

CHILD PORNOGRAPHY LAW UNDER ATTACK BY HOMOSEXUALS

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In the confusion surrounding Royal Assent granted July 20, 2005 to the same-sex marriage law, it was overlooked that Royal Assent was also given at the same time to amendments to the Criminal Code on the child pornography law (Bill C-2). The amendments in Bill C-2 were helpful, but still do not provide full protection for vulnerable children.

There is no doubt that child pornography is harmful to children. Dr. William Marshall of Queen's University, who has carried out extensive research on sexual deviants at Kingston Penitentiary, found that paedophiles use child pornography both to incite themselves to carry out their offences, and also to seduce their victims into believing that such activity is normal and acceptable.¹ Child pornography destroys the self-worth of the children used in these depictions. It causes a devastating emotional toll on them as they not only have to endure the abuse, but must also carry with them, throughout the rest of their lives, the knowledge that there is a visual record of their abuse circulating in society. Understandably, these victims demonstrate symptoms, such as depression, emotional withdrawal, guilt and shame, which destroy their sense of worth and security.

Even when child pornography depicts only fictional or computer-generated children, (that is ,not actual children), such material is still deeply harmful since, as discussed above, it is used by deviants in the seduction process to lure children to participate in sexual acts.

Child pornography is also deeply destructive because it conveys the notion that adult sexual relations with children are acceptable and that children are suitable objects for adult sexual desire and gratification.

For these reasons, it is critical that children be protected from harm by a strong child pornography law. Unfortunately, the amendments included in Bill C-2 include some serious loopholes for those charged with violations of our child pornography law.

The amendments in Bill C-2 include the following provisions:

1. The defence of "artistic merit" to a charge of child pornography was retained in the amendment, provided that the artist's work serves a "legitimate purpose" (undefined) and does not pose an "undue threat" to persons under 18 years of age.

The notion, however, that child pornography can be excused because it is "artistic" defies common sense, owing to the fact that it can never have a legitimate purpose.

Artists Should be Held Responsible

Why should the artistic community not be accountable for their works like everyone else in society, who are required to be responsible for their actions, whether they are a plumber, carpenter, doctor or lawyer? That is, why should the freedom to express oneself by an artist be an exception when it comes to the harmful effects that the artist's works may have on others?

Artists, should not have “rights” which are not accorded to others in society, especially when these “rights” cause harm and interfere with the rights of others. Children can be victimized by artists expressing their creativity or “freedom of expression”, should they depict children as sexual objects. A limitation on “freedom of expression” in regard to child pornography is, therefore, justified and reasonable.

Further, freedom of expression, like all the other rights and freedoms set out in the Charter of Rights, are not absolute rights without limits. Since all rights in the Charter can be limited, the right to freedom of expression should also be limited, especially in the instance when freedom of expression can cause harm to others – namely, innocent children.

2. No minimum sentence was included in the bill when it was introduced in the House of Commons. However, when REAL Women appeared before the Justice Committee reviewing the Bill, we strongly recommended, as did some other witnesses, that the bill include a minimum penalty for the offence of contravening the child pornography law. This is crucial because some Canadian judges have become notorious for repeatedly giving child pornographers a mere slap on the wrist for their offences. For example, convicted child pornographer, Vancouver’s Robin Sharpe, charged under the previous law for possessing approximately 500 photographs of child pornography, many of which were taken by himself while in Asia, received only a four-month confinement to his home for this horrendous wrong. A minimum sentence prevents judges, such as the one in the Robin Sharpe case, from handing down lenient sentences for the terrible acts that strike at the very heart of our society. Fortunately, the Justice Committee did propose an amendment to the bill to include minimum sentences for offences under the child pornography law which amendments were passed into law.
3. Despite the fact that the Provincial Attorneys General had approved, at their annual federal/provincial meetings in October 1998, December 1999, and again in September 2003, to raise the age of consent from 14 years to 16 years, this provision was not included in Bill C-2.

