornography detected at a Customs port would be allowed into Canada.

**Of greater concern is the number of intangible, imprecise and undefined terms used in the guidelines to describe and differentiate the items which are admissible or inadmissible.** These terms and phrases include: "hard-core", "pornographic", "lewdly", "sexual perversions", "sexual exploitation", "redeeming features", "over-emphasis on the sexual organs" and "inoffensive illustrations". Linguistic vagaries of this sort afford wide discretionary powers to the individuals called upon to interpret them. The greater the number of such individuals is, the wider the interpretive latitude evinced by their judgments is likely to be. The wording of the guidelines tends to promote the problems that the document was intended to alleviate: widely disparate standards of enforcement and inconsistency or variation between the decisions made by individual officers.

These problems were found to exist in 1965, according to a paper prepared at the request of Maxwell Cohen, Dean of the Faculty of Law, McGill University. The report concerned *Customs Control of Imported Publications* and was drafted to assist a committee established to investigate the possibility of legislative control of the dissemination of hate propaganda in Canada.<sup>3</sup> The paper concluded that one of the main problems of existing legislative provisions designed to permit Customs to control the importation of certain kinds of literature was "that of exercising the prohibition of a publication uniformly and consistently from port to port across the country". The paper recommended that:

The decision as to whether certain items of printed or pictorial matter come within the definition [of material whose importation is prohibited] should not be left to Customs officers. The Department's instructions to custom ports of entry on what material is to be prohibited should be predicated upon the advice of competent authority and this advice must be such as to be applicable on a country-wide basis.<sup>4</sup>

## The Seizure Process

Under the current system of enforcement, line officers at local ports of entry are responsible for the initial evaluation of imported articles, and for the determination of whether or not their entry into Canada should be permitted. Material sufficiently objectionable to be detained at a port of entry is forwarded to the Regional Office of Customs having administrative authority over the port at which the particular seizure occurred. The 12 regional offices are located in Halifax, Quebec City, Montreal, Ottawa, Toronto, Hamilton, Windsor, London, Winnipeg, Regina, Calgary and Vancouver. At each office, Commodity Specialists make rulings on the admissibility or inadmissibility of seized items. The Commodity Specialists are officials drawn from the ranks of line officers. Their training includes the same 16 week Customs College course received by all prospective line officers, as well as their actual working experience in Customs inspection, part of which involves rotation between jobs at

their assigned port of entry in order to assure their familiarity with all aspects of the port's operation.

In order to become Commodity Specialists, line officers must apply and compete for vacant positions. After this selection process is complete, the new Commodity Specialists receive one week of on-the-job training designed to familiarize them with the paperwork that the job entails and to refresh them concerning the criteria according to which material can be classified as "indecent" or "immoral", for the purposes of the *Customs Tariff*.

Eighteen of the larger ports of entry are classified as district ports. In each of these ports, one officer serves as the Chairman of a District Committee, the responsibility of which is to review the decisions of the Commodity Specialists concerning material falling into the "grey area" between the clearly importable and the unquestionably unacceptable. Some of the larger local ports, at which seizures are more frequent, have adopted the practice of referring such borderline material directly to Ottawa for final rulings, thereby bypassing their District Ports. The Chairman's duties include notifying the release point (i.e., local port) of the Committee's decision, corresponding with the importer and referring all questionable items and appeals to Ottawa for final rulings.

Under the *Customs Act*, the importer of matter classified as immoral or indecent may appeal within 90 days of the ruling being made. Upon initial classification, the importer is informed of this statutory right. Appeals are made either in the form of a letter to the Deputy Minister of National Revenue or on standardized forms. However, because prohibitions frequently are made at the field level, appeals are processed through the port at which the seizure occurred. In the event that the appeal is denied, the importer is entitled under the *Customs Act* to appeal further. Such appeals must be initiated within 60 days of the Deputy Minister's decision, and are dealt with by a judge of the Supreme Court in Prince Edward Island, by a judge of the Court of Queen's Bench in New Brunswick, Saskatchewan and Alberta, by a judge of the Superior Court in Quebec, and by a judge of the County or District Court in all other provinces.

All questionable items detained are referred to a special office at Revenue Canada Customs and Excise Headquarters in Ottawa. This office, the Prohibited Importations Section, also reviews all appeals and recommends decisions to the Deputy Minister. In addition, the Section is responsible for notifying the field ports of the decisions made regarding the "grey area" materials referred to it; the ports in question must then inform the would-be importers about the Section's decision. Every second week, the Section distributes to the field a list reporting its rulings made during that period.

**In the Committee's judgment, the listing of rulings has the potential to serve a valuable function in Revenue Canada's efforts to control the importation of adult materials. Line Officers, Commodity Specialists and District Committees could draw upon the report for guidance in their deliberations concerning the importability of borderline material. If it were treated as a set**



**of directives from "head office", the listing could facilitate virtually uniform nation-wide standards for seizure.**

Through extensive interviews with the responsible local Customs officials, the Committee learned that the bi-weekly listing is not widely accessible. The items that have been the subjects of the Prohibited Importations Section's rulings are not listed alphabetically according to title. Considering that the Prohibited Importations Section receives about 1000 items each month to be ruled upon, it can be appreciated how difficult it may be to locate a particular title on the twice-monthly issued listing. At the Vancouver Regional Office, the initiative has been taken to alphabetize the entries on the list. The Committee was informed of numerous examples across the country in which regional decisions were inconsistent not only with those made in Ottawa, but also with those made in the same office; in some instances, an official has been inconsistent with his or her own prior rulings concerning the same magazine title.

The Prohibited Importations Section has developed a policy of co-operation with periodical distributors and publishers. The distributor, or a lawyer representing the publisher, of a questionable imported publication will submit a "blueline" (also referred to as a "chromoline" or "dummy") copy of a forthcoming issue to the Prohibited Importations Section, and will be advised whether any depictions contained therein are sufficiently offensive to prevent the magazine from being allowed into Canada. After the necessary excisions have been made, the issue is re-submitted for a ruling, and generally, receives approval.

Another Customs official whose function may have an impact upon the seizure process is the Regional Intelligence Officer (R.I.O.). R.I.O.s are stationed either centrally (i.e., in Ottawa) or regionally, depending upon their geographic area of jurisdiction. The R.I.O.'s basic duty is to gather information concerning Customs-related incidents occurring in his/her assigned region. The R.I.O. also acts as a liaison with other agencies, contacting such organizations when their involvement is warranted by the facts of a case under investigation. If the case appears to be purely Customs-related, the R.I.O. may decide to conduct a more exhaustive follow-up investigation. If grounds for laying charges are uncovered, the standard practice is for the R.I.O. to notify personnel from R.C.M.P. Customs and Excise, so that they can make the necessary arrests.

#### Liaison with Canada Post

The interrelationship of Revenue Canada Customs and Excise and the Canada Post Corporation is of critical importance to the process by which the importation of pornography is regulated. Customs officials are stationed in all post office facilities handling mail of foreign origin. The initial screening of mail occurs at each of five International Mail Units (I.M.U.s) across the country. The I.M.U.s located in Halifax, Montreal, Toronto, Winnipeg and Vancouver are the central points from which mail first enters Canada. After the

preliminary screening, the mail is sent to one of 12 secondary screening facilities across the country.

Under the *Canada Post Corporation Act*,<sup>5</sup> a legal distinction exists between letters and other forms of mail. In practice, the term "letter" seems to be synonymous with mail sent by first class post. As a result of this differentiation, second, third and fourth class mail appears to be far more readily accessible for purposes of Customs inspection than is first class post. For this reason, incoming foreign first class mail received by the I.M.U. is separated from the second, third and fourth class post, the latter classes being subject to automatic inspection to determine which items are dutiable.

In order to obtain an illustration of the volume of mail inspected, the Committee contacted the responsible officials at the I.M.U. in Toronto. That unit handled approximately 9,500,000 pieces of incoming foreign mail in 1982, or about 40,000 pieces daily. There were 24 staff members employed to examine all posted matter. The average inspector handled almost 1700 pieces of mail daily, or well over 200 pieces hourly. Any time spent opening or examining letters or packages which may require individual scrutiny reduces the time allotted for the inspection of the remaining load of mail.

No information is available concerning the thoroughness of these inspections. However, when the sheer volume of mail that the system processes is considered, it is difficult to imagine the Customs officials having sufficient time to give most items more than a cursory going-over (with the result that more carefully concealed pornographic materials may escape detection and examination).

When the Customs officer inspecting incoming mail finds an item that he or she considers classifiable as indecent or immoral, he or she forwards the item to the Regional Customs Office for examination and ruling by a Commodity Specialist. If the contents of the envelope or parcel in question are then ruled prohibited, the importer has the same rights of appeal as a person from whom material is seized at a border crossing; that is, an appeal may be submitted through the regional or port Collector of Customs to the Deputy Minister. Material ruled by the Commodity Specialist not to be immoral or indecent is released and delivered to the importer. Items about which the Commodity Specialist has difficulty making a decision are forwarded to Ottawa for a ruling by the Prohibited Importations Section.

At the International Mail Unit in Winnipeg, the Committee learned that measures had been taken to increase the effectiveness of Customs officers in spotting items that should be seized. The Commodity Specialist assigned to the Winnipeg Regional Customs Office had posted notices in the I.M.U.'s sorting area designed to alert the Customs personnel concerning the kinds of packages for which they should be on the lookout. The notices described the methods used by importers of unlawfully imported adult material to prevent it from being detected in the mail. It appears to be the practice at the Winnipeg I.M.U. to rotate Customs employees to other assignments less frequently than

at other I.M.U.s. As a result, Customs officers inspecting mail in Winnipeg may be more experienced and more knowledgeable concerning the importation of pornography than comparable officials stationed elsewhere. The disproportionately high volume of detected material mailed to Manitoba addresses between 1979 and 1981 detained by Customs attests to the efficacy of the methods employed at the Winnipeg I.M.U. (see Chapter 51).

The special attention afforded to certain types of mail may impede the detection and seizure of immoral or indecent matter. The official Post Office/Customs position, as of March, 1982, was as follows:

2. It is not expected that Canada Post employees will have to make any determination that any specific goods are dutiable or controlled. There are, however, types of mail matter that can be delivered automatically without reference to Canada Customs; for example, correspondence, letters, postcards, newspapers and magazines posted to individuals by publishers need not be referred. Regional Collectors of Customs are encouraged to give their counterparts in Canada Post any further guidance or information on the types of mail that can be forwarded directly so as to ensure the best possible service.
8. . . . First class or letter mail will be subject to a "cull" by Canada Post employees to provide for automatic release of such material as envisaged in section 2. As well, "AO" (Autres Objets) will be culled to remove for direct delivery, the newspapers, circulars and magazines which need not be examined by Customs.
9. Notwithstanding the foregoing, Canada Customs may from time to time arrange for sampling checks of the letter mail for AO material culled out for direct delivery. The purpose of these checks is to do a sampling of such mail for illicit importations of narcotics or other material concealed therein.<sup>6</sup>

Considering the implications of these instructions, it is evident that the use of certain importation practices designed to hide the nature of the material being posted could result in substantial quantities of immoral or indecent depictions passing through the mail. For instance, legitimate magazines or newspapers can be used to conceal copies of pornographic publications. Individual photographs and small format (5" x 7") magazines may be readily concealed in letter-sized or slightly over-sized envelopes. Sending such envelopes by first class mail renders extremely remote the chance of their detection and seizure.

### Storage of Information

A factor that may have a significant impact on the investigation of cases involving child pornography and other indecent, immoral or obscene matter is the effectiveness of the system by which records of Customs seizures are kept and are made available to appropriate law enforcement agencies. For instance, learning that a person from whom pornography has just been seized at a border crossing has had similar matter detained by Customs on a number of previous

occasions may strongly influence an enforcement agency in deciding whether to conduct a comprehensive investigation of that individual (e.g., in deciding whether to apply for a warrant to search the person's place of residence). The efficient maintenance of records of Customs Seizures could prove invaluable in relation to the identification of habitual smugglers of pornography, and more importantly, the major consumers of child pornography.

All district Customs offices are encouraged to contribute information concerning seizures of pornographic materials to Ottawa for computerized storage at Revenue Canada Customs and Excise Headquarters. The Committee was informed that 13 offices had supplied such information; however, in examining Revenue Canada files for the period 1979-1981, it was discovered that only three offices had contributed information. In order to obtain a more accurate picture of the number and nature of pornography seizures, the Committee visited the Regional Offices. Here, a hand search was conducted of Customs records. While about 10,000 entries were obtained from the computerized file in Ottawa, approximately an additional 16,000 entries came to light as a result of these visits.

Aside from the sheer incompleteness of the information contained in the central computerized file, the quality of information obtainable from this source often lacked pertinent details. For some of the 16,000 entries, few details were recorded that would be vital for the purposes of police investigation; specifically, the printouts from the file frequently failed to indicate either what material was seized (by title or description) or the number of items detained in each seizure. A number of duplicated entries were found. The failure of numerous offices to contribute information to the file could seriously hamper police investigations. Enforcement agencies checking with Ottawa, for instance, may be informed that a suspect has never had material seized from him when, in fact, any number of seizures from that person have been made by an office that does not contribute information to Headquarters.

## R.C.M.P. Customs and Excise Section

### Jurisdiction

Members of the Royal Canadian Mounted Police may be appointed as peace officers under the *R.C.M.P. Act*,<sup>7</sup> and when so appointed, are peace officers in every part of Canada. As such, they may be called upon to enforce not only the provisions of the *Criminal Code* throughout the country, but also a wide range of other federal statutes. In accordance with federal-provincial contracts, provincial police service is extended by the R.C.M.P. to the Yukon and Northwest Territories, and to all provinces not maintaining their own provincial police forces (in effect, to all provinces except Ontario and Quebec; the Newfoundland Constabulary, in practice, restricts its policing activities to certain regions of the province). The R.C.M.P. provides contracted municipal police service to about 200 municipalities in all provinces, except Ontario and

Quebec. When acting in the capacity of provincial and federal police, the R.C.M.P. enforces the entire gamut of Canadian legislation, from the *Criminal Code* and other federal statutes to provincial acts and municipal by-laws.

Broad federal enforcement goals, policies and priorities for the R.C.M.P. are set by the agency itself, in consultation with the Solicitor General of Canada. With respect to R.C.M.P. work at the provincial and municipal levels, goals, policies and priorities are determined in co-operation with the Attorney General or Solicitor General of the particular province.

Under Canadian constitutional law, enforcement of the *Criminal Code* is delegated to the provincial Attorneys General. Thus, while it is the peace officer who institutes criminal proceedings by laying an information before a justice of the peace, the Attorney General of the particular province or territory has the power to halt any such proceedings by withdrawing the information, or by issuing a stay of prosecution pursuant to section 508 of the *Code*. Whether any such action is taken, or whether the prosecution is permitted to go to trial, may depend upon the prosecution policy of the Attorney General, and more specifically, upon the amount of emphasis that the Attorney General has determined should be placed upon enforcing certain sections of the *Criminal Code*. It is as a result of this constitutional division of authority, this discretionary power and this policy determination, that the efficacy of the *Criminal Code* provisions relating to obscenity can be minimized or even negated in different parts of the country. A similar situation pertains with respect to the charging practice of the R.C.M.P. when its members are involved in provincial and municipal policing since, as noted, the agency's goals and policies under such circumstances are set in consultation with the Attorney General. It has thus been pointed out to the Committee that:

"Priorities may change frequently, depending on operational necessity, direction of the A.G., etc., and may vary from Unit to Unit, City to City or Province to Province."<sup>8</sup>

## Enforcement

The Section of the R.C.M.P. to be discussed first concerns itself exclusively with Customs and Excise matters. As a matter of practice, responsibility is divided between: R.C.M.P. Customs and Excise; and Revenue Canada Customs and Excise. Revenue Canada acts primarily to prevent smuggled goods from entering the country, and to this end, maintains offices at border crossings and at all International Airports, that is, at all airports at which flights arrive from outside of Canada; in turn, the R.C.M.P. undertakes to investigate and seize smuggled goods that may penetrate the Customs barrier and find their way inland.

Canada, for purposes of law enforcement by the R.C.M.P. is divided into 13 separate districts, or Divisions, each with its own Divisional Headquarters

(i.e., one Headquarters for each province or territory, and a National Headquarters in Ottawa).

According to the *R.C.M.P. Act*,

- (4) Every officer, and every member appointed by the Commissioner to be a peace officer, has, with respect to the revenue laws of Canada all the rights, privileges and immunities of a customs and excise officer, including authority to make seizures of goods for infraction of revenue laws and to lay informations in proceedings brought for the recovery of penalties therefore.<sup>9</sup>

Acting under the authority of the *Customs Act* (section 205), the R.C.M.P. Customs and Excise Section seizes smuggled goods found inland. As a rule, material so seized is forfeited directly to the Crown, except in cases where the person charged with smuggling is able to show "lawful excuse" — that is, to prove that the material was not brought into the country illegally.

Smuggled pornography, however, often constitutes an exception to this rule. In order for the goods to be forfeited, they must have been imported unlawfully. In the case of pornographic matters, importation would be illegal only if the items brought into the country were immoral or indecent, and classifying goods as immoral or indecent is the responsibility of Revenue Canada Customs and Excise. It is necessary for a ruling to be made by the latter agency respecting any pornographic matter whose forfeiture is sought under the *Customs Act*, even if the agency responsible for the initial seizure was the R.C.M.P.

Where the *Customs Act* is invoked, the R.C.M.P. prepares a "K 19, G.R.C." Seizure Form, upon which is recorded a description of the goods being held, along with any additional relevant information. Copies of the completed form are sent to Revenue Canada's Prohibited Importations Section, to R.C.M.P. National Headquarters to be placed on a national file, and, if required, to Division Headquarters. If the Prohibited Importations Section rules that the pornographic material in question falls within the meaning of the words "immoral or indecent", then the material becomes the property of the Crown (subject to an appeal to the Deputy Minister and thereafter to the courts). Alternately, if the material is ruled not to have been imported illegally, and no criminal (i.e., obscenity) charges are laid with respect to it, then it is returned to the owner or claimant.

It is also the case that charges are laid by the R.C.M.P. under the *Criminal Code* with respect to pornography initially seized under the *Customs Act*.<sup>10</sup> In non-contract Divisions, where the R.C.M.P. only provides federal policing, it is the agency's policy to refer cases involving substantial amounts of pornographic material to the police force with local jurisdiction for its decision whether or not to prosecute under the *Criminal Code*.<sup>11</sup> Should the force choose not to charge, the matter may be dealt with by the R.C.M.P. either by means of the *Criminal Code* or the *Customs Act*. In other jurisdictions, even

where forfeiture under the *Customs Act* fails because the Prohibited Importations Section rules that the material in question is not immoral or indecent, the case at hand does not necessarily terminate. Depending upon the circumstances involved (e.g., offering for sale, distribution, etc.), the R.C.M.P. may refer the case to the Attorney General of the province in which the pornographic matter was seized. In turn, the Attorney General may consider the material sufficiently objectionable to proceed under the *Criminal Code* provisions relating to obscenity.

R.C.M.P. National Headquarters, as a matter of policy, regards unlawfully imported pornography — especially child pornography — as a serious problem. As a result, Headquarters has established a separate catalogue listing all seizures of pornographic material; moreover, the R.C.M.P. has acted in cooperation with Revenue Canada in order to obtain access to Customs and Excise detention orders issued against pornographic matter. Information concerning these Customs seizures has been fed into R.C.M.P. computers. Thus, the R.C.M.P. constitutes perhaps the most comprehensive source of information in Canada with regard to the detention and forfeiture of smuggled child and adult pornography.

The R.C.M.P. derives considerable strength from co-operation with other law enforcement agencies, including local, municipal and provincial police forces as well as police forces in other countries. Co-ordination between the actions taken by the R.C.M.P. and those of other police forces inside Canada tends to maximize the efficacy of efforts to control the availability of unlawfully imported pornography. Information concerning individual seizures brought to the R.C.M.P.'s attention by local or provincial police generally results in the check of the suspected importer's, seller's or distributor's name against the R.C.M.P.'s computerized records. If the suspect's name appears one or more times in the records in connection with previous unlawful activities related to sexually explicit materials, either the R.C.M.P. or the local agency may consider that sufficient grounds have been established to conduct a more extensive investigation, including applying for a warrant to search the suspect's place of residence.

Co-operation of this kind aids in the development of optimally effective charging practices. When municipal or provincial police locate pornographic material smuggled into Canada, several courses of action are available to them. If they believe that the matter meets the legal test of obscenity, they may seize it or may lay charges under the *Criminal Code*. Where the local or provincial police feel that impugned material is insufficiently salacious to warrant an obscenity charge, they may contact a member of the R.C.M.P. who, in turn, may seize the material and charge under the *Customs Act* which, as a federal statute, is beyond the jurisdiction of the former agencies.

Where the material has been smuggled and distributed, sold or displayed, the local police and R.C.M.P. may charge simultaneously under the *Criminal Code* and the *Customs Act*. Typically, when this happens, the courts will deal first with the offences alleged under the *Code*. If the accused is convicted, any

charge(s) under the *Customs Act* will be withdrawn, but if the verdict is one of acquittal, it still is possible that the legal sanctions provided for under the *Customs Act* may be applied (e.g., where distribution, sale or public exposure have not adequately been proven, or where the material seized does not meet the legal test of obscenity, but is demonstrably immoral or indecent). Co-operation and information-sharing between local or provincial police and the R.C.M.P. may make it possible to determine, on the basis of all available evidence, which of these alternate courses of action is most appropriate in the circumstances.

### International Liaison

Co-operation between the R.C.M.P. and law enforcement agencies in other countries has proved rewarding as a means of strengthening the control exercised over the importation into Canada of obscene and immoral or indecent material. This co-operation manifests itself in the form of inter-agency information sharing, and is useful where foreign police departments seize the mailing lists of pornography producers and provide the R.C.M.P. with the names and addresses of Canadian subscribers appearing thereon.

In 1978 and early 1979, the United States Federal Bureau of Investigation (F.B.I.) conducted investigations of Falcon and All-American Studios, two San Francisco-based firms identified as leading producers and distributors of homosexual child pornography. The seized mailing list of All-American Studios contained over 5000 names and addresses, from about 30 countries, including Canada. The R.C.M.P. assisted the F.B.I. in its investigations by conducting a number of searches across Canada of the residences of listed customers. The Canadian subscribers on the list numbered 266; the geographic distribution of addresses was:<sup>12</sup>

Newfoundland	0	Manitoba	8
Prince Edward Island	1	Saskatchewan	11
Nova Scotia	5	Alberta	27
New Brunswick	4	British Columbia	32
Quebec	67	Yukon	0
Ontario	111	Northwest Territories	0

The Canadian addresses on the seized mailing list indicate that recipients of magazines from All-American Studios resided not only in major metropolitan areas, but also in smaller cities and towns, and even in numerous rural communities.

The R.C.M.P.'s legal authority to conduct searches in the All-American investigation derived from the fact that the products would be classified as immoral or indecent, and hence could be treated as smuggled goods. The investigations thus fell within the R.C.M.P.'s mandate of enforcing the *Customs Tariff* and the *Customs Act*. About 40 searches were executed across the Country by R.C.M.P. Customs and Excise officers in order to determine the



quantity of unlawfully imported material received by customers identified by the mailing list. Almost without exception, child pornography was found, sometimes in large quantities. The pornography either had originated in Europe, or came from the companies in San Francisco. Most of the subscribers had been unknown to Canadian authorities prior to the R.C.M.P.'s receipt of the Canadian mailing list from the F.B.I.

The following case study illustrates the value of co-operation between the R.C.M.P. and foreign enforcement services in discovering the identities of Canadian purchasers of child pornography.

The accused, a 34 year-old Edmonton grade four teacher, was investigated by R.C.M.P. Customs and Excise officers after they received notification from United States authorities that the accused was receiving child pornography by mail at his Edmonton address. The material was sent to the accused under an assumed name.

An R.C.M.P. search of the accused's residence uncovered more than 50 pieces of commercially produced child pornography valued at about \$1000. The accused was charged under the *Customs Tariff*. The investigating officers also found photographs of young girls apparently between 10 and 12 years of age, wearing school gym outfits. Three photographs were located that depicted a young girl in a nightgown; of these, one shot showed the girl reclining on a bed with one leg raised, and was focussed on the subject's genital area.

Further investigation conducted by Edmonton City Police raised suspicions that the accused had sexually assaulted three female children, of whom one was four years-old.

Before City Police could interview him, the accused committed suicide.

On the basis of the information assembled by the Committee, it appears that the use of customer mailing lists represents a more efficient method of discovering persons who illegally import pornography than the hit-and-miss process of border point Customs inspection and examination of mail. The latter two techniques require line officers to spot a relatively tiny amount of baggage or mail containing illegal importations amidst a huge volume of luggage, letters and parcels that conceal no illicit matter. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny. It appears that the existing practice is to conduct searches in a minority of cases where there is suspicion that pornography is being imported illegally. In the All-American investigation, for instance, one that involved the identification of a substantial volume of child pornography, only about 40 R.C.M.P. searches were conducted, representing approximately 15.0 per cent of the Canadian entries on the seized mailing list.

The Committee recognizes that care and discretion must be exercised by law enforcement officers before they undertake to search a private citizen's home or place of business. Certain fundamental safeguards have been enacted to prevent any abuse of police authority in conducting searches. A police officer investigating a suspected *Criminal Code* offence cannot obtain a warrant to search a certain building, receptacle or place unless he or she complies with

section 443(1) of the *Code* by satisfying a justice that there is a reasonable ground to believe that the place in question contains:

- Anything upon or in respect of which an offence against the *Code* has been or is suspected to have been committed,
- Anything that there is reasonable ground to believe will afford evidence with respect to an offence against the *Code*, or
- Anything that there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant.

Also, section 8 of The *Canadian Charter of Rights and Freedoms* provides that "Everyone has the right to be secure against unreasonable search and seizure".

**In the Committee's judgment, and considering the results of the searches conducted in the All-American investigation, it would seem that an aggressive search and seizure policy is warranted, wherever circumstances render such techniques an effective means of strengthening legitimate enforcement practices. Where foreign police provide the R.C.M.P. with subscriber mailing lists, and especially where child pornography is involved, the circumstances do exist to justify thorough investigations, including searches. In this regard, the R.C.M.P. could make it known publicly that it was actively seeking the cooperation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography discovered through such contacts. The prospect of being discovered, of having one's residence searched, and of facing the real possibility of prosecution and conviction, would likely serve to dissuade a significant number of persons from sending for child pornography through the mail.**

Canadian authorities should also actively seek out the mailing lists of all major commercial producers and distributors of child pornography. It is significant that Canadian authorities appear never to have received customer lists from the significant national sources of child pornography; it is unclear whether this fact is attributable to a lack of enforcement or an unco-operative attitude on the part of authorities in other nations, or to a failure by Canadian enforcers to take an active role in requesting that foreign police agencies supply them with seized customer lists.

### Provincially and Municipally Contracted Services

As already noted, the R.C.M.P. is charged with enforcement of the *Criminal Code*, and in many communities may be the chief agency providing such enforcement service. Thus, the R.C.M.P.'s mandate includes laying charges under those sections of the *Criminal Code* that concern obscenity. Where obscene matter is domestically produced or is mailed, kept for purposes of distribution or circulation or is sold, exposed to public view or possessed for any such purpose, the R.C.M.P. may charge under the *Code*.

In contract jurisdictions, the R.C.M.P. provides municipal or provincial police service, or both. In these jurisdictions, R.C.M.P. officers are called upon to enforce provincial statutes and even municipal by-laws. In the six contract provinces in which film classification or regulatory boards have been established pursuant to provincial legislation, the R.C.M.P. are the enforcement agency laying charges for such violations as exhibiting a film without first submitting it to the board for approval or failing to display a film's rating outside a theatre in the manner prescribed by statute or by the board.

In its contracted role as a municipal police force, the R.C.M.P.'s mandate includes charging for infractions against by-laws designed to restrict the accessibility of sexually explicit materials to children. The only by-laws of this kind of which the Committee has learned, are those passed by municipalities where the R.C.M.P. does not provide contracted service. The R.C.M.P., however, would have authorization to enforce the Victoria, British Columbia by-law that prohibits the sale or lease of certain pornographic video cassettes, videotapes or films.

## Other Law Enforcement Agencies

### Jurisdiction

The role of local, municipal and provincial police, referred to here as local police forces, in the control of pornography is reviewed briefly, since a number of salient aspects of this role have been alluded to already. These local police forces operate under the authority of the provincial Attorneys General. Their jurisdiction permits them to enforce the *Criminal Code*, provincial statutes and municipal by-laws (in the case of municipal police, only the by-laws of their own municipality), but not federal legislation such as the *Customs Tariff* or the *Customs Act*. Thus, the primary instruments available to local police forces for dealing with sexually explicit materials are the *Criminal Code* provisions relating to obscenity.

Using only the *Criminal Code* restricts the range and number of situations in which local police forces are able to act against pornography in magazine and print form. First, the material with respect to which these agencies are able to lay charges must meet the legal standard of obscenity; it is insufficient for the depictions in question merely to be immoral or indecent. Second, importation of pornographic matter in contravention of the *Customs Tariff* and the *Customs Act* does not in itself warrant the direct intervention of local police forces. Even if obscene matter has been smuggled successfully into Canada for private consumption rather than for publication, distribution, circulation, sale or public exposure, charging or seizure under the *Code* are inappropriate courses of action. In such circumstances, the only option open to local law enforcers is to refer the case to the R.C.M.P. or Revenue Canada Customs and Excise for disposition under section 205 of the *Customs Act*. Similarly, if illegally imported matter is discovered that is only considered to be immoral or

indecent, local law enforcement agencies may contact the R.C.M.P. or Revenue Canada. The effectiveness of local police in controlling much of the pornography that enters Canada is largely contingent upon the nature of the cooperative liaison developed with the R.C.M.P.

### Provincial Policies and Guidelines

Another factor impinging upon the role of local police forces in controlling pornography is the nature of the provincial law enforcement policy determined by the Attorneys General. Contacts made between the Committee and police departments in most of Canada's major cities revealed that these policies of enforcement varied widely from province to province. In two provinces, British Columbia and Quebec, the Attorneys General have issued guidelines setting forth the types of depictions and other materials with respect to which obscenity prosecutions or seizure procedures may be instituted. In Alberta, informal guidelines are followed. Police officers and agencies are expected to comply with these provincial guidelines since the Attorney Generals have the authority to stay any proceedings under the *Criminal Code* of which they disapprove. The guidelines are:

***British Columbia Guidelines for Enforcement of the Obscenity Provisions, Criminal Code of Canada (1978)***

Prosecutions for material classified as "obscene" under the *Criminal Code* of Canada are subject to the following guidelines:

- A. The following categories of obscenity are considered to clearly contravene community standards and may be the subject of prosecutions:
  1. Material which depicts sexual acts coupled with acts of violence (including sadism, masochism and other similar acts).
  2. Material which depicts acts of bestiality.
  3. Material which depicts juveniles involved in sexual activities. *Violence is not a factor to be considered in this context.*
- B. With respect to material recognized as "hardcore" and not covered by the criteria set out above, the following guidelines are applicable:
  1. Material in this category shall not be sold or displayed to juveniles.
  2. Material in this category may be sold in establishments designed for the purpose. Such establishments *shall* prevent the display of this material to public view from outside the establishment.
  3. Juveniles shall not be permitted access to these establishments.  
Should the guidelines in this category be breached, prosecutions may be taken.
- C. With respect to material recognized as "softcore", being the sort of material generally sold in news and magazine stands, corner grocery stores, and drug stores, the following guidelines are applicable:
  1. Such material shall not be accessible to juveniles.

2. The giving of advice to police as to whether or not such material is "obscene" is the responsibility of Crown Counsel.
3. In the case of material recognized as "softcore", where Crown Counsel forms the opinion that the material is legally obscene, "*in rem*" proceedings pursuant to section 160 C.C. is the preferred course of action. However, where continued violations of these guidelines occur, Crown Counsel are to proceed with prosecutions under section 159 C.C.

For the purposes of these guidelines, "juvenile" means any person under the age of 17 years.

The issue of obscene material is of concern to both retailers and distributors. The co-operation of these businessmen has been sought to ensure that in premises to which juveniles have access, such material is sold from behind the counter or is not accessible to them.

It is expected that retail sellers of "softcore" material will attempt to comply with the spirit of the Guidelines by ensuring non-availability of "softcore" material to juveniles. However, it must be recognized that prosecutions cannot proceed unless the material is deemed legally obscene. The responsibility of ensuring that no legally obscene material is on the shelves rests with the retailer and distributor.

The police must not exercise their powers under Category "C" for the purpose of prohibiting the sale of "girlie" or adult magazines in this category without first determining the legal question of obscenity.

***Quebec Guidelines Concerning Pornographic Newspapers and Magazines (1977)***

We will divide these categories of magazines and newspapers into three sections to better determine in which cases we should proceed with legal action:

- A. The categories of obscenities mentioned hereafter are considered as an evident violation of traditional values and morals of society that can take the following form.
  1. All publications that contain pictures of sexual acts accompanied with violence (including sadism, masochism and other acts of the same nature).
  2. All publications that contain pictures of bestiality.
  3. All publications that contain pictures of sexual acts involving children.
- B. Hardcore publications not mentioned above:
  1. These publications cannot be sold to minors nor can they be accessible to them.
  2. These magazines in certain establishments must be wrapped in a fashion that prohibits examination. These business establishments must ensure that the racks containing this material are not in the public view in the store.
- C. Publications known as "softcore" [that is pornographic but acceptable by a good portion of the population]. These publications must not be sold nor can be accessible to children less than 14 years of age.

Protection of the minors is our main concern.

We are counting on the collaboration of all businesses, in order to achieve the goals we afix.

You are asked to note that we must prohibit completely the access of minors to specialty shops known as "Sex Shops".

The official provincial guidelines for Quebec and British Columbia set restrictive limits on the classes of material considered sufficiently offensive to warrant the intervention of the criminal process. Under the guidelines, a few general types of magazines are specified as suitable subjects for prosecution, including those depicting acts of bestiality, and those that present children and juveniles involved in sexual activities. Since the latter classes of material are generally not commercially available within Canada, the number of proceedings against sexually explicit material undertaken by local law enforcers could be expected to be small in jurisdictions where such guidelines have been implemented.

The enforcement experience in this regard varies widely, indicating that the setting of provincial guidelines is not by itself synonymous with their actually being implemented. Between 1979 and 1982, 109 charges were laid under sections 159 to 164 of the *Criminal Code* by the Montreal Police Force and 17 cases came before the Court of Sessions.<sup>13</sup> In contrast, it was reported to the Committee that only one obscenity prosecution had been commenced in Vancouver during the four and a half year period ending in April, 1982 during which that province's guidelines had been in effect. The enforcement record of the latter city stands in stark contrast to that of Montreal (109 charges between 1979 and 1982) and that of Metropolitan Toronto, where 101 obscenity charges were lodged under section 159(1) of the *Code* between January 1 and November 30, 1982.<sup>14</sup> There are no provincial guidelines in Ontario.<sup>15</sup>

**The evidence suggests that the issuing or non-issuing of provincial guidelines may have little bearing upon actual enforcement practices. Rather, the evidence indicates that it is provincial policy that plays a decisive role in determining whether the obscenity provisions of the *Criminal Code* are relatively tightly enforced or whether, comparatively, a *laissez-faire* stance prevails with respect to the distribution, sale and display of sexually explicit matter.<sup>16</sup>**

Provincial policy may impinge upon the enforcement of the obscenity laws, as for instance, in jurisdictions where police officers are required to consult either with a Crown Attorney or with an agent of the Attorney General before acting against any allegedly obscene matter. In these jurisdictions, the decision whether to initiate proceedings is taken out of the hands of the police.

In the Committee's view, the policies of the provincial Attorneys General with respect to obscenity prosecutions may impinge upon the practices of other agencies involved in regulating pornography. In some instances, this impact results in *de facto* compliance with an Attorney General's policy, even when the agencies in question have federal jurisdiction. In several provinces, Customs

officials contacted by the Committee reported having encountered problems as a result of the Attorney General's position. In addition, R.C.M.P.-initiated obscenity prosecutions, both in contract and non-contract provinces, may be stayed by order of the Attorney General.

### Enforcement Practices

In certain provinces, the police are directed not to take action unless they receive complaints from the public concerning pornographic matter being offered for sale. This practice makes enforcement a hit-and-miss affair that depends on chance — that is, on certain sexually explicit materials being seen by a person vocal enough, aware enough, or with moral sensibilities, to lodge a complaint. Where this practice has been adopted, it assures that inconsistencies in enforcement result, reflecting the inconsistencies between complaints lodged in different provinces, or even in different municipalities within a province. In one province, a policy has evolved of focussing law enforcement attention primarily on complaints received in writing; in the province in question, it is expected that complainants will be prepared to testify in any legal proceedings concerning the pornographic matter about which the complaint was made.

In another province, the Attorney General has issued instructions preventing the police from intervening before a publication has gone into public distribution. The principle underlying this policy is that government should not act as a censor of printed matter. A policy of this kind is calculated to induce periodical distributors to exercise caution in deciding which magazine titles to carry; since the provincial government and police do not provide guidance concerning what material is acceptable and what is not, the distributors may adopt relatively conservative practices in order to avoid the risk of unexpected prosecutions and seizures.

The control of pornography by local law enforcers is also affected by the departmental policies of individual police forces. Police manpower resources, the local occurrence of other, higher priority offences (e.g., violent crime) and the perceived extent of community concern with pornography influence whether the obscenity provisions of the *Criminal Code* are enforced with rigour or laxity. Departmental adoption of standardized procedures may affect the role of the local police in regulating the display and accessibility of sexually explicit publications. In several urban jurisdictions, for instance, police forces have adopted a so-called "walk-around" procedure, that involves having officers informally inspect the magazine racks of convenience stores, newsstands and other retailers. If pornographic magazines are prominently displayed, or are placed within the reach or field of view of children, the officer advises the proprietor to alter the display.

The "walk-around" policy poses problems related to the ambit of section 159(2) of the *Code*. Under this subsection, public display and sale of sexually explicit matter are proscribed only where the material in question meets the legal test of obscenity. Where obscene material is being sold, the police practice

of cautioning a proprietor may serve as an effective means, should a prosecution ensue, by which to deprive him or her of the defense that he or she was unaware of the nature or contents of the material being sold.

It is unquestionably the case, however, that much printed matter that does not meet the test of obscenity is unsuitable for open display in places where it is accessible to children and youths. Therefore, while police officers may advise or even warn retailers to display so-called "soft-core" pornography discreetly, they have no legal means by which to enforce standards of accessibility. In practical terms, the "walk-around" procedure amounts to a policy of informal cautioning that takes advantage of the retailer's presumed unfamiliarity with the law. In most instances, this policy fulfills its purpose; an (unenforceable) warning from a uniformed police officer often suffices to persuade store owners to reorganize their magazine racks. The possibility remains, however, that retailers may ignore the warnings, in which case, the police have no legal recourse. Alternately, the store owner may regard the warning as a threat or intimidation, and may challenge the authority of the police so to conduct themselves. The prospect of such a challenge has been a matter of sufficient concern in one province to cause the Attorney General's regional agent to instruct police departments not to advise retailers concerning the display of pornography.

Another factor potentially affecting local enforcement of the obscenity-related sections of the *Criminal Code* is the existence or non-existence within particular police forces of specialized squads dealing exclusively with sexual offences, or only with pornography (the only example of the latter being Project "P" jointly operated by the Metropolitan Toronto Police Force and the Ontario Provincial Police). Members of such squads gain specialized experience and expertise in their area of enforcement, and possess a greater awareness than non-specialized officers, of the law of obscenity, of methods of distribution, sale and display, of appropriate investigative techniques, and of the sort of material whose seizures is most likely to be upheld by the courts.

