

BEYOND BORDERS SET TO INTERVENE IN SUPREME COURT'S "INTERNET LURING" CASE

By Mark Erik Hecht

In April of 2003, Craig Legare engaged in two private, electronic "chat" conversations with a 12-year-old girl. Legare was 32 years old at the time, although he represented to the girl that he was 17. The conversations were explicitly sexual in nature. For example, Legare asked the girl if she had "pubic hair," whether she had had her "menstrual cycle" and whether she had had "sex". The girl provided her telephone number, and a short time after the chat conversations, Legare made two telephone calls to her home. Again, the conversations were explicitly sexual. For example, Legare asked the girl to send him a pair of her "worn underwear". Legare and the girl never met and no sexual activity ever took place. An agreed statement of facts filed with the trial court indicated that at no time did Legare or the girl discuss a meeting, nor did Legare ever intend to meet the girl.

Legare was charged with the following crimes: That he on or about the 28th day of April, 2003, at or near Edmonton, Alberta, did, for a sexual purpose, unlawfully invite, counsel, or incite [the girl], a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object, [his] body, contrary to section 152 of the Criminal Code of Canada; That he, on or about the 28th day of April, 2003, at or near Edmonton, Alberta, did by means of a computer system, communicate with a person who was, or whom the accused believed to be, under the age of fourteen years, for the purpose of facilitating the commission of an offence under section 151 or 152 with respect to that person contrary to section 172.1(1) (c) of the Criminal Code of Canada.

The trial judge found Legare not guilty on both counts. While he indicated that most of the public would find Legare's actions to be "abhorrent," the specific facts before him did not constitute a crime. The Court of Appeal allowed the Crown's appeal, in part. The appeal against the acquittal of the charge pursuant to s. 152 was dismissed. The appeal against the acquittal of the charge pursuant to s. 172.1(1)(c) was allowed. The acquittal was set aside and a new trial ordered. Legare requested, and was granted, leave to appeal to the Supreme Court of Canada.

Building on the track record of Beyond Borders' involvement in many high profile child protection cases, we decided to file a motion with the Supreme Court requesting leave to intervene in the case. Roz Prober provided the Affidavit in support of this motion. We were granted leave to intervene and soon after filed our factum. The factum requested permission to address the Supreme Court with oral submissions. Upon reviewing the factum, the Supreme Court agreed to allow us to address the Court in person. The hearing is scheduled for October 15, 2009.

Although the issue of Internet luring is quite broad and includes many sub-issues, the actual point of law before the Supreme Court is very narrow and rather technical. At its core the matter is one of legislative interpretation. Specifically, the question put before the Court is whether or not the trial judge erred in interpreting section 172.1(1)(c) of the Criminal Code to include the present intention to "lure" a child. The Court of Appeal found that the trial judge did in

fact err and stated that it need only be proven that an accused engaged in communicating over the Internet in a manner wherein the accused's purpose was to facilitate a designated offence, however far off or unlikely. The Respondent of the Court of Appeal matter (i.e., Legare) disagrees with this decision.

The Appellant and Respondent both explore the issue of statutory interpretation in their materials. Reference is made to the Federal Interpretation Act and jurisprudence from the Supreme Court of Canada that reviews the treatment of statutory interpretation since, approximately, 1992. As Interveners, Beyond Borders contends that the Court has an obligation to interpret domestic legislation in a manner that is consistent with international law. Specifically, in this instance the legislation must be interpreted through the lens of international child law. The necessity to interpret the Charter in conformity with international human rights law has been affirmed by the Court on previous occasions. The Supreme Court of Canada, both within a Charter challenge and outside of the traditional Charter analysis, has also explored the use of international child law as an interpretative tool for domestic law.

International jurisprudence also supports the notion of interpretation of domestic law in keeping with a State's international requirements. Canada is a party to the Convention on the Rights of the Child, 1989 and the

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002. The Vienna Convention on the Law of Treaties, 1969 expressively forbids State parties from invoking the provisions of its internal law as justification for its failure to perform the requirements articulated in a treaty.

Beyond Borders submits that when determining the language of a Criminal Code provision that prima facie intends to protect Canadian children, the Court must heed to obligations beyond the Charter. In this instance, the "luring the child" offence must be understood in a way in which the child would be the most protected.

Simply stated, the language in s.172.1(1)(c) of the Criminal Code must be read in a manner that supports Canada's international obligations to protect its children. Specifically, the mens rea (guilty intent) required in order to be convicted of the offence should be communicating over the Internet in a manner wherein the accused's purpose is to facilitate a designated offence. It should not need to be further demonstrated that the accused had a present intention to meet the child and commit one of the enumerated sexual offences. This would be in keeping with Canada's international obligations and would also be the most protective for Canadian children.

