Canada’s Age of Consent Still 14!
Why the “Exploitive” Relationship Offence Fails Children

By David Butt

In so many ways, teenagers are neither adults nor children. Therefore, it is hardly surprising that in so many situations, teenagers need simultaneously both the support and protection of caregivers and other adults, and the space to make their own autonomous decisions. Nowhere is this difficult balancing act between caring for teenagers, and giving them space, more important than in the realm of teen sexuality.

Teenagers all experience sexual awakening as they mature physically, and it is therefore perfectly understandable that they will, to varying degrees and at varying ages, begin to explore their sexual selves by seeking out relationships with a sexual component. When they do so, they are entering into a part of the adult world that they must learn to navigate on their own. But because this world is unknown to them, when they enter it they are vulnerable.

The law needs to protect vulnerable teens from being sexually exploited during their early sexual awakenings. But at the same time the law must accord teenagers the liberty to awaken sexually in a zone of safe choices. How is this to be done?

Recently, the Parliament of Canada took a faltering step forward in protecting the safety zone of teenage sexuality by making it an offence to become sexually involved with a 14-17 year old in an “exploitive” relationship. This legislation is a step forward because for the first time it recognizes that those in the vulnerable sexually awakening years of 14 to 17 are prime targets for sexual predators, and they need protection. But it is a faltering step forward because the offence will be almost impossible to prove, and therefore ineffective in delivering the protection these young people need.

The main problem with this new law is that the term “exploitive” is next to impossible to define with any certainty. And prosecutors, who must prove their case beyond reasonable doubt, will inevitably fail, because there is no way to inject this vague law with enough certainty to earn convictions.

Recent research has shown that those who prey on 14-17 year olds are usually upfront and honest about their sexual intentions. These predators are, however,
invariably far older than the teenagers they lure. They are adults, they are emotionally manipulative, and the inexperienced teens are easy prey. These adult predators promise teenagers, naive to the world of relationships, the safety and comfort of love and romance. But all these predators are after is sex. Often the teenager is complicit in his or her abuse, refusing to accept that the person who seemed so nice to them is really a callous predator.

There is no doubt that this relationship dynamic between a far older predator and a naive teenager is exploitive. But how could a prosecutor ever prove it under Parliament’s new law as presently worded? The predator typically lures the victim with gifts, and promises of love which the victim in his or her immaturity, believes. The victim will therefore be unlikely to co-operate with the police or prosecution. Who would ever want to get into a witness box and talk about one’s most intimate teenage sexual embarrassments, especially when the police are asking that the victim testifies against a person they may still have strong feelings for? Even if the victim does co-operate, he or she must face in open court the predator’s savvy defence lawyer, who will be able to point out with great emphasis how kind the predator was, and raise a reasonable doubt that will get the client acquitted every time.

It doesn’t have to be that hard. We can do a better job of protecting vulnerable teens while at the same time allowing them the necessary freedom to become the sexual adults they will inevitably be. The simple way to do so is to accord teens the freedom to make sexual choices with their peers, but prohibit relationships between vulnerable teens and much older adults. That way, each teenager can express his or her sexuality in his or her own way in the relative safety of a peers-only social environment, safe from the claws of much older sexual predators.

The law that would create this peer safety zone is not hard to write. For example, Parliament could simply say that it is an offence for anyone more than five or six years older than a 14-17 year old to have sex with that person. The law would be dead simple to enforce. All it would take is evidence of sexual activity and birth certificates. And most importantly, it would outlaw precisely the kind of predatory behaviour that puts our teens at the greatest risk: sly adults taking advantage of kids still unsure of their awakening sexuality.

Recent Internet Luring Cases

**Ottawa, Canada** - A Texas man was charged after coming to Canada after using the Internet to lure a boy under 14 to his hotel room for sexual activity (over age 14 Internet luring is legal in Canada)

**Colorado, USA** - A former minor hockey coach from Hamilton, Ontario, Robert Ross, was charged with Internet luring of a 14 year old Colorado boy. At the time of his arrest, the accused had plane tickets and details of his victim's home address (legal in Canada)

**Ajax, Ontario** - A church pastor was charged with Internet luring in August, 2005 after going on a popular teen chat site, Teen Oh Canada Chat, and striking up a conversation with a detective posing as a 12 year old girl. He was arrested when he traveled to meet her.

