

DISTRICT COURT OF ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ROSS WISE and 294555 ONTARIO LTD.,
Accused.

BEFORE: THE HONOURABLE JUDGE H.R. LOCKE

APPEARANCES:

I. SCOTT, Esq.,

For the Crown

R.J. CARTER, Esq.,

For the accused Wise

J.D. McCOMBS, Esq.,

For the numbered company

The Court House
361 University Ave.,
Toronto, Ontario

June 22, 1990

REASONS FOR JUDGMENT

5 did in fact sell and distribute within the meaning of the words employed in Section 163 of the Criminal Code.

The accused re-elected to be tried by a judge alone. In the result, I have heard evidence relating to a constitutional attack upon the indictment as well as evidence and argument with respect to the obscenity issue as it relates to each count. I propose to describe each item of evidence before I deal with the constitutional and obscenity issues.

15 THE EVIDENCE

There are two broad categories. The first consists of books, movies, videocassette, so-called novels, and a large number of magazines all glossy in composition, most in colour, all of them depicting every sexually oriented acts known to the human race with the possible, but unlikely exception of what is said to be found in the Kamasutra.

25 The second is the testimony of experts, some of whom are professors or other academics. One is a medical doctor specializing in sex therapy. One is a psychologist. These witnesses were qualified as specialists in the field known to the community at large as pornography. A number of the exhibits at trial are academic papers, published reports, some authored by these witnesses, transcripts of interviews in which some participated. Yet others are printed results of

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Reasons for Judgment,
(Locke, Dist.Co.J.)

5 dehumanizing violence toward women. I find them all obscene
within the meaning of the Criminal Code, along with the
coloured catalogue contained in a box which holds one of the
10 films (Exhibit 15). It shows scenes which vividly depict
women tied up with ropes and being subjected to the infliction
of pain upon them by other women. The victims' breasts are
being pinched and twisted. Women are shown dominating men by
riding on their backs as if they were animals, and pulling
their hair. In yet others, a near naked woman is shown
15 assaulting by slapping the buttocks of her female victim.

These films were found by a police officer in a
filing cabinet or a desk drawer in Mr. Wise's office. Count
13 alleges that this material was possessed by the accused for
20 the purpose of distribution.

Mr. McCombs submits that by the very location
where the material was found not in the warehouse area where
other material was located at the accused's premises on
25 Britain Street in Toronto, the Crown has failed to prove that
this material was possessed intentionally by the accused for
the purpose of distribution within the meaning of those words
contained in the Criminal Code.

30 It is argued that not being found in the
warehouse, the material may have been samples for his
acceptance or rejection. They were not at the time they were

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5 publication "300 Cotton Panties and Bare Bottoms" depicts a
female girl who notwithstanding the mild suggestion of some
pubic hair is obviously pre-pubescent. The centrefold of the
magazine "Young Girls" (No. 6) depicts a very young female,
10 totally naked except for her running shoes and socks, lying on
a child's bed with head on a teddy bear while she displays a
very close-up explicit photograph of her total lower genital
area. The first seven pages including the front cover of
another magazine entitled "Young Girls" depicts a very young
15 female person dressed in childish clothes explicitly showing
her genitals and wearing a childlike ribbon in her hair.

The magazine "Young and Lonely", page 13,
depicts a very young female person sitting on a chesterfield
20 with her legs spread apart. She has a childlike haircut.
there is a bow prominently displayed in her hair. She has
lace at each wrist and is holding a curling iron in her left
hand with its tongs encompassing the nipple of her right
25 breast as if it self-mutilation.

The magazine entitled "Baby Dolls" discloses a
totally naked female obviously barely pubescent, displaying
bare breasts under a pulled-up pink jersey. She has a pink
30 ribbon in her hair tied in a childish hairstyle. The lower
left hand corner of the front cover discloses the same female
totally naked again displaying her genitals. She, in that

5 appears to be a fax machine stand are all used as platforms upon which sexual intercourse and fellation occur between the two people involved.

10 The dominant theme displayed in the many photographs in both magazines is the sexual performance of the secretary with the male person who is dressed up to appear to be her employer.