In eight provinces, local police forces are also responsible for enforcement of the provincial statutes enacted to regulate the exhibition of motion pictures. The local police are empowered to lay charges where provisions of these Acts are contravened, or where exhibitors or distributors fail to comply with certain decisions of the film classification or censor boards.

Finally, reference must be made to the role of local police in enforcing municipal by-laws designed to regulate the conditions under which retailers purvey sexually explicit materials to the public. In municipalities where such legislation has been passed, the police are empowered to play a direct role in *enforcing certain standards for the accessibility to children and the display of pornographic merchandise*. (The legal ramifications and problems associated with the accessibility by-laws are discussed in Chapter 49).



## Summary

In its review of Canadian enforcement practices of various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography), the Committee identified the following problems.

In relation to the operation of mandate assigned to the Customs and Excise Division of Revenue Canada, concerning the importation of pornography, it was found that:

1. Imprecise and undefined terms are used in guidelines to describe and differentiate items that are admissible or inadmissible.
2. The need for Commodity Specialists to receive more specific training to acquaint them with leading judicial decisions, with the distinctions in law between indecency or immorality and obscenity, and with the methods and problems of various enforcement agencies.
3. The decentralization of the authority to prohibit the entry of goods coupled with the issuance to line officers of imprecise, non-specific guidelines affords them wide discretionary powers, and places heavy reliance on their subjective judgment.
4. The inaccessibility to Customs officers of the list of prohibited publications issued by the Prohibited Importations Section.
5. The failure of the Prohibited Importations Section to organize its listing alphabetically.
6. The failure to use the list as a set of directives to assure nation-wide uniformity of enforcement.
7. The large volume of incoming foreign mail that Customs inspectors at I.M.U.s must examine.
8. The culling out and general non-inspection of first class mail.
9. The incompleteness and variable quality of the information stored in the computerized file system maintained by Revenue Canada Customs and Excise Headquarters.

In relation to the work of the R.C.M.P. Customs and Excise Section, it was found that:

10. There has been limited use of the mailing lists of child pornography subscribers seized by foreign enforcement services as a means of discovering persons who illegally import child pornography into Canada.
11. Canadian enforcement authorities do not appear to have actively contacted the police forces in nations which are significant sources of child pornography with respect to convictions against producers and distributors or the obtaining of seized mailing lists.

In relation to the enforcement practices concerning the distribution and sale of pornography by provincial and municipal police forces, it was found that:

12. Enforcement policies vary widely across Canada.
13. Where provincial guidelines with respect to the enforcement of obscenity provisions of the *Criminal Code* have been established, their application has had highly variable consequences.
14. Provincial policies may affect the operation of agencies having federal jurisdiction.
15. A number of informally adopted enforcement practices have evolved which have made the operation of the obscenity provisions in the *Criminal Code* a hit-and-miss affair, and which in certain instances, are legally unenforceable.
16. Few police forces across Canada have specialized units dealing exclusively with sexual offences or the control of obscene and pornographic matter.

## References

### Chapter 50: Enforcement Practice

- <sup>1</sup> Rompkey, William H., *Communique: To All Members of Parliament and Senators*, Ottawa, May 7, 1980, p. 2.
- <sup>2</sup> Revenue Canada Customs and Excise, *Instructions to Port Officers*, Ottawa, February 20, 1976 (Revised October 6, 1977), pp. 7-8.
- <sup>3</sup> *Customs Control of Imported Publications* (Document No. 1), (Ottawa, 21 April 1965).
- <sup>4</sup> *Ibid.*, p. 8.
- <sup>5</sup> S.C. 1980-81, c.C-54.
- <sup>6</sup> *Canada Post Office/Customs Instructions for the Routing and Primary Customs Screening of International Mail*, pp. 2-3.
- <sup>7</sup> R.S.C. 1970, c.R-9, ss. 7(4), 17(3).
- <sup>8</sup> Letter and memorandum received by the Committee from R.R. Schramm, Assistant Commissioner, Director, R.C.M.P. Criminal Investigation, Ottawa. Letter dated February 18, 1983.
- <sup>9</sup> R.S.C. 1970, c.R-9, s. 17(4).
- <sup>10</sup> Letter from R.R. Schramm (*supra*, note 8).
- <sup>11</sup> *Ibid.*
- <sup>12</sup> Information concerning the Falcon and All-American investigations was provided to the Committee by Special Agent T. Jenkins, United States Federal Bureau of Investigation, Organized Crime Squad, San Francisco.
- <sup>13</sup> Letter and memorandum received by the Committee from Monsieur Remi Bouchard, Associate Deputy Minister, Quebec Ministry of Justice, dated August 19, 1983.
- <sup>14</sup> Letter by Staff-Inspector Forbes-Ewing, Metropolitan Toronto Police Force, dated December 3, 1982, quoted in a memorandum issued by the *Metropolitan Toronto Licensing Commission*, dated December 10, 1982.
- <sup>15</sup> The Ontario Provincial Police and the Metropolitan Toronto Police Force jointly maintain a special anti-pornography squad, Project "P". The role of this squad constitutes a major factor in Ontario's high incidence of charging under the obscenity-related provisions of the *Criminal Code*.
- <sup>16</sup> The Committee attempted to compile a comprehensive listing of the numbers of obscenity prosecutions undertaken by each province over a period of years. Such a listing would have illustrated the practical consequences of provincial policies with respect to enforcement of the obscenity provisions of the *Criminal Code*. The only reliable source of data for the proposed compendium would have been provincial justice statistics; most of the provinces were unable to supply the Committee with such statistics.

## Chapter 51

# Importation and Seizure

In Chapter 50, *Enforcement Practice*, a review was given of the organization and operation of enforcement practices in relation to the obscenity provision in the *Criminal Code*. In this chapter, the statutes relating to the unlawful importation and seizure of unauthorized goods into Canada are reviewed and research findings are presented in relation to 26,357 seizures of obscene and pornographic matter, including child pornography between 1979 and 1981. This extensive source of information assembled by the Committee provides a basis upon which to assess the amount of child pornography known to enforcement authorities which persons have illegally attempted to bring into the country.

### Unlawful Importation

Section 14 of the *Customs Tariff* prohibits the importation into Canada of any goods enumerated, described or referred to in Schedule C of the Act and authorizes forfeiture to the Crown of any such goods. Tariff Item 99201-1 of Schedule C lists the following as goods prohibited entry:

Books, printed paper, drawings, printings, prints, photographs or representations of any kind of a treasonable or seditious or of an *immoral or indecent* character.<sup>1</sup>

Canadian courts have enunciated a number of general principles concerning the unlawful importation of "immoral or indecent" materials. The test concerning whether imported material is "immoral or indecent" under Schedule C of the *Customs Tariff* is whether the material goes beyond what the contemporary Canadian community is prepared to tolerate. In this respect, it is similar to the "community standards" test in prosecutions for obscenity under the *Criminal Code*.<sup>2</sup> The words "immoral or indecent" in Tariff Item 99201-1 are not synonymous with the word "obscene" in section 159(8) of the *Criminal Code*. A publication may be considered "immoral or indecent", notwithstanding that it might not be considered "obscene" under the *Criminal Code*.<sup>3</sup>

The contemporary Canadian community is arguably less tolerant concerning the depiction of overt homosexual acts than that involving similar acts committed between persons of opposite sexes. Magazines which depict full frontal nudity of males do not fall within the prohibition. But magazines depicting homosexual acts between two persons are prohibited notwithstanding that, were the persons of opposite sexes, the magazines might well fall outside the prohibition. Magazines which depict acts of bondage, cruelty, sadism or masturbation, and which advertise male prostitutes accompanied by pictures of their genitals, are clearly of an immoral or indecent character.<sup>4</sup>

There is no onus on the Crown to adduce evidence of prevailing community standards of tolerance concerning the publications in question.<sup>5</sup> That the same publications were previously imported without difficulty does not preclude the authorities from invoking the Tariff Item 99201-1. Past tolerance or negligence by customs officials is not a bar to subsequent proceedings.<sup>6</sup>

In respect of prohibited importations, the *Canada Post Corporation Act* and the *Customs Tariff* operate in conjunction. Since the *Customs Tariff* prohibits the importation into Canada of "immoral or indecent" representations, whether by mail or otherwise, section 40(1) of the *Canada Post Corporation Act* requires any mail from outside of Canada suspected to contain such representations to be submitted to a customs officer for examination. Under section 40(2) of that Act, the customs officer is authorized to open any such mail, other than a letter. If the mail is found to contain an indecent or immoral representation, the customs office is authorized to seize it under section 14 of the *Customs Tariff*. Where a letter is directed to the customs officer pursuant to section 40(1) of the *Canada Post Corporation Act*, the officer is authorized<sup>7</sup> to cause the letter to be opened by the addressee, or, with the addressee's written permission, to open it himself. If the letter is found to contain an immoral or indecent representation, it is subject to seizure and forfeiture under the *Customs Tariff*. If the addressee cannot be found, or refuses to open the letter, the Canada Post Corporation will treat the letter as undeliverable mail.<sup>8</sup>

## Seizure

Whereas section 14 of the *Customs Tariff* prohibits the importation of certain goods and authorizes seizure and forfeiture of them when discovered during the importation process, section 205(1) of the *Customs Act* authorizes the seizure and forfeiture of unlawfully imported goods generally. Accordingly, where the unlawful importation of goods has escaped detection, such goods are nonetheless subject to seizure and forfeiture if found anywhere in Canada. Section 205(1) provides:

205.(1) If any person, whether the owner or not, without lawful excuse, the proof of which shall be on the person accused, has in possession, harbours, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be seized and

forfeited without power of remission, and if such goods are not found, the person so offending shall forfeit the value thereof without power of remission.

Further, section 248(1) of the *Customs Act* places on the accused the burden of proving lawful importation, subject to the Crown leading evidence to show that the accused had some knowledge, or means of knowledge, concerning the circumstances of importation.<sup>9</sup>

The *Customs Act* also provides for the issuance of "writs of assistance" (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against the Act.<sup>10</sup>

## Case Studies

The first of the case studies that follow provides an example of the kind of situation in which charging under section 205 of the *Customs Act* is appropriate. The second and third case studies illustrate the practical enforcement consequences of the distinction between the meanings of the terms "obscenity" and "immoral or indecent".

### *Case Study 1 (R. v. Havelock)*<sup>11</sup>

In June, 1972, the accused attempted to bring seven boxes containing 700 pornographic magazines into Canada without declaring them to Customs. The magazines were discovered by customs inspectors at Emerson Manitoba, concealed in a trailer truck loaded with 1,800 cases of cucumbers. The accused, who was driving the truck, declared the cucumbers but made no mention of the boxes of magazines. When the customs officers found the magazines, they estimated their values (ranging from 25¢ to \$10 apiece), according to the prices marked on the covers. The accused was charged with possession of illegally imported goods of value greater than \$200, contrary to section 205(3) of the *Customs Act*. The accused was convicted at trial, and launched an appeal, which was dismissed by the Manitoba Court of Appeal.

### *Case Study 2*

In Ontario, the June, 1980 issue of *Penthouse* magazine was the subject of public complaints and of complaints from several municipal police forces. After an Ottawa Crown Attorney recommended that charges be laid against the magazine's Toronto distributor, Project "P" searched the company's premises. The company and its president were charged with distributing obscene matter under section 159(1)(a) of the *Code*. Five thousand copies of the impugned issue were seized.

The issue of *Penthouse* in question contained a photographic layout featuring two young girls in the nude near a horse (i.e., suggestions of bestiality), as well as depictions of bondage, mutilation and lesbian acts.

The accused company and individual were tried in Provincial Court in Ottawa. The corporate accused pleaded guilty and received a \$500.00 fine, while the charge against the individual was withdrawn. The 5000 magazines seized were forfeited to the Crown. (In a separate county court case, a seizure order under section 160 of the *Code* was granted with respect to the same

issue of *Penthouse*. The judge found the photographic content of the magazine obscene but stated, *obiter*, that sexually explicit language describing fellatio, anal intercourse and cunnilingus, was not obscene.)

Revenue Canada Customs and Excise did not rule the June, 1980 issue of *Penthouse* to be immoral or indecent, and permitted its importation into Canada. The issue had been placed on the Ontario Advisory Council's "with reservations" list; several prominent retailers had refused to carry the magazine.

### Case Study 3

The September, 1977 issue of *Penthouse* magazine contained photographs depicting lesbian sexual activities between two females who appeared to be under the age of 18. The two models had freckled faces, youthful hair styles and ribbons in their hair, and were shown wearing leotards and tutus. The acts performed by the models included: touching tongues; squeezing and holding each other's breasts; embracing and fondling; sucking each other's nipples; exposing genitals (from the rear); touching each other's genital areas; and one female placing her face against the other's buttocks. As later attested by sworn depositions, the models were actually 19 and 20 years of age.

In the opinion of the Attorney General of Ontario and officers at Project "P", the magazine was obscene by reason of the layout described. Revenue Canada Customs and Excise received notification accordingly and immediately teleaxed all border Customs ports, instructing them to prevent the issue from entering Canada, pending a final ruling by the Prohibited Importations Section. A few days later, however, six tractor trailer-loads of the magazines were permitted entry into Ontario.

In order to prevent these inadvertently admitted magazines from being distributed, it was decided to seize these copies under section 160 of the *Criminal Code*. After obtaining the necessary warrant of seizure, Project "P" took possession of 85,000 copies of the magazines.

Following the Project "P" seizure, the Prohibited Importations Section ruled that the September, 1977 issue of *Penthouse* was *not* immoral or indecent, and hence, could not be denied entry into Canada. Over 500,000 copies seized by Revenue Canada were released, while Project "P" still retained possession of the 85,000 copies.

The Ontario Advisory Council recommended that Ontario distributors should not handle the released copies, but one company apparently did seek to distribute them.

At the show cause hearing held in county court pursuant to the seizures under section 160, the 85,000 magazines were found obscene and ordered forfeited to the Crown. The forfeiture was upheld by the Ontario Court of Appeal, and leave to appeal to the Supreme Court of Canada was denied in 1979. The 85,000 copies were destroyed in April, 1979.

## National Survey of Seizures: 1979-81

As noted in Chapter 50, *Enforcement Practice*, complete information in an aggregated form does not exist for Canada in relation to seizures of illegally imported immoral or indecent materials. This fact underscores the problem in

the existing mechanisms for the collection and storage of information concerning seizures of sexually explicit matter. These problems include:

1. The absence of a single, comprehensive source of information.
2. Incomplete or insufficient information being entered in the computerized files of Revenue Canada Customs and Excise.
3. The failure of many District Offices of Revenue Canada Customs and Excise to contribute information to Ottawa.
4. The duplication of entries in the computerized files.
5. The incorporation by R.C.M.P. Customs and Excise Headquarters into its own central, computerized file system of the incomplete computerized file maintained by Revenue Canada Customs and Excise.

In order to obtain information about the importation of immoral or indecent materials, including child pornography, the Committee conducted a survey that involved:

1. Visits to all Regional Customs Offices where a manual search of the seizure files was undertaken of records from 1979 to 1981.
2. Information derived from the central computerized file systems of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division.

This information was transferred to a standard research protocol developed for the purpose of identifying the types of materials seized and specifying the volume of different types of child pornographic matter.

Insofar as the Committee is aware, the information obtained on 26,357 seizures represents the first time that an attempt has been made to ground conclusions concerning the importation of pornography into Canada on empirical evidence derived from the records of the relevant national enforcement agencies. The Committee acknowledges the co-operation of the R.C.M.P. and Revenue Canada in making available their records for analysis. The information obtained permits detailed documentation concerning the quality, type and regional distribution of pornographic material detected in the process of being brought into the country illegally. The findings presented are based on seizures by the R.C.M.P. and Revenue Canada Customs and Excise, rather than those made by local and provincial police forces. Thus, information concerning charges under Section 159 or Section 164, and (for the most part) seizures under Section 160 of the *Criminal Code*, is not provided here.

Of special interest to the Committee was the opportunity to obtain information concerning seizures of child pornography. Since the available Customs and R.C.M.P. records often list only the titles of publications seized, identifying such matter as child pornography posed a special problem. This difficulty was surmounted with the assistance of an officer seconded from Project "P". This officer, a specialist with long experience in those areas of law enforcement



involving pornography, was able to identify which of the seized materials were child pornography by examining the listed titles. The only titles identified as child pornography were those with which the officer was directly familiar as a result of his work with Project "P". Titles which on their face appeared to have some association with children or youths, but of which the officer had no first-hand knowledge, were assumed not to be true child pornography. Only materials featuring actual children or youths were classified as child pornography, and thus the class of material referred to as pseudo-child pornography was excluded. In practice, there is usually a clearcut demarcation in the depiction of children and that of adults in most types of pornography. Where there was doubt, the materials were assigned to the adult category.

In order to preclude information being obtained about enforcement practices for a single, and possibly, exceptional year, findings were assembled for the three year period from 1979 to 1981.

## All Seizures of Pornography: 1979-81

The findings given in Table 51.1 represent the total *number of seizures* for the three year period rather than the *number of items per seizure*. In an individual seizure, one, a few, dozens, hundreds or thousands of items may have been involved; these findings are given in subsequently presented tables.

Between 1979 and 1981, 1.10 seizures of pornography were made for every 1000 Canadians. On average, only 0.37 seizures were made for every 1000 persons in each of 1979, 1980 and 1981. Because the information obtained by the Committee is unique, there is no comparative basis upon which to calibrate these results. In the Committee's judgment derived from its findings on the distribution and accessibility of pornography across Canada and the results of the National Population Survey (see Chapter 54), the volume of seizures is indeed small. The findings suggest that:

1. Not much pornography is entering the country illegally; or
2. Much more pornography enters the country illegally than is detected and seized (i.e., that the enforcement system is porous).

A review of the regional variations indicates that the second possibility is more likely, namely, that extensively more pornography is illegally brought into Canada than the relatively small amount being detected by enforcement authorities.

The results given in Table 51.1 indicate that the rate of seizures of all forms of pornography (i.e., the number of seizures per 1,000 persons) varies by region and generally tends to increase from east-to-west. This phenomenon may be attributable to: variations in the relative number of persons in different regions who purchase matter of this kind; regional differences in the volume of pornography purchased by the average user; or variations in the types of pornography most commonly purchased in different parts of the country. Patterns

**Table 51.1**  
**Seizures of Sexually Explicit Material, 1979-81:**  
**by Province of Seizure and**  
**Numbers of Seizures per 1000 Persons**

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	349	579.6	0.60
Prince Edward Island	8	124.4	0.06
Nova Scotia	670	852.8	0.79
New Brunswick	581	707.6	0.82
Quebec	3,231	6,312.0	0.51
Ontario	9,149	8,574.4	1.07
Manitoba	2,534	1,029.5	2.46
Saskatchewan	2,115	970.1	2.18
Alberta	4,670	2,081.4	2.24
British Columbia	3,041	2,640.1	1.15
Northwest Territories	8	43.0	0.19
Yukon Territory	1	21.4	0.05
<b>TOTAL</b>	<b>26,357</b>	<b>23,936.3</b>	<b>1.10</b>

*National Survey of Seizures.* Information from Revenue Canada Customs and Excise (61.3 per cent) and R.C.M.P. Customs and Excise (38.7 per cent).

of this kind may also be explicable in terms of regional economic variations (i.e., in poorer areas, fewer persons may have sufficient disposable income to indulge in such "luxury" items as adult magazines and books). The findings from the Audit Bureau of Circulation (see Chapter 54)) indicate the existence of an east-to-west gradient in the demand for pornographic magazines.

The regional differences noted may result entirely or in part from variations in the effectiveness of enforcement at preventing immoral or indecent matter from entering the country. In this regard, the relative seizure record of Manitoba between 1979 and 1981 was the most impressive of any province. This fact may, in part, result from the innovative methods that have been implemented at Winnipeg's International Mail Unit (see Chapter 50). It is likely that the success achieved at this one location was sufficient to inflate the figures for all of Manitoba, making it Canada's leader at intercepting illegally imported pornography.

Until more complete and compelling evidence is available than that assembled, the Committee concludes that alterations in existing enforcement

practices, such as those implemented for Manitoba, would result in the detection of a considerably higher volume of illegally imported pornography into Canada.

### Seizures of Child Pornography: 1979-81

In some circles, it has been suggested that the availability and importation of child pornography have reached epidemic proportions in Canada. In relation to the latter concern, the findings given in Table 51.2 do not support this claim. Of 26,357 seizures between 1979 and 1981, a total of 330, or 1.3 per cent, were adjudged to be child pornographic matter. On the basis of known materials seized, it is evident that child pornography constitutes a tiny proportion of all pornography entering Canada unlawfully.

**Table 51.2**  
**Seizures of Child Pornography, 1979-81:**  
**by Province of Seizure and**  
**Numbers of Seizures per 1000 Persons**

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	4	579.6	0.0069
Prince Edward Island	0	124.4	—
Nova Scotia	9	852.8	0.0105
New Brunswick	7	707.6	0.0098
Quebec	146	6,312.0	0.0231
Ontario	73	8,574.4	0.0085
Manitoba	26	1,029.5	0.0252
Saskatchewan	7	970.1	0.0072
Alberta	28	2,081.4	0.0135
British Columbia	30	2,640.1	0.0113
Northwest Territories	0	43.0	—
Yukon Territory	0	21.4	—
<b>TOTAL</b>	<b>330</b>	<b>23,936.3</b>	<b>0.0138</b>

*National Survey of Seizures.* Proportion of seizures per agency were: Revenue Canada Customs and Excise (81.5 per cent) and R.C.M.P. Customs and Excise (18.5 per cent).

The child pornography seizure rates listed in Table 51.2 provide a far less clear picture of an east-to-west gradient in the relative numbers of seizures. Quebec, for instance, has one of the lowest seizure rates listed in Table 51.1, but the second highest rate listed in Table 51.2. For Saskatchewan, precisely

the opposite is true; that province has one of the highest rates listed in Table 51.1, but the second lowest in Table 51.2. The muddled picture of regional variations afforded by Table 51.2 is likely a factor of the small number of child pornography seizures that occurred in the three year period.

Of the possible sources of supply other than importation, domestic commercial production, distribution and sale are ruled out on the basis of the findings given in Chapter 52; the only avenue remaining open is informal home or private production unless, of course, substantial quantities of child pornography enter the country without detection.

In a single investigation (the All-American Studios case, see Chapter 50), the R.C.M.P. was provided with a list of 266 Canadian customers of a major child pornography producer in the United States. Considering this fact, in the Committee's judgment, it is totally improbable that the 330 seizures carried out by both the R.C.M.P. and Revenue Canada from 1979 to 1981 represents all, or even most, of the child pornography mailed or carried illegally into Canada over that span of time.

At present, there exists no satisfactory, lawful means by which to gauge the level of adequacy of the enforcement systems currently employed to detect and seize child pornography, and other material of an immoral or indecent character. Virtually the only trustworthy means of estimating the number of items successfully smuggled into Canada each year would be to resort to the methods of the consumer — that is, to mail and carry a certain volume of child pornography into the country using different border crossings and different International Mail Units in order to obtain a representative sampling of regional variations in the seizure success rates. The proportion of all items thus smuggled that were detected and seized would indicate that proportion of all smuggled pornography that Customs and the R.C.M.P. manage to seize. From this proportion, it would be then possible to extrapolate from the 330 seizures documented between 1979 and 1981, and to arrive at an estimate of the number of items of child pornography that eluded detection and seizure during that time period. Since a study of this kind would have involved systematic violations of Section 205(1) of the *Customs Act* and Section 164 of the *Criminal Code*, it was not undertaken by the Committee for both ethical and legal reasons.

**On the basis of the evidence available, however, it is clear beyond reasonable doubt that a number of crippling problems beset the detection mechanisms currently in operation. These problems include: variable interagency co-operation and communication; vague Customs guidelines for seizure that lead to inconsistent enforcement; the inaccessibility to Customs line officers of the bi-weekly list of rulings by the Prohibited Importations Section; the incomplete collection of seizure-related information by Revenue Canada Customs and Excise headquarters in Ottawa; the routine non-inspection of first class mail and the assignment of too few inspectors to examine massive volumes of other types of mail; and restrictive provincial policies which hamstring local law enforcers, and which influence the enforcement practices of other**

agencies. In addition, the consumers of child pornography have developed sophisticated importation techniques to guard against detection of the material, whether out of a dread of having their identities discovered, or as a means of protecting an expensive investment. Taken together, all of these factors indicate that the seizure success rate with respect to child pornography is very low.

### Types of Child Pornography Seized

When a comparison is made between the ratio of seizures of child pornography to all seizures of pornography and the ratio of the number of items per seizure of child pornography to all items of pornography, a consistent pattern emerges. Seizures of child pornography constituted 1.3 per cent of all seizures of pornography; the comparable proportion for items of child pornography to all items of pornography seized was 1.7 per cent. In the latter instance, on average, 15.9 items were included per seizure of child pornography in comparison to 12.1 items for all items of pornography.

**Table 51.3**  
Contents of Seizures of Sexually Explicit Materials, 1979-81

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines/comic books	47,776	27.7	65,865	45.3	113,641	35.8
Books	97,561	56.6	42,030	28.9	139,591	44.0
Photographs	5,786	3.4	4,187	2.9	9,973	3.1
Films	12,660	7.3	13,860	9.5	26,520	8.4
Videotapes	3,754	2.2	5,418	3.7	9,172	2.9
Catalogues	4,327	2.5	11,585	8.0	15,912	5.0
Adult newspapers	77	0.1	911	0.6	988	0.3
Playing cards/records	150	0.1	927	0.6	1,077	0.3
Audio tapes	215	0.1	552	0.4	767	0.2
<b>TOTAL</b>	<b>172,306</b>	<b>100.0</b>	<b>145,335</b>	<b>99.9*</b>	<b>317,641</b>	<b>100.0</b>

*National Survey of Seizures.* Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

\*rounding error

While persons seeking to import child pornography illegally appear to have more items per seizure, child pornography *per se* represents only a tiny proportion of all detected illegally imported pornography. This contrast is even

more striking when it is recalled that some seizures of pornography may involve thousands of items, such as an issue of a widely circulated magazine.

**Table 51.4**  
**Contents of Seizures of Child Pornography, 1979-81**

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines	1,700	40.7	439	41.5	2,139	40.8
Photographs	1,681	40.2	428	40.5	2,109	40.3
Films	743	17.8	173	16.4	916	17.5
Videotapes	5	0.1	5	0.5	10	0.2
Catalogues	50	1.2	12	1.1	62	1.2
<b>TOTAL</b>	<b>4,179</b>	<b>100.0</b>	<b>1,057</b>	<b>100.0</b>	<b>5,236</b>	<b>100.0</b>

*National Survey of Seizures.* Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

The findings in Table 51.4 indicate that the total number of items of child pornography seized by Revenue Canada and the R.C.M.P. between 1979 and 1981 was 5236. The fact that the R.C.M.P. was responsible for only 61 seizures is, by itself, deceptive since that agency was responsible for the confiscation of almost four times as many items as Revenue Canada. Given the type of investigations that the R.C.M.P. most frequently conducts and the fact that it took possession of an average of 69 pieces of child pornography in each seizure, it is apparent that in most of the R.C.M.P. seizures, substantial private collections were seized. An average of about four items were held in each Revenue Canada seizure. Thus, the figures for Revenue Canada seizures give a rough indication of the number of articles of child pornography in a single importation, as well as the proportion of all detected illegally imported child pornography accounted for by magazines, films, photographs, videotapes and catalogues. (The proportions of all seizures made up by each medium are almost identical for the Revenue Canada and the R.C.M.P. seizures. This is not the case for the seizures of all types of pornography. The correspondence between the relative composition of seizures made by each agency suggests that if the R.C.M.P. seizures primarily involved private collections, the correspondence may suggest that virtually all child pornography entering the country finds its way into collections of this kind.)

The Revenue Canada figures in Table 51.4 support the conclusion that child pornography generally is not imported for commercial distribution within Canada, since a professional distributor would have to bring the product into the country in quantities far more sizeable than four items per shipment in order to maintain an economically viable operation.

An important distinction between the seizure of all types of pornography and of child pornography lies in the relative numbers of photographs detected. Only 3.1 per cent of the number of all seized items of pornography were photographs, while 40.3 per cent of the number of items of child pornography confiscated were photographs. This finding confirms that individual photographs are a preferred medium in the child pornography market. Since photographs constitute perhaps the easiest medium for small-scale production, their popularity may be indicative of the conditions under which much child pornography is made (e.g., by individuals sexually abusing children or by the pimps or customers of child prostitutes).

Video tapes constitute a tiny proportion of all pornography, and of all child pornography, seized by the R.C.M.P. and Revenue Canada. This finding is deceptive. Video cassette duplicating equipment is not inordinately expensive or difficult to use, as is the equipment required for the reproduction of motion pictures. In order for a pornographic video cassette to become readily available on the domestic market, only one copy need be smuggled into the country. By contrast, mass reproduction of a film would require not only access to a professional laboratory requiring considerable funding, but also considerable expertise; alternately, would-be distributors of immoral or indecent films could produce them in Canada or attempt to smuggle in large numbers of copies. While many copies of a film would be large, bulky, and prone to be detected and seized, a single video cassette is compact, lightweight and can be hidden more readily. Also, a substantial amount of time is required to examine a video tape unlike a magazine, whose contents may be inspected in a few seconds. Thus, even if a pornographic video cassette is found on the person of an individual entering the country, the Customs inspector will seldom have the time to review its contents in detail (assuming that suitable physical playback apparatus is available; Beta and VHS and one-quarter inch formats would be required).

In spite of the low seizure figures for 1979 to 1981, the Committee considers that the videotape medium constitutes a potentially major problem with respect to enforcement of the laws designed to regulate pornography. It is evident from the proportion of advertisements featuring video tapes in the major pornographic magazines circulated across Canada (see Chapter 53) that this medium has grown rapidly since the introduction of video equipment and that it can be expected to expand further in the future. Likewise, it cannot be assumed on the basis of the R.C.M.P. seizures listed that the number of items in the collections of most Canadian child pornography customers is 69. The results of R.C.M.P. searches in the All-American investigation (see Chapter 50) suggest that the size of collection varies considerably from one collection to the next.

## Summary

The following are among the more salient findings emerging from the statistics on R.C.M.P. and Revenue Canada seizures:

1. There exists an east-to-west gradient in the rate of seizures of all types of pornography. This pattern may be attributable in part to variations in demand, but in the Committee's judgment a substantial proportion of this variation is also accounted for by regional differences in enforcement practice.
2. Compared to the total detected volume of pornography being imported illegally, there is little child pornography.
3. While it seems likely that the total amount of child pornography entering the country may be far greater than that seized, there is no massive importation of these materials.
4. The findings presented in this chapter do not negate the fact that child pornography is a serious problem. The informal, private production of sexually oriented materials involving children, as shown in Chapter 52, is a real phenomenon in Canada.

As a number of case studies in the Report indicate, there have been instances in which the use of child pornography was co-associated with sexual assaults on children. Thus, any child pornography entering the country is cause for concern, but it is misleading to suggest that child pornography is flooding into Canada, or has become a readily available retail commodity. The perception in some quarters that there has been a drastic influx of this kind of material may result from a tendency to confuse child pornography with other forms of pornography (which, as the figures obtained from the Audit Bureau of Circulation show, is widely marketed, and has increased in popularity at a startling rate in recent years).

**In light of its recommendations concerning amendments to the *Criminal Code* given in Chapter 3, and on the basis of its review of statutory provisions, enforcement practices and research findings given in Chapters 48, 49, 50 and 51, the Committee recommends that:**

1. The relevant definitional, seizure and forfeiture provisions in the *Customs Tariff, Customs Act, and Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
2. The *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
3. In conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.
4. The federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada, and the Office of the Commissioner:
  - (i) Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to



**obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography;**

**(ii) Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.**

## References

### Chapter 51: Importation and Seizure

<sup>1</sup> Emphasis added.

<sup>2</sup> *Deputy Minister of National Revenue for Customs and Excise v. Tache* (1982), 65 C.C.C. (2d) 250 (Fed. C.A.). See also *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.). But see *Re Priape Enrg. and The Deputy Minister of National Revenue* (1979), 52 C.C.C. (2d) 44 (Que. Sup. Ct.); and *Re North American News and Deputy Minister of National Revenue for Customs and Excise* (1974), 14 C.C.C. (2d) 63 (Ont. Co. Ct.).

<sup>3</sup> *Re Han and Deputy Minister of National Revenue for Customs and Excise* (1972), 8 C.C.C. (2d) 399 (B.C. Co. Ct.).

<sup>4</sup> *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

<sup>5</sup> *Re North American News and Deputy Minister of National Revenue for Customs and Excise*, *supra*, note 2. See generally *Re Winkler and Deputy Minister of National Revenue* (1973), 15 C.C.C. (2d) 168 (Ont. Co. Ct.).

<sup>6</sup> *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

<sup>7</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, ss. 40 (2)(a), 40 (2)(b).

<sup>8</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40 (2).

<sup>9</sup> *R. v. Shelley* (1981), 59 C.C.C. (2d) 292 (S.C.C.).

<sup>10</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 145.

<sup>11</sup> *R. v. Havelock* (1974), 20 C.C.C. (2d) 186 (Man. C.A.).

## Chapter 52

# Production and Distribution of Child Pornography

In its Terms of Reference, the Committee was instructed to review the use of Canadian children in the making of pornographic materials. The Committee recognizes that this is an issue of deep public concern. As in the case of all types of pornography, there is virtually no documentation for Canada concerning the extent of child pornography, the types of materials involved and whether Canadian children are involved in the production of these materials.

The results of the investigations given in this chapter pertain to the sources of commercial production and distribution of child pornography; this is followed by a review of the importation practices used by persons purchasing this matter abroad. In relation to the non-commercial production of child pornography in Canada, the Committee drew upon the findings obtained in its several surveys and its meetings with enforcement authorities. The findings of the National Population Survey provide an estimate of the proportion of Canadians who have been subjects of sexually explicit pictures taken by persons who persuaded, bribed or forced them. The findings reveal the existence of an informal and fragmented system of private production of child pornography, one primarily undertaken to serve the sexual gratification of persons taking these pictures. Case studies are given which illustrate the different situations in which children have been involved in the making of sexually explicit depictions.

### Sources of Research Information

Throughout the Report, information has been provided about the design and findings of the several surveys conducted by the Committee. In relation to seeking documentation about the distribution and production of child pornography in Canada, the Committee drew upon the following sources of information.

1. National Accessibility Survey of Retail Outlets.
2. National Police Force Survey — 28 police forces in all provinces and the Yukon.

3. National Population Survey.
4. Periodical Distributors of Canada.
5. Provincial Attorneys General. Visits to senior officials of all provincial departments.
6. Revenue Canada Customs and Excise Division, Headquarters and Regional Branches.
7. Review of major court decisions concerning obscenity.
8. R.C.M.P. Customs and Excise Section.

In each of the Committee's contacts with senior officials of institutions or associations, information was sought concerning the production and distribution of child pornography in Canada. It is on the basis of these several sources that the Committee's findings are derived.

## Commercial Production

**On the basis of the sources of information reviewed, the Committee found that there was virtually no domestic commercial industry which used Canadian children for the commercial production of sexually explicit graphic, photographic or cinematographic depictions. By "commercial production" is meant the making of matter with open sale or rental as its primary purpose. None of the sources of information drawn upon by the Committee had positive and confirmed knowledge of any production of child pornography for commercial distribution in Canada.**

The Committee learned of three possible exceptions. The first involved a magazine entitled, "Let's Visit Canadian Moppets and Teens" which was being held on file at Project "P". The magazine is a glossy and professional production and features nude photographs of male and female children and adolescents, mostly in a wilderness setting (ostensibly in Canada, and evidently a nudist camp). Since the magazine was published in California, and since the surroundings in which the photographs were taken are not identifiable, it has neither been determined how many, if any, of the children depicted were Canadian nor whether the shots were actually taken in Canada. The nationality of the publisher does not decrease the likelihood that the children were Canadian, since the Committee has been advised that foreign companies distributing child pornography will often purchase photographs of children taken in other countries (including Canada) for inclusion in magazines.

While the Committee learned of instances from the National Population Survey in which persons had had sexually explicit pictures taken of themselves, in none of these incidents was it reported that these pictures had been taken for the purpose of commercial distribution. In the extensive review of court decisions and the review of the 6203 cases of sexual offences against children documented in the National Police Force Survey, the Committee identified only two

instances where it appeared that the production of child pornography may have been attempted for commercial purposes.

- *32 year-old male.*

In January, 1980, the Metropolitan Toronto Police Force filed an occurrence report, after receiving a complaint from a 17 year-old boy implicating a 32 year-old male in the making of pornographic films that featured female juveniles. According to the complainant, the suspect's practice was to recruit females at random from the street, and to offer them money to participate in his films. The complainant further stated that, while at the suspect's residence, he had seen the man engaged in various types of sexual activity with girls between the ages of 12 and 15 years. Allegedly, the suspect routinely paid \$100 each to the females used for his films. It was stated that, aside from receiving sexual gratification from the films, the suspect also sold and traded them with persons having similar sexual preferences.

The complainant alleged that the suspect was a slum landlord, and hence had a ready source of finances upon which to draw in funding his cinematographic projects. The police report states that the complainant's credibility is high, in spite of the fact that he was embroiled in a tenancy dispute with the suspect. A copy of the report was forwarded to the Metropolitan Toronto Police Force Youth Bureau, and to Project "P".

- *R. v. McCormick.*<sup>1</sup>

The accused, a 29 year-old male, first came to the attention of the police in July, 1978, when he became involved in a dispute with his landlord and threatened the latter with a firearm. As a result of this altercation, police executed a search warrant against the accused's apartment, and there discovered 21 boxes containing over 10,000 photographs (black and white), negatives and slides, as well as numerous films and books, all depicting male juveniles in sexually suggestive poses or engaged in sex acts. The acts portrayed include fellatio, buggery and bondage. Later investigation revealed that most of the photographs had been produced in the accused's apartment.

Project "P" was notified, and assumed responsibility for the police investigation. The material found in the accused's apartment was seized and the following criminal charges were laid: two weapons charges and one charge of possession of obscene photographs for the purpose of distribution under section 159(1)(a) of the *Criminal Code*.

Two subsequent searches were conducted by Project "P". In the first, photographic equipment and other material were seized at the accused's apartment. The second search took place at the North York Public Library branch where the accused was employed as an audio-visual technician. In addition to personal papers belonging to the accused, a 30 minute video-cassette was seized, on which were recorded scenes of whipping and bondage involving two male youths. The youths who participated in these scenes, as well as in a number of the still photographs, were identified as employees of the public library at which the accused worked. The library's theatre had served as the shooting location of the photographs and scenes in question.

Other material seized included: (i) large numbers of instruments of bondage and torture (such as leg irons, thumb cuffs, handcuffs, chains, ropes, straps, wrist-restraining straps, spurs and whips); (ii) a number of short stories written by the accused with sado-masochistic and homosexual-pedophilic themes; (iii) customer lists drafted by the accused, with detailed indexes and codes; (iv) advertising copy written by the accused in reference to pedophilic materials (on some of these pages were written block advertising rates); (v)

draft scripts for pornographic films; (vi) release stamps and forms of the kind employed in obtaining authorization from photographic models to use pictures taken of them; (vii) copies of the sections of the *Criminal Code* that relate to obscenity, and letters written to Members of Parliament by the accused concerning the obscenity laws; and (viii) correspondence conducted by the accused under an alias, concerning pornographic books and magazines.

In all, at least 10 juveniles were used by the accused in the making of pornographic photographs. The standard ploy used by the accused to secure the co-operation of his subjects was to claim that the photographs would be published in magazines in the United States where none of the youths' acquaintances would see them, and that such publications would earn them large sums of money. Apparently, however, none of the models ever received payment from the accused.

