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Submission to the House of Commons Justice Committee on Bill C-2

Raising the age of consent

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Canada's most notorious child pornographer and convicted child sexual abuser John Robin Sharpe on why he likes Bill C-2:

"Cross examination on the evidence dealing with "first sex" could be both entertaining and educational as the nature of the relationship is examined in court and broadcast."

"The young person however, could have to deal with probing cross examination about intimate aspects of the relationship and its history or evolution leading to a more complete picture which could reveal such positive factors as genuine friendship and mutual respect which might be used to question the Crown's claims of exploitation. This could perhaps benefit some men who become entangled in the law"

John Robin Sharpe's web site – http://207.139.168.113/

Bill C-2 proposed amendments are patently flawed

The proposed amendments contained in Bill C-2 are not a viable alternative to raising the age of consent to sexual activity from 14 to 16 years.

The proposed amendments to the Criminal Code are patently flawed, as they do not provide clear guidance to the courts and no obvious deterrent to potential violators.

The best way to protect young persons from sexual exploitation is to raise the general age of consent to sexual activity from 14 to 16 years with a “close in age” exemption. However, the government insists on introducing a flawed process based on the Judges’ subjectivity to determine what is an exploitative relationship.

The proposed amendments would technically permit a 50 year old man to have asexual relationship with a 14 year old girl or boy providing that the relationship is not determined to be exploitive. Bill C-2 proposes that the Court proceed on a case by case basis and determine whether or not the relationship with the child is exploitive.

Internationally

The age of consent to sexual activity in Canada is 14 which is one of the lowest in the world and significantly out of line with the International Convention on the Rights of the Child’s recommendation of 18. Most western democracies, namely, England, Scotland, Australia, New Zealand set 16 years as the age of consent to sexual activity. Ireland and the United States raise the bar and set the age of consent to 17, and 16 to 18 respectively. The Government’s position also offends the recommendations of all children’s rights organizations across the country and the Association of the Canadian Chiefs of Police.

The vast majority of Canadians support the age of consent to be 16 and are shocked when they learn that the age of consent in Canada is 14 years.

The proposed amendments

The proposed amendments would criminalize a sexual relationship between an adult and a child age 14 to 18 only if the relationship is deemed to be exploitive. Subsection 153 of the Criminal Code would be amended to set out the "Factors to be considered" in determining whether a person is in a relationship with a young person that is exploitive of the young person. In that regard, the Court would consider the nature and circumstances of the relationship between the person and the young person, including the following:

a) the age difference between the person and the young person;
b) the evolution of the relationship; and
c) the degree of control or influence by the person over the young person.

It is noted that the list of factors to be considered is not exhaustive. Creative defence counsel will certainly add to this list and find a way to favour their clients. That's what happens when laws are passed that are full of loopholes.

Deficiencies of the proposed amendments

Judges' subjectivity

It is up to the Court to determine whether a person is in a relationship with a young person that is exploitive of the young person. The determination is left to the Judge's discretion. A relationship, therefore, may be determined to be exploitive by one Judge and not by the other. We will see a vast body of potentially conflicting jurisprudence develop in this area and many appeals before the question of what is an exploitive relationship is judicially defined. That definition may never be consistent, and the effect of such an inconsistency will resonate most with those who are victimized.

Vagueness

Canadian citizens deserve to be governed by clear laws without any ambiguity. The proposed amendments are vague and confusing. What may be considered a crime for one individual is not considered a crime for the other. It is up to the discretion of the Police and the Crown attorneys to prosecute what they may or may not consider a crime. Adults will not know that they are breaking the law until they are arrested and convicted. The uncertainty and vagueness of the law will attract Charter challenges by the accused.

No preventive measures

The proposed amendments do not serve as a deterrent to the crime. The whole scheme of the proposed amendments contemplates that the act was already committed and leaves it to the Court to determine if the act was criminal. The onus rests on the complainant to prove to the Court that the relationship was exploitive. Most 14-16 year old children do not have the maturity or developmental ability to recognize an exploitive relationship, especially with regard to the manipulative natures of pedophiles. The predator will certainly not admit to the exploitive nature of the relationship as they do not recognize it as such. This creates a power imbalance of significant proportions.

Not practical

The proposed amendments do not take in consideration the reality of the judicial process. The accused will never plead guilty to an act that may or may not be considered by a judge to be criminal. Inevitably the accused will choose to proceed to trial so that the Court may determine whether or not the relationship with the child is exploitive. The child will be subject to a very aggressive cross examination and be re- victimized by having to re-live the events through testifying at the preliminary hearing and trial.

Historical cases

It can take years or decades for victims to realize that they have been abused. Consent when 14 might only be recognize as abuse when much older. It will be impossible to prosecute any historical cases. The Courts will not be in a position to determine if relationship that occurred 20 years ago was exploitive. The perpetrators will go unpunished.

"Close in age" exemption

Although we call for an increase in the "age of consent" we also agree that there should be what is known as a "close in age" exemption. In other words, we believe that it should not be a crime to engage in sexual activity with a young person if both people are relatively close in age. For example, even thought a 14 year is too young to consent to sexual activity, it should not be a crime if the 14 year old engages in sexual activity with say, a 15 or 16 year old. We believe that the appropriate fixed gap in age be 4 years.

Implicit in the "close in age" exemption is a recognition that, while some sexual activity with young persons should be the subject of the criminal law, other activity should not. The distinction is based on a recognition of and respect for the developing sexuality and emotional maturity of young people. The weight of the criminal law should not be directed at sexual activity between persons having a similar level of maturity and emotional development. It should instead be directed at sexual activity where there is an imbalance in power and maturity - where an older person exploits the reduced level of maturity of a younger person.

