Child Pornography on the Internet: The Victims Deserve a Response

Michael Green

A Thesis

In

The Department

Of

Sociology

Presented in Partial Fulfillment of the Requirements
for the Degree of Master of Arts at
Concordia University
Montreal, Quebec, Canada

August 2004

Your file Votre référence
ISBN: 0-612-94647-9
Our file Notre référence
ISBN: 0-612-94647-9

Abstract

Child Pornography on the Internet: The Victims Deserve a Response

Michael Green

Child pornography on the Internet is a problem almost invisible to the general public, which has produced consternation among those entrusted with the protection of society. The argument is presented that a great deal needs to be done to protect children and eradicate this illegal material from the Internet. I interviewed police officers, members of the judiciary, legislators and their advisors to discover what is being done to resolve these issues in Canada.

The Canadian *Criminal Code* has been amended to include sections which deal specifically with child pornography and the Internet; sections 163.1(1) to 163.1(7) have proven to be inadequate in the face of challenges from the *Canadian Charter of Rights and Freedoms* particularly in the Sharpe case. The lack of legislative clarity begs inquiry into the formation of laws, their interpretation by the bench and enforcement by the police.

In conclusion I present a series of recommendations, drawn from my interviews and from the available literature, to correct the problem of child pornography on the Internet and, thereby, to protect the children.

Acknowledgements

I would be remiss if I did not begin by thanking Concordia University for allowing me to further my education and learn that there is more than one way to answer a question. I will always be grateful.

Special thanks must go to Professor Anthony Synnott, my Supervisor, without whom this thesis would still be an idea written disjointedly on scraps of paper. I'm sorry for the extra grey hairs Tony.

To Commander Andre "Butch" Bouchard (retired) whose frankness, willingness to help and honesty motivated me to continue with this study even though the subject matter was so abhorrent. Thanks Butch.

Thanks to Jacques Viau whose demanding appetite for answers on how to protect children was contagious; I'm glad to be infected. I hope we can find the answers Jacques.

Thank you, Professor Greg Nielsen you taught me the importance of theory and immanent reading. A++

To Professor Kurt Jonassohn your inquisitive nature rubbed off on me historically and sociologically; thank you Kurt.

Thank you RCMP Inspector Jennifer Strachan because your readiness to assist helped this study enormously.

And very special thanks to someone who manages to keep it all together regardless of the pressure: Jody Staveley. How can one person know all those answers? Thanks a million Jody.

Thank you all.

TABLE OF CONTENTS

List of Appendices

Chapter

1

CHILD PORNOGRAPHY ON THE INTERNET

Introduction

At the outset of this research, issues presented themselves which begged a response. Child pornography appears on the Internet. Child sexual abuse is central to child pornography. The sale of child pornography has become a valuable international commodity for criminals. Bureaucratic reaction time to the Internet is too slow. Politicians are not recognizing the problem. Criminals benefit from the Canadian *Charter of Rights and Freedoms*. *Criminal Code* laws are inadequate to protect children. Law enforcement does not have the tools. Judicial responses are subjective and ill informed. There is an urgent need to eliminate child pornography from the Internet.

Given the prevalence of child abuse recorded in our own communities – Concordia University's library alone lists 503 titles on child abuse – it had to be asked, what is being done to protect children? Legislators and the judiciary argue that children are protected by the Canadian *Criminal Code* with laws enacted for that very purpose; law enforcement, however, presents a position contrary to that claim, as interviews conducted for this study will show.

Children are the most vulnerable in our communities and yet seem perpetually extricated to the periphery of society. The media frequently reports on child abuse with everything from shaken baby syndrome to bullying, beatings,

rapes, for both male and female, kidnapping and murder. The Internet has become a stage from which an audience of faceless and nameless individuals can access, through every time zone, twenty four hours a day, seven days a week, atrocities perpetuated on children under the banner of 'child pornography' which in reality is the sexual abuse of children.

Legislators, the judiciary and law enforcement agencies argue an inability to successfully curb these activities, which appear on the Internet; activities, which comprise displays of violent acts perpetrated against children from infancy to adulthood. In addition, they are at a loss to protect these children. This admission represents a very big problem; a problem that has grown out of all proportion and continues to expand at an alarming rate along with the Internet.

Jenkins (2001) describes the Internet as being linked to less than three hundred computers in 1981. Within seventeen years, that number had increased to 36.7 million. From 1993 to 1998, the number of web sites grew from fifty to 1.3 million (p.47). Canadian legislation against child pornography is inadequate with judicial enforcement impeded by a lack of the necessary resources. Furthermore, the victimization of children continues to produce a negative ripple effect throughout society.

From physical to electronic community

The Internet is an electronic medium created for the rapid transmission of information. While setting new standards and norms instantaneously, it has continued to grow beyond the wildest expectations of any of its architects. As such, it has been transformed from a means of communication to a

communicative device resembling the common pathways through which a community's members interrelate and co-exist: as such, a society.

When we regard the Internet as a community of sorts, social terms such as society, family and kinship, to mention but a few are difficult to apply. This aspect of the information highway is troubling to many and, therefore, the common denominator of all the available research data is 'concern'. That concern leads us to the central question to be addressed in this thesis: how can child pornography be eliminated from the Internet?

Perpetrating crimes against children is illegal and the Internet has been designated a medium through which the promotion of such crimes should be universally prohibited. The validity of this argument is not in question; rather, whether universal or domestic, it is the conception, the motivation, the application and the relevancy of laws dealing with this dilemma, which require scrutiny. Child pornography is the derivative of child abuse. The proposal, here, is that this research begin within the legal parameters afforded it through the Canadian Judicial process.

It is from within the Canadian political and judicial systems, along with their affiliates, that this thesis takes its direction; child pornography on the Internet will be investigated as it relates specifically to these agencies. A broad analysis to include a multiplicity of viewpoints is necessary to produce a workable cross section from which to extrapolate guidelines necessary to complete this study. Much needs to be asked if we are to do that.

Some enquiry would include, has Canadian legislation changed, over time, to accommodate Internet intervention as a medium which conveys illegal material? With the inclusion of the Internet into political policymaking, have law enforcement agencies received the necessary tools to combat electronic, illegal activity? Are laws based on evidentiary conclusions or do legislators assume necessity based on extraneous factors: public outrage, media pressure or perhaps simply a desire to appease the electorate, albeit temporarily?

If we believe the protection of children to be a precondition for legal rhetoric on the subject, then what measure of support does law enforcement receive from the judiciary in their attempt to apply the laws? Furthermore, given the consideration that child abuse is illegal and as an extension, child pornography, does the *Criminal Code* clearly recognize the illegality of an abusive act displayed on the Internet, and protect the abused child, or censure those who observe?

What is child pornography and what is its connection to the Internet? These are not simple terms to describe. Child must be defined in relation to law; for this thesis the laws will be Canadian. Similarly, pornography must be examined from the perspective of sociological relevance. Combined as 'child pornography' the term takes on a completely different significance. And, it is that meaning which is essential to this study.

To acquire some clarity in reference to these data, it is necessary to establish the connection, if any, between the illegality of abusing children and watching the act, or acts, through some exterior medium. Section 163 (1) of the

Canadian Criminal Code specifically states: "possession for the purpose of publication, distribution or circulation is an offence." Downloading and storing images can be construed as possession for sale or distribution and as such becomes an illegal activity that the accused must defend against. Looking is also an offence.

Bill C-15A known by its short title, *Criminal Law Amendment Act, 2001* which was Assented to 4th June, 2002, describes in section 163-1 which was amended after subsection 4, – (4.1) "Every person who accesses any child pornography is guilty of (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or (b) an offence punishable on summary conviction." The interpretation in subsection (4.2) offers "For the purposes of subsection (4.1), a person accesses child pornography that knowingly causes child pornography to be viewed by, or transmitted to, himself or herself."

The significance of these articles relates directly to the matter of John Robin Sharpe. Sharpe, from British Columbia, was arrested while possessing material considered in violation to the law on possession of child pornography. Arguing through his lawyer, Paul Burstein, that his possessions were for his own benefit and were constitutionally allowed to him as artistic renditions under the *Canadian Charter of Rights and Freedoms*, Sharpe extended his court appearances from the British Columbia Superior court to the Supreme Court of Canada.

The outcome of these cases and in particular, the ruling of the Supreme Court impacts directly on subsection (6) of the Criminal Code Amendments:

"Where the accused is charged with an offence under subsection (2), (3), (4) or (4.1), the court shall find the accused not guilty if the representation or written material that is alleged to constitute child pornography, has artistic merit or an educational, scientific or medical purpose."

Sharpe's case made public a previously surreptitious activity. His eventual four-month sentence of house arrest included Internet use restriction. Public outrage took a different focus; because of Sharpe, more interest was directed toward the Internet and in particular the threats presented in 'chat rooms'. Media attention concentrated on presumed, increased pedophile activity related to chat rooms which offer anonymity for those who communicate and often lure other participants. Law enforcement frequently uses this avenue of anonymous communication, to bait and lure pedophiles by imitating supposed unsuspecting children. There is no accurate data on how many people frequent this form of contact. There is also no accurate data on how many people view child pornography on the Internet. Furthermore, we can only speculate on the ramifications with which these activities affect society.

Consequently, we must consider the relevance of viewing child abuse on the Internet and ask directly, has child pornography increased because of the Internet? There is limited empirical data on this issue; much of what I gathered came from interviews with anecdotal evidence garnered from those currently involved in law enforcements' efforts to control this medium.

The issue has proven to be difficult. The Canadian Broadcasting Corporation's (CBC) current affairs program, *The Fifth Estate*, presented an

exposé on Operation 'Snowball', the Canadian offensive against those people accessing child pornography on the Internet. Snowball was a direct extension of the FBI's Operation Avalanche. Highlighted by the program was Canada's lack of response and law enforcement's on-going frustrations in reaction to Internet crime (CBC Archives). The CTV evening news reported a new electronic crime by bringing to light the arrest of a man for downloading child pornography through a wireless connection to the Internet while he was in his car. The Internet was entered by remotely accessing the signal from a house in close proximity to the perpetrator (CTV Archives).

CBS's *'60 Minutes'* devoted 30 minutes to an in-depth study of the "Pornography" industry in the United States. Steve Kroft interviewed Paul Fishbine, Founder and President of "*Adult Video News*" (AVN) and was told that in the United States, during 2002, there were over 800 million pornographic video rentals. Furthermore, it was emphasized that within one generation, what was only available in back alleys was now part of a ten billion dollar industry supported by corporations such as General Motors, Time Warner and Marriott Hotels. Consumer demand, it was noted, has seduced corporate America into selling pornography to Americans (CBS Archives).

Priorities

Media attention to the problem is often sensationalized and out of proportion. Jenkins provides a succinct overview of media build-up which dealt with child pornography in the United States from the mid-1970s to the late 1980s. The media reports provoked an era of panic which caused moral, political

and law enforcement agencies to spearhead a drive to control and eradicate what had been promoted as an enormous industry, child pornography. The claims were never supported and after a ten year drive, were found to have little or no basis in fact (pp.33-34-45).

The statement that pornography on the Internet is immense and growing daily has also been argued by all the respondents interviewed for this thesis. Corroborating data, however, are hard to acquire given the very nature of Internet anonymity combined with the illegalities of viewing child pornography. There is no argument, though, that Internet activity in pornography has increased exponentially.

Prioritizing concerns in light of these statements must not allow deviation from the central issue here; there is a problem; children are being sexually abused and that abuse is being presented on the Internet. Under today's Internet structure, little has been done to separate legitimately informative sites from those which contain pornography and child pornography. And these sites can be seen by anyone who 'logs on'. Because of this, organizations have developed to provide filtering for control of what children are able to view on-line. Censoring what children watch on the Internet, however, is another issue and one that is not fundamental to this study.

Our concern is with abuse that occurs without consent and it is that which must be focused on and removed. What appears and what should or should not be viewed only creates confusion in the public sphere where, unfortunately, a

majority display more concern for censoring than eliminating the source. Such divisiveness weakens law enforcement's support and the abuse continues.

The increased accessibility of child pornography on many sites and the proliferation of such material have become a central issue at various international conferences where domestic regulations for control have been mirrored against international recommendations. One such conference, *Vienna Commitment against Child Pornography on the Internet* brought together interested parties wanting comparisons between domestic and international rules of law which might assist in controlling child pornography in their region. Experts representing Japan, The United Kingdom, Germany, Switzerland, Italy, France, Holland, Finland, Canada, The United States of America, Austria, Sweden, Spain and Denmark, all listed articles in the conference publication *"Combating Child Pornography on the Internet."*

Canada's approach to the problem

In 1981, the Canadian government's departments of Justice and National Health and Welfare commissioned a committee to report on how well Canadian laws were protecting children and youths in Canada. The committee spent the next three years exercising their mandate and concluded that amendments to the Criminal Code were essential. Arguing that child pornography was not a major concern, at that time, they did recognize the possibility of increased sale and distribution as a distinct possibility with the onset of technological communication.