15 The publication "Bit Tits For A Hard Boss", the last five photographs, excluding the one on the back cover clearly depicts the male person ejaculating into the face and neck of the female.

20 The publication "Hot Lust No. 5" is in essentially the same format. Three mature adults are involved. Two are female. The other is male. The intention is to depict one of the females in the position as a housemaid. The other plays the wife of the husband. Both women appear to be either competing with one another or
25 cooperating with each other in conferring such sexual favours as fellatio, buggery and sexual intercourse on the man. There are also very explicit acts of a combination of fellatio on the male and lesbianism with respect to the two women all at the same time.

30 The publication "Roly-Poly" involves a series of photographs in its 62 odd pages. Each involves the sexual

5 The first publication is "Sweet Cocks No. 9".
The allied publication is "Those Bad, Bad Boys". Both
magazines display male homosexual themes. They do not contain
physical violence. They involve buggery and fellatio between
two obvious adult consenting males.

10 The back covers of both magazines contain a
number of adds for sexually violent magazines involving
whipping, violence by one male toward another male who is hung
upside down by his ankles while being assaulted. One of the
15 ads is called "Master's Degree". It discloses a naked man
wearing a belt and a leather neck piece going around his neck
and down to his naval beating another man who is tied up
against a wall by his wrists and a whip is used. The back
20 cover of "Those Bad Boys" depicts a female naked from the
waist up wearing leather to her knees and holding a whip.

The other magazine is entitled "Glamour in
Bondage". It shows a female naked from the naval up. Her
25 mouth is gagged. She is held attached to something with a
number of straps both over and under her two bare breasts with
another strap lashing her diagonally in the area of her naval.
The third shows a virtually naked female tied up on the front
cover of a magazine called "Captured". The fourth is entitled
30 "Hogtie". It depicts a naked female whose mouth is gagged and
she is tied to a chair with ropes binding her arms and holding

5 sexual acts with one another. The poses struck by those
photographed are explicit and otherwise unremarkable.

Under the title of "Slim and Slinky" being two
lesbian women, the printed dialogue in part states as follows:

10 "When Syble backs her sweet
behind into Kelly's pussy, it's
all Kelly can do to keep from
throwing her down on the bed and
raping her with a dildo."

15 At another point, the printed dialogue when
describing the sexual antics of two blonde women has the
following to say:

20 "One game they play is when
Miranda pretends to be a man and
attacks Candy sexually. She
uses a plastic dildo to complete
the act of fucking."

25 Other than these two excerpts, the publication
is exclusively female homosexual lesbian disclosing sexual
activity between two women.

30 The publication "Lady Lovers" retailing for
\$45. per magazine discloses photographs of essentially
consenting adult homosexual lesbian women and contains no
dialogue of the type I have mentioned that pertains to the

5 The publication "Back Door Beginners" features anal intercourse as its theme. It is heterosexual in context. There is one quote in the written narrative such as it is and it is as follows:

10 "His huge cock was tearing her asshole apart, but she loved it."

COUNTS 19 and 20 - Magazine - "Sinful Pleasures Annual" (No. 2)

15 This magazine appears to contain essentially conventional heterosexual sexual activities. A substantial portion of the publication at the beginning contains photographic scenarios wherein an adult female dressed to resemble a nurse in a medical office performs fellatio upon a male model dressed to resemble a doctor. In other photographs another female appears to be conferring sexual favours on the male.

25 Counts 21 and 22 - Magazine - "Poppin Mamas" (No. 2)

30 This publication is devoted entirely to pregnant women. All of the photographs depict pregnant women in sexually provocative postures. There is no violent content and no depiction of dehumanizing content.

Exhibits 23 and 24 are so-called novels: 1.

5 academics by nature and essential experience. Three are
professors holding teaching positions at York University
(Professor Check), the University of Western Ontario (Dr.
William Fisher), Santa Barbara Community College, U.S.A. (Dr.
Edward Donnerstein). Dr. Beryl Chernick practices medicine in
10 the special discipline of sex therapy. She also holds
teaching positions at the University of Western Ontario.

I have, with care, considered the total
evidence of all the expert witnesses. Some, but certainly not
15 all of it I now summarize.

