

BILL C-22: AN OPPORTUNITY TO PROTECT ALL OF CANADA'S CHILDREN IN A NEW DIGITAL GENERATION

**Brief submitted by UNICEF Canada
to the
Senate Committee on Legal and Constitutional Affairs**

16 February 2011

INTRODUCTION

UNICEF Canada strongly supports the enactment of Bill C-22 in principle as a timely piece of legislation and as a positive step towards achieving greater child protection and safety. In fact, Manitobaⁱ and Nova Scotiaⁱⁱ have already enacted similar or complementary provisions in their provincial legislation, and UNICEF advocates for this kind of legislation worldwide. There are, however, a number of areas where the Bill can be strengthened, in our view, and we will set them out in this written submission.

ABOUT UNICEF

UNICEF is the world's leading child-focused humanitarian and development agency. Through innovative programs and advocacy work, we save children's lives and secure their rights in virtually every country. Our global reach, unparalleled influence on policymakers, and diverse partnerships make us an instrumental force in shaping a world in which no child dies of a preventable cause. UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. For more information about UNICEF, please visit www.unicef.ca.

The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights.

UNICEF CANADA'S SUPPORT FOR BILL C-22

UNICEF Canada supports the enactment of Bill C-22 as a necessary instrument, which will impose reporting duties on persons who provide an Internet service to the public if they are advised of an Internet address where child abuse imagery (pornography) may be available, or if they have reasonable grounds to believe that their Internet service is being or has been used to commit a child pornography offence. Enacting Bill C-22 would bring Canada in line with other countries, like United States and

Australia,ⁱⁱⁱ which, under federal law, require Internet Service Providers to report the discovery of sexual abuse images.

Our support for the Bill is also based on the ever-increasing proliferation of child sexual abuse images on the Internet. Although accurately capturing this activity is a challenge, it is clear that digital child abuse imagery and other forms of sexual exploitation facilitated by the Internet is a growing concern. Statistical information reported in the Parliamentary Legislative Summary from Statistics Canada and Cybertip.ca (which is run by the Canadian Centre for Child Protection) illustrates some alarming trends:

"According to Statistics Canada, which gathers data on all types of child pornography (not Internet child pornography alone), child pornography offences have increased significantly in Canada from 55 offences in 1998 to 1,408 in 2008.

It is currently estimated that there are over five million child sexual abuse images on the Internet. According to analysis by Cybertip.ca, from 2002 to 2009, 57.4% of the images on Internet sites containing pornographic images of children were of children under the age of 8; 24.7% were of children aged 8 to 12; and 83% were of girls. Over 35% of the images analyzed showed severe sexual assault. Children under the age of 8 were most often subject to sexual assault (37.2%) and extreme sexual assault (68.5%). Older children were usually shown naked or in an obscene pose."^{iv}

The Cybertip.ca study also shows that Canada is one of the top sexual abuse image Web site host countries, ranking third out of close to 60 countries.^v

An analysis of the first-year impact of the Manitoba legislation, called *The Child and Family Services Amendment Act (Child Pornography Reporting)*, was carried out by the Canadian Centre for Child Protection and is documented in the study *Mandatory Reporting of Child Pornography in Manitoba: 2009-2010 Annual Review*. The key findings are as follows:^{vi}

- a) In 2009/10, there was a 126 per cent increase in the number of reports submitted by individuals within Manitoba in comparison with the year prior (up from 196 in 2008-2009 to 442 reports in 2009-2010).
- b) While the majority of these reports (75 per cent) were submitted anonymously, 87 per cent of the reporting persons provided identifying information when child victim and/or suspect information was reported.
- c) The majority of reports (88 per cent) pertained to Web sites and 44 per cent of the submitted reports were forwarded to law enforcement. Of the reports forwarded to law enforcement, the majority (90 per cent) were forwarded to law enforcement outside of Manitoba.
- d) The new legislation resulted in 17 reports containing information on an identified child victim and/or suspect in Manitoba being forwarded to child welfare.
- e) In the year preceding proclamation, there were no child pornography reports forwarded to child welfare from Cybertip.ca. Child welfare determined that several children had been sexually abused by a suspect identified in one report and criminal charges against the suspect are pending. Eight of the reports remain active investigations with child welfare.
- f) Of the total number of reports (442) 31 were submitted by children and youth under 18 years of age. The highest number of reporting individuals was between 31-50 years (207 reports).

