A Just Case for Raising the Age of Consent
By Mark Erik Hecht (Ottawa)

Our law states the age of consent in Canada is 14. Recognizing that this leaves children vulnerable to adults who wish to exploit them, at the time of its enactment the government made an additional amendment to the Criminal Code. The supplemental provision states, “Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who for a sexual purpose, touches...any part of the young person...is guilty of an indictable offence.” By adding this crime to the mix, the government was signifying that children should never be able to consent to sexual activity with certain adults, even when they are 14 years or older, and if they do consent their agreement will be considered invalid by the courts.

Although on paper this added protection measure seems like a good idea, the reality is that the courts have very narrowly defined “who is in a position of trust or authority” and “a relationship of dependency”. Generally speaking, unless the adult is a

Continued on Page 2 (raising the age of consent)
coach, clergy, counselor, Big Brother, etc. judges have basically said at the age of 14 children can indeed consent to sexual relations with anyone they want. Perhaps the most extreme case study is the 2001 Manitoba arrest of a teacher who admitted to a sexual relationship with his former student who was 14 at the time. The Crown Attorney opted not to pursue the matter because her reading of recent judgments had indicated that, “you can't assume that just because this is a teacher, there [is] an automatic position of trust there.”

Children are continuing to be exploited by adults and their “consent” is continuing to be used as a defence by the exploiters. The solution to this problem is quite simple. Raise the age of consent. If the age of consent was 18 or even 16, parents, law enforcement agents and children's rights activists would be much more comfortable with the notion that young people can acquiesce to this kind of sexual activity. For this reason, Beyond Borders launched its Age of Consent postcard campaign last year. As a result of our efforts the government tabled Bill C-20 this past December.

Rather than follow our advice and raise the age of consent -- which would have also resolved loopholes in our child pornography laws and on-line luring legislation the Department of Justice chose instead to add the following words to the current Code articles: “... or who is in a relationship with a young person that is exploitative of that young person...”.

So, to sum up, the age of consent is still 14. However, if one of the partners is in a position of trust or authority, if the younger partner is dependant on the older one, or if the relationship is exploitative, the courts will disregard the consent. Is this an improvement over what had existed before? I suggest not for the following reason: If the courts have been unable to properly define something as self-evident as an adult in position of authority how will they ever come to terms with the phrase “relationship... that is exploitative”? By drafting a craftily worded amendment the government has missed the point: Every adult is in a position of trust and authority over every child, every child is in a relationship of dependency to every adult and young people are always at serious risk of being exploited by those who are significantly older than them. Until the government acknowledges what the rest of us already know they will not raise the age of consent and as a result, our youngest and most vulnerable citizens will continue to be harmed by those who are entrusted to protect them.

Child pornography and artistic merit

By David Matas (Winnipeg)

Bill C-20, the Government of Canada's new proposed child pornography legislation, goes in exactly the wrong direction. The defense of artistic merit needs narrowing. Instead the Bill proposes broadening the defense.

Right now the law states that where an accused is charged with a child pornography offence, the accused has the defense that the representation or written material has artistic merit or an educational, scientific or medical purpose. The Bill proposes that this defense be repealed and be replaced by the defense that the material alleged to constitute child pornography serves “the public good.”

Mr. Justice Shaw of the Supreme Court of British Columbia in February 2002 found that the written works of Robin Sharpe had artistic merit and acquitted him of the charges possession and distribution of child pornography in relation to those written works. It is unlikely that this verdict would be any different under the proposed law.

It is possible to legislate three limitations to the defense of artistic merit and still maintain the constitutionality of the law. First, I understand the Supreme Court's comments to mean that where the subjective intention of the creator is sexual portrayal, enticement or seduction, rather than an artistic purpose, then that intention speaks to the unavailability of the defense of artistic merit.

The second possible limitation I draw from the decision of the Supreme Court of Canada in Sharpe is that, where the work is unconnected or has little connection with artistic conventions, traditions or styles, that absence of connection undercuts the defense of artistic merit.

The third limitation the Supreme Court of Canada mentions, the mode of production, display and distribution, also deserves attention. The law should include this limitation.

