

BEYOND BORDERS INC.

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Ensuring Global Justice for Children

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Child Sex Tourism Legislation in Canada

Child Sex Tourism (CST): “the commercial sexual exploitation of children by persons who travel from their own country to another usually less developed country to engage in sexual acts with children”¹

Canadian Legislation Against CST: Under section 7 (4.1) of the *Criminal Code*, Canadian citizens and permanent residents can be prosecuted *in Canada* for certain sexual offences committed against children in other countries, including Sexual Interference, Invitation to Sexual Touching, Sexual Exploitation, Incest, Child Pornography and Obtaining the Sexual Services of a Child under 18.²

“Prober Amendment:” The above legislation was originally drafted so as only to apply to commercial sexual exploitation (a.k.a. “child prostitution”). Rosalind Prober recognized that this scope was much too narrow, especially because the majority of child sexual abusers are known to the child; and include family members, friends, coaches or teachers who take advantage of foreign circumstances in order to engage in illicit conduct. She lobbied the Federal Justice Committee to have it expanded and was successful. As is evident from its provisions, s. 7 (4.1) now applies to all forms of sexual exploitation, whether commercial or not.

Extraterritoriality: This legislation is also *extraterritorial*, meaning that Canada assumes jurisdiction to prosecute these offences; they are considered as if they were committed in Canada. When the law was enacted in 1997 this was conditional upon receipt of a request from the government of the country where the offence occurred, and this loophole allowed a Canadian teacher accused of molesting a 17-year-old Canadian girl during a school trip to Costa Rica to escape prosecution in 2000. The Costa Rican government refused to request prosecution because sexually exploiting a 17-year-old was not against the law at that time in that country.³ In 2002 this stipulation was removed⁴

¹ “Frequently Asked Questions about CSEC. Child Sex Tourism,” online: ECPAT International <<http://www.ecpat.net/eng/CSEC/faq/faq3.asp>>.

² *Criminal Code*, R.S.C. 1985, c. C-46, s. 7(4.1).

³ Marina Jimenez, “Child sex tourism law fails first test” *National Post* (9 August 2000) A1.

⁴ *Supra* note 2 s. 7 (4.3).

and now the only precondition for prosecuting such cases is consent from the Attorney General of Canada.⁵

First Successful Prosecution: Donald Bakker of Vancouver was the first to be prosecuted and convicted under s. 7 (4.1). In May 2005 he pleaded guilty to, among other domestic crimes, 7 counts of sexual interference involving children younger than 14 in Cambodia. After he was arrested on sexual assault charges in Vancouver, videotapes were found in his possession depicting him sexually assaulting 7-to-12-year-old girls in Svay Pak, Cambodia between February and March 2003.⁶

Future Prosecutions: Although Bakker's conviction is a positive step forward, Canada needs to more proactively enforce its CST legislation. Sweden, Norway, Australia, the United States and other countries post liaison officers in child sex tourism destination countries in order to investigate child sexual abuse. This has led to better co-operation between countries when gathering evidence for international CST cases, which is often extremely difficult to obtain. The U.S. Immigration and Customs Enforcement agency has made fighting sex tourism a priority, and through strong cooperation with local police forces in Southeast Asia has charged 14 Americans with abusing children overseas since 2003. In contrast, the Canadian Department of Foreign Affairs does not conduct its own investigations of child sexual abuse overseas and would only launch a prosecution if a foreign government provided it with enough evidence to support a charge.⁷

Constitutionality of CST Legislation: Bakker's lawyer initially was set to argue that s. 7 (4.1) is unconstitutional, violating international law because it unjustifiably infringes upon the jurisdiction of another sovereign state.⁸ Since Bakker decided to plead guilty the law was never put to this test, but it may be in future cases. Beyond Borders maintains that s. 7 (4.1)'s extraterritoriality has a solid foundation on the following grounds:

1. Canada has ratified or become a signatory to international treaties that obligate the federal government to tackle the issue of CST, such as the *UN Convention on the Rights of the Child* and the *Stockholm Declaration and Agenda for Action*.⁹
2. The nationality principle, by which a person's nationality provides a sufficient connection between a state and a person, is recognized by the Supreme Court of Canada as a valid basis for extending prescriptive jurisdiction.¹⁰

⁵ *Ibid.* s. 7 (4.1).

⁶ Jane Armstrong "Sex tourist convicted in B.C." *The Globe and Mail* (2 June 2005) A7.

⁷ Chad Skelton, "Victims' reluctance makes sex tourism charges tough to lay" *The Vancouver Sun* (3 June 2005), B4.

⁸ Jennifer Wells, "Canada's offshore child sex law faces its first test" *Toronto Star* (29 August 2004), A2.

⁹ Melissa Ferens, "An Evaluation of Canada's Child Sex Tourism Legislation Under International Law," online: Beyond Borders < <http://www.beyondborders.org/Child%20Sex%20Tourism%20Paper%20-%20Melissa%20Ferens.pdf> > at 14-18.

¹⁰ *Ibid.* at 19.

3. Other countries are unwilling or unable to prosecute cases of child sexual exploitation that occur within their borders.¹¹

4. American jurisprudence indicates that offences involving child sexual abuse and exploitation can fall under the universality principle of international law jurisdiction, allowing and even *obligating* states to prosecute these offences.¹²

Raising Awareness: Thirty-two countries have extraterritorial CST laws in place. While their existence is not expected to eradicate the problem, they are important as a deterrent against potential sex tourists. Unfortunately, the Canadian government has done little or nothing to inform the public about its law. In contrast, the U.S. State Department has given grants to World Vision to place billboards in Thailand and Cambodia with the slogan: “Abuse a child in this country, go to jail in yours.” In Europe some airlines such as Lufthansa and Air France started showing in-flight videos to certain destinations warning passengers that they could be prosecuted at home for committing sex crimes abroad.¹³ It is hoped that Air Canada, as Canada’s national airline, will follow their lead. These proactive measures can also alert travelers to report any incidents of child exploitation that they witness while abroad. Reports can be made to the RCMP or on Canada’s national tipline for reporting the online sexual exploitation of children: www.cybertip.ca.

Recommendations:

1. The federal government should fund a prominent awareness campaign to alert the public, police and judicial authorities of its CST legislation. Notices should be placed in airports.

2. More Canadian liaison officers should be placed in CST destination countries. These officers could conduct investigations and help train local police on how to improve their CST investigations.

3. The Canadian government should restrict convicted and suspected child sex offenders from traveling to CST destination countries, and bar travel of convicted child sex offenders to countries or tourism destinations experiencing a sudden increase of children’s vulnerability to sexual exploitation due to, amongst other causes, man-made or natural catastrophes.

4. Airlines and travel companies should take a proactive role in alerting the public of CST legislation through such methods as showing in-flight videos and providing brochures.

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¹¹ *Ibid.* at 23-26.

¹² *Ibid.* at 26-27.

¹³ *Supra* note 7.