While it is difficult to retrieve exact statistics, we do have available a European Union survey, which was conducted to determine the percentage of children by age classification who were seeing/receiving sexual messages versus posting/sending such messages. The survey found that, for 11-16 year olds only, 15% have seen or received and 3% have posted or sent a sexual message online in the previous year.^{vii}

According to the UK-based Child Exploitation Online Protection Centre^{viii}, as many as one in five 11 to 17 year-olds have received a sexually explicit or distressing text or e-mail, with 70% admitting they knew the sender. **The majority of such exchanges are between friends and schoolmates, not between children and adult abusers.** This point is of crucial importance in understanding both the need to mitigate the risk of criminal charges and prosecution for children and youth and the value of preventive education for children and youth who may otherwise come into conflict with the law.

A CHILDREN'S RIGHTS PERSPECTIVE

UNICEF Canada's support for Bill C-22 is also rooted in the recognition that Canada has assumed international obligations to respect and promote the rights of all children in Canada. In this regard, Canada signed the Convention on the Rights of the Child^{ix} on May 28, 1990 and ratified it on December 13, 1991. Due to the nature of treaty obligations and customary law, there is a general duty to bring internal law into conformity with obligations under international law."^x

The Convention on the Rights of the Child affirms the status of all children as equal holders of human rights and it includes explicit rights to protection from all forms of violence and exploitation, including sexual exploitation.

Article 19 of the Convention on the Rights of the Child speaks to the child protection obligations of signatory States and provides:

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."^{xi}

Article 3 of the Convention on the Rights of the Child is also relevant here and speaks to the importance of signatory States treating the best interests of the child as a primary consideration in all actions undertaken by legislative bodies, such as the enactment of bills like Bill C-22:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."^{xii}

It is also noteworthy that the World Congress III Against the Sexual Exploitation Declaration and Plan of Action 2008,^{xiii} which resulted from the Congress proceedings in Brazil, explicitly calls for the enactment of legislation requiring Internet Service Providers, mobile phone companies, search engines and other relevant actors to report and remove child pornography Web sites and child sexual abuse images, and develop indicators to monitor results and enhance efforts.

STRENGTHENING THE OBJECTIVES OF BILL C-22

It is clear that the sexual abuse of children is being facilitated by digital technologies, and that children have rights to protection from sexual abuse in all its forms. Bill C-22 is a step forward in the protection of Canada's children. However, a full, rights-based and systems approach to child protection suggests the need for some amendments to Bill C-22 that could enhance the prevention of risks for all children. The amendments we propose recognize that children are not only victims of sexual abuse, but also engage in risk behaviours that cause harm to themselves and other children in the use of digital technologies. To protect all children from harm, children need to know what constitutes abusive and illegal activity, to know how to report it, and how to avoid actions that would harm other children and themselves.

To strengthen the objectives of Bill C-22, it is important, in our view, to address three areas – namely, the absence of a statement of purpose provision; the mitigation of exposure of children and youth to criminal charges and prosecution; and the need for children and youth to receive preventive and corrective education.

1. STATEMENT OF PURPOSE

Discussion

The first observation that we have for strengthening the objective of Bill C-22 is to add a section enumerating the main purposes of the Bill. Many statutes contain a statement of purpose provision, a preamble or a declaration of principles.

