



**Canadian Professional Police Association Association
canadienne de la police professionnelle**

BRIEF

**TO THE STANDING COMMITTEE ON JUSTICE HUMAN
RIGHTS, PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

REGARDING BILL C-2

(An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act)

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INTRODUCTION

The Canadian Professional Police Association (CPPA) welcomes the opportunity to appear today before the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. The CPPA is the national voice for 54,000 police personnel serving across Canada. Through our 225 member associations, CPPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services and members of the RCMP.

Children are the most vulnerable group in society and are in need of protection from those who would prey on them. The growth of the Internet has significantly increased the availability of child pornography. The Canadian Professional Police Association has called for a strategic national response by Government in response to the growing problem of child exploitation and the Internet.

While Bill C-15 made considerable advances with respect to this issue; there is still more work to be done. We need laws that protect our children from exploitation by older persons, and we need to make greater use of technology to address crimes against Children.

We are pleased to have the opportunity today to comment on the provisions found in Bill C-2. The CPPA has previously testified concerning the predecessor Bill, C-20, and we are generally pleased by the progress that has been made since that time and the revisions contained in Bill C-2. We applaud the Deputy Prime Minister's commitments to nationally expand cybertip.ca, and to expand the RCMP's National Child Exploitation Coordination Centre. These are important initiatives supported by the police community in our efforts to protect children from exploitation.

DISCUSSION

Young Persons' Consent to Sexual Activity

There are presently inconsistencies between various provisions of the Criminal Code relating to age of consent. For example, the age of consent for children to have sex with older persons is currently lower than the age that applies for child prostitution and child pornography. A 2001 resolution of Provincial Ministers of Justice urged the federal Minister to raise the age at which a young person under the age of 18, but over the age of 14, can validly consent to sexual activity with an adult.

Although the Minister of Justice has attempted to address this issue in C-20, the response was complex, confusing, and open to interpretation. We argued that the Federal Government needs to simplify, not over legalize the issue.

The CPPA has consistently advocated increasing the age of consent for children to have sexual relations with older persons to at least age 16. In almost all US states, Britain, and Australia the age of consent is 16. Increasing the age of consent to 16 years of age is simple. If there is concern about consensual relationships between young people, we have argued that this can be addressed through a two-year age difference exemption.

Bill C-2 introduces a new category of sexual exploitation to protect young persons between 14 and 18 years of age. Under the proposed scheme, courts may infer that a relationship is exploitative of the young person based on its nature and circumstances, including the age of the young person, any difference of age, the evolution of the relationship, and the degree of control or influence exercised over the young person. This new category is intended to focus the court's determination on the conduct or behaviour of the accused, rather than on the consent of the young person to the sexual activity. The proposal will also remove the defence of consent for accused persons under the age of 16, where the relationship is exploitative of the complainant.

Ultimately it will be a responsibility of the judiciary to determine whether or not this criteria is adequate to protect children from exploitation by older persons. Parliament should consider a review of this provision, and other sections of the Bill, after 5 years.

Penalties

We are not surprised that, once again, successive Ministers of Justice and their officials in the department have shied away from addressing the abysmal sentencing practices of Canada's judiciary in any meaningful way. While Bill C-2 props up maximum sentences for several existing offences and introduces new "aggravating factors" for sentencing purposes, the reality is that courts are frequently issuing light and even non-custodial sentences for sex offences against children. Surely crimes of sexual exploitation against children and vulnerable persons warrant a much stronger approach than that which is presented in Bill C-2? If the Minister of Justice intends to get serious about crimes against children and vulnerable people, we contend that he must be prepared to attack the systemic bias that exists against minimum sentences. Minister Cotler and his officials have indicated that the Minister is open to proposals from the committee with respect to sentencing issues.

Prohibited Activities – Section 161

Bill C-2 expands the list of offences for which convicted offenders may be prohibited from attending schools, playgrounds, etc. or from seeking paid/volunteer employment in situations where they would be working with children.

We recommend that this section be amended to:

- a. apply to victims up to the age of 18 (from 14); and,
- b. include the offence of voyeurism.

In addition, the crown should have the ability to seek such a prohibition at the time a convicted offender is to be released into the community, not only at the time of sentence.

The New Offence of "Voyeurism"

In response to a 2002 Resolution by Provincial and Territorial Justice Ministers, Bill C-2 creates a new offence of Voyeurism. This provision makes it a crime to secretly

observe or record another person who “is in circumstances that would give rise to a reasonable expectation of privacy”, such as sexual activity or nudity.

The Bill provides an exemption to peace officers who are carrying out activities authorized by a warrant.