To the initial charges against the accused were added two counts of counselling to commit an act of gross indecency, and one count of making obscene pictures contrary to section 159(1)(a) of the *Criminal Code*. At trial, the accused pleaded guilty to the two counselling charges, and not guilty to the two separate obscenity charges, namely, making obscene photographs and possessing obscene photographs for the purpose of distribution.

With respect to the charge of making obscene photographs, the trial Judge held that the definition of obscenity in section 159(8) should be applied notwithstanding that the photographs in question were arguably not "publications". On this point, he followed Chief Justice Laskin's minority opinion in the Supreme Court of Canada case of *Dechow v. The Queen*.<sup>2</sup> The trial Judge further held that, on a charge of making obscene photographs under section 159(1)(a), it is sufficient for the Crown to prove that the accused made the photographs and that the photographs were obscene; it was not necessary for the Crown to prove that the photographs so made were intended to be published, distributed or circulated.<sup>3</sup> That the photographs were made by the accused, and that they were obscene within the legal test of obscenity outlined in section 159(8) of the *Criminal Code*, there was absolutely no doubt.<sup>4</sup>

"In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

Accordingly, the accused was convicted of the offence of making obscene photographs contrary to section 159(1)(a) of the *Criminal Code*.

With respect to the charge of possessing obscene photographs for the purpose of distribution, the trial Judge noted that this offence does not oblige the Crown to prove actual distribution of the photographs, but only possession of the photographs coupled with a "perfected intention" to distribute them. That the photographs were obscene in the legal sense was beyond question;

the key issue on this aspect of the case was: Had the Crown proven beyond a reasonable doubt that the accused intended to distribute them?

The trial Judge concluded, after a thorough examination of the evidence, that the Crown had proven the accused's intention to distribute the impugned photographs. Several factors compelled this conclusion, notwithstanding the accused's strenuous protestations to the contrary: (i) the accused's exhortations to his photographic subjects to assume progressively more explicit poses, in order to make the photographs more "marketable"; (ii) the detailed customer lists in the accused's possession; (iii) the block letter advertisements and tentative commercial names ("Can-Pix" and "Foto-Fax") developed by the accused; (iv) the stamped model release forms which the accused employed; and (v) the enormous quantity of photographs taken, many of which were duplicated several times and in various sizes of enlargement. Accordingly, the accused was found guilty of the offence of possessing obscene photographs for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*.

The accused received a suspended sentence with respect to two obscenity offences. With respect to the two counselling offences, he was sentenced to two terms of six months' imprisonment, to be served concurrently, and was placed on probation for three years. His conditions of probation were as follows:

- The accused was not to associate with children younger than age 16, except in the context of a social gathering.
- The accused was prohibited from owning or using any form of camera, photographic, film or video-recording equipment, except for purposes of work related activity.
- The accused was prohibited from owning or having in his possession any obscene photographs or written matter with themes of homosexual pedophilia.
- The accused was required to seek steady employment upon being released.
- The accused was required to report to his probation officer every two weeks following his release.
- The accused was required to continue receiving intensive psychiatric treatment for as long as was necessary.

The accused's term was to be served in a detention centre where it would be possible for him to receive further psychiatric treatment. The trial Judge ordered that a copy of the accused's probation report be sent to him every three months.

Reasons for sentence included the fact that no violence had been used against the youths in obtaining their co-operation, that no physical injuries had been suffered by the participants, and that the accused had responded well to psychiatric treatment received since his arrest.

The accused successfully appealed against this sentence to the Ontario Court of Appeal.<sup>5</sup> The Court allowed the appeal, and reduced the sentence of incarceration to time served (approximately nine weeks). In addition to the terms of probation imposed by the trial Judge, the Court added the condition that the accused continue psychiatric treatment with the psychiatrists who had been attending him under arrangements approved by his probation officer. The Court's principal reasons for varying the accused's sentence were:<sup>6</sup>

"The main evidence against the appellant on all counts consisted of a large number of photographs of young boys taken by him and found in his apartment. The psychiatric reports disclosed pedophilic tendencies which had been treated by psychiatrists including one who specializes in the treatment of persons suffering from sexual problems. Treatment between arrest and trial had resulted in a marked improvement in the appellant. The psychiatrists testified that his sexual problems were treatable; that he would continue to benefit from treatment; and that he would probably regress if incarcerated. The psychiatrists were confident that, given continued treatment, he was not likely to present a danger to society.

Taking all these considerations into account, I am of the opinion that the sentence imposed on him was fit for his offence at the time it was imposed, but we cannot ignore the further information which has been placed before us. He was incarcerated at the Ontario Correctional Institute where facilities for psychiatric treatment are available, although not of the specialized kind required to treat his sexual disorders. He was not released on bail pending his appeal but has continued to serve the sentence imposed. After incarceration he suffered a severe physical upset which appears to have been prompted by emotional disturbance necessitating emergency treatment in a Toronto hospital. This episode must be considered in the review of his sentence and appears to bear out the prediction made by the psychiatrists that incarceration was likely to cause a break in his progress which had been so positive under his previous psychiatric treatment."

**On the basis of the evidence available, the Committee concludes that there is virtually no commercial production of child pornography in Canada, and that the detected ventures attempted in this regard have been small, without exception, unsuccessful, and relatively promptly identified by enforcement services. The findings indicate that with respect to the control of the commercial production of child pornography in Canada, the various enforcement agencies are effectively and efficiently controlling this problem at the present time. These services, however, will likely face a situation of different proportions in the future as audio-visual reproduction equipment becomes more readily available and its use facilitates the easy and cheap reproduction of child pornography.**

There is no evidence that audio-visual reproduction of child pornography tapes is as yet a major enforcement problem in Canada. Its control, however, will entail the development of new and more sophisticated enforcement practices than those used to identify and control the commercial production of individual photographs or magazines.

## Commercial Distribution

"Commercial distribution" signifies the dissemination of a product to the retail marketplace through recognized, legitimate professional channels, such as wholesaling companies. As with commercial production, **the Committee**



learned that the commercial distribution of child pornography within Canada is virtually non-existent. None of the wholesalers belonging to the Periodical Distributors of Canada has ever been detected smuggling, importing, distributing or selling child pornography anywhere in Canada by any enforcement agency. On the basis of information provided by enforcement agencies and voluntary associations, its review of court cases and the findings of the national surveys conducted, the Committee learned of only two confirmed instances involving the commercial distribution of child pornography (see Case Study 5, Chapter 48; and *R. v. Ariadne Developments et al.*, cited below). In a third case, (*R. v. The MacMillan Company of Canada*), the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

• *R. v. Ariadne Developments et al.*<sup>7</sup>

As a result of searches conducted by the Halifax City Police in late 1972 and early 1973, 21,509 books were seized from the corporate accused's principal place of business and from an express truck which had been seen being loaded at such premises. A police officer had purchased two of these books (which later became exhibit F-16 at trial) from the manager of a retail outlet for books, candy and tobacco in Bedford, Nova Scotia. The store manager had obtained these books from A.B.C. News, a subsidiary of the corporate accused. She typically received three to four hundred books each month from A.B.C. news and from the co-accused, Creelman, who was an agent of the corporate accused and apparently general manager of A.B.C. News.

Creelman and the corporate accused, Ariadne Developments Ltd., were charged under section 159(1)(a) with possession of obscene matter for the purpose of distribution. At trial, both accused were convicted, and were sentenced to fines of \$500 (Creelman) and \$12,500 (Ariadne Developments Ltd.).

The accused appealed to the Nova Scotia Court of Appeal. In delivering its judgment, the Court outlined the nature of the publications alleged to be obscene:<sup>8</sup>

"The two books which form ex. F-16 are entitled "Down On The Farm" and "Daddy's Playmates". The latter is, simply put, primarily a running account of an incestuous relationship between a father and daughter, mother and son and sister and brother, including descriptions not only of sexual intercourse between father and daughter, mother and son and sister and brother, but also of sodomy, cunnilingus and fellatio between the various members of the family. In addition, there are descriptions of acts of intercourse and other sexual acts between the members of the family and other persons. The book concludes with a description of the seduction of his granddaughter by the father. There is absolutely no story or plot unless it can be said that the descriptions of the sexual activities of the members of the family constitute a story.

The second book in ex. F-16, "Down On The Farm", is an account of the sexual activities of two male teenagers, including the description of an act of bestiality between one of them and a chicken.

A random sampling of the seized books includes "The Animalizers", which on its cover is described as being "an analysis and case histories of man's most infamous taboo human, animal sex content". This description aptly fits the contents which are but a series of accounts of sexual relations between humans and various animals.

"Apple For The Teacher" is a description of sexual activity of a female school teacher, primarily with her male students, including descriptions of acts of intercourse, sodomy, fellatio and cunnilingus performed singly and sometimes jointly with a number of her male students.

"Blow By Blow" is a description of a series of sexual activities between males."

After noting the relevant principles concerning the definition of obscenity in section 159(8) of the *Criminal Code*, and taking into account the testimony of defence witnesses, the Court concluded unequivocally that the impugned publications were obscene:<sup>9</sup>

"The main defence witness was Doctor Charles E. Tailer, a psychiatrist, who stated that in the past 10 years there has been a change toward liberalization of people's attitudes towards sexuality. On cross-examination, however, he was referred to a passage in the book "Daddy's Playmates" (part of ex. F-16) which describes an act of sodomy between a father and daughter and said:

Q. That's plainly a dissertation of incest, isn't it?

A. Yes.

Q. And you just admitted it is a type of activity which should be stopped.

A. I think it should, yes.

Q. You really think it is helpful to have a publication which shows this sort of thing?

A. I think it should be stopped, same as I think the drug experiment shouldn't go any further because we don't know the long term effects.

Q. Are you saying if one wants to experiment it is alright, but not . . .

A. No. I am saying it shouldn't go to any stage.

It is my opinion, applying the principles set forth in the authorities I have referred to, that the learned Magistrate was not in error in finding that the books in issue were obscene and in consequence the appeal from conviction by both appellants should be dismissed. I would but add that the books in the present case, based on the opinions set forth in the various authorities, conform to the standard formula of hard-core pornography and no matter what standards within Canada are employed they go beyond the Canadian community tolerance level and are obscene under our law."

On the issue of sentence, the Court stated:<sup>10</sup>

"The evidence of Sergeant Wyatt, as mentioned earlier, was that the books that bore prices had a total retail value of \$64,883.94. Counsel with the

appellant advised this court that \$12,500 represented two years' net profits of the company. The overriding principle of sentence in a case such as this is the protection of the public which can be achieved by deterrence. I feel, however, that a penalty of \$7,500 representing as it does more than one year's net profits of the company, would be adequate and I would reduce the fine accordingly."

• *R. v. The MacMillan Company of Canada Ltd.*<sup>11</sup>

The accused corporation was charged with possession of obscene books for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*. The book was entitled "Show Me", and was purportedly designed for use by parents in explaining sex to their children. The book's text was written by a doctor practising in Switzerland; its photography, captions and design were done by an American photographer. The photographs were taken in Munich, and the book was originally published in Germany in 1974. The English language edition was published in New York in 1975. The accused corporation was the Canadian distributor of the book. "Show Me" retailed in Toronto for \$14.95 and was packaged in cellophane.

The police seized a number of copies of the book in Toronto, and ascertained that 4,000 copies of the book had been distributed within Ontario, Quebec, Manitoba, Alberta and British Columbia. The Crown Attorney for Toronto threatened the MacMillan Company of Canada with prosecution in the event the book was not withdrawn. The corporation decided nevertheless to continue distributing the book, with consequent complaints from members of the public. It was these complaints which prompted the authorities to prosecute.

That the accused corporation possessed the book for the purposes of distribution was conceded. The sole issues at the trial were whether the book was obscene and, if so, whether the company's possession of the book for the purpose of distribution served the public good within the meaning of section 159(3) of the *Criminal Code*. An appreciation of the book's contents is necessary to an understanding of the legal conclusion reached in the case. Accordingly, the trial Judge's thorough description of the book in his written judgment is extracted below:<sup>12</sup>

"I turn now to a description of the book itself. It is a large 'coffee table' type format, measuring some 9 1/2 x 13 1/2 in. The front dust jacket reveals a photograph of two nude children, boy and girl, ages (I would gather) between six and nine. The inside of the front jacket gives information as to the contents of the book. To set out certain passages:

[It] . . . is an explicit, thoughtful and affectionate picture book designed to satisfy children's curiosity about sex and sexuality — their own as well as that of their elders. In a series of sixty-nine beautiful double-page photographs, accompanied by a running commentary assembled from actual reactions of children to the photographs, it explains and illustrates sexual development from infancy through adulthood. An illustrated text at the back of the book spells out the educational, ethical and psychological significance of the pictures, and supplies complete information on human reproduction, love, sexuality, sexual experimentation and marriage. This explanatory section, by a noted child psychologist, will help parents discuss with their children the pictures in the earlier part of the book.

The back of the dust jacket contains a brief biography of the authors as well as endorsements of the book by medical and religious notables.

The foreword at pp. 3-4 deserves full quotation:

We have made this book for children and parents. In their hands it can be an aid to sexual enlightenment. But above all we hope it will show parents that natural sexuality develops only when children are surrounded from birth onwards by a loving family and environment which does not repress sexuality. We don't believe a child will have 'found the answer' to sex simply by looking at the pictures in this book. A good understanding requires rather a continuing exchange between parent and child, a dialogue which helps the child express his questions and problems concerning sex and resolve them. The photographic part of this book is meant as a taking-off point for parents. Internal bodily processes such as conception and pregnancy as well as anatomical facts should be presented to the child in simple words by the parents themselves. The text at the end of the book makes suggestions for this purpose. It gives parents basic information on the development of sexuality and sex education. We are of the opinion that only an explicit and realistic presentation of sex can spare children fear and guilt feelings related to sexuality. For this reason we chose photography as a medium. With much care and under great difficulty we succeeded in photographing the children in such a way that their natural behaviour came through. We thank the children and their parents for their help in putting together the photographs. The captions to the pictures are gathered from their spontaneous comments. We hope this book will serve parents and children as a source of information and guide them toward a happy sexuality marked by love, tenderness and responsibility.

There follows 69 double-page photographs, each of which save one depicts human beings wholly naked or their genitalia. The first seven photographs show a boy and a girl, aged (I would gather) between six and nine, discussing their anatomical differences. The next three photographs concern a mother showing tenderness to and breast-feeding her baby, as seen through the eyes of, and discussed by, the aforementioned children. In the next photograph the mother comforts the boy whose world has been invaded by a new baby brother. The next photographs involve another child, aged (I would estimate) between one and two, exploring her mother's breasts, and being held lovingly in the latter's arms. In the ensuing two photographs, the boy who feels resentment to the new intruder holds the baby and contemplates how he was in his own infancy. This is followed by a child wrestling with his father.

On p. 36 there is shown the external female genitalia, and it contains a pejorative caption with an older male and female person apparently expressing disapproval. In the three photographs subsequent, the vulva, penis and external excretal parts of the body appear, with comments respecting their essential differences, although the common feature of the latter as to boys and girls is stated. As to the latter, the above-mentioned elderly people gaze disapprovingly from the caption.

The picture at p. 44 is merely a full face view of a young girl, aged (I would estimate) between five and six, captioned: "Look what I can see. But I don't want to see it any more."

An erect penis is shown, with a piece of cloth draped over it. And whatever else may be said about the book, I fail to comprehend how its internal necessities are served by this inclusion. There follows penises in the ordinary

state and photographs illustrating the difference between circumcision and the lack thereof, which take up the following double pages.

An inquiry from the boy who appeared at the beginning of the photographic section as to when he will acquire pubic hair and genitals like his father, with relevant pictures, will be found at pp. 52-5; and then a young girl who, I surmise, is the same girl shown full face at p. 44 is shown to be asking what two girls obviously past puberty are doing, as they are hugging one another. This leads into a query as to whether she will have large or small breasts and then culminates in a photograph of a boy, very much in adolescence, with an erection touching the breasts of an adolescent girl, and presumably the same girl holding the same boy's penis, all with appropriate captions.

The young girl whose questions and queries underlay the sequence of photographs that I have just described, then discloses (with accompanying photography) that she would like to have a baby but demurs at the idea of having the boy who appeared in the first seven photographs enter her vagina when they are grown up. Sequentially, she initially demurs at the sight of a couple, again probably aged between 14 and 16, preparing for sexual intercourse, although she finds goodness in the touching which is said to be part of the lovers' world. She then dwells on the topic of female masturbation as it involves her older sister and finds it to be beautiful. The boy then comments on male masturbation as related to him by his older brother, all of which is graphically shown in the photographs.

The penis shown in this section is, although not grossly so, considerably enlarged in size.

At p. 88 a close-up of the introitus and vagina appears, followed by five photographs of preliminary love play between a couple described as the boy's older brother and his girl friend. The photograph at p. 96 in which the girl friend holds the brother's penis is grossly enlarged.

The preliminary love-making series of photographs is accompanied by captions where the elderly man expresses shock and dismay at the activities portrayed, which include an act of fellatio. The elderly man is referred to by the children as "an old crab! And just cause those two are in love and are making out with each other". The children express complete approval not only of the preliminary love-making, but also of the sexual intercourse which follows.

The young girl who expressed a wish to have a baby is reassured by her mother that the couple's sexual intercourse stems from the fact that they are in love, but the girl expresses fear of a penis in her vagina as she earlier had done. Two photographs, one of which would be hopelessly incomprehensible if taken out of context, illustrating a close-up of sexual intercourse then follow, with the mother assuring the girl that sexual intercourse only occurs when people are older. The girl appears content and happy with her mother's explanation.

At p. 118 the elderly man states: "Dreadful, the things they tell children these days".

Nine photographs follow dealing with childbirth, two of which most effectively catch the accompanying pain and four of which equally catch the ensuing happiness of childbirth.

The photographic part of the book ends with the children who appeared at the commencement of the photographic odyssey expressing their wishes to be like their parents — the boy like his father; the girl, her mother.

The textual section of the book by Dr. Fleischhauer-Hardt consists of 28 pages, commencing with how to look at "Show Me" with parents and children. An excerpt from the first page of the explanatory text is indicative of the author's approach. (I am reading from p. 143 of the book.)

To avoid introducing repressions and new inhibitions regarding sexual matters, the adult should explain the photographs and encourage the child to talk about the feelings they bring about in him.

Parents who feel that the book is good, but hesitate to show it to their seven — or eight-year old, do so almost certainly because they fear they might impart to their children anxieties about their own sexual feelings or behavior patterns. Parents can easily overcome their fear if they go through the book section by section, looking at the photographs slowly and carefully and not showing them all at once to the children. In this way parents will give themselves and their children the opportunity to gain confidence in the material, little by little. The most important parts of this process remain conversation, explanation, openness on the part of adults, and their readiness to answer all of the children's questions.

Sex education and development is then discussed, not in depth but in a manner adequate to alert the parent to the necessity of and to the pitfalls in developing a capacity for love in terms of what the authors call "basic social trust". The text deals with this concept in the spectrum from infancy to late adolescence. The text encourages the exploration by the child of his or her body.

The explanatory text is accompanied by photographic captions. A substantial number of the photographs are reproduced from the pictorial section of the book. However, there are significant additions: a boy with his finger in his anus; an act of cunnilingus; a young child under the legs of two young people. As was the case in the pictorial section, the people shown in this section are all naked. Abundant photographs of male and female genitalia and sexual intercourse are included, as well as photographs conveying a message of family warmth and unity. Masturbatory action, both male and female, is reproduced.

The book contains an appendix, dealing in detail with contraception and to a lesser extent venereal disease. Shorter sections concern homosexuality and sexual behaviour disturbances.

On the last page of the book Will McBride describes the mechanics of the photography, and he writes:

The models were all friends. Except for the coitus scenes, mothers and fathers of the children were present and helpful during the photographic sessions.

It must be emphasized that in the photographic division of the book, the captions indicate that in many instances the younger children are watching or have had related to them the sex play

of the older boys and girls and young adults; also, in the photographic caption in the text illustrating anal exploration, there may be another person present.<sup>7</sup>

Expert evidence concerning the book was led by both the Crown and the defence. Experts called by the Crown testified to the effect that the book encouraged voyeurism and incest, and that it made no mention of the postponement of sexual gratification. The book's attitude towards older persons was thought pejorative. The pictures were said to be pornographic and the book was considered to have little educational merit. In one psychiatrist's view, the book's captions were stupid and its text confusing, with little relationship between the text and the photographs. Further, the human models used were thought to have been exploited.

Defence experts testified that the object of the book was sincere, and that the book treated sex directly, honestly and not immorally. The photographs were not erotic, but rather assisted in eliciting legitimate questions about sex. These experts would recommend the book for use by average Canadian parents. They testified that it did not promote promiscuity or permissiveness, and that it assisted children in receiving truthful information about sex. Several experts testified that in their view the book served the public good, by engendering a more enlightened view of sex among adults and by liberating persons from their own guilt sensations and repressed needs. It was contended that the book helped persons sort out their feelings and attitudes, and provided an opportunity for parents to discuss the range of sexual conduct with their children.

The trial Judge held, after an extensive canvass of the evidence and the applicable principles of law, that the book was not obscene, and therefore that it was unnecessary to consider whether the distribution of the book served the public good. In the Court's opinion, the author's purpose was not merely base exploitation, but was a serious attempt to educate and assist children and their parents in the realities of human sexuality. Although the book undoubtedly exploited sex, such exploitation, in light of the author's evident purpose, the internal necessities of the book itself, and the contemporary Canadian standard of tolerance, was not undue. Although the privacy of the models was invaded in the preparation of the book, this was done with their consent and, in the case of the child models, with the consent of their parents. Several of the photographs, if taken in isolation, would constitute obscene productions, but in light of the internal necessities of the book it could not be said that their inclusion was unwarranted.

Other features of the book which the Crown relied on as proof of obscenity, such as the testimony that some of the pictures, if not properly explained, might frighten children, and the disparaging treatment of older persons, were not relevant to the issue of obscenity. Moreover, the evidence did not support the proposition that the book encouraged incest, masturbation, voyeurism or instant sexual gratification. Finally, the book did not exceed contemporary community standards of tolerance. The evidence supported the view that the Canadian community would tolerate the use of the book by parents wishing to develop their children's sexuality with its assistance, and within the context of family responsibility and morality advocated by the book. The trial Judge stated:<sup>13</sup>

'If the book were intended to be and was viewed by children without guidance and explanation from their parents, the book would, in my judgment, seriously offend contemporary community standards in this country. That is not the intention of the authors, and I doubt very much that the packaging and pricing

of the book would permit it to fall into the hands of children, save through the agency of their parents.'

Accordingly, the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

**The Committee's conclusions concerning the commercial distribution of child pornography in Canada parallel those reached in relation to the commercial production of child pornography. On the basis of the evidence available, the Committee concludes that there is virtually no commercial distribution of these materials and that enforcement services are now effectively and efficiently controlling this problem.**

In reaching this conclusion, the Committee recognizes that in some quarters there is the belief that child pornography is widely available across Canada. This perception appears to be fostered by two types of matter which are on occasion exhibited at public meetings and by the titles of some magazines which can be considered to be "pseudo child pornography" which are available in some retail outlets across the country.

At meetings convened to consider these issues, two types of matter are typically exhibited. First, certain sexually explicit depictions of children seized from individuals by the police may be exhibited. Without exception, to the Committee's knowledge, these exhibited commercially produced items have come from abroad and have been seized, when imported, or they have been obtained as a result of subsequent police investigation. Other exhibited materials, those not commercially produced, have come from the seized private collections of pornographers.

The second type of pornographic material which may be exhibited can be classified as "pseudo child pornography". In material of this kind, adult models are presented in such a way as to make them appear to be children or youths. Models used in such publications are chosen for their youthful appearance (e.g., in females, slim build and small breasts); they are presented with various accoutrements designed to enhance the illusion of immaturity (e.g., hair in ponytails or ringlets, toys, teddy bears, etc.). One magazine examined by the Committee referred to one of its models as "the Shirley Temple of smut". The National Accessibility Survey uncovered 15 magazines being sold in various parts of Canada, classifiable as "pseudo child pornography"; their titles were: Babe; Baby Face; Bad Girl; Baby Dolls; Creamy Virgins; Dominated and Diapered; Dollhouse; Nymphet; Over Daddy's Knee; Teens, Tits and Twats; Tiny Cunts; Young Wet Pussies; Young Stuff; Young and Lonely; and Young and Silky.

"Pseudo child pornography" is of concern since it may appeal to the same tastes and may evoke responses similar or identical to those elicited by true child pornography. However, it is distinct from, and is not 'geniune' child pornography in the sense that it is older adolescents or adults who are displayed in sexually explicit depictions, namely, it is not individual children who have been directly exploited in the making of such materials.



In searching for instances involving the production and circulation of child pornography in Canada, the Committee learned that the two main sources of these materials came from:

1. The importation of child pornography from other countries, largely by means of matter carried or smuggled across the border by means of the postal system.
2. Individual production or small group exchanges of child pornography.

These two sources of child pornography are documented in the next two parts of this chapter.

## Importation

**The best information available to the Committee indicates that any commercially produced pornography found in Canada is of foreign origin and has been imported illegally.** (This, of course, excludes non-pornographic youth-oriented publications; it was learned, for instance, that one bookshop catering primarily to Toronto's homosexual community routinely stocks a Boy Scout magazine produced in Quebec.) According to local police departments, the R.C.M.P., Revenue Canada Customs and Excise, various American enforcement authorities and some persons purchasing child pornography who were consulted, the primary importation techniques employed are mailing and personal smuggling (i.e., carrying the material across the border in luggage or on the person). Information based on seizures made by R.C.M.P. Customs and Excise and Revenue Canada Customs and Excise suggest that foreign large-scale commercial production and distribution of child pornography seems to be more or less restricted to three media: magazines, films and individual photographs; the seizure of these materials (see Chapter 51) further confirms that these three media are the ones most often chosen by consumers of child pornography for purposes of importation.

The following case studies illustrate the range of smuggling techniques used by persons illegally seeking to bring child pornography into Canada.

- *37 year-old male.*

In November, 1979, U.S. Customs informed Project "P" that German customs had broken up a pornography distribution ring and had identified a Canadian as a major purchaser of child pornography. The accused, a 37 year-old male residing in a small Ontario town, received the material at a post office box in Buffalo, New York.

A search of the accused's residence uncovered large quantities of child pornography, including books, magazines and 8-millimetre film; this material was seized, as well as a diary belonging to the accused.

The accused had been a public school teacher (and at times, a school principal) for over 15 years. Police also learned that the accused obtained child pornography from three European suppliers and that he received the material under an assumed name. The accused made several trips to Europe when United States authorities began actively prosecuting child pornography

distributors; in Europe, the accused mailed the material back to his Buffalo post office box. The accused visited the box from time to time, emptied it of its contents and then smuggled the pornography into Canada in the trunk of his car.

The diary revealed that the accused had taken valium while at school, that he often watched his pupils to catch a glimpse of their buttocks and genitals, that he tried to provoke sexual conversations in class, that he derived pleasure from any chance touching of his students and that he sometimes masturbated in his classroom while watching his students at recess.

Since there was no evidence of distribution, R.C.M.P. Customs and Excise charged the accused with possession of illegally imported goods with a value greater than \$200 (section 205(3) of the *Customs Act*). The estimated value of the seized material was over \$4000. The accused was also charged under the *Narcotics Control Act*. The police were unable to uncover evidence that the man had indecently assaulted his students or any other person.

The accused was temporarily reassigned to an administrative post in another city.

The accused pleaded guilty to both charges and was fined \$800 on the *Customs Act* charge and \$40 on the *Narcotics Control Act* charge. The seized items of child pornography entered as exhibits at trial were forfeited to the Crown, while the items not so entered were returned to the accused upon expiration of the appeal period.

• *Male about 50 years-old.*

In 1977, Project "P" received notification that Revenue Canada Customs and Excise had seized a large quantity of child pornography, including the addresses and nude photographs of about 2500 children. The material was seized from a male in his mid-twenties who stated that he was returning to Canada from Florida, and that his father (the suspect) had requested him to deliver the items to a Toronto address. The suspect was about 50 years of age, married and also had a daughter. Police learned that the suspect had an extensive criminal record in four countries, stretching over a 20 year period and consisting in large part of sexual offences against children.

The address to which the suspect's son was to have delivered the pornography was discovered to be that of a mailing service retained by a company owned by the suspect. In the judgment of Project "P" officers, the suspect was a major distributor of child pornographic films and slides, and was attempting to transfer his business operations to Canada, when the load of material carried by his son was discovered at the border. Revenue Canada retained the material, but no further action was taken against the suspect at that time. The woman who operated the mailing service was not regarded by police as being culpable since she refused to have anything to do with the suspect once she discovered the nature of his business; accordingly, no charges were laid against the woman or her business.

Later that year (1977), the suspect again came to the attention of law enforcers, when an American citizen complained to the United States Postal Service that he had not received colour slides of young girls that he had ordered from several addresses. One of these addresses was that of the mailing company already mentioned. The aggrieved customer had seen an advertisement placed by the suspect in a photographic journal; the advertisement showed a young nude girl wearing her hair in a pony tail, sitting on her buttocks, and curled into a foetal position, with her knees touching her forehead

(so that neither genitals nor breasts were visible). The United States Postal Service notified Canada Post concerning the matter.

The material handled by the accused consisted of thousands of slides of young, nude girls and boys, either posing alone or with other children, pamphlets and newsletters, including a "child's bill of rights" propounding that every child has the right to engage in sexual activity and that those who oppose pedophilia have deprived children of this right.

Project "P" was informed by the Los Angeles Police Department that the suspect had absconded from a Florida mental institution in 1976. In 1978, the Los Angeles Police Department notified Project "P" that the suspect was awaiting a bail hearing in California and requested information concerning his previous criminal activities inside Canada. The Los Angeles police were seeking to have the accused committed as an habitual sex offender. The suspect is now serving a 25 year prison term in Florida.

- *Male in mid-thirties.*

In 1982, R.C.M.P. Customs and Excise seized mail addressed to the suspect, a male in his mid-thirties. The R.C.M.P. informed Project "P" that the suspect might be a postal recipient of "hardcore" homosexual child pornography. Project "P" 's investigations revealed that the accused had a criminal record from the 1970s for offences including contributing to juvenile delinquency (by taking nude photographs of two, nine year-old boys) and two charges of indecently assaulting a male.

When they searched the accused's residence, Project "P" and R.C.M.P. officers discovered and seized large numbers of homosexual, child pornography magazines and photographs of nine male youths (who, subsequently, were identified). In addition, the investigating officers discovered several application forms for employment as a youth counsellor; the suspect had not actually applied for the posts, but evidently had some interest in them. At the time of the search, the suspect also admitted that he subscribed to two child pornography-oriented publications.

The investigating officers advised the suspect to seek psychiatric assistance. The individual stated that he would comply with this advice, and subsequently notified the R.C.M.P. that he was receiving treatment twice weekly from a medical doctor.

The Police Youth Bureau was assigned the task of determining whether the nine boys appearing in the suspect's photographs had been indecently assaulted. No charges were laid.

The mails are an attractive avenue of importation for the would-be consumer of child pornography. First, the case studies presented in this section of the Report indicate that persons who purchase material of this kind are anxious to avoid detection. The consumer of child pornography's apprehensiveness of being discovered is essentially the fear of facing humiliation, social ostracism, and possibly, criminal charges for any sexual acts that he may have committed with children. A taste for child pornography is one satisfied only at considerable expense. A review of child pornography seizures held at the offices of Project "P" revealed that individual black and white photographs sold for at least \$1.00, while small (5" x 7", 20-40 page) magazines varied in price from \$10 to \$50 apiece. Films and videocassettes sold for considerably higher prices.<sup>14</sup> Thus, the consumer of child pornography must also possess a powerful

economic motivation to take whatever steps are necessary to prevent the detection and seizure of any such material that he has ordered.

The postal system is, by its very nature, so constituted as to afford importers the opportunity to obtain child pornography while shielding their identities; it is this fact that likely accounts for the popularity of the mails as a conduit for the importation of sexually explicit depictions of children. The Committee learned of the following methods used either by subscribers or foreign distributors to avoid detection:

1. The use of pseudonyms by subscribers when placing orders.
2. The use of post office boxes by subscribers for the receipt of material ordered.
3. The concealment of child pornography in various packages, as well as in rolled-up newspapers and larger publications. The Committee learned of one incident in which Customs inspectors discovered a reel of film hidden in a cake mix box.
4. The re-routing of child pornography through other countries. Since Customs inspectors are most likely to be suspicious of packages sent from certain countries, distributors in these nations often re-route their products through seemingly more innocuous countries before final shipment to the customers.

One device used by the large-scale producers of child pornography is the subscriber mailing list. Lists of this kind are compiled by professional brokers. The lists are sold to companies catering to specialized classes of persons such as stamp collectors, scout masters, doctors and purchasers of various products. Some brokers specialize in providing lists of consumers who have purchased sexually oriented material. Depending on their size and quality, the lists may sell for thousands of dollars. After one company is through using a list, having developed a shorter but more comprehensive list of good customers, it may sell the original list to another company. Thus, any number of companies may have the same mailing lists. The utilization of mass-marketing devices such as professionally prepared customer lists indicates that American and European child pornography operations are sophisticated and lucrative concerns.

Another tactic used by mail order companies is to advertise the sale of relatively "soft core" material in newspapers, magazines and books. The names of purchasers of this material are then incorporated in mailing lists, and such persons are likely to become primary targets for advertisements for the sale of "hard core" and child pornography. In Chapter 53, the *Contents of Pornography*, a description is given of some of the advertisements placed in adult sex magazines having the widest circulation in Canada. The addresses from which these materials may be obtained are almost invariably located in other countries and indicate that the materials ordered will be sent to the purchaser in 'plain wrapping', 'a plain sealed envelope', or 'sent with discretion'.

Travel affords individuals the opportunity to purchase child pornography in parts of the world where such material is readily available and to smuggle

this type of merchandise into the country. Foreign visits not only facilitate personal smuggling, but can also be used to develop new channels of postal importation. Personal visits may facilitate the making of new contacts in other countries with persons willing to exchange photographs through the mail. In some instances, child pornography users have obtained post office boxes in United States border cities. These purchasers have had child pornography sent to their post office boxes; periodically, they have visited the given border city, emptied the boxes and carried the child pornography back with them into Canada. In other instances, the authorities have intercepted mail indicating that packages containing child pornography have been sent from abroad to be received by the sender.<sup>15</sup> The perceived advantage of the latter technique (from the customer's standpoint) may be that mailing pornography to his home address while traveling, creates less risk of detection and embarrassment than does actually carrying the material over the border.

As noted in Chapter 51, *Importation and Seizure*, the Committee recognizes that there is no fool-proof system of preventing the importation of child pornography either by means of personal or postal smuggling. The Committee believes, however, that considerably stronger effort is warranted than occurs at present by Canadian services to work in co-operation with the enforcement services in other nations which may have knowledge of child pornography distribution rings, that more effective identification procedures are required relative to the identification of matter coming through the postal system, and that information from both of these sources should be efficiently maintained on a central computerized basis for purposes of identification and follow-up of known buyers of child pornography.

The precedent already exists for each of these enforcement practices, but in each instance, their application needs to be sharply extended and placed on a more uniform and comprehensive basis. In this respect, there is no doubt that Canadians wish to have child pornography totally prohibited from coming into or being distributed in Canada on any basis — commercially or by means of informal exchanges. The strengthening of the existing enforcement practices recommended by the Committee, while not ensuring the absolute elimination of child pornography in Canada, would make its importation and distribution more difficult and would facilitate the identification and follow-up of known instances involving persons possessing child pornography.

## Non-commercial Production

In addition to importation, the Committee identified that the second and likely less extensive source of child pornography in Canada was the production for private use of these materials. On the basis of the findings of several of the national surveys and case studies assembled from police records and sentencing decisions, it appears that many of these reported instances involved the taking of individual photographs, apparently for personal use rather than commercial

purposes. The numbers of photographs seized in cases known to the police ranged from a few to almost 12,000.

### National Population Survey

A total of 10 persons in this nationally representative sample of Canadians reported that they had been subjects of sexually explicit depictions. Situations of this kind had occurred equally to both males (5) and females (5) and half of the respondents stated that they were children when they had been the subjects of these depictions. The ages reported when the incidents had occurred were: 9 year-old female; 11 year-old male and 11 year-old female; 14 year-old male; and a 15 year-old female. There were also four instances in which persons reported that members of their families or close friends had been subjects of such depictions when they were children. In two cases, the pictures taken had been used as a means of blackmailing the person involved.

At face value, the number of persons involved in these incidents is small. However, it is recalled that the findings were derived from a representative sample of the population, and to the extent that they are reliable, if the proportion found in the sample is prorated to the population, then it may be the case that over 60,000 Canadians, when they were children, may have been the subjects of sexually explicit depictions.

On the basis of the findings of this and other national surveys and the review of reported case law, there can be no doubt that incidents of this kind occur in Canada, in some instances, involving very young children. Taken together, the findings from the several research sources suggest that the reported prevalence of about one in 400 persons (1:401.6) having been the subject of a sexually explicit depiction as a child is likely an under-estimate of the actual occurrence of acts of this kind committed against children.

### National Corrections Survey

Information in the correctional records of 695 convicted male child sexual offenders indicated that one in 29 (3.4 per cent) was reported to have taken sexually explicit pictures of victims. These incidents varied in relation to the types of sexual offences committed, respectively involving 9.5 per cent of the victims of offenders having multiple victims, 7.0 per cent of the victims of homosexual offenders and 2.4 per cent of the victims of heterosexual offenders.

### National Juvenile Prostitution Survey

The survey's findings indicate that juvenile prostitutes are a high risk group in regard to being exploited by pornographers. Of the 229 youths who gave personal accounts to the Committee, about three in five (57.6 per cent)

said that they had been asked at least once by clients to be the subjects of sexually explicit depictions. These requests had been made about equally to both young male (58.3 per cent) and female (57.2 per cent) prostitutes. However, proportionately more males (20.2 per cent) than females (12.4 per cent) said that they had actually been involved in the making of these depictions.

The types of sexually explicit depictions taken of juvenile prostitutes included: posing nude with only the client present (19); performing homosexual or lesbian acts (4); being filmed while engaged in sexual intercourse (3), having intercourse with a dog (2) and performing sado-masochistic acts (2); pictures taken at male stag parties (3); and other (2), including a mould of a penis made by a "sculptor" and participating in the making of a pornographic film.

From the findings of the three national surveys and the case studies given below, the picture of the Canadian child pornography producer emerges as that of a male who photographs or films children as a means of obtaining sexual gratification. Persons who make child pornography often amass substantial private collections of the material. Often, though not always, the children depicted are those with whom the pornographer has had (or is having) sexual encounters. The following case studies illustrate the types of situations in which child pornography is typically produced in Canada.

## Case Studies

- *50 year-old male.*

Police began an investigation of the accused upon receiving a complaint from a mother who had found three nude photographs of her 14 year-old daughter in her home. The accused, a 50 year-old male, first met the mother and daughter when the child was 12 years of age. At that time, the accused obtained the mother's permission to photograph the girl. During the initial sessions, the child was fully clothed, but at subsequent sessions semi-nude photographs were taken, and by the time the daughter had reached her thirteenth birthday, she had been persuaded to pose fully nude. During some of the later sessions, the accused fondled the girl's breasts and crotch. Occasionally, the accused had the child photograph herself in the nude with the aid of a timed shutter release.

Once the mother's complaint had been received, the police conducted a search of the accused's residence and found thousands of photographs. A 16 year-old girl was also found in the house. This girl was depicted performing various sexual acts with the accused in many of the photographs seized.

