

**NOTICE OF DECISION
UNDER SECTION 38(1)**

TO:



Title of Publication: The League Of Extraordinary Gentlemen Volume II
Other Known Title(s): The League Of Extraordinary Gentlemen Volume Two
Publisher: America's Best Comics LLC
Author: Alan Moore
Format: Comic
Country of Origin: USA
Language(s): English



Decision:

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.

Descriptive Note

Contains violence and sex scenes.

Display Conditions:

That when the publication is on public display, the classification given to the publication must be shown by way of a label issued in accordance with a direction under section 36A(2);

and

That the label must be affixed to the publication in order that the classification is brought to the attention of persons to whom the publication is displayed.

Direction to issue a label has been given.

OFLC No: 700014

... Please turn over

Submission procedure:

On 22 December 2006, a member of the public applied to the Chief Censor for leave to submit the comic *The League of Extraordinary Gentlemen Volume II* for classification. Leave was granted on 4 January 2007. The Chief Censor then directed that the library which held the copy of the publication submitted, and its publisher, America's Best Comics LLC, be notified of the application for classification and their right to make written submissions in the matter. The Secretary for Internal Affairs was also reminded of the right to make a written submission on the publication's classification. The lapse date for written submissions was 19 January 2007.

The applicant included in their submission the following statements:

The book is in the teen/kids comic section of the library.

There are pictures that show sexual activity that are not appropriate for children. The last couple of pages of the book (should anyone read them) have a picture of a man & woman sitting (upper-body) naked on bed and the reader is invited to put his fingers through the holes where the woman's legs should go & lick all the way up. Kids book??

No submissions have been received from any of the other interested parties.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act, the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publication:

The publication is a comic but arguably could be described as a graphic novel, which is a publication in hard cover that has not been serialised in comic books and is intended for mature audiences. The publication measures approximately 26 cm by 17 cm and contains 226 pages, excluding the front and back covers.

The League of Extraordinary Gentlemen Volume II is a satirical sci-fi comic written by celebrated writer Alan Moore (author of *V for Vendetta*). It is the second volume of a planned six-issue series. The vividly illustrated series is set in an alternative universe based on mythology and literature. This volume is set in 1898 and the characters are all taken from 19th Century literary fiction. It starts when aliens, about to be defeated on Mars, escape and invade the Earth. British military intelligence enlists the aid of the League of Extraordinary Gentlemen to defeat the aliens. Current members of this group include, Captain Nemo, Allan Quatermain, Dr Jekyll and Mr Hyde, Wilhelmina Murray (from *Dracula*) and Hawley Griffin (the invisible man). The aliens send out tripodal robots with powerful heat rays to burn and conquer England. Griffin betrays the league and is in cohorts with the aliens. Griffin attacks Murray and is in turn killed by Mr Hyde. Eventually Murray and Quatermain, who have a romantic relationship, obtain a biological weapon from the mad Dr Moreau which destroys the invaders.

The comic book also contains a meticulous 50 page travelogue that is an alternative history of the world based on international mythologies. A number of light-hearted games, fables and Victorian advertisements are also included.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

In over 150 pages of vivid animation drawings, usually formatted into nine boxes per page, are three pages containing drawings of sexual activity. On pages 98 and 100 Quatermain and Murray consummate their attraction to each other by having sex. In 11 boxes on these two pages they are depicted naked, breasts and buttocks displayed, engaging in sexual activity. He touches her breasts and is depicted in the missionary position. Later, on page 109, they are depicted fully clothed having sexual intercourse against a tree. Intimate kissing and stroking are part of the sexual conduct and the speech bubbles indicate passion and care between the couple.

While the genitals of the pair are not depicted there is no doubt they are having sex. However actual sexual contact is only shown in 11 of the 26 boxes on these pages. These small boxes in 2 out of 150 pages do not present a high extent of depictions of sex. However they do indicate that the publication is intended for mature entertainment and reflection. Amongst the many issues that the comic book examines is mature relationships and their associated feelings of love, betrayal and power. The tentative and gentle nature in which the characters in these segments treat each other are related to the final segments of the book in which they part company and suggest that these images are included for this purpose and not for salacious effect. This is reinforced by the unflattering manner in which the characters are rendered; Quatermain a scrawny old man and Murray an attractive woman but badly scarred around her neck.

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

Some light-hearted segments of the magazine include ribald Victorian advertisements (page 158) including a cure for "self-abuse", and a pseudo-Victorian postcard depicting a couple in a bed (page 224). She is topless and his arms are around her waist. There are two holes where her legs would be and the reader is asked to cut out the holes and insert their fingers to make legs. It is suggested that the reader who does so might enjoy "kissing and licking one's own knuckles". It is unlikely that a reader of a book of this nature would cut the page as suggested and in tune with other small notices in the book it is intended to lampoon Victorian concepts of morality and double-standards.

Matters such as horror

Some images in the comic are of large monsters with carnivorous teeth or bloodied people. Pages 120 and 121 present the mad Dr Moreau who is wearing a bloodied apron and is said to perform genetic operations on woodland creatures, ironically represented as children's cartoon characters such as Rupert Bear. These occasional images and indistinct descriptions are not particularly graphic but may be disturbing to children.

