

Standing Committee on Justice and Human Rights
Bill C-310,
An Act to amend the Criminal Code (trafficking in persons)¹
Thursday, March 15, 2012

Chair (Mr. Dave MacKenzie (Oxford, CPC))
Mrs. Joy Smith (Kildonan—St. Paul, CPC)

Witness: Rosalind Prober (President and Co-founder of Beyond Borders ECPAT Canada)
Dr. Mark Erik Hecht (Senior Legal Counsel, Beyond Borders ECPAT Canada)

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Ms. Rosalind Prober (President and Co-Founder, Beyond Borders ECPAT Canada):

Beyond Borders, Au-delà des frontières, is a national, bilingual NGO that works in solidarity with sexually exploited children.

I am president, and I founded Beyond Borders, in 1996, with Mark Erik Hecht. Our NGO is now the Canadian arm of an international NGO based in Bangkok, Thailand, called ECPAT: End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

Both ECPAT and Beyond Borders were founded to combat cross-border sex crimes against children, including all forms of sex trafficking and child sex tourism.

Bill C-10 proposes that human trafficking be added to the list of extraterritorial offences. Beyond Borders early on endorsed this bill, as it includes child sex traffickers and supports the tireless work of MP Joy Smith on the issue.

Ethical cosmetics company The Body Shop raised awareness of this issue with Beyond Borders. Over half a million Canadian customers signed a petition asking the government to do more to stop child sex trafficking. This bill validates the incredible efforts of that company and its staff. Canadians clearly want child sex traffickers held accountable wherever they choose to abuse and exploit vulnerable children for profit.

Extraterritorial crimes against children committed by Canadians are the focus and expertise of Beyond Borders. Thanks to the Minister of Foreign Affairs at the time, Lloyd Axworthy, I appeared before this committee in 1996 on Bill C-27, on child sex tourism. In its wisdom, this committee in 1996 agreed with my suggested amendments and made all sex crimes against children extraterritorial. The committee referred to the new legislation as the "Prober amendment". At the time, there was, of course, no legislation on human trafficking, as there is now.

Today before us is another bill making human trafficking law, including child trafficking, extraterritorial. What has happened in Canada after our new sex tourism extraterritorial law came into effect in 1997? Well, it has worked to a limited extent. There are lessons to be learned from the last 15 years, which leads to the recommendations Beyond Borders is making today.

Since 1997 Canada has had four successful prosecutions in Canada of child sex tourists abroad: two in Vancouver, one in Montreal, and one in Windsor. That's four in 15 years.

I always enjoy discussing the Windsor case, as it concerns a pedophile priest who got tremendous funding from the good people in Windsor, through Hearts Together for Haiti, to bring technology, etc., to the children in the remote village in Haiti where the priest was sexually abusing the boys. Using that Canadian technology, one of the Haitian victims e-mailed the Windsor funders to inform them of the sexual assaults.

The constitutionality of the extraterritorial law—Criminal Code subsection 7(4.1)—on child sex tourism was challenged in the latest child sex tourism prosecution, *R. v. Klassen*, in the B.C. Supreme Court. The main issue before the court was whether it was constitutional to apply Canadian law to acts committed overseas by Canadians.

Justice Cullen decided that the child sex tourism legislation was constitutional. He ruled that Parliament has the power to enact extraterritorial legislation, adding that the majority of the world's countries, including Canada, have signed the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.

He disagreed that the rights of the accused under the charter would be infringed when the crimes were committed outside of Canada, stating that the accused was still guaranteed a fair trial in Canada under our charter.

Creating legislation like Bill C-10 is, of course, when it comes to extraterritorial crimes, the easy part. The investigations and prosecutions of our child sex tourists in Canada have been extremely complicated, costly, and a huge investment of law enforcement and prosecutors' time. *R. v. Klassen* took six years.

Sentencing of our child sex tourists has been all over the map, from extremely lenient to what I would call "fitting the damage done".