The police learned that the accused was involved in boxing programs sponsored by a local Boys' and Girls' Club. Through these volunteer activities, the accused had cultivated the friendship of a number of young females, between the ages of 12 and 17, whom he gradually persuaded to pose nude, semi-nude and in sexually suggestive poses. The accused had had consensual sex with several of the girls who were between the ages of 14 and 16; he also had sexually assaulted two 14 year-old girls and had performed cunnilingus on one of them.

The police charged the accused with two counts of indecently assaulting a female, one count of making obscene pictures, and two counts of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*). After pleading guilty to the charge of making obscene pictures and to one count of indecently assaulting a female, the accused was placed on two years' probation.

- *53 year-old male.*

The accused, a 53 year-old male, was the town photographer in a small community, and as such, photographed all local functions, sporting events and took the school pictures and individual portraits, but also photographs of young girls in gym and cheerleader outfits.

On occasion, the accused would invite young girls to come to his home (with parental permission) to have their photographs taken. The children always remained clothed during these sessions, and many of the photographs taken were of an innocent nature; for other shots, however, the accused would instruct the children to bend over, lie down, raise one leg or place themselves in other positions that would expose their panties or bottoms. (The genital area was the centre of attention in many of these photographs. The subjects of these photographs were between seven and 12 years of age). The accused gave the ordinary portraits to the parents and retained the "special" shots for his own use. He enlarged some of the photographs to 11" x 17". If the girl portrayed was older than 12, the accused would cut out a picture of a younger face and paste it over the older one. The accused also pasted pictures of children's faces onto pictures of adult nude women.

The accused came to the attention of the police when he sent an exposed roll of film by mail to a photographic laboratory for processing. The laboratory, in turn, contacted the police. Upon searching the accused's premises, police officers found hundreds of photographs of young girls with their panties exposed. In addition, there were thousands of photographs taken at school gymnasias, in which were pictured girls bent over, or in other revealing poses. The groin area was the constant centre of attention in these shots.

The accused was charged with one count of mailing obscene matter (section 164 of the *Code*) in connection with the roll of film that he sent to the laboratory. A charge of indecent assault on a female was eventually withdrawn. After a 30 day psychiatric assessment, the accused pleaded guilty and was placed on probation for one year, subject to the proviso that he did not photograph children unless they were under the supervision of a person at least 21 years of age.

- *Husband and Wife.*

The accused, a 35 year-old freelance photographer who worked at night as a janitor, gained access to children by serving as a volunteer in the Big Brothers Organization. The accused lived with his 29 year-old wife (the co-accused) and his three children, ranging from three to nine years of age. The complainant, a 14 year-old "little brother" of the accused, stayed at the accused's home on weekends. The youth was first persuaded to shower with the accused; eventually the relationship progressed to the point where the two would engage in acts of mutual fellatio. The wife encouraged this relationship, was always present when her husband and the boy had sex and, on occasion, would engage in sexual intercourse with the youth while her husband buggered him. The boy was then used to recruit other young boys for the couple. The couple performed various sex acts with the other boys, whose ages ranged from 10 to 16.



On many occasions, the accused and co-accused photographed their sexual activities with young boys.

A small proportion of the photographs was discovered by police when they searched the couple's home. Police investigations also revealed that the accused had invited Boy Scouts to his home, whereupon he showed them pornographic material and made sexual advances to them.

Police speculate that the couple may have received some form of advance warning of the impending search and that this would explain the absence of most of the photographs from their home. The charges laid against the two accused were as follows:

Charge	Husband	Wife
Buggery	two counts	one count
Indecent assault on a male	one count	
Gross Indecency	six counts	three counts
Contributing to Juvenile Delinquency	one count	

The male accused received concurrent sentences of four years for each buggery count and one year for one count of gross indecency. The female accused was given a two year suspended sentence which, on appeal by the Crown, was increased to 18 months' imprisonment.

- *21 year-old male.*

The accused, a 21 year-old probation officer working with a youth group, became involved sexually with an 11 year-old boy under his supervision. The accused took nude photographs of the boy and submitted the film to a commercial laboratory for processing, whereupon the laboratory contacted the police. A search revealed more photographs indicating that the accused had been involved sexually with other male youths. The accused admitted to having felled the 11 year-old male at a summer camp. The accused also admitted to police that he was a homosexual and stated that he had been receiving psychiatric assessment and treatment for years. After his arrest, the accused was released in the custody of his father, under strict conditions, including the stipulation that he not associate with persons under 16 except in their parents' presence. He was charged with indecently assaulting a male.

- *30 year-old male.*

The accused, a 30 year-old ship's cook, travelled regularly between Halifax and St. John's over the two year period of his employment. In June, 1978, on the St. John's stopover of one such trip, the accused invited nine youths (sexes not specified) to his hotel room. Here, the youths participated in a photographic session in exchange of between \$10 and \$15 each. The photographs taken showed the youths in nude and semi-nude poses, and included shots depicting acts of fellatio and buggery. The number of youths appearing in each photograph ranged from one to four.

The police began their investigation of this case when the mother of a 12 year-old boy reported her suspicion that her son had been photographed in the nude by the accused. Statements obtained from the nine juveniles revealed that the accused had carried on his photographic activities over a

two year period, and that some of the youths had been used as models repeatedly during that span of time. One of the youths had been photographed on between 10 and 15 occasions, and had received as much as \$500 over the two year period. Some of the juveniles had also been used to recruit others to participate in the accused's photo sessions.

The accused was charged with one count of "counselling an act of gross indecency" and three counts of contributing to the delinquency of juveniles under *Newfoundland's Welfare of Children Act*. The accused pleaded guilty to the "counselling" charge, upon which the three less serious, charges were withdrawn; he was sentenced to four years' imprisonment.

- *53 year-old male.*

The accused, a 53 year-old male, came to be known locally as "The Candy Man" because of his practice of asking young girls to visit him at his home in exchange for candy and money. The girls lured into the accused's home were shown pornographic magazines, in order to lower their inhibitions. The girls were then induced to engage in sex acts with each other and with the accused. The accused took nude and semi-nude photographs of the victims while they were performing these acts. In some instances, the girls felated the "Candy Man". None of the victims was older than 15, and most were between the ages of 10 and 12. In investigating the case, the police executed a search warrant on the accused's home, and seized drugs, some of the photographs of the girls and pornographic magazines.

"The Candy Man" was charged with four counts of indecent assault on a female and five counts of gross indecency. No charges were laid in connection with the accused's photographic activities.

- *Two Males.*

In 1981, the police were notified by a photographic laboratory that an individual had submitted a roll of colour film for processing which, when developed, had yielded photographs depicting sex acts between a child and an adult. From 13 impugned photographs, the following depictions were noted: the erect penis of a reclining adult male; an adult male with genitals exposed and pants pulled down to his knees; a naked 11 year-old boy sitting with the penis of a naked, standing adult male resting on his head; acts of fellatio and buggery involving two adult males; an adult male holding his own penis and that of another adult male; and a naked boy holding the penis of an adult male.

A search was conducted at the residence of the person who picked up the photographs from the laboratory. This person, the first accused, was taken into custody; he identified the child as well as the second adult appearing in the photographs (the second accused).

The first accused stated that he had known the victim and his parents for some time. According to the first accused, he had taken some of the photographs himself and the child had taken others. He denied having engaged in sexual acts with the child at the time of the photographic sessions, but admitted that the boy had licked his penis on other occasions. The first accused further admitted having been questioned and released by police after several other children had complained of his having had sex with them.

The child's statement indicates that he took four of the photographs. While no violence was used against the boy to obtain his compliance, one police report notes that the child resisted participating in the photographic sessions.

Police files disclosed that a number of previous complaints had been lodged against the accused for alleged sexual involvement with children. The earliest of these complaints was made when the first accused was 16 years-old.

Both accused were charged with counts of gross indecency, buggery and indecent assault on a male, while the first accused was also charged with gross indecency with respect to his involvement with the child. In addition, charges of making obscene matter and contributing to juvenile delinquency were laid, but were later withdrawn. The first accused was released on his own recognizance subject to the condition that he not associate with juveniles.

At trial before a county court judge, both accused pleaded guilty to all charges. The second accused, who was found not to have instigated the commission of the offences, received a four month reformatory term. The first accused had yet to be sentenced when this information was collected, and was undergoing psychiatric treatment.

The victim apparently received counselling and psychological help following the incidents described above. The boy's father testified at trial that his son had become the subject of ridicule by his peers at school and by his sister, once the facts of this case became known locally.

- *19 year-old male.*

The accused, a 19 year-old male, submitted a roll of film to a commercial laboratory for processing. When developed, the film yielded photographs of two young girls, apparently 11 or 12 years of age. The girls were pictured in states of full and partial nudity, and in one shot, one of them appeared to be masturbating herself. The laboratory notified the police who, in turn, visited a number of local schools and succeeded in identifying one of the girls portrayed in the photographs. The girl was enrolled in a class for slow learners. This identification precipitated the search on the accused's residence.

The accused occupied the basement of a house in the upstairs portion of which resided a woman separated from her husband and her four children, two girls five and nine years-old, and two boys, eight and 10 years of age. The search uncovered nude and semi-nude photographs of these children. The accused admitted having sexually assaulted all four children, and was charged with two counts of indecently assaulting a female, two counts of indecently assaulting a male and one count of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*).

- *62 year-old male.*

The accused, a 62-year old man with no previous criminal record, used glue and contact cement cleaner as an item of barter between himself and the numerous female children with whom he became sexually involved. The children befriended by the accused were between the ages of nine and 16; many were runaways and came from families with histories of alcoholism.

When the accused's residence was searched by the police, a 13 year-old runaway girl was discovered in the accused's bedroom. The girl stated that, since the age of 12, she had had sexual intercourse with the accused on four or five occasions, either in exchange for glue or for money (the amount paid by the accused was \$2.00 on these occasions). The police also found several full and empty cans of contact cement cleaner, vasoline, one rubber glove, rubber vibrators and 30 polaroid photographs of nude and semi-nude females, all of whom appeared to be under 16 years of age. In one of these photographs, an apparent act of cunnilingus was depicted.

Police investigators revealed that over a two year period, the accused had used as many as 16 female children for his sexual gratification. The accused was charged with six counts of having sexual intercourse with females under the age of 14, pleaded guilty to two of these counts and was sentenced to six months' imprisonment.

- *29 year-old male.*

The accused, a 29-year old university professor, gained access to children through his volunteer work as a group leader for a boy's club and as a supervisor at a school youth reading program. Seven victims of the accused were identified, all males between the ages of eight and 15. Most of the boys came from "broken homes" in which there were no male parental figures. Boys befriended by the accused were invited to his apartment where they were given food, candy and liquor as a means of gaining their trust and lowering their inhibitions. The accused then showed the boys pornographic films depicting acts of homosexuality, bestiality and sex between male children. The boys, often inebriated by this time, were asked to undress and to perform sex acts with the accused and with each other. These activities were photographed by the accused.

When the police searched the accused's apartment, they discovered about 50 reels of 8 millimetre film, books, magazines and 15 photo albums containing more than 400 photographs. All of this material featured depictions of children. The acts portrayed in the photographs included buggery, fellatio, masturbation and oral-anal sex.

The accused was charged with one count of indecent assault on a male and three counts of gross indecency. At trial, the accused was found guilty on all charges and was sentenced to two years less a day. He also received a concurrent sentence of 18 months to be served at a psychiatric facility.

- *Husband and Wife.*

The police occurrence form states that in 1977, the accused husband and wife invited a 13 year-old male into their apartment, and performed various sex acts in his presence. The boy was then undressed by the accused woman and induced to have sexual intercourse with her while her husband watched. A few days thereafter, the same boy returned to the accused's apartment accompanied by another 13 year-old male; on this occasion, the accused engaged in sex acts with both of these boys. The two juveniles were given alcohol and marijuana. The accused male offered the boys "a substantial sum of money" to pose (for photographs) while engaging in sex acts.

Police investigations of the case led to the seizure of a number of pornographic films of men and women, as well as photographs of males and females engaging in various sexual activities; several of the photographs depicted the female accused having sexual intercourse with a dog. When interviewed, the female accused admitted that she had posed for the latter group of photographs and that the male accused had taken the pictures.

- *Re Hawkshaw and The Queen.*<sup>16</sup>

In October, 1980, Project "P" was notified by a commercial film processing laboratory that it had received a roll of film which, when developed, contained obscene photographs. In one of the photographs, an adult male was shown fellating a 17 year-old male while another youth looked on. The accused, who had submitted the film, was identified from the envelope in which the film had been received. The accused was a male civil servant about

60 years of age. Project "P" executed a search warrant on the film laboratory's retail outlet and seized 25 photographs from the roll of film in question. Although the accused appeared in several of these photographs, he was not a subject in the "fellatio photograph."

Project "P" executed a search warrant against the accused's rural residence, which was identified as the location where the fellatio photograph had been shot. The following items were seized as a result of this search: 48 photo albums, loose photographs, fifty 8 millimetre films, a box of negatives, an address book, notebooks, correspondence and two cancelled cheques. The accused admitted that he owned the camera used to take the fellatio photograph, but denied having taken the picture or having been present when it was taken. He identified the participants in the photographs and stated that they had been weekend visitors at his home.

This information prompted a search by Project "P" of the residence of the co-accused, who was the adult male depicted fellating the male youth. The shirt worn by the co-accused in the photograph was seized. The co-accused admitted that he was one of the persons photographed, but denied that an act of fellatio had actually occurred. The impugned photograph, he protested, was taken from a bad angle and was misleading. He also identified the male youth alleged to have been fellated ("the victim").

According to a person interviewed by Project "P" (who was the brother of a person found in the accused's residence when it was searched), the victim had been drinking heavily on the occasion when the photograph was taken. This person stated that the accused had taken the fellatio photograph.

The victim, a 17 year-old male, admitted to having gone to the accused's residence for the weekend and confirmed (after initial denials) that an act of fellatio had taken place. He also admitted to having consumed a large quantity of alcohol — enough to make him vomit — and stated that the accused had taken the fellatio photograph.

The co-accused was charged with gross indecency under section 157 of the *Criminal Code*. He pleaded guilty at trial and was sentenced to a fine of \$1,000 or, in default of payment, to two months in jail.

The accused Hawkshaw was charged with making an obscene photograph under section 159(1)(a) of the *Criminal Code*. The preliminary inquiry was beset with irregularities. Two of the Crown witnesses, apparently including the victim, gave testimony which conflicted with their earlier written statements to the police. Both witnesses (who were friends of the accused and the co-accused) were later charged with perjury, but the charge against the victim was withdrawn. One of the persons present at the accused's residence when it was searched was charged with obstructing justice, apparently for exhorting the victim, in the form of a threat, not to give evidence against the co-accused.

The accused was committed for trial on the section 159(1)(a) charge, but his committal for trial was set aside in a higher court. Mr. Justice Osler, in quashing the accused's committal for trial, held that on a charge of "making" obscene photographs under section 159(1)(a), to publish or to intend to publish the photograph is an essential element of the offence.<sup>17</sup>

The Crown successfully appealed from this ruling. The Ontario Court of Appeal held that publication or intended publication is not an element of the offence in section 159(1)(a) of making an obscene photograph and that the accused should accordingly be committed for trial on that charge. The word

“makes” in section 159(1)(a) is very broad and may encompass a single act of creation, whether or not publication is contemplated.<sup>18</sup>

“[Section] 159(1)(a) is quite explicit, and Parliament intended it to be an offence to make or to print an obscene picture, even though it might not be made for the purpose of publication or was not made known to the public.

It seems reasonable to conclude that Parliament considered that the protection of the social interests threatened by the dissemination of obscene material could be most effectively accomplished by proscribing altogether the bringing of the offensive material into existence.”

The Court further held that there was no justification for applying a different test of obscenity for offences involving “publications” and matters which were not “publications”, and therefore, that the definition of obscenity in section 159(8) should apply to all obscenity-related prosecutions.

On the issue of whether the photograph should be considered obscene, the Court stated:<sup>19</sup>

“It will have to be decided at trial, on the basis of all the evidence, whether a dominant characteristic of the photograph is an undue exploitation of sex. In determining what is undue exploitation of sex within section 159(8), the test to be applied is whether the accepted standards of tolerance in the contemporary Canadian community have been exceeded. This is a matter to be determined by the trial Judge in an objective way after considering the relevant evidence . . . The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone’s hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author’s imagination and is only intended to be viewed privately might not be found by the trial Judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination.”

• *R. v. E. and F.*<sup>20</sup>

In 1979, a commercial film processing laboratory in Toronto notified Project “P” concerning a film submitted for processing at one of the firm’s retail outlets in a small Ontario city. The film had been submitted by the female who was later accused, Mrs. E. Photographs processed from the film depicted a man, a woman and a young girl about 10 years-old. All three persons had been photographed in the nude, and some of the pictures of the young girl were clearly sexually suggestive. For example, in one photograph, the young girl posed nude with her legs spread widely apart.

The police interviewed the female accused, who was a 35 year-old divorcee with no prior criminal record. She lived with her common law spouse, Mr. F., and with two children from her former marriage, a 15 year-old boy and an

11 year-old girl. The male accused, Mr. F., was about 30 years-old, and was also divorced. He had co-habited with Mrs. E. for about eight years.

When the police showed them the photographs, the two accused identified the persons portrayed therein as themselves and the 11 year-old girl. They stated that they did not consider the photographs to be objectionable, since they were nudists and intended to raise the girl in the nudist lifestyle. Further, they claimed that the pictures of the girl had been taken for posterity. The two accused also showed the police photographs from their family album. Several of these photographs depicted the male and female accused, and the girl, in the nude.

In this initial investigation, no charges were laid because the photographs had been made exclusively for family perusal rather than for distribution or sale. The photographs were returned to the accused with the stipulation that no further nude pictures of the young girl should be taken.

About two months later, Project "P" was informed by a local police force that a film processing laboratory had reported receiving film containing depictions of a young girl in sexually suggestive poses. The name on the envelope in which the film was submitted was that of one of the accused.

A warrant was obtained and a search conducted at the accused's residence. Approximately 400 photographs and negatives were seized. The accused were charged jointly with engaging in sexual immorality in the home of a child, and thereby endangering the morals of the child contrary to section 168 of the *Criminal Code*. As required by section 168, the Attorney General's consent to the prosecution was obtained. Charges for the making of obscene pictures under section 159(1)(a) of the *Code* were not laid because it was doubtful whether the photographs seized satisfied the legal test of obscenity.

Among the exhibits entered at trial were photographs of the girl in numerous poses, some totally nude, and others, semi-nude (e.g., in boots, "provocative" negligees, high heels or with an umbrella). In another photograph, the nude girl was seated between her mother's legs with her own legs spread widely apart. Some of the photographs focussed on the child's genitals.

Testimony at the trial revealed that the female accused had become involved with a commercial enterprise specializing in the sale of erotic lingerie through the homes of sales representatives. The female accused was one such sales representative, and would hold "parties" at which she would model the lingerie for an audience of invited guests. The erotic lingerie sold by the female accused had been used as a source of costumes for her daughter when the little girl had participated in the photographic sessions. Evidence was also adduced to the effect that the two accused had shown copies of "Playboy" to the girl, had asked her to emulate the poses of the adult models depicted therein, and had photographed her in these poses.

The trial Judge concluded, with the aid of expert testimony from a child psychiatrist, a child psychologist and a social worker, that the photographs were inappropriately sexually suggestive given the age of the girl concerned. A number of factors grounded his conclusion: (i) the prominent display and apparent emphasis on T.'s genitals; (ii) the number of such photographs; (iii) the fact that, where clothes were worn by T., they were in the nature of lingerie; and (iv) the inappropriateness of the poses and clothing, where worn, having regard to the age of the child. The trial Judge remarked that "the child T. is assuming provocative adult poses at a stage in her life when she does not even exhibit secondary sexual characteristics."

On the next issue before the Court, namely, whether the photographic depiction of the child in this manner constituted participation by Mrs. E. and Mr. F. in "sexual immorality", the trial Judge considered that the legal test was an objective one, and therefore, that it was immaterial whether the photographic sessions in which T. had participated were a manifestation of the family's nude lifestyle. On the basis of the content of the photographs, the age of the child participant, and the manifest failure of the accused to provide acceptable sexual guidance to their child having regard to her age, the trial Judge concluded that both accused had participated in "sexual immorality" within the home of the child T.

On the issue whether the child's morals were endangered by the accused's conduct, the trial Judge held that, although the Crown need not prove some present harm or injury to the child's morals, it must prove that there is genuine risk that the child's morals have been endangered. Extensive expert evidence was sought on this issue, and indicated that the child T. had been exploited sexually in a manner that could be considered child abuse. It was stated that the photographic depictions evidenced an undue emphasis on sex rather than on love, on outward appearance rather than on inner-self, and that the parents' conduct could be detrimental to the child's self-image and to her emotional and moral development. It was further testified that a child of T.'s age would probably not be able to interpret these acts and would see them as a way of gaining parental affection, and that this perception could be harmful in confusing the child about the nature of healthy expression of affection between her and her parents. A social worker specializing in child abuse testified that T. had been exposed to adult forms of behaviour with sexual overtones inappropriate to her development, and that this could lead to role confusion about how one appropriately expresses love and affection with a family. All the experts agreed that this type of photography, insofar as it involved the child T., should cease, and the trial Judge accordingly held that the Crown had met the onus of proving beyond a reasonable doubt that T.'s morals had been endangered. Further, it was held that the Crown need only prove that Mrs. E. and Mr. F. intended to engage in the acts found to endanger the child's morals; it was not necessary for the Crown to prove that the accused consciously intended to endanger the child's morals by so-acting, or even that the accused intended to participate in sexual immorality.

The accused were accordingly, convicted of participating in sexual immorality in the home of a child and thereby endangering her morals, contrary to section 168 of the *Criminal Code*.

At the sentencing stage, the trial Judge noted that neither of the accused was alleged to have been involved in any way in improper physical or sexual contact with the child T., nor was there any suggestion that the photos in which T. was featured were taken with a view to publishing or distributing them. He further stated his conviction that the investigation and trial process had made the accused realize that to continue this type of activity posed a real threat to the child's moral development, and therefore that the protection of the public, which is one of the principal considerations in the sentencing process, could best be achieved by promoting the accused's rehabilitation.

Accordingly, the sentence of both accused was suspended and a three year probationary period was imposed. The conditions of probation were that no photographs were to be taken by either accused or by anyone else at their direction or under their control, in which the child T. was nude or partially-nude or in which any other nude or partially-nude person was photographed in the presence of the child T. Both accused were required to submit to psychological and psychiatric assessment, counselling and treatment with the



child T., under the direction and on-going supervision of the local child protection services. Further, the accused were required to provide the representative of the local agency free access to their home, without notice and at all reasonable times, for the purpose of enabling the on-going supervision process to be carried out.

A review of these case studies and others assembled by the Committee indicates that child pornographers are usually detected in one of three ways. Their identities become known by: direct police investigation, often stemming from other types of complaints or suspected infractions; the police being notified by film processing laboratories; and direct complaints made by victims or their parents (the latter appears to be the least frequent means by which such cases come to light).

In most of these cases, prior to the incident having been investigated, the police had no previous knowledge of the child pornographers. The child pornographers usually operated on their own, and notably, males were involved in all of these instances. Where two or more persons were involved, most of the offenders were males. However, cases also occur in which a male and female show pornography to children, take sexually explicit pictures of them and commit other sexual offences. The situations described in the case studies clearly show that the pornographic pictures taken of children involved both boys and girls.

Most of the children photographed were also either sexually fondled or assaulted. This sequence of making child pornographic pictures and sexually assaulting children closely parallels the cases documented in Chapter 55, *Associated Harms*, in which children were shown pornography and then an attempt was made to assault them sexually, or actual sexual assaults occurred. In each situation — the making of pictures and the showing of pornography to children — the common element which is almost invariably present is the culmination of the encounter in an actual or an attempted sexual assault against the child.

In a majority of the incidents documented, the children already knew the child pornographers who frequently held positions of trust. Some individuals had deliberately become associated with various youth-related activities for the purpose of being in close contact with children whom they subsequently sought to entrap. The positions of trust involved, included: family friend, school photographer, father, probation officer, members of Big Brothers and Boy Scouts, school teacher, university professor, and landlord, among others. Pornographers typically bribed or lured children to their homes, and after seeking to lull their suspicions, gradually proceeded to a situation in which the children were enticed, or on occasion, forced to pose nude. This stage was often followed by an attempt to photograph the child performing some form of sexual act either with the pornographer, or less often, with other children. In relation to how cases involving the making of child pornography came to the attention of the police, it is evident that only a small proportion of the cases directly resulted from complaints made by victims or their parents.

## Summary

In the Committee's judgment, the findings indicate the need for a comprehensive educational program to be given on the media and in the schools to inform and alert children about situations of this kind. This approach may be criticized by some on the grounds that children may become unduly afraid of all contacts with adults or that it is not the business of the state to intrude in matters which are more properly the concern of parents. However, the available evidence suggests that these are situations that children find difficult to discuss openly with members of their families or friends.

The Committee believes that children who are educated about these risks will be better able to protect themselves, and also, will obtain the encouragement and reassurance necessary to help them overcome their reluctance to identify persons who have attempted to take or have taken pornographic pictures of them.

## References

### Chapter 52: Production and Distribution of Child Pornography

- <sup>1</sup> *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).
- <sup>2</sup> *Ibid.*
- <sup>3</sup> *Ibid.*, See also on this point *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982.
- <sup>4</sup> *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.) at 23.
- <sup>5</sup> *R. v. McCormick*, unreported, March 14, 1980 (Ont. C.A.).
- <sup>6</sup> *Ibid.*, at 2-3.
- <sup>7</sup> *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).
- <sup>8</sup> *Ibid.*, at 51-2 per MacDonald J.A.
- <sup>9</sup> *Ibid.*, at 59-60 per MacDonald J.A.
- <sup>10</sup> *Ibid.*, at 60 per MacDonald J.A.
- <sup>11</sup> *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).
- <sup>12</sup> *Ibid.*, at 289-96.
- <sup>13</sup> *Ibid.*, at 321.
- <sup>14</sup> Gulo, M.V., A.W. Burgess and R. Kelly, Child Victimization: Pornography and Prostitution, *Journal of Crime and Justice* 65:69, 1980. This report notes that American bookstore prices range from \$5 to \$20 for magazines, and refers to a 50-foot reel of film depicting sex acts between two youths, that was scheduled to sell for \$50 (U.S.).
- <sup>15</sup> Review of child pornography seizures held on file at the Office of Chief Investigator, Canada Post, Ottawa.
- <sup>16</sup> *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued during the 1983-84 judicial term.
- <sup>17</sup> *Re Hawkshaw and the Queen* (1981), 62 C.C.C. (2d) 289 (Ont. H.C.).
- <sup>18</sup> *Supra*, note 16, at 510 per Howland C.J.O.
- <sup>19</sup> *Ibid.*, at 515-516 per Howland C.J.O.
- <sup>20</sup> *R. v. E. and F.* (1981), 61 C.C.C. (2d) 287 (Ont. Co. Ct.).

## Chapter 53

### Contents of Pornography

In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken of the issues for June, 1983 of 11 magazines which are widely distributed in retail outlets across Canada.<sup>1</sup> These magazines had an audited Canadian circulation of 13,539,900 copies in 1981.<sup>2</sup> The definition of pornography adopted in this content analysis derives from the listing of specific types of sexual acts used elsewhere in the Report. The Audit Bureau of Circulation statistics for 1981, those most recently available when the analysis was undertaken, were used as the basis for the selection of the 11 pornographic magazines.

For each magazine, each page was divided into 12 equal parts in order to determine how much space was devoted to photographs, text, cartoons and advertisements. The analysis of the contents of the photographs in these magazines was developed on the basis of the list of sexual acts used by the Committee in relation to the analysis of sexual offences. For each photograph, a number of different features might be identified with each being separately counted. For example, a photograph which depicted a nude man with his genitals shown being kissed by a fully clothed woman would be listed under the categories of: fully dressed woman; kissing; nude man; and genitals explicitly depicted.

A similar list of sexual acts was used in the textual analysis, with the addition of categories for children and handicapped persons. No distinctions were made between letters, editorials, articles and fiction: the emphasis was on the number and variety of sexual acts described in the complete text of each magazine. Instead of using "story" as a unit (as "photograph" can be used), "vignette" or "episode" were deemed to be more appropriate. Otherwise, a five page story in which a male commits 12 acts of sexual intercourse in 12 different situations, for example, would be given the same weight as a single paragraph in the letters column describing one act of intercourse. If an act occurred in a discrete piece more than once, it was only listed once, as an element of the piece. For example, in an anecdote about group sex in which three participants simultaneously committed acts of oral sex, oral sex is listed once as an element of that vignette.

As part of the textual analysis, the letters column of each magazine was examined in relation to the gender of the correspondents, as were the feature writers listed in the Tables of Contents, the publishers and the editors. Finally, a detailed examination was made of the advertising contained in each magazine. Lists were drawn up of the types of products advertised; these products were then categorized either as general consumer goods or as sexually oriented goods.

## The Magazines Reviewed

There was considerable diversity in the contents of the 11 magazines, with each catering to somewhat different tastes in relation to the types of sexual behaviour or acts portrayed and the degree of explicitness in sexual depictions. Before providing a content analysis of these magazines, a summary is given of the salient features of each publication.

**Penthouse** is the top-selling pornographic magazine; it sells five million copies every month worldwide,<sup>3</sup> almost a tenth of which are bought by Canadians.<sup>4</sup> It contains a slightly higher than average amount of photographs. These, however, account for a relatively low percentage of the entire contents. Although the number of advertisements in *Penthouse* is only half of that in *Playboy*, it is still about double the average found in most of the other magazines. About two-thirds of the products advertised are general and men's consumer goods and the rest are sexually oriented products, most of which are available by mail order. Many of the articles aim for the same tone of general interest as those appearing in *Playboy*, but in addition there is a comparatively high level and variety of sexual content, especially in the "Forum" (letters from the readers) section. The photographs explicitly depict the female body; there is some variety in the subjects and acts portrayed.

**Playboy**, founded almost 25 years ago, is the oldest magazine of its genre, and something of a prototype. At 274 pages, the June, 1983 issue is twice the length of the other magazines and while it has a slightly higher than average number of pages devoted to photographs of all kinds, these account for a very low proportion (17.3 per cent) of its overall content. The difference is advertising. *Playboy* has three and a half times the average amount of advertising, most of which displays expensive general and men's consumer goods. Not much of the text is devoted to exclusively sexual subjects. The sexual content of the photographs is typically restricted to depictions of nude and partially nude women, posed singly.

**Hustler** has the third highest sales among pornographic magazines in Canada. The June, 1983 issue contains a relatively high proportion of violent images in the text (photographs and illustrations). The photographs are explicit and cover a wide range of sexual activities, including a simulated lesbian bondage scenario.<sup>5</sup> Most of the text is sexually oriented and only a small proportion of material is of general interest — for example, an article on Unidentified Flying Objects (U.F.O.s). The advertisements are almost exclusively sexually oriented; the few which are not are small and advertise mail order products.

**Gallery**, at 114 pages, is one of the shorter magazines. It contains a fairly high percentage of general interest features, for example, articles and reviews of generally released films. The sexually oriented photographs depict women

singly, or in one case in a non-sexual duo. In contrast to *Playboy*, this magazine does not contain much advertising and only one third of the products are general consumer goods, most of which are available on a mail order basis. The sexually oriented advertisements are generally non-explicit. *Gallery's* "The Girl Next Door" feature is a phenomenon common to half of the magazines reviewed, in which photographs of non-professional female models are sent in by readers, most popularly in monthly contests: "Friends and Lovers" in *Genesis*; "The Girl Next Door" in *Gallery*; and "Beaver Hunt" in *Hustler*.

**Cheri** is billed as "The All-True Sex News" magazine. It has a somewhat different format than the others, for as well as the standard pictorials, it has a high proportion of photo-journalistic stories involving locations which the staff of the magazine has visited. In the June issue, for example, these stories describe a nudist camp, a lingerie and sexual aids' boutique, and a number of nightclubs. Everything in the magazine is sexually oriented, including all but a very small proportion of the advertising. *Cheri* has a higher proportion of its contents devoted to photographs than any other magazine, as well as having more actual pages of photographs. The contents of these photographs, specifically the ones accompanying the news stories, are explicit and professional.

**Playgirl**, a pioneer in its field, publishes photographs of nude men instead of women. It is the only magazine in which references in the text are made to contraception and pregnancy. The photographs are relatively uniform: nude or semi-nude, shots of single men and one pictorial of a heterosexual couple. It has the lowest number of photographic pages of any magazine other than *Forum*, and at 132 pages, it is slightly below the average length. The text emphasizes general issues, humour, what are perceived as women's issues, and an average amount of sexually oriented content. One-third of the advertising is devoted to general and women's products, while the other two-thirds concerns sexually oriented goods.

**Forum** is something of an anomaly in terms of its format. It originated in response to the positive reception by readers of the "Forum" section in *Penthouse*, and its contents are mostly text rather than photographs. Small, more like a journal or book than a magazine, it contains articles by sexual therapists and other experts, more anecdotal, titillating articles, as well as a large selection of letters, some of which seek advice and some of which relate sexual experiences. The advertisements are largely devoted to sexually oriented goods. The text — specifically the letters — contains most of the references to pedophilia and incest found in the review of the 11 magazines. Of nine photographs, only one is in full colour, and that is the cover. It is the only magazine to depict sexual scenes between two men.

**Oui's** format contains pictorials interspersed with general interest articles and a sizeable amount of sexually oriented material. There is some emphasis on violence in the text and photographs. It is the only magazine to have a full pictorial of a nude woman posed with an animal. It has the second highest number of pages of photographs. The proportion of advertising is low and the majority (84.5 per cent) of the products advertised are sexually oriented.

**Club** magazine claims a worldwide distribution of two million copies,<sup>6</sup> 2 per cent of which are sold to Canadians.<sup>7</sup> The magazine contains the widest range of depictions of sexual behaviour, both in its photographs, but especially in its text. There is an emphasis on bondage, sadism and masochism, as well as on scatological elements and other fetishes. In format it is slightly larger than the other magazines, which (except for *Forum*) are a uniform 8 x 10 3/4 inches: *Club* measures 8 3/4 x 11 7/8 inches. It has a high proportion of photographs and a low proportion of text and advertisements. The products displayed are almost uniformly (91.0 per cent) sexually oriented.

*Swank*, at 100 pages, shares with *Club* the distinction of having the least number of pages, though both their cover prices, along with *Hustler*, are at the top of the \$2.00 — \$3.95 scale. *Swank* contains reviews of X-rated films, interviews with pornographic movie actors and other related features. The textual content is completely sexual — the cover promises “Sex On Every Page!” — as are the advertisements (92.4 per cent of the products advertised). It has a fairly high proportion of photographs, many of which are explicit and depict a wide range of participant subjects.

*Genesis* (“Celebrating the Good Life”) follows the format of interspersing mainly sexual contents with articles of general interest. There is an average proportion of photographs, and the pictorials, almost without exception, are of individual females. The amount of advertising is slightly below average, and the majority of the products displayed (55.6 per cent) are general consumer goods, half of which are available on a mail order basis. There are a few articles relating to other pornographic media, as well as “how to” articles: “Winning with Women: Score with Personal Ads” and “How to Score with a Waitress”. There is one violent image, but otherwise not much violent content.

Six of the 11 magazines have proportionately more page space devoted to photographs than to any other feature. Generally, the magazines containing more explicitness and sexual variation are those having proportionately the most photographs, while the magazines which also include general interest articles and contain less variety in their sexual content have a higher proportion of text and/or advertisements.

## Magazine Covers

Apart from *Playgirl*, which displays a photograph of a fully dressed male celebrity, the covers of the magazines are fairly uniform: all have glossy colour photographs which display partially clad women with no sexual parts of the body showing. Some of the cover models are dressed in revealing clothes (*Gallery*, *Cheri*, *Forum* and *Oui*), some are wearing lingerie (*Playboy* and *Hustler*) and some are practically nude (*Penthouse*, *Club*, *Swank* and *Genesis*). The covers of the last four magazines display most of the models’ breasts, though their nipples are not shown. (The nipples of the model on the cover of *Club* are partially visible, but are covered by a sticker in the Canadian edition). In none of cover photographs is the model’s pubic area visible: it is either covered or off-camera. The cover of *Hustler*, which contains a rear photograph of a woman from the waist down, is the only cropped photograph.

## General Scenes

General scenes, for the purposes of this study, are defined as photographic representations of non-human subjects, or in some cases, shots depicting persons in an unambiguously non-sexual way: for example, a crowd scene or a news photograph. All the magazines, except for *Forum*, have general photographs ranging from less than 1 per cent to 8 per cent of the photographic

pages. In the majority of cases, the general photographs are smaller in size than those which are sexually oriented, though most of them are in colour.

## Individual Females

With the exception of *Playgirl* and *Forum*, most of the photographs in these magazines depict individual female models. The highest proportions are in *Genesis* and *Gallery*: 82.4 and 72.4 per cent of their photographs, respectively, are devoted to individual women. These magazines, along with *Playboy* (55.5 per cent), follow a fairly predictable formula with few variations. *Playboy* contains a large proportion (40.8 per cent) of photographs in which the subject is fully clothed and/or is only visible from the shoulders up. Some of these are in the nature of news or celebrity photographs; a smaller proportion depict the authors of articles in the magazine. The majority of these non-sexual photographs are of women depicted in sexual ways elsewhere in the same pictorial, or of women identified as "Playmates".

In depictions of individual females, the majority of the sexual content in these three magazines is in the form of glossy colour pictorials, usually several pages in length, featuring one model. The overall emphasis in these sexually oriented photographs is on partially dressed rather than fully nude models. Accessories are popular — lingerie, high heels and stockings. In *Playboy*, *Gallery* and *Genesis*, there is not much variety: breasts are exposed in half to three-quarters of the photographs, buttocks in 9.9 to 19.4 per cent, and the pubic area in 18.4 to 39.0 per cent. Genitals are displayed in one in six pictures in *Genesis*, only twice in *Gallery* and never in *Playboy*. The individual models are sometimes depicted either as touching themselves or as removing or loosening their clothing. Generally, the models are inactive and posed to be seen rather than to depict any type of particular activity.

*Cheri* magazine, though different in format, does not differ much in its depiction of individual female models: it follows the glossy pictorial format, and is comparable to *Gallery* and *Genesis* in terms of explicitness and the types of acts depicted. The photographs of women in *Penthouse* follow a similar format, except that they are more explicit than those in *Playboy* or *Gallery*. Half (50.4 per cent) of the photographs in *Penthouse* are devoted to individual females: different participant-subjects occur in a large proportion of the photographs. *Hustler*, *Swank* and *Oui* are correspondingly more explicit: the former two have a greater number of explicit photographs of genitals than non-explicit depictions. These magazines also have a number of scenes depicting masturbation, bondage, sadism and masochism.

*Club* magazine is in a category by itself, in terms of the variety of acts depicted. The issue contains only five photographs of clothed women; otherwise, the bodies of the models are displayed explicitly and a high proportion is engaged in masturbatory activity. There is some emphasis on apparent vaginal penetration by foreign objects — though not in the main pictorials — and a



heavy emphasis on bondage, sadism, masochism, leather clothes and fetish items and elements of violence. The latter are often obscured by the corresponding text. For example, there is an 11 x 7.5 cm. photograph of a women's feet, clad in high heeled sandals, protruding from the trunk of a car. The image could arguably be construed as a violent one, yet the accompanying text, although sexual, de-emphasizes any violent constructions:

"... Why hasn't some inventive entrepreneur cum[sic] up with the Pussy Pick-up? We can see it now. Drive-in, check out the merchandise muffs, make your selection, and drive away for a piece of ass or whatever else it is you desire. This klutz, though, could have at least put her in the front seat. How can she give a proper blow job from all the way back there?"<sup>8</sup>

Apart from its cover, *Forum* contains practically no photographs of individual females. *Playgirl* contains 21 photographs of women, none of which is sexually oriented. In these two magazines, about two in five photographs of individual women are in colour, in contrast with the 90-100 per cent range in the other magazines.