Professor Check testified as the only Crown
witness on this subject. He examined all of the exhibits
seized by the police from the accused. He offered his opinion
20 with regard to whether or not each was obscene. In that
process he classified each publication within one or more of
three distinct categories he himself established.

His special area of study concerns the effects
25 of sexual violence in the media, the effects of sexually
explicit images, and the study of sexual abuse with regard to
children and women. His three tier classification consists
of: a) sexually violent pornography, b) nonviolent but
dehumanizing pornography, c) erotica.

30 He testified to the research work he has done
regarding the effects of pornography, media violence and his

5 atmosphere, location, manner of dress and pose, intended to be children. In effect, he categorized these magazines as child pornography.

10 He was of the opinion that the average Canadian would not tolerate this type of material. The two magazines, "Baby Dolls", he thought were good examples of what the average Canadian would conclude the intent of those magazines to be, namely, to portray childlike pornography to appeal to someone who is perhaps interested in having sex with children.

15 In his view Exhibit 13, "Big Tits Secretaries" and "Tits For A Hard Boss", he classified as nonviolent but dehumanizing because both publications employed persons cast in the role of professional women being used for the purpose of sexual gratification by men. He categorized "Hot Lust No. 5" in the same category where a woman is employed in her professional role as a housemaid is used by her employer for sexual purposes.

25 "Roly-Poly" involving all obese women has one violent element, he says. He declined to give an opinion or to categorize this publication.

30 He said that Exhibit 14 "Sweet Cocks" and "Those Bad Boys" and "Slaves to Anal Sex" he categorized as having "proper straightforward male homosexual themes with no violent or nonviolent dehumanizing content". The back

5 dehumanizing content.

The magazines "Rear Ended", "An Anal
Arrangement" and "Back Door Beginners", Exhibit 1 and 7,
contain heterosexual depictions exhibiting a number of persons
engaging in buggery as well as conventional sexual activities.
10 He saw no sexually violent content nor dehumanizing violent
content.

He found the publication "Sinful Pleasures No.
2" to contain what he called conventional heterosexual
15 activities for the most part with the exception of one portion
involving 12 pages he found that portion to be nonviolent
dehumanizing in nature because it depicted a nurse performing
sexual favours upon a person dressed as a doctor.

20 Dr. Chernick's evidence, while interesting,
instructive, and learned, I found somewhat unsettling.

Her discipline requires her to do all possible
to either initiate or regenerate dormant sexual drives and
25 desires in her patients. This requires in the course of
patient therapy, the use of sexually explicit material
including books, sexually explicit magazines, pornographic
films, and the like.

30 To render help a sex therapist requires the
establishment of a close rapport with the patient. The object
is to find ways to enrich the sexual relationship of the

5 Magazines of this type, in her view, depending on the context,
would be positive in the sense that they could have a positive
presumably beneficial use. Anal intercourse she said is a
common form of sex play among some people. Indeed in some
parts of the world it is used as a form of birth control.

10 She thought that the homosexual magazines
depicting the "Glory Hole" and the very close-up picture of a
large penis sticking through the partition of a men's toilet
was dangerous from a public health point of view.

15 I copied part of her evidence as having said
that in her medical specialty "If what you are doing doesn't
work, move on to something that does."

20 She has never seen such a magazine as Exhibit
19 "Poppin Mamas".

25 She found bondage involving the infliction of
pain of "concern" to her. She qualified that statement by
saying that if both of her patients or her patient and the
patient's partner agree to it then presumably she would
acquiesce in therapy involving that subject. She would use
such magazines that are now exhibits in her medical practice
depending on the needs of the patient and the context of the
therapy. She did agree that this type of material is capable
30 of being employed for the purpose of sexual arousal.

She found "Ram Rodded Daughter", Exhibit 20,

5 particularly in the fields of stereotyping television
violence involving aggressive behaviour on children. Sexually
explicit matter does not produce much effect on children. In
that field he said the mass media plays a small role. He
disagreed with Professor Check that adolescents are heavy
10 users of pornographic material.

I bear in mind that Professor Donnerstein
testified from essentially an American context. That is the
environment in which he lives and functions professionally.
15 This is reflected in his strong view that censorship in any
form for any reason is abhorrent and unacceptable.