Matters such as violence and cruelty

The comic occasionally depicts images of violence often in a stylised, extravagant and fanciful manner. People are burnt or killed in explosions from alien heat rays. These images are bright and far-fetched and are not likely to affect readers. The strongest examples of violence occur when the invisible man attacks Murray and is later attacked by Mr Hyde. On pages 70 to 71 Murray is punched by her invisible assailant and choked by the long scarf around her throat. One box presents blood flying from her nose. In the final series of boxes she is forced to the ground and vomits. Her face is pushed into the vomit. Later in retaliation (pages 116 to 117), Hyde grabs the invisible Griffin and punches and taunts him. In one box Hyde is pictured on his knees with his pants down and his buttocks exposed. It is a tiny unclear drawing but an adult reader might assume that he is engaging Griffin in anal intercourse. Griffin's reaction is not clearly conveyed. While shocking, the violence in these segments is outrageous, slapstick and farcical in the traditional comic book manner. They are very brief segments in the context of violence in the book which mainly focuses on battles with fantastical creatures and colourful explosions.

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.³

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

³ Above n2 at para 29.

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). This publication does not fall within s3(2) because it contains none of the matters listed therein.

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The only matter that it considers relevant to this publication is:

s3(3)(a)(i) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

The extent and degree to which, and the manner in which, the publication describes and depicts acts of torture, the infliction of serious physical harm, or acts of significant cruelty has been considered under s3(1) above.

Additional matters to be considered:

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a) The dominant effect of the publication as a whole.

The dominant effect of the publication is of a vivid and colourful graphic novel that satirizes and pays homage to 19th Century literature. It also has subtext about contemporary politics and human relationships.

s3(4)(b) The impact of the medium in which the publication is presented.

The comic is potentially widely available and easily accessible. The reader may copy parts of the comic to redistribute, and is able to carry the magazine around and to show others. The comic medium is highly attractive to children and young persons.

s3(4)(c) *The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.*

The graphic novel is an accomplished and increasingly popular medium. This publication is from one of the leading exponents of this art form. Consequently the comic has considerable artistic and cultural value, especially amongst aficionados of the medium.

s3(4)(d) *The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.*

The publication is particularly intended for teenage boys.

s3(4)(e) *The purpose for which the publication is intended to be used.*

The publication is primarily intended for the purpose of entertainment but may also have of educative value in encouraging teenagers to read and become familiar with distinguished literature.

s3(4)(f) *Any other relevant circumstances relating to the intended or likely use of the publication.*

The first volume of the series was made into a feature film.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

Occasionally the word "fuck" is represented by "****" in speech boxes and the word "shit" is used once. Consequently it cannot be fairly said that the publication contains highly offensive language to such an extent and degree that its availability is likely to cause serious harm to young persons.

Publication may be age-restricted if likely to be injurious to public good for specified reasons

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

The Classification Office has considered all the matters in s3B(3). There are some matters overlapping with those already discussed above, but none would be likely to cause young persons to be, in the words of s3B(4), greatly disturbed or shocked, or increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both. Section 3(1) considerations in relation to matters such sex and violence detailed above form the main injury to the public good in relation to the publication.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBR Act, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBR Act states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

Conclusion:

The comic entitled *The League of Extraordinary Gentlemen Volume II* is classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.

The publication is an imaginative and vivid sci-fi comic or graphic novel. It is highly satirical, and often farcical and outrageous in manner. The comic has been created by a leading exponent of this art form and is intended for mature contemplation and amusement. However the comic format has traditionally been aimed at, and is popular, with children and young persons. This publication contains occasional images of frank sexual activity and is likely to introduce children to sexual concepts they are not at a developmental stage to deal with. Combined with a few images of horror and strong violence the comic is likely to disturb and confuse younger readers. Nevertheless comics in this format are often of educative value for older students and in this instance may introduce them to distinguished literature. Considering these elements the publication is likely to be injurious to the public good unless restricted to its intended readership of persons over 13 years of age.

Considerations under s3 of the Films, Videos, and Publications Classification Act 1993 have been weighed against the relevant provisions of the New Zealand Bill of Rights Act 1990. Given the manner, extent and degree to which the publication deals with matters of sex, violence and horror, a limit on its availability to teenagers and adults is considered to be a reasonable and demonstrably justifiable restriction. This limitation on the publication's availability is the minimum restriction that can be applied in order to prevent likely injury to the public good.

Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) The reasons for classifying the publication as a restricted publication;
- (b) The terms of the classification given the publication;
- (c) The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.

The sexual material in there publication is of such a low extent that it would not be seen upon cursory examination of the publication. The age restriction and the descriptive note affixed to

the front cover of the comic should be sufficient to warn members of the public of the restricted nature of the material contained within.

The following conditions apply to the public display of the publication:

That when the publication is on public display, the classification given to the publication must be shown by way of a label issued in accordance with a direction under section 36A(2);

and

That the label must be affixed to the publication in order that the classification is brought to the attention of persons to whom the publication is displayed.

Date: 13 March 2007

For the Classification Office (signed):

OFLC No: 700014

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Note:

You may apply to have this publication (or these publications) reviewed under section 47 of the Films, Videos, and Publications Classification Act 1993, if you are dissatisfied with the Classification Office's decision.

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