Bill C-20, by making the defenses to the child pornography offences as broad as all outdoors, makes convictions harder to obtain. Because there are at least three possibilities of limiting the defense of artistic merit, consistent with the majority decision of the Supreme Court of Canada in Sharpe, Bill C-20 needs to be amended to invoke those possibilities.

David Matas is a Winnipeg lawyer. He argued the Sharpe case in the Supreme Court of Canada for Beyond Borders.
As a result of a number of disturbing horse mutilations in the Calgary area, a police officer, Detective Lionel Busch, began an undercover police operation to solve the crime. As part of his undercover investigation, he went into an Internet bestiality chat room asking if anyone had any interest in horses in Calgary. He got a reply from a Mr. Jordan, a retired oilman, married and a member of a strict religious group called the Two by Twos. Mr. Jordan explained that he was a frequent visitor to Guatemala. During sentencing before Judge Semenuk, the court was informed that Jordan's telephone and email conversations with Busch were about bestiality, sex with children and child pornography. Jordan told Busch he would arrange to get him child pornography from Guatemala. In July 2001, Jordan, apologizing that the Guatemalan phone lines were poor and the quality of the pornography was not as good as he expected, gave Busch 13 photos of two young girls being sexually abused by a white male, which Jordan claimed, were taken "in the jungles of Guatemala". Busch arrested Jordan and charged him with importing, possession and distribution of child pornography.

When Bruce Harris of Casa Alianza in Latin America became aware of this case, he contacted Beyond Borders in Canada. Together, Bruce and I agreed that this case was of international importance. Jordan plea-bargained and the charges of importing and distribution were dropped for a guilty plea to the charge of possession. In Jordan's defense, his lawyer, Alain Hepner, submitted to the presiding judge that as a result of seeing all the poor children in Guatemala, his client became a deeply traumatized individual with disassociative characteristics. He lost self-esteem and to regain it, got involved in a misguided attempt to help law enforcement. Jordan was portrayed as a misguided good citizen giving child pornography to a stranger he met online (Detective Busch) to help solve the horse mutilation case!

I made three trips to Calgary to draw attention to a defense based on what seemed to be an excuse for possession, that of helping law enforcement - a defense which not only lacked any hint of common sense but which would also be a dangerous precedent for the courts to accept. Unfortunately, Judge Semenuk, in spite of all the evidence to the contrary, including the crown attorney's statement to the court that he did accept the report of the crown psychiatrist, accepted the doctor's report which characterized Jordan as an inadequate man but not a danger to children.

Because of Beyond Border's belief that the link between child pornography and the actual sexual abuse of children is not usually recognized in the Canadian courts, a lawyer, Simon Buck of Vancouver, was hired to make an application for presentation of a victim impact statement on behalf of the two girls, now named Jane Doe 1 and 2. In Canada, victims can address the Court to speak of the crime and the impact on their lives. The court accepted the application of Beyond Borders, which was supported by UNICEF Canada. Before the sentencing of Jordan, I addressed the court on behalf of the girls. That was the first time ever that a voice for anonymous children sexually abused in pornography has been heard during sentencing.

**SENTENCE:** Jordan was sentenced to 3 months house arrest and fined $1,000.00. Beyond Borders was widely quoted in the media on the case saying it is another example of the low value placed on sexually abused children in Canada, and the light sentencing of child pornographers which allows this crime to flourish.

**Beyond Borders Thanks**

Paul Vandervert, LL.B., Brantford Ontario, for acting pro bono for Beyond Borders in R. v Renton (Page 6).  
Jeanette McCoshen for accompanying Roz Prober to Brantford, Ontario and  
Nancy Embry, Beyond Borders, Toronto, for hosting Roz and Jeanette and accompanying them to Brantford.  
Raymond Oakes, LL.B., Winnipeg, for his donated legal services.  
Earl Glinter, C.A., Winnipeg, for his donated accounting services.

Beyond Borders is a network of volunteers who donate their time, expertise, and money on behalf of sexually abused children.
Australia 15 Canada 0: How Two Countries Took Opposite Paths to Stop Child Sex Tourism
by Rosalind Prober (Winnipeg)

The numerous similarities between Canada and Australia have often been written about. Unfortunately however, on the issue of child protection from sexual abusers, Canada falls far behind Australia.

One only has to examine the long troublesome history of Canada's sex tourism legislation, compared to the success of Australia's work to stop their citizens from preying on the hyper vulnerable of the world, to see how inadequate Canada's response to this crime has been.