Mark Hecht is an Ottawa lawyer, human rights advocate and Senior Legal Counsel to Beyond Borders.

A Supreme Court Intervention for \$1244.50!

On October 15, 2009, three members of Beyond Borders legal team, Mark Hecht (Ottawa), Jonathan Rosenthal (Toronto) and Nicole Merrick (Winnipeg) will appear before the Supreme Court on the above exceptionally important case on Internet luring. Beyond Borders President, Rosalind Prober, will be flying in from Winnipeg as well. Amazingly the cost to our charity of our appearance, flights, hotels, research and court time is a grand total of \$1244.50 and even that amount which goes to **Gowlings Lafleur Henderson LLP** to file our submission is greatly reduced. Thank you Gowlings.

Since inception in 1996 vounteerism has been a core value for our child advocates including our legal team. This intervention is pure child advocacy at its best. Congratulations and thanks to all involved from ECPAT International and the Board of Beyond Borders.

Beyond Borders Calls for Appeals in the Following Canadian Cases

Quebec - Richard Jacques, a 62-year old man fom Milan, Quebec was sentenced in Sherbrooke court on Tuesday to two years less a day to be served in the community. He had pleaded guilty to six counts of sexual assault. The crimes were committed between 1968 and 1995 against five young victims who left the court in angry tears.

British Columbia - A B.C. court has thrown out polygamy charges against two religious leaders, ruling former B.C. attorney general Wally Oppal was wrong to ask a third special prosecutor to take the case after the first two prosecutors decided the men should not be charged. Winston Blackmore and James Oler, leaders of two factions of the Fundamentalist Church of Jesus Christ of Latter-day Saints based in Bountiful, B.C., were arrested earlier this year and charged with one count each of breaching Section 293 of the Criminal Code — which

bans polygamy — by entering into a conjugal relationship with more than one individual at a time.

British Columbia - A convicted US sex offender, James Ventling, whom RCMP tracked down in the U.S. to bring to court 30 years after a Vernon B.C. nine-year-old child was lured and raped, saw criminal charges against him stayed by the B.C. Supreme Court. The ruling was made after a judge in Canada decided Ventling's Charter Rights were violated by a protracted extradition process to bring him before the Canadian justice system. The RCMP who had spent years on this case were dumbfounded and devastated for the victim. Court documents outlined how a bloody fingerprint on a fast-food napkin found at the Vernon crime scene helped cops finally break the case. DNA evidence analyzed years later matched the sample.

Beyond Borders Media Awards 2009

Beyond Borders hosts its **7th Annual Media Awards** event November 20 in Winnipeg, MB. This year, the awards will include an afternoon event featuring award-winning author and journalist, **Victor Malarek**. Victor will deliver a keynote address based on his recently released book, *“The Johns: Sex for Sale and the Men Who Buy It.”* Visit the Beyond Borders website at www.beyondborders.org for registration details.

Media Awards Co-Chair, Deborah Zanke, is pleased with the calibre of nominations and the range of topics covered but is disappointed that in spite of the efforts to reach out to the French journalism community, there are no nominations in the French Print or French Student category this year.

Nominees

English Print:

Tim Petruk - Kamloops This Week, *Targeting Teens within Seconds*, February 22, 2009.

Jana Pruden - Regina Leader-Post, *Pedophile and Predator: The Darren Philpott Story* (series), November, 2008.

Sandie Benitah - CTV.CA, *Sex Tourism and Canada's Weak Response*, August 2, 2009.

Sue Montgomery - The Gazette, *Brothers Stand Accused; Dark Side of the 'Chaste' Life Ruined Lives of Victims; Legal Motion Claims Sex Abuse*, December 2008.

Tamara Cherry - Toronto Sun, *Human Trafficking: Canada's Secret Shame* (series), September/October 2008.

Tamara Cherry - Toronto Sun, *Tina: Slave to a Pimp* (series), February 2009.

Lindor Reynolds - Winnipeg Free Press, (Body of Work) on issues related to sexual exploitation between September 1, 2008 and August 31, 2009.

English Electronic:

Robin Benger - Cogent/Benger Productions Inc., CBC Television, *Porndemic: Sex in the Digital Age*, April 2, 2009.

Sharlene Azam - Reluctant Hero Productions, SBS Netherlands, *Oral Sex is the New Goodnight Kiss*, January 2009.

