

BEYOND BORDERS INC.

Au-Delà Des Frontières Inc.

Ensuring Global Justice for Children

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After years of advocacy by Beyond Borders, ECPAT International and other NGOs, Canada's new age of sexual consent/protection, raised to 16 from 14, was signed into law on Feb. 28, 2008

Canada's Abuser-friendly Age of Consent

The age of consent for sexual activity in Canada is 14! Youths 14 and older can consent to any type of legal sexual activity with a much older partner.¹ *This means that in many situations it is perfectly legal in Canada for a 50-year-old to have sex with a 14-year-old.*

It is illegal for someone who is in a position of trust or authority (ie parents, guardians, teachers, employers) towards a 14-17-year-old to engage in any type of sexual activity with that young person. Sexual activity is very broadly defined and in addition to touching for a sexual purpose includes trying to persuade a young person to touch their own or someone else's body for a sexual purpose.²

*****The age of consent should be raised to at least 16!*****

Why raise it? Statistics from Cybertip.ca and elsewhere show that between the ages of 13-15 youth are at highest risk to being manipulated in sexual relationships. They are in a transitional stage of life, "often taking risks with a sense of invincibility at the same time as they are looking for relationships."³ Police officials observe that the average age for victims of sex crimes across the country is 14.⁴ Different young people obviously reach different levels of maturity at different stages. However, we should be concerned with those most at risk, and far too many are extremely vulnerable in this age group.

¹ *Criminal Code*, R.S.C. 1985, c. C-46 s. 150.1.

² *Ibid.* s. 153.

³ Rosalind Prober, "Talking Tough Internationally and Remaining Silent at Home – Canada's Hollow Commitments to Protect Children Over 14 From CSEC," online: Beyond Borders <<http://www.beyondborders.org/MTR%20Windsor%20May05.pdf>>.

⁴ Sharon Doyle Driedger, "Drawing the line" *Maclean's* (18 November 2002), p. 106.

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Why 16? The UN's *Convention on the Rights of the Child* recommends that 18 is the proper age of consent.⁵ While this might be the ideal, raising it to 16 is a reachable goal that brings Canada into line with the international norm. The United Kingdom, Scotland, Australia, New Zealand, Belgium, Israel and Norway, among others, have it set at 16. In Ireland it is 17. In the United States it varies from 16 to 18 among states.⁶ *Canada's age of consent is one of the lowest among Western industrialized nations.*

Consenting teenagers would not be prosecuted. In February 2005, Justice Minister Irwin Cotler told a parliamentary committee that raising the age of consent would allow thousands of Canadian teens who have voluntary sexual intercourse to be criminally charged.⁷ This is a red herring. A "close in age" exemption could be easily included into the legislation so that it would not be a crime for two young people relatively close in age to engage in sexual activity. A similar exemption already exists in the *Criminal Code*, allowing 13- and 14-year-olds to legally engage in sexual activity with 12-year-olds.⁸ Beyond Borders recommends that an age gap of four years be allowed for consensual activity with 14- and 15-year-olds. In other words, it would not be a crime for someone up to the age of 18 to engage in consensual sexual activity with a 14-year-old.

Raising the age of consent would help prevent the commercial sexual exploitation of children. Professional pimps often prey on naïve and disadvantaged youth, posing as boyfriends in order to recruit them into commercial sexual exploitation. These pimps often choose to recruit youth who are over the age of consent but as young as possible in order to most easily manipulate them.⁹

In a Quebec City prostitution ring discovered by police in 2002, at least 17 girls between the ages of 14 and 17 were recruited by biker gang members. An investigating officer reported that "they often fell in love with their recruiters, who showered them with gifts such as jewels, clothes and money." They were then coerced into commercial sexual exploitation.¹⁰

Raising the age of consent would help prevent young girls from being brainwashed into polygamous unions. In February 2005 women from a polygamous sect in B.C. called for the age of consent to be raised to 16 to help them protect daughters who have been raised to believe that they must obey the prophet and marry much older multi-

⁵ *Convention on the Rights of the Child*, 2 September 1990, online: UNICEF <<http://www.unicef.org/crc/crc.htm>>.

⁶ "Legal Age of Consent," online: <<http://www.ageofconsent.com/ageofconsent.htm>>.

⁷ Cristin Schmitz "Age of consent bill could leave teens liable, Cotler says" *National Post* (24 February 2005), A9.

⁸ *Supra* note 1 s. 150.1 (2) (b).

⁹ Jannit Rabinovich, "Considerations on the Age of Consent to Sexual Activity" online: Office of the Honourable Landon Pearson <<http://www.sen.parl.gc.ca/lpearson/Age%20of%20Consent.pdf>>.