More and more children are being lured over the Internet! In July, 2005, Canada's national tipline received 17 reports of Internet Luring!

Beyond Borders 2005 National Media Award – Call for Nominations – Deadline Oct. 31, 2005

This award recognizes journalists who have made an important contribution to raising awareness of child sexual exploitation in Canada or abroad, through their work in print or TV media. The winner will receive a cash prize of $500, along with an engraved gift, sponsored by the Winnipeg law firm of Booth Dennehy.

To enter go to Beyond Borders website at: www.beyondborders.org
Should We Release Photos Of Children’s Faces In Sexual Abuse Images?

By Nancy Embry

As we are all too well aware the Toronto Police Sex Crimes Unit found itself struggling with a moral dilemma this past May, 2005. Over a period of three years they watched as one young girl’s image appeared in over 50% of the collections of child pornography that they had seized. They were literally watching her grow up through abuse images. This frustration, combined with the knowledge that approximately only 1% of victims in child pornography are ever identified motivated them to appeal to the public for assistance. In February, 2005 they released to the media several photos that had been digitally modified to remove the child’s image and show only the background; within hours they had enough tips from the public to confirm the location of the abuse in these pictures as taking place in a hotel in Disney World Florida. Florida law enforcement were brought into the case as well, but after months of reviewing old hotel records no new leads were discovered. Among the images of the young girl there was a picture of an acquaintance, another child of approximately the same age, who the police were confident was not being abused. In May, 2005 they released her photo hoping that this further appeal to the public would lead them to the victim. If this did not succeed would a last resort be to release a photo of the young girl herself? This action has never been taken before in child pornography cases and indeed the Florida police were prohibited from doing so by law. Paul Gillespie and his Toronto team now struggled with weighing the dangers to the child versus the benefits of such a bold move. In the end she was found before this became necessary but what are the challenges that such a decision raises? What position should those concerned with protecting the rights of the child take?

When we know that children in child pornography are suffering ongoing sexual abuse the top priority is to get them out of that situation; however, the safety of the child must always be considered. Once the identity of the child is public knowledge the perpetrator of the abuse may feel threatened even to the point of taking the child’s life. For this reason releasing the identity of child pornography victims should be a last resort and we would hope always done on a case by case basis. Should their photos be included in missing children campaigns without revealing the nature of their victimization as an alternative? It could also be argued that law enforcement already deal with the dangers to a child’s safety when their identity is released in an Amber Alert. Unfortunately, in the case of missing children the first three hours are crucial to finding the child and those not found within 48 hours are rarely found alive. This urgency to act with the utmost speed to save the child’s life totally justifies releasing their photos. But isn’t there an urgency to get the victim in child pornography out of that situation? The sooner they are found the sooner they can start the healing process and start to reclaim their lives.

We also know that part of the abuse child pornography victims suffer is the psychological trauma the child feels knowing that humiliating personal images are available to the public forever. Is it a further traumatization for the child to see his or her photo in the public media identifying them as a sexual abuse victim? One could also ask whether it gives the child confirmation that the world sees her as a victim but is anxious to participate in his or her rescue from this sexual abuse. Could this media attention offset the guilt and shame that so often accompanies such children? In the ECPAT Newsletter, January 2005, Abusive images: The impact on the child, Tink Palmer notes: “We know that children who have been sexually abused rarely disclose their abuse. It would seem, however, that when the abuse is photographed or filmed it is even more difficult for the victim to disclose what has happened.” When the need to disclose is eliminated by the “rescue” of the child through the help of an entire public, is some of the guilt and shame deflected? Indeed, the young girl in this case did seem to be empowered by the media attention. As it turned out her adoptive father was the perpetrator and had been in jail for the last three years for possession and distribution of child pornography serving a 15 year sentence. That the Toronto Police were undertaking such heroic measures while the abuser was already in jail, only underlines the dire necessity for a world-wide database of children involved in child pornography and the need for law enforcement to work together not only domestically but internationally.