Recommendations

- 1. That Bill C-22 be amended to add a new section, enumerating the main purposes of the Bill.**
- 2. That consideration be given to including in this new statement of purpose provision, a set of purposes which focus on the recognition of sexual online exploitation as child abuse and as a serious violation of children's fundamental rights under the UN Convention on the Rights of the Child; the important role of Internet Service Providers in reporting any incident of child pornography for purposes of ensuring the online protection and safety of children and the need for public support in this endeavour; the need for children and youth to receive preventive education as to how to avoid the risks of becoming either a child –victim or child-perpetrator in respect of the offences of making, possessing, transmitting, or accessing child pornography; the development of appropriate police and prosecutorial discretionary guidelines to prevent the criminalization of selective actions committed by children and youth; and the development of appropriate alternative measures and corrective education for children and youth who have committed an offence under section 163.1 of the *Criminal Code*.**

Justification

The various purposes of Bill C-22 are not entirely clear and this ambiguity could lead to children being inappropriately charged and prosecuted, rather than emphasizing the primary goal of protecting children – all children. We will elaborate on this potential impact of Bill C-22 below.

The intent of Bill C-22, which is described in the Parliamentary Legislative Summary in the following terms, does not appear in Bill C-22:

"Following after former bills C-46 and C-47, on legal access and the modernization of Canadian criminal law to keep pace with new technologies, Bill C-22 is intended to fight Internet child pornography by requiring Internet Service Providers (ISPs) and other persons providing Internet services (e.g., Facebook, Google and Hotmail) to report any incident of child pornography."^{xiv}

2. MITIGATION OF EXPOSURE OF CHILDREN TO CRIMINAL CHARGES AND PROSECUTION

Discussion

While we applaud the laudable purposes of Bill C-22 in promoting the online protection and safety of children, we are concerned about the potential unintended consequence of children and youth being subject to greater exposure to criminal liability and prosecution through the anticipated increased reporting by Internet Service Providers of the digital activity of such young persons, where it involves pornographic/sexual abuse images (i.e., accessing, downloading, or sharing). This heightened exposure to criminal liability may occur even when actions reflect a youthful exploratory instinct or a lack of awareness of the consequences, and have no malicious intent. As such, there are heavy and disproportionate consequences that may accrue to young people for not knowing the legal parameters of the responsible use of technologies. We see this danger not just in relation to sexual exploitation, but also extending to privacy considerations.

With children and youth having increasing access to their own computers and mobile phones with embedded cameras, they now have the capability to access, download and share child abuse images and to send photographs, videos and messages that they create themselves, depicting themselves or other children. There has been a great deal of concern raised by the growing tendency of some children and youth to send photos, videos and messages with explicit sexual content, called 'sexts', over their mobile phones.

It is important to be vigilant in the enactment of Bill C-22, so that in our haste to protect children from the possession, transmission and accessing of sexual abuse images that we do not create legislative machinery that may inadvertently hurt them in other ways.

It is also necessary to consider the risks to children and youth whose actions are criminalized, when transmitting sexual images (sexting), or otherwise accessing Web site and other digital child pornographic content, as defined in section 163.1 of the Criminal Code. Such criminalization could lead to reputational damage; a permanent stigma negatively affecting education and employment opportunities; and potential acts of self-harm, resulting from a sense of embarrassment and humiliation.

Legal Analysis of Criminal Liability Parameters

It is important to appreciate that the offence sections which can lead to a young person being charged under the *Youth Criminal Justice Act* (or a young adult under the *Criminal Code*) appear in section 163.1

of the *Criminal Code* and not in Bill C-22. Moreover, Internet Service Providers cannot be expected to differentiate between child pornography being possessed, transmitted or accessed more innocently by children/youth and young adults, as opposed to a more pernicious use by predators and pedophiles. However, this mandatory reporting will likely result in more young people being identified as possessing, distributing or accessing child pornography, and potentially being subject to charges under the *Youth Criminal Justice Act*.