By 1987, CompuServe's arrival on the Internet heralded new photographic equipment making reproduction of pictures much easier (Sansom, 2001, p.37 and interview). This technological advance soon changed what had once been an exchange, by mail or by hand, of '8"X10" glossy photographs' to a far superior way of instantaneous transmission of photos electronically.

The chronological order of these data is extremely significant since the Badgley committee worked with information gained prior to 1984. Exchange of photographs on the Internet became prevalent after 1987 and the Criminal Code was amended with Bill C-128, which received Royal assent on 23 June 1993 and was acclaimed, in force 1 August 1993. This amendment to the Criminal Code specifically dealt with child pornography.

To fully appreciate the importance of these dates, we must understand that the Criminal Code changes allowed for the arrest of perpetrators who were in possession of any representations of child pornography. This included computer downloaded images. Prior to 1993 and bill C-128, only by observing the exchange of such representations was law enforcement able to charge those accused with a criminal offence: simple possession was not a factor. Now, police could apprehend a suspect, with a warrant, whom they found in possession of downloaded child pornography or kiddy porn; that 'kiddy porn' would have come from the Internet.

Providing the link: Internet Service Provider

Communication by technological means needs a conduit from transmission to receiver. Such a conduit winds through innumerable electronic

switches, some of which can be many miles away while others may be around the corner. The Internet Service Provider (ISP) relays all Internet transmissions to the end user with only a limited self-regulating process that is not designed to filter site content. Because of this, Bill C-231 was introduced into the Parliamentary system for reading.

A simple scenario would be as follows: The Federal Justice Department in Ottawa proposes changes to legislation, presents their draft paper into the political arena and waits for Parliament to vote. This process is extremely lengthy and time consuming. The Internet conveys information instantaneously. Something is wrong with this scenario.

Bills from Parliamentarians in opposition take much longer to traverse the winding route through the bureaucratic maze and more often than not, they are discarded along the way far from ever becoming law. One such bill was C-231. Chris Axworthy, a backbencher with the New Democratic Party (NDP) put a private members bill – C396 – on the order paper of Parliament, April 8, 1997. The bill suggested that Internet Service Providers be regulated in respect to the information they make available to users.

The bill died on the order paper but the principle was again presented in 1999, now as C-231 by Peter Stoffer. The new bill received a very positive response from the public. However, the bill also died on the order paper. On 21 October 2002, Stoffer again presented his bill, this time as C-234 and again he asked that ISPs be required to block access to child pornography.

These events are important to this thesis since they demonstrate that the mechanisms of legislation move far too slowly compared to the Internet's rapid technological advance. This slow progress reflects on all avenues connected to legislative decision-making. As my interviews will show, law enforcement, which is supposed to combat crime, is left far behind without the legislative will, tools, funds or work force to deal with this ever-expanding phenomenon, the Internet.

The Internet

Internet growth is rapid and is proving to be an unchecked vehicle for criminals. Child pornography is abundant on sites dealing with pornography which cater to an insatiable demand. Much of that demand is on our continent. Researching pornography on the Internet and in particular child pornography places the observer within a faceless and nameless society that careens along at breakneck speed. Very often, access to sites or bulletin boards, that contain child pornography, allows the voyeur to participate for brief periods only.

When much of their content is illegal, sites and bulletin boards come and go at a blinding pace. Perpetrators, who post the illegal content, stay ahead of the watchful eye of law enforcement, very often, because they possess far superior technology. After a site containing child pornography is produced, access is gained to the Internet through an Internet Service Provider (ISP). Before it can be traced, it is gone, only to reappear with another site name from another location. Some of these sites last only a few hours.

As mentioned during the CBS, *60 Minutes* report, pornography is abundant; it is particularly profuse on the Internet and can be viewed twenty-four

hours a day. Producers cater to the insatiable, voyeuristic appetites of their audiences with anything that labeled, 'sex.' When children are portrayed in sexually explicit situations, the material is illegal – in most countries. Much of the 'kiddy porn' material is used to entice the voyeur into other linked hard-core sites where, often, there is an entry fee.

The data is vast. A check of the browser **Excite**, November 2003, listed 282,000 sites under the heading of pornography. The **Yahoo** search engine listed three, 550,000 sites while **Google** announced that 5,150,000 sites containing pornography were found in 0.08 seconds. Only **Lycos** advised, before allowing access, that the viewer would be entering sites containing adult content when prompted for pornography.

On specific Internet sites producers known as sponsors rent space to advertise their product: pornography. From here, the 'customer' is led into a maze of porn that seems endless and all encompassing. Very often, that porn depicts displays or sexual acts which include children. And, from the comfort of a chair in front of a monitor, a realm of illegality can captivate where the voyeurs need not worry about modesty, appearance, interruption or apprehensiveness: or so they believe.

Easy Access

A voyeur can access a multitude of choices dealing with children, by visiting a bulletin board specializing in kiddy-porn and pedophilia. The bulletin board system (BBS) is a message database often operated by amateurs from their homes, where 'Cyber' visitors can leave and receive messages. Galton and

Morgan describe thousands of local BBS systems operating in Canada and the USA (Galton and Morgan, 1994).

The BBS mechanism, when used for child pornography, limits listings to "on-topic" sites only. Very often, those who frequent such places admonish others for posting 'Spam' or cluttered information and any advertising that does not deal with infant or preteen material. However, such sites are deemed illegal in Canada and the USA.

This unconcealed exchange of information continues freely on bulletin boards that are rarely shut down. The sites (links) they list, however, can close very quickly. This happens when the ISP shuts it off from their system. The intervention, by the ISP, does not stop the promoter whose site can reappear under a different address (URL – Uniform, Resource Locator: a location address for information on the Internet) sometimes within hours of being closed. Adding to this game of cat and mouse is the fact that very often the perpetrators use the same ISP when they reappear. Names such as 'Sexhound' and 'Xoom' are frequent choices in offensive URL's.

While this thesis focuses on child pornography on the Internet as it relates to Canada, we must not ignore what is going on in other parts of the world. After all, the Internet is universal but laws are not. Nevertheless, law enforcement has been able to work internationally, from time to time, where the Internet is involved. One example of international action was Operation Cathedral.

Operation Cathedral

Operation Cathedral was initiated in 1998 when 12 countries became involved to seize over a million images depicting acts of abuse and child pornography. There were arrests and several men were jailed in the United Kingdom as a result of this action (McAuliffe, ZDNet (UK), 2001: www.zdnet.co.uk). Lucy Sherriff reported that seven men pleaded guilty at Kingston Crown Court, in the United Kingdom, to conspiracy to distribute indecent images of children.

The seven men were, Ian Baldock, 31, a computer consultant from St. Leonards, East Sussex; David Hines, 30, unemployed of Bogner Regis, West Sussex; Antoni Skinner, 36, a computer consultant from Cheltenham, Gloucester; Ahmed Ali, 30, a taxi driver from Tulse Hill, London; Andrew, John Barlow, 25, unemployed of Bletchley, Milton Keynes; Frederick, Paul Stephens, 46, a taxi driver from Hayes, Middlesex; and Gavin, Morris Seagers, 29, a computer consultant from Dartford in Kent. An eighth man, Steven Ellis, 40, from Norwich in Norfolk, was also charged but committed suicide on January 21, 1999 (Sherriff, 1999 – www.theregister.co.uk).

CNN reported, via the Internet, that United States Customs officials had uncovered a ring known as the 'Orchid Club' in 1996 and had made a connection to three men in the United Kingdom. The findings were transmitted to the U.K. and British police executed 105 warrants (CNN, 2001). In 1998, connections to the pedophile network had been uncovered in Australia, Austria, Belgium, Finland, France, Germany, Italy, Norway, Portugal, Sweden, Sweden

and the USA (Sherriff, 1999). Police at exactly 0400 GMT carried out simultaneous raids on September 2, 1998 (CNN, 2001).

Operation Snowball.

The U.S. Justice Department initiated Operation Avalanche, which cracked down on over 250,000-suspected pedophiles around the world. This operation was referred to as Operation Snowball in Canada. The information provided by the F.B.I. from checking credit card use, resulted in Operation Ore in the U.K. and 1,300 arrests were made in connection to child pornography on the Internet. Several notable characters were among those arrested in England but perhaps none as well known as Pete Townshend the lead of the rock group "The Who."

Capital Crimes and Pornography

Links between the Internet, child pornography and capital crimes have been reported where downloaded pornographic images of children have been seized while in possession of a suspected murderer. One such case was the abduction and murder of seven-year-old Danielle Van Dam, February 2, 2002, in San Diego, California. Her body was found east of El Cajon on February 27, 2002 (Roth, 2002). Van Dam's accused killer, David Westerfield has been charged with first-degree murder and misdemeanor child pornography possession after files and images of child pornography were found on Westerfield's computer disc. (Ryan.2002).

Whether or not there are links between child killers and child pornography on the Internet can best be researched through police files. In cases such as

these, with a search warrant, the law allows for search and seizure of computer files and records. Police records of any downloaded pornographic material seized from a suspected killer becomes part of the case file. Therefore, arrests rather than convictions are more important to this thesis since it is with the former that gathered evidence would show a connection or not. The relationship had not been determined in this study prior to June 2004.

During his court appearance June 17, 2004, Michael Briere, a 36-year-old computer programmer with no previous criminal record, having waived his right to a trial, pleaded guilty to the murder of Holly Jones. Holly had been 10 years old when she was abducted on a street in the Bloor and Dundas Street's area of Toronto one year earlier; it was revealed in court that she had been raped, strangled and dismembered.

Crown attorney Paul Culver and assistant crown attorney Hank Goody read a 61 page 'Statement of Facts' to the court. The facts revealed details of the abduction, police response, and murder of Holly and arrest of Briere. After his arrest, Briere admitted, "I always had the fantasy of having sexual relations with a little girl" (p.37). The relevance of this statement impacts directly on the research conducted for this thesis.

"...this concept of having relationships with a child has been there forever...it's always been part of my life" (p.55). Denying contact of a sexual nature with any other children, Briere admitted that he had downloaded child pornography from the Internet both at home and at work. In describing Briere's

admitted 'dark secret' the police report evidenced in this Statement of Facts, continued with a description of how Briere saw the Internet:

> I have never understood how the whole thing wasn't shut down...You search for the word 'baby', and it will find stuff there...it's easy...you don't need a degree...I would say that, yes, viewing the material does motivate you to do other things. In my case, for sure. The more I saw it, the more I longed for it in my heart. The more I wanted it. And that's the one time where I actually tried to do it...

The report continued that Briere had not met Holly before; he had never had contact with her in any way. He had never been in touch with her via the Internet and in fact, he did not know she existed. His eventual contact with her was purely a random happening since his actions on May 12, the date of the abduction, occurred without any pre-designed plan:

> That night, I must have viewed some material beforehand. And I just got excited, and just went" I need to go out and see if I"...I just went out. I really wanted to do it...I really wanted to have sex with a child. And that was all consuming. I just came out of my place, and was overwhelmed with desire, and she was just there, and there was nobody around. That's all it took...I was just in that frame of mind, and it was easy...This stuff is really affecting me too...you kind of think of doing something like that, for quite a while, and then you['re] doing it, and it's completely opposite...I have had the desire to have [a] sexual relationship with a young child for the longest time, and you think it's going to be a pleasurable experience...but it was a nightmare...(p.58) (emphasis added).

Conclusion

This chapter has focused on how the Internet impacts on child pornography. It also spotlights the perception of anonymity, which accompanies its use by those whose interests lie within the realm of deviance and criminality. As well, it develops a central theme which directs our attention toward the

methods and procedures available to law enforcement, the judiciary and legislators to combat the availability of what has become too readily available: child abuse in the form of child pornography.

The rapid growth of the Internet has been in direct conflict with the deliberate processes of control espoused by global bureaucracies. Having recognized this dilemma, nations are now playing catch-up. Abusing children is illegal; however, child pornography is not illegal everywhere.

This chapter has indicated a motivation on the part of many nations to discuss outlawing the practice where it impacts on them. From this, the possibility presents itself for international warrants to circumvent borders and apprehend perpetrators. A willingness to comply, however, is not an imminent solution. There must be determination aligned with willingness and it is this that will be examined in the following chapters.

Chapter

2

METHODOLOGY

The availability of child pornography on the Internet is a social problem which is illegal in most countries. For the purpose of this thesis the laws of Canada, in particular those which deal with child pornography in the Canadian *Criminal Code* will be examined to determine their origins and methods of application. Of primary concern will be how these laws apply to this problem: how domestic legislation is created, how the laws are interpreted and applied by law enforcement and the judiciary: and how these laws impact on society, in particular society's children. Connections between Canada and international agencies will also be investigated.

To research this topic, I have adopted various methods. First, I am conducting interviews with police officers, crown prosecutors, academics and politicians who are themselves professionally involved in this subject matter. The police officers in question are from the RCMP (Royal Canadian Mounted Police), the S.Q. (Sûreté du Québec), the Montreal Police and the Toronto Police.