## Two or More Females

Couples who are supposedly lesbian are a popular subject for full-scale layouts. The pictorial in *Hustler*, "Love Slave", is noteworthy for its inclusion of a strong theme of sadism and masochism. The text reinforces this theme with the catchwords "slave" and "mistress". The photographs depict ritualized scenes of bondage, masturbation, simulated oral sex and simulated vaginal penetration by a riding crop. In one full page photograph, the "slave", described in the text as a "young girl", is depicted tied to the bedposts while her black-clad "mistress" kneels over her, the high heels of her boots suspended inches away from the other's exposed, practically hairless vulva.

"Rawhide", a pictorial in *Club*, while it lacks the sadistic overtones of "Love Slave", contains several comparable elements: it depicts simulated acts of oral sex and explicit close-ups of model's genital and anal areas. The setting and costuming are pseudo-western.

"Steam Heat" in *Swank* follows the same format, with simulated kissing, caressing, masturbation, three scenes of simulated oral sex and one scene in which one model holds a bath-brush against the other's buttocks. The setting is a shower. The models' bodies are depicted explicitly; as is the case with *Club*, most other shots of female models together are stills from films.

Although the emphasis is different, "Pillowfight" in *Oui* continues the lesbian theme. "Tina and Marci are room-mates at Yale", the caption reads. "Tina studies biology, Marci wants to be an actress. They've been friends all their lives." The same types of acts previously noted are depicted with a comparable degree of explicitness, though the setting is a large white bed covered with goose feathers and the models are young and playful.

*Gallery* has a pictorial of two women posing nude together with no sexual activity and devotes approximately six pages to this category. *Cheri* has approximately 13 pages of women posing nude and semi-nude together, with minimal sexual contact. *Playboy*, *Forum* and *Genesis* have no photographs in this category, and *Penthouse* and *Playgirl* have one and three, respectively.

## Heterosexual Couples

Several of the magazines have full-scale colour pictorials of heterosexual couples. In the pictorial in *Penthouse* which accounts for all but three of the photographs in this category, "Steve" and "Leanne" engage in caresses and simulated oral sex. The female model engages in masturbatory activity and her body is explicitly depicted.

*Swank* also contains a pictorial, "Lust Affair". The setting is affluent and exotic; the models are wearing lingerie. The caption is, "She only wants him for sex. That's fine with him". Though more explicit, the acts depicted are similar to those appearing in *Penthouse*, with the addition of one subdued fetish image: in one photograph, a woman holds the high heel of her shoe against the man's penis. Three of the photographs are censored, two of which depict oral sex.

*Club* has 44 photographs of couples. The bulk of these are contained in one pictorial, "Joe and Sugar", which is cast in a setting evocative of the gangster films of the 1930s and includes depictions of: caresses, simulated oral sex, explicit views of female genitals and five photographs of actual or simulated intercourse. Elsewhere in the magazine, other depictions include one instance of oral/anal contact, six of actual or simulated intercourse, bondage and sado-masochistic paraphernalia, some violence, and fetish-related activities centring around lactation and high-heeled shoes.

*Playgirl* contains a short pictorial in which the models undress and caress each other. The emphasis is on the man's nudity; the woman is never fully shown. The other photographs in this category are mainly news photographs or stills from generally released films, none of which is explicitly sexual.

None of the other magazines places much of an emphasis on heterosexual couples, though all contain some photographs of this type. *Cheri* has 20, *Playboy* has 11, *Hustler* has six, *Gallery* has six, *Forum* has four, *Genesis* has four and *Oui* has three.

## Individual Males

*Swank* magazine has no photographs of individual men, and *Penthouse*, *Playboy*, *Gallery*, *Cheri*, *Forum*, *Oui* and *Genesis* have between less than a fifth of a page and about three pages, none of which contains sexual content involving individual males. *Hustler* has one photograph of a nude man in the

“Beaver Hunt” section and *Club* displays two partially dressed men and one in black leather with his genitals partially visible.

About three in five (61.3 per cent) of the photographs in *Playgirl* are devoted to individual male models. Half of them are totally nude with the models’ genitals being explicitly depicted. Five models appear to be undressing and one is touching himself. The shots are in colour; some in the pictorial format and some in a tenth anniversary section feature models from previous issues of the magazine.

## Two or More Males

*Playboy*, *Gallery* and *Playgirl* all have a few photographs in this category, none of which has sexual content. Of the other magazines, only *Forum* has pictures in this category. *Forum* has three photographs which accompany an interview with a gay man: monochromatic depictions of the torsos of two men who hug and caress each other.

## Mixed Gender Groups

*Oui* magazine has the most pages devoted to photographs of mixed gender groups engaging in sexual activities; it is the only magazine which has a full pictorial in this category, “The Revolt of the Slave Girls”. This pictorial involves three “slave girls” and their “master”. The acts depicted include: actual or simulated oral sex, vaginal sex and caresses and, once the slaves revolt, seven photographs of ritualized sado-masochism.

The photographs in this category in *Playgirl* and *Gallery* do not depict sexual acts. In *Club* and *Swank*, there are approximately two pages each of photographs of mixed gender groups, most of which are stills from pornographic films depicting explicit sexual acts. The other magazines also have relatively few photographs in this category.

## Other Groupings

In addition to the foregoing categories, there are two photographs of transvestites or transsexuals and two depicting women with animals. In the former category, there is a news-style photograph of an entertainer in *Playboy* and a photograph in *Club* of what appears to be a woman exposing her penis. In the latter category, *Hustler* contains a small colour photograph of a naked woman with a large boa constrictor and *Oui* contains a pictorial called “The Lady and Tiger”, which features a nude female model posed with a tiger. Although no sexual acts are depicted, the text states:

“Since I was a child, I have been attracted to wild animals . . . sometimes the feeling is sexual. Imagine the power of a tiger, the roughness of its

tongue. How could any date I might have compete with that? [...] My needs — *all* of them — are taken care of . . . ”<sup>9</sup>

A number of advertisements of books and magazines with contents related to bestiality and transvestitism/transsexuality are listed in several of the magazines. Typically, however, editorial content does not refer to these subjects.

## Violence in Photographs and Illustrations

There are a number of violent images depicted in the magazines, some of which take the form of illustrations. *Hustler*, for example, has a two page illustration of a blood-splattered female torso. Her blouse is open, her nipples erect. Beside her on the floor is manuscript, “The Bloody Blade: Confessions of the Fisherman”. The accompanying text reads:

“When I smiled, my lips tasted of her strawberry lipstick. Her tits wobbled playfully as I slapped them again, hard. Then I pulled the bait knife from my back pocket, I nicked my finger and swore. This put the delicious terror back into the girl’s eyes. The rape had felt good, but the best was yet to come.”<sup>10</sup>

A long, narrow knife lies across these pages which is splattered with blood. The accompanying story details the capture of a man who rapes, kills and mutilates young women.

A story in *Oui* entitled “Nazis On the Loose!” is accompanied by two full-page illustrations, the first of which inaccurately depicts three men and one woman in Nazi uniforms sitting at a table, apparently torturing a baby. As a background portrait of Hitler looks on, there is blood dripping from the table, one man wields a knife and a large Alsatian dog slathers. Upon turning the page, the reader sees the same persons, apparently years later, sitting down and enjoying a peaceful meal. One of the men is carving a chicken.<sup>11</sup>

Accompanying “The Great Crime-Wave Myth”, an article which states that crime is on the decrease, *Genesis* magazine published a one and one-third page photograph of a female body under a blood-stained sheet, lying in what looks like an alley or street. No clothing is visible, though the woman’s bare legs and arm protrude from under the cloth.

*Swank* magazine has three photographs of women in boxing gloves and helmets engaged in “bare breasted boxing”: “The girls come out swinging! Dangerous Dotty lands a breathtaking blow to the boobs! And a crunching chop to the cleavage!!! The men at ringside are going wild!” In the same issue, accompanying a story entitled “Fuck or Die!”, there is a two page photograph of a woman and man partially undressed and engaged in what appears to be actual or simulated intercourse as an onlooker nudges the man’s buttocks with a gun and another man looks on.

*Club* has several depictions of persons who are bound or are threatened by whips. It also contains a short series of photographs from a film of two women engaged in a dispute in which one woman wields a whip and several times apparently bloodies her half-naked adversary.

## Types of Sexual Acts Depicted in Photographs

The salient features of the photographs contained in 11 pornographic magazines circulated across Canada during the middle of 1983 are summarized in Table 53.1. It is recalled that the number of features or elements listed exceeds the actual number of photographs contained in these magazines. Thus, if a photograph showed both a female's breasts and a male's penis, both depictions were counted.

The results of the content analysis indicate that sexually explicit depictions were portrayed in most of the pictures in the 11 magazines analyzed. Included in these depictions were not only the genitals and erogenous zones of males and females, but also a sizeable number of actual or simulated sex acts involving two or more persons.

## Cartoons and Illustrations

The average proportion of space devoted to cartoons and illustrations in the 11 magazines is about 7 per cent, or approximately 10 pages per issue. In addition to the violence portrayed in some of these illustrations, there is a large amount of sexually explicit material. The following are typical examples.

*Gallery.* One series accompanies an article on sexual techniques: they are small illustrations which depict kissing, caresses and intercourse.

*Oui.* Accompanying an article called "Cocaine Island" there is a two page colour illustration of two naked women on a beach, each with cocaine, some liquor and a pile of bank-notes. A scowling man in fatigues mans a machine gun and an armed motorboat cruises past.

*Hustler.* In an article on A.I.D.S. (Acquired Immune Deficiency Syndrome), a nude smiling woman is depicted kneeling on a bed, apparently being penetrated from behind by a grinning figure of Death, carrying a scythe.

*Swank.* In a two page colour illustration accompanying an article on "Fire of Desire", a woman, half naked, is depicted reclining on a bed. Her body is twisted so that her buttocks are topmost and her legs are open. She spreads her buttocks with her hand, and the lips of her labia are slightly

**Table 53.1**  
**Types of Sexual Acts Depicted in the**  
**Photographs in Eleven Pornographic Magazines: 1983**

Situations/Sexual Acts Depicted in Photographs	No.	%
Person fully clothed	414	9.6
Person partially clothed (bathing suit, underwear)	682	15.8
No clothing on trunk of body (excludes stockings)	521	12.1
Nude part of sexual parts of body shown, but not face	103	2.4
Use of sexual accessories	329	7.6
Person exposed body by loosening/removing clothing	37	0.8
Another person attempted/removed subject's clothing	29	0.6
Female breasts, nipples shown	723	16.8
Buttocks shown	181	4.2
Genitals shown (female pubic hair and labia; male penis and scrotum)	591	13.7
Anus shown	60	1.4
Sexual positioning between two or more persons (no contact)	78	1.8
Masturbation, touching/fondling breasts, buttocks, genitals	252	5.9
Kissing mouth, other parts of body	83	1.9
Oral-genital contact (actual or simulated)	30	0.7
Oral penetration with object	4	0.1
Vaginal/anal penetration with penis (actual or simulated)	11	0.3
Vaginal/anal penetration by finger or object (actual or simulated)	7	0.2
Bondage equipment, clothing, elements	92	2.1
Fetishism	10	0.2
Elements of force against victim, violence, use of weapons	53	1.2
Picture partially censored	12	0.3
Other†	11	0.3
<b>TOTAL</b>	<b>4313</b>	<b>100.0</b>

† Other includes: actual simulated oral-anal contact (2); homosexual relationship (2); victim being murdered (2); and display of pornographic magazines (5).

parted. The other character in the scene is a fireman, and the hero of the story. He is in the foreground of the picture, looking at the woman on the bed. He carries a firehose, the nozzle of which is pointed at the woman's vulva.

*Club.* A monochromatic illustration of a man holding an empty picture frame up to the naked buttocks of a woman who is otherwise covered in black leather. The man is turned, winking at the viewer. The article is called "Ass Crazy".

*Hustler.* An apparently young girl is saying her prayers before bed, overseen by her parents. She smiles and says, "And bless that man at the playground today who let me rub his thingie!" One inference that can be drawn is that the child had enjoyed the experience.

## Types of Sexual Acts Depicted in Text

In the contents of the text in each of the 11 magazines, there is a wide range from articles on general topics to explicit descriptions of sexual violence, degradation, fetishes, sexually deviant behaviour and sexual offences. In the analysis of the text, similar categories were used as those employed in the review of photographs in these magazines.

In Table 53.2, a listing is given of the types of situations and sexual acts described in the mid-summer 1983 issues of 11 nationally distributed magazines. The following are some examples of the text from which these statistics were compiled.

### *Case Study 1*

"... A large wobbling backside somehow seems to solicit punishment. It's like an inflated balloon that makes you want to prick it with a pin or apply a lighted cigarette to it. And the female's ass makes such a satisfying target. The devastation of a balloon gives only a moment's mildly sadistic pleasure — like stamping on a bug — but the buttocks can soak up an astonishing amount of punishment. They seem to fight back, too — insolently judging and glowing under chastisement. This is far better than a totally passive response with no visible or audible return for effort. You know how unrewarding it is to beat up a wet sponge.<sup>12</sup>

### *Case Study 2*

"... I was on holiday in Tangiers in 1964. A road was being constructed, and the laborers were living in tents nearby. One night I approached one of the tents and crawled in. I was afraid the laborers would think I was a thief, or that one of them would shout and jump up if I surprised him in his sleep.

I touched one of them tenderly on his leg, then on his thigh, and when he didn't move I finally put my hand on his crotch. He sat up. Then he saw that I was a white man and he understood immediately. He lay down again. I got his cock out and sucked him off. And then the others awoke — six all together. We went outside and they fucked me.

*Forum:* Why didn't they have sex with each other?

**Table 53.2**  
**Types of Sexual Acts Depicted in**  
**the Text in Pornographic Magazines: 1983**

Situations/Sexual Acts Depicted in Text	No.	%
Person exposed body by loosening/removing clothing	65	8.0
Another person attempted/removed subject's clothing	59	7.2
Masturbation, touching/fondling breasts, buttocks, genitals	168	20.6
Kissing mouth/other parts of body	71	8.7
Oral-genital contact	110	13.5
Oral-anal contact	12	1.5
Vaginal penetration by penis	76	9.3
Vaginal penetration by finger, fist or object	28	3.4
Anal penetration with penis	8	1.0
Anal penetration by finger, fist or object	17	2.1
Homosexual elements	20	2.5
Use of sexual accessories	8	1.0
Bondage equipment, clothing, elements	33	4.0
Fetishism	67	8.2
Incest	5	0.6
Elements of force against victim, violence, use of weapons	30	3.7
Victim raped/murdered	3	0.4
Pornography — users, makers	16	2.0
Strippers, swing clubs, prostitution	11	1.4
Other†	7	0.9
<b>TOTAL</b>	<b>814</b>	<b>100.0</b>

† Other includes: oral penetration by an object (1); thigh intercourse (2); suggestion of vaginal/anal penetration by object (1); contraceptives (3).

*La Rue:* It's not done. An Arab male would lose face if he violated the Arab sexual code of honor. A man will fuck a boy until the youth reaches puberty. Then he cannot touch him anymore. So he will look for another boy or a white man."<sup>13</sup>

*Case Study 3*

"... I cupped one of her breasts in my hand and sucked on it hard as I began to pump slowly and deeply, bringing my penis almost all the way out with each stroke and thrusting it back in again, moving my hips in a figure-eight action.

I alternated between quick and slow movements, making Joy gasp with pleasure. She lifted her hips violently to match my thrusts until, tossing her head from side to side and raking my back with her fingernails, she let go in an intense orgasm that nearly brought us off the bed.



Now it was my turn. I like to fuck a woman hard to really let her know that she has a man between her legs. I spread her legs wide, bringing my knees up underneath her thighs, and began pumping hard and fast. My balls were slapping against her and the head of my penis was hitting her cervix at each stroke. Joy gasped, 'Oh, darling!' with each thrust and lifted her long legs to give me greater penetration, raking my sides, bucking violently and gripping me firmly with her vaginal muscles until I shot my load deep inside her . . ."<sup>14</sup>

#### *Case Study 4*

" . . . She didn't know what was coming off at first. She felt me fooling around with her asshole, and she was up to taking two or three fingers easy.

Then I made a fist and began to work it into her. The way I do it is I get my fist around my dick and then work both of them in. I pulled out enough to do this, and then I let her have it fullforce — a ten incher with a fist wrapped around it.

I have to give it to the lady, because she didn't even scream. She just grunted and moved her legs to widen her ass some more. She took the whole thing with hardly a whimper, and I began to jerk off inside her ass. I had my prick in there and one whole hand up to the wrist, and she was letting me pump to the max. She was frigging her clit, and suddenly I felt her stiffen, and then her ass muscles began to contract as she came. I kept on pumping my prick and my fist, and I couldn't hang on. I began to spurt out my scum, jerking off hard, and it was one the best cums of my life.

Since then, Anna Punkerama and I have enjoyed an ideal employee-boss relationship . . ."<sup>15</sup>

#### *Case Study 5*

" . . . So I let her have it. My hand smacked those plump, round cheeks and the flesh resounded with the impact. She let out a long, slow moan. I rubbed the cheeks and felt the pussy hair peeking out from between them. She begged for more and I gave it to her . . . smack . . . smack! She moaned loving it' . . . She was howling like a wolf, and those bright red, swollen cheeks were shaking like jelly . . . And then I pounded her, digging my dick in and out, faster and faster till I was gasping for breath and hit my peak . . ."<sup>16</sup>

#### *Case Study 6*

" . . . She removed his tie, shirt and bullet-proof vest. She put the vest on and took the gun from its holster. Stroking the barrel along her thighs, she wedged it between her legs, . . . 'Now,' she crooned. 'This is what I want you to do. Handcuff my hands behind my back and push me down face-up.' The water bed surged. 'Fuck me with your nightstick, slow and easy. Then put six bullets inside me and suck them out one at a time. Then you fuck me, beautiful man, slow and long. Do it now . . . don't be gentle, only slow.' . . ."<sup>17</sup>

#### *Case Study 7*

" . . . Ordering him to his feet, I prepared him for the next ordeal. With the aid of a wide leather posture collar, a tightly laced corset, high-heeled 'training shoes,' and a leather arm restraint, I adjusted Martin's poor posture. I then put a thick, heavy book on his head, and for a predetermined period of 15 minutes I led him around my chamber by a leash, advising him that every time the book fell from his head he would be punished accordingly.

Naturally, the book fell quite a few times, especially when I would unexpectedly change the direction of our stroll or jerk sharply on the leash. Again, my pupil did surprisingly well under such adverse conditions: Nevertheless, he had to be punished for his many failures. This time, the cane was applied to his ass cheeks, again slowly and painfully — one lash for every time he had failed to keep the book from falling . . . ”<sup>18</sup>

#### *Case Study 8*

“ . . . Bill is a guy I’ve been seeing for a couple of months and Andrea is a mutual friend . . . We were drinking a lot and as we got drunker and drunker we started talking about sex . . . I parted her ass cheeks wider and sent my tongue down her crotch. I licked her asshole and hairy cunt . . . She straddled my boyfriend and stuck his dick right into her creaming hole. I saw her shiver and toss her head back as his huge, engorged cock filled her . . . all three of us were rocking and screaming . . . ”<sup>19</sup>

#### *Case Study 9*

“ . . . Saturday night came and people started arriving . . . After about an hour I got such a rush from the dope that I guess I blacked out.

When I finally came to, I was experiencing a wonderful orgasm. Through my half closed eyes I looked down to find that I was completely nude and, to my surprise was being wonderfully eaten by a friend of one of our guests. What really shocked me though was that most of the people from the party were still there, sitting around, watching the show we were putting on . . .

Thomas [her husband] told me that I had gotten so high that I must have thought I was alone and going to bed. In the middle of the party, it seems, I stood up and began undressing and proceeded to lie down on our sofa. Ken, the guy that had been eating me, was sitting at the end of the sofa when I lay down. Then, it seems, I put one leg on the back of the sofa and the other on the floor, which gave him a beautiful view of my wide-open pussy. Everyone began to laugh and say that he should do something, including my husband. Well, it seems he fucked me first and then went down on me . . .

He [Thomas] asked if I needed a dick and I said I sure wanted his. He replied that he would first like to let me fuck someone else. He gently laid me on the floor and asked the guys if they also wanted some. Before the night was over, I fucked every guy there while their wives and dates cheered us on.

Since that night I have become much more relaxed about sex and my body . . . My husband, by the way, asked me to stop fucking everyone I see (including his boss) but I said that he had helped start it and now I needed at least three or four different cocks in me a week! . . . ”<sup>20</sup>

#### *Case Study 10*

“ . . . They slipped in [to the bedroom] and tied her wrists, just as Audrey woke up. She screamed and Jack pretended to be angry and told her to shut up. They removed her nightgown and spread her out, tying her to the bed. Then Sandra began to toy with her bush. ‘Oh, you should shave this one. Honey, it would look so much better. See, like mine,’ and she removed her clothes. Sandra has a beautiful cunt, slick as a baby’s ass. Sandra played with Audrey’s nipples until they were swollen and hard. Then she climbed up on the bed and, placing a knee on each side of Audrey’s head, forced her cunt down on Audrey’s face. ‘Eat me out, suck my pussy, baby. Stick your tongue up inside and find my clit.’ Audrey screamed “no” and yelled for me. I was just outside, watching through the window. ‘I’ll teach you to refuse me, you

bitch,' Sandra said. My cock was so hard I nearly creamed my jeans. Sandra and Jack then shaved Audrey's pussy. Audrey was pleading with them to leave her alone. 'No, baby. No, you are mine,' Sandra said.

Jack was stripped by this time and his cock was large and very hard. He went to Audrey and commanded. 'Suck this, whore.' Audrey looked at it and pleaded, 'No! No! Please don't!' But as Jack fed his cock into Audrey's mouth, she sucked and licked it until he shot his cum down her throat. With tears running down her face, she swallowed it. Then Sandra mounted her and Audrey ate her out. They repeated this, with Jack fucking Audrey in the mouth and ass. Audrey was soon worn out, but they kept it up for most of the day.

I had left and went to town to do some shopping. When I returned they had Audrey collared and on a leash, kneeling down . . . "21

#### *Case Study 11*

" . . . She's screaming with pleasure now that the gag's been removed. She knows she's undeserving of the big cock that's just fucked her silly. So don't cry for her, her own tears match her pussy spasms and juicy orgasms. When her master finally let her speak, all she could say was, 'Fuck me again. I'm so helpless without you inside of me. Fill me with cock and cum.' Her master obviously knows the ropes' . . . "22

#### *Case Study 12*

" . . . one shapely woman was grabbed by one of the gunmen and pushed into another, smaller dining room. While several horrified, naked diners watched, the woman was pushed down on top of a table and raped at gunpoint . . . one of the gunmen, whom police later said was Bruce Garrison, started walking between the aisles where people were lying down and hitting them with his blackjack. Some were hit on the collarbone, some on the spine, others around the face . . . Some couples were startled to see a revolver shoved against their temples as they made love. The gunmen would order the man to pull out of the woman and finish off in her mouth, or to have her jerk him off . . . "23

#### *Case Study 13*

" . . . Marlowe struck her hard in the belly, knocking out her wind. She'd braced for the blow, but it came too quick and too strong for her to recover. He grabbed her throat in one hand and pushed her violently back to the couch, ripping her dress from the neck down to her waist. Another vicious rip tore Brigit's lace bra away, exposing her breasts. Anger and betrayal had brought the Fisherman back to life.

'You killed them,' Brigit gasped breathlessly, 'killed them all — raped and slashed 15 young women.'

'Yes, you stupid, filthy bitch,' he hissed. His hand left her throat and brutally squeezed her breasts. He planted his knee firmly in her crotch, pinning Brigit to the couch. She saw the growing erection in his pants and shuddered. He spotted the X-acto knife on the coffee table and grabbed it . . . "24

When a comparison is made between the types of sexual acts (actual or simulated) depicted in photographs in these 11 widely distributed magazines and the types of sexual acts described in the text, a sharp contrast emerges between the proportional emphasis given to the main categories of sexual acts.

Sex Acts Depicted	Photographs	Text
	No.	No.
Oral-genital contact	30	110
Oral-anal contact	2	12
Vaginal/anal penetration by penis (actual, simulated)	11	84
Vaginal/anal penetration by finger, fist or object	7	45
Bondage	92	33
Fetishism	10	67
Elements of force	53	33

In the proportionately larger number of photographs to the text appearing in the magazines, two types of situations occur more frequently: pictures showing bondage; and the use of force or violence against victims. In all other types of sexually explicit depictions, the text, on average, contains five times as many depictions as those appearing in the photographs of: oral-genital contacts; oral-anal contacts; vaginal and/or anal penetration by a penis; vaginal and/or anal penetration by a finger, fist or object; and fetishism.

With the exception of one or two magazines such as *Playboy* in which the text is largely devoted to journalistic contributions, there is a sharp shift between the main emphasis in the photographs and the themes of the text in the other pornographic magazines. In most of the photographs showing sexual acts which may involve two or more persons, while the portrayal is often vividly graphic, the situations depicted may be simulations rather than actual sexual acts performed when the photographs were taken. This is especially true of depictions which apparently portray vaginal or anal penetration by a penis, finger, fist or object.

In contrast, there is no pretense at simulation in the types of sexual acts described in the text of these magazines. Sexual acts are fully and explicitly described, often in lugubrious detail. The examples of the types of situations described are exemplified by the excerpts which have been given. These magazines, legally distributed across Canada, are considered to be 'soft core' pornography, i.e., in contrast to 'hard core' pornography, they are not thought to deal with an explicit and graphic depiction of the full range of sexual behaviour and acts. It is evident from the content analysis that in the text of some so-called 'soft core' pornographic magazines, there is a substantial element of 'hard core' matter being presented.

### Sexual Depiction of Children in Text

There were 24 situations (3.0 per cent) in the text of the 11 nationally distributed pornographic magazines in which children and youths were por-

were portrayed in sexually explicit depictions. The youngest child described in situations of this kind was 11 years-old; the usual age range was between 13 and 17 years-old. The references to children involved in sexually explicit behaviour or acts were primarily contained in two magazines, *Forum* and *Club*.

The only mention of children in the June, 1983 issue of *Playboy* was a reference to an anti-child pornography statute in Chicago. *Hustler's* references to children included: the assertion that cold cereal was invented to inhibit children from masturbating; and an eight year-old girl who had found a booklet entitled 'Exotic Sexual Positions from Around the World' in a box of Cracker Jacks. *Penthouse* and *Hustler* expressed disapproval of pedophilia, particularly of the North American Man-Boy Love Association (NAMBLA).

In *Club*, there were two sexually explicit depictions of children, one involving oral-anal sex, the other referring to incest. In a vignette in the magazine's "Steiner Sex Probe", a boy and a girl, both at the age of puberty, are described as they are returning home walking through a park.

"... She let me go on stroking her ass and said how nice it was that at least I didn't think she was an ugly freak...

I... told her I'd like to prove what I'd said by kissing her ass if she'd let me. There was another long pause, then she whispered 'All right, George.' I think she was in heat. We went behind some bushes and she took her panties right off. Then she lay face down in the grass and remained very still apart from her heavy-breathing. I lifted her skirt and marveled all over again at the breathtaking size and beauty of her ass. I began to caress and squeeze the luscious white cheeks. Then a really amazing thing happened. I suddenly felt the urge to be cruel to her ass: to whip it and cane it until it was all red and bleeding. This was a feeling I'd never had before and I only just managed to fight off the urge. God alone knows what would have happened if I'd given in to it. Screams of 'rape' and 'murder' I wouldn't wonder'....

I kissed and tongue-lapped each cheek in turn, taking my time over it. Then I opened her up and buried my face deep into the enormous cleft. I found her musky asshole and licked that too. I was about to shove my tongue up into her intestines but exploded into my pants before I had time..."<sup>25</sup>

The second reference to children in *Club* is a letter purportedly written to the "Steiner Bureau" referring to incest and containing a reply given by the magazine's columnist.

"Karl Steiner: Like Holly V. (*Club* 8/12). I'm in love with my brother. I'm 17 and he's 24. He's never screwed me or even asked, but I've been rubbing and sucking him off regularly since I was around 11. It all began during a game of 'doctors and nurses.' I guess he was really too old for that game, but I wasn't. I'm very good at getting him off and love the taste of his cum. He says I handle his cock better than any girl he's ever dated. He has a really fine cock that makes all the others I've seen and handled look small. Am I doing wrong in pleasuring my brother this way?

Gina T.,  
Newark, New Jersey

Yes, but only because there's no future in it for you. You are old enough now to understand that incest may be okay for the occasional kick (provided

there's no procreation) but seldom works out well in the long run. Find yourself a nice well-equipped guy outside of the family."<sup>26</sup>

In the content analysis of the text of the 11 adult sex magazines, most of the references to children and youths occur in the 'Open Forum' and the 'Forum Advisor' sections of *Forum* magazine. These descriptions, purportedly received from the magazine's readers, refer without exception to some form of sexually deviant behaviour, fetishes or situations involving incest. In the first reference, a boy "between sixth and seventh grades" and his mother are alleged to have experienced the following sexual activities.

"... [my mother] told me that we needed to talk. She told me that since my father's death, she had began wearing diapers again (she had been a bedwetter until the age of 19) ...

That night she came into my room to help me with my own diapers, although I usually did this myself. While she was snapping my plastic pants, I asked her if she was wearing her diapers. She lifted her dress and showed me her plastic pants ...

At first I was afraid to show her when I'd had a bowel movement in my diapers, but she was obviously used to cleaning up her own messy bottom and thought nothing of mine.

Soon my mother was walking around clad only in her nightie and diapers. We started talking about sex and she gave me my first handjob. Then she gave me my first blowjob. One night when I came home from a school basketball game, she complained to me about her messy diapers, and I offered to change her. As soon as her diapers were off. She pulled me down beside her onto the bed.

Since then, our lives have been quite exciting ... "<sup>27</sup>

In a letter, apparently written by a male subscriber, a description is given of his boyhood experience with incest.

"... The first time was when I was 16. When I was 15, my 41 year-old aunt seduced me and taught me how to suck on her pussy for hours at a time. I would eat her until she'd had at least four orgasms. She was a massive woman with large breasts and a large, hairy mons. Late at night I would sneak into her room (she lived with us) and I always ended up under her nightie, eating her ... "<sup>28</sup>

Brother-sister incest is the theme of another letter printed in *Forum*. A young man claims that his 17 year-old sister found him using an inflatable love doll while he was having "a great screw".

"... She was shocked, but we discussed it. I told her I was horny and lonely, and she said she would help me remedy the situation.

She and I went out on a 'date' and went dancing. My sister looked so sexy, I knew she was turning heads all over the room. She let me rub my cock on her thighs when we danced and when we got home that night, she gave me some oral sex ... "<sup>29</sup>

The letter concludes with the observation that the siblings intend to move to another state where they can live anonymously as lovers.

Under the caption "An Exciting Solution", the publishers of *Forum* printed a letter purportedly received from a father who describes his sexual feelings towards his 14 year-old daughter.

"... My daughter Tracy is 14 years-old, tall, slim and blonde. Years of gymnastics and swimming have resulted in a firm young body — not yet that of a woman, but no longer a child's. I have seen my daughter's naked body often, but only glanced casually, although even at a glance it is obvious that she is going to be a beautiful young woman.

Her breasts are still small, but they are well rounded. Her nipples are tiny, pink and delightful. She seems to be unaware of her growing beauty.

One Saturday morning she complained of a severe tummyache. Rather than take her to a doctor, I consulted with a friend who is a registered nurse. She suggested that Tracy have an enema since she was extremely constipated.

My friend told me how to prepare the solution. I brought a large towel into the bedroom and laid it on the bed. I told Tracy to raise her hips and pull her nightie up. I did not watch her.

I decided it would be easier to lubricate the nozzle. Tracy was lying on her back, legs together, knees raised and her nightgown up to her waist. I later learned that I should have had her lie on her side, but I didn't know. I asked Tracy to open her legs, which she did, but only a few inches. I gazed upon her lovely young body. Even though she is a natural blonde, her pubic hair is quite dark by contrast. I was struck by the lips of her vulva, which were very small and tightly closed. Since she had barely opened her thighs, I grasped her ankles and did it myself. I was amazed to see the lips of her pussy open like a flower, exposing her secret place. Inside, she was a delicate pink color.

By this time, it was hard not to stare and even more difficult to conceal my growing erection. Putting one hand on her thigh, I bent over to slide the nozzle into her rectum. My face was inches away from her vagina, I almost forgot about the enema, but the nozzle in my hand reminded me why I was there.

I quickly and gently administered the enema, and then helped Tracy to the bathroom. By that evening, Tracy was greatly improved, and I realized that I had enjoyed one of the most erotic moments of my life. As I reflected on our encounter, I couldn't help but wonder what it would have felt like, to Tracy and to me, if I had plunged my penis into her vagina. I suppose we'll never know."<sup>30</sup>

The theme of sex education for male youths between 13 and 15 years-old is dealt with in a letter purportedly written by a nurse specializing in contraceptive counselling.

"... Since the male doctor doesn't care to instruct boys [in sex education], he has delegated this responsibility to me.

I take a boy, usually around 13, sometimes as old as 15, and have him undress in a private room. Then, when he is wearing only a brief robe, I tell him about the mechanics of sex, and about contraception and venereal disease. Then comes the good part.

I stroke the boy's cock until he has an erection. Sometimes the cock is already hard from the excitement of discussing this subject with an attractive young woman. When I feel the tension in the balls increasing and his penis twitching, I increase my stroking until he ejaculates.

When the physical task is over, the boy also knows how to masturbate. He also knows he's normal since he was able to come. To date, I have jerked off about 121 boys and it's all perfectly legal!"<sup>31</sup>

A somewhat similar episode is recounted in *Forum* involving a 15 year-old and an adult nurse. Other letters said to have been received by this magazine depict sexual acts involving 13 and 17 year-old males and 16 and 18 year-old females.

Characteristic of the sexually explicit depictions of children and youths in *Club*, and particularly in *Forum*, is the description of acts of this kind as though they constituted normal sexual behaviour in which children become involved. The situations described and the contents of the letters purportedly received from readers are written in a remarkably uniform and pre-packaged style evincing on the part of the writers a consistently well informed knowledge of these matters and with all of them having the literary ability to provide explicitly graphic depictions of children and youths involved in sexually deviant acts. **In most of these situations, the children and youths are portrayed either as passive novices who are being tutored about sexual behaviour, or more often, they are cast as eager and active participants who willingly have intercourse with adults. These depictions do not accord with the findings of the several national surveys undertaken by the Committee.**

At least one inescapable inference which may be drawn from the depiction of situations in which children are portrayed engaging in sexually explicit behaviour with adults is that these are acceptable and normal learning situations for children. While the publishers of the magazines do not formally endorse this viewpoint in their publications, it is noteworthy that this perspective is not condemned and that the materials described appear in their publications.

## Gender of Contributors

Determining the gender of the persons whose letters were published and of columnists and editorial staff members is one means, albeit imperfect, of assessing the circulation market for pornographic magazines. In this regard, a count was made in relation to the sex of these persons.

The gender of some writers and editorial staff members could not be identified; of those for whom this was feasible, a majority were males and approximately a quarter were females. It is unknown how many of the names printed were genuine or fictitious. The text of the letters is of such a consistently uniform style that it appears that considerable editorial assistance may have been



Sex of Writer	Published Letters		Columnists/ Editorial Staff	
	No.	%	No.	%
Male	155	60.8	87	74.4
Female	73	28.6	28	23.9
Unknown	27	10.6	2	1.7
<b>TOTAL</b>	<b>255</b>	<b>100.0</b>	<b>117</b>	<b>100.0</b>

rendered. In light of the fact that all of the 11 pornographic magazines are primarily intended for the market in the United States, and that in quite a few instances where correspondents lived was not specified, this source of information does not provide a reliable means for determining what proportion of the readers may be Canadians. There is no indication that a checking procedure is adopted with respect to confirming the identities of persons writing letters to these magazines.

## Advertisements

In the content analysis of the advertisements contained in the magazines reviewed, a distinction was made between 'general' and 'sexually oriented' items. The former category included items such as liquor, automotive goods, men's cologne, tobacco products and electronic equipment, while the latter category subsumed sexually oriented items, such as: telephone sex; listing of pornographic magazines, films and videotapes; and sexual aids and accessories. Specific items referred to in the advertisements were identified and tabulated. This procedure was adopted since a single advertisement could list several items. A further distinction made was whether the items could be purchased in retail outlets or could only be obtained by mail.

The magazines' advertisements listed a total of 840 products. The proportional distribution of general and sexually oriented items varied widely between different magazines. On average, two in three advertisements (67.9 per cent) were sexually oriented ranging from 4.6 per cent in *Playboy* to 92.8 per cent in *Hustler*. The proportion of sexually oriented products advertised in the other magazines was: *Penthouse* (38.3 per cent); *Genesis* (44.4 per cent); *Playgirl* (64.0 per cent); *Gallery* (65.2 per cent); *Oui* (84.5 per cent); *Forum* (89.2 per cent); *Cheri* (90.9 per cent); *Club* (91.0 per cent); and *Swank* (92.4 per cent).

The June, 1983 issue of *Playboy* contained five advertisements for sexually oriented products, four of which were for 'in-house' products (i.e., relating to the magazine itself), and the fifth advertised books with titles such as the *100 Best Opening Lines* and the *Shy Person's Guide to a Happier Love Life*. In contrast, over nine in 10 products advertised in *Hustler* dealt with sexually oriented items, such as telephone sex, pornographic matter and sexual accessories.

The 'general' products advertised in *Hustler*, all of which could only be obtained by mail, included items such as caffeine stimulants, pseudo-drugs, hair restoratives and a tear-gas revolver.

**Table 53.3**  
**Types of Sexually Oriented Products Advertised**  
**in Eleven Pornographic Magazines: 1983**

Type of Sexually Oriented Product Advertised	No.	%
<i>Sold at Retail Outlets</i>		
• Telephone sex	166	29.1
• In-house advertisements	33	5.8
• Films, videotapes	3	0.5
• Condoms	2	0.3
• Pornographic magazines	2	0.3
<i>Mail Order Products</i>		
• Pornographic books, magazines	74	13.0
• Sexual aids	51	9.0
• Films, videotapes	42	7.4
• Catalogues	34	6.0
• Clubs, hotlines to meet other persons	30	5.3
• Sex appeal enhancement drugs, lotions	28	4.9
• Slides, photographs	26	4.6
• Condoms	19	3.3
• Lingerie	16	2.8
• Penis enlarger	12	2.1
• Seduction aids	11	1.9
• Love dolls	5	0.9
• Sex jokes	4	0.7
• Audio cassettes	4	0.7
• Film processing	2	0.3
• Sex games (cards)	2	0.3
• Female contraceptives	1	0.2
• Sex letters	1	0.2
• Sexual self-improvement exercises	1	0.2
• Fetishism items (e.g., worn underwear)	1	0.2
<b>TOTAL</b>	<b>570</b>	<b>100.0</b>

In its review, the Committee found that there was a direct correlation between the variety and explicitness of sexual depictions in the photographs and text of these magazines, and the types of products being advertised. An instance of this was advertisements for telephone sex in which a customer is invited to pay for a sexually explicit telephone conversation with a woman. In *Club*, for example, there was a full page colour advertisement of a nude female model who is parting the labial lips of her vulva with her fingers. The accompanying caption reads: "I'd like to show you the position that I love best that reveals the most of my PINK FLESH . . . I know you'll call".<sup>32</sup>

The magazines having the most advertisements for telephone sex with a woman were: Hustler (63); Club (34); Oui (28); Swank (21); and Cheri (19). In comparison to the magazines having none or fewer of these kinds of advertisements, those that had the highest proportion were also those having proportionately more sexually explicit depictions in the photographs and text constituting the substance of the magazines.