Brett Mitchell, Victor Malarek, Patti-Ann Finlay - CTV W-Five, *Trail of a Sex Tourist*, March 2009.

Arthur Holbrook - CBC- The Lens, *My Son the Pornographer*, February 2009.

English Student:

Ben Choy & Vanessa Ybarra - British Columbia Institute of Technology, *Sex and the City*, 2009 (Not aired).

Jillian Kestler-D'Amours, Concordia University - *Behind the Velvet Curtain*, 2009 (Published in The Link student newspaper).

Megan Martin, Concordia University, *Human Rights School*, June 2009 (Published in the Montreal Gazette).

Lindsay Lafreniere, Concordia University, *Working to Stop Child Prostitution in Cambodia*, (unpublished).

French Electronic:

Marquise Lepage - Cinéma ONF (Montreal), *Des billes, des ballons et des garçons*, 4 septembre, 2008.

Myriam Fimbry - Radio-Canada - Première chaîne radio, *Abus sexuels chez les jeunes enfants: le défi de la preuve*, 12 février, 2009.

You are invited to attend

Beyond Borders Annual General Meeting

to be held at:

Tayler McCaffrey LLP
11th Floor - 400 St. Mary Avenue, Winnipeg, MB

December 7, 2009 at 6:00 pm

The Body Shop and ECPAT International Launch Campaign

STOP SEX TRAFFICKING OF CHILDREN AND YOUNG PEOPLE

<http://www.thebodyshop.ca/landing-stop-trafficking.html>



At least 1.2 million children and young people are exploited in the global sex trade each year. In Canada most child sex trafficking occurs within our borders, across provinces. Children and youth are forced and/or manipulated into sexual abuse through prostitution. Aboriginal girls are at greatest risk.

The Body Shop and ECPAT International have launched a global campaign to fight child sex trafficking. To create awareness and inspire action The Body Shop has developed a special hand cream aptly called **Soft Hands Kind Heart Hand Cream**, which is now being sold at a rapid pace in Body Shops around the globe. In Canada, the hand cream retails for \$10 with \$5.50 going to Beyond Borders and \$.50 to ECPAT International.

Rosalind Prober Addresses Rally at Canadian Launch

Metropolitan United Church, Toronto, July 30, 2009

“The demand for sex with children is causing an international nightmare. This crime is called **Child Sex Trafficking**. Beyond Borders was founded in 1996 to take on child traffickers and those who selfishly sexually harm our children. Because child sex trafficking is driven by greed and the profit motive, no country is immune and no child is free of risk of sexual exploitation.



“There is a clear match between The Body Shop and Beyond Borders and together we **WILL** make a difference.

“All of the studies of sexually abused and trafficked children illustrate that children can become extremely successful even after suffering the worst human rights abuses. They just need a helping hand.



“Resilience is the word used to describe this phenomenon. Joining Beyond Borders and The Body Shop in this Canadian campaign is the incredible Somaly Mam and her Foundation. Resilience and Somaly Mam are two words that certainly go together. Throughout this campaign, Somaly Mam, Beyond Borders and The Body Shop team will bring hope to sexually exploited children around the world. No stone will be left unturned to make this happen.

“For the past 6 months, I have been working with the Beyond Borders team to launch this new campaign with The Body Shop. In speaking of their employees, The Body Shop executives talk of their passion to solve difficult issues, their long term commitment to facilitate change and their staff’s drive and determination to help people.



Forte - The Toronto Men's Chorus
volunteer driven NGO it is today.

“Those are the very same words I would use to describe the lawyers, youth and professionals who make Beyond Borders the successful, national, bilingual



“Somaly Mam, The Body Shop, Beyond Borders and the Canadian public who despise the harm traffickers are inflicting on their children are about to make a lot of **NOISE**.”

Many Countries Participate in Global Launch of Campaign

The ECPAT and The Body Shop *Stop Sex Trafficking of Children and Young People Campaign* has launched around the world, with national launches in Mexico, Luxembourg, France, India, Denmark, Russia, Portugal, United Arab Emirates, Austria, the Netherlands, Taiwan,

Malaysia, the Philippines, Japan, Thailand, South Korea, the UK, Sweden, Singapore, New Zealand, Canada, the US and Hong Kong. For more information about these and upcoming campaign launches in 45 countries, visit the ECPAT website at: www.ecpat.net.



New Zealand



Singapore



Taiwan



France

Beyond Borders Remembers the Rebellious but Always Elegant Global Changemaker Dame Anita Roddick

"The only real elegance is in the mind; if you have got that, the rest really comes from it" Diana Vreeland Newsweek 1962.