An interview with Paul Field, a member of the British Customs and Excise Service, in the United Kingdom, has offered the opportunity to link with officers at New Scotland Yard who were directly involved in Operation ORE. From the perspective of the British police, these officers will be asked to provide information on methods of surveillance and arrests of perpetrators accessing child pornography on the Internet. This will provide an international outlook.

The prosecutors are associated with Provincial judicial jurisdictions. The academics assist in a consultative capacity at all levels of law enforcement and Government departments. Federal Government departments that have shown interest in this research are the Prime Minister's Office (P.M.O.), the office of the Solicitor General and the Justice Department. Jean Charést, Premier Minister of the province of Québec met with me and expressed a strong interest in this research. He offered to discuss the study with the Youth wing of the Liberal Party.

My second method will be directed toward a review and content analysis of the media as it handles cases related to child pornography. This will complement my review of the available scholarly literature and will be conducted concurrent with interviews. The Internet, as a medium, is constantly being connected to pedophile activity because of the ease of access to sites containing child pornography. Reports of seized collections of downloaded images are paraded out by the media as infallible proof of possession and, by extension, images for sale. While this 'proof' may offer guilt by media, it does not prove anything unless it can be substantiated by physical evidence: a fact, which is repeated constantly by law officers.

An on-going analysis of arrests and prosecutions as they too relate to child pornography on the Internet will provide the avenue for my third focal point. A correlation of arrests, prosecutions, media, public outrage and political rhetoric will be assessed to determine the inception of legislation. However, while I would hope to correlate these data from police files and court documents,

I have already been told by some law enforcement officers that information provided to agencies by the FBI on perpetrators listed in project Snowball, have produced few if any arrests and almost no prosecutions in Canada. Law enforcement officers will be asked why this was so.

The reason for so few arrests and prosecutions must be examined in this thesis in relation to Canadian laws and their application in these cases. Furthermore, relative to arrests will be an in-depth analysis of conditions and attitudes within law enforcement itself in relation to manpower, funding, legislative and judicial support and, in general, the resources available to combat Internet crime, in particular child pornography.

The usual tools of an observer, the interviewing of key informants, structured interviews, questionnaires or the collection of life histories are obviously, instruments not suited to researching child pornography on the Internet. At best, it is possible to collect data only from the periphery of the object of the search. It became clear from the outset that if I were to search or surf the Net, I would not be able to research the topic adequately; the data is too immense;

The principle actors are pedophiles and the very structure of the Internet allows deviants the opportunity to hide behind a veil of anonymity. Indeed, it is essential that the focus be refined to identify the various levels of information required to determine not why pedophiles do what they do but, rather, how to protect children; how to eliminate child pornography from the Internet; and how to assist law enforcement in the apprehension of these criminals.

Child pornography, for example, cannot be regarded simply as a term of reference. 'Child' must first be observed from the perspective of "what is a child?" Amendments to the Canadian *Criminal Code*, beginning with those enacted in 1993 referencing child pornography, will be examined along with the latest, 2002 changes, described in Bill C-15. These most recent modifications to the *Code* emphasize the provisions of extra protection for children from Internet, sexual exploitation. Significant to this investigation will also be age identification as the legislation sees it to answer the question, what is a child?

This question must also relate to a community's perception of what is a child? Beginning with our own Canadian community it will be critical to determine how our legal system has been shaped to intervene in the lives of children. This intervention will then be regarded from the position of protection.
Only then, will it be possible to expand the study to other communities until a global reference can be established. The Internet is already global.

Child, describes society's most vulnerable member. As such, a child needs the protection of adults. By examining child pornography on the Internet, it will be essential to determine what level of protection, if any, the interveners, legislators, judiciary and law enforcement, have afforded these children, who, after all, are victims, being abused both physically and psychologically.

For the purpose of this study, censorship, or any restrictive practice to protect the viewer, may be included, but will not be confused with the child abuse under scrutiny. Since there are laws in the Canadian *Criminal Code* identifying child pornography as illegal it will be important to see how these laws

are applied through the various levels of the judicial system to protect the victims when child abuse becomes the central focal referent. The links between departments mandated to apply these laws must also be examined to determine if the process works.

Examples of this research's direction will be in the comparisons between arrests, court appearances and convictions. Time frames will be observed to calculate the actual length of time it takes from arrest to conviction. Perhaps most important of all will be to understand exactly how the system operates when presented with this openly available vista of child abuse on the Internet. In consequence, it will be the availability of protection and how it is applied in law that will determine the themes of this research study.

This investigation has been directed to those areas of authority from which I hope to collect my information: law enforcement agencies, parts of the judicial system and legislation. Quantitative data on prosecutions and information on increases in, and the extent of, criminality will be essential if we are to see some development in the process. These data will include arrest success rates. For added qualitative remarks, my attention will be focused on the forum of public opinion: radio, TV, newspaper editorials and magazines. I need to learn how public opinion affects legislation; does it address the actual problem or does it exacerbate it?

Chapter

3

REVIEW OF LITERATURE

When reviewing literature, it is necessary to include as much written material dealing with the subject under review to acquire a cross section of the works related to the subject: child pornography on the Internet. The most unfortunate circumstance, however, is the limited published work on this issue. Concordia University's library has 503 books dealing with child abuse; the library offers, through its electronic access "*Clues*', only two book listings whose titles deal with child pornography or child abuse in connection with the Internet: *Beyond Tolerance: Child Pornography on the Internet*, written by Phillip Jenkins and *Child Abuse on the Internet: Breaking the Silence*, edited by Carlos A. Arnaldo.

To date, August 10, 2004, Yale University Library lists one book on child pornography, Jenkins's *Beyond Tolerance* and two government reports, papers published by the United States General Accounting office. Each report deals with child pornography under the banner of coordinating efforts by law enforcement with a notation which reads "but an opportunity exists for further enhancement." Accessed on line, McGill University library offers no books on child pornography and Oxford University's Library offers "no matches" to child pornography. Cambridge University has no listings for child pornography and similarly, neither does the Université de Montréal. NYU, New York University has twenty library listings dealing with child pornography, three of which are

connected to the Internet: the works of Jenkins and Arnaldo and *Child pornography: an Internet crime* by Max Taylor and Ethel Quayle. One title of the twenty, reviews methods of restricting Internet use by children.

Jenkins (2002) argues that there is little written on child pornography on the Internet because studying it can land the researcher in jail (p.18). The Canadian *Criminal Code* describes quite clearly the illegality of just viewing this material: section 163.4.1 – every person who accesses any child pornography...section 163.4.2 – for the purposes of subsection (4.1), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself. Added to this is the social stigma attached to child pornography which precludes any attempt to conduct constructive interviews in the physical communities. Furthermore, it isn't feasible to assume pedophiles would be willing to discuss why they do what they do, on-line or otherwise.

The electronic realm is even more difficult to review critically, considering the facelessness of Internet traffic. Given the lack of academic authorship on the subject, it becomes necessary to review media presentations which all too often are sensationalized and out of all proportion to the actual facts. As had been mentioned earlier (p.8), reports and reviews can be disingenuous if they are sensationalized. Similarly, articles without credible support can mislead rather than clarify a study attempting to solidify abstract theory from a cultural and sociological perspective. Therefore, credibility is essential in the review of literature.

Ofelia Calcetas-Santos, in *Child Abuse on the Internet*, states, "There is evidence that child pornography is being used as an active tool by homosexuals for the recruitment of young boys" (2001, p: 59). This claim appears in the article *'Child Pornography on the Internet',* published in conjunction with UNESCO, **United Nations Educational, Scientific and Cultural Organization**, with no corroborating references.

UNESCO has issued a disclaimer to the effect that the views of this author, and others in the book, may not necessarily be theirs. The credibility of what has been written here is questionable and on closer scrutiny we find several such claims in this article: "This global computer communications network has also become the latest vehicle for trafficking in women and children" and "images of children...depicting their rape, torture and even murder, can be downloaded easily by anyone with basic knowledge of the Internet" (p: 58). With no gatekeeper for the Internet to support our enquiry, it is crucial to determine the validity of claims such as these.

Ofelia Calcetas-Santos is a practicing lawyer for children's rights whose field of expertise encompasses child prostitution, the sale of children and child pornography. As such, Calcetas-Santos acts as Special Rapporteur for the United Nations. It is to be assumed that this author's extensive research of the Internet can support these claims. However, assumption is central to the very problems we face with regard to the credibility of the Internet.

Assumption and speculation very often precede legitimate enquiry, the outcome of which provides data from which legislation may be developed. Policy

cannot always conform to rapid developments as we have seen with the Internet. In an attempt to clarify a preponderance of information, constantly in need of codification, governments establish committees to assist them with policy. The Canadian Government authorized one such committee in 1981: The Badgley Committee.

Child Pornography and the Canadian Legislative System

In 1981, the Canadian Ministers of Justice and National Health and Welfare established '*The Committee on Sexual Offences against Children and Youths,*' otherwise known as **'The Badgley Committee,'** named after its chair. The mandate of the committee was to inquire into the laws of Canada in respect to how well those laws protected children from sexual offences.

The findings of the Badgley report suggested that sexual offences involving children were 'alarmingly high.' The committee with the help of the Gallup Organization gathered data for these conclusions. A sample survey of over 2000 Canadians were asked to complete a questionnaire dealing with their experiences of unwanted sex. This population study detailed that, at some time in their lives, one in two females and one in three males were victims of unwanted sex. The committee recommended that greater protection by law enforcement was needed for the victims. The committee further recognized the necessity to keep the names and identity of child victims' concealed (Badgley et al, 1984, p.2).

In 1984 when the Badgley report was released, the committee suggested that there was little empirical data to warrant that child pornography had reached

'epidemic proportions' in Canada. It also found that there was little or no production depicting child pornography known to be occurring here but rather, what was circulating, they concluded, had been imported (p.13). They did specify, however, that the advent of technological advancement could, and most probably would change all of this (p.14).

The committee reported that almost no production of child pornography was occurring in Canada. They could not have known that conclusively since possession was not a crime at that time and Badgley was limited only to statistical data on the importation of child pornography carried across the Canadian border (p.13). Badgley had introduced the problem of child pornography into the discussion and with the arrival of the Internet, the problem, as predicted, escalated.

International recognition of the problem

Combating Child Pornography on the Internet was the conference publication at the *Vienna Commitment against Child Pornography on the Internet*. The conference binder, far in excess of 400 pages, dealt exclusively with combating child pornography on the Internet. Made available to all conference participants, the publication outlined each country's existing regulations for combating child pornography. The guide included recommendations for a global network of laws to better regulate this activity. Cited, in working groups, were articles encompassing areas such as European public opinion and how attention was drawn to events because of it; freedom of speech and how this would impact on legalities within existing laws and future

ones; Internet filtering and how self regulation may be considered as a deterrent; and a contrasting position between EUROPOL, the proactive European law enforcement agency and the reactive organization, INTERPOL.

The **Council of Europe** published a comparable working document entitled *European Committee on Crime Problems – Comité Europeen Pour Les Problemes Criminels (CDPC)* which similarly dealt with crime in cyberspace. A committee of experts was required to reply to a questionnaire dealing entirely with cyber crime, in particular, child pornography in "electronic networks."

This binder included replies from Belgium, The Czech Republic, Cyprus, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Moldova, Romania and the Russian Federation, Slovenia and Turkey. Each was asked to outline their country's existing *Criminal Code* and how its penalties dealt with perpetrators of child pornography on the Internet; the specific priority being an attempt on the part of the **Council of Europe** to formulate a global attack on the exploding availability of child pornography on the Internet.

A second draft convention published two years later by the *European Committee on Crime Problems* (CDPC) suggests measures to be taken at a national level through recommendations on substantive criminal law provisions. This document was designed to emphasize the necessity to combat electronic crimes against children by outlining the legislative measures to be adopted by all its members. The crimes were defined as follows:

- Offering, distributing, transmitting or [otherwise] making available child pornography through a computer system;
- Producing child pornography for the purpose of its distribution through a computer system;

- Possessing child pornography in a computer system or on a data carrier (CDPC, 2000).

Combating Internet crimes

Parliamentarians quote media references to child abuse during question period in Parliament often inflaming an already irate public. But is this what is needed to curb child pornography on the Internet? Mackinnon (1997) argues a need for a method to punish the virtual offender. He quotes a term coined by Steven Jones, "*Cybersociety*...the emergence of a community from a complex set of social formations in a space enacted by mediating technology" Within this new term, he suggests, are developmental structures occurring so rapidly that they have "outpaced the researchers collective abilities to investigate them" (Jones, 1997, p.206).

When referring to crimes and their punishment, Mackinnon emphasizes the importance of knowing the location where many crimes occur; in this case the crimes occur on the Internet. He then asks the question, "How will these crimes be punished?" Claiming that the Internet is less civilized, "sociopathy has been a major part of our virtual interaction from the beginning" he continues by stating that, "the 'darker side' of virtual life merits considerable study" (Jones, p.206-207). Mackinnon also says that he was unable to find literature documenting this phenomenon, to support his theories and concerns

Mackinnon's article clearly provides the perspective of community for the Internet. As such, his description of the dark side includes crimes familiar to non-electronic societies. It is this link, I believe, that allows us entry to the realm of

the 'cybersociety' while using more conventional means of investigation to support the research. A review of literature encompasses such means by reporting articles from a variety of authors and locations. However, credibility of the literature is indispensable given the sources available.