Voyeurism is a serious invasion of personal privacy. Modern technology can be exploited for voyeuristic purposes, enabling offenders to secretly record and monitor the activities of others. Many persons who commit voyeuristic crimes graduate to more serious sexual offences.

We believe that these provisions of Bill C-2 are appropriate and required.

Child Pornography: Definition and Defences

We are pleased that the Minister of Justice is taking steps to tighten the definitions of child pornography to address recent court challenges, thereby broadening the application of the law and limiting available defences. Bill C-2 proposes amendments to the child pornography provisions that will broaden the application of the law and limit the available defences to such a charge. Bill C-2:

- adds to the definition of child pornography an audio recording that advocates or counsels sexual activity with a person under the age of 18 years and that would be an offence under the Criminal Code. Second
- Redefines child pornography by adding a second category of written material to section 163.1(1), “whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.” As a result, written material will no longer have to advocate or counsel illegal sexual activity with a person under 18 to fall under the definition of child pornography.(14)
- Adds to the definition of child pornography any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of 18 years that would be an offence under the Criminal Code.

- Eliminates defences for material having “artistic merit or an educational, scientific or medical purpose.” Bill C-2 replaces these defences with one based upon a “legitimate purpose related to the administration of justice or to science, medicine, education or art.” The act alleged to constitute the offence must not pose an undue risk of harm to persons under the age of 18 years.

While there has been considerable public debate over the “artistic merit” defence, police officers responsible for Child Pornography investigations are not normally confronted with this defence as a consequence of their investigations. The stark reality is that the nature of the material seized by police officers is so voluminous, vile, and graphic in nature that a defence of this nature is not plausible. Parliament should also consider a review of this provision, along with other sections of the Bill, after 5 years.

Complainant/Witness Accommodation

Police officers understand firsthand the trauma and frustration that is experienced by victims and witnesses in relation to our criminal justice system, particularly in situations involving children and vulnerable persons as victims and witnesses. We are often left to explain to victims and witnesses how the system has failed to acknowledge their rights in favour of the accused.

Bill C-2 introduces some welcome amendments to provide greater protection to victims and witnesses. We would like to see these protections expanded and support the recommendations submitted by the *Canadian Resource Centre for Victims of Crime*:

- a. Amend section 486(1), to require a judge to consider an application from a victim for the exclusion of the public;
- b. Amend section 715 to allow for judges to have discretion to use video recordings for victims/witnesses of any age in any proceedings, similar to amendments in section 486.1(2);
- c. Amend s.486.5(7) to include the views of the victim in the list of items a judge must consider in considering a publication ban. There should also be amendments to ensure victims can apply to have the bans lifted, and that this process not be onerous; and,

- d. Amend section s.486.3(1) which deals with accused not to cross examine witnesses under 18, to include victims/witnesses with a mental/physical disability.

CONCLUSION

Bill C-2 addresses a number of concerns that have been raised by police organizations with respect to child pornography and child exploitation. The Canadian Professional Police Association has been calling for a national strategy, combining additional tools and resources necessary to address child pornography and the sexual exploitation of children. We are pleased that additional resources have been allocated nationally to expand the cybertip.ca, and to expand the RCMP's National Child Exploitation Coordination Centre. There remain opportunities to enhance investigative support:

- a. Establishing a national child pornography photo image database; and,
- b. Expanding the scope of offences established under the Criminal Code of Canada to enable effective and efficient utilization of Forensic DNA Analysis.

SUMMARY OF RECOMMENDATIONS

1. Increase penalties for persons preying on children by introducing mandatory minimum non-custodial sentences for sex offences against children.
2. Amend section 161 section to:
 - a. Apply to victims up to the age of 18 (from 14);
 - b. Include the offence of voyeurism; and,
 - c. Provide the crown the ability to seek such a prohibition at the time a convicted offender is to be released into the community, not only at the time of sentence.
3. Expand the protections afforded to victims of crime and witnesses:
 - a. Amend section 486(1), to require a judge to consider an application from a victim for the exclusion of the public;
 - b. Amend section 715 to allow for judges to have discretion to use video recordings for victims/witnesses of any age in any proceedings, similar to amendments in section 486.1(2);
 - c. Amend s.486.5(7) to include the views of the victim in the list of items a judge must consider in considering a publication ban. There should also be amendments to ensure victims can apply to have the bans lifted, and that this process not be onerous; and,
 - d. Amend section s.486.3(1) which deals with accused not to cross examine witnesses under 18, to include victims/witnesses with a mental/physical disability.
4. Establish a national child pornography photo image database; and,
5. Expand the scope of offences established under the Criminal Code of Canada to enable effective and efficient utilization of Forensic DNA Analysis.
6. Bill C-2 should be amended to require a mandatory review by Parliament to occur five years following proclamation.