Recently I was in Bangkok to attend ECPAT's Second International Assembly. While there, one of Bangkok's daily newspapers, The Nation, reported Australia's fifteenth sex tourist arrest. A 58 year old Australian had been charged with sexual intercourse with a 16 year old girl while in Thailand. Australia has indeed shown that sex tourism prosecutions are not only possible, but in fact, in Australia, they are now almost routine.

In Canada, quite the opposite is true. Since 1995, Beyond Borders has lobbied for legislation comparable to that of Australia and many other countries. The Department of Justice, however, has repeatedly insisted on including prosecutorial burdens that complicate the legislation and which sadly guarantee its failure.

The first proposed legislation drafted for the First World Congress on the Commercial Sexual Exploitation of Children in 1996, Bill C-27, was so narrow that only if a person paid for sexual activity (child prostitution) could he/she be prosecuted in Canada for extraterritorial crimes.

Criminalizing only those involved with paying for sex with children would have resulted in the continuing problem of Canadian and foreign children being abused outside of Canada by Canadians with impunity. To my knowledge, no other country drafted their legislation like Canada.

Appearing before the Parliamentary Standing Committee on Justice and Legal Affairs, I was able to convince the members of the Committee that this legislation was not only flawed, but also inadequate. Unlike the Canadian Department of Justice, the Justice Committee found that unacceptable. The Department of Justice was instructed to change the legislation so that extraterritorial jurisdiction would apply to all sexual crimes against children. They called the resulting changes the "Prober Amendment".

The new legislation became Canada's law on sex tourism in 1997, however overly narrow restrictions remained. The law required that the Canadian prosecutor had to seek approval from the authorities in the country where the crime was committed (or child was sexually abused) before they could proceed with the prosecution of a Canadian using extraterritorial jurisdiction.

In 1999, a Canadian student was sexually abused by her Canadian teacher in Costa Rica. Although once home the teacher admitted the abuse, Canada could not charge him as Costa Rica refused permission. Their refusal was based on the issue of age of consent - Costa Rica's was previously quite low. What should have been Canada's first sex tourist prosecution turned out to be a dismal failure. (New Zealand has just had its first sex tourist arrest in a similar case: a New Zealander sexually abused a child from NZ while in the US)

In July 2002, the Department of Justice finally removed this requirement in Bill C15A. After 7 years, the Canadian legislation is straightforward and not in the best interest of predators. Two problems, which are effectively addressed in Australia, remain however.

The first is Canada's low age of consent (14), which deeply impacts on the majority of the laws to protect children including child pornography possession and child sex tourism. Australia's age of consent is 16-18 years depending on the state. Beyond Borders is currently running a postcard campaign to have the age of consent in Canada raised.

Secondly, the government of Canada has made virtually no effort to make Canadians aware of the sex tourism legislation. One excellent brochure, What No Child Should Endure, has been produced by the Department of Foreign Affairs but one is hard pressed to find a Canadian including a law enforcement officer who has seen it or has any awareness of the legislation or how to make it work. In 2001, the Australian Federal Police took the bold step of deploying additional officers to Cambodia, Indonesia and Thailand (popular travel destinations for Australians) to strengthen enforcement of their Child Sex Tourism Act of 1994.

On the plus side, Canada's new hotline CYBERTIP.CA gives Canadians an easy vehicle by which to report child sex tourism. No doubt, it will be just a matter of time before Canada has a sex tourist arrest; but watching as country after country moves forward on this issue, it is disturbing to see that Canada has given the protection of foreign and Canadian children such a low priority.
In an effort to support the direct involvement of the tourism industry in aiding the alleviation of the commercial sexual exploitation of children, the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (CC) was initiated by ECPAT Sweden in 1997. Based on the UN Declaration of Human Rights and the UN Convention on the Rights of the Child, the CC is part of the follow-up work of the Agenda for Action, adopted in 1996, during the World Congress against the Commercial Sexual Exploitation of Children in Stockholm, Sweden.