Anita Roddick's success was based on a message she delivered in 2006 when Canadian community leaders gathered to honour her at the prestigious Winnipeg MB IDEA dinner. "You can make a profit and make a positive contribution to the community" she stated. Anita saw a world full of gross violations of its inhabitants and true to her word tried until her untimely death to make the world a better place. Today corporate social responsibility and involvement in human rights reform and other charitable causes often based on The Body Shop model is practiced around the world by corporations large and small.

In Winnipeg Anita was asked by one of our Beyond

Borders board members, Jeanette McCoshen, to help our cause. Anita graciously agreed to become an honorary Beyond Borders board member and help us and ECPAT stop child sexual exploitation.

The changes that the world will see as a result of a 3-year The Body Shop/ECPAT global Stop Sex Trafficking of Children and Young People campaign will be documented in *The Body Shop - ECPAT Progress Card Summary Report* which was launched on September 24, 2009 in New York at the Clinton Global Initiative. Visit our website at www.beyondborders.org to read the report.

The children rescued from traffickers and saved from lives of child sexual exploitation and abuse will play a large part in the incredible living legacy of Dame Anita Roddick.

Take Action Now!

Head to *The Body Shop* nearest you – Purchase *Soft Hands, Kind Heart Hand Cream* and support Beyond Borders efforts to fight sex trafficking of children and young people in Canada and around the world. You may also purchase online from The Body Shop at: <http://thebodyshop-ca.stores.yahoo.net/softhands.html>

It's Time to Speak 'Man to Man' about Child Sexual Exploitation

Jason Priestley, Jacques Villeneuve among Canadian men speaking out on website

Beyond Borders recently launched a public awareness campaign on its website that is a first of its kind with respect to child sexual exploitation. The *Man to Man* campaign features prominent Canadian men delivering the message to other men that the sexual exploitation of children must stop now. Visit www.beyondborders.org to view the campaign.

Most public awareness campaigns about child sexual abuse have focussed on the victim. That's obviously important but we've ignored trying to tackle the demand side of the issue. This campaign changes that.

The campaign focuses on men because although females sometimes exploit children for sex, more than 90% of those charged with the offence are male. The message hinges on a simple premise—without those who use children for sex and profit (the demand) there would be no victims (the supply).

We want to encourage men to get involved with this issue and to take a stand. It's important for boys and men to hear that using children for sex and profit is not OK. Hearing that message from men they admire or look up to is equally important because the message has more weight.

The campaign hopes to add other men to the roster of males speaking out. Featured on the site to start are Corner Gas actor, **Lorne Cardinal**, NFL athlete, **Israel Idonije**, journalist/author, **Victor Malarek**, actor/director, **Jason Priestley**, Little Mosque on the Prairie actor, **Manoj Sood** and race car driver, **Jacques Villeneuve**.

Features of the campaign webpage includes a series of myths those who offend tell themselves that enable them to exploit children. For example, that viewing child sexual abuse images (child pornography) is a victimless act. A corresponding fact is displayed along with each myth. Men are encouraged to send an E-mail link to other men within their personal networks asking them to raise awareness. There is also a section about seeking help for those who have carried out sexual offences against children or have thoughts about it. Beyond Borders hopes to get incarcerated offenders involved as well – contributing information about the personal consequences of child sexual exploitation.

Although some may think this is an odd campaign for a victims' rights group to take on, we think mobilizing men around this issue is long overdue. We need men to talk in order to change the offender mindset. We believe this campaign is a first, important first step towards that.



National Football League athlete and philanthropist, **Israel Idonije** speaks out "man to man"

Their Protection is in Our Hands

The State of Global Trafficking of Children and Young People for Sexual Purposes

Findings from a new report by *ECPAT International* and *The Body Shop* indicate that the global economic crisis could have far-reaching social effects for children in both poor and rich countries alike. According to experts in the field of child trafficking, there are growing concerns that this crisis could lead to a further increase in the trafficking of children for sexual purposes for a number of key reasons.

These and other findings are presented within the full ECPAT and The Body Shop global report, *Their Protection is in Our Hands – The State of Global Trafficking of Children and Young People for Sexual Purposes*, released in Bangkok on August 13, 2009.

To view this report visit the Beyond Borders website under Latest News at www.beyondborders.org.

New Website Offers More Ways to Connect with Beyond Borders

Beyond Borders was busy this summer redesigning its website and engaging with supporters via social networking sites such as Facebook and Twitter. Those visiting the new site have been impressed with the striking images and graphic design that make a strong impact. Navigation of the site has also undergone a major overhaul, making it easier to find the information visitors seek.