The danger of quoting out of context, or without supporting data, is particularly relevant to the Internet where a plethora of information is frequently presented unsubstantiated. Furthermore, since this medium promotes such a wide range of issues, debate, very often accepts rather than rejects its reliability. Child abuse and in particular, child pornography on the Internet, tests credible argument while providing a vehicle that sensationalizes an event begging clarification and understanding rather than exploitation.

Credible argument goes beyond written works. Discourse affords the listener an opportunity to observe the presenter while evaluating the work at hand. Such assessment is severely restricted within the realm of Internet facelessness. Corporeal, community norms are difficult to apply given the virtual reference to Internet 'community'. While Mackinnon argues Internet community through newsgroup communication (Jones, p.92-93), this author would question whether any amount of spontaneity or uncensored dialogue, argued by Mackinnon as representative of true dialogue, could offer satisfactory credibility for any Internet research?

Ethnography and data collection within physical communities requires vigilance. The development of trust is essential. On-line communities have no physical contact; communication is electronic affording the communicators none

of the other means, through participant observation, such as body language and like characteristics, to determine the credibility of the dialogue offered. In short, people lie.

Steven G. Jones (1998) in quoting from works by Soja (1989) and Jensen (1990) refers to the computer as offering impersonal communication as well as "a kind of imitation talking" (p.13). In describing the term "interactive' and its relation to corporate, governmental and media frenzies to establish themselves embedded in computerized communication, De Kerckhove (1997) argues that "people still don't get it" (p.3).

What they don't get, I would argue is the true nature of the Internet. This medium has become a dependency for most users. Calculators replaced the necessity to make mathematical, mental equations and computerized programs to check spelling have replaced the need to know how to spell. In fact, the multitude of information available on the Internet, today, has for many, replaced the need to think or question; which is why much of the available, Internet information is accepted verbatim.

Communicating

The imparting of information through methods of communication, language, verbal or nonverbal, semiotics or body language is considered socially controllable. Hymes (1965) coined the term *communicative competence* to engender social awareness beyond simple syntax. His 'rules' encompassed actions within a society as a necessity for prolonged social interaction. The rules are indicative, in Hymes's opinion, of important social skills needed for

communication. [1] Emphasized, here, are the contrasts in communication between human groups. Furthermore, it is the community which becomes the focus of analysis rather than language (Gumperz and Hymes, 1986, p.36).

Hymes (1974) argues that the transmission of all rules requires a message form. It is that form which governs its interpretation. He further argues the relevance of human behaviour in relation to form and content; the former as a necessity to fully understand the latter, "*how* something is said is part of *what* is said" (p.54). Similarly, Bernstein (1964) argues the importance of non-verbal signals and how they can change the meaning of a communication (Hymes, 1964, p.260).

Canale and Swain (1981) incorporated Hymes's theory of communicative competence in a theoretical framework presented as a study for learning a second language. The research combined three dominant factors: grammatical competence, sociolinguist competence, which includes rules of use and rules of discourse and, finally, strategic competence.

This theoretical frame of reference suggests a dependency upon the rule of grammar from both sociolinguistic and grammatical elements. As such, communication and its functioning elements become central to a community. Contrary to this argument is that of *computer-mediated communication* (CMC). This reasoning presents community from the perspective of virtual relevance which consists of participants for whom community means computer links and electronic interaction.

---

[1] In arguing a true communication process, Hyme's acronym S.P.E.A.K.I.N.G. lists social actions necessary in his rules for sustained interactions: **S**etting and scene, **P**articipants' **E**nds, **A**ct

As Baym has said in supporting Fernback's argument "community is a term which seems readily definable to the general public but is infinitely complex and amorphous in academic discourse. It has descriptive, normative and ideological connotations... [and] encompasses both material and symbolic dimensions" (Jones, 1998, p.35). In the virtual world of the Internet, it is argued, by proponents of CMC, that on-line communities exist (Jones 1998, p.1-30).

Through the network of bulletin boards and electronic mail, users may connect globally into this virtual community but the question remains, what type of community is this? Referring to the dreams of community envisioned by Rheingold and Healey, Jones presents the image of a place where Internet travelers can opt in or out at will; where we may "forge our own places from the many that exist...wherever and whenever we wish" and Jones continues by quoting from Healey "such mobility may not oblige...participants to deal with diversity" (p.3). This statement directly impacts on the anonymity afforded users of the Internet. When describing CMC, Dinty Moore (1995) argues anonymity:

> "Nobody talks at Carnegie Mellon," Katie explains, "they send E-mail. A lot of the population at Carnegie Mellon is very, very bright, but not necessarily socially skilled, and it helps a lot of them. Electronic mail is good for people who have a hard time dealing with other people" (p.28).

Anonymity creates a wide area of concern impacting on all members of society. Price and Munroe (1998) argue the V Chip debate and parental controls on what children should be viewing. Harper (1998) like Jones, speaks of the Internet's dark side, involving e-mail communication. Identified here is a murder

---

sequence, **K**ey **I**nstrumentalities, **N**orms and **G**enres.

connected to e-mails – Sharon Lopatka (p.148-149) as well as an e-mailed list of children provided to other molesters by a pedophile already incarcerated in Minnesota (p.150).

Regarding the dark side, Goodman (1994) presents the difference between virtual and physical communities. He argues that in the virtual world it's unlikely you would know who you are in contact with; he further emphasizes the necessity to be "leery of the validity of information coming from someone who hides behind an alias" (p.170).

Behaviour and code of conduct

Do users of Internet e-mails and chat rooms become anonymous or do they enter because they can be anonymous? Is there a code of conduct within this virtual community or is it, as Jones suggested, a place where people can opt in or out at will without any firm attachment or commitment to other members of the group? Is there a necessity for codes to regulate behaviour patterns?

For the answer to these questions I believe we must examine the theoretical perspectives hypothesized and authored by sociologists in their examination of physical societies. One such author was Georg Simmel (1858 – 1918). Simmel, considered the action of individuals becoming an association, 'sociation'. His argument theorizes that individuals bring their knowledge of life to the group; in return, they receive experiences from other members. These actions of togetherness he describes as 'Sociability' or a type of acting (Wolff, 1950).

This togetherness allows for inclusion of the participants within the realm of sociability, a thing, Simmel argues, which can provide nothing other than the stage on which to play act: an entity with no ulterior motive, no central issues or results other than the necessity for its existence. While describing the traits of individuals, Simmel argues the need for sociability since if each individual within an association or union were to bring a subjective point of view, an imbalance would be created corrupting the very atmosphere of being social (Simmel, 1911).

Unfortunately, such an imbalance can and does occur in society all too frequently. Simmel argues cognition as a development of the "struggle for existence" (Wolff, p.41). Such struggle can be seen in autonomous development; an example of which is shown here:

> The interpretation of realities, concrete or abstract, in terms of special systems, or of rhythms or sounds, or of significance and organization, certainly had its origins in practical needs. Yet these interpretations have become purposes in themselves, effective on their own strength and in their own right, selective and creative quite independently of their entanglement with practical life and not because of it (Wolff, p.42).

Autonomy can sometimes result in weakening the whole leaving an aspect of society vulnerable to attack for control from its own members. In arguing control, Adams reasons that cyberspace pornography is a male domain. She describes as entitlement to women a prevailing male perpetration of control on-line and provides extensive data to substantiate her thesis (Ess, 1994, p.154-162). Shea centers her approach to Internet pornography from the perspective of etiquette, or more precisely, 'Netiquette'. This subject concerns her most: what should be posted on the Internet, how and where (1994, p.119-120).

Perhaps we should also add, by whom. Her argument extends to a behaviour pattern on-line which, she argues should mirror that of any physical community. However, she continues that, regulatory laws for on-line communication are still in process (p.37).

The 'whom' in Internet communication is the most indescribable since this participant of interaction has no sedentary relationship to any on-line group. Such is the identity of Simmel's *Stranger* who although offering a bodily presence within a physical community, can also be described as an entity with no attachment:

> He is fixed within a certain spatial circle – or within a group whose boundaries are analogous to spatial boundaries – but his position within it is fundamentally affected by the fact that he does not belong in it initially and that he brings qualities into it that are not, and cannot be, indigenous to it...the distance within this relationship indicates that one who is close by is remote, but his strangeness indicates that one who is remote is near. The state of being a stranger is of course a completely positive relation; it is a specific form of interaction (Levine, 1971, p.143).

This reasoning lends itself to the earlier description of on-line communities. Simmel argues "the solitariness of the individual is resolved into togetherness, a union with others" (Simmel, 1911, p.255). Such union produces society not by individualizing the factors each person brings to the group, but, rather, by the eventual development of the community produced by these factors. As such, the behaviour of each participant, by interaction and, therefore, by extension, will produce an entity which, by transformation will become an autonomous thing unto itself.

Such an entity is governed and controlled by law. However, one could argue, that the application and adaptation of laws to regulate on-line activity, lack the necessary forms to be truly representative of this medium's needs. Simmel regarded the Berlin of his day as chaotic and in need of order. Sociability was just such a development spawned of necessity for self-regulating human behaviour.

Simmel was never able to observe electronic communication but his philosophical reasoning applies itself directly to this medium. There are those who argue the Internet is self-regulating. Jenkins presents several arguments posted by pedophiles, on the electronic bulletin boards, who admonish or support others who ignore or follow expected behaviour patterns on-line; "keep it on-topic" (p.56). The Internet seems in desperate need for behaviour controls.

The Law and its application to the Information Highway

In September of 1995, Mr. David Johnston, Chair of the *Information Highway Advisory Council*, wrote a final report to the then Minister of Industry, The Honourable John Manley, P.C., M.P. In describing recommendations made by his committee, Mr. Johnston wrote, "Pornographic...materials distributed... on...electronic bulletin boards are readily and widely accessible...Though easy to obtain, they are difficult to monitor and police.

Of course, the rule of law applies with equal force to the Information Highway" The report continues by outlining the necessity to accept regional differences in the application of laws, the almost non-existence of international laws in relation to "global networks" as well as the need for Canadians to accept

a "balance between freedom of expression and harm to society." While arguing that under "the *Criminal Code* distributors of prohibited materials are prosecuted," the report then stresses the protection of children from accessibility of such material but does not address the abuse of children depicted in such offensive material. The report concludes that there should be "respect for...Canadian values" and that "voluntary codes of conduct and morality...should be established at the community level" (p.48).

With these recommendations, what if anything has been done to apply the law already in existence? Segal (Gibson and Gibson, 1993) writes that pornography has become a metaphor for increasing violence by men toward women and children. In consequence, she argues, public attention to the issue has become fierce both politically and morally (p.5). *The Police Function in Canada*, edited by McGrath and Mitchell, argues that "police in this country are not adequately prepared to fill their role in society" (p.78). With all fairness, this statement refers to physical and not on-line societies. However, we must ask, what if anything is done by amending laws to prepare officers for Internet crime?

Less than complimentary references to criminal laws are recorded in *An Introduction to Criminal Law* by Graham Parker (1977). Written in 1933, Parker states "Panic was often the major ingredient in formulating new laws which were hurriedly passed to prevent (or try to prevent) some currently urgent social problem" (p.34). Committee recommendations, to Provincial and Federal parliamentarians, become relevant, albeit in hindsight, when attempting to

understand the progress, or lack of it, of some of these recommendations for amendment.

Amendments implemented in 1993 made child pornography an offence (Schelling, 1998). In reality, it is the application of those amendments and the law that are of interest to this study. Lacombe (1988) writes, "The determination of the 'community standards' is still, today, the responsibility of the judge." She continues, "Since the burden to prove that the material is obscene is that of individual judges, wide discrepancies exist as to what is considered obscene" (p.38).[2] Accountability in the judicial system has long been a concern. While Minister of Justice, the Honourable Jean Chrétien, P.C., M.P. (1982) prefaced The *Criminal Law in Canadian Society* which reported, "considerable decision making discretion is given, either by law or by tradition, to police, prosecutors, correctional officials and parole boards" (p.32).

Sansom's observations (2001, P.14) have fashioned a review of the technical aspects of computer generated child pornography. His arguments, with respect to whether the Internet has produced more child pornography activity and the percentages of those involved in this action will be looked at closely in a subsequent chapter. Sansom is an advisor to the Justice Department.

Health Canada's review of child sexual abuse was presented in 1993 as, *Child Sexual Abuse: Professional Training and Public Education.* Of interest here is a paragraph on page 8:

---

[2] From 1988 to 2002 there have been several amendments to the Criminal Code dealing with child abuse and pornography. More will be written in regard to this matter in chapter 6, 'The Sharpe Case' to see how judges, in their duty of adjudication, apply these amendments with regard to Internet crime.