The CC, however, is more than a declaration condemning the commercial sexual exploitation of children. Suppliers of tourism services who become signatories to the CC must make tangible efforts to provide training and information at the local level. Signatories agree to report annually to the CC Secretariat on the implementation of the following criteria:

- the establishment of an ethical corporate policy against the sexual exploitation of children;
- the education and training of personnel in both the country of origin and the travel destinations;
- the introduction of a clause in the contracts with suppliers, that states the common repudiation of child sex;
- the provision of information to travelers by means of catalogues, brochures, posters, in-flight films, ticket-slips, home pages, etc, as appropriate; and
- the provision of information to local “key persons” at destinations.

The CC project is supervised by an international, multi-stakeholder Steering Committee with representatives from international umbrella organizations, (the World Tourism Organization, the International Hotel & Restaurant Association, Interpol, ECPAT International, and the International Federation of Women’s Travel Organization), national tourism authorities, industry sector representatives, receiving and sending country NGOs, youth tourism organizations and an international expert. The European Parliament and European Commission is co-funding the CC project. The CC Secretariat is hosted by the World Tourism Organization.

There are currently approximately 33 signatory tour operators to the CC in 11 countries, (Austria, Costa Rica, Denmark, Finland, Germany, Italy, the Netherlands, Norway, Sweden, Thailand and the UK). The destination countries where implementation is underway include: Thailand, Costa Rica, India, Bali, Kenya, China, Mexico, Vietnam, Cuba, South Africa, Gambia, Bulgaria, the USA, and the Dominican Republic.

To date six tour operators from Sweden, Finland, Denmark, the Netherlands, and the UK have provided annual reports to the CC Secretariat. These pilot reports are intended, in part, to provide signatories with the opportunity to share their experiences of the implementation process and to identify the challenges they face. As the project is in the developmental stage, it is considered of utmost importance to understand industry’s perspective on the CC to ensure that it is a workable and meaningful code of conduct.

The CC is gaining a significant profile in Europe. Recently, the non-profit, Paris based Tour Operators Initiative for Sustainable Tourism Development, made it mandatory for all it’s membership to be signatories to the CC.

The CC has yet to be implemented in North America and while work is underway with ECPAT USA for a launch of the project in New York City, Canada is without any support for the CC. In August, 2002, Camelia Tepelus, of the CC Secretariat contacted Beyond Borders in regard to implementing the CC in Canada. As a major tourism-sending country with a population that is largely unaware of sex tourism, Beyond Borders recognized the need to be a part of this important international effort to raise the profile of this problem and to accord Canadian consumers the opportunity to direct their tourism dollars to companies that are committed to eradicating sex tourism.

Efforts are underway to initiate the CC project in Canada. In November, 2002, Beyond Borders met with UNICEF Canada’s 2001/02 Board Chair to discuss the project and the feasibility of bringing the CC to Canada via a pilot project in Winnipeg. UNICEF indicated an interest in actively supporting the project. In addition, Beyond Borders is working with Camelia Tepelus of the CC Secretariat to gather information pertaining to sex tourism and the implementation of the CC in Canada. The Secretariat supports spearheading the project in Winnipeg and recommends that Beyond Borders organize a media event to kick-off the signing of the CC in Canada. Finally, Cynthia Messer, a Professor at the University of Minnesota and Chair of the CC Steering Committee will be joining Beyond Borders in Winnipeg for a informational meeting about the implementation of the CC in Canada.

A Code of Conduct for Canada? Yes!
BRANTFORD, ONT. -- A group that fights child pornography was denied a request yesterday to speak on behalf of the young, unidentified crime victims at the sentencing of a Brantford policeman convicted of possessing what the Crown termed "filth." Rosalind Prober, the president of Beyond Borders, had travelled from Winnipeg to tell Mr. Justice David Marshall of the Ontario Superior Court about the trauma inflicted by people such as Darryl Renton, 31, who purchase pictures of children being sexually exploited.

The seven-year veteran of the Brantford police department had paid $1,200 to a Texas-based international Internet porn ring and was found with more than 100 computerized images of naked youngsters, some performing sexual acts with adults and other children.