New features at www.beyondborders.org or French site www.audeladesfrontieres.ca:

- E-mail subscription to this newsletter
- A speakers bureau page detailing how to book a presenter from Beyond Borders
- A link to the Beyond Borders Twitter profile as well as a display of recent Twitter updates right on the homepage

- A link to Facebook Fanpages for the Media Awards
- Easy online donation through a link to CanadaHelps.ca

“Our website has always enjoyed significant traffic, I’m hopeful with the new design we’ll see even more, states Beyond Borders President, Rosalind Prober, “I know that the social media tools will allow those who want to do something about child sexual exploitation a way to connect and talk to each other.”

Facebook

You can find the Fanpage on Facebook by searching “Beyond Borders Media Awards” on the social networking site or by clicking on the Facebook link on the homepage of the Beyond Borders website. In French, search for “Au-delà des frontières”. To get updates from the Fanpage you’ll need to get a Facebook account (it’s free).

Twitter

Beyond Borders will use Twitter to issue fast breaking news (e.g. media interviews with Beyond Borders, links to info about particular legal cases, upcoming events) You can read Beyond Borders latest posts to the micro-blogging site by viewing them on the website homepage. There’s a direct link to Twitter there as well. Beyond Borders profile name on Twitter is @Beyond_Borders. You do not need a Twitter account to view the posts but you will need one (it’s free) if you want to interact with Beyond Borders and others on the site.

Visit the site and connect with Beyond Borders however you choose. Start the conversation about how we can better protect children.

Sign up for E-News!

If you wish to receive the Beyond Borders newsletter by e-mail, visit our new website at www.beyondborders.org and click on **Sign Up for E-News** where you may choose either English or French versions. If you wish to cancel your hard copy please send a message via the Contact button on top of home page.

COMING SOON - A “Tourist/Witness” Tour Of Southeast Asia

Watch our website as **Incursion Voyages and Beyond Borders** team up to offer a unique and educative trip to Southeast Asia. It is one thing to read about child sex tourism and help Beyond Borders fight this crime; it is another to see how this crime impacts on countries like Thailand, Cambodia and Viet Nam.

Those joining this tour will come away with a clear view of not only the work of Beyond Borders and ECPAT International based in Bangkok but also the reason behind our worldwide activism. This tour will be for adults only.

Beyond Borders Congratulates:

Member of Parliament Ed Fast for his private member's Bill C-277 which received Royal Assent in June, 2007 and became the law of Canada. The bill increases from 5 to 10 years in prison the maximum sentence for luring children over the Internet for sexual purposes. Mr. Fast became one of a small handful of MPs, representing fewer than 2% of all MPs in total, who have seen their private members' bills passed into law. Mr. Fast believes that this bill is a significant step forward in better protecting vulnerable young children against sexual predators.

Mr. Linden MacIntyre for his new novel, *The Bishop's Man*, about a priest who is assigned to a parish in Cape Breton Island. Shortly after his arrival, a nineteen-year-old commits suicide and rumours circulate in the community about child sexual abuse in the priesthood causing this tragic death. While not writing books, Mr. MacIntyre is an award winning investigative reporter and broadcast journalist

Incursion Voyages, the first Canadian signatory of the *Code Of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, for its continuing advocacy and support of Beyond Borders' fight to end child sex tourism.

Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society of Canada, for her excellent opening address at the Canadian Human Rights Tribunal on First Nations child welfare. The

historic human rights tribunal on First Nations child welfare was adjourned until November 16, 2009 when witness testimony will begin. For more information go to <http://www.fnwitness.ca/#news>

ACTA -The Association of Canadian Travel Agents for changing their Code of Ethics to help stop child sex tourism. ACTA signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism in 2008.

The Royal Newfoundland Constabulary for the arrest of a man in connection with a 9-month child luring investigation which started in 2008. The RNC Child Exploitations Unit was established in September 2008. In March, Statistics Canada reported that two out every three cases of cyberspace predators are **never** solved, and the vast majority of luring is never reported in the first place. The report is based on statistics obtained from 2006 to 2007 where police forces across Canada reported 464 cases of Internet child luring.

Ottawa Prosecutions for persevering in the difficult Internet luring case of Bogdan Dragos, 26, of Toronto who has pleaded not guilty to nine charges, including sexual assault, abduction, child luring and possession of child pornography. Unfortunately this case is difficult as the age of consent, now 16 in Canada, was 14 at the time. The victim, 13, admitted under cross examination she told Dragos she was 14.

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