> Although the problem of child sexual abuse has always existed, the significance of the impact that such experiences have on individuals, and subsequently on society, has only recently been realized. With greater numbers of disclosures and reports of child sexual abuse emerging throughout the country there is no evidence to suggest that reporting and/or disclosing rates are diminishing. Professionals and community members are struggling to respond effectively (p.8).

In its 1994 brief to the Federal/Provincial/Territorial Family Law Committee, the Canadian Advisory Council on the Status of Women, Child Custody and Access Policy, the authors wrote, "Lawyers report that women alleging sexual abuse by the father of the children are believed in very few cases, and have uphill battles to persuade a court to listen to their claim" (2.8, p.33). [3] Margaret H. Meriwether has documented the reporting of child abuse as part of an on-going process being carried out in the United States (Besharov, 1988). This process was enacted to report children in danger from abuse as quickly as possible to allow the system to respond, not only to the child but also to the family. While reporting has increased exponentially, Meriwether has claimed, abused children are not being identified or helped (p.9)

COPINE Project

The COPINE (*Combating Peadophile Information Networks in Europe*) Project applies forensic and clinical psychology to the study of vulnerabilities in relation to children as they apply to the Internet. Max Taylor, Professor of Applied Psychology spearheads the research at the University College Cork, Ireland. In conjunction with Ethel Quayle, Gemma Holland and C. Linchan, Max

[3] Crown interest in cases of child abuse and child pornography is part of the CBC Fifth Estate program record in chapter 4 – Noreen Waters

Taylor has published many works in relation to his research on child pornography and the Internet.

Among these are, *The Nature and Dimensions of Child Pornography on the Internet*, presented in Vienna 1999, *The Internet and Offending Behaviour: A Case Study* (2000), *Child Pornography, The Internet and Offending* (Summer 2001) and *Typology of Peadophile Picture Collections* (2001). *Child Pornography and the Internet: Challenges and Gaps* and *Child Seduction and Self-Representation on the Internet* were both added as presentations in 2001.

As a guest speaker (Discussant) invited to *Borders Conference – Rethinking the Line: the Canada – U.S. Border*, Taylor described COPINE as having a "very extensive data base of child pornography pictures," the use of which is instrumental as a "research tool" to identify and locate children at risk (p.18). This institutional private collection of child pornography is allowed by Irish law, something which would be punishable by a prison sentence in North America. This immediately identifies differences in international laws.

Taylor's all encompassing work identifies many aspects of child pornography as it relates to the internet. His papers, often written in conjunction with other University College researchers specialize in defining pedophilia and child sexual abuse from a psychological perspective. Quoting from Stermac and Siegal, Quayle, Holland, Linchan and Taylor (2000) offer the perception that molesters justify their actions by suggesting that children are willing participants, fully appreciative of the actions being presented to them while reducing the complicity and responsibility of the participating adults. This reasoning is

encapsulated within the definition of 'cognitive distortion'; an argument describing the distorted attraction of some adult molesters toward children rather than other adults (p.80).

Cognitive distortion was an argument emphasized by Dr. Peter Collins, PhD, during interviews he agreed to in 1999 and again, in early August 2004. Having been called many times as an expert witness, Collins takes the position that pedophiles will often attempt to reduce children's reticence to the act of their abuse, by showing them depictions of similar acts in which children are seemingly enjoying their participation. He described this material to the British Columbia Court during the trial of John Robin Sharpe.

Taylor, Holland and Quayle (2001) present cognition and motivation for collecting pornographic material but argue insufficient empirical data to corroborate claims of other researchers; arguing personal qualitative experiences as the prevailing means of data compilation rather than experiential quantitative data (p.97). Their argument states that not all child abusers are collectors while collectors of pornography are not always child molesters.

Taylor (Summer, 2001), in discussion papers provided by COPINE, argues that offenders can use and then be changed by the Internet. This 'effect' he outlined as 'addictive like qualities' for anyone with lengthy involvement on the Internet. He continued by emphasizing the seduction like qualities of this medium (p.1).

Barrie J. Saxton and Ronald T. Stansfield (1990) are ex-police officers whose book, *Understanding Criminal Offences: Second Edition* offers an interpretation of criminal law as it applies to Canadians. Worthy of mention here is chapter six. Identified are infractions, the facts in issue, case law and rules of law as they would apply to the infraction. Pages significant to this study are 146, 147 and 148 which deal with infractions involving youths under the age of fourteen years of age:

> **Page 146 – SEXUAL INTERFERENCE**...touches...any part of the body of a person under the age of 14 years...**CASE LAW – *There are no reported cases for this section*. Page 147 – INVITATION TO SEXUAL TOUCHING** – Every person who, for a sexual purpose, invites, councils or incites a person under the age of fourteen years...**CASE LAW – *There are no reported cases for this section*. Page 147/8 – SEXUAL EXPLOITATION – DEFINITION OF "YOUNG PERSON"** – Every person who is in a position of trust or authority toward a young person...(a) for a sexual purpose, touches...(b) for a sexual purpose, invites, councils or incites...**CASE LAW – *There are no reported cases for this section***.

Conclusion

Assessing opinions is only one perspective in reviewing literature. The structure of the argument, its application to the discipline under review and validating references are equally necessary. Scholarly involvement is essential if a concise microcosmic view is to be formulated on the topic. So why are there only two books in the Concordia University library system connecting child pornography, abuse and the Internet? And why are there so few books from academia on this topic at other Universities? I believe we have seen how the formation of laws is indeed constructed without much thought to their eventual

application. Furthermore, following Jenkins's reasoning, the laws actually prevent research.

Could this challenge be a pattern of disinterest on the part of authors? Is it possible that speculation and conjecture will remain the only referents in determining how to protect children? Credible argument is essential in determining the multitude points of view, if they exist. Will the subjective views of participants remain the only avenue for researchers while authors remain mute on a subject which affects societies' most vulnerable?

Given the limited literature dealing with child pornography on the Internet, credibility of argument becomes even more crucial. Canadian Government involvement in this issue has provided interested observers an opportunity to participate at home and abroad. This display of government interest, while welcome, must not be the only legislative contribution. A compilation of empirical data is vital given the scope of the problem and, in particular, its connection to the Internet.

This chapter is meant to display sociological forms and structures for communication through the literary process, while bringing the study into the realm of electronic communication. Dialectically, a compilation of ideas and values could provide a synthesis corresponding to the various opposing arguments being presented. However, it would be unclear how child pornography could be treated differently from any other subject within society. In addition, it would probably be incorrect to assume any explanation of this action as sociologically different. Regardless of moral expectations, the review of this

issue is and should continue to be a matter inherent for all societies. From a sociological viewpoint, literature can be regarded as an historical record of all happenings within a society. The lack of literature on child pornography, whether on the Internet or not says, I believe, something conclusive about a community's value system.

Chapter

4

THE MEDIA

Introduction

The significant difference between academic research and media presentations is that the latter is always after the fact. The newspaper reporter need not view child pornography to write about its connection to a suspected pedophile. And that has been the consistent pattern of reporting which I have seen from the beginning of this research in 1999. The collections, the clandestine stalking, the voyeuristic connotations, the insinuations and extravagant statements are all features relevant to stories in the media which deliver impact.

There is no doubt that the media provides an important service in bringing current affairs into the public realm. In quoting from media reports, though, the researcher must be extremely careful to cross-reference information which may have been derived from sources less than credible. The same applies to reports taken from the Internet. Reports of this type are meant to stimulate public reaction not provide the comprehensive research data required for on-going study.

Child pornography on the Internet is a topic, one could argue, that sells newspapers. With sensationalism added to headlines, the public's interest is fuelled. The headline read, **"Child porn seen as election sleeper",** the second

"PM soft on kid porn, Harper says". There was actually little connection between these headlines given that they appeared almost four years apart. Headline one – Gazette: 10.16. 00. Headline two – Gazette: 6.19.04. The outcome, it could be argued had little effect on either election but the second did seem to be a resurrection of the first perhaps to politicize the hardship of children in an attempt to win an election and nothing more.

Both articles, however, influenced an up-surge in the public's attention toward child pornography. The first report coincided with the trials of John Robin Sharpe, a pedophile, in British Columbia and the second, since Sharpe was still in the news in 2004, was ultimately connected to his court legacy. A review by this author in 1999, when Sharpe was first charged with possession of child pornography, showed that media coverage on average lasted one or two days depending on the subject matter. The lead up to Sharpe's first trial and subsequent appearances lasted a combined total of twelve days.

Sharpe, the most newsworthy pedophile, after being charged in 1999, continued then and continues now, in 2004, to appear in court; his most recent court appearance was on charges of molestation of a minor.[4] Attention, such as Sharpe has received, initiates public anger, which is evident in both headlines and editorials. (Gazette: 2.1.00) letters to the editor: *Jasmine Sharma, Baie d'Urfe* wrote, **"Protect children from pornographic thoughts."** (Gazette: 7.2.99) **"Possession of child porn upheld in B.C. Province pledges to appeal to Supreme Court."**

---

[4] John Robin Sharpe is the central character in chapter seven of this thesis.

A 1999 comment in favour of the B.C. judges' decision, acquitting Sharpe while striking down a portion of the *Criminal Code*, offers an explanation devoid of corroborating evidence yet purporting to be an explanation the public and his fellow journalists are in need of: **"Thanks, B.C. Judges"** is the title of an article by the *Ottawa Citizen's, Dan Gardner* claiming obscenity laws previous to the *Criminal Code* amendment of 1993, sufficient to protect children. Articles about Sharpe have continued to appear in print since 1999, the latest in 2004 – (Gazette: 7.20.04) **"Child-porn advocate sentenced for assault on minor."** Sharpe has said he will appeal the court's latest ruling.

It is unnecessary to list all the articles dealing with child pornography which have appeared in Canadian newspapers since 1999. Suffice to say, arguments are directed mostly toward industry, law enforcement and Federal and Provincial legislators – **"Ottawa accused of doing too little"** –(Gazette: 1.17.03) and **"Child porn is flooding into B.C.: Reform MP repeats call for Ottawa to override charter"** – (National Post: 3.3.99).

The focus on industry asks – **"Innocents and experience"** – (Gazette: 1.27.03) with an article depicting youth in advertising. **"Images of sexy children aren't just the domain of pedophiles and pornographers"** the headline argues under a photo of two young people, one male one female, both scantily clad in fashionable attire. Other than the obvious suggestive poses, there is nothing to link pedophilia and pornography with this picture. Describing 'kids' as being 'tarts' because of the way they are portrayed in a 1995 Calvin Klein ad, is presenting a false image on the back of a very real problem.

An article in the Gazette: 11.4.03 suggests, **"Microsoft stalks on-line pedophiles"** and advises readers of an up-coming program from the software manufacturer to assist Toronto police in tracking people, through a multi million dollar data base, who attempt to take advantage of children on-line. Previous articles (Gazette: 9.24.03) **"Microsoft's MSN to shut down most Web chat"** and by the same reporter accuses, (Gazette: 9.25.03) **"Microsoft cashes in on Web chats"** by charging for the use of time on line.

Similarly, articles directed toward law enforcement from 1999 on, seem to flounder in an unknown region, first castigating: (National Post: 3.2.99)**"Police are losing the fight"** and over time commend, **"Toronto cops help track child-sex victims"** in an article which shows collaboration between Toronto police and the F.B.I in saving five children from sexual abuse after identifying their location by examining the Internet site on which one child had appeared.

Such reporting shows a willingness to cover the progress of Internet developments while playing the same catch-up as all other agencies in dealing with the Internet. An INTERPOL investigator (National Post: 3.2.99), Paul Higdon, head of the criminal intelligence directorate at the organization that groups 177 police forces around the world, stated, "at Interpol, we recognize that technology has outpaced us."

While media reporting is selective, so must the reader be prepared to search from cover to cover for relevant articles which deal with subjects of her or his interest. In this case, a search for reports on child pornography produced some articles spread over several sections of different newspapers. Of interest is

a pattern that links available academic theory to actual reports of deviance. However, caution is still necessary while interpreting these media articles.

A National Post editorial claims that Michael Briere, the killer of Holly Jones, said "that viewing child pornography he had downloaded on his computer led him to commit the horrific crimes." Court transcripts are not as conclusive as this editorial. "That night, I must have viewed some stuff beforehand" isn't quite an admission that connects child pornography with murder. But given the fact that Briere admitted a connection to the Internet certainly suggests credible argument that the Internet can be a detrimental influence.

Such a hideous crime stirs public resentment as was witnessed (National Post: 6.23.04) following the Jones case. Councilor Mark Beaven, of Huron East, Ontario proposed a municipal law to make Internet Service Providers responsible for filtering out child pornography. This proposal has been made before by others and it will be interesting to see if any progress can be made to regulate ISPs with stronger public outrage over Jones and approval for the proposal.

One proposal reported before argued (Gazette: 11.4.02) **"Child protection at top of agenda"** highlighted a report that provincial and territorial ministers were preparing a recommendation to the Federal Government to amend the *Criminal Code*, once more for the protection of children. This was following the 'artistic merit' acquittal of John Robin Sharpe. Prime Minister Paul Martin claimed during his campaign for re-election, that an amendment to the

Criminal Code 'would be re-introduced' after the (2004) Federal election dealing with just that subject.