Pornographic magazines and books were the second most frequently advertised product in the issues reviewed. Some of the titles listed were:

- The Transsexual Phenomenon ("Girls with hugh cocks, studs with big boobs")
- Women Who Love Animals
- Shaved Review ("close-ups of shiny pussies . . . all shaved and clean")
- Milk ("huge milky tits")
- Girls Who Eat Cum
- Up the Ass
- Big Brown Jugs
- Mixed Meat

The wide assortment of sexual aids advertised included items such as vibrators and anal intruders. In Chapter 51, *Importation and Seizure*, it was found that only a relatively small proportion of the items seized were films and audio-visual cassettes. One measure of the incremental growth in the popularity of these types of pornographic materials is provided by their listing in the advertisements of the 11 magazines. **If only the pornographic matter listed for audio-visual films and cassettes, magazines and books, and photographs and slides is considered, then of the 145 such items advertised, about a third (31.0 per cent) were films and videotapes. As noted elsewhere in the Report, the market for these products can be expected to expand sharply as audio-visual equipment becomes cheaper and is more widely purchased.**

## Advertisements Featuring Children and Youths

**Of all the advertisements listing sexually oriented products, one in 10 (10.0 per cent) focussed in one way or another on youths. While the words, child, boy or girl are not used and no ages are specified, the listing of these advertisements which unmistakably identify youths reflects the perception of advertisers of the widespread appeal of having sexual activities with or between young females. Male youths are referred to in only three listings. One in six (17.5 per cent) of the advertisements refers to incest or incestuous behaviour.**

Unlike the depiction of other sexually oriented products in the advertisements printed in these magazines, those having an emphasis on youth are seldom accompanied by photographs. Those having pictures are smaller than

**Table 53.4**  
**Types of Sexually Oriented Products Featuring Youths Advertised**  
**in Eleven Pornographic Magazines: 1983**

Title of Item Advertised	Format	Magazine
After School Suck Off	Film	Hustler
All You Can Suck Mom	Film	Hustler
Babyface Nymphos	Magazine	Hustler
Bosum Cunt (in which Young Tina arrives to babysit and gets a complete education in cocksucking and fist-fucking)	Film	Hustler
Candid Cheerleaders	Photograph	Hustler
Cheerleaders	Film	Hustler
Cheerleader Gang	Film	Hustler
Cheerleader Suck Off	Film/Magazine	Hustler
Cherry Bustin	Film	Hustler
Cherry Poppin	Magazine	Hustler
Chubby and Tubby Gals (all under 20 years)	Magazine/ Photograph	Hustler
Class of '69	Film	Hustler
Cock Crazy Coed	Film/Magazine	Hustler
Coed Cocksucker	Film	Hustler
College Girls Vacation	Film	Penthouse
Creamy Virgin Lips	Film/Magazine	Hustler
Dynamic Duos (including an older man/younger girl)	Book	Swank
Experience with Virgins	Book	Club
First Cum	Film	Hustler
First Fuck	Film	Hustler
First Time Fuckers	Magazine	Hustler
Forbidden Sexual Fantasies (including Chapters on . . . Families)	Book	Swank
Foxy (See . . . an older man enter a little shaver)	Book	Swank
Golden Showers Sister	Magazine	Hustler
Hand Job (in which Seka shows her young sister how to suck, fuck and stroke a stiff cock)	Film	Hustler

**Table 53.4 (Continued)**  
**Types of Sexually Oriented Products Featuring Youths Advertised**  
**in Eleven Pornographic Magazines**

Title of Item Advertised	Format	Magazine
Her First Dick (a Little Suck Off Magazine)	Magazine	Hustler
High School Memories	Book	Penthouse
Incest Expose	Book	Club
It's So Wet Daddy	Film	Hustler
Little Hot Panties (in which her hot pussy and wet panties make a perfect playground)	Film	Hustler
Mama's Hot Mouth	Film/Magazine	Hustler
1001 Erotic Nights (in which a fisherman seduces two nymphet daughters of a noble- woman)	Video	Swank
Palace of Pleasures (including naughty schoolboys)	Book	Forum
Peach Fuzz Perverts	Magazine	Hustler
Pom Pom Girls (young looking model depicted)	Magazine	Hustler
Pottie Pussies	Film/Magazine	Hustler
Sailor and Babysitter	Film	Penthouse
Sexual Knowledge (in which explicit, intimate, photo- graphs expose the very personal details of teenage sex, orgasm, puberty, masturbation, exotic posi- tions, oral sex). The accompanying photograph depicts two nude youths and a child.	Book	Club
Shaved Chicks (including . . . smooth & slick young girls)	Book	Swank
Six Cock Coed	Film	Hustler
Slick (including young, hairless sweeties . . . wild little shavers)	Book	Oui
Sorority Sex	Film	Hustler
Sorority Sucking (a Little Suck-Off Magazine)	Magazine	Hustler
Sorority Sweethearts	Video	Swank
Stepsisters	Book	Forum
Sucking Sister (young looking model depicted)	Magazine	Hustler

**Table 53.4 (Concluded)**

**Types of Sexually Oriented Products Featuring Youths Advertised  
in Eleven Pornographic Magazines, 1983**

Title of Item Advertised	Format	Magazine
Suck-Off Student	Film	Hustler
Sugar Daddy's Darling	Film	Hustler
Swedish Chickies (We have what's Forbidden in U.S.A.). Mailing address given is in Sweden.	Film/Magazine	Swank
Taboo (including family sex: mom, dad, sis and brother)	Book	Oui
Talk Dirty To Me, Part II (in which John seduces the teenage daughter of one of his ladyfriends)	Video	Swank
Teen Lover	Audio	Club
Teenage Dessert	Video	Club
The Younger the Better	Video	Club
Virgin Rapture	Audio	Hustler
xxx Fairy Tales (including Goldilocks, Cinderella, Jack and the Beanstock)	Book	Swank
Young and Hot Nymphs	Book	Club

average and are reproduced in black and white. Of the 57 titles, 56 listed mailing addresses in the United States.

Whether the pornographic matter being advertised was genuine child pornography (i.e., actually featuring children) is unknown. There is no doubt, however, that at the very least, it was pseudo-child pornography; the number of advertisements involved suggests that there is a sizeable market for matter of this kind. Over a half of these items (52.6 per cent) were available in the form of films and/or videotapes. Matter of this kind was typically more expensive than the sexually oriented magazines and books being advertised.

### Summary

The content analysis of the photographs, text and advertisements of single 1983 issues of 11 nationally distributed magazines indicates that there was extensive depiction of sexually explicit behaviour and acts in these publications. In general, the depictions given in the text were more varied and explicit

than those portrayed in photographs. There was a progression from photographs and text to advertisements involving the depiction of children and youths. In the photographs, few references were made to youths. In the text of the magazines, 3.0 per cent of the sexually explicit descriptions portrayed children and youths with the ages of the children being specified in some of the articles. Ten per cent of the sexually oriented advertisements in one way or another featured children and youths.

On the basis of this content analysis, it is evident that an operational definition of some of the salient features of pornography can be developed, one which is based on the listing of the portrayal of specific types of sexual behaviour and acts. A definition incorporating the elements documented could serve as the basis for the framing of statutes whose purpose is to limit the accessibility of matter of this kind to children and youths.

As documented in the following chapter, while it was found in a nationally representative sample that Canadians were divided in relation to whether accessibility to pornography by adults should be restricted, there was considerable unanimity that children and youths should not be exposed to the types of sexually explicit depictions described in the findings given in this chapter.

## References

### Chapter 53: Contents of Pornography

<sup>1</sup> All magazines, except for *Club*, were obtained for the June, 1983 issues. In May, 1983, the June issue of *Club* was unavailable and the July, 1983 issue was used in the content analysis. The magazines included were:

(1) *Cheri*, Volume 7, Number 11, June, 1983 (Canadian edition); (2) *Club*, Volume 9, Issue 6, July, 1983 (Canadian edition); (3) *Forum*, Volume 12, Number 9, June, 1983; (4) *Gallery*, Volume 11, Number 6, June, 1983; (5) *Genesis*, Volume 10, Number 11, June, 1983; (6) *Hustler*, Volume 9, Number 12, June, 1983 (International Edition); (7) *Oui*, Volume 12, Number 6, June, 1983; (8) *Penthouse*, Volume 14, Number 10, June, 1983; (9) *Playboy*, Volume 30, Number 10, June, 1983; (10) *Playgirl*, Volume 11, Number 1, June, 1983; and (11) *Swank*, Volume 30, Number 5, June, 1983.

<sup>2</sup> Audit Bureau of Circulation. *Circulation Statistics*, 1981.

<sup>3</sup> *Penthouse*, reported estimate.

<sup>4</sup> Audit Bureau of Circulation, *op.cit.*

<sup>5</sup> *Hustler*, *op.cit.*, "Love Slave", pp. 86-95.

<sup>6</sup> *Club*, *op.cit.*, reported estimate.

<sup>7</sup> Audit Bureau of Circulation, *op.cit.*

<sup>8</sup> *Club*, *op.cit.*, p. 4.

<sup>9</sup> *Oui*, *op.cit.*, pp. 12-16.

<sup>10</sup> *Hustler*, *op.cit.*, pp. 56-57.

<sup>11</sup> *Oui*, *op.cit.*, pp. 47, 49.

<sup>12</sup> *Club*, *op.cit.*, p. 42.

<sup>13</sup> *Forum*, *op.cit.*, pp. 64-69.

<sup>14</sup> *Penthouse*, *op.cit.*, pp. 29-30.

<sup>15</sup> *Swank*, *op.cit.*, p. 91.

<sup>16</sup> *Oui*, *op.cit.*, p. 22.

<sup>17</sup> *Forum*, *op.cit.*, p. 46.

<sup>18</sup> *Cheri*, *op.cit.*, p. 81.

<sup>19</sup> *Oui*, *op.cit.*, pp. 6-7.

<sup>20</sup> *Penthouse*, *op.cit.*, p. 16.

<sup>21</sup> *Ibid.*, p. 20.

<sup>22</sup> *Club*, *op.cit.*, p. 5.

<sup>23</sup> *Swank*, *op.cit.*, p. 72.

<sup>24</sup> *Hustler*, *op.cit.*, p. 104.

<sup>25</sup> *Club*, *op.cit.*, p. 40.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Forum*, *op.cit.*, pp. 78-79.

<sup>28</sup> *Ibid.*, p. 106.

<sup>29</sup> *Ibid.*, p. 94.

<sup>30</sup> *Ibid.*, pp. 85-86.

<sup>31</sup> *Ibid.*, p. 90.

<sup>32</sup> *Club*, *op.cit.*, p. 99.



## Chapter 54

### Circulation, Accessibility and Purchase

In accordance with its Terms of Reference, the Committee reviewed the issue of the accessibility of pornography to children and youths. The sources of information assembled were: a review of reported and available circulation statistics for publications audited by the Audit Bureau of Circulation; an accessibility study of the display of pornographic retail outlets in a number of cities across Canada; and a component of the National Population Survey which dealt directly with the buying habits and opinions concerning pornography of a nationally representative sample of Canadians. This chapter presents findings obtained from these sources.

For purposes of this analysis, the working definition of pornography that was adopted, included:

1. Magazines referred to as: girlie, adult, softcore, sophisticates or men's magazines. They are characterized by: a glossy cover page, a male or female in nude or semi-nude stances, and bold typeface announcing contents inside of a sexual nature. The contents have male and female nude and semi-nude photographs.
2. Booklets 5" x 7" that have a glossy cover page and bold-type printing announcing stories or erotic letter exchanges dealing exclusively with sexual themes. They typically contain written text plus a few photographs.

While the findings of this chapter show that there is an enormous distribution of pornographic matter across Canada and that many Canadians have bought pornography at least once during their lives, reliable information is extremely scarce when it comes either to investigating the pornography trade on a national basis, or of learning about Canadians who buy these materials. In this regard, the present review of the distribution, accessibility and purchasing habits of Canadians would appear to be without precedent in Canadian experience. Despite the great size of this market, the findings clearly show that a majority of persons believe that there should be an age limit in relation to the purchase of pornography.

## Audit Bureau of Circulation

The Committee received the co-operation of the *Audit Bureau of Circulation* (A.B.C.) which is believed to be the only repository of information possessing factual information concerning the audited circulation of major publications. The information made available by the A.B.C. provided a basis for estimating changes in the extent, volume and regional distribution of sales from 1965 to 1981, as well as the minimal market value of the pornography business in Canada.

The A.B.C. is a non-profit agency established by periodical publishers, advertisers and advertising agencies as an instrument of self-regulation for the publishing industry. The Bureau's specific functions include: to prepare and issue standardized statements of circulation and other information reported to it by the member publishers; to verify the figures contained in these statements by means of an auditor's examination of the publishers' records; and to distribute this information, without editorial commentary. The A.B.C. disseminates circulation figures for 132 magazines and farm publications and 1900 United States and Canadian daily and weekly newspapers. Approximately three-quarters of all circulation of print media available to advertisers in the United States and Canada are reported according to A.B.C. standards. Since circulation figures provide the basis for determining the advertising rates of various publications, the A.B.C. provides an essential service to publishers and prospective advertisers.

The Board of the A.B.C. is constituted to ensure that purchasers of advertising have majority representation. Of the 33 Board members, 11 are advertisers and seven are representatives of advertising agencies (representation also includes three magazines, eight newspapers, two business publications, one farm publication, and the director of one Canadian periodical publication). The A.B.C.'s reports are prepared twice annually. Publishers submit figures indicating their total sales for each month and their average circulation for the six month period. The publishers also submit geographic analyses of total paid circulation of each magazine for a one month period of their choice (that is, a breakdown of the circulation in specific geographic areas for the selected month).

Although the A.B.C. proved to be an indispensable resource for the Committee's research, the findings provided must be interpreted in recognition of certain limitations. The A.B.C.'s records only provide circulation figures for "adult" magazine titles having the largest circulation, and thus, its records by no means represent a comprehensive listing of the circulation of all pornographic magazines. In addition, the list of publications whose circulation is reported by the A.B.C. has changed from time to time and contains no French language titles.

A.B.C. figures were available for six adult magazines in 1965, for seven in 1970, for 10 in 1975 and for 12 in 1980. The increase over time in the number

of reported publications is attributable to the increase in the number of pornographic magazines capable of attracting significant advertising revenues. Few sexually explicit magazines carried substantial amounts of advertising in 1965. With the passage of time, there has been a steady increase in the number of companies willing to place advertisements in certain pornographic magazines and a comparable growth in the number of "adult" magazines deemed sufficiently "acceptable" to attract advertisers. Today, more publishers of pornographic magazines need to establish advertising rates, and hence, more of them are having their circulation figures audited by the A.B.C. A total of 17 different adult magazine titles appears in the A.B.C.'s listings between 1965 and 1981.

### Changes in Number and Content: 1965-81

The Committee contacted magazine wholesalers and distributors for information concerning the number of "adult" magazine titles on the market in 1965. In the judgment of these informants, no more than about 30 different pornographic magazines were available at that time, including such titles as: Ace, Escapade, Esquire, Fling, For Men Only, Gem, Gent, Jem, Male, Mayfair, Men, Men's Adventure, Mister, Nugget, Playboy, Rogue, Stag, Stud and Swank. Of these publications, only three have survived intact, while two have been revamped significantly.

Police sources estimate that at present there are several hundred different "adult" magazine titles available in Canada. This information was confirmed in part by the findings obtained in the National Accessibility Survey. Persons completing the questionnaire for that study were asked to list up to 20 pornographic magazine titles being sold at each retail outlet examined. A total of 540 different titles was documented (Table 54.1).

**Table 54.1**  
**Pornographic Magazine Titles Distributed in Canada: 1982-83**

- A -	All Man All Natural Poses Auto Buff	Beaver Hunt Bedside Advisor Beef Cake Big Boobs Big Book Big Bosoms Big Breasts Big Breasts Plus Big Brown Jugs Big Bucks Biker Lifestyle Bi-Swinger Bitches and Boots Black Beauties
Ace Action films Adam Adam Choice Adam Classics Adam Film World Adelina Adult Cinema Advisor Aggressive Women Alive All Canadian Honey	- B -	
	B, B & B Babe Baby Face Babydolls Bachelor Bad Girl Ball Busters Ballsy Babes	

**Table 54.1**  
**Pornographic Magazine Titles Distributed in Canada: 1982-83 (Continued)**

Black Flash	Club	- F -
Black Tarts	(The Best of) Club	Family Affairs
Blacktress	Club International	Fanny
Blast Off	Cockade	Fanny Club
Blonde and Hard	Cocks	Fantasy
Blondes	Cock Sure	Fantasy Register
Blondes and I	Cocktails	Feedback
Blue Collection	Coloured Cuties	Female Fantasies
Blueboy	Companion	Female Flesh
Bobbie Prizes	Conquered	Female Mimics
Body Probe	Continental	Femme
Body Shop	Couples	Femmes de Paris
Bondage	Couples Today	Fiesta
Bonder	(Best of) Couples	Film World
Boobs	(Best of) Couples Letters	First Hand
Boobs, Busts and Bazooms	Cover Models	Fit
Bottoms Up	Creamy Virgins	Flare
Bra Babes		Fling
Bra Busters	- D -	Flings: D-cup Contest
Bronc		Flings Fantasy
Bronks	Dapper	Forum
Brutes	Day Bird	Forum Blue
Buf	Depths of Desire	Forum Letters
Bumper Parade	Detective	Forum Lifestyles
Busting Out	Des Hommes..Des Reves	Forum Red
Busts, Bigger and Better	Digest	(the Best of) Forum
Bust Orgy	Digest Kinks	Fox
Bust Parade	(the Best of) Digest	(\$) Foxes
Bust Plus	Do Me	Foxette
Busy Bodies	Dollhouse	Friends and Lovers
Butch	Dominated and Diapered	Friends Network
Butts 'n Buns	Downtown Mama	Front Door Detective
- C -	Dreams	Fun and Games
	Dude	- G -
California Boys		Gallery
Canadian Key	- E -	Game
(the) Canadian Connection	Easy Rider	Gay
Candid	Eclat De Rire	Gay is Beautiful
Caper	Ecstasy	Gem
Caribbean Black Heat	Ekanaa o	Genesis
Carling	Elite	Genesis, Girls, Girls
Carnival	Encore	(the Best of) Genesis
Cathy	Erection Collection	Genitals
Cavalier	Eros	Gent
Cavalier Yearbook	Eros — Porn Stars	Gent Annual
Celeb	Eroscope	Gentlemen's Companion
Celebrity Skin	Erotic Adventure	(the) Girl Next Door
Centerspread	Erotic Film	Girls, Girls
Champagne	Erotic Film Guide	Girls on Girls
Cheating	Escape	Golden Girl
Cheri	Escapade	Golden Guys
Cherry	Escort	Good Humor
Chic	Exclusive	Gymnos
Chic Letters	Exotics	- H -
Chick Licks	Explore	H & E
Chocolate Pussy	Expose	Hang Outs
Choice	(the Best of) Expose	
Chubby Cheeks	Exotica	
Cinema	Extra Nepio iko	
Clothesdick		

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (Continued)

Hara Kiri	- K -	Modern Screen
Hard		More Than a Handful
Hard Rocks	Kazanobae	Motorcycle Women
Harlots in Harness	Key (the)	Movie X-rated
Harvey	Kinks	Mud Wrestler
He and She	Kinky Letters	
Heartthrob	Knack	- N -
Heavy Metal	Knave	
Hero	Knight	National Collection
High Heels	Knockers and Nipples	National News
High School		Nationwide Swingers
High Society	- L -	Naughty, Butt ...
Holiday Special		New Direction
Hollywood Sexy	Late Night Extra	New Man and Woman
Honey	Leg Review	New Swingers (the)
Honey Pies	Leg Show	Nous
Hooker	Legomania	Nude
Hooker Handbook	Legs, Boobs and Lingerie	Nugget
Hot Ass	Les Girls	Numbers
Hot Blondes	Lesbian Action	Nymphet
Hot Buns	Lesbo Lust	
Hot Fun Sister	Letters	- O -
Hot Panties	Letters Magazine	
Hot Picks	Liberated Lovers	Off Limits
Hot Rods	Lick'n Promise	Office Party Lust
Hot Shot	Limbo	OH AYPO
Hot Spots	Line and Form	Olympus
Hot Stuff	Lipstick	Options
Hot Virgin	Live	Oral Sex Digest
(the) Hot New Game	Love	Orgy Girls
Hour Douces	Love At Touch	Original Fox
Howto	Love Collection	Oui
Hub	Love Guide	Oui Letters
Human Advisor	Lovebirds	Over Daddy's Knee
Human Digest	Lovebirds Encyclopedia	
Hustler	Loverboy	- P -
Hustler Sex Play	Lovers	
Hutch	Lovers Fantasies	P.G.
	Lui	P.M.
- I -	Lusty Ladies	P.7.0.
		Pain
Images Sexuelles		Paragon
In Touch	- M -	Park Lane
I.T. (In touch for men)		Partner
International	Macho	Party Girls
International Chesty	Madame X	Penthouse
Organ	Make it	Penthouse Calendar
International H & E	Male	Penthouse Forum
International Harvey	Man Alive	Penthouse Variations
International Sex-	Man's Action	(Best of) Penthouse
ploitation	Man's World	(Best of) Penthouse
Intimacy	Mandate	Letters
Intimate Acts	Manhatton	(the Girls of) Penthouse
Intimate Letters	Mayfair	Person to Person
Iron Horse	Mayflower	Pick-Up
	Men	Pictorial
- J -	Men of Action	Piece Makers
	Men Only	Pillowtalk
Jammon	Mink	Pillowtalk Booklet
Journal of Love (the)	Misfits	Pink
Joy Stickers	Miss Tits	Pixie
Just Great Legs	Misstress	

**Table 54.1**  
**Pornographic Magazine Titles Distributed in Canada: 1982-83 (Continued)**

Photo	Raven	Stranger Lovers
Photo Selection	Real Confessions	Stud
Platinum	Response	Sugar and Spikes
Play Bird	Riviera	Super Boobs
Play Guy	Rubbing Off	Super Cycle
Playbirds Continental	Rustler	Super Girls
Playboy	Rustler Centerfolds	Super Love Collection
Playboy Advisor	Rusty	Super Male
Playboy Album (in French)		Super Studs in Drag
Playboy Bunnies	- S -	Superstars of Sex
Playboy Business		Swank
Playboy Calendar		Swap
Playboy Fashion	Satin Dolls	Swapping Wives
Playboy-Playmate Collection	Savage	Swat
Playboy Special Holiday Issue	Scoring	Sweetcocks
(the Girls of) Playboy	Secret Seduction	Swing
Playdames	Seka	- T -
Players	Seka's Calendar	
Players Calendar	Sensuous Letters	Tabu
Playgirl	Sex Connection (the)	Talks
Playgirl Calendar	Sex Play	Teased, Tormented and Transformed
Playgirl Cartoons	Sex Secrets of the Sisterhood	Teasers
Playgirl Entertains	Sex Stars	Technique Modern de L'amour (les)
Sexy Men	Sex Tapes	Teens, Tits and Twats
Playgirl Pictorial	Sex To Sixty	Tender Teasers
Playgirl Special	Sexe	3 'n 1 (Three in One)
Holiday Issue	Sexology	Tiny Cunts
(the Best of) Playgirl	Sexology Today	Tip Top
Playgirl's Best Cartoons	Sexuelles	Tit World
Playgirl's Men of Europe	Sexy Humour	Titers
Playgirl's Portfolio	Sexy Men	Titillating Experience
Playmate Calendar	Sexy Special	Tittes
Playtimes	Sexy Starlett	Titties
Pleasure	Seyco	Toilet Graffiti
Pleasure Seekers	She	Tomorrow's Man
Plus	Show	Topside
Porn Stars	Silky	Torrid Bitches
Pounce	Sin Sisters	Torso
Pretty Girl	Sir	Touch
Prevue	Sizzler	Transsexual Bonanza
Private	Skin Flicks	Transsexuals
Private Letters	Skirts Up	Trio
Private Pilot	Sleeping Tall	True Police
Prize Winners	Sluts and Slobs	Turn-On
Probe	Smile	Turn-On Letters
Pub	Smuck	TV in Rubber
Purr	Snatch	
Puss 'N Boots	Souvenir Portfolio of David	- U -
- Q -	Spankers Delight	
	Special Edition	Ultra Erotic (Gourmet Edition)
Queen Bees	Spike Team	Union
	Stag	Unite
- R -	Stag's Golden Girls	Uptight Females
	Stage	
Rammer	Stallion	
Rapier	Stars	
	Stiff	

**Table 54.1**  
**Pornographic Magazine Titles Distributed in Canada: 1982-83 (Concluded)**

- V -	Virile Man Viva	X-rated Movie Hand- Book X-rated Movies (Review)
Variations (the Best of) Variations Velvet Velvet Erotic Film Velvet Foxes Velvet Portfolio Velvet Talks Velvet Touch Velvet's Vibration Vibrations Video-Sex Video-X Vie Privee	- W -	- Y -
	Wet and Horny White House White Undies Wildcot	Young and Lonely Young and Silky Young Men's Image Young Stuff Young Wet Pussies
	- X -	- Z -
	X-cert. X-rated	Zap

*National Accessibility Survey*

While 540 titles were listed across Canada, there is no indication that this number is available in any single location. The figure of 540 represents the minimum number available, since the National Accessibility Survey forms contained only 20 spaces in which to list the magazine titles sold at each outlet; because many outlets may have had more than 20 titles for sale, it is possible that a certain number of the more obscure publications were missed. There were 60 "variation titles", (e.g., Playgirl, Playgirl's Portfolio, Playgirl's Men of Europe, Playgirl's Best Cartoons and The Best of Playgirl).

Many of the more explicit or fetish-oriented magazine titles appear only for a single issue. "Volume One, Number Two" is never produced, but in its stead, the same publisher will introduce "Volume One, Number One" of a closely related magazine, one often having a very similar title. This practice is intended to protect the publisher from law enforcement activity. For example, if Customs prohibits the importation of magazine X, the publisher will not suffer a permanent loss, since there will never be a second issue of magazine X; magazine Y, will be introduced the following month, and since its title will not appear on the bi-monthly list put out by the Prohibited Importations Section, it may stand a better chance of clearing Customs than would its predecessor. Similarly, municipal or provincial police officers keeping a lookout for new issues of magazine X, for the purpose of possible obscenity charges, would be unable to find subsequent issues. Of course, the following month, Magazine Y will be discontinued, to be replaced by magazine Z. Since the National Accessibility Survey was conducted over a period of several months, it is certain that the 540 titles listed include many that have since disappeared, and have been succeeded by other titles shown on the list. If a single series of such titles is regarded as representing *de facto*, only a single publication, the total of 540 different magazines may in fact be considerably inflated.

It is evident from the listing given that the A.B.C. does not now report — nor ever has reported — circulations for the full range of pornographic magazines being marketed in Canada. While the number of "adult" titles listed by

A.B.C. has doubled, this growth is not a factor as such of the increase in the actual number of different pornographic magazines being retailed. The increase in the number of titles reported has not come close to keeping pace with the increase in the number of titles available. Further problems arise from the fact that many magazines whose circulations were reported by the A.B.C. at one time have since either ceased to publish or have discontinued using the A.B.C. to set their advertising rates. *Because of these limitations, the A.B.C. figures cannot be used as the basis of a precise calculation either of the total Canadian sales volume for all pornographic magazines, or of the growth in sales over the years.*

The information from the A.B.C. does not provide any indication of changes in the content of adult magazines from the past to the present. This type of information was obtained by examining magazines published in various years. Magazines of the 1950s featured photographs of female models with veiled or exposed breasts. By the 1960s, magazines were available which contained not only exposed breasts but also side profiles of nude men. In the 1970s, publications were introduced onto the market which featured photographs of full frontal and rear nudity of men and women, of the female genital area and (by the late 1970s) of male genitals.

The categories of information available through the A.B.C. were:

1. Price by single copy and subscription on a one, two and three year basis;
2. Total North American sales both by month, and as an average taken over a six month period;
3. Total subscription sales per province (available in most instances);
4. Total newsstand sales per province (available in most instances);
5. Canadian paid circulation by population groups;
6. Canadian paid circulation by county size.

### National Per Capita Adult Magazine Sales

The one month circulation figures reported by publishers to the A.B.C., listed for both six month periods of each year (January to June and July to December), were obtained for 1965-81. During this period, circulation figures were reported for 17 different adult magazine titles at different times, but never for more than 12 titles in any one year. In order to determine *per capita* sales figures, it was necessary first to obtain aggregate sales figures for each year. This was accomplished by adding together both semi-annual sales figures for each year. The annual aggregate sales for each listed magazine were thus obtained; for each year, these totals were then added together to yield the annual aggregate sales totals for all adult magazines reporting to the A.B.C. Reference was made to Statistics Canada information to obtain general population figures for each year, as well as figures for the total male population.



**Table S4.2**  
**Canadian Per Capita Sales of**  
**A.B.C. Audited Adult Magazines: 1965-81<sup>1</sup>**

Year	ABC Total Magazine Sales (million)	Total Population <sup>2</sup> (million)	Per Capita Sales	Total Male Population	Per Capita Sales
1965	3,603.8	19,644.0	0.18345	9,879.4	0.3647
1966	4,066.3	20,014.9	0.20316	10,054.3	0.4044
1967	N/R	20,378.0	U/K	10,232.2	U/K
1968	5,128.6	20,701.1	0.24775	10,387.8	0.4937
1969	5,059.7	21,001.0	0.24093	10,530.7	0.4805
1970	5,324.2	21,297.0	0.25000	10,669.1	0.4990
1971	6,255.7	21,568.3	0.29004	10,795.4	0.5794
1972	8,272.5	21,801.3	0.37945	10,900.8	0.7588
1973	11,133.1	22,042.8	0.50505	11,010.4	1.0111
1974	11,441.8	22,364.0	0.51166	11,159.0	1.0253
1975	12,722.2	22,697.1	0.56052	11,313.8	1.1245
1976	11,066.7	22,992.6	0.48132	11,449.5	0.9665
1977	13,525.6	23,272.8	0.58117	11,572.1	1.1688
1978	15,075.5	23,517.0	0.64104	11,670.8	1.2917
1979	15,172.8	23,747.3	0.63892	11,765.5	1.2896
1980	15,375.7	24,042.5	0.63952	11,887.1	1.2935
1981	13,539.9	24,341.7	0.55624	12,068.3	1.1219

*Audit Bureau of Circulation.*

<sup>1</sup> Statistics Canada figures were obtained to determine: total population; and total male population. Statistics Canada Population figures and Audit Bureau of Circulation figures are quoted in thousands and rounded to the nearest hundred.

<sup>2</sup> Canada, Statistics Canada. *Estimates of Population for Canada and the Provinces, June 1, 1983.* Ottawa, Supply and Services Canada, 1983, p. 13.

N/R = not reported

U/K = unknown

Between 1965 and 1981, there was a sharp increase in sales: the aggregate sales figure for the peak year, 1980, is 4.3 times that calculated for 1965. The fact that aggregate sales decreased between 1980 and 1981 does not necessarily indicate a diminution in or saturation of the market for pornography. The proliferation of new titles likely accounts for a significant increase in sales which would not appear in the A.B.C. records. Also, the emergence of new media (e.g., video-cassettes) to compete with magazines may account for part of the decline. On the basis of these figures alone, it is evident that the pornographic magazine trade has been a high growth industry.

*Per capita* sales figures also marked striking increases between 1965 and 1981. The overall *per capita* sales (i.e., for the total population of Canada) in 1980 were 3.5 times higher than in 1965. Among all Canadian males, the *per capita* sales also increased by a factor of 3.5 between 1965 and 1980. In interpreting these findings, it is necessary to reiterate the fact that these figures represent an extremely conservative estimate of Canadian consumption of magazine format pornography, since the sales of a sizeable number smaller

circulation publications were not included in the calculations. The total Canadian sales volume for all pornographic magazines is startlingly large: on average, one in two Canadians in 1980, was purchasing one copy of the leading pornographic magazines each year. The purchase of this matter has grown over the years at a rate far exceeding that at which the country's population has increased.

### Provincial Circulation

Based on one month sales totals for each six month reporting period, the annual provincial sales totals were obtained by adding together the sales totals for both single months reported in each year, and multiplying this sum by six. This procedure makes the assumption that the sales reported by each publisher for the selected individual months were reasonably representative of the sales volume for each title for the entire six month period, rather than being extensively higher or lower than the average. This assumption may not be justifiable, and may represent a source of error in the total annual provincial sales figures reported in Tables 54.3. The degree of error thus introduced is likely not sufficient to negate the validity of the findings concerning regional sales trends.

**Table 54.3**  
**Provincial Per Capita Sales of**  
**A.B.C. Audited Adult Magazines: 1966, 1973 and 1980**

Province	Per Capita Sales for Total Population of A.B.C. Audited Adult Magazines			Per Capita Sales for All Males of A.B.C. Audited Adult Magazines		
	1966	1973	1980	1966	1973	1980
Newfoundland	0.1135	0.2079	0.2334	0.2215	0.4084	0.4600
Prince Edward Island	0.1398	0.0947	0.3971	0.2740	0.1885	0.7904
Nova Scotia	0.1865	0.4553	0.5475	0.3675	0.9080	1.0996
New Brunswick	0.1274	0.3182	0.3792	0.2522	0.6333	0.7583
Quebec	0.1653	0.2269	0.3169	0.3306	0.4575	0.6415
Ontario	0.2353	0.6570	0.7682	0.4692	1.3139	1.5554
Manitoba	0.2061	0.5699	0.7284	0.4074	1.1416	1.4715
Saskatchewan	0.1614	0.4082	0.7638	0.3137	0.8056	1.5150
Alberta	0.2644	0.8553	1.0967	0.5144	1.6836	2.1649
British Columbia	0.3124	0.7653	0.9650	0.6183	1.5243	1.9404
Yukon	0.6600	0.8390	0.7477	1.1928	1.5495	1.4286
Northwest Territories	0.2360	0.2665	0.9628	0.4307	0.5072	1.8991
<b>TOTAL</b>	<b>0.2032</b>	<b>0.5051</b>	<b>0.6395</b>	<b>0.4044</b>	<b>1.0111</b>	<b>1.2935</b>

*Audit Bureau of Circulation.* Audited circulation statistics relative to: (1) total Canadian population by provincial distribution; and (2) all males by provincial distribution.

The findings in Table 54.3 indicate the existence of persistent regional differences in the *per capita* sales of the pornographic magazines reported to the A.B.C. The *per capita* sales in Eastern Canada have been markedly lower than in the West. Unfortunately, the A.B.C. does not provide information concerning the circulation of any French-language publication; thus, the patterns are likely to be somewhat distorted. To the extent this was the case, it would be expected that the *per capita* figures of all provinces with large francophone populations would be disproportionately low. In this regard, however, Manitoba, the Western province with the largest French-speaking population, recorded significantly higher *per capita* sales rates in each of 1966, 1973 and 1980 than did New Brunswick. This fact suggests that the gradient of sales from East-to-West is a real phenomenon, notwithstanding the non-inclusion of information concerning French-language magazine sales.

The gap between the highest and lowest provincial *per capita* sales widened between 1966 and 1980. The findings on provincial *per capita* sales confirm those given concerning the high level of growth across Canada in the recorded sale of pornographic magazines between the 1965 and 1980. In all jurisdictions except two (Quebec and the Yukon), the *per capita* sales of magazines reporting to the A.B.C. at least doubled, and in many instances, tripled, or even quadrupled. The lower rate of growth in *per capita* sales for Quebec may be a product of the non-inclusion of information concerning the circulation of French-language publications.

## Sales Value of Pornography

A.B.C. information sheets provide the *per issue* newsstand price for each magazine. These price figures may be misleading, however, because of differences between newsstand prices and subscription prices. Some of the magazines listed underwent price changes during either of the six month periods, but these variations have been taken into account in determining the sales value of each magazine title. The dollar value of each magazine was calculated by multiplying the number of magazines sold by the *per issue* price. For only 12 of the several hundred pornographic magazine titles being sold in Canada in 1980, the estimated sales value was \$41,389,264.36.

## National Accessibility Survey

In order to obtain information concerning the accessibility of pornography to children and youths, the Committee settled on the expedient of a survey in which volunteer participants across the country completed questionnaires concerning the display and accessibility of adult magazines in various retail outlets. One questionnaire was completed for each retail outlet visited. Because the Committee relied upon the voluntary assistance of a large number of volunteers, the survey was kept as brief and simple as possible. The questionnaire

**Table 54.4**  
**Sales Value of 12 A.B.C. Audited Adult Magazines: 1980**

Magazine	June 1980 (thousand)	Price (\$)	Total (\$)	December 1980 (thousand)	Price (\$)	Total (\$)
Cheri	254.9	2.50	637,250.00	270.2	2.75	743,050.00
Chic	195.1	2.95	575,545.00	136.9	2.95	403,855.00
Club	235.1	2.95	693,545.00	280.8	2.95	828,360.00
Gallery	340.9	2.25(4) 2.95(1) 2.50(1)	820,991.00	312.5	2.50	828,025.00
Genesis	135.9	3.00	407,700.00	141.6	3.00(3) 2.75(3)	407,100.00
Hustler	587.2	2.95	1,732,240.00	551.3	3.25(1) 2.95(5)	1,653,900.03
Oui	411.1	2.50	1,027,750.00	286.9	3.00(1) 2.50(5)	741,158.33
Penthouse Forum	374.7	1.75	655,725.00	303.8	1.75	531,650.00
Penthouse	3,111.3	2.75	8,556,075.00	2,870.1	2.75	7,892,775.00
Playboy	2,037.6	2.75	5,603,400.00	1,436.6	2.75	3,950,650.00
Playgirl	338.1	1.95	659,295.00	329.5	2.25	741,375.00
Swank	222.7	2.75	612,425.00	210.9	3.25	685,425.00
<b>TOTAL</b>	<b>8,244.6</b>		<b>21,981,941.00</b>	<b>7,131.1</b>		<b>19,407,323.36</b>

*Audit Bureau of Circulation.* June 1980 figures represent the average sales for six months January 1980 to June 1980; December 1980 figures represent the average sales for the six months July 1980 to December 1980. A number in brackets (following the price for that six month period) indicates the number of months that the magazine sold for that price. Total sales value of 12 titles for 1980 is: \$41,389,264.36.

consisted of one page of questions with an accompanying page of instructions and definitions. (The working definition of pornography used was previously noted).

The questions asked in the survey related to the nature of the store, the number of adult magazine titles being offered for sale, the mode of display for such magazines, the visibility and accessibility of such items to children and the presence or absence of signs prohibiting youths from buying or browsing through the adult magazines. The types of retail outlets targeted for the survey included confectionery, smoke, variety, drugstores, milk, department, airport, train station, hospital and general bookstores, but excluded so-called "adult" bookstores.

In order to assure the practicability of the survey, pilot studies were conducted prior to enlisting the participation of volunteers across the country. At this stage, a total of 117 stores was visited in most parts of Canada. The results indicated the feasibility of undertaking a national survey, and in this regard, the Committee contacted a number of organizations seeking volunteers willing to participate in the collection of information. The Committee warmly acknowledges the assistance afforded, primarily rendered by academic institutions in all parts of the country. A total of 1091 retail outlets in 23 towns and cities were surveyed in the National Accessibility Survey. In all but three communities, either all retail outlets, or a sample survey of these, was undertaken of those identified as selling newspapers, magazines or books.