Under section 1 of Bill C-22, “child pornography” has the same meaning as in subsection 163.1(1) of the *Criminal Code* and: “child pornography offence” means an offence under any of subsection 163.1(2) (making child pornography); subsection 163.1(3) (distribution, etc., of child pornography); subsection 163.1(4) (possession of child pornography); or subsection 163.1(4.1) (accessing child pornography).

In *R. v. Sharpe*^{xv}, a 2001 decision of the Supreme Court of Canada, the Court read two exceptions into subsection 163.1(4) (possession of child pornography) and subsection 163.1(2) (making child pornography), but not into subsection 163.1(3) (distribution and transmission of child pornography) or subsection 163.1(4.1) (accessing child pornography):

“115 To assess the appropriateness of reading in as a remedy, we must identify a distinct provision that can be read into the existing legislation to preserve its constitutional balance. In this case, s. 163.1 might be read as incorporating an exception for the possession of:

1. Self-created expressive material: i.e., any written material or visual representation created by the accused alone, and held by the accused alone, exclusively for his or her own personal use; and
2. Private recordings of lawful sexual activity: i.e., any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use.

The first category would protect written or visual expressions of thought, created through the efforts of a single individual, and held by that person for his or her eyes alone. The teenager’s confidential diary would fall within this category, as would any other written work or visual representation confined to a single person in its creation, possession and intended audience.

116 The second category would protect auto-depictions, such as photographs taken by a child or adolescent of him- or herself alone, kept in strict privacy and intended for personal use only. It would also extend to protect the recording of lawful sexual activity, provided certain conditions were met. The person possessing the recording must have personally recorded or participated in the sexual activity in question. That activity must not be unlawful, thus ensuring the consent of all parties, and precluding the exploitation or abuse of children. All parties must also have consented to the creation of the record. The recording must be kept in strict privacy by the person in possession, and intended exclusively for private use by the creator and the persons depicted therein. Thus, for example, a teenage couple would not fall within the law’s purview for creating and keeping sexually explicit pictures featuring each other alone, or together engaged in lawful sexual activity, provided these pictures were created together and shared only with one another. The burden of proof in relation to these excepted categories would function in the same manner as that of the defences of “artistic merit”, “educational, scientific or medical purpose”, and “public good”. The accused would raise the exception by pointing to facts capable of bringing him or her within its protection, at which point the Crown would bear the burden of disproving its applicability beyond a reasonable doubt.

117 These two exceptions would necessarily apply as well to the offence of “making child pornography” under s. 163.1(2) (but not to printing, publishing or possessing for the purpose of publishing); otherwise an individual, although immune from prosecution for the possession of such materials, would remain vulnerable to prosecution for their creation”.

It is submitted that 'sexting' may technically in all cases, or at least in the case of transmissions to third parties without consent, contravene subsection 163.1(3) of the *Criminal Code*. In this context, it has been suggested by one law professor that apart from the possession offence, "since cell phone cameras weren't around in 1993 [at the time of the enactment of section 163.1 of the *Criminal Code*], ... the reference to 'transmission', under the section 163.1(3) 'distribution' offence, might need the kind of attention that the Court gave to the 'possession' offence."^{xvi} Another law professor was interviewed by a newspaper journalist in connection with a newspaper account of a London, Ontario police probe into a possible child pornography case involving 'sexting' that could bring charges against high school teens. In that case, it was alleged that a teenage girl sent an explicit photograph of herself taken on a cell phone to an eighteen year old male, who sent it to other persons. The opinion the law professor, reported to have given by e-mail to the journalist, was that "A Supreme Court of Canada decision in 2001 recognized exceptions for 'privately-created and privately-held images that do not depict unlawful activity'... [and these exceptions] would probably apply to the original photograph as long as it remained only in the possession of the two young people in question, but it does not apply to distribution of the image."^{xvii}

In the United States, child pornography criminal charges have been laid against teenagers who have transmitted sexually explicit photographs to others. However, states such as Vermont have taken the position that a more proportionate response is required in the case of children and youth. As a result, they have taken steps to prevent such charges from being laid by introducing a bill to legalize the consensual exchange of graphic issues between two individuals aged thirteen to eighteen years old.^{xviii} Nonetheless, transmitting such images to others would remain a crime.