A recommendation from Beyond Borders was proposed recently by another of our legal counsel, David Matas, who appeared before the Senate justice committee on sentencing. Beyond Borders proposed a sentencing commission for Canada. I am today recommending that solution as well.

Post-incarceration, the reality is that not only do our convicted high-risk sex offenders, including convicted child sex tourists and child traffickers, get out of jail, but they also get passports, allowing them access to low-cost, high-speed foreign travel. Of course, vulnerable, young, at-risk children can easily once again become their targets in foreign countries.

Today I'm recommending that Canada use our sex offender registry to have a designation for, at a minimum, all convicted extraterritorial child sex offenders to be declared unfit to travel. Canada has signed and ratified the Convention on the Rights of the Child, where countries commit to putting children first, not globe-trotting convicted pedophiles and sex traffickers.

There are presently scant resources and too few liaison officers in embassies abroad to combat all global crimes. Another recommendation is therefore that if you're going to take trafficking seriously and really crack down, there will have to be more RCMP liaison officers abroad and much more focus on preventing sex crimes against children by travelling Canadians.

As of December 2011, in a landmark step for children's rights, the UN General Assembly adopted a new optional protocol to the UN Convention on the Rights of the Child, establishing a complaints mechanism for violations of children's rights. The new treaty will enable children or their representatives to bring a complaint to an international committee of children's rights experts if they've not been able to get remedies for these violations in their countries. Canada has not signed on to this new complaints mechanism and should do so forthwith.

Presently Beyond Borders is running a national campaign supported by The Body Shop, reaching out by using Canadian male celebrities to speak to all men in an effort to sensitize them on the tremendous damage their gender is doing to children. The demand or perpetrator side of child sexual exploitation results in an endless supply of trafficked children prostituted both here in Canada and abroad. The campaign is called "Man to Man/Homme à homme". Much more focus in Canada has to be put on child sex consumers, as stopping demand will prevent more damaged children.

It is essential, to ensure global justice for children, that Bill C-10 is supported by this committee. At the same time, it is essential that systems are in place in Canada and abroad to make sure the law will work.

One case out of Nova Scotia, Regina v. MacIntosh, is so disturbing, so full of injustice for victims in Canada and victims in India, that nothing less than a full inquiry is necessary to ensure a global child abuse case like this never happens again. Previously convicted sex offender MacIntosh, while under warrant status in 1995 for 43 new child sexual abuse charges of many Nova Scotia boys, lived in India for 11 years in flight from justice. He got passport renewals to stay there, travelled back and forth from India to Canada, and was reported by the *Toronto Star* to be sexually exploiting boys in India. He twice got visas, while wanted for sex crimes here, to bring an Indian boy to Canada with him. That boy, according to the *Toronto Star*, joins many other Indian boys who say they were abused by this Canadian, in India or here.

Every system put in place to stop sex crimes abroad, including the extradition system, was bungled. The law on child sex tourism was ignored. Officials in India were widely quoted in the papers saying they were dumbfounded that a wanted Canadian had access to Indian boys for years and years and they were never aware that he was previously convicted and also wanted. They are stunned that he, remarkably, was getting passport renewals and visas to travel with minors while under warrant status. The Canadian passport office was asleep, at best.

A first recommendation, obviously, coming out of this case is that Canadians under warrant status for sex crimes, including trafficking, should not get passport renewals.

Holding global child sex traffickers accountable wherever they exploit and not providing a safe haven for them here, if detected in another country and they flee home, is necessary at this time of globalization, cyber-pimping, and trafficking. The law is constitutionally valid.

We can no longer turn a blind eye to those Canadians who befriend, romance, control, abuse, and then traffic children in countries like the Dominican Republic, sadly a Canadian biker gang hangout.

Thank you.

QUESTIONS

Mr. Sean Casey (Charlottetown, Lib.):

...

Ms. Prober, I listened to you talk about the MacIntosh case.

Ms. Rosalind Prober:

There's an appeal to the Supreme Court. I should be clear about that. So any inquiry would be if it goes to the Supreme Court. After that.... If it doesn't, hopefully then it would carry on.