### Policies of Periodical Distributors of Canada

The *Periodical Distributors of Canada* (P.D.C.) is an organization comprising 39 member companies across the country that employ an estimated 2,000 persons. The P.D.C. estimates that its members are responsible for the distribution in Canada of about 90 per cent of periodicals and paperback books of all types. The P.D.C. "can state with authority that not only do its members not distribute hardcore pornography, but that hardcore pornography from other sources is not generally available at the average neighbourhood newsstand, cigar, or variety store or other retail outlets throughout Canada".<sup>1</sup> A number of independent jobbers and wholesalers not belonging to the P.D.C. operate in various parts of the country and these do not necessarily adhere to P.D.C. policies and guidelines.

The P.D.C.'s official policies concerning adult periodicals are:<sup>2</sup>

... each Member Firm hereby acknowledges the social desirability of selective display of Adult Reading Matter in retail outlets. Each Member Firm undertakes to use its good offices to encourage retail outlets to at all times display adult reading matter with restraint in order to restrict exposure to children, as well as to adult members of the community who do not wish to avail themselves of such reading matter;

... not withstanding the fact that Member Firms have no authority to assume the responsibility of deciding what may properly be published or read by Canadians, each Member Firm hereby pledges itself to the interpretation of Canadian community standards by establishing categories of Adult Reading Matter, as for example:

One, Adult Reading Matter depicting non-violent human sexuality shall be classified as "Restricted" and recommended only for selective retail display.

Two, other Adult Reading Matter which from time to time exceeds the tolerance of contemporary community standards shall be classified as "Unacceptable" for distribution.

The P.D.C. states that member companies encourage retailers to employ restraint in displaying adult publications, to place such matter on upper racks, away from the floor or cash registers and not to sell to minors. The P.D.C. further notes that publishers of adult magazines are aware that certain types of covers will offend some persons, and for this reason, most of these publishers have ceased to produce magazines with nudity displayed on the covers.

Ontario-based members of the P.D.C. make use of an independent advisory body, the Ontario Advisory Council, in deciding whether individual issues of certain periodicals are, or appear to be, acceptable according to contemporary community standards (i.e., whether they are legally obscene).

#### Location of Retail Outlets

Of the retail outlets surveyed, over half (53.9 per cent) were in commercial areas of towns and cities, two in five (43.0 per cent) were located in residential areas, and the remainder were either sites such as recreational centres or industrial areas. The types of outlets surveyed were:

Type of Store	Per Cent (n= 1091)
Bookstore/newspaper	7.1
Restaurant/cafe	0.3
Department store	3.7
Drugstore	14.8
Gift/card shop	1.9
Neighbourhood grocery store	10.6
Newsstand	7.8
Supermarket	3.3
Tobacco store/smoke shop	5.6
Variety store	44.9

Of the 1091 retail outlets surveyed, 881 or 80.8 per cent sold at least one or more adult magazines or some form of pornographic matter. The remainder of the findings are given in relation to the outlets selling these materials. Before

these results are presented, it is pertinent to note the general etymological usage of the word, *accessibility*. As this word has come to be commonly used, it refers to that which is capable of being used or of being reached. In relation to the meaning typically attributed to the idea of *accessibility*, the findings given pertain to pornography which potentially could be used or reached by children and youths, but it does not mean that children may have actually seen or purchased pornography. Findings about the purchasing habits of Canadians were obtained in the National Population Survey; these are given following the presentation of the results of the National Accessibility Survey.

### Display of Pornography

Of the four in five retail outlets (80.8 per cent) selling some form of pornography in 23 towns and cities across Canada, about a third (35.5 per cent) displayed 20 or more items; some had hundreds of items. A majority of the outlets sold considerably fewer adult magazines, with these including: under five items (21.6 per cent); five to nine items (23.2 per cent); 10 to 14 items (11.9 per cent); and 15 to 19 items (7.8 per cent). Most of the various retail outlets surveyed carried some form of pornography, most commonly, glossy full-size adult magazines having the widest circulation across Canada.

Over half of these pornographic items were located further than 10 feet from the sales counter (52.8 per cent). In only about one in six outlets was the pornography located either at the sales counter or placed within it. In about one in three outlets (35.1 per cent), the materials were situated within 10 feet of the sales counter.

Most of the outlets carrying pornographic matter had full size glossy adult magazines (77.3 per cent) and one half (50.2 per cent) carried small booklet-type magazines (some outlets carried both types of pornography). In four in five outlets (80.2 per cent), these 'adult' magazines were either displayed separately from popular magazines, or with them, but grouped together.

Display of Adult Magazines	Per Cent
Separate from popular magazines	26.0
Included with popular magazines, but adult magazines grouped together	54.2
Interspersed with popular magazines	14.3
Other, not reported	5.5
<b>TOTAL</b>	<b>100.0</b>

One third of the adult magazines (32.8 per cent) were either placed on the flat bottom shelf or displayed within three feet of the floor. About half were located at an eye level of between four and five feet from the floor. Thus, about six in seven pornographic magazines (85.4 per cent) were readily accessible to most young adolescents and a sizeable proportion was well in reach of younger children.

Height from Floor	Per Cent
On ground or bottom shelf	15.3
2 – 3 feet from floor	17.5
4 – 5 feet from floor	52.6
<b>TOTAL (5 feet or under)</b>	<b>85.4</b>

The findings of the National Accessibility Survey indicate that the policy guidelines of the *Periodical Distributors of Canada*, for the most part, were either unknown to, or were being ignored by, the retail outlets surveyed from Newfoundland to British Columbia. In these outlets, comparatively little restraint was being observed in the display of adult magazines and other forms of pornography.

About nine in 10 retail outlets surveyed had no signs prohibiting children or youths from buying or browsing through adult magazines.

Signs Prohibiting Children and Youths From:	Yes	No	Not Reported
	Per Cent	Per Cent	Per Cent
Buying Adult Magazines	3.2	88.9	7.9
Browsing through Adult Magazines	5.6	86.0	8.4

Information was obtained in the survey about how the adult magazines on the front rows of display shelves were shown. The style of display may range from a magazine's cover being fully exposed, partially covered, having only the title showing, to being fully hidden. The findings of the National Accessibility Survey clearly indicate that a sizeable majority, about four in five, of the retail outlets either fully exposed or only partially covered the adult magazines on their display shelves. In only a small proportion of these retail outlets was it found that the titles of adult magazines were shown; it was rare for them to be fully covered. In about one in six outlets (16.9 per cent), some or all adult magazines were enclosed with a clear plastic cover or a paper binding.

Display Covers of Adult Magazines	Large Glossy Adult Magazines	Small Booklet-type Adult Magazines
	Per Cent	Per Cent
Fully exposed	45.5	63.1
Partially covered	33.2	19.2
Only titles shown	19.7	13.4
Fully covered	1.6	4.3

The findings of the National Accessibility Survey will not surprise Canadians living in most parts of the country. Their own experience will attest



to the findings' validity. A great majority of the retail outlets surveyed carried pornographic magazines, most openly displayed adult magazines and there were few apparent restrictions in relation to their accessibility by children and youths. As noted in the review of the circulation figures, the distribution and sale of pornography have become a large-scale enterprise in Canada, one almost exclusively of foreign origin but generating earnings for many thousands of Canadians.

The survey's findings also show that the well-intentioned policy guidelines of the *Periodical Distributors of Canada* have been ineffectual in instilling a sense of restraint or prudence by retailers in the display of adult magazines or pornography. Pornographic matter is not just accessible, but readily accessible, to children and youths in all parts of Canada. As documented in the findings of the nationally representative sample of the Canadian people, this practice stands in sharp contrast with the expressed wishes of most Canadians.

## National Population Survey

The design of the National Population Survey and how it was conducted are described in Chapter 6, *Occurrence in the Population*. Included in this statistically representative survey of the Canadian population were questions concerning: the purchase of pornography; the types of matter bought; when the first purchase had been made; opinions concerning the display of pornography in retail outlets; whether pornography had ever been shown to the person against his or her will; and if he or she had known anyone who had been harmed by exposure to pornography.

In the pretest of the survey, special attention was paid to whether the word 'pornography' was clearly understood. The working definition given preceding the questions asked which was similar to that used in the National Accessibility Survey was that pornography included 'sex magazines, books and video tapes or cassettes'. On the basis of previously conducted research surveys, it appeared that the meaning of the word was generally well understood by persons from whom information was sought; in the case of the present survey, this was also found to be true. In the pretest, only one individual questioned what pornography meant, and in the national survey, only four persons raised similar concerns. None had any doubt that the word referred to sex magazines or comparable matter. The findings from the National Population Survey complement those of the Audit Bureau of Circulation and the National Accessibility Survey. Information from each of the three sources clearly indicates that a sizeable number of Canadians have bought pornography.

### Age of First Purchase

About three in five males (59.4 per cent) and about one in three females (30.8 per cent) said that they had bought pornography at least once during their lives. Conversely, about one in three males (36.6 per cent) and two in three females (62.9 per cent) had never purchased any form of pornography. A small handful of respondents (5.1 per cent) did not answer this question.

**Table 54.5**  
**Canadians Buying Pornography: Age of First Purchase**

Age When First Bought Pornography	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Under 7 years	—	—	—
7 – 11 years	0.5	—	0.3
12 – 13 years	1.9	0.3	1.1
14 – 15 years	7.7	1.5	4.6
16 – 17 years	14.4	4.9	9.6
18 – 20 years	21.2	8.7	15.0
21 and older	13.7	15.4	14.5
Never bought pornography	36.6	62.9	49.8
No reply	4.0	6.3	5.1
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*National Population Survey.*

The purchase of pornography is not an issue which is usually openly discussed by Canadians. It is evident, however, that when persons are asked questions about these issues and given the assurance that their replies will be kept confidential, many are prepared to provide information. There is no previous baseline for findings of this kind for Canada.

In its review of the national circulation statistics of a small number of widely distributed adult magazines, the Committee was informed by knowledgeable periodical distributors that the audience for pornography was almost exclusively male in composition and that buyers were typically men between 21 and 49 years-old. This belief is also widely held in other quarters. The survey's findings indicate that these assumptions are not wholly tenable. Only three in five males stated that they had ever bought pornography, and in contrast with commonly held beliefs, so had one in three females.

A distinction may be drawn between the purchase of a product and its subsequent use. A product may be used by, or exposed to, persons other than or in addition to, the one who buys it. It is unknown how many of the females who stated that they had bought pornography had purchased it for their own use, or for the use of male or female persons other than themselves. However, the same line of thought is equally applicable to male purchasers of pornography. By the same token, the findings of the National Population Survey do not indicate what proportion of males or females who stated that they had never bought pornography, may have in fact read, viewed or used pornographic

materials purchased by someone else. These materials are now so widely distributed that this type of situation is not just a possibility but an occurrence whose proportions are as yet undocumented.

The findings in Table 54.5 indicate that about a third (34.9 per cent) of the males first bought pornography at the age of 18 or older, while a quarter (24.5 per cent) had made their initial purchase at an earlier age. Assuming that in most males, pubescence has ended by age 18, it appears that the initial purchase of pornography by males was a post-pubescent experience more often than not (it was a post-pubescent experience for the three in five (58.8 per cent) males surveyed who had ever bought pornography). The finding suggests that the purchasing of pornography is not necessarily a phenomenon associated with the normal process of sexual maturation in Canadian males (i.e., it is not explicable solely as a "phase" that males go through as part of their growing up). This conclusion is even more strongly applicable in the case of the female respondents. Only about one in 15 females (6.7 per cent) had purchased pornography when under 18 years of age, and of the females who had ever bought pornography, one in five (21.6 per cent) had made her first purchase when she had been under age 18.

**While the findings show that a majority of persons who had ever purchased pornography had done so when they were age 18 or older, a substantial proportion of first purchasers had been children and youths.**

Age of First Purchase	Males (n=595)	Females (n=310)
	Accumulative %	Accumulative %
Under 7 years	—	—
7 – 11 years	0.8	—
12 – 13 years	4.0	1.0
14 – 15 years	17.0	5.8
16 – 17 years	41.2	21.6
18 – 20 years	77.0	50.0
21 and older	100.0	100.0

Excluding persons who had never bought these materials, one in six males (17.0 per cent) and one in 17 females (5.8 per cent) had been under age 15 when they had made their first purchase of pornography. These proportions rose respectively to two in five males (41.2 per cent) and one in five females (21.6 per cent) who had made such purchases before they had reached age 18. For these persons, the purchase of pornography had started relatively early in life, and as shown in the findings of the National Accessibility Survey, there were relatively few restrictions governing the display of adult sex magazines in retail outlets across Canada.

## Types of Pornography Purchased

Magazines constituted by far the most popular medium of pornography from the standpoint of purchase. All of the males and seven in eight females (87.1 per cent) who had ever purchased pornography had bought adult magazines. These figures also suggest that a sizeable proportion of the persons surveyed who had bought pornography had purchased more than one form of it (generally magazines and one or more other types of these materials). Half of the males (50.4 per cent) and one in six females (15.8 per cent) stated that they had purchased pornographic magazines several times or often. Thus, there were proportionately more recurrent purchasers of pornographic magazines than of any other type of pornography.

A substantial proportion of the respondents buying these materials had purchased pornography in book form. About two and a half times as many of the men had purchased pornographic magazines as had bought adult books (the proportions were about the same for men and women who stated that they had purchased these materials several times or often).

While only a relatively small proportion of persons said that they had purchased pornographic video-tapes or cassettes, this finding should be viewed in light of the fact that when the survey was conducted the home video-tape media were still new to the Canadian marketplace, and that playback equipment was relatively expensive. Also, it is unknown how many illicit copies were made of rented or purchased pornographic video-tapes; such copies could increase the actual circulation of this form of pornography to a level far greater than that indicated by the findings in Table 54.6. Given these facts, it is remarkable that almost one male respondent in 10 (9.6 per cent) reporting having purchased a pornographic video-tape and that one in 15 (6.6 per cent) had made such a purchase several times or often. One in 10 females (9.7 per cent) who had ever purchased pornography had bought an adult tape or cassette.

The findings indicate that adult magazines were the most frequently purchased pornographic commodity, but that a sizeable demand also existed for other forms of pornography which were less likely to have been as openly displayed as adult magazines. The Committee did not obtain information about the means of distribution of these other items, such as adult pornographic books, which are seen to reach a large audience if the findings of the National Population Survey are projected to the buying habits of all Canadians.

## Views Concerning the Retail Display of Pornography

The findings in Tables 54.7 and 54.8 present a study in contrast between the way Canadians perceived the conditions under which pornography was sold, and the situation that they believed should exist. A majority of all respondents (62.3 per cent) stated that, typically, local stores displayed pornographic magazines in a non-segregated manner. About one in five (20.4 per

**Table S4.6**  
**Types of Pornographic Matter Purchased**

Type of Pornography Purchased	Males			Females		
	Proportion of All Males in the Sample (n = 1002)	Proportion of Males Who Have Bought Pornography (n = 595)	Purchased Pornography Several Times or Often*	Proportion of All Females in the Sample (n = 1006)	Proportion of Females Who Have Bought Pornography (n = 310)	Purchased Pornography Several Times or Often*
	Non-Accumulative Percentages					
Magazines	59.4	100.0	50.4	26.8	87.1	15.8
Books	23.7	39.8	19.0	13.6	44.2	7.7
Video Tapes/ Cassettes	9.6	16.1	6.6	3.0	9.7	1.6
Other Types	5.3	8.9	4.0	2.4	8.1	1.7

*National Population Survey.*

\*Percentage of total sample

**Table 54.7**  
**Display of Pornography in Local Stores as**  
**Reported by Canadians**

Usual Display of Pornography in Local Stores	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	61.2	63.3	62.3
Displayed separately	21.2	19.8	20.4
Behind blinders or screens	3.5	4.3	3.9
Kept out of sight/under counter	3.1	4.4	3.7
None sold locally	6.5	6.5	6.6
No reply	4.5	1.7	3.1
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*National Population Survey.*

cent) believed that the standard retail practice was to maintain a segregated display of pornographic magazines, while 7.6 per cent said that such publications were sold in such a way as to restrict their visibility, either by means of placing them behind blinders, under counters or out of sight.

The findings of the National Accessibility Survey and the National Population Survey are remarkably comparable in relation to the display of adult sex magazines and other pornography in retail outlets.

Display of Pornography in Retail Outlets	National Accessibility Survey	National Population Survey
	Per Cent	Per Cent
Located with or mixed with other magazines	68.5	62.3
Displayed separately	26.0	20.4

In the former survey, it was found that the majority of pornography sold in retail outlets was located in the display of other types of magazines. In the latter survey, the views expressed by respondents indicate that pornography has come to be widely perceived as a visible fact of social existence in Canada. On the basis of the surveys' findings, there can be no doubt that it has.

The findings in Table 54.8 attest to the existence of considerable dissatisfaction with the perceived *status quo*. Of all respondents, over half (54.6 per

cent) either favoured restricted visibility of pornography in local stores, or opposed any sale of such material. Only about one in six (17.7 per cent) felt that a mixed display of magazines was acceptable, while about a quarter (24.8 per cent) preferred a segregated display of pornography.

**Table 54.8**  
**Opinions Concerning How Pornography Should be Displayed in Local Stores**

How Pornography should be Displayed	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	23.2	12.7	17.7
Displayed separately	31.2	19.1	24.8
Behind blinders or screens	10.7	7.7	9.1
Kept out of sight/under counter	12.1	20.8	16.7
None should be sold	20.6	36.1	28.8
No reply	2.2	3.6	2.9
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*National Population Survey.*

While the perception of males and females concerning the display of pornography was remarkably similar, there was no such concurrence of opinion when they were asked how they felt pornography should be displayed in stores. Women were considerably less tolerant of the open display of pornographic materials than were men: two in three (64.6 per cent) females favoured visually restrictive modes of display (i.e., behind blinders or screens, kept out of sight or under the counter) or opposed the sale of pornography altogether, while only two in five (43.4 per cent) of the males' responses fell into these categories. A third (36.1 per cent) of the women felt that no pornography should be sold as compared to a fifth (20.6 per cent) of the men. While this discrepancy of opinion is wide, a substantial proportion of the respondents of both sexes stated that there should be no sale of pornography in local stores.

In the course of its work, the Committee identified an apparent contradiction between the behaviour and views of Canadians concerning pornography. While most Canadians tended to denounce current practices involving the display of pornography, they nonetheless purchased it extensively. On the issue of how pornography should be shown in retail outlets, the findings of the National Population Survey indicated that about two in five tolerated the open display of pornography, and respectively, one in four either wished to have its visibility restricted or for none to be sold. There was far greater agreement, however, concerning the age at which persons should be permitted to purchase pornography.

## Age Limit on the Purchase of Pornography

The persons contacted in the National Population Survey were asked at what age they believed a person should be permitted to purchase pornography. About half (49.0 per cent) felt either that there should be no sale of pornography or that such material should be sold only to persons aged 21 or older. Five in six persons (83.3 per cent) were opposed to permitting the sale of pornography to persons under the age of 18. Unconditional freedom of purchase was favoured by a relatively small proportion of the persons surveyed — only 2.5 per cent.

**Table 54.9**  
**Opinions on the Ages at which Persons should be Permitted to Buy Pornography**

Age at which a Person should be Permitted to Buy Pornography	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
21 and older	20.1	28.1	24.3
18 and older	41.0	28.3	34.3
16 and older	13.1	7.1	9.9
14 and older	1.3	0.7	1.0
12 and older	0.3	0.2	0.2
Persons of all ages	4.5	1.8	3.1
None should be sold	17.9	30.7	24.7
No reply	1.8	3.1	2.5
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*National Population Survey.*

A more restrictive approach towards the selling of pornographic materials was advocated by a larger proportion of the females than of the males: 58.8 per cent of the females stated that pornography should be sold only to persons over the age of 21 or should not be sold at all, while 38.0 per cent of the males' responses fell into these two categories. On the other hand, a larger proportion of the males (41.0 per cent) than that of the females (28.3 per cent) considered 18 an appropriate age for persons to assume the right to purchase pornography.

In the National Population Survey, it was found that a large majority (77.3 per cent) of the respondents who did not oppose the sale of pornography altogether felt that only post-adolescent purchasing (i.e., over age 18) should be permitted. Among the male respondents, three in four (74.4 per cent) of those not opposed to the selling of pornography favoured a post-adolescent age limit, while four in five (81.4 per cent) of the comparable group of females



advocated such a limit. This discrepancy, while not large, may reflect the fact that a larger proportion of males than females had made initial purchases of pornography below the age of 18. What is more remarkable than this modest difference is the high level of agreement about the need to protect children and youths from exposure to pornography. This finding is clear and unequivocal.

## Summary

The findings of the three surveys present a complementary description of the pornography trade in Canada. Between 1965 and 1980, the sales of the pornographic magazines reported to the Audit Bureau of Circulation increased by 326.7 per cent. By comparison, the population of Canada grew by 22.4 per cent. The growth in adult magazine sales was at least 14.6 times the growth of the population (there can be no doubt that the rate of growth was far greater than that, considering the increase in the number of magazine titles being offered for sale).

Clear and persistent regional differences occur in the distribution and sales volume of pornographic magazines. These disparities not only persisted, but actually became more marked between 1966 and 1980. This finding may reflect any of a number of social, economic or legal phenomena, including:

1. Differences between the public attitudes prevailing in different parts of the country towards pornography.
2. Variation from region to region in the cost of living and in the size of the average person's disposable income (i.e., in different regions, fewer or greater numbers of persons may have the funds to purchase pornographic magazines).
3. Different practices on the part of distributors and retailers (particularly in response to public pressure groups).
4. Differences in enforcement practice from region to region.
5. Differences in the habits of readers (e.g., in the number of persons between whom a certain copy of a magazine will be passed before being discarded).

It is unknown which of these factors may account for the regional sales patterns that emerge from the circulation statistics. However, the ascending east-to-west sales volume gradient corresponds roughly to the pattern of R.C.M.P. and Customs seizures of pornography (see Chapter 51). This correspondence indicates that the actual consumer demand for pornography appears to be greater in the West than in the Maritime provinces.

**One hitherto known but undocumented fact that received clear and ample verification from the Committee's examination of the statistics of the Audit Bureau of Circulation, is that the sale of pornography is big business in Canada. The commercial value of only 12 major titles was over \$41 million in 1980. If the sales of all other available titles only equals or slightly exceeds**

those of the 12 listed publications — a plausible supposition — then the retail value of pornographic magazines likely generates a gross revenue of at least \$100 million *per annum*. This \$100 million figure excludes the sale of pornographic pocket books, films, videotapes, “sex aids”, and the admission fees charged for commercially exhibited motion pictures.

The main findings of the National Accessibility Survey were the documentation of several hundred pornographic magazines being sold in retail outlets across Canada and that most of this matter was openly displayed. Much of this material was readily accessible to children and youths in relation to magazine covers being readily visible, being placed with other magazines and in terms of height from the floor. The findings indicate that the policy guidelines of the Periodical Distributors of Canada concerning the display of adult reading matter were not being observed by a majority of retail outlets carrying these materials. In the National Population survey, three in five males and about one in three females stated that they had bought pornography at least once. Of persons having bought pornography, two in five males and one in five females had initially purchased these materials before age 18.

On the issue of the display of pornography in retail outlets, there was considerable agreement that an age limit be established in relation to when persons might purchase pornography. Over three in four persons (77.3 per cent) who did not oppose the sale of pornography altogether felt that only persons age 18 and older should be permitted to purchase this matter.

## References

### Chapter 54: Circulation, Accessibility and Purchase

- <sup>1</sup> Periodical Distributors of Canada *Statement of Policy "Respecting Adult Reading Matter"*, June, 1976; and "Adult Reading Matter: Censorship vs. Freedom of Choice", March, 1980.
- <sup>2</sup> *Ibid.*

## Chapter 55

### Associated Harms

Much public and scientific controversy surrounds the question of what effects, if any, pornography has on individuals and on society. A wide range of moral, behavioural, attitudinal and emotional effects have been attributed to exposure to pornographic materials. Many producers of pornography proclaim their product to be an educational tool and a liberating force for sweeping away the repressive and joyless puritanical attitudes of the past. This view is sharply contested by many parents who are deeply concerned by the possibility that their children may obtain misleading or distorted information about love, sex and relations between men and women through contact with sexually explicit matter. Pornography has been condemned on the grounds that it fosters misogyny and socially repressive attitudes, lowers self-esteem and self-awareness, and acts as a catalyst in promoting violence. Researchers, often drawing upon incomplete or seriously flawed sources of information, are divided about whether exposure to pornography is associated with increased aggressiveness and a rise in the incidence of sexual offences.

**In undertaking its review of the research literature on sexual offences available for Canada, the Committee found no empirical studies whose findings had been directly grounded upon the experience of a sizeable number of individuals. None of these studies dealt directly with the potential harmful effects of exposure of pornography to children. The studies completed included: non-empirically grounded assessments; a limited number of personal accounts; statistical reports surveying trends in crime and the distribution of pornography; the results of social psychological experiments, typically involving college students, involving the simulation of exposure to these materials; and briefs or reports drawing heavily, but selectively, upon studies undertaken in other nations.**

In seeking to assess the extent to which children and youths were known to have been exposed to pornography and whether they had been affected or harmed by such exposure, the Committee considered the findings of two major national inquiries undertaken in the United Kingdom and the United States and included questions on these issues in the national surveys which were conducted. In particular, the National Population Survey was used as a means of seeking to obtain information from a representative sample of Canadians about

their experience as children with pornography and their identification of the consequences resulting from exposure to these materials. These findings are given in this chapter.

## American and British National Inquiries

A substantial body of research pertaining to the effects of exposure to pornography was reviewed in two national inquiries appointed respectively in the United States and the United Kingdom. The *United States Commission on Obscenity and Pornography* which reported in 1970 undertook a comprehensive review of available research and commissioned studies dealing with these issues.<sup>1</sup> The *British Committee on Obscenity and Film Censorship*, which reported in 1979, provided an updated review of research completed between the publication of the American report and the submission of its own appraisal.<sup>2</sup>

The reports of these two major national inquiries were in agreement on several issues. These points were: the varying and vague definitions of pornography; the inconclusiveness of the limited number of studies having empirical findings in documenting whether there is a causal link between exposure to pornography and persons being harmed by such exposure; and the absence of studies documenting the experience of children who were exposed to these materials.

In relation to harms associated with exposure to pornography, the main conclusion of the *U.S. Commission* was:

"In sum, the empirical research has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youths or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquency."<sup>3</sup>

Based on its review of the research drawn upon by the *U.S. Commission*, critiques of that report and subsequently completed studies, the 1979 *British Committee* reiterated the conclusions of the earlier inquiry.

"... we make the comment that the effect of re-examining the original studies in light of a hostile critique of the Commission's conclusions ... is simply to make one adopt rather more caution in drawing inferences from the studies undertaken. It is still possible to say ... that there does not appear to be any strong evidence that exposure to sexually explicit material triggers off anti-social behaviour. We would add only that this is consistent with what we learned from the clinical experience of those experienced medical witnesses we consulted."<sup>4</sup>

In reaching these conclusions, both national inquiries shredded most of the existing research on pornography. Much of the available research was based on the experience of small and atypical groups such as prison inmates or college

students. None of the research reviewed by these inquiries provided an assessment of the long-term effects of exposure to pornography. Social psychological experiments in which small groups were exposed to sexually explicit material and the reactions of the subjects noted were dismissed "as an unilluminating and unreliable way of investigating complex behaviour"<sup>5</sup>. In this regard, the 1979 *British Committee* concluded:

"Since criminal and anti-social behaviour cannot itself, for both practical and ethical reasons, be experimentally produced or controlled, the observations must be made on some surrogate or related behaviour . . . The fundamental issue in this field concerns *the relations that hold between reactions aroused in a subject by a represented, artificial, or fantasy scene, and his behaviour in reality* . . . We can only express surprise at the confidence that some investigators have shown in supposing that they can investigate *this* problem through experimental set-ups in which reality is necessarily replaced by fantasy."<sup>6</sup>

Both national inquiries cited the absence of clinical studies documenting the harms of exposure to pornography. Each report also considered, and set aside as spurious, those studies in which the distribution of pornography was correlated with changes in the incidence of reported rates of criminal activity. Such studies were dismissed on the grounds that there was no direct empirical documentation of harms to persons at the individual level, and that no consideration was given in these types of reports as to why a minority of persons exposed to pornography either should be harmed or become sexually deviant when the majority having this experience was apparently immune to these effects.

Notably, the two national inquiries failed to identify research dealing with the effects of exposure of pornography to children. In a minority report appended to the 1970 *U.S. Commission*, it was noted that:

"While the Commission in their Final Report state ' . . . [there] is no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crimes, delinquency, sexual or non-sexual deviancy, or severe emotional disturbance . . . or plays a significant role in the causation of delinquent or criminal behaviour among *youth or adults*', they do not mention that there was *not a single* experimental study, longitudinal study, or clinical case study involving youth."<sup>7</sup>

The 1979 *British Committee* concluded that while the effects of pornography were widely seen as being dangerous to children:

" . . . for obvious reasons children have not been used in experimental work on exposure to pornography, and we heard no evidence of actual harm caused to children . . . <sup>8</sup> [in discussions with clinicians] . . . we were struck by the fact that none of them was able to tell us of a case of which they had experience in which there was evidence of a causal link between pornography and a violent sexual crime."<sup>9</sup>

On the basis of its review of the reports of the American and British national inquiries and available Canadian studies, the Committee concluded

that, due to the absence of adequate empirical research on the effects of pornography on children, there was insufficient evidence provided by previous studies to show that children were or were not harmed by exposure to sexually explicit materials.

## Unwanted Exposure to Pornography

In undertaking its research, the Committee adopted a grounded approach in which information was sought directly from Canadians about their experience of having been exposed to pornography as children and whether they or someone whom they knew had been harmed. The persons contacted in the survey were also asked if they had ever been exposed to pornography against their will and how old they were if this had happened to them.

The findings obtained by the Committee indicate that Canadians identified several types of harms associated with exposure to pornography. These harms were:

1. The corruption of moral and social values.
2. The altering of personal values and behaviours.
3. Associated sexual assaults and attendant physical injuries sustained.

**Table 55.1**  
**Unwanted Exposure to Pornography by Age**

Age at Which Unwanted Exposure to Pornography Occurred	Sex of Person Shown Pornography			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	2	3.0	4	7.3
7 — 11 years	4	6.1	5	9.1
12 — 13 years	11	16.9	11	20.0
14 — 15 years	12	18.5	8	14.5
16 — 17 years	9	13.9	6	10.9
18 — 20 years	12	18.5	11	20.0
21 years and older	9	13.9	5	9.1
Not Reported	6	9.2	5	9.1
<b>TOTAL</b>	<b>65</b>	<b>100.0</b>	<b>55</b>	<b>100.0</b>

*National Population Survey.* Total denominator = 1002 males, 1006 females.

In presenting these findings, the Committee recognizes that there are serious limitations inherent in the sources of information drawn upon. The information obtained was based on recollections of events occurring in the past, different ideas of what constituted pornography were likely involved, the reports given about the experience of persons known to the informants may have been inaccurate, and the number of persons citing such incidents was small. However, in light of the other types of privileged information provided to the Committee for which extensive replies were given, there is no reason to believe that a sizeable number of persons would have chosen to withhold information about their unwanted experiences as children with pornography. As well, the graphic accounts given, when taken in conjunction with cases investigated by the police, leave no doubt that incidents of unwanted exposure to children of pornography occur, and that in some of these situations, such exposures are associated with children having been sexually assaulted.

**One in 17 persons (6.0 per cent) in the National Population Survey said that he or she had been exposed at least once to pornography against his or her will; one in 15 (6.8 per cent) said that he or she knew someone who had been harmed by such exposure.**

The findings in Table 55.1 list the ages when the first unwanted exposure to pornography occurred. Acts of this kind had happened about a fifth more often to males than to females. When the first unwanted exposure to pornography had occurred, one in 11 males (9.2 per cent) and one in six females (16.4 per cent) had been 11 years-old or younger. About half (47.5 per cent) having an experience of this kind had been under age 16.

## Impact on Social Values

Approximately two in three persons contacted in the National Population Survey added written comments in addition to replying to the questions asked. In relation to the issue of pornography, the majority of their written comments focussed upon the impact of pornography in affecting the moral and social values of Canadian society. The following statements are representative of the views expressed.

- *30 year-old farmer.* "Pornography affects the moral fibre of our society. Sex and its abuses bombard us too much. The moral values of young people are compromised".
- *50 year-old utility foreman.* "Some of my fellow workers are pre-occupied with pornography. It really affects their attitudes towards women. This material does not display reality — models are used to portray fantasy".
- *24 year-old computer analyst.* "Pornography has made some of my close friends have a lack of a sense of what's right or wrong. It's an invitation to crime — it is contrary to a sane mind".
- *35 year-old school board member.* "People are led to believe that abusive, exploitive sex is normal and enjoyed by all".



- *40 year-old foster mother.* "Pornography definitely causes rape and molestation to children. Men are excited. As a woman, I feel degraded by some of their remarks".
- *29 year-old union organizer.* "Pornography degrades women and children — it makes them sex 'objects'. It makes men have no respect for sex — they expect to behave like the pictures they see in the magazines".

None of the replies focussing on the negative effects of pornography in this category identified persons known to the respondents who had specifically been harmed by exposure to pornography.

## Impact on Personal Values

In addition to general opinions given concerning pornography, two categories of harms to persons were identified by respondents in the National Population Survey. In the first category, persons cited instances either of individuals who were family members, friends or close associates whom they reported had been negatively influenced by exposure to these materials, or they gave personal accounts of how they themselves had been affected in this regard. In the second category, accounts were given in which persons reported that they had been exposed to pornography and that they had subsequently been sexually assaulted by the same person.

In the former category, of the one in 15 persons (6.8 per cent) who said that he or she knew someone who had been harmed by exposure to pornography, about half (47.1 per cent) cited the experience of a family member, friend or close colleague and about an equal proportion (52.9 per cent) gave personal accounts. The most frequently cited harm recounted by persons which had involved family members or friends was the alteration of their values about sexual behaviour.

- *34 year-old public health worker.* "Pornography contains pro-violence, anti-female messages. It changed my ex-husband's attitude towards me. I became more of a thing than a person to him".
- *23 year-old ferrier.* "Pornography encourages sexual promiscuity and deviation. It encourages a pre-occupation with sex. It stimulated my father to lust for other women and to commit adultery. He lost his wife and lost the respect of his family. Now, he is an empty man with nothing of real worth in his life".
- *41 year-old graduate student.* "You should be mature enough to be able to deal with it. My ex-husband wasn't — he became pre-occupied with it".
- *32 year-old salesman.* "I had no adverse effects from buying pornography at 16. My wife was shocked — she had not been exposed to these books before".
- *48 year-old mother.* "Pornography gives young people a false image of sex between grown-ups, especially between parents. It makes no mention of the emotional involvement necessary to make sex meaningful. Seeing

pornography damaged my teenage son (13) — it changed his attitude to girls at a time when he was very vulnerable to peer pressure”.

- *32 year-old sales clerk*. “Pornography is an obstacle to having sincere and spontaneous sex. It replaces passion with desire. My husband wants me to practice the sexual acts inspired by seeing pornography”.
- *36 year-old mother*. “There are enough crazy people in the world without adding pornography to show children how they are going to grow up. It hurt my son — he doesn’t understand sex and thinks what he sees in magazines is normal”.
- *34 year-old secretary*. “Pornography leads to over-stimulation, abuse and desensitization. It has made my husband have unreal expectations of me”.
- *23 year-old clerk*. “Pornography encourages violence towards women. It made my nephew have a loss of respect for the female sex”.

Slightly over half of the persons who said they knew someone who had been harmed gave personal accounts of how their views about sexual behaviour had changed following exposure to pornography. Most of these persons felt that pornography had warped their views about sex, had altered their relations with others, and in some instances, had changed their way of life.

- *21 year-old student* shown pornography at age 13. “My innocence was lost and now I periodically have thoughts I’m ashamed of. It’s changed my personality”.
- *52 year-old utility engineer* shown pornography at age 17. “Myself. Some warping of thoughts always. Pornography is supposed to somehow make it ‘all right’.”
- *32 year-old controller*. “Seeing pornography made me get involved in sexual relationships without realizing their consequences”.
- *20 year-old camp counsellor*. “I found a number of pornography magazines. I was confused and became terrified of close contact with men. These books ruin the respect of the human body”.
- *31 year-old minister* shown pornography at age 11. “Me. Exposure tends to give me very violent and perverted thoughts”.
- *38 year-old teacher*. “Pornography gave me an improper view of sex relationships — it affected my personal moral standards”.
- *37 year-old economist*. “I was not seriously affected by pornography, but it certainly did harm my attitude to women”.
- *27 year-old sawmill worker* shown pornography at age 15. “I was hurt. It causes lusts and perverted thoughts which to me is the same thing as doing them”.
- *32 year-old nursing assistant*. “Having seen pornography as a child, it permitted me to continue in an area of my life which was seriously out of perspective”.
- *49 year-old nurse* shown pornography at age 11. “It left me with the wrong impression of sex. I consider it to be against decency”.

- *21 year-old student.* "Younger people should be kept from pornography so that their sexual perceptions develop in a healthy way. Seeing it distorted my own sexual attitudes and expectations".

The findings given in Chapter 54, *Circulation, Accessibility and Purchase* indicate that slightly less than half (45.1 per cent) of the persons contacted in the National Population Survey reported that they had purchased pornography on at least one occasion. While the purchase of pornography is not synonymous with a person having been exposed to this material, the survey's findings suggest that a substantial number of Canadians at one time or another have been exposed to pornography at least once during their lives. In contrast, one in 15 persons (6.8 per cent) reported knowing someone who in his or her judgment had been harmed; slightly over half of this group (3.6 per cent of all persons in the survey) gave personal accounts in this regard of their own experiences.

The survey's findings shed little light on why some persons but not others may have been harmed by exposure to pornography. In relation to the potential harms of exposure, the findings do not provide a basis upon which to establish the age at which special protection for children may be warranted. In light of the information available, the grounds for reaching this decision must be based on other considerations.

## Unwanted Exposure and Associated Assaults

**In addition to the reported impact of pornography on the values of Canadian society and the personal values of individuals, a number of respondents in the National Population Survey stated that they had been shown pornography and that they had also been sexually assaulted by the same person. One in 63 persons (1.6 per cent) in the National Population Survey reported incidents of this kind. Proportionately more of these incidents had involved victims who were females (1.9 per cent) than males (1.4 per cent).**

The findings given in Table 55.2 show that half of the males (50.0 per cent) and about three in five females (57.9 per cent) who had reported that they had been shown pornography and that they had been sexually assaulted by the same person were under age 16 when the incidents had occurred; only one in four persons having had this experience (24.2 per cent) had been an adult.

In incidents of this kind, about two in five persons (39.4 per cent) had had the sexual parts of their bodies touched. Proportionately, four times as many males (42.9 per cent) as females (10.5 per cent) had experienced oral-genital contacts. Some form of completed or attempted vaginal penetration had been committed against about half of the females, including: attempted vaginal penetration with a penis (21.1 per cent); vaginal penetration with a penis (against two females); and penetration with finger or object (21.1 per cent).

**Table 55.2**  
**Reported Incidents of Unwanted Exposure to**  
**Pornography Followed by Sexual Assault**

Age at Which Reported Unwanted Exposure to Pornography Followed by Sexual Assault Occurred	Sex of Person Shown Pornography and Who Was Sexually Assaulted			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	1	7.1	2	10.5
7 - 11 years	—	—	3	15.8
12 - 13 years	2	14.3	5	26.3
14 - 15 years	4	28.6	1	5.3
16 - 17 years	1	7.1	1	5.3
18 - 20 years	3	21.4	2	10.5
21 years and older	3	21.4	5	26.3
<b>TOTAL</b>	<b>14</b>	<b>99.9*</b>	<b>19</b>	<b>100.0</b>

*National Population Survey.*

\*rounding error

Only two persons reporting these incidents had been victims of acts of anal penetration with a penis. Both were males. However, proportionately more males (28.6 per cent) than females (5.3 per cent) had been masturbated.

