



## **Submission to the Standing Committee on Justice On Bill C-20, *An Act to Amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act***

August 28, 2003

### **Introduction**

The Evangelical Fellowship of Canada appreciates this opportunity to make a written submission to the Standing Committee on Justice. The Evangelical Fellowship of Canada (EFC) is a national association of evangelical Christians. Our affiliates include 36 denominations, over 100 religious organizations and many churches and individuals.

The EFC has long been concerned with the protection of the vulnerable, particularly children. We were intervenors before the Supreme Court of Canada in *R. v Sharpe*. We have made submissions to this committee, the Department of Justice and the Justice Minister on child pornography, child prostitution and the age of consent.

Our concern for the protection of children stems from the biblical mandate to care for the vulnerable. In the Bible, the people of Israel and followers of Jesus were commanded to care for children. As well, our belief that God has created all people in His image and loves each person is the foundation for our belief in the worth of each human being. Flowing from this respect for human dignity is our desire to treat people as persons, not as objects or playthings.

### **Bill C-20**

We applaud the federal government's initiative to protect children. We have been gravely concerned with the British Columbia Supreme Court's decision that writings depicting sexual acts with children in the context of violence and torture are legal. We trust that the additional definition of child pornography proposed in Bill C-20 as including any written material the dominant characteristic of which is the description, for a sexual purpose, of prohibited sexual activity with children, will provide greater protection to children. We believe this is a reasonable attempt to close the gap

opened in the March 2002 British Columbia Supreme Court decision.

We support the increase in maximum sentences for child-related offences. We believe, however, that minimum penalties would be more effective than higher maximum penalties.

We are pleased that the legislation does away with the artistic merit defence. The new defence of public good, we trust, will send a strong message to the judiciary that this defence is to be applied very narrowly. We are pleased that the provision has two parts, so that material that is seen as serving the public good must still pass the test of not extending beyond the public good.

The Justice Department Backgrounder on Bill C-20 notes that the legislation attempts to alleviate the potential trauma of the courtroom experience for young witnesses under 18 years by allowing them to use testimonial aids such as closed-circuit television or testifying from behind a screen. We applaud this attempt to facilitate the testimony of child victims and witnesses and reduce their trauma in the courtroom setting.

However, this same legislation that implicitly recognizes the potential for trauma of the courtroom experience for young witnesses in *any* criminal proceeding, establishes the offence of sexual exploitation in which the courts would determine whether a relationship with a person under 18 is exploitative. The courts will examine the nature and circumstances of the relationship, including any difference of age, the evolution of the relationship and the degree of control of influence exercised over the young person, according to the Justice Department Backgrounder. Given that it is difficult even for adult women to report and testify regarding date rape, with all

the pressures inherent in teen life and the vulnerability of the age, we question the wisdom in the prospect of having young teens required to testify about the details of their intimate relationships. This could be further. Instead of this new offence, we strongly recommend that the age of consent to sexual activity be raised to 18 years. The current low age of consent makes Canada more open to problems related to child prostitution and child abuse.<sup>1</sup> Article 1 of the United Nations *Convention on the Rights of the Child* defines a child as anyone under the age of 18.

Sexual activity among young teens can have detrimental physical and emotional effects on the rest of their lives. The physical effects of sexual activity can include sexually transmitted diseases (STDs) which can lead to painful medical conditions and infertility, and pregnancy. The rate of STDs among teens 15-19 is very high. According to Health Canada, the reported incidence of genital chlamydia among 15-19 year old women in 1996 was more than eight times the national rate, and the highest of any age group.<sup>2</sup> One third to one half of women who acquire an STD will develop pelvic inflammatory disease (PID), which may lead to infertility, chronic abdominal pain and other serious complications. A major risk factor associated with PID is being sexually active in adolescence.

As well as physical effects, early sexual activity can have detrimental emotional effects. Sexual intimacy has emotional and social components. Biblically, sexual intimacy is reserved for marriage, in part because of the emotional and spiritual effects which are described as the woman and the man becoming "one flesh." Young teens may not have the foresight or maturity in judgment to choose a sexual partner wisely. The breakdown of the relationship or manipulation within the relationship are heavy burdens for ones so young to carry.