Not untypically, the furthest he would go in
winkling out unacceptable content in various forms of
20 publication would be merely to bring the attention of the
community at large to bear by x-rating certain parts of what
is published or otherwise disseminated. He agreed that
sexually explicit violent material does have an effect on
subjects tested in the laboratory. He described present day
25 research as "unbelievably inconsistent". He said it was very
hard to answer a question on whether or not sexually explicit
content has any effect on the reader.

30 He observed that there is much difficulty in
defining pornography and erotica and then to categorize
various subjects within those two fields. He was of the view

5 limitations imposed on what he says is the fundamental freedom
of expression (s.29b)) does not constitute "such reasonable
limits prescribed by law as can be demonstrably justified in a
free and democratic society" as contemplated by s.1 of the
Charter.

10 I am asked to find that every one of the
exhibits in this trial, regardless of subject or content or
the activity portrayed in them, falls within and is protected
by s.2(b) of the Charter. That is so in view of the wide net
15 cast by such landmark decisions as the majority judgment in
the Supreme Court of Canada case of Irwin Toy Ltd. vs. Quebec
(Attorney General) (1989), 58 D.L.R. (4th) 577 at 606 where
Chief Justice Dickson said, and I quote:

20 "Freedom of expression was
entrenched in our Constitution
and is guaranteed in the Quebec
Charter so as to ensure that
25 everyone can manifest their
thoughts, opinions, beliefs,
indeed all expressions of the
heart and mind, however
30 unpopular, distasteful or
contrary to the mainstream.
Such protection is, in the words

5 decision: freedom of expression
... is applicable not only
'information' of 'ideas' that
are favourably received or
10 regarded as inoffensive or as a
matter of indifference, but also
to those that offend, shock or
disturb the State or any sector
of the population. Such are the
15 demands of that pluralism,
tolerance and broadmindedness
without which there is no
'democratic society'."

20 In essence, Mr. McCombs takes the position the
words "freedom of expression" embrace all contents of
expression including the expressive components of human
activity provided always that such expressions convey or
25 attempt to convey meaning.

30 He further urges that such activities ranging
from creating, recording, to distributing words, films,
photographs, paintings and sculptures all convey a meaning and
therefore fall within the parameters of freedom of expression
which is restricted by s.163(1)(a) and is not saved by s.1 of
The Charter.

5 Primarily, the court held that the obscenity section of the
Criminal Code did infringe that section of the Charter.
However, secondly, it was held that such a limitation on the
freedom of expression was reasonable in a free and democratic
10 society. In its Charter discussion (2.2(b)) which was prior
to the Supreme Court of Canada setting out the test in the
Oakes case, it was held that there were sufficient legitimate
concern expressed by certain segments of society to justify
restricting the freedom. The Court found further that the
15 limitation was reasonable, in view of the previous case
precedent disclosing a flexible standard for judging what was
obscene and what was not. Finally, the Court found obscenity
provisions to be "prescribed by law" being rules sufficiently
20 precise to be recognized and determined by an ordinary citizen
exercising common sense and intelligence.

In 1985 R. vs. Wagner (1985) 43 C.R. (3) 318
held that while s.159 of the Criminal Code (now s.163)
25 infringed s.2(b) of the Charter, such was a reasonable limit
within the meaning of s.1 of the Charter.

The British Columbia Court of Appeal in R vs.
Red Hot Video Limited (1985), 45 C.R. (3) 36, interpreted
30 "reasonable limits" in the context of the Criminal Code
obscenity provisions. As I understand it, the Court concluded
that s.159(8) is a reasonable limitation on one's freedom of

5 dressed as children in the context of a child's nursery being surrounded by toys and other childish things.

In Irwin toy v. Quebec Attorney General, the Supreme Court of Canada establishes the test to determine the scope of s.2(b) of the Charter. As well it applies the s.1 "Oakes test" to a freedom of expression.

10 In this regard, two decisions must receive comment. The first is that of The Honourable Mr. Justice Wright in the case of R vs. Butler (1989), 50 C.C.C. (3) 97. The second is a ruling on s.2(b) of the Charter as it pertains to the obscenity sections of the Criminal Code handed down by my sister Judge Charron. The ruling is dated the 26th day of January, 1990. I do not believe it is as yet published.