Collins and Taylor's reference to cognitive distortion is significant when reading this last media reference. The report (Gazette: 5.18.04) described a Canadian who arranged a meeting at a restaurant in Atlanta, Georgia, with the mother of a four year old girl for sex with the child. The man, William John Krygsman from Tillsonburg, Ontario, had been using a chat room on the Internet to search for just such a rendezvous. In reality, the mother was actually an FBI agent. Krygsman was arrested. Significant in the report, on page A22, was that on the back seat of his car, the suspect had "a variety of materials which they [the FBI agents} believed were intended for use in enticing and abusing the [supposed] victim."

Conclusion

A concerted effort is required by all agencies, including the media, to assist in the arrest of on-line perpetrators who target children. Freedom of the press has long been argued as a democratic right; The Internet offers information within the sphere of unimaginable freedom which knows no bounds or controls nor rights.

The job of the media is to inform while keeping its integrity intact. In this technological age when information is relayed instantaneously, it befalls those who report the news to identify rather than vilify and as such separate the victims – children – from the perpetrators. The flurry of activity in the media, which surrounded the Sharpe trials, was combined with lesser-known pedophile arrests

that had achieved temporary public interest. For Sharpe, the previews and predictions of what could be expected, along with a photographic description of the judges, began appearing about January 8, 2000. There was a deluge of comments and letters to the editor, which continued until approximately January 20, 2000 only to be replaced by other more newsworthy information. The media attention and public rage had lasted twelve days.

Chapter

5

INTERVIEWS WITH POLICE

Introduction

This chapter is not meant to identify law enforcement's methods in dealing with child abuse. Nor is it expected to outline the various process's of analysis used to determine deviance; rather, the object, through interviews, will be to find out how child abuse and by extension, its availability on the Internet as child pornography, impacts on those commissioned with the protection of society, in particular, society's children.

"We have to protect the children." Detective Sergeant Jacques Viau was the first to tell me that. "We are all interested in the same thing, protecting children" was RCMP Chief Superintendent Kevin Vicker's, more recent statement. This proved to be the most recurring theme in the interview chapter: a need to protect children. Lacking the necessary funding, equipment and work force to counter child pornography on the Internet, the respondents displayed enormous frustration.

The frustration, among those in law enforcement who are attempting to control the phenomenon of child pornography on the Internet, was directed toward institutional inefficiency within the system. They informed me that suggestions for improvements through regular channels fall on ears extremely slow to react. The limited number of officers whose job it is to scrutinize child

pornography through the electronic medium is also required to analyze other communication where fraudulent transactions are suspected. Searches for illegal dealings of this kind require innumerable person-hours. Certainly, given this scenario, it would be relevant to establish where child pornography would be on the list of priorities.

The list is obviously long and complex. Concern for children, while prevalent in all the interviews, does not indicate this problem's priority level. A better indication of law enforcement's direction necessitated a visit to RCMP headquarters in Ottawa. The officers I met are in direct contact with Parliament, in the capacity of advisors, and in particular, the office of the Solicitor General.

Monday June 9, 2003, I attended a meeting at Royal Canadian Mounted Police headquarters, 1200 Vanier Parkway, Ottawa, Ontario. The meeting was held as an extension of my on-going connection with RCMP Superintendent Dave (D.B.) Jeggo. This get-together was at my request to examine the possibility of holding a seminar to discuss child pornography on the Internet. The concept had originated with a suggestion from Sergeant Detective Jacques Viau of the Montreal police.

With reference to computer crime and in particular, child pornography on the Internet, Viau had argued for a committee of citizens to provide lay support to law enforcement. By extrapolating his way of thinking, the next stage, was to pursue political involvement since legislation would determine any perception of support for law enforcement, lay or otherwise.

Criminal Code Laws in Canada are Federal and pass through the legislature in Ottawa. Enforcement is within the jurisdiction of police forces across the country where, through Provincial courts the laws are applied. I made contact with Jean Charest, leader of the Quebec, Liberal party, which was then in opposition. Although he was very supportive, the contact did not prove to be successful.

I wrote to the Prime Minister of Canada, the Right Honourable Jean Chrétien asking for a meeting to discuss the possibility of forming a committee, at the Federal level, to assist law enforcement. My letter was sent on to the Solicitor General's office. The Honourable Lawrence MacAuley, the then Solicitor General, arranged a meeting for me with Superintendent Dave (D.B.) Jeggo of the R.C.M.P. (see Appendix A)

In his reply, MacAuley had agreed for the need to pursue my suggestion given that I had emphasized the central focus of my research being child pornography on the Internet. Over time Jeggo and I met at his office in Ottawa and then continued our contact by e-mail. Our intent was to expand the argument that a committee was essential to assist law enforcement in developing national objectives in relation to child pornography on the Internet. It was because of this that the meeting at R.C.M.P. headquarters had been arranged.

Attending the meeting with Jeggo and myself were Inspector Earla-Kim McColl, OIC Operational Policy Section, National Contract Policing Branch; also attending and chairing the meeting was Chief Superintendent Kevin M. Vickers,

Director General, National Policing Branch Community and Contract and Aboriginal Policing Services (CCAPS). While chairing the meeting, Vickers opened by informing us all of a recent development at the Ministerial level.

The Right Honourable Solicitor General, Wayne Easter had suggested a national committee to combat the sexual exploitation of children. This was a Ministerial recommendation and the committee was to be known as "*The National Steering Committee on Internet Based Sexual Exploitation of Children.*" Vickers informed us that the committee had met once at the end of May and was expected to meet again by mid summer:

> The difficulty, initially for the committee will be to see child pornography from the perspective of the producers. Very often, the producers attempt to call what they have made, art! The law sees this very differently. Just because a child isn't being shown as battered or bruised, the very nature of the presentation is pornography as the law suggests. We approach this from a Canadian legal perspective because it primarily concerns our country.
>
> We have to do that since communication across borders is not always available or forthcoming. The committee has been formed with representation from law enforcement across Canada: the RCMP along with officers from most of the provinces. There are also advisors from Government departments and, as a matter of fact, Gervais Ouellet from the S.Q. attended by conference call. Your interest to be a part of the committee is a good one and we would like a presentation from you, from Concordia University, so that it can be made official.

My involvement at this meeting was not just to be part of the committee, for Concordia University, or myself; rather, it was to determine exactly what had changed from the beginning of my research some four years before. The development I had witnessed showed me that child abuse was still the central issue. The Internet had become a viewing portal by which an audience, from

whom radiated the demand, could watch the abuse unfold. Therefore, perhaps more than ever, I began to see the necessity for a unified effort to shut down the supply. Vickers continued:

> The committee wants to work with other countries to share information but they realize that, that will have to come later. They do, though, have the figures from Operation Snowball which showed 2% or 25,000 Canadians were monitored as viewing child pornography on the Internet. That included police officers too. Police aren't allowed into these sites unless they are authorized and the one's we are looking at, weren't.

Given the reaction from other law enforcement when asked about budgets and available funding, it was necessary to find out if Vickers's committee had been granted some Government assistance for their efforts. In answer to this, Vickers offered:

> Budgets are terrible. We don't have enough money right now even for computers. But we have applied for funding and do expect to receive at least enough for us to go forward. You asked if we could support a seminar to bring interested parties to Ottawa and I'd like to say yes. That will depend first on your University's proposal and secondly on how much money we can get from Government. Furthermore, our priorities would be cooperation, intelligence, training, working through individual researchers, working internationally and finally a sharing of information. That would be our goal and we have just started.

Child Abuse on the Internet

The statement, 'child pornography on the Internet' has many connotations and creates very different responses from those who come in contact with it. Certainly, the respondents interviewed for this study, which deals with child pornography, displayed different emotions when questioned, but none as much as anger. That anger became disappointment when it was shown that watching

child pornography on the Internet was equal to being a spectator of child abuse, something the law is supposed to prevent.

Interestingly, this emotion manifested itself inconsistently since the focus of the anger varied broadly across a spectrum of reasons for the outrage. As will be seen here, the respondents were all connected in some way with child abuse given that each is employed in a professional capacity where the well-being of children is paramount.

Interviews were open-ended and covered a range of issues. If the reactions and responses to my questions had been categorized into a hierarchical pattern, anger, as already stated, would have been at the top. Concern would then have followed, first for the children and then for the law whether local or international. Also, there was an intense interest in how laws could be applied to the Internet. However, this interest rarely manifested itself as suggestions.

This need for laws to control criminal activity provided an interesting assortment of speculative assumptions. Mostly, the assumptions dealt with spurious problems developed more from a lack of knowledge regarding the Internet than a true understanding of it. This does not mean those interviewed didn't understand the Internet. In fact, they were well aware of its far-reaching tentacles.

Responses, though, on what the Internet has created, concerning the availability of child pornography, were almost always from a personal, subjective viewpoint. And, this approach was consistently argued from an effect rather than

cause philosophy suggesting correction rather than prevention. Which approach contributed to the lack of innovative suggestions to combat what has obviously become a problem of epidemic proportions.

Interestingly, there were also few convincing recommendations for dealing with existing problems. Rather, I found each of those interviewed, focused on their own area of expertise with only a perfunctory recognition of the greater picture. The frequent account offered was that there was a lack of communication and yet, what I observed was an overwhelming inability to provide an adequate response to the Internet itself.

The obvious interest within the communities of those mandated to deal with this phenomenon seems stymied by an uncontrollable rapidity of Internet growth. What was seen as lacking were the necessary legislative actions to provide ammunition for the job to be done properly. The developmental changes to the Canadian *Criminal Code* were seen as inadequate and slow.

Toronto Police
Detective Sergeant Paul Gillespie

Detective Sergeant Paul Gillespie of the Toronto Police Service's Sex Crimes Unit corroborated this information while being interviewed by the CTV television network (CTV.ca: www.ctv.ca/servlet/articlenews/story) and the CBC television news (CBC.ca: www.cbc.ca) among others. Gillespie argued that fewer than five percent of the 2,329 suspects, from Operation Snowball, listed as being in Canada by the FBI, had been arrested. Toronto, he offered, had arrested less than ten suspects from the 241 listed in that city:

An interview with Detective Sergeant Paul Gillespie, November 5, 2003, confirmed that there has been little further progress in the arrests:

> The notice we received from the FBI on Operation Snowball caught us off guard. They [the Americans] are so far ahead of us and they've been doing this for many more years than us. We just don't have the equipment. But it's changed now. Microsoft has been writing programs for us and when they're done, we will have a very good database, which will be available for other agencies to work with, together with us.
> There are several Microsoft technicians working in our offices right now. And they don't intend leaving until the programs are finished. Hopefully it will make a big difference for us.

When we spoke of Ottawa, legislation and the National police force (RCMP), Gillespie, was less enthusiastic. He felt that the RCMP had not been able to establish a national link, nor had the Government done much to recognize the problem: others had mirrored his sentiments arguing for a unified effort to combat child abuse in relation to the Internet.

These following interview data, outline what those involved in law enforcement believe to be the current conditions regarding child abuse and the Internet. Therefore, these data will begin with reference to those conditions as I had learned them, beginning with the perspectives of Commander André Bouchard of the Montreal Police.

Montreal police
Commander André Bouchard

When I first met Commandant André Bouchard he was head of the morality squad at the Montreal Police. It was there that he had helped me with information for research papers on prostitution, juvenile prostitution and intravenous drug users in the Montreal area. His information was always clearly

stated and easily corroborated by other sources. This was done by interviewing officers in his department, listening to media reports or reading non-classified documents, which formed part of an investigation.

Since early 1999, Bouchard commanded the Night Crimes Division, the detachment dealing with Organized Crime and more recently was made head of the Major Crimes division (division des crimes majeurs), which is where he works today. All positions have been considered promotions. With his access to the many levels of police work and those officers within the hierarchical echelon, he has been able to guide me through an intricate maze of information that I would otherwise not be privy to.

With a professional interest in my project, Commander Bouchard wrote me a letter of agreement for a joint venture with the Montreal Police, on April 30, 1999. This agreement has since been renewed three times and is now extended into 2005 (see Appendix A). As liaison for the project, Bouchard agreed to continue our association for the duration of the venture. The information derived from my study, he suggested, could provide important information to his department.

They in turn would supply me with data for my research making the arrangement mutually beneficial. With Bouchard as my key informant I agreed to furnish him with the results of my research as it proceeded. We would both verify the credibility of the data collected. Bouchard promised to introduce me to other officers and prosecutors in the judiciary. He also agreed to discuss the workings of the police department in relation to the subject of child pornography.

However, he opened by describing how slow the machinery works and how limited the resources were.

"Very little is being done," he said. "Relationships and cooperation with other law enforcement agencies is often non-existent." He described funding and work force as extremely limited given that "priority for limited budgets is often apportioned to what are considered, more important areas." He illustrated how smaller cities on the Island of Montreal [before the existence of the Montreal Mega City] would buy equipment for their police cars with funds from their own general budget rather than waiting for Government funds because very often, there just wasn't enough. A call to then Westmount Mayor Mr. Peter Trent confirmed this fact.