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<sup>1</sup> Rosalind Prober, "Children: Canada's Child Sex Laws," *The Human Rights Databank*, Jan. 1999, Vol. 6, No. 1; Anne McGillivray, "*R. v. Bauder*: Seductive Children, Safe Rapists, and Other Justice Tales," (1999) 25:2 *Manitoba Law Journal* pp. 359-83; Detective Sergeant Paul Gillespie of the Toronto Police Service's, Sex Crimes Unit, Child Exploitation Section.

<sup>2</sup> "Sexually Transmitted Diseases in Canada: 1996 Surveillance Report," *Canada Communicable Disease Report – Supplement*, v. 25S1, May 1999.

traumatizing for already victimized youth or ineffective if the youth bypass the process and the offence.

Many teens do not seem to be making wise decisions about sexual activity. The *Statistical Report on the Health of Canadians* indicates that 15-17 year olds, the youngest age surveyed for the report, were engaging in high risk sexual activity. The report finds that 8 percent of 15-17 year olds had more than 3 sexual partners in the past year, and that the same percentage had not used a condom the last time they had sexual intercourse with a partner of less than 12 months. This age group is among the highest rate for having had more than 3 sexual partners in the previous year. The 18-19 year olds had the highest rate for both more than 3 partners in the previous year (12%) and for not having used a condom the last time they had sexual intercourse with a partner in a relationship of less than 12 months duration (26 percent).<sup>3</sup>

There is the potential for exploitation in peer sexual relationships, as well. As noted in the Department of Justice's handbook on child sexual abuse legislation, the Badgley Committee found that, "Three in five sexually abused children had been threatened or physically coerced by their assailants. Young victims were as likely to be threatened or forced to engage in sexual acts by persons relatively close to their age as by older persons."<sup>4</sup> Youths under 18 years are vulnerable to exploitation by their peers, as well as by adults.

For these reasons, we urge this committee to amend this legislation to raise the age of consent to sexual activity to 18 years. This would more effectively protect young Canadians from exploitation than the proposed new offence of sexual exploitation. Protecting children means both protecting them from the actions of others and from undertaking serious or dangerous activities before they have attained the appropriate level of maturity. Lifestyle choices which entail some risk, such as purchasing cigarettes or alcohol, are regulated according to age and prohibited for those in their early to mid-teens. Other activities which require mature forethought and responsibility, such as operating a

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<sup>3</sup> "Sexual practices," *Statistical Report on the Health of Canadians*, Statistics Canada, 1999.

<sup>4</sup> Mary Wells, *Canada's Law on Child Sexual Abuse: A Handbook*, Minister of Supply and Services Canada, Ottawa, 1990, p. 8.

motor vehicle or joining the military, are similarly prohibited for those considered to young. Early sexual activity has the potential to bring devastating, life-long consequences and should be reserved for those of an age to be considered an adult.

We are failing the young people of Canada if we do not provide guidelines for them to protect them from the severe long-term consequences of their actions. If they are too young to make responsible decisions about smoking, drinking, voting and driving a car, surely they are too young to make responsible decisions about sex.

## **Conclusion**

We are pleased that this legislation takes steps to improve the protection of children in Canada, and to reduce exploitation of them. We support the amendments that strengthen the child pornography provisions by adding a new, broader definition of written pornography and a more narrow defence of public good.

The increase in maximum sentences for child-related offences is commendable, although we believe that minimum sentences would be more effective.

Any reasonable initiative that will make courtroom experiences less traumatic for child victims and witnesses is commendable, as well. We support this provision of Bill C-20. However, we note that Bill C-20's new category of sexual exploitation necessarily places child victims in a courtroom experience and requires them to provide details of their intimate relationships in order to ascertain whether exploitation has taken place. We are concerned that this provision will either further victimize exploited children or be ineffective. A far more effective way to protect young Canadians from sexual exploitation would be to raise the age of consent to sexual activity to 18 years of age.