But Judge Marshall, while acknowledging Ms. Prober's long involvement in the crusade against international Internet porn, said she did not meet the criteria of victim as described in the law that permits victim-impact statements. Victims are those actually physically or emotionally hurt by the crime, Judge Marshall said. If the victims are dead or incapacitated, the spouse, parent, or someone who has custody of the victim can speak on their behalf. That definition would rule out "a public-interest group, albeit a well-meaning one," he said. It was the third time Beyond Borders has tried to obtain the right to offer such a statement. The group was unsuccessful in the high-profile pornography case of Robin Sharpe of British Columbia, but did get the chance to speak at the sentencing of Stanley Howard Jordan in Calgary earlier this year.

Even if Ms. Prober was not permitted to read her words in court, however, her sentiments were widely referenced by Crown attorney Steve O'Brien as he argued for a four-month prison term for Mr. Renton.

The police officer, who told the judge yesterday he was prepared to tender his resignation from the force, has said he was only trying to improve his professional knowledge when he downloaded the pornographic images of children from Asia and Russia. "I deeply regret the choice of method in advancing my investigative knowledge," he told the judge.

His lawyer, John Renwick, asked for an 18-month conditional sentence, with the first six months to be served under house arrest. He suggested that Mr. Renton be required to make a $2,000 donation to Beyond Borders.

But Mr. O'Brien, who pointed out that the police officer's computer was also crammed with adult pornography, said Mr. Renton's refusal to admit he possessed the material for his own pleasure strongly suggests that "he just doesn't get it."

Some of the images he downloaded were of babies in sexual positions, Mr. O'Brien said. Others were of three- and four-year-olds. All were "gruesome."

And quoting from Ms. Prober, he said: "The images are out there, often for decades -- there is no way that these abused and degraded children can get those images back."

The children would likely not have been exploited in the first place if there were no market for their images, Mr. O'Brien argued. Thousands of people worldwide, including many others in Canada, have been charged and convicted of purchasing child pornography from the same Texas firm that supplied Mr. Renton. Judge Marshall reserved his decision until Dec. 16. After yesterday's hearing, Ms. Prober acknowledged that she had accomplished much of what she had set out to do because the judge had been apprised of the substance of her statement. But she said she regretted not being able to deliver the message personally. Mr. Renton "is in denial," she said. "It would have been in his very best interests to hear the pain that he's caused from someone who he can look at and say, 'That's a representative' because they [the children] were missed in this hearing."

SENTENCE: As requested by defence counsel, Darryl Renton received a sentence of 18 months conditional with the first six months to be served under house arrest. He is able to leave for work, medical reasons and religious observances. Renton was ordered to donate to Beyond Borders $2,000.00. Beyond Borders will use this donation to continue to advocate for appropriate sentencing for Canadian child pornographers who are causing irreparable harm to children in foreign countries.
New offences:

- **Adult sexual activity with a child:** this will cover any sexual activity that takes place between an adult aged over 18 and a child under 16, even with the apparent consent of the child. This will criminalize direct physical contact and non-contact activity. Where no contact takes place, the maximum penalty will be 10 years; with direct physical contact, the maximum penalty will be 14 years imprisonment.

- **Sexual activity between minors** will cover the same behaviour as the adult offence but carry a maximum penalty of 5 years imprisonment.

- **Sexual grooming** is meant to tackle grooming both on and off-line (to deal with internet safety issues); this offence will carry a maximum penalty of 5 years imprisonment. It is designed to catch adults “who undertake a course of conduct with a child under 16 leading to a meeting where the adult intends to engage in sexual activity with a child” A new civil order relating to grooming will be available on application by the police in response to an adult deemed to be a risk to children irrespective of whether or not he has previously been convicted of a sex offence. The maximum penalty for breach is 5 years

- **Familial sexual abuse of a child** will deal with any sexual exploitation or abuse of a child within the family unit. The ‘unit’ may include relationship by blood, adoption, fostering, marriage or quasi-marriage, living in the same household, and assuming a position of trust or authority in relation to the child. The maximum penalty will be 14 years imprisonment.

- **Abuse of a position of trust** from the Protection of Children Act 1999 will be re-enacted and expanded to include other professionals like personal advisers. Tied to a maximum penalty of 5 years imprisonment.

- **Commercial sexual exploitation** of a child will protect young people up to 18 from the purchase of sexual services of that child (penalty of 7 to 14 years imprisonment depending on the age of the child); and causing or facilitating the child into commercial sexual exploitation, or controlling activities in child prostitution or pornography (maximum penalty 14 years).