From this case we have learned that the media and the public can be powerful and tempting tools in helping law enforcement rescue children locked in the abusive world of child pornography. All the right questions are being asked and the releasing of children’s identities will hopefully always be done with the utmost care, but now knowing how effective and empowering the public support in these cases can be should we really oppose such tactics? Without doubt the Toronto Sex Crimes Unit were very close to finding this child without using her photo and would most probably would have found her had they released it. When more children are found the public will become even more energized to help in the rescue of these children. Surely we can do more to protect these children than merely finding 1% of them.
Successful Sex Tourism Prosecution Provides Impetus for Beyond Borders Vancouver – Welcome Simon Buck

By Barbara Barnett-Fontaine

Since 1995, Beyond Borders has lobbied for effective legislation against sex tourism to enable the prosecution of Canadians who sexually exploit children outside of Canada. After successfully lobbying for amendments to the initially flawed legislation, and waiting, seemingly in vain, for this extraterritorial legislation to actually be used, Beyond Borders geared up for another battle in the fall of 2004. British Columbian, Donald Bakker, became the first person to be charged under Canada’s sex tourism laws after he was caught sadistically sexually assaulting a woman in Vancouver. Video tapes in his possession revealed that he also sexually exploited numerous pre-pubescent Asian girls outside of Canada.

Our sex tourism legislation was immediately under attack. The threat of a constitutional challenge loomed, as Bakker’s lawyers touted that it was an intrusion on the sovereignty of other nations. At this time, Vancouverite, Simon Buck, a criminal lawyer who assisted Beyond Borders in the past with the case of Robin Sharpe, was called upon to monitor the Bakker case. He prepared to make application for intervention and argue the constitutionality of Canada’s sex tourism legislation. Simon also served as Beyond Borders official spokesperson while the Bakker case unfolded in the media.

The momentum increased as the case, Canada’s first test of this legislation, received international attention. Finally, after much uncertainty, on June 2nd of this year, Bakker pleaded guilty to sexually assaulting seven girls in Cambodia and three adult women in Vancouver and was sentenced to ten years in prison. This precedent-setting case marks a significant victory for Beyond Borders as Canada’s sex tourism legislation finally proved successful, ten years after its inception.

In the aftermath of the Bakker case, it became apparent to our President, Rosalind Prober, that there was a need for an expansion of Beyond Borders, to the west coast. Simon Buck became the obvious choice of person to spearhead this effort and establish Beyond Borders Vancouver. Simon is currently working to bring interested people aboard and trusts that his wife, Dagmar Dlab, also a lawyer, will serve on the Board.

Simon emigrated to Canada from England when he was 13 years old and has resided in Vancouver since 1975. He studied English Literature at the University of British Columbia and attained a B.A. in 1983. He went on to study law and received his LL.B. in 1986. Soon after, he began his own practice and concentrated on criminal defence. Today he partners with several other lawyers in the practice of all realms of criminal law. Simon and Dagmar have two grown children.

We can look forward to hearing more from Simon as Beyond Borders Vancouver gets underway!

Recent Child Sex Tourism Cases

Kenya - A German national, Leo Brock, was sentenced in July, 2005 for his involvement in making child pornography with children in a swim club in Kenya.

Australia - An Australian, Wulf Werner, suspected of being part on an international pedophile ring, was extradited back to Goa, India in August 2005 to stand trial. He was accused of buying young boys from a convicted sex offender, Fred Peats, who was jailed for life in India and died in prison.

Thailand - A former director of a London children’s home, British national Nicholas Rabet, has been charged in Thailand in July 2005 with sexual abuse of Thai boys. Rabet was investigated for sexual abuse in the UK in the 90’s and subsequently moved to Asia.

United States - In May, 2005, Florida truck driver, Karl Kaechele, was charged with traveling to Asia and sexually abusing children, some as young as seven. US ICE agents have made 14 arrests under the child sex tourism provisions of the PROTECT Act since 2003.
Exporting Child Abuse: Canadian Sex Offenders Will Travel

By David Thompson

Donald Bakker of Vancouver was convicted in May of brutally sexually assaulting 7-to-12-year-old girls in Cambodia in 2003. This conviction is a major victory for Canada’s child sex tourism legislation, as Bakker is the first to be convicted under it since it was enacted 7 years ago. Despite this the troubling question remains of what will happen in 7 years (at the latest) when Bakker completes his sentence? If he wants to travel back to Cambodia, will he be stopped? Unless there are some major legislative changes in the next few years, probably not.