Another distinguished law professor^{xix} has communicated the following observations in relation to the exercise of charging and prosecutorial discretion:

"[Charging and prosecutorial] discretion may be exercised on the basis of consent. Images may be posted by the child whose image it is, or with that child's consent by a peer close in age, who is a friend or acquaintance of the child. While there are very real concerns about the reality or reliability of consent in this context..., a common sense approach sensitive to the expressive rights and capacities of the child and to the nature and intent of the posting would make a lot of sense. The hardline position taken by the Supreme Court is not a workable standard.

An amendment to s. 163.1 could recognize these factors. Close in age exceptions to criminal responsibility are found in other Criminal Code provisions regarding sexual activity involving children. A workable distinction based on the nature of the image has been adopted elsewhere..."

Similarly, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse provides the authority to signatory Parties to reserve the right not to criminalize the production and possession of pornographic material "involving children who have reached the age of consent [to sexual activities] where these images are produced and possessed by them with their consent and solely for their own private use."^{xx} It is important to recognize that this mitigation of exposure to criminal responsibility appears in a Convention, which requires European Union states to act in compliance in terms of national or domestic law.

Article 16 (3) of the Convention speaks to the provision of intervention programs and measures for children who sexually offend:

"Each party shall ensure, in accordance with its internal law, that intervention programmes or measures are developed or adapted to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility, with the aim of addressing their sexual behavioural problems."^{xxi}

A proposal for a directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography sets out, among other considerations, the following provision:

"1a. Member states shall ensure that where offences concerning child pornography...are committed by a child, they shall be subject to appropriate alternative measures adapted to specific re-educational needs under national law, having due regard to the age of the offender, the need to avoid criminalization and the objective of social reintegration of the child."^{xxii}

Legal Analysis of Prosecutorial Discretion Parameters

The development of prosecutorial guidelines to mitigate the risk of children and youth being prosecuted for offending section 163.1 of the *Criminal Code* would be an additional safeguard, should charges under the *Criminal Code* or the *Youth Criminal Justice Act* be laid in the first place.

For appropriate prosecutorial guidelines to be developed, the proper exercise of prosecutorial discretion would have to be exercised. Prosecutorial discretion in Canada has been described as occurring only after a charge has been laid and only in respect of the authority to withdraw charges or stay criminal proceedings, once commenced.^{xxiii}

The exercise of prosecutorial discretion is based upon a consideration of two principles – sufficiency of proof and the public interest, which can be understood in the following manner:

"The principle of sufficiency of proof provides a threshold test whereby a Crown prosecutor must be satisfied that there is a reasonable chance of gaining a conviction at trial. Assessment in this regard involves considering whether there is sufficient evidence relating to each element of the offence, and any *defences* that an accused might raise.

...The existence of the public interest principle reflects the common law position that sufficiency of evidence will not, alone, compel the prosecution of a charge."^{xxiv}

Recommendations

3. That police charging guidelines and prosecutorial guidelines be developed that could be used to withdraw charges or stay criminal proceedings against a child who may have technically committed an offence under section 163.1 of the *Criminal Code*.
4. That a list of non-exclusive factors be identified for Crown Attorneys to consider, when determining whether to prosecute a child for committing an offence under section 163.1 of the *Criminal Code*. Such factors could include the age of the offender; the closeness in age between the offender and the child; the fact or even appearance of consent; and the nature, intent and severity of the image.^{xxv} Other factors could be the possible counter-productivity of a prosecution; the undue harshness or oppressiveness of a conviction under the circumstances; the reputational, educational and employment implications of a conviction; the potential for self-harm on the part of the offender; and the opinion of the victim.