This was a grievous disappointment, as young people, at 14 years of age, do not have the maturity to make responsible decisions in regard to sexual activity with adults. Sex between young persons and adults can lead to long-range problems that will affect the children for the rest of their lives. Such activity can and does lead to sexually transmitted diseases (STDs), AIDS, unexpected pregnancies, the lowering of self esteem, and the curtailment of education, among other difficulties. It is the duty of society to protect young people from sexual predators who take advantage of their youth and vulnerability.

4. Bill C-2 strengthened the provision against the exploitation of children: The bill includes a provision, which states that it is an offense to have a sexual relationship with a person while in a position of trust and authority over an adolescent, if he/she is between 14 and 18 years of age. Under this exploitation amendment, a judge may assess such a relationship as exploitative by considering such circumstance as the age differences, degree of control over the young person and the actual age of the young person.

The problem with this provision, however, is that a court is required to analyze each case in which a charge is laid, in order to determine whether the adult is, in fact, exploiting the child. This approach is not only cumbersome, it also fails to create the certainty of protection that all

children require. It is also far too complex, and using this provision, a skilled defence lawyer can and will shift responsibility for the sexual relationship onto the shoulders of the victim, arguing that the adolescent gave his/her consent willingly and that the relationship was in no way exploitative.

According to the homosexual newspaper, **Capital Xtra**, February 10, 2005:

... the government strengthened the sexual exploitation laws ... in order to stave off demands from provincial justice ministers to raise the age of consent to 16

The article went on to state that this is a compromise and that EGALE, opposes raising the age of consent, and therefore finds this proposed amendment “the lesser of two evils.”

Although this amendment may satisfy homosexual activists, it is completely unsatisfactory for those who want children to be protected from adults who desire sexual access to them.

Homosexual Community Unhappy with Amendments

Despite the fact these amendments to the child pornography law are mild, they made the homosexual community decidedly unhappy. Homosexual activists claimed that, although three of their organizations, EGALE, Coalition for Lesbian and Gay Rights in Ontario (CLGRO) and Sex Laws Committee, submitted briefs to the Justice Committee when it was reviewing Bill C-2, the Committee never received their briefs. However, the clerk of the Justice Committee strongly denied this, stating that two of the homosexual briefs were reproduced and presented to the committee (Capital Xtra July 14, 2005).

Since it is well known that the Liberal government never brings forward legislation unless it has passed inspection by the homosexual lobby, how did it happen that the homosexual seal of approval was not given to the amendments to the child pornography law before it was passed into law? Further, why do the homosexual activists, such as those in EGALE claim their brief was not presented to the Committee?

The truth is that EGALE never lets the facts stand in the way of its propaganda.

According to the homosexual newspaper Capital Xtra, (February 6, 2005 and July 14 2005), the board of EGALE discussed Bill C-2 at a meeting in December but was unable to reach a consensus on the bill. The disagreement among the board members arose because some of them were parents and, therefore, were aware that the child pornography law needed to be strengthened in order to adequately protect children. This position did not sit well with other members of the EGALE Board, who disliked Bill C-2 because they claimed it both created risks for homosexuals in their sexual activity, and denied adolescents the “right to chose their sexuality”. Further, they felt that it threatened the artistic freedom of homosexual artists and writers to write about youthful homosexual experiences, such as their own “coming out” as homosexuals.

However, in March, EGALE had a turn-over in its Board members and the new Board decided, on April 14, 2005, to publicly criticize Bill C-2. It did not however, submit a brief to the Justice Committee, despite the fact it had assured its supporters it had done so.

The, two other homosexual groups, Coalition for Lesbian and Gay Rights in Ontario (CLGRO) and the Sex Laws Committee did submit their briefs to the Justice Committee.

In its brief, the CLGRO complained that Bill C-2 would deny lesbian, gay and bisexual teens the free expression of their sexuality and create more circumstances in which sexual relations with adolescents would be criminalized. The brief claims that there is a blurring in Bill C-2 between sexual assault and consensual sexual activity.