Canadian child sex offenders have almost complete freedom to travel abroad upon completion of their sentences. Offenders listed on the national sex offender registry only have to report absence from Canada if it extends beyond 14 days, and this may be done by mail. They may have to provide notification of travel plans under the conditions of a s. 810 peace bond order, but this is left up to a judge’s discretion and only lasts for one year. Finally, the Minister of Foreign Affairs has the authority to simply refuse or revoke a passport on the grounds of national security, but this is rarely done and it has never been used to prevent child sex tourism.

This legislative void poses great danger to children in foreign countries. Consider this combination:

1. Child sex offenders are likely to re-offend. The results of a 25-year follow-up study of 351 sex offenders were released in 2004 by Toronto psychologist Ron Langevin. It found that more than 4 in 5 sex offenders re-offend, with child sexual abusers among the most likely to re-offend.

2. Child sex offenders like to travel. Peter Whitmore served 5 years for sexually assaulting an eight-year-old girl and a nine-year-old boy. Days after his release in Toronto in 2000 he disappeared, only to resurface a month later in Mexico with a list of the names of children of “tender ages,” suggesting he had contact with kids in Mexico. Canadian hockey coach Graham James was sentenced to three-and-a-half years in 1997 for committing 350 sexual acts on two teenage hockey players. He now coaches hockey in Spain, working with children as young as five.

3. Many children in many foreign countries are extremely vulnerable to sexual abuse due to factors such as poverty, homelessness, and thriving local child sex tourism industries.

A convicted child sex offender can be like a ticking time-bomb in any community with children. If he is released and remains in Canada, at least some procedural safeguards can be put in place, such as banning him from schoolyards and parks frequented by children. However, the same sex offender may travel in anonymity to impoverished nations where children are more vulnerable, and local authorities are not notified and thus unable to monitor him.

Australia and the U.K. have very strict laws restricting the foreign travel of convicted sex offenders, ranging from requiring detailed notification of travel plans for trips longer than 2 days to outright passport removal. As an exporter of child sex tourists, Canada should follow the lead of these countries and restrict the foreign travel of convicted sex offenders. As a signatory to the Convention on the Rights of the Child, Canada has international legal commitments to revise its laws to eliminate the commercial sexual exploitation of children. Canada’s inaction in this area sends a message that we care about our own children, but the street kids in Cambodia can fend for themselves.

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<th>More Child Sex Tourism Cases</th>
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<td><strong>Finland</strong> - A Finnish man suspected of sexually abusing 445 Thai boys over the last 15 years was detained after returning from his 26th trip to Thailand.</td>
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| **United States** - Two men from Europe have received prison sentences of more than four years each for traveling to Tucson, Arizona to have what they believed would be pre-arranged sex with underage girls in Mexico. |

| **United States** – A San Francisco businessman sex tourist jailed in Mexico on child sex charges, has settled two civil lawsuits filed by American and Mexican youths who claim they were molested by the financier. |

| **France** - A Canadian clergyman with a criminal record for sexually abusing minors confessed yesterday to charges of raping a young member of his parish in Normandy, where he moved after serving a Quebec prison term. |
What No Child Should Endure - The Court Of Appeal Of Saskatchewan

Where Deference To An Erring Trial Judge Is More Important Than Justice For A Victim

By Rosalind Prober

R V Edmondson- Dean Trevor Edmondson, 24 at the time, was convicted of sexually assaulting a ninety pound 12 year old hyper-vulnerable aboriginal runaway with other men on September 30, 2001 on a lonely road in rural Saskatchewan. The victim had to be hospitalized as she was drunk, injured and hysterical. A jury found Edmondson guilty of sexually assaulting the child with the others, and the trial judge, Justice Kovach, sentenced Edmondson to two years less a day house arrest. Edmondson appealed his conviction and the Crown appealed his sentence. The Court of Appeal upheld Edmondson’s conviction but changed the conviction to a simple sexual assault (not with others) due to errors by Justice Kovach. Regarding the sentence, the Court then said that 2 years less a day was appropriate but that Kovach’s decision allowing Edmondson to serve it at home was unjust and wrong. The Court also said “This is not to say that any of us, had we been called upon to impose a sentence in the first instance, would necessarily have imposed a term of this length rather than three years.”