Justification

Our legal analysis suggests that children and youth may be charged or prosecuted for technical breaches of section 163.1 of the *Criminal Code* and may not be able to rely upon considerations of consent or private possession or use, particularly where there has been the distribution or transmission of child pornography under subsection 163.1 (3) or the accessing of child pornography under subsection 163.1 (4.1) of the *Criminal Code*. This would then place young persons at risk of criminal liability in the case of their sending or receiving sexually explicit messages, photos or videos. Accordingly, a reasonable response to this risk of criminalization would be the development of appropriate police charging and Crown Attorney prosecutorial guidelines.

This approach would be consistent with a trend in Canadian jurisdictions to enumerate non-exclusive lists of factors for prosecutors to consider when determining whether to pursue a prosecution in the public interest. For example, the relevant guidelines for prosecutors in Nova Scotia indicate that in addition to the sufficiency of evidence “the principle of prosecutorial discretion also requires that a prosecution only proceed where the public interest is best served by a prosecution.”^{xxvi}

3. PROVISION OF PREVENTIVE EDUCATION FOR CHILDREN

Discussion

To protect all children from abuse, children need to know what constitutes abusive and illegal activity, to know how to report it, and to avoid actions that would harm other children and themselves. We see the need for increased education to prevent children from being placed at risk of abuse, and also at risk of criminal prosecution. The Bill offers an opportunity to press for the need for preventive education of youth – ALL youth - through effective programs that consult youth in their design and that are properly evaluated. In this regard, preventive education would benefit not only potential youth-victims, but also potential youth-victimizers, who may not fully appreciate the implications of their actions.

There are a number of networks already established to prevent Internet child exploitation. There is the Canadian Coalition Against Internet Child Exploitation, whose membership includes Beyond Borders and representatives from Canada’s leading Internet companies, the federal and provincial governments, law enforcement, and is chaired by Cybertip.ca.

School Net is a program of Industry Canada and has also received funding to improve its Web site to serve as a clearinghouse of existing educational resources for the protection of children from sexual exploitation. School Net’s partnerships and projects have included the Media Awareness Network; Young Canadians in a Wired World; and Reality Check – all assisting young people in their development of critical thinking skills about the media and the Internet.

Websites like Cybertip.ca also play a role in the protection of children online. Cybertip.ca is Canada’s national tip line for reporting the online sexual exploitation of children. The tip line is owned and operated by the Canadian Centre for Child Protection and is the agency named in Manitoba to receive such reports and to analyze and report upon the data that is generated from such reports. The Canadian Centre for Child Protection has concluded that the results observed in the year following the proclamation of

mandatory reporting of child pornography in Manitoba stress the importance of training, education and public awareness.

A useful approach to effective preventive education directly engaging children and youth (not just their parents, teachers and child-serving organizations, which are also important targets) is seen in PREVNet,^{xxvii} a national network of Canadian researchers, non-governmental organizations (NGOs) and governments committed to stop bullying. PREVNet creates evidence drawn from research to help inform educational interventions to address bullying, and has launched an initiative to evaluate education interventions to ensure that the considerable public funding of such programs flows to measures that actually work. Bullying is approached as a relationship problem, recognizing the power imbalances that contribute to it, and both the children who bully and the victims of bullying are the focus. This kind of approach can be applied to preventive education *and* to measures to redress problem behaviours in children and youth in the area of online child sexual exploitation.

The Child Exploitation Online Protection Centre (CEOP) in the UK^{xxviii} offers a very strong example of a preventive education approach for different age groups of children and youth, as well as for parents and educators. Children were extensively consulted and participated in the development of Thinkuknow,^{xxix} an informative online site for children where *both* victim and perpetrator behaviours by children and youth are addressed. Children and youth are informed in developmentally appropriate ways about what kinds of online activity may be illegal, and the range of consequences for the perpetrators and for the victims.