CLGRO stated:

Unfortunately, the amendments contained in Bill C-2 will create more instances in which consenting sexual relations between a person between the ages of 14 and 18 and someone over that age are criminalized. The result will be infringement of the human rights of both parties and, in particular, the right of young persons to express their sexuality ...

There is a widespread belief that older, predatory persons lure young people into homosexuality. This is coupled with a refusal to accept that younger persons are capable of seeking and do seek out consensual same-sex relationships with older persons and, in fact, may be the initiators of such relationships. In addition, contrary to popular belief, a relationship with an older person may not in fact be damaging for a young person.

It is significant that CLGRO's interest in adolescent sexuality was apparent as far back as 1994 when it distributed a background paper in which it raised the argument that sexual relationships can be initiated by the younger party and that sexual relationships between older men and adolescents were not necessarily dangerous. Obviously, CLGRO did not stray from this position in its 2005 brief to the Justice Committee.

The Sex Laws Committee brief took much the same position on adolescent sexuality. It stated in its brief, quoted in Capital Xtra, June 16, 2005:

The dangers presented by the Criminal Code provision is that any same-sex consensual relationship involving a person over the age of 18 years and a person who is under the age of 18 but over the age of 14 will be deemed exploitative. There is a plausible risk, under this new amendment that the older person will always be presumed to be exploiting the younger person and "luring" them into a homosexual lifestyle.

Although Bill C-2 left the Senate Legal and Constitutional Affairs Committee **without** amendments, the homosexual activists remained concerned about the implications of the bill. Consequently, Senator Serge Joyal, a homosexual who appears to act as the point man for the homosexual cause in the Senate stated, as quoted in the Hill Times (July 25, 2005 issue):

It's a bill that doesn't convince us that it will satisfy the objective for which it has been tabled, ... In the present code, the artistic merit is objective. You have to prove that the work has artistic merit. In the new defence, you have to prove not only that the work has artistic merit, but that you did that work of art for legitimate purpose.

Senator Joyal then went on to say that he was worried that classic works of literature such as Vladimir Nabokov's Lolita could be seen as child pornography under the new law.

As a result of Senator Joyal's expressed concern, as well as that of another Quebec Senator Pierre Claude Nolin, although the Senate Committee sent the bill back to the floor of the Senate Chamber without amendments, it did so with "observations", calling for the government to review the legislation in three years, instead of five, owing to the fact that the bill trampled on artistic freedom and other constitutional rights.

Globe and Mail Objects to Child Pornography Amendments

The Globe and Mail, which never fails to promote the homosexual agenda, jumped on Bill C-2 in an editorial on July 6, 2005. It stated that Bill C-2 was "extreme" and objected to the limits placed on freedom of expression. The editorial also stated that the restrictions on freedom of expression should not apply to artistic works, which come directly from the imagination and do not abuse or involve "real" children. The Globe went on to say,

Freedom of expression includes the freedom to trespass in areas of social taboos – to write of the sexuality of those under 18 and of acts which if committed in reality, would rightly land the perpetrator in prison ...

The editorial also expressed its distaste for minimum sentences in regard to child pornography when it stated:

The second flaw in the proposed bill is its plethora of new minimum sentences for sexual crimes. The goal is to strip discretion from judges who, considering the circumstances of a case, might feel justice would be better served by imposing house arrest or community service.

The homosexual activists' objection to Bill C-2, together with the Globe and Mail editorial, are setting the stage for our liberal judges to overturn the child pornography law at the first opportunity they get. Apparently, the sexual demands of homosexuals override society's obligation to protect children.

ⁱ Marshall, William L., "The Use of Sexually Explicit Stimuli by Rapists, Child Molesters, and Nonoffenders," *The Journal of Sex Research*, v. 25, no.2, 1988.

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