15 Mr. Justice Wright considered whether s.2(b) of the Charter was infringed by the obscenity provisions of the Criminal Code. He held that it was. Following the Oakes decision reasoning, he said:

25 "In making its assessment under Section 1, the Court should be satisfied that the legislation provides an intelligible standard to be applied in order 'to determine if the restriction is justified'. The Court should

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legitimately prescribed according to the requirements of Section 1 of the Charter. The material contains scenes involving violence or cruelty intermingled with sexual activity, or depicts lack of consent to sexual contact, or otherwise can be fairly said to dehumanize men or women in a sexual context."

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With respect to other pornographic items before him, the learned justice held that there was no objective sufficient to justify restricting the freedom of expression. He said:

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"The material covered by the remaining counts in the indictments, relating to the magazines and videos, reflects consensual activity by adult individuals not involving force, duress or cruelty. In this context I am unable to conclude that the depiction of the human

5 Judge Charron addresses the issue of whether
s.2(b) is infringed by s.163 of the Criminal Code. She notes
that while:

10 "Certain objectionable forms of
expression, such as violence,
will fall outside the scope of
protection; all content of
expression falls under the
constitutional guarantee."

15 She then observes:

20 "Of course activities having no
expressive content would fall
outside the scope of the charter
section."

25 She held, quite correctly if I may say so, that
the distribution of records and tapes is a form of expression
that is "clearly not objectionable" and "also aims to convey a
meaning". I hold that this observation applies to all of the
exhibits before this court in this trial. They do attempt at
least to convey a meaning. She found that the intention of
the obscenity provisions of the Criminal Code and the language
of the Irwin Toy decision, is "to restrict the content of
30 expression by singling out particular meanings that are not to
be conveyed."

5 Dr. Check's evidence consisting of his expert
opinions regarding the danger of the dissemination of the
exhibit material he studied is limited by reason of the
"laboratory methodology" that he was obliged to employ in
order to create his statistics.

10 Professor Donnerstein was asked to spend a good
deal of the time during which he testified criticizing
Professor Check's methodology. The balance of his evidence
included his philosophical approach to what he viewed as the
15 balancing between the undesirability of censorship in any form
to his view of the ever changing scientific data results on
the subject of proven harm of hard-core pornography to those
members of the general public who consume it. At the end of
20 it all, Professor Donnerstein, as he testified, seemed to me
to be in the very process of changing some of his previously
held professional opinions on some of these subjects.

25 Dr. Chernick practices medicine in the
discipline of sex therapy. Her obvious dedication to whatever
method would assist her sexually maladjusted patients, even to
the point where as I understood her evidence, she would not
totally immediately reject using such printed material as "Ram
30 Rodded Daughter" which extols incest, leaves me in some state
of uneasiness concerning her evidence.

At the end of all of the evidence of each of

5 subverts important social values
 and policies even though there
 may not be proof that they
 conduct in question caused
 direct, demonstrable harm to
10 others."

 In my view, pursuant to the Oakes decision,
harm to society resulting from the undue exploitation of sex
or sex in any one or more of the following subjects, namely,
15 crime, horror, cruelty and violence, is of pressing and
 substantial concern.

 The means chosen again in my view are
proportionate to that objective certainly regarding violent
20 and dehumanizing pornography. They are perhaps somewhat less
so in the nonviolent dehumanizing pornography but they are
nevertheless in that latter category, clear. The Parliament
of Canada over the many amendments to the wording of the
25 relevant section of the Criminal Code which is not s.163, has
consistently written the section, which has been the subject
of more than one amendment, in a temperate and restrained
manner consistent with its object of protecting society in
30 general, and members of it in particular from a harm which may
not be scientifically directly proven but nevertheless is a
harm which is demonstrable. In my respectful view the

5 I repeat here the passage in the Edward Books
decision as quoted in the Irwin Toy case:

"The courts are not called upon
to substitute judicial opinions
for legislative ones as to the
10 place at which to draw the
"line."