As the site advises for the 11-16 age group:

"There are loads of different laws that are there to protect young people and also some laws that make young people take responsibility for their actions. We've added this section to help give you a bit of a snapshot of your rights as a young person and exactly what you can be accountable for..."^{xxx}

For example:

"'Sexting' (sending a sexual photo of yourself or someone else via text is against the law as whoever has that picture on their phone, is technically in possession of an indecent image of a child. If the people involved in sexting are under 18, this is illegal (even if the person is your boyfriend or girlfriend). This means that person can be prosecuted under the Sexual Offences Act 2003."^{xxxi}

Overall, there are few awareness and education initiatives that directly reach children and youth, and that are proven effective through evaluation. The most effective initiatives will consult children and youth themselves, and reach them directly, supported by education for parents, in schools, and for other stakeholders. They will increase the capacity for children and youth to protect themselves from sexual abuse online and from engaging in criminally risky behaviour.

Recommendations

5. That **Bill C-22 be amended (or regulations thereto and/or guidelines be created) to require the development and dissemination of effective educational interventions for children and young people to address the risks involved in making, possessing, transmitting or accessing child pornography, as defined in section 163.1 of the *Criminal Code*.**

6. That there be due consideration of the recommendations for training, education and public awareness advanced by the Canadian Centre for Child Protection, as a result of the review of the Manitoba experience with mandatory reporting of child pornography.

Justification

Some suggestions made for educating young people particularly as it relates to ‘sexting’ include the identification of multiple risks, which can result from a simple ill-advised act:^{xxxii}

- a) The sender could become the object of humiliation beyond anything she or he has ever contemplated, and even become seriously depressed, leading to acts of self-harm, or even suicide;
- b) The sender could get into serious trouble and be suspended or expelled from school;
- c) The sender could come into conflict with the law and even be charged criminally for offending the provisions of section 163.1 of the *Criminal Code*;
- d) Once these images have been taken and sent to others, they become a permanent indelible online record. Even far into the future, the images are still there and can cause problems for future jobs and serious relationships;
- e) Once these images have been transmitted, control is lost over them and they can end up anywhere – being seen by friends and family, a future employer, or even end up in the possession of an offender;
- (f) The sender could have a sexual image, which was originally sent to and intended solely for a trusted boyfriend or girlfriend, forwarded to undisclosed third parties, once that relationship sours; and
- (g) The sender may be put in a vulnerable position, as somebody she or he may or may not know could have these images and use technology to bully, harass, or even try to locate them.

As the Thinkuknow Web site advises:

“Just think – if you wouldn't print and pass these images around your school or show your mom or dad, they are not appropriate to share via phone or other technologies.”

In the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 6 addresses the matter of education for children:

“Each party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.”^{xxxiii}

Article 8(1) of the same Convention additionally addresses measures for the benefit of the general public:

"Each Party shall promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken."^{xxxiv}

SUMMARY

The difference between children and youth who are victims of sexual abuse and children whose actions are illegal is sometimes a blurry line in the digital world. While there are certainly children and youth who are harmed, and children and youth who cause harm to others, within the spectrum between "victim" and "perpetrator", there are children who, by virtue of their developmental stage and lack of knowledge, act in ways that expose themselves to the sanction of criminal law without intending to cause harm to themselves or to others. Such activities include inadvertently accessing child abuse imagery on Web sites, sharing it with others, and making and/or sharing images of themselves or other children and youth. These activities are more likely to bring criminal sanctions with the passage of Bill C-22.

UNICEF Canada strongly supports the passage of Bill C-22, and encourages the Committee to strengthen it and better protect Canada's children with (a) preventive measures that will help children and youth avoid the risk of both abuse and of engaging in criminal acts, and (b) mitigating measures that will appropriately address those who act recklessly or unknowingly without intending to cause harm to themselves or others.