¹⁰ Alexander Panetta "Girls in sex ring recruited at malls and schools: Police; Twenty people arrested in Quebec city prostitution bust Pimps linked to Hells Angels and criminals in Toronto" *Toronto Star* (19 December 2002) A34.

married men often before the age of 16.¹¹

Raising the age of consent would help prevent Canada from becoming a child sex tourism destination. University of Ottawa criminology professor Wade Deisman observes that incidents of cross-border internet-luring seem to be on the rise, and suggests that Canada's relatively low age of consent could have something to do with it.¹²

In March 2005 a 14-year-old Ottawa boy was found in an Ottawa hotel room with 31-year-old Dale Eric Beckham from Texas, who had lured him on the internet. Consensual sex allegedly occurred between the two, and Beckham was charged with abduction and internet luring. The abduction charges were later dropped, because the 14-year-old boy was old enough to give sexual consent.¹³ If the two had not met on the internet, it would have been perfectly legal in Canada. Beckham *may* be charged in the United States under child sex tourism laws.¹⁴ However, it is often difficult to gather sufficient evidence for these cases and may involve the boy having to testify in an American courtroom. Most importantly, why should Canada have to rely on another country's justice system to protect Canadian children?

Raising the age of consent would help protect 12- and 13-year-olds from sexual abuse. In 2001 three white males in their 20s, Jeffrey Brown, Jeffrey Kindrat, and Dean Edmondson, picked up a 12-year-old aboriginal girl outside a bar in Saskatchewan. The three men claimed the girl told them she was 14 and that they believed her. All three unsuccessfully attempted intercourse with the girl. Edmondson was found guilty of being a party to a sexual assault, and sentenced to house arrest rather than jail because the victim may have been seen as a "willing participant" or "the aggressor," according to the judge.¹⁵ Brown and Kindrat were acquitted, although this has been appealed and they are awaiting retrial.¹⁶

Although there were many factors contributing to this miscarriage of justice, a higher age of consent probably would have helped. It would be much more difficult for a 12-year-old girl in most cases to convince someone that she is 16, or for a court to believe that the accused believed it. One reporter who interviewed the girl after this incident observed that the girl was very small, and that it would be difficult for her even to convince anyone that she was 14.¹⁷ Either Brown, Kindrat and Edmondson would have

¹¹ Norman Boudreau, "Submission to the House of Commons Justice Committee on Bill C-2. Raising the age of consent," online: Beyond Borders

<<http://www.beyondborders.org/Norman%27s%20presentation%20Bill%20C-2%20April%2019.05.pdf>>.

¹² "Web luring case raises age-of-consent issue" *CBC News* (11 March 2005), online: CBC News <<http://www.cbc.ca/story/canada/national/2005/03/08/internet-luring-050308.html>>.

¹³ "Texas man cleared of abduction" *The Ottawa Citizen* (31 August 2005) C2.

¹⁴ Jake Rupert "Texas man lured Ottawa teen" *National Post* (8 March 2005) A9.

¹⁵ Jason Warick "Man convicted of sexually assaulting a 12-year-old avoids jail term; family wonders 'Who has justice served?'" *CanWest News* (4 September 2003) 1.

¹⁶ *Ibid.*

¹⁷ Doug Cuthand "Nobody will win in aftermath of Tisdale case" *Star – Phoenix* (12 September 2003) A13.

been deterred from attempting intercourse with the girl, or their alleged belief that she was of the age of consent would have seemed less convincing to the court, and be less of a mitigating factor in their favor.

Adding the word “exploitive” to the Criminal Code is not a substitute for raising the age of consent. The federal government recently passed *Bill C-2*, which adds the provision that anyone “who is in a relationship with a young person that is exploitive of the young person” and engages in sexual activity with them can be found guilty of the offence of sexual exploitation. In order to infer that the relationship is exploitive, the judge should consider the age difference, the evolution of the relationship, and the degree of control or influence the adult has over the young person.¹⁸

While the goal of these amendments is laudable, practically it will do little or nothing to protect young people. Here’s why:

1. The law is too subjective. It forces police, judges and juries to infer what is “exploitive” sexual activity and what is not.
2. It permits aggressive cross-examining of young victims who would have the onus to prove they are “exploited.”
3. The law is vague. People would have no idea they are breaking it until arrested, making it vulnerable to *Charter* challenges.
4. Historical cases will go unpunished because courts will not be in a position to determine if a relationship that occurred 20 years ago was exploitive.¹⁹

Raising the Age of Consent would be an effective deterrent. While raising the age of consent would not be a catch-all solution to ending all child sexual abuse, it would send a strong message that children in this vulnerable age bracket are off-limits to adults. It is a clear, definable limit that is simple to prosecute and leaves the onus on the offender, not the victim.

Recommendations:

1. The age of consent should be raised to 16.

2. A four-year “close in age” exemption should be included in this legislation so as not to criminalize peer-to-peer sexual activity of consenting teenagers. A 5 year “close in age” exemption would also be acceptable to Beyond Borders.

3. The “exploitive” amendments in Bill C-2 should apply to youth 16 and 17.

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¹⁸ Bill C-2, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, 1st Sess., 38th Parl., 2005, cl. 4 (assented to 20 July 2005).

¹⁹ *Supra* note 11.