Mr. Sean Casey:

Would this bill have changed anything with respect to that case?

Ms. Rosalind Prober:

No. The only reason I'm really raising this case is in regard to the systems that have to be in place if you're going to do extraterritorial, if you're going to have an extraterritorial law and make it effective. Everybody has to be up to speed. Everybody has to be trained. I might turn this over to our legal counsel to talk about....

But generally that's why I'm raising this. It's great that we do it, but then let's look at a situation where things fall apart. Or there's the other case, the case of Wrenshall. He was an individual who unfortunately set up a brothel in Bangkok. That would be an instance where an individual would be held accountable for human trafficking in Bangkok and couldn't be. He was held accountable by the United States; they caught him in England and brought him back on conspiracy charges because he was actually offering the boys to American citizens. So there wasn't anything there for him at the time.

But I don't know if Mark wants to add anything.

Dr. Mark Erik Hecht (Senior Legal Counsel, Beyond Borders ECPAT Canada):

I will just add that with the work Beyond Borders does, we're always very cautious not to promote any kind of amendment to legislation that would be really operating in a vacuum. So with respect to the other times we've presented in front of committees, what we always tried to raise was the fact that there has to be a more integrated kind of approach to this. It's very good if we get the legislation in. That's definitely very important and necessary. But we also have to ensure that whatever we do on the criminal side works closely with the other protocols in place, as, for example, immigration, which was raised, but also specifically with the MacIntosh case, the whole issue of the passport offices and the role they play in helping enforce extraterritorial legislation.

That's why we always try to bring it up, so people are aware that it's not only the work that's being done in this committee, but the effect the work in this committee has on work going on in other areas of the federal government.

Mr. Sean Casey:

Ms. Prober, you referenced another case with respect to someone who set up a brothel and was ultimately pursued in the United States.

That leads me to my next question. In terms of particular cases that we could point to, where there is a gap in our legislation that this addresses, are there particular cases that this addresses? Or is this a problem that is pervasive and can't be reduced down to individual cases that we're dealing with?

I pose that question for you, but I expect there may be others on the panel who would like to address that as well.

Ms. Rosalind Prober:

When you look at the issue of child sex trafficking, it is generally the local or national children in Canada who are trafficked. Certainly that is a reality. In fact, I don't think we have before the courts any cases involving trafficking of children that are not, at the moment, involving local children, not children brought into Canada. Generally, if you look at sex trafficking, the use of children for profit, it's a local phenomenon.

You actually mentioned the United States. Sometimes I worry about the United States getting too much of a pat on the back. In actual fact, the money from The Body Shop in the United States with our American ECPAT group went to bringing in legislation so that children in prostitution are not arrested. It may well be that the United States has looked very closely and done some good work about trafficking foreigners into the United States, but in terms of children in the United States, they are way behind the eight ball, and they still arrest them in many states.

Back to your question, is this going to address a phenomenon or is a phenomenon out there, as I think you are asking? One of the things—

Mr. Sean Casey:

I'm asking more whether there are specific cases where prosecutions have failed because we don't have this bill. That's where I'm going.

Ms. Rosalind Prober:

I think if you look at the polygamists in B.C., we know full well that the polygamists in B.C., the FLDS, were going into the United States and bringing back and forth child brides. That would certainly be an incidence where criminal activity was going on and there was no legislation to prevent it.

Mr. Sean Casey:

Thanks.

...

Ms. Rosalind Prober:

I want to say that, having worked, Mark and I, on the child sex tourism legislation, when we were doing that a lot of the folks who were opposed thought the sky was going to fall if you did this. But the reality is that the alternative is to have your country as a safe haven for criminals who have committed offences abroad. That's the reality, if you want to accept that reality. If you don't have this, that is the reality: they will just skip home and say tough luck.

...

Ms. Rosalind Prober:

I want to add that in general there are only so many dollars to go around, there are only so many prosecutors, etc. The general principle is that wherever the person was caught, that country—say, for example, a Canadian in Bangkok, Thailand....