Since there is limited documentation in the research literature about incidents of this kind, the following personal accounts given by persons in the National Population Survey and the reports of a number of cases investigated by the police documented in the National Police Force Survey serve to illustrate the types of situations in which children and youths were shown pornography and had been sexually assaulted by the same person. In presenting these accounts, it is noted that the proportion reporting such incidents is small and that, in each instance, the exposure to pornography was forced upon the person involved.

- *23 year-old ice arena attendant.* When she was 12, a 17 year-old watchman exposed to her, showed her pornography, fondled her sexually and attempted to rape her. "I did not tell anyone, but I wasn't ready for it. Children are exposed to pornography too early. Sex is not properly explained at home or in school. Boys are encouraged to be aggressive physically and sexually from a very early age".
- *19 year-old student.* Shown pornography at age 10, threatened and experienced an attempted rape by her 68 year-old grandfather. In urging the prohibition of pornography, she wrote: "I feel this way because there

is enough bad things going on in the world today without pornography adding to it — it gives people ideas and this is why crimes happen”.

- *34 year-old secretary.* Shown pornography at age seven, threatened and was a victim of both cunnilingus and rape by her 17 year-old brother. “I still suffer from the humiliation of all that happening to me. My self-esteem suffered for years. I am now 34 and am still not over the guilt and trauma”.
- *45 year-old hotel clerk.* Between ages 12 and 16, her father exposed himself to her, showed her pornography, sexually fondled her and attempted to rape her. When she was married, she told her husband. “I feel my father could have been helped”.
- *26 year-old mother of three children.* This woman reported that when she was 13, her 33 year-old brother-in-law exposed to her, showed her pornography, threatened to have sex with her and fondled her crotch several times. “I lived with my sister and her husband. When she went to bed, if he was drinking, my brother-in-law wanted me to take my clothes off. He had a top management position for a large company. At the time, I didn’t know he had done the same thing to another sister. I didn’t want to hurt my sister who was married to him”.
- *46 year-old educator.* Shown pornography at age four, sexually fondled and masturbated. “It was presented as fun, a game, by a babysitter when I was four. It degenerates a whole population which becomes lax in their way of doing things in everyday life. It had a long indirect affect on me”. He told his mother and “the sitter was not recalled”.
- *25 year-old waitress.* Shown pornography at age eight by her father who also inserted a finger in her vagina. “I became lost and this was no good for me. It corrupts people’s minds — they become perverted”.
- *23 year-old truck driver.* Shown pornography at age 15 and had his penis fondled. “It makes the children learn bad things before the good things. It shows a lack of respect for others”.
- *50 year-old artist.* Shown pornography at age 12 and was masturbated by a neighbour. “It causes weak-minded people to rape. Some adults become aroused by looking at this. I ran away when it happened”.
- *19 year-old attendant.* Shown pornography at age 15, had a finger inserted in her vagina and experienced an attempted rape by school acquaintances. “They wanted me to be or do what they saw in the tapes or magazines. I was not ready for it. I did not tell anyone”.
- *41 year-old housewife.* Shown pornography at age six, threatened and raped by her uncle. “Children see pictures, they don’t forget and some adults have warped minds when it comes to pornography . . . I was frightened of males. It took years to heal the scars. Happy now”.
- *26 year-old lawyer.* Shown pornography at age 12 and was masturbated. “Pornography furthurs illicit and illegal sexual activity — I was offended and embarrassed”.
- *18 year-old student.* Shown pornography at age 11 and sexually fondled. “The younger generation is becoming more involved in sexual experiences shown in movies and pornography. There is a sexual look in some men’s eyes. I’m always on my guard and uneasy”.

- *26 year-old mother.* "I do not like to admit that my father enjoyed pornography. He made my sister and me when I was five look at obscene pictures. Until I was 12, he abused us both [oral-genital and oral-anal contacts]. I could not speak of this until much later. My husband is the only person who knows".

- *Six year-old girl.* A parks grounds-keeper approached a six year-old girl and asked her to "shake his pee-pee to get all of the milk out of it". He showed her nude photographs and then masturbated in front of the child.

When apprehended, he was found by the police to have previously been committed for abnormal sexual behaviour to a provincial mental hospital. He explained he performed these acts "because of pressure building up over a period of time". No charges were laid.

- *Five year-old girl.* Over a period of time until detected by the child's parents, their five year-old daughter had her 15 year-old uncle as her babysitter during her parent's absence. He would read a pornographic magazine and then fondle the child's vagina and anus. No charges were laid due to lack of corroboration.

- *14 year-old girl.* Following the separation of this 14 year-old girl's parents, she visited her father during the summer vacation. On her first night at her father's home, he entered her bedroom and gave her a pornographic magazine to read. The next morning, he returned to his daughter's bedroom and "asked her how she had liked the book". He lay down beside her, and while fondling her breasts "remarked that it was better that a father and a daughter had sex". He had intercourse with his daughter three times during her stay with him.

Although the girl was initially too ashamed to tell her mother, she subsequently confided to an adult who informed the local child protection agency which in turn contacted the police.

- *12 year-old boy.* A 12 year-old boy discovered and read several pornographic magazines in his older brother's bedroom. A few days later, while baby-sitting a neighbour's five year-old son, he started a game of "dickie" with the child. According to the child's account given to the police, the older boy "put his dickie in my mouth and I was to suck it and then I was to put my dickie in his mouth and he was to suck on it".

No charges were laid. Psychological assessment and counselling were recommended for the 12 year-old boy.

- *Six year-old girl.* A man sitting in a car in an alley called a six year-old girl to join him. He showed her a picture of a nude woman in a pornographic magazine, pulled down his trousers and exposed himself. He then asked the girl to touch his penis, which she did, but when he asked her to suck it, she refused. The unidentified offender then drove away.
- *Six and eight year-old boys.* Two brothers, ages six and eight, were playing in a ravine when they were approached by three boys, two of whom were age 10. The older boys showed the younger children pictures in a pornographic magazine and then asked the brothers to fellate them. The older brother refused but the six year-old sucked the penises of both of the 10 year-old boys.

When the boys' mother learned what had happened, she notified the police. The 10 year-old boys were cautioned by the police.

- *Six year-old girl.* A six year-old girl was invited by a 35 year-old man into his apartment where she saw "some barenaked books" which he had left open on the floor near his bed. After playing some disco music, the man told the child to remove her clothing. He fondled the girl's genitals and then had her masturbate him. He threatened her that she should not tell anyone.

The police, contacted by the girl's mother, seized a number of pornographic magazines. The accused was charged with indecent assault.

- *Six year-old girl.* While she was playing in a park, a six year-old girl was approached by a man in his mid 20s who gave her three pictures depicting lesbian sexual acts. He asked if she wanted to play with his monkey, and when she refused, he grabbed her. After trying to undress her, he ran away.

Ten days later when she was in her bedroom at night, the girl heard noises and saw the same man looking through the window. He asked her to come out to play. She called her mother who with a male companion immediately searched the grounds. The man was seen leaving. Suspect unknown.

- *11 month-old boy.* A family friend, a 15 year-old boy, was asked to babysit an 11 month-old infant boy. When the parents left, the babysitter took a combination of graval pills and whiskey in hopes of becoming 'high'. He reported later to the police that previously he had read several hard-core pornographic magazines which portrayed sadomasochistic heterosexual acts. While reading, he heard the baby crying upstairs.

The baby wasn't hungry and the babysitter decided to give him a bath. The account given the police describes what happened.

"I took him into the bathroom and took the diaper off to give him a bath. Before this, I was reading a dirty book. I was feeling horny and I was giving [the infant] a bath and tried to screw him".

The anal intercourse on the infant resulted in tearing of the sphincter muscle leaving the ruptured tissue protruding from the anus. When the offence was discovered, the youth was placed in a boys' detention centre, pending a juvenile court decision and the commencement of psychiatric treatment.

## Summary

On the basis of the findings of the National Population Survey, it is evident that the occurrence of unwanted exposure to pornography may have been experienced by a sizeable number of Canadians, many of whom were children and youths when the incidents took place. In many of these incidents, the persons committing these acts were well known to children or were responsible for

their welfare. One in 63 persons (1.6 per cent of persons in the National Population Survey) reported having been exposed to pornography and also having been sexually assaulted at the time or following the exposure.

As noted previously, these findings are based on recollections of incidents occurring in the past, the definitions of pornography may have varied and the experiences of only a small number of persons are provided. However, in the case of the National Population Survey, the information obtained was derived from a representative sample of the Canadian population. In the Committee's judgment, the incidents reported likely constitute an under-estimate of the occurrence of situations involving exposure to pornography followed by a sexual assault.

**The findings of the two national surveys — population and police — indicate that for a number of persons, pornography had served as a stimulus to committing sexual assaults against children. The findings do not elucidate, however, why exposure to pornography may affect some persons, but not others, in this way nor do they indicate the nature of the circumstances in which incidents of this kind are more likely to occur.**

While incomplete with respect to many significant aspects of these issues, the findings of the National Population Survey identify some of the dimensions of the harms associated with exposure to pornography, particularly where this was unwanted and had happened to a child. There can be no doubt that the impact of having been shown pornography, or of having been forced to see this matter, was vividly recalled by those persons to whom this had happened when they were children. In this regard, one in 15 persons (6.8 per cent) stated that such exposure had affected his or her views, or those of someone whom they knew well, towards sexual behaviour and their relations with others later in their lives. The long-term moral, psychological and social consequences of these exposures, however, are insufficiently documented in the case studies in relation to the impact of other types of depictions which these persons may have been exposed. There is no evidence in these findings, for instance, that compares the impact of exposure to pornography on a child with that which may result from their having seen scenes on television or movies depicting violence involving physical assault and murder.

A second kind of harm associated with unwanted exposure of children to pornography identified by persons contacted in the National Population Survey is situations in which these materials were shown and a child or youth had been sexually assaulted by the same person. In light of the findings obtained, there is no doubt that such incidents occur. The personal accounts and the cases investigated by the police also identify a third type of harm associated with exposure of children to pornography. In these accounts, a number of children had been threatened or coerced, had sustained physical injuries, or had incurred a risk to their health (e.g., introduction to the use of drugs or alcohol).

The Committee's recommendations concerning the making, distribution, sale and display of child pornography and accessibility by children to pornogra-



phy are given elsewhere in the Report. The findings given in this chapter concerning the actual and potential harms of exposure to pornography to children support the need for special statutory provisions to afford children better protection. In addition to the reform of the law concerning these issues, more complete documentation is required of the nature of the long-term effects of exposure to children of pornography. Accordingly, the Committee recommends, in conjunction with other means proposed to afford better protection for children, that a comprehensive study be commissioned to consider the long-term effects of exposure to children of pornography, particularly focussing on where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.

## References

### Chapter 55: Associated Harms

- <sup>1</sup> *United States Commission on Obscenity and Pornography*, New York: Bantam Books, 1970.
- <sup>2</sup> United Kingdom. Home Office. *Report of the Committee on Obscenity and Film Censorship*, London: H.M.S.O., 1979.
- <sup>3</sup> U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 466.
- <sup>4</sup> U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 66.
- <sup>5</sup> *Ibid.*, p. 65.
- <sup>6</sup> *Ibid.*, p. 65-66, Emphasis in italics added.
- <sup>7</sup> U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 487.
- <sup>8</sup> U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 88-89.
- <sup>9</sup> *Ibid.*, p. 63.

## Appendices

**Sexual Offences and the Protection of Young Persons**  
**(Bill C-53, 1st Session, 32<sup>nd</sup> Parliament, 29 Elizabeth II, 1980-81)**

An Act to amend the Criminal Code in relation to sexual offences and the protection of young persons and to amend certain other Acts in relation thereto or in consequence thereof

First Reading, January 12, 1981

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

**CRIMINAL CODE**

1. Section 2 of the *Criminal Code* is amended by adding thereto, immediately after the definition "clerk of the court", the following definition:

" "complainant" means the person against whom it is alleged that an offence was committed;"

2. Subsection 3(1) of the said Act is repealed.

3. All that portion of subsection 6(1.2) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

"(1.2) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against the person of an internationally protected person or against any property referred to in section 387.1 (attack on official premises, etc.) used by him that if committed in Canada would be an offence against that section or section 218 (murder), 219 (manslaughter), 245 (assault), 245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping) or 381.1 (threats against internationally protected persons) shall be deemed to commit that act or omission in Canada if"

4. Sections 17 and 18 of the said Act are repealed and the following substituted therefor:

"17. A person who commits an offence under compulsion by threats of immediate death or serious bodily harm from a person who is present when the offence is committed is excused for committing the offence if he believes that the threats will be carried out and if he is not a party to a

conspiracy or association whereby he is subject to compulsion, but this section does not apply where the offence that is committed is high treason or treason, murder, piracy, attempted murder, sexual assault, aggravated sexual assault, forcible abduction, robbery, assault causing serious bodily harm, unlawfully causing serious bodily harm or arson.

18. No presumption arises that a married person who commits an offence does so under compulsion by reason only that the offence is committed in the presence of the spouse of that married person.”

5. The headings preceding section 138 and sections 138 to 158 of the said Act are repealed and the following substituted therefor:

**“PART IV  
PUBLIC MORALS, DISORDERLY CONDUCT AND  
SEXUAL EXPLOITATION OF YOUNG PERSONS**

*Interpretation*

158. In this Part,

“guardian” includes any person who has in law or in fact the custody or control of another person;

“public place” includes any place to which the public has access as of right or by invitation, express or implied;

“theatre” includes any place that is open to the public where entertainments are given, whether or not any charge is made for admission.”

6. Sections 166 to 168 of the said Act are repealed and the following substituted therefor:

*“Sexual Exploitation of Young Persons*

166. (1) Every one who engages in or procures sexual misconduct with or by a person who

(a) is not his spouse and

(b) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(a) at the time the sexual misconduct took place, he was under fourteen years of age; or

(b) he is less than three years older than the complainant.

(3) Where an accused is charged with an offence under subsection (1), it is not a defence to the charge that the complainant consented to the sexual misconduct or that the accused believed at the time the sexual misconduct took place that the complainant was fourteen years of age or more.

**167.** (1) Every one who engages in or procures sexual misconduct with or by a person who

(a) is not his spouse, and

(b) is fourteen years of age or more and is under the age of sixteen years,

is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(a) at the time the sexual misconduct took place he was under sixteen years of age;

(b) he is less than three years older than the complainant;

(c) he believed at the time of the sexual misconduct took place that the complainant was sixteen years of age or more; or

(d) he is less responsible than the complainant for the sexual misconduct that took place.

**168.** (1) Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under sixteen years of age,

(a) engages in sexual misconduct with or procures or (sic) by that person is guilty of an indictable offence and is liable to imprisonment for ten years; or

(b) knowingly permits the sexual misconduct of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Every one who, being the owner, occupier or manager of premises, knowingly permits the premises to be used for the purposes of sexual misconduct involving a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for two years.

(3) No one shall be found guilty of an offence under this section if he establishes that he believed at the time the sexual misconduct took place that the complainant was sixteen years of age or more.

**168.1** (1) Every one commits incest who, knowing that another person is his blood relative, has sexual intercourse with that person.

(2) Every one who commits incest is guilty of an indictable offence and is liable to imprisonment for ten years.

(3) No person shall be found guilty of incest if he establishes that he acted under restraint, duress or fear of the person with whom he had the sexual intercourse.

(4) In subsection (1), "blood relative" means a parent, child, brother, sister, half-brother, half-sister, grandparent or grandchild.

**168.2 (1)** Every one who knowingly

(a) induces, coerces or agrees to use a person under sixteen years of age to participate in any sexually explicit conduct for the purpose of producing, by any means, a visual representation of such conduct,

(b) participates in the production of a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

(c) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a visual representation of a person under sixteen years of age participating in any sexually explicit conduct, or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

is guilty of an indictable offence and is liable to imprisonment for five years or is guilty of an offence punishable on summary conviction.

(2) For the purposes of subsection (1), a person who at any material time appears to be under sixteen years of age shall, in the absence of evidence to the contrary, be deemed to be under sixteen years of age.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

**168.3** In any proceeding under this Part, where a court is satisfied that a matter or thing is obscene or is a visual representation referred to in subsection 168.2(1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct."

7. The said Act is further amended by adding thereto, immediately after section 169 thereof, the following section:

**"169.1 (1)** Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Subsection (1) does not apply to any act committed in private between

(a) a husband and his wife, or

(b) persons each of whom is eighteen years of age or more."

8. Section 175 of the said Act is repealed.

9. The definition "offence" in section 178.1 of the said Act is amended by striking out the reference to "79 (causing injury with intent)" where it occurs therein and substituting a reference to "79 (using explosives)", by striking out the reference to "144 (rape)" and "245(2) (assault causing bodily harm)", where it occurs therein and by adding, immediately after the reference to "218 (murder)", a reference to "245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault)."

10. Subsection 179(1) of the said Act is amended by adding thereto, immediately after the definition "place", the following definition:

"prostitute" means a person of either sex who engages in prostitution;"

11. Sections 182 and 183 of the said Act are repealed.

12. Subsections 195(1) and (2) of the said Act are repealed and the following substituted therefor:

"195. (1) Every one who

(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or house of assignation for the purpose of illicit sexual intercourse or prostitution,

(c) knowingly conceals a person in a common bawdy-house or house of assignation,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or



(j) lives wholly or in part on the avails of prostitution of another person,  
is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is, in the absence of any evidence to the contrary, proof that he lives on the avails of prostitution.”

13. Section 201 of the said Act is repealed.

14. All that portion of section 213 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), section 246 (assaulting a peace officer), section 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if”

15. Subsection 214(5) of the said Act is repealed and the following substituted therefor:

“(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

- (a) section 76.1 (hijacking aircraft);
- (b) section 246.1 (sexual assault);
- (c) section 246.2 (aggravated sexual assault); or
- (d) section 247 (kidnapping and forcible confinement).”

16. Section 228 of the said Act is repealed.

17. Paragraph 242(3)(b) of the said Act is repealed and the following substituted therefor:

“(b) is guilty of an offence under section 245.2, if serious bodily harm to any person results therefrom; or”

18. Sections 244 to 246 of the said Act are repealed and the following substituted therefor:

“244. (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or gesture to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person and begs.

(2) This section applies to all forms of assault, including sexual assault and aggravated sexual assault.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by means of

(a) the application of force;

(b) threats or fear of the application of force;

(c) fraud; or

(d) the exercise of authority.

(4) For the purposes of this section,

(a) it is a question of fact whether the complainant consented or not; and

(b) consent shall not necessarily be inferred from the fact that the complainant submitted to or did not resist the application of force.

(5) Where a question is raised as to whether the accused believed that the complainant consented to the conduct that is the subject-matter of the charge, the jury shall be instructed, in determining the honesty of that belief, to consider, along with any other relevant matter, the presence or absence of reasonable grounds for that belief.

**245.** Every one who commits an assault is guilty of

(a) an indictable offence and is liable to imprisonment for two years; or

(b) an offence punishable on summary conviction.

**245.1** Every one who commits an assault that causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

**245.2** Every one who unlawfully causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

**246. (1)** Every one commits an offence who

(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(c) assaults a person

(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or

(ii) with intent to rescue anything taken under a lawful process, distress or seizure.

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and is liable to imprisonment for five years; or

(b) an offence punishable on summary conviction.

**246.1** Every one who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for ten years.

**246.2** (1) Every one commits an aggravated sexual assault who

(a) uses a weapon during or at the time he commits a sexual assault; or

(b) commits a sexual assault that causes serious bodily harm.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

**246.3** (1) Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

(2) Nothing in subsection (1) prevents a judge from commenting on the credibility of a witness in his charge to the jury.

**246.4** (1) The rule that permits a previous consistent statement of a complainant to be admitted in evidence as a recent complaint is abrogated.

(2) In a proceeding for an offence in which a question is raised as to the consent of the complainant to the conduct of the accused, the complainant may give evidence of the making of a complaint concerning that conduct, but no evidence may be given of the particulars of the complaint unless the accused has questioned the credibility of the complainant on the basis of recent fabrication or previous inconsistent statement relating to that conduct.

(3) The judge in a proceeding referred to in subsection (2) is not required to give the jury any direction respecting the lack of a complaint concerning the conduct of the accused made within a reasonable time subsequent to the offence.

**246.5 (1)** Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no question shall be asked by or on behalf of the accused concerning the sexual activity of the complainant with a person other than the accused unless

(a) it relates to evidence that tends to show that the accused believed that the complainant consented to the sexual activity that is the subject-matter of the charge; or

(b) it tends to rebut evidence of the complainant's sexual activity that was previously introduced by the prosecution.

(2) No evidence is admissible under paragraph (1)(a) unless

(a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

(6) In this section, "newspaper" has the same meaning as in section 261."

**19.** Sections 248 to 250 of the said Act are repealed and the following substituted therefor:

**"249. (1)** Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care or charge of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) For the purpose of proceedings under this section, it is not a defence to the charge that

(a) the person taken consents to or suggests the taking; or

(b) the accused believes that the person taken is sixteen years of age or more.

**250.** Every one who, not being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years, unlawfully has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child, is guilty of an indictable offence and is liable to imprisonment for ten years.

**250.1 (1)** Every one who, being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years,

(a) has the possession of that child in contravention of the custody or access provisions of a custody order in relation to that child made by a court anywhere in Canada, or

(b) where there is no custody order in relation to that child made by a court anywhere in Canada, has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child,

unless the parent, guardian or other person from whose lawful possession, care or charge the child was taken had consented to the taking, is guilty of an indictable offence and is liable to imprisonment for five years for an offence under paragraph (a) or to imprisonment for two years for an offence under paragraph (b).

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General.

**250.2** Sections 250 and 250.1 do not apply to a person who has the possession of a child in circumstances where the court is satisfied that such possession was essential for the welfare of that child, but the court shall not be so satisfied by reason only of the granting of a custody order in favour of the accused after he obtained the possession of that child.”

**20.** Subsection 256(1) of the said Act is repealed and the following substituted therefor:

“**256.** (1) Every person who procures or knowingly aids in procuring a feigned marriage between himself and another person is guilty of an indictable offence and is liable to imprisonment for five years.”

**21.** Paragraph 381(1)(a) of the said Act is repealed and the following substituted therefor:

“(a) uses violence or threats of violence to that person or his spouse or children, or injures his property,”

**22.** Paragraph 423(1)(c) of the said Act is repealed.

**23.** (1) Subparagraphs 429.1(a)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

“(ii) section 246.2,”

(2) Paragraph 429.1(b) of the said Act is repealed and the following substituted therefor:

“(b) the offence of attempting to commit any offence referred to in paragraph (a), other than an offence under section 222, or”

24. Subsection 442(3) of the said Act is repealed and the following substituted therefor:

“(3) Where an accused is charged with an offence mentioned in section 246.3, the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).”

25. Paragraph 483(c) of the said Act is amended by adding thereto, immediately after subparagraph (vii) thereof, the following subparagraph:

“(viii) section 245 (assault),”

26. Paragraph (b) of the definition “serious personal injury offence” in section 687 of the said Act is repealed and the following substituted therefor:

“(b) an offence or attempt to commit an offence mentioned in section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault).”

27. Section 727 of the said Act is repealed.

28. Subsection 745(1) of the said Act is repealed and the following substituted therefor:

“745. (1) Any person who fears that another person will cause personal injury to him or his spouse or child or will damage his property may lay an information before a justice.”

29. (1) Wherever the expression “serious bodily injury” appears in the definition “firearm” in subsection 82(1) and in paragraph 380(1)(b) of the English version of the said Act, there shall in each case be substituted therefor the expression “serious bodily harm”.

(2) Wherever the expression “grievous bodily harm” appears in subsection 25(3) and sections 34 and 35 of the English version of the said Act, there shall in each case be substituted therefor the expression “serious bodily harm”.

(3) Wherever the expression "bodily harm" appears in subsection 38(1), paragraph 49(b), section 77, paragraph 78(b), paragraph 79(1)(b) and sections 83 and 204 of the English version of the said Act, there shall in each case be substituted therefor the expression "bodily injury".

(4) Wherever the expression "bodily harm" appears in paragraph 229(a), subsection 231(1) and section 232 of the English version of the said Act, there shall in each case be substituted therefor the expression "serious bodily harm".

30. (1) Wherever the expression "blessures corporelles graves" appears in paragraph 35(c) and 380(1)(b) of the French version of the said Act, there shall in each case be substituted therefor the expression "lésions corporelles graves."

(2) Wherever the expression "lésions corporelles" appears in paragraph 49(b), subsection 83(1) and section 204 of the French version of the said Act, there shall in each case be substituted therefor the expression "blessures corporelles."

(3) Wherever the expression "lésion corporelle" appears in subsection 38(1) of the French version of the said Act, there shall in each case be substituted therefor the expression "blessure corporelle".

(4) Wherever the expression "lésions corporelles" appears in paragraph 229(a), subsection 231(1) and section 232 of the French version of the said Act, there shall in each case be substituted therefor the expression "lésions corporelles graves".

#### CANADA EVIDENCE ACT

31. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

"(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 166 to 169.1, 195, 197, 200, 246.1, 246.2, 249, 250, 250.1, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged."

(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

"(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1 or 245.2 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged."

## DIVORCE ACT

32. Paragraph 3(b) of the *Divorce Act* is repealed and the following substituted therefor:

“(b) has committed an assault involving sexual intercourse, an act of sodomy or bestiality or has engaged in a homosexual act;”

## EXTRADITION ACT

33. (1) Item 10 of Schedule I to the *Extradition Act* is repealed and the following substituted therefor:

“10. Sexual assault or aggravated sexual assault;”

(2) Item 22 of Schedule I of the said Act is repealed and the following substituted therefor:

“22. Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;”

(3) Paragraph (a) of item 24 of Schedule I to the said Act is repealed and the following substituted therefor:

“(a) sections 52, 58, 59, 77 to 79, 166 to 168, 174, 343 to 349, 351 to 354, subsection 355(1), sections 356, 358, 359, 363 and paragraph 423(1)(a) of the *Criminal Code*;”

(4) Items 8 and 9 of Schedule III to the said Act are repealed and the following substituted therefor:

“8. Sexual assault or aggravated sexual assault;

9. Abduction;”

(5) Item 19 of Schedule III to the said Act is repealed and the following substituted therefor:

“19. Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;”

## NATIONAL DEFENCE ACT

34. Section 60 of the *National Defence Act* is repealed and the following substituted therefor:

“60. A service tribunal shall not try any person charged with an offence of murder, manslaughter, or aggravated sexual assault committed in Canada.”



#### TRANSITIONAL AND COMMENCEMENT

35. An offence committed prior to the coming into force of this Act against any provision of law affected by this Act shall be dealt with in all respects as if this Act had not come into force.

36. For the purposes of paragraph 3(b) of the *Divorce Act*, as enacted by section 32 of this Act, a person who is found to have committed rape, as it was known prior to the coming into force of this Act, shall be deemed to have committed an assault involving sexual intercourse.

37. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

**Working Paper for Offences against Young Persons**

(Discussion Paper prepared by the federal  
Department of Justice dealing with  
Sexual Offences against Young Persons and  
revising some of the provisions of Bill C-53).

CRIMINAL CODE

1. The *Criminal Code* is amended by adding thereto, immediately after section 137 thereof, the following:

**“PART III.1  
OFFENCES AGAINST YOUNG PERSONS**

*Interpretation*

**137.1** In this Part,

“guardian” includes any person who has in law or in fact the custody or control of another person;

“sexual conduct” includes any touching of a sexual nature or any sexual performance, but does not include conduct of an affectionate nature that is normal in a family context;

“sexual exploitation”, in relation to a young person, means any sexual conduct where the young person is involved as a participant or otherwise;

“sexual performance” includes any pose, dance, photograph, motion picture, play or other visual representation in which vaginal, oral, or anal intercourse, bestiality, masturbation or sado-masochistic abuse, whether actual or simulated, or in which the lewd exhibition of the genitals, occurs or is depicted;

“visual representation” includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

*Sexual Exploitation of Young Persons*

**137.2** (1) Every one who engages in or procures the sexual exploitation of a person who

(a) is not his spouse, and

(b) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(a) at the time the sexual exploitation took place, he was under fourteen years of age; or

(b) he is less than three years older than the complainant.

**137.3 (1)** Every one who engages in or procures the sexual exploitation of a person who

(a) is not his spouse, and

(b) is fourteen years of age or more and is under the age of sixteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(a) at the time the sexual exploitation took place he was under sixteen years of age; or

(b) he is less than five years older than the complainant.

**137.4 (1)** Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under eighteen years of age, engages in or procures the sexual exploitation of that person is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one exercising authority over the complainant shall be found guilty of an offence under subsection (1) if he establishes that he is less than five years older than the complainant.

**137.5 (1)** Every one who, being the owner, occupier or manager of premises, permits the premises to be used for the purposes of the sexual exploitation of a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that he believed on reasonable grounds at the time the sexual exploitation took place that the complainant was sixteen years of age or more.

#### *Child Pornography*

**137.6 (1)** Every one who

(a) induces, coerces or agrees to use a person who is or appears to be under eighteen years of age to participate in any sexual conduct for the purpose of producing, by any means, a pornographic visual representation of such conduct,

(b) participates in the production of a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

(c) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct, or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of subsection (1), a visual representation is pornographic if an object of the production thereof is an appeal to the sexual appetite or creation of sexual arousal.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

(4) In any proceeding under this Part, where a court is satisfied that a matter or thing is a pornographic visual representation referred to in subsection (1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

#### *General*

**137.7** For the purpose of proceedings in respect of an offence under this Part, unless expressly provided otherwise in relation to any offence, it is not a defence to any charge that

(a) the complainant consented to any conduct of the accused; or

(b) the accused reasonably believed, at the time the conduct complained of took place, that the complainant had attained an age exceeding the age in relation to which the conduct was punishable.

**137.8** In proceedings in respect of an offence under this Part,

(a) no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person, unless it is evidence of the sexual activity that formed the subject-matter of the charge;

(b) evidence of reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant; and

(b) participates in the production of a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

(c) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct, or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of subsection (1), a visual representation is pornographic if an object of the production thereof is an appeal to the sexual appetite or creation of sexual arousal.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

(4) In any proceeding under this Part, where a court is satisfied that a matter or thing is a pornographic visual representation referred to in subsection (1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

#### *General*

**137.7** For the purpose of proceedings in respect of an offence under this Part, unless expressly provided otherwise in relation to any offence, it is not a defence to any charge that

(a) the complainant consented to any conduct of the accused; or

(b) the accused reasonably believed, at the time the conduct complained of took place, that the complainant had attained an age exceeding the age in relation to which the conduct was punishable.

**137.8** In proceedings in respect of an offence under this Part,

(a) no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person, unless it is evidence of the sexual activity that formed the subject-matter of the charge;

(b) evidence of reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant; and

(c) no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.”

2. Sections 140 and 141 of the said Act are repealed and the following substituted therefor:

“140. Where an accused is charged with an offence under section 149 or 156 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.”

3. Sections 146 and 147 of the said Act are repealed and the following substituted therefor:

“147. No person shall be deemed to commit an offence under section 144, 145 or 150 while that person is under the age of fourteen years.”

4. Sections 151 to 154 of the said Act are repealed.

5. Sections 166 to 168 of the said Act are repealed.

6. Section 175 of the said Act is repealed.

7. The definition “offence” in section 178.1 of the said Act is amended by striking out the reference to “79 (causing injury with intent)” where it occurs therein and substituting a reference to “79 (using explosives)” and by adding, immediately after the reference to “132 (prison breach)” a reference to “137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons),”.

8. All that portion of section 213 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking an aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), 137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons), 143 (rape), 149 or 156 (indecent assault), subsection 246(2) (resisting lawful arrest), section 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if”

9. Subsection 214(5) of the said Act is repealed and the following substituted therefor:

“(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

- (a) section 76.1 (hijacking an aircraft);
- (b) sections 137.2 to 137.5 (sexual exploitation of young persons);
- (c) section 137.6 (pornographic visual representation of sexual conduct of young persons);
- (d) section 144 (rape), 149 (indecent assault on female) or 156 (indecent assault on male); or
- (e) section 247 (kidnapping and forcible confinement).”

10. Subparagraphs 429.1(a)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

- “(ii) sections 137.2 to 137.6,
- (iii) section 144 or 145,”

11. Subsections 442(2) and (3) of the said Act are repealed and the following substituted therefor:

“(2) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1) and the prosecutor or the accused makes an application for an order under subsection (1), the presiding judge, magistrate or justice, as the case may be, shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

(3) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1), the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).”

12. Paragraph (b) of the definition “serious personal injury offence” in section 687 of the said Act is repealed and the following substituted therefor:

“(b) an offence or attempt to commit an offence mentioned in sections 137.2 to 137.5 (sexual exploitation of young persons), section 137.6 (pornographic visual representation of sexual conduct of young persons), 144 (rape), 145 (attempted rape), 146 (sexual intercourse with a female under fourteen or between fourteen and sixteen), 149 (indecent assault on a female), 156 (indecent assault on a male) or 157 (gross indecency).”

13. The said Act is further amended by adding thereto, immediately after section 745 thereof, the following section:

"745.1 (1) Any person who has reasonable grounds for believing that a person who has been found guilty of an offence under Part III.1 or sections 143 to 157 has been wandering or loitering in or near a school ground, playground, public park, bathing area or other place normally frequented by young persons may lay an information before a justice.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

(3) Where the justice or the summary conviction court is satisfied by the evidence adduced that the informant had reasonable grounds for laying an information, the justice or court may

(a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance as the court considers desirable for securing the good conduct of the defendant; or

(b) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance.

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20 respectively.

(5) The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section."

#### CANADA EVIDENCE ACT

14. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

"(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 137.2 to 137.6, 143 to 146, 148, 150 to 155, 157, 169, 175, 195, 197, 200, 248 to 250, 255 to 258 or 289 or paragraph 423(1)(c) of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged."



(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

“(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223 or 245 of the *Criminal Code*, where the complainant or victim is under the age of fourteen years, is a competent and compellable witness for the prosecution without the consent of the person charged.”

#### COMMENCEMENT

**15.** This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

**Criminal Law Reform Act, 1984**  
**(Excerpts from Bill C-19, 2nd Session, 32nd  
Parliament, 32-33 Elizabeth II, 1983-84)**

First Reading, February 7, 1984

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Criminal Law Reform Act, 1984*.

**PART I**  
**CRIMINAL CODE**

35. Subsection 150(3) of the said Act is repealed and the following substituted therefor:

“(3) Notwithstanding subsection 660(1), where a court determines that a female person is guilty of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court may, instead of convicting that person, discharge her under section 660 of that offence.”

36. Subsection 159(8) of the said Act is repealed and the following substituted therefor:

“(8) For the purposes of this Act, any matter or thing is obscene where a dominant characteristic of the matter or thing is the undue exploitation of any one or more of the following subjects, namely, sex, violence, crime, horror or cruelty, through degrading representations of a male or female person or in any other manner.

“(9) Where a court convicts a person of an offence under this section, it shall make an order declaring the matter or thing by means of or in relation to which the offence was committed forfeited to Her Majesty in right of the province in which the proceedings took place, for disposal as the Attorney General may direct.”

**48.** Section 195.1 of the said Act is amended by adding thereto the following subsection:

“(2) In this section,

“prostitution” includes obtaining the services of a prostitute;

“public place” includes a motor vehicle located in or on a public place.”

**58.** Section 253 of the said Act is repealed.

**206.** The heading preceding section 662 and sections 662 to 667 of the said Act are repealed and the following substituted therefor:

*Restitution*

**665.** (1) Where an offender is convicted of an offence, the court may make an order that an offender shall, on such terms as the court may fix, make restitution to another person in one or any combination of the following ways that is applicable and appropriate in the circumstances, namely,

(a) subject to subsection (3), in the case of property obtained by the offender as a result of the commission of the offence, by returning the property to that person or to someone designated by that person if that person is the lawful owner or lawfully entitled to possession of the property;

(b) in the case of damage to, or the loss or destruction of, the property of any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying to that person an amount not exceeding the replacement value of the property on the date the order is imposed less the value of any part of the property that is returned to that person as of the date it is returned, where such amount is readily ascertainable;

(c) in the case of bodily injury to any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying an amount equal to all special damages and loss of income or support incurred as a result of the bodily injury, where the value thereof is readily ascertainable;

(d) by paying an amount of punitive damages

(i) where the offender is an individual, not exceeding two thousand dollars in respect of a summary conviction offence and not exceeding ten thousand dollars in respect of an indictable offence, and

(ii) where the offender is a corporation, not exceeding twenty-five thousand dollars in respect of a summary conviction offence and in an amount in the discretion of the court in respect of an indictable offence; and

(e) subject to subsection (2), where the person to whom restitution is to be made and the offender agree on restitution, by making restitution in the manner provided for in the agreement.

(2) The agreement referred to in paragraph (1)(e)

(a) may provide that the offender shall make restitution in any manner, for example, by

(i) returning property obtained as a result of the commission of the offence or other property in lieu thereof or paying a sum of money to that person, or

(ii) performing the unpaid work specified in the agreement as restitution to that person for any loss, damage or injury suffered by that person in respect of which restitution under paragraph (1)(b) or (c) may be ordered to be made;

(b) shall not provide that the offender shall pay an amount for punitive damages; and

(c) shall be in writing and filed with the court, where the court so directs.

209. The said Act is further amended by adding thereto, immediately after the renumbered section 668.29, the following heading and sections:

#### *Dangerous Offenders*

668.3 In Section 668.31, "serious personal injury offence" means an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(a) the use or attempted use of violence against another person, or

(b) conduct endangering or likely to endanger the life or safety of another person

and for which the offender may be sentenced to imprisonment for ten years or more.

668.31 (1) Where, on an application made following the conviction of an offender, it is established to the satisfaction of the court, at the time of the sentencing hearing held pursuant to subsection 646(1), that the offence for which the offender has been convicted is a serious personal injury offence and

(a) is of such a brutal nature as to compel the conclusion that the offender constitutes a threat to the life, safety or physical well-being of other persons, or

(b) forms a part of a pattern of repetitive behaviour by the offender showing a failure to restrain his behaviour and a wanton and reckless disregard for the lives, safety or physical well-being of others,

the court shall impose a sentence of imprisonment for life in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted.

(2) No application shall be heard under this section unless

(a) the Attorney General of the province in which the offender was tried gives, before or after the making of the application, his personal consent in writing to the application;

(b) notice was given by the prosecutor to the offender or his counsel, before the offender pleaded to the offence, that an application would be made under this section on conviction;

(c) at least seven days notice is given to the offender by the prosecutor, after the making of the application, outlining the basis on which it is intended to found the application; and

(d) copies of the notices referred to in paragraphs (b) and (c) are filed with the clerk of the court."

**210.** (1) Section 669 of the said Act is amended by adding thereto, immediately after paragraph (a) thereof, the following paragraph:

"(a.1) where the provisions of section 592 have been complied with, in respect of a person who has been convicted of second degree murder where he has previously been convicted of culpable homicide that is murder, however described under this Act, that he be sentenced to imprisonment for life without eligibility for parole until he has served twenty-five years of his sentence;"

(2) Section 669 of the said Act is further amended by striking out the word "and" at the end of paragraph (b) thereof and by adding thereto the following paragraph:

"(b.1) in respect of a person who has been sentenced to imprisonment for life under section 668.31, that he be sentenced to imprisonment for life without eligibility for parole until he has served ten years of his sentence; and"

**214.** Part XXI of the said Act is repealed.