So was Edmondson’s house arrest reversed and was he then rightly sent directly to jail? Anything less and it would be painfully obvious that what happened to this child victim was far more serious than what happened to the sexual abuser.

The court was clear that house arrest was unfit and wrong. It stated, “Allowing Mr. Edmondson to serve his sentence in the community, even subject to the conditions imposed by the trial judge, was neither consistent with the fundamental principle of sentencing, nor with the principle of parity. Nor was it consistent with the need to give more meaningful effect to the objectives of denunciation and deterrence.”

Remarkably, Edmondson had a huge victory. He did not go to jail. He went home, his unfair, unjust sentence upheld by the very Court of Appeal that said it would have considered a three year jail term at the same time as using such strong language to say how unfair and unjust house arrest was in this case. How did the Court of Appeal get itself into a position to hand Edmondson such a sweetheart deal? Is the aboriginal community wrong in their assessment that this sentence would not have been upheld if the victim were white and from an affluent Saskatchewan home?

The Court of Appeal agreed with Justice Kovach that two years less a day was a fit sentence for this sexual assault. Beyond Borders strongly disagrees and is appalled. The Court decided no matter how unfair, unjust, or simply wrong it was to allow Edmondson to serve his sentence at home, it would not increase Edmondson’s sentence to ensure that, even giving him credit for the time he had already served at home, he would still go to jail where the Court clearly stated he should have gone in the first place. The Court bent over backwards in speculating on hypothetical time frames of when he would have been released if he had been sent to jail in the first instance. It focused on second guessing the parole board instead of concentrating on making sure that justice was done, which in its view was that Edmondson deserved jail time.

Two years less a day is not a fit sentence for sexually assaulting 12 year old children. How could a Court of Appeal come to that conclusion? This is a terrible precedent. The molly coddling in the justice system of those preying on children in Canada must end. The Crown has applied to the Supreme Court to have this flawed decision overturned. Beyond Borders will attempt to intervene on behalf of the child victim whose right to justice has been totally ignored by the Court of Appeal of Saskatchewan.

Beyond Borders Newsletter – Fall 2005
March 2, 2005

Dear Members of Beyond Borders,

The women of Bountiful, BC would like to express their sincere thanks for the opportunity to be involved in the Beyond Borders Round Table discussion on February 18, 2005. We found the discussion stimulating and thought provoking. We appreciated David Matas in his efforts to mediate the discussion, allowing all participants to have a voice. We respected all the participants for welcoming us.

We admire the cause of Beyond Borders in protecting children around the world from sexual abuse, and for making the effort to create a safe environment for all children. We join you in your efforts of child safety, by continuing to provide a safe environment for our children in Bountiful. We agree that 15-year-old girls should not marry.

There are a few issues that were left unresolved after the discussion which we feel need clarified. Firstly, our culture is very important to us. Respecting other people’s cultures is valued as well. We do not feel that we need to compromise our culture to provide a safe environment for our children. In fact, we feel that our lifestyle ideally provides greater protection from abuse. Secondly, as far as our families are concerned, we have not experienced the kind of abuse that was discussed, and we take exception to the comment that we “are stopping the abuse in Bountiful.” Thirdly, moral integrity is one of the basic values of our religion. We do not believe that sexual exploration is acceptable, nor do we feel that it is healthy or safe. We understand this is a controversial issue and will continue discussion when you come to Bountiful, if needed.

We welcome your next meeting in Bountiful. Thank you again for the opportunity to represent ourselves in a matter that truly impacts us and our children.