Recent cases on age of consent

R v. Brown 2005 SKCA 7
A 12 year old aboriginal girl was preyed upon sexually after being made drunk by three adult males. Edmondson, 26, sexually assaulted the 12 year old girl with his two friends Brown and Kindrat outside his truck on a gravel road near Tisdale Saskatchewan in September of 2001. One accused (Edmondson) was convicted and the other two (Brown and Kindrat) were found not guilty. In the case of Brown and Kindrat the jury found that accused took "all reasonable steps" and honestly believed that the girl was at least 14 years old.

During his instructions to the jury prior to the deliberations, Justice Fred Kovach referred to Brown and Kindrat as "boys" at least six times while referring to the girl as "Ms.". Justice Kovach also called the inebriated 12 year old "a willing participant". The Crown appealed Brown and Kindrat acquittals and the Saskatchewan Court of Appeal ordered a new trial. Will the young girl be able to withstand further cross-examinations? How will Bill C-2 help the hyper vulnerable who over and over find themselves being portrayed as the sexual "aggressor" in the Canadian Courts?

R v. Laurin

Last summer in Quebec, Louis Laurin was sent to prison for three years after having had a sexual relationship with a 14 year old girl. Laurin was her teacher and in a position of trust. It is only because of the fact that Laurin was her teacher that he was sent to jail. Otherwise, the relationship would have been entirely legal.

R. v. John Doe

A 38 year old Pennsylvania man lured a 14 year old Moncton girl on the Internet. After chatting with this young girl for several months, he arranged a date with her. He drove up to meet her outside her school, and later had sex with her at a nearby motel. Her parents notified the police and the RCMP located the child at the motel, and arrested the sex tourist on the spot. The next morning he was charged with sexual assault, and also for luring a child on the Internet. The man spent the weekend in jail. The following Monday, April 19, 2004, the assault and child luring charges were dropped because the girl was 14 years old – the age of consent in Canada.

Child sexual abuse in polygamy Bountiful, British Columbia

On February 18, 2005, women from a Mormon sect in British Columbia where polygamy is practiced joined Beyond Borders at a conference in calling for the age of sexual consent in Canada to be raised.

The B.C. women said changing the federal legislation to make 16 the age of consent from the current age of 14 would help them protect daughters who have been raised to believe that they must obey the prophet and marry much older multi married men often before the age of 16.

Former Bountiful resident Debbie Palmer, who was a child bride at 15 and left the commune at 34 with her eight children, is advocating for the age of consent to be raised to 16 from 14. She's written a book about the abuse she suffered and saw in Bountiful, and maintains young girls are still being exploited and are entering into "celestial marriages" with men in the community.

R v Paton 2005 NUCJ 07

The most recent case of a child being referred to as a "willing participant" due to Canada's age of consent when being used to make child pornography occurred in Iqaluit. The victim under 14 was passed out when she suffered a serious sexual assault. The court was informed that the accused, James Paton, admitted to a three-year "relationship of verbal and behavioral consenting sexual activity" with the complainant when she was "not of an age where legal consent could be given." Paton at the same time as sexually abusing the complainant was buying child pornography which led to his arrest. When RCMP searched his house they found a videotape of the accused supplying alcohol to the young girl. The Honourable Mr. Justice E Johnson described the contents of the homemade video of the accused with the child in his February 14, 2005 judgment as follows:

"The two are seen leaving what appears to be the living room and going to the bedroom. The video stops and restarts in what appears to be the bedroom. The complainant is seen to be lying on mattress and appears to be passed out. The accused is seen to perform cunnilingus, digital penetration, and then vaginal sexual intercourse with the complainant. She is then seen to wake up and become a willing participant in the activity."

Canada's low age of consent gave the accused a major advantage and crown a major hurdle in this case as the video was found when the victim was 16. The crown stayed the sexual abuse charges and a plea bargain was entered into for the "willing participant" sexual assault on the drunk "passed out" child and the child pornography charges. The accused, 36, received house arrest of two years less a day.

R. v. Howard March 16, 2005 (Q.B. Alta)

In Edmonton, 40-year-old Christopher Howard of Fort Saskatchewan was acquitted of sexually assaulting a 14-year-old girl with a mental capacity of seven to 12-year-old.

While denouncing Howard's actions as "stupid and naïve," Court of Queen's Bench Justice Philip Clarke said "that stupidity by itself is not criminal [and] it is

not the court's role to pass moral judgment." He added that the Crown had failed to prove beyond a reasonable doubt that the girl did not consent to having sex with the accused three times.

Howard testified that he suspected that the girl had problems speaking and hearing, but he did not know that she suffered from a mild form of autism.

R. v. Beckham March 10, 2005, Ottawa

In Ottawa, police arrested a 31-year-old Texan, Dale Eric Beckham after he was found at a hotel with a 14-year-old boy. Beckham met the youth via an Internet chat room and had flown to Ottawa for a weekend of what police say was "consensual sex." Beckham is charged with using a computer to lure a child under age 16 and child abduction. But because Canada's age of consent of sexual consent is 14, he faces no sex-related charges.

Recommendations

The proposed amendments still hold on to the notion that sexual activity between a 14 year old and a much older person might be consensual. This is wrong and such activity ought to be criminalized.

Beyond Borders submits that the proposed amendments contained in Bill C-2 regarding the age of consent are flawed on many levels and contrary to the best interest of Canadian children and to the population in general.

Beyond Borders further submits that:

- the age of consent to sexual activity be raised from 14 to 16.
- the criminal law should not be brought to bear against sexual activity between people of relatively similar emotional and sexual development. Therefore, a “close in age” exemption would be required.
- the proposed amendments in Bill C-2 be enacted in an attempt to protect children age 16 to 18.