Bouchard and I talked several times after our first meeting. On one occasion he asked, "How often do you use the Canadian Charter of Rights and Freedoms?" I answered, never. "The criminals do" he said, "all the time." His observation proved pertinent when I researched the John Robin Sharpe case. Bouchard emphasized how, while I may come across sites containing child pornography, I would be prohibited from downloading or forwarding any pictures of child pornography to him. Even he, as a police officer, has not been authorized by the courts to be in possession of this type of material.

Section 163 (1) of the Criminal Code states:

> Every one commits an offence who
> (a) makes, prints, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, photograph record or other thing whatever; or

(b) makes, prints, publishes distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

Montreal Police
Detective Sergeant Jacques Viau

I was informed that only a select few officers are designated by the courts to view and download this sensitive material as evidence in on-going cases. One such officer was Detective Sergeant Jacques Viau who was then the coordinator of the Fraud and technology division of the MUC (Montreal Urban Community) Police. Within the first week Bouchard arranged a meeting for me with Detective Viau. Detective Sergeant Jacques Viau

I met with Detective Viau in his offices at 7275 Sherbrooke Street East, in Montreal, late in 1999. Once through a common reception area I was shown into a relatively small office. A desk and larger table adjacent to it were almost the only furniture in the room. This was the detective's office, which also served as the general meeting room. Viau was very welcoming and while it was obvious he was extremely busy, I was made to feel comfortable. He wanted to know everything I was working on. I gave him a rough synopsis of my paper with its central theme of child pornography on the Internet.

This was a subject he was very familiar with, I was to learn, but one that formed only a small part of his everyday work. The reason for this, he told me, was limited work force and limited funding. His department oversaw all crimes of a technological nature in the greater Montreal area; the range and scope of which included bank fraud, credit and debit card fraud, and any crime in which computers were used.

His staff consisted of a very few officers whose working hours were extraordinary. Most, if not all, continued to work on home computers after office hours. Part of Viau's job was to make representations to other law enforcement and government agencies across Canada and the United States. Having listened to the scope of my research, Viau asked if he could use part of it for an up-coming presentation.

Our conversation was not only informative but also extremely cordial with a great degree of interest on both sides. It soon became obvious that the subject of child pornography on the Internet was something he was very concerned about. He has been involved with the police force for almost thirty years and now as an authority in the field of technological law enforcement he is sought after for his expertise; that expertise, it seems, is frustrated by insufficient funding.

What troubled him most was the lack of a unified effort on the part of law enforcement to protect the children being abused. He mentioned this fact several times in relation to the Internet and included in his concern, the Royal Canadian Mounted Police (RCMP), the Sûreté du Québec (SQ), and INTERPOL. The latter, he described as one of the slowest organizations for the delivery of information noting that the information highway is vast and developing at an incredible speed. At this point he began discussing his computer equipment, or lack of it.

It was explained to me that very often computer equipment seized from a perpetrator would be far superior to that in Viau's office. As part of on-going

proceedings, equipment would be examined thoroughly for evidence and may remain in police custody for an extended period. While there, he said, "we would use the equipment until the case was over. It then had to be returned to the original owner." This statement added to his frustration and he told me that because of the extreme limitations connected to his work, he had considered leaving the police force in May of 2000.

Does the Internet create more deviants?

Detective Sergeant Jacques Viau told me that he believed the Internet creates deviants. What basis in fact did he have to make this statement? In a meeting with Crown Prosecutor Lyne Decarie, she suggested that, in her opinion, the Internet did not create more deviants. In stating this she was drawing on her extensive experience prosecuting cases, which dealt with child abuse. Similarly, Viau was giving his opinion as a police officer whose years of experience caused him to believe otherwise.

The obvious difference in these two statements was that Viau was expressing his opinion based on arrests while Decarie saw only those cases that came to court. Two very different opinions that originated in spheres often far removed from each other; but why should that be since both deal with crime and criminals? The evidence produced for this thesis has shown, repeatedly, that cooperation between law enforcement agencies in the matter of Internet crime, while a priority of rank and file, has never received universal precedence. In addition, the interviews recorded here emphasize this describing a widespread lack of funding and work force.

"The Internet provides an enormous opportunity for deviants to communicate. It also creates deviants," Viau said, "and it gets more difficult for us every day." I asked what suggestions he had to correct this.

Viau indicated that he would like to see a committee of citizens formed to assist the police. A good cross section of the population, he felt, could help legislators establish proposals for control of the Internet. "This would also help us. We don't have enough manpower." Viau's conclusion: "too much to do and not enough experts to do it."

Control is often identified within forms of Censorship. Censorship is applied 'after the fact' because it tries to regulate what has already been produced but not yet presented; it attempts to restrict or prevent contact with a commodity before it reaches a population, which all too often demands it. Legislators have often found themselves unfavourably placed between these spheres because their attempt to prevent creates more demand. Therefore, censorship is not prevention, rather it should be considered as nothing more than an irritation and at best, a temporary and unworkable band-aid solution.

Child pornography is determined to be illegal in the Canadian Criminal Code, therefore, how can so many sites be presented on the Internet without any control when they are obviously illegal? Consequently, the question for interviews became, what is the Government, law enforcement and the Canadian Judiciary doing, other than censorship, to prevent these publications from appearing on the Internet? Furthermore, is there a concerted effort to curb illegal publications on the Internet?

Royal Canadian mounted Police
Emmett Milner – Staff Sergeant

Milner is National Coordinator of Criminal Intelligence Services Canada. He was appointed to this position as a member of the RCMP. His department coordinates strategy with law enforcement agencies across Canada. "The department was initially mandated to oversee organized crime but quickly developed a branch to study sexual exploitation of children, which includes Internet crime." According to Milner, "our attention was focused on the methods with which child abuse was being exploited by means of Internet transmission." He felt that Internet Service Providers (ISPs) should be regulated in some way. "This," he said, "had already been started in Australia. Most industries are accountable after all." Milner was quite clear in the role of his department:

> Contact is made frequently with US agencies and customs, while semi-annually, strategy meetings are held with INTERPOL. We, at Criminal Intelligence, were mandated by the RCMP to examine sexual exploitation of children, which includes predators on the Internet, prostitution and sex tours being offered overseas. Any information or pertinent data we receive is forwarded directly to other law enforcement agencies around the world, when it's determined that what we have is in their jurisdiction. It gives it a Canadian and International overview. This arrangement is reciprocal.

Royal Canadian Mounted Police
Superintendent D. B. (Dave) Jeggo

A letter I wrote to the Prime Minister, The Right Honourable Jean Chrétien describing my study, was forwarded to the [then] Solicitor General of Canada, the Honourable Lawrence MacAuley, M.P. MacAuley replied outlining arrangements that had been made for me to meet with Superintendent D. B. Jeggo. We met at his office in the RCMP Headquarters on Vanier Parkway in

Ottawa. From the outset of our meeting, Superintendent Jeggo told me that child pornography on the Internet was a great concern to his department. He also told me his time was limited and then proceeded to spend three hours with me.

He reiterated what I had already heard from others, that funding and work force were extremely limited. Therefore, the RCMP was no different. However, Jeggo's interest in my investigation was such that he intended having me meet others in the RCMP with similar interests for the purpose of developing a perspective and plan to assist the legislators.

O.P.P. and RCMP Advisor,
Dr. Peter Collins PhD.

Dr. Collins is a Forensic Psychiatrist working with the Ontario Provincial Police (OPP) and the Royal Canadian Mounted police in Orilia, Ontario. His specialty is in the field of Behavioural Sciences. He argues that there is a difference between collecting and doing and that not all offenders are pedophiles. "The Criminal Code also recognizes that."

In view of the increased market available on the Internet, Collins believes that victims may also be increasing and he does not believe there is any empirical data to confirm the percentages of pedophiles out there. "Pedophiles," he says, "are erotically attracted to children but they may not be child molesters. However, they may victimize children.

Child porn doesn't mean pedophilia. And looking doesn't mean a preference for children. There are those with cognitive distortions who rationalize sex with kids as a normal event since they don't believe any harm is done." He added, "by showing children depictions of sexual activity between children and

adults they lower the children's inhibitions so that their actions seem normal." I asked Dr. Collins for his opinion on the Sharpe case but he declined to answer telling me that he is listed as an expert witness at the trial in British Columbia. Dr. Collins and I spoke recently, August 2004, and he reiterated his concern that the Internet has increased the availability of child pornography to an ever-growing market of viewers.

Sûreté du Québec (S.Q.)
Detective Sergeant Gervais Ouellet

The first time I met Detective Sergeant Gervais Ouellette, it was at his offices in the S.Q. building on Parthenais Street in Montreal. Ouellette has since been promoted to Lieutenant. After clearing security, which entailed emptying my pockets, having my briefcase x-rayed and walking through a sensor arch, similar to those at airports, I was given a badge, which served as a key to open a glass door in the main lobby area.

Ouellette was called and he met me on the other side of the door. I was taken to the sixth floor by elevator and, once there, we entered a very small office, which he said belonged to his superior. He asked me to describe exactly what I was doing. Even with Bouchard's letter and my Concordia University identification I felt as though this was more an interrogation than interview and I was the one being questioned.

I gave him an outline of my research and explained how, from looking at sites with pornography, I had very quickly found myself confronted by child pornography on the computer. I also told him that a great deal of what I'd seen was on two sites for which I had paid an entry fee. He looked directly at me and

said, "You realize that if you paid to get child pornography, I'll have to arrest you!"

He meant it and I spent the next few, very uncomfortable minutes, explaining that the two sites were actually Newsgroups from which it was possible to acquire a plethora of information. The child pornography was part of the data available and had not been my first choice. In fact, I explained that this was one of the reasons I was visiting him. What, I wanted to know, was law enforcement doing to control this illegal material?

He told me much of what I had heard from Detective Sergeant Viau. A lack of funding and work force; all technological crimes funneled through one department with limited emphasis placed on child pornography on the Internet. In fact, he, apart from a very small department staff of assistants monitoring computers, was the only one designated to examine downloaded material. Along with a heavy workload, his position necessitated visits to seminars and conventions along with meetings in Europe with organizations such as INTERPOL and EUROPOL.

Having understood that my intent was to include Concordia University's Sociology and Anthropology department in all my M.A. studies and data collection, he offered to provide information to expand my findings. In return, he asked that I keep him informed of my progress. One thing he emphasized before the meeting ended was that children are being abused everywhere and he was determined to do something about it. It seemed that was something everyone wanted.

Vancouver Police Department, British Columbia
Detective Noreen Waters

I did not personally conduct an interview with Detective Waters; she retired, after twenty-seven years with the Vancouver police department before we could connect for an interview. However, the CBC program, Fifth Estate, included Detective Waters in its program, October 2003, which dealt with child pornography.

Detective Waters detailed her involvement in cases which dealt with child pornography. She had been made aware of Operation Snowball but could only add it to her existing portfolio of sixty-eight on-going cases. One such case involved a known pedophile – T.M. – who had been found in possession of 64,000 images downloaded from the Internet, Waters investigation into the activities of T.M. had been on going for two years.

T.M. had been convicted of child molestation, in 1999 and sentenced to five months in jail: he served two months. Waters continued her investigation into T.M's activities, following leads that he possessed a large collection of child pornography. After preparing a file consisting of hundreds of pages of evidence, she attempted to have a Crown prosecutor take the case against T.M. The first three declined arguing partly that the material was despicable. They also added that sentencing in similar cases had offended them since it represented nothing more than a slap on the wrist for the offender; T.M. received no jail time, instead he was given a conditional discharge with probation. Arguing a lack of resources, Waters resigned from the Vancouver Police department after twenty-seven years service. She never worked on the Landslide file.

International Enforcement Agencies
British Customs and Excise Service - Paul Field

On a recent business trip to London, England, February 19, 2003, I called Police Headquarters at Scotland Yard, for an interview to discuss the British Criminal Code and its application to recent arrests involving pedophiles. The telephone numbers had been provided by Lieutenant Ouellette. Unfortunately, I was not able to connect with officers at Scotland Yard but I was directed to the British Customs and Excise Service who, themselves, play a role in the area of monitoring distribution of Child Pornography in the United Kingdom.

I was given an interview with Paul Field a British Customs official. He began by telling me that there is an 1876 law, which prohibits the importation of indecent or obscene articles into the British Isles. This law still stands and the Customs and excise officers continue to apply it. However, he said that they are not allowed to use it in reference to the electronic media. His willingness to share information showed an interest that went beyond borders:

> Legal advice is that electronic signals cannot be considered to be articles. So the choice was, do we go for a new bit of law to allow us to do the same thing with electronic signals or do we rely on what we've already got which is domestic law. In terms of what the police can do, if we were able to extend our law to include the Internet, then we wouldn't be able to enforce it, to be honest with you, because we don't have the people to sit there on a computer, but the police do.
>
> Even though there is no customs' offence, if child pornography, and I'll stick to Child Pornography then I'll come back to the anomalies of adult pornography, but Child Pornography, whilst there's no offence of importing it, or there's no offence because the Internet is not importation, of downloading it there's no customs offence but there's a police offence under section 1 of the Protection of Children's act, 1978, which prohibits the making of indecent photographs.