Sincerely,
Marlene Palmer and women of Bountiful

For a full report on the Round Table discussion entitled “Preventing Sexual Abuse in a Polygamous Community” by David Matas, go to Beyond Borders Website: http://www.beyondborders.org/publications.htm

Men Indicted in U.S. Polygamous Community

Eight men from the Fundamentalist polygamous community in Colorado City, Utah have been indicted on charges of sexual misconduct with a minor and conspiracy. Five of them were accused of marrying underage girls in spiritual union. Also, the church’s leader Warren Jeffs, has been charged in Arizona with counts that include conspiracy to commit sexual conduct with a minor. He remains a fugitive at the time of this report. (A.P., July 11, 2005)
What’s New

Daphne Bramham writes on injustice in Yukon. Two young girls, starting at ages 8 and 9, were fondled and sexually assaulted over a period of 5 years between 1975 and 1980, by a man who is now a successful business man and a member of the Yukon legislature. It took several years for the girls to summon courage to come forward. Although he has now been convicted, and awaiting sentencing, Haakon Arntzen remains an MLA, a position he may hold onto even if he goes to jail. Daphne writes: “That a man who became a respected member of the community, a leader and supposed role model continues to believe that sexually abusing girls is not sufficiently important to warrant his resignation from the legislature is astounding.”

“If we don’t demand that Haakon Arntzen be stripped of his dignity and power – having stripped those young girls of theirs – what message are we sending to women and girls about the kind of justice they can expect in Canada?”

(Vancouver Sun, July 9, 2005)

Winston Blackmore, former bishop of Bountiful, a polygamous community in BC, speaks out on his marriages to children. “There was one, one day shy of her 14th birthday. I have married several very young wives in my life.” (Andre Dearden, Idaho’s News Channel 7, May 10, 2005)

Children bear psychic scars of their pedophile father’s pornographic abuse according to a report by Allison Hanes in the Montreal Gazette. Their case worker describes the young 7-year old daughter as overtly sexual, aggressive and hyper-active. “This is a child who risks being re-victimized,” she states. Her three brothers are also afflicted. They have since been plucked from their home and live in foster care. (Montreal Gazette, July 13, 2005)

Beyond Borders applauds Vicki Boer, victim of sexual abuse as a teen by her Jehovah Witness father, for pressing charges against him in the Orangeville, Ontario Superior Court, and going public in order to expose how the sect handles sex-abuse complaints within its ranks. Her father was found guilty of abusing his daughter and sentenced to 2 years less a day of community service. Earlier in 1998 she had also sued the sect in civil court. Now married with three daughters, Ms. Boer said she hoped her court battles would force change in the Jehovah’s internal policy regarding sexual abuse and render the elders accountable. According to Ms. Boer they forced her to confront her father to allow him to repent his sins, a process she found to be abusive and traumatic. (Based on an article by Colin Perkel, Globe and Mail, August 30, 2005)

A 16-year old Toronto girl is struggling with a cyber nightmare after sexually explicit photos taken by a vengeful ex-boyfriend were posted on the Internet. Although child pornography charges have been laid, the police have tried without success so far to get the anonymous webmaster to remove the photos, plus the photos are being copied to other sites. (Globe and Mail, April 22, 2005)

The Irish Anti-Trafficking Coalition (IATC) urges Canada to raise the age of consent. Gregory Carlin, IATC Director, states “The Canadian Parliament must enact legislative measures to deter sex buyers who create the demand for the sexual exploitation of women and children.” “Child-protection groups have been lobbying the Canadian government to raise the age of sexual consent from 14 to 16 to bring Canada into line with international standards,” Carlin explained. “Instead of introducing a law that would definitively protect children, the Liberals are advocating NAMBLA friendly legislation that will do nothing to stamp out child exploitation and everything to help their exploiters.” (Belfast, LifeSiteNews.com, March 14, 2005).

A San Diego man convicted of traveling to the Philippines to have sex with a teenage girl was sentenced on September 12, to 37 months in federal prison and ordered to pay $25,000 in restitution to help Filipino victims of child exploitation.

George Kraus, a B.C. elementary teacher, has pleaded guilty to possessing 27,000 child abuse images on his home computer. He told a reporter in March that the kids in the images were mostly aged five to 14, and said: "It's not hurting anybody... they're all overseas." (The Province, September 20, 2005)

Beyond Borders Mission Statement

Beyond Borders advances the rights of children to be free from abuse and exploitation without regard to race, religion, gender or sexual orientation. Also, Beyond Borders does not have any religious or political affiliation. Our group is made up solely of volunteers who absorb all their own expenses with the exception of the expenses of our lawyers when they are intervening in court cases, which they often do pro bono.