15 Section 163(1) certainly does limit freedom of
expression. In that regard it is in conflict with the
relevant section in the Charter of Rights. . However, the
limitation is proportional to the objective as I say. That
objective is much too important to be left solely in the hands
of pornographers and others who, for money, for example, cater
20 to the lowest wrung of the market by graphically pictorially
extolling the dubious joys of unbridled sexual fellatio with
unknown strangers as partners through the "glory hole" in the
partitioned wall of men's toilets in public washrooms.
(Exhibit 16).

25 It is difficult to think of a better and
quicker way for gullible members of the public to catch aids
only to then slowly die all to the general detriment of
themselves and the public. Surely, for example, to restrict
30 that type of publication in a free and democratic society is
fair and proportionate to this obvious public danger in

5 I am invited to "read out" of the section the words "he establishes" thereby allowing the accused to rely on the defence when reasonable doubt is disclosed in the evidence.

10 Section 163(3) is inconsistent with the provisions of Section 11(d) of the Charter. I agree with Judge Charron that to find the whole section invalid would proceed unnecessarily far. The section should be interpreted as if those words were not present thus permitting the accused
15 to rely on "a public good" defence if such is raised in the evidence.

I turn now to the obscenity issue. Obscenity is defined in s.163(8) of the Criminal Code:

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

30 The Supreme Court of Canada, in Towne Cinema Theatres Ltd. (1985), 45 C.R. (3) 1 stipulated two tests for

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harmful to society, there is no necessary connection between these two concepts. Thus, a legal definition of 'undue' must also encompass publications harmful to members of society and, therefore, to society as a whole."

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The court went on to develop "the harm to society test" and said, again I quote:

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"Even if certain sex-related materials were found to be within the standard of tolerance of the community, it would still be necessary to ensure that they were not 'undue' in some other sense, for example, in the sense that they portray persons in a degrading manner as objects of violence, cruelty or forms of dehumanizing treatment."

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In R v. Wagner (1986), 50 C.R. (3) 175, the Alberta Court of Appeal appears to have on the basis of the "harm to society test" found certain videotapes to be obscene.

5

COMMUNITY STANDARDS

This test is most often applied in the case law. In the Towne Cinema Theatres case, the Supreme Court of Canada made it clear that "tolerance not taste" is the essential ingredient by which to judge material. It appears that the case law has had a trend to differentiate or classify material according to its contents under the following headings: a) Those which depict "present crime, horror, violence, or cruelty in association with ... sexually explicit activity, b) Those which portray the participant in a manner that is degrading or dehumanizing and, c) Those which portray "merely present explicit exotica" (R. v. Wagner, Shannon, J., Queen's Bench, page 322).

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It seems to me, setting aside momentarily the words used to identify and define these categories, those publications which contain sex mixed with violence and cruelty will not be tolerated by Canadian community standards. This is made clear in such cases as the Wagner decision, supra: R. v. Doug Rankine and Co. Ltd., and Act 3 Video Productions Ltd. (1983), 9 C.C.C. (3) 53, a decision of The Honourable Judge Borins of this court; R. v. Video World Ltd. (1985), 22 C.C.C. (3) 331 (The Manitoba Court of Appeal) at 339.

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It is equally clear that the absence of such

5 cunnilingus and anal sex -- as
for the other films which I am
satisfied are obscene and which
do not contain scenes of sex and
10 violence and cruelty, it is the
degree of explicitness of the
sexual acts which leads me to
the conclusion that they exceed
community standards." (Page
15 70).

A recent British Columbia Court of Appeal
decision in R. v. Pereira-Vasquez (1988) 43 C.C.C. (3) 82
appears to disagree with the view of Judge Borins of what the
20 community will tolerate. The Court of Appeal in the case
said, and I quote:

25 "The conclusion that
contemporary community standards
will tolerate portrayals of
virtually any kind or degree of
sexual activity except those
which include violence and
30 cruelty as one directly at odds
with a basic thrust of the line
of cases decided since the

5 first two categories will, generally speaking, fall below the
community standard.

