

# Child porn too disgusting for legal excuses

Claire Hoy



Some lines simply should not be crossed.

Like kiddie porn, for example. But late last week, B.C. Supreme Court Justice Duncan Shaw tossed out a section of the Criminal Code which makes it illegal to possess child pornography.

The case involved 65-year-old John Sharpe, a divorced father of two and active homosexual pedophile who faced charges dating back to 1995. Sharpe was held by U.S. customs officials as he returned from Amsterdam via Seattle after a search of his baggage turned up 10 nude photos of teenaged boys. He also carried several copies of a collection of short stories he had written, entitled *Sam Paloc's Flogging, Fun and Fortitude, a Collection of Kiddie Kink Classics*.

More than a year later, police raided his apartment in the Vancouver neighbourhood of Kitsilano, arrested Sharpe and seized 14 boxes of computer disks, books and writings.

The B.C. government, happily, has already announced it intends to appeal the controversial ruling by Judge Shaw and no doubt it will eventually

end up in the Supreme Court of Canada for clarification.

B.C. Attorney-General Ujjal Dosanjh, wasting little time, said, "Crown counsel will seek to expedite this appeal as this case may have significant impact on other similar cases before the court."

Judge Shaw — while upholding the criminal prohibition against making and distributing child pornography — ruled that on the issue of possession the law is unconstitutional because "The intrusion into freedom of expression and the right to privacy is so profound that it is not outweighed by the limited beneficial prohibition."

He argued that the prohibition "extends to all persons including those

who make no harmful use of pornography. The prohibition also includes pedophiles, who, instead of preying on children, use pornography for very private purposes, such as relief from their affliction by masturbation."

Judge Shaw said there is no hard and fast evidence, only an assumption, that supports the fear that "materials that advocate or counsel sexual crimes with children have the effect of increasing the occurrence of such crimes."

"A person who is prone to act on his fantasies will likely do so irrespective of the availability of pornography."

Let's look at his rather selective arguments.

On the one hand, he is only too willing to accept the unproven notion that child pornography actually protects children by providing relief of pent-up sexual tensions for pedophiles, yet on the other hand he rejects the idea that giving a societal stamp of approval to possession of this stuff — which is exactly what his ruling would do if it were upheld — can have no impact at all on the preponderance of sexual crimes against children.

Is he really saying that societal sanctions, legal and otherwise, have no impact on behaviour? Surely he can't believe that.

Even more disturbing, however, is his complaint that the law is too broad because it applies to those "who make no harmful use of pornography."

Quite apart from the issue of whether or not child pornography is harmful by definition — as I believe it is — the fact is that pornography is clearly harmful to the children who are the subjects of it. How do you manufacture child porn without exploiting the children?

Judge Shaw contradicts himself by arguing that the mere possession isn't necessarily harmful to society, yet the manufacturing and distribution of child porn is. This is rather inconsistent. It's either harmful or it isn't. If it is, then it should be illegal to make it, distribute and possess it.

Yes, freedom of expression and privacy are important issues in our society. But surely protection of children from gross exploitation in this way is more compelling.

Sharpe goes so far as to argue, as he

told one journalist this week, that "Pornography is probably good for children. I think kids should explore pornography. I think it would be great if kids could access porn on their own."

He refused to say what age his youngest sex partner was, but he did say, "This is not a confession. But intergenerational sex, particularly involving adolescent boys, is a practice of long standing in society."

Indeed, it is. But then, so too is rape, robbery and murder, and that doesn't make any of them right.

A 1992 Supreme Court ruling on child pornography acknowledged that there is a lack of positive linkage between pornography and social evils but upheld the ban on possession because child pornography "appeal(s) only to the most base aspect of individual fulfillment" and does not merit constitutional protection.

Damn right. The sooner this wonky ruling is tossed out, the better off we'll be.

Claire Hoy is a Toronto writer and broadcaster.