And we have one in Bangkok, Thailand, haven't we? You all know of Christopher Paul Neil, Mr. Swirly, who thought he was going to outfox the German police? He was caught in Bangkok.

He didn't make it home to Canada. He would have tried, but he wouldn't make it. So they tried him there. Had they said they were shipping him off to Canada, Canada would have picked it up.

But generally, the principle in child sex tourism is that if they're caught, for example, in Cuba or the Dominican Republic, and if they want to try them for crimes against their citizens, they have the right to do it. If they don't, then they ship them home. It's very simple.

...

Prof. Amir Attaran:

... Probably if you've been acquitted in another country as a Canadian or permanent resident charged with trafficking in that country and you return to Canada, first of all, it's unlikely that prosecutorial exercise in Canada would be used to prosecute you again. If it did happen, and if you had a good defence lawyer, you can enter the plea of *autrefois acquit*.

Mr. Stephen Woodworth:

Even though it's a foreign acquittal?

Prof. Amir Attaran:

Yes. There would be a question—a very interesting question of law, and I don't actually know this off the top of my head—about whether the legal standards used in the country where you were acquitted were comparable enough to Canadian legal standards that the acquittal would stand and your plea of *autrefois acquit* would work.

That's going to be fact-dependent. I think you really can't make a general prediction about it.

The Chair:

Okay. Ms. Prober, go ahead.

Ms. Rosalind Prober:

I'm overtalked. Our lawyer here knows about this.

Dr. Mark Erik Hecht:

It would be an interesting test, I agree.

What I can say is that it happens in civil litigation all the time. With multinational corporations, it happens all the time. They're held to a different standard in different jurisdictions.

The U.S. has the Alien Tort Claims Act, which specifically allows, in the area of human rights, for a multinational corporation to be sued in various jurisdictions for basically the same human rights crimes. It would be novel to see how it would work in criminal law, but it definitely works on the civil litigation side.

Mr. Brian Jean:

First of all, in relation to the MacIntosh case, a public inquiry was suggested. If I'm correct on that particular factual basis, the gentleman was in India and the court actually looked at the time away from Canada as an unreasonable delay in prosecution, and it included that time, notwithstanding that there was a warrant issued. From my perspective, instead of an inquiry, I might suggest maybe some legislative changes to make sure judges take judicial notice that they cannot include time away in part of the unreasonable trial. Would that be fair to say?

Ms. Rosalind Prober:

You can read a legal analysis of this case by Jonathan Rosenthal on our website. Beyond Borders' view is that the Court of Appeal of Nova Scotia absolutely mangled the law on delay. We had an individual in flight from—

Mr. Brian Jean:

I do understand, and that may go to the Supreme Court.

Ms. Rosalind Prober:

I think the Supreme Court will clean it up.

Mr. Brian Jean:

Exactly.

Ms. Rosalind Prober:

And after that, we have to figure out whether Canada is up to speed in handling a case like that.

Mr. Brian Jean:

Okay, but would you not agree that a change in the legislation to codify "unreasonable delay" and what can and cannot be included—and I see your lawyer nodding his head in agreement—would not be sufficient to make sure that the Supreme Court took notice of that, and that future judicial decisions also include that?

Dr. Mark Erik Hecht:

I think it would definitely be very helpful. If I have to speculate, which is always dangerous—

Mr. Brian Jean:

You're a lawyer. You have to speculate.

Dr. Mark Erik Hecht:

Should this be successfully heard by the Supreme Court, I suspect they're going to read language into it, which may ultimately end up in the code anyway.

Mr. Brian Jean:

And they may even be listening to you right now and listening to us, as legislators, saying something needs to be done there.

Dr. Mark Erik Hecht:

Yes. I think what happened in that situation was an abomination.

Ms. Rosalind Prober:

I was just going to add—and I know Joy will agree—we really shouldn't leave here without acknowledging the Salvation Army for their work against human trafficking in the streets.

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ⁱ <http://parl.gc.ca/HousePublications/Publication.aspx?DocId=5462971&Language=E&Mode=1&Parl=41&Ses=1>