10 I agree that the standard of tolerance must be
national rather than local. It must be contemporary as times
do change and ideas do change with them. The standard must be
objective and not subjective. The issue is one of tolerance
and not taste. It must be identified without regard to the
audience to whom it is directed. Certainly tolerance must be
15 preferred over proscription especially where doubt exists. I
also agree with Mr. McCombs that the decision of whether the
material in question exceeds contemporary community standards
of tolerance rests with the judge who may draw on his or her
own knowledge although evidence is admissible to assist
20 regarding that issue. I respectfully disagree with the
defence's suggestion that merely because a portion of a
particular item is obscene, for example, the advertisement on
the back of a magazine, it does not follow that the item
itself is obscene. In my view, if such an advertisement
25 exists and is of itself obscene, then the publication in which
the advertisement appears, provided it falls within s.163 of
the Criminal Code, will be held obscene.

30 I also disagree that video tape recording is
not encompassed by the provisions of s.163 of the Criminal
Code. I find that the words of the section are sufficiently

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I turn now to the actual exhibits. In the process of deciding whether each exhibit is obscene or not, I have borne in mind all of the evidence that I have heard and I rely essentially upon the community standards test. That test has been set out by Judge Borins in the Doug Rankine decision and as refined by the British Columbia Court of Appeal in the case of R. v. Pereira-Vasquez.

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I find that the publication "Hot Cameron", Exhibit No. 10, to be totally explicit, totally sexual in its content but for the reasons given prior in this judgment, to be erotic only. It is not obscene. The accused will be found not guilty on Counts 1, 2 and 5. Counts 3, 4, and 6 concern a motion picture recorded on videocassette tape entitled "Double Penetration". However explicitly conventional and unconventional acts of sexual intercourse and buggery may be, bearing in mind that portion which shows one woman slapping the backside of another, I am in some doubt concerning that latter display of mild physical violence. I find that the total film discloses consenting adults indulging in sexual acts essentially devoid of physical violence or other dehumanizing content regarding to either the male sex or the female sex. I hold the cassette to be not obscene. The accused is acquitted with respect to these counts.

Counts 7 and 8 include nine magazines. Every

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vice versa. In addition, it is sexually explicit to a point which exceeds community standards. For example, it discloses male semen being ejaculated into the face of the female. The publication "Hot Lust" discloses even more graphically the same type of depiction. It involves not one but two female recipients of the semen. Both publications are dehumanizing. Both grossly exceed community standards. Each is in law obscene. The accused will be convicted on Counts 9 and 10.

10
Counts 11 and 12 deal with three magazines -
15 "Those Bad, Bad Boys", "Sweet Cocks No. 9" and "Slaves of Anal Sex". For the reasons I have already given, each of these publications exceeds public standards because each, in my view, unduly exploit sex. In addition, they combine that exploitation in either content or in the advertisements surrounding that content with depictions of sexual cruelty and violence. The accused will be convicted on Counts 11 and 12.

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I have already found those publications described in Counts 13 and 14 to be obscene and on those counts the accused will be convicted.

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Counts 15 and 16 include three publications -
30 "The Best of All Male Cum", "Lady Lovers", and "Lesbians - Volume 2, No. 4". "Lesbians" is totally erotic and in my view not obscene. The same result occurs with respect to "Lady Lovers".

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Reasons for Judgment,
(Locke, Dist.Co.J.)

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with one another in acts of buggery. I do not find that the Crown has proven beyond a reasonable doubt that these publications are obscene within s.163 of the Criminal Code. The verdict of not guilty is entered on these counts.

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"Sinful Pleasures Annual (No.2)" (Counts 19 and 20) in my view its totality does not exceed what is acceptable under the community standards test. The accused are acquitted with respect to those counts.

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There will be an acquittal with respect to Counts 21 and 22 - "Poppin Mamas". There is no violent content. Nor does any part of the publication dehumanize sexually or otherwise. At most, it is erotic.

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As Judge Borins said in his Doug Rankine decision publications which consist substantially or partially of scenes which portray violence and cruelty in conjunction with sex or which degrades and dehumanizes people upon whom they are performed exceed the level of community tolerance. The publications and material contained in Counts 13 and 14 and Counts 23 and 24 essentially portray violence and cruelty in a totally sexual context. Those scenes degrade and dehumanize people. All of this material far exceeds the level of community tolerance. The publications upon which I have rendered convictions in this indictment which do not portray scenes of violence and cruelty also exceed the level of

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