- **Trafficking people** for commercial sexual exploitation will carry a maximum penalty of 14 years imprisonment.

---

**ABOUT JOHN CARR**

John is an advisory board member of Beyond Borders and the NCH Internet consultant and author of “A Parents Guide to the Internet” (www.nch.org). John is a member of the Home Secretary’s Internet Task Force on child safety and a member of the Internet Watch Foundation. John wrote the theme paper on child pornography for the Second World Congress on Commercial Sexual Exploitation in Japan in 2002 (www.ecpat.net).
Three New Activists Join Beyond Borders

Board Member: BARBARA BARNETT-FONTAINE

Barbara Barnett-Fontaine is currently employed with the Provincial Government as a Policy Analyst with the Department of Advanced Education and Training. In 1996, she obtained a Masters Degree in Public Administration from the University of Manitoba after completing an undergraduate degree in Justice and Law Enforcement at the University of Winnipeg.

Her studies in law enforcement sparked her initial interest in the commercial sexual exploitation of children. She authored a comprehensive paper on the international trafficking of children for sexual purposes and numerous other papers related to sexual abuse and the nature of the offender. The failure of the Canadian justice system to effectively deal with crimes of child sexual exploitation and a lack of compassion for the victims of such crimes, compelled her to become involved with Beyond Borders.

In addition to volunteering with Beyond Borders, she is Chair of the Resolutions Committee for the Business and Professional Women's Clubs of Manitoba. She is also the Treasurer of the Provincial Council of Women of Manitoba and a member of this organization's Resolutions Committee. She is also an active member of Louis Riel Toast Masters.

Board Member: CAROLE ROGERS

Carole Rogers has over 22 years of experience in corporate library management with United Grain Growers (now Agricore United). Retiring in 1995 from UGG, she has completed several projects as an information consultant, with both private industry and government. This included organizing and creating online databases of information resources, and some website design. In a previous life, armed with a B.A., and Certificate in Education, Carole began as a teacher of English. She has also chaired the local chapter of a national library association, and edited their newsletter. Currently she manages a legal library for Thompson Dorfman & Sweatman in a job sharing situation, and co-edits and writes for the UGG Retirees Association newsletter, on a voluntary basis. Carole, in her role as information provider was an early user of the Internet as a research tool and feels very strongly about the abuse of this tremendous resource by sexual predators.

Board Member: BRADFORD DEAN

Bradford Dean has gained wide experience in the printing industry as a typesetter and website developer to Galaxy Printing and is an independent Multimedia Specialist as listed in the Aboriginal Business Directory. He believes strongly in the need to work against abuses by sexual predators and to fight for social change. He is also a board member of the German Canadian Congress (MB).

What's New

MARK ERIC HECHT was elected for a second term to be the North American representative on the board of ECPAT International at the ECPAT International Assembly in Bangkok in September, 2002.

SOLICITOR-GENERAL WAYNE EASTER introduced in December, 2002, legislation to create a national registry for sex offenders. Unfortunately the registry will not be retroactive and will omit dangerous sex offenders convicted before the bill's passage. Therefore, many sexual deviates such as Karla Homolka may disappear when leaving prison without having to report their whereabouts to law enforcement.

ROSALIND PROBER was the recipient of two awards in December, 2002 for her work to stop child sexual exploitation. She received the Ian Logan Award from the Manitoba Provincial Committee on Child Abuse and the Queen's Golden Jubilee Medal from the federal government in honour of the 50th anniversary of Queen Elizabeth II's accession to the Throne. The medal was awarded to those who have made a significant contribution to Canada, their community and their fellow Canadians.

MARLYN BENNETT has just completed a work entitled, A Literature Review and Annotated Bibliography Focusing on Aspects of Aboriginal Child Welfare. The review is now available on CD Rom from the Centre of Excellence for Child Welfare First Nations Research Site at the University of Manitoba (email bennettm@ms.umanitoba.ca). It will soon be up for viewing online at www.cecw-cepb.ca.

SAFER INTERNET NEW SERVICE http://www.saferinternet.org is an excellent site for information on all internet related news from around the world.

Do you want to help stop child sexual exploitation?
Please make your cheque payable to:
Beyond Borders Inc. 387 Broadway Avenue
Winnipeg, MB Canada R3C 0V5