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ENDNOTES

- ⁱ *The Child and Family Services Amendment Act (Child Pornography Reporting)*, S.M. 2008, c. 9.
- ⁱⁱ *The Child Pornography Reporting Act*, S.N.S. 2008, c. 35.
- ⁱⁱⁱ Library of Parliament, Publication No. 40-3-C22-E, Legislative Summary of Bill C-22, at 2, available online at <http://www2.parl.gc.ca/Content/LOP/legislativeSummaries/40/3/40-3-c22-e.pdf>
- ^{iv} *Ibid.* at 3.
- ^v *Ibid.*
- ^{vi} www.cyberaide.ca/pdfs/mandatory_reporting/key_stas.pdf
- ^{vii} Livingstone, Sonia et al, *Risks and Safety on the Internet: The Perspective of European Children*, (The London School of Economics and Political Science: 2010), at 109, available online at <http://www.eukidsonline.net>.
- ^{viii} <http://www.ceop.police.uk>.
- ^{ix} United Nations, Convention on the Rights of the Child, A/RES/44/25, United Nations, New York, 20 November 1989.
- ^x Brownlie, Ian, *Principles of Public International Law* (New York: Oxford University Press, fifth ed., 1998) at 35.
- ^{xi} *Supra*, note ix.
- ^{xii} *Ibid.*
- ^{xiii} World Congress III Against the Sexual Exploitation of Children, Brazil 2008, Declaration and Plan of Action, available online at http://www.ecpat.net/EI/updates/WCIII_Outcome_Document_Final.pdf.
- ^{xiv} *Supra*, note iii, at 1.
- ^{xv} *R. v. Sharpe*, [2001] 1 S.C.R. 45 (SCC)
- ^{xvi} Written Communication from Professor Mark Carter, Faculty of Law, University of Saskatchewan, January 14, 2011.
- ^{xvii} Belanger, Joe, Toronto Sun, *Sexting a possible child-porn case*, December 11, 2010, available online at <http://www.torontosun.com/news/canada/2010/12/11/16513446.html> (referring to opinion by Professor Hamish Stewart, Faculty of Law, University of Toronto).
- ^{xviii} Working Group of Canadian Privacy Commissioners and Child and Youth Advocates, Discussion Paper, *There Ought To Be A Law: Protecting Children's Online Privacy in the 21st Century*, 2009, at 9, available online at <http://www.gnb.ca/0073/PDF/Children'sOnlinePrivacy-e.pdf>. This Paper speaks to the privacy rights of children and youth that ought to be respected while examining their need for online protection.
- ^{xix} Written Communication from Professor Anne McGillivray, Faculty of Law, University of Manitoba, January 21, 2011.
- ^{xx} Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2010, available online at 10, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=1&DF=&CL=ENG>.
- ^{xxi} *Ibid.* at 8.
- ^{xxii} European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Draft Report on the Proposal for a Directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, 2010, available online at <http://www.statewatch.org/news/2010/dec/ep-draft-angelili-report-combating-sexual-exploitation.pdf>.
- ^{xxiii} Carter, Mark, *Corporal punishment and prosecutorial discretion in Canada*, The International Journal of Children's Rights, 2004, Vol. 12 (Netherlands: Koninklijke Brill NV) at 51-53.
- ^{xxiv} *Ibid.* at 53-54.

^{xxv} *Supra*, note xix.

^{xxvi} *Supra*, note xxiii.

^{xxvii} See <http://www.preynet.ca>.

^{xxviii} *Supra*, note viii.

^{xxix} See <http://www.thinkuknow.co.uk>.

^{xxx} *Ibid.*

^{xxxi} *Ibid.*

^{xxxii} *Ibid.* See also Wolf, Anthony, *Globe and Mail*, A sexting sermon they have to hear, January 21, 2011.

^{xxxiii} *Supra*, note 20, at 5.

^{xxxiv} *Ibid.* at 6.