> Not the production, just the making. Making is literally downloading on to your computer. So if you download something and keep it on your computer, then you've downloaded off the Internet and that is called 'making' and it's been tested in court and the courts are satisfied that downloading is making. So that would be an offence under domestic legislation, therefore, we don't really need an importation offence as such, because if we're going to catch them you've got to get in through someone's door in the first place.

Field continued that Section 1 of the Protection of Children Act, in the UK, had originally specified possession for oneself as not being illegal. However, he pointed out, that this law had been changed since possession was ambiguous. Possession with intent to pass the material on was illegal and the law was changed to reflect this.

"Criminal Justice Act 1988 made the simple possession of indecent photographs of children an offence. It had to be photographs, though. Sketches didn't apply. It was felt, there had to be a victim. Sketches didn't reflect that. Even morphed photos are illegal now."

Field described a case in which an accused had been released although police had arrested him while in possession of photographs showing children involved in sexual acts. The accused's defense was that the photos had been morphed. Those shown, he claimed, had been adults with children's morphed faces on them. "That was his defense and he got off. They've changed the law since then."

Canadian law enforcement is not alone in struggling to make airtight cases in these instances. In the United Kingdom, when Pete Townshend of the rock group 'The Who', was arrested in operation ORE, a British assault on

Internet child pornography, he was held in custody but not charged although police had confiscated his computer, which held several images of child pornography.

Townshend insisted that he was in the process of writing a book about his childhood, which he claimed included molestation. His arrest came because he had accessed sites containing child pornography. In particular, he had visited, with the use of his credit card, "Landslide" Inc, a child pornography site, which had originated in Texas. After many months of inquiry, Townshend was released and not charged and only his name was registered on a list of sex offenders (Montreal Gazette, section D16, Saturday, May 24, 2003).

Montreal Police
Detective Sergeant Jacques Viau and Detective Sergeant Francesco (Frank) Secondi

March 27, 2000, I visited the offices of Jacque Viau again. Knowing Viau is retiring from the police force on May 25, 2000, I wanted to renew my contact and gain more information on the squad's technological capabilities. On entering the reception area I was met by Sergeant Detective Francesco Secondi. We discussed Viau's up-coming retirement. "He will be sadly missed. None of us has his experience. We can do the job but it will take us a lot longer."

When Viau arrived Secondi and I sat in his office where we proceeded with a meeting that lasted almost two and a half hours. Speaking of his retirement, Viau said he was troubled that there was so much still to be done but after thirty years of service (I previously thought he had been in the force for twenty-five years) he had to have time for himself and his family:

> I put in so much overtime, we all do, and there's no extra pay. Everyone in the office could work for five or six figures in private industry. The equipment we have is the same as you saw last time. Did you know that we confiscate equipment so much more powerful than ours and very often we can't download the files. We don't have enough memory. We have to contact IBM or Microsoft for their help. Sometimes we get it and sometimes we don't. The part we may need costs about eighteen dollars and we can't afford it. By the time we get back to the case we are working on, it's maybe weeks or months later and then with the paper work it could be even longer. That's what it's like for all of us.

Secondi told me that they have an inside joke about the red millionaires, the green upper class and the blue lower class. "The red" he said, "are the RCMP. Everyone here thinks they must get loads of money from the Federal Government. The green is the SQ (Sûreté du Quebec) and we figure they also get lots of money from Quebec, not as much as the RCMP but lots, and then there's us. We get nothing." Viau continued by arguing:

> The Provincial Government doesn't give us anything. We have to take money from the Montreal Urban Community, which is made up of twenty-nine cities. They all put money in and the Montreal police get funding from that. Our department isn't even recognized as a department yet so that's why we get nothing for equipment.

I had to tell them that I'd heard the same 'lack of manpower and funding' from the SQ and the RCMP destroying their myth. Viau said that they still believed they were the poor relatives:

> Now you know why we use confiscated computers from seizures. We are the poor relatives. And yet, everyone here is devoted to his job. Did you know that twenty seven percent of our cases deal with child pornography? And that's only on the Island of Montreal. We know there's more out there. The other seventy-three percent are other electronic crimes. We handle them all here. Of thirteen hundred cases last year we had five hundred

> arrests. Those arrests save industry a lot of money. It's a pity that there are no budgets for what we do.

Viau described how budgets are allotted based on a percentage of crimes that are expected to occur. "Consequently, when extra funding is required but wasn't allocated from the previous year, there is nothing available if crime has risen. In the case of electronic crimes there has been an increase mostly against banking institutions."

Viau described how banks lose about 50 million dollars a year to fraud:

> We can help them with security and they could help us with funding. A million dollars and we could do everything. Instead, they ask, can you guarantee that you will save us the fifty million. Of course we can't so they stay as they are. They would rather keep all that quiet. It would be bad publicity to make it public. For us we need funding and manpower because technology is happening too fast.
>
> It took years for people to get used to telephones. Then they became part of life. It's like the horse to the car. Just look what's happening with the Internet. Just imagine, criminals use the Internet to communicate instantaneously. They rip off the banks by copying debit and credit cards. It's a situation that's getting out of control. That's why we need new laws. And those laws would be in place to protect all society. We don't have enough time to work all the cases and we know there are lots of deviants coming from the Internet."

I told Viau that I had interviewed Gareth Sansom and John Fleishman, both of whom work with the Department of Justice in Ottawa, and that they were of the opinion the Internet doesn't make more deviants. He laughed and so did Secondi. I asked what data they had to substantiate their claim of more deviants coming from the Internet and they said what they had was evidence from arrests.

They were seeing younger criminals storing pornography. Men were being arrested who had been sitting at the computer for months. Never washing, urinating and defecating in pots close by. Ordering food delivered so that they didn't have to leave the images they were viewing. Viau explained:

> These people are a new breed. We call them cyber junkies. If you looked at them you would think they were on something like heroin or something else but they're not. They are mesmerized by what they are looking at and they have no other life. They sleep where they sit or they sleep on a bed where the sheets haven't been washed in a year. We never saw that before. Now we have to wear coveralls over our street clothes because of the filth we find when we enter places like that and we're seeing much more of it.
>
> We seize computers with thousands of images on them and nothing else. Nothing else! There are no files, no correspondence, nothing, just images. The reports say that the percentage of deviants hasn't increased but the amount of people looking has certainly increased. That's what we look for, people, not percentages.

RCMP – Inspector Jennifer Strachan

In December 2003, RCMP Inspector Jennifer Strachan and I spoke at length by telephone. Her position as Officer in charge, National Child Exploitation Coordination Center (NCECC) Centre national de coordination contre l'xploitation des enfants (CNCEE) exposes her to the direct ramifications of child abuse as it appears on the Internet. Strachan offered to help with whatever information would be necessary to assist with the thesis and anything that might in some way protect children.

On the mandate of the National Steering committee's functions she offered the objectives as:

Expeditious and comprehensive investigations

Information and intelligence gathering, dissemination and sharing
Create one central complaint center
Assist in victim identification
Assist with strengthening legislation
Work with industry and NGO to improve cooperation and information sharing
Work to improve upon law enforcement tool and investigational techniques
Assist in awareness building and prevention
Strengthen and build international cooperation

The committee's directive, therefore, is to act as catalyst for information on child abuse as it impacts on Federal and Provincial law enforcement, government agencies as well as non-governmental organizations (NGO's). The first meeting was June 6, 2003 with two meetings since. At the first meeting the discussion dealt with what the National Strategy would be and the objectives of the NCECC.

The agenda included the **Manitoba Child Finds Tip Line** and the possibility of it becoming a National tip line. At the second meeting, July 29, 2003, after an up-date on progress for the past four months, there was a presentation by the **Canadian Association of Internet Providers.** The third meeting was November 17, 2003 when the NCECC provided an eight-month up-date. At this meeting, Strachan described "a presentation by Images which demo'd Childbase a facial recognition software product and a presentation by Microsoft and TO Police on a potential database to share investigator information."

RCMP – Paula Bertrand
Criminal Intelligence Analyst
National Child Exploitation Coordination Centre 11/01/03

Paula Bertrand has supplied data provided to NCECC on Project: 6399-5 – Operation Snowball. The Criminal Intelligence Service Canada (CSIS) was responsible for the coordination of the file. And Bertrand has allowed its inclusion here. (See Appendix B).

Conclusion

These law enforcement interviews began in 1999. A more current data analysis would be recommended given the rapidity with which the Internet changes. Change would be the optimum reference here since while what has been recorded may have begun in 1999, in 2004 there is little or no evidence of any real change. Surely, allowing for the consistency of anger displayed by those in law enforcement, at the abuse of children, one would have expected some major developments to report. This author has seen none of any consequence.

Extraneous to the central issue of child pornography on the Internet, the lawmakers seem to be failing those who can best serve their supposed intent. Law enforcement has been asking for the tools to do the job and the constant frustration recorded here, shows a lack of support as evident in 2004 as it was in 1999. From the position of the police, then, there is still a shortage of peoplepower and funding to combat the ever-increasing threat of the availability of illegal material on the Internet.

The abuse of children, whether in Canada or abroad continues with sites containing child pornography readily available for viewing. Before retiring from the Montreal police force, Detective Sergeant Viau talked about his evidence coming from arrests, but how many convictions have there been? Operation Snowball identified perpetrators in Canada and to date, almost none have been arrested, a fact which was reiterated recently by Chief Superintendent Vickers of the RCMP.

So what is being done? My interviews are on going and I am fortunate to have constant contact with Commander André Bouchard of the Montreal Police, Lieutenant Gervais Ouellet of the Sûreté du Quebec and Superintendent Dave Jeggo of the RCMP. However, they are not the lawmakers and it becomes necessary, now, to examine that sphere of social dictate to see, what, if anything has transpired between 1999 and the present: 2004. I suggested in 2000, that by monitoring credit card use, law enforcement could identify those who access Internet sites offering child pornography. They would then have an opportunity to curb the demand and arrest the perpetrators.

Inspector Strachan provided valuable information when she detailed the work being carried out by the committee established by the Solicitor General. The first meeting of the committee was June 6, 2003, the second meeting was July 29 and the third meeting was held November 17. This committee's formation is a beginning and its focus is narrow enough to cover the central topic of child pornography as it appears on the Internet. However, the infrequency of meetings so far, tends to correspond with government policy in these matters, as

it has been. Scrutinizing the committee's progress, with the assistance of Inspector Strachan and Superintendent Jeggo, will allow us to determine its accomplishments, if any.

The FBI initiated Project 'Avalanche' and used credit card information to locate and identify those who were accessing child pornography on the Internet. I reminded Jeggo of my original suggestion, to him, Bouchard and others, that credit card use should be monitored. "We dropped the ball on that one" was his reply.

Chapter

6

CANADIAN JUDICIARY, POLITICIANS AND THEIR ADVISORS

Introduction

All interview respondents agreed that the availability of child pornography on the Internet has to be controlled and more importantly, removed. While, 'we must protect the children' was the phrase most often used, there is no definitive evidence that legislators have accomplished much in that area. The police have shown a constant frustration with the inability of lawmakers to establish ground rules within which enforcement can function in the field of electronic crimes.

The central question to be asked, therefore, must be, 'which set of guidelines do Canadian legislators operate from when determining which bills deserve priority?' Furthermore, in reference to child pornography on the Internet, this thesis describes the problem as multi-faceted and not simple to define. Therefore, how do we separate law enforcement's frustration, public outrage and media attention from the reality of the legislative process?

There has been an abundance of evidence describing law enforcement's frustration with legislation that does not support their efforts. In regard to current affairs we have seen, through the media, that public opinion has a short lifespan. However, this avenue of outrage seems able to influence legislative decision making to a far greater degree than those who act on its directives. Given this scenario interviews with individuals involved directly and indirectly with the

process of law making will help clarify the direction Parliamentarians take in writing the laws.

The Laws of Canada

The following are interviews conducted between 1999 and 2003 with respondents whose connections to the subject matter would, in some way, shed light on the process with which we are most interested: Canadian legislation to eliminate the availability of child pornography on the Internet. It must be noted here that given the limited supply of written work dealing with child pornography on the Internet, interviews have become the mainstay for this study's information base. Also, interviews will be on going until this thesis is concluded.

Gouvernement of Québec - department of the Minister of Justice
Me Lyne Decarie assistant to the Prosecutor General

On Friday February 18, 2000, Commander Bouchard contacted me. He had arranged a meeting with Lyne Decarie a prosecutor in the Quebec Justice department. Bouchard would also attend the meeting. We met on Tuesday February 22, 2000 in a very informal atmosphere: over lunch. Ms. Decarie produced the documents of the trial judgment for John Robin Sharpe – a current case involving the arrest and prosecution of a suspected pedophile – along with a copy of the relevant section of the Canadian Criminal Code dealing with possession: section 163.1.

She repeated what others had told me before her that everyone is waiting for the Supreme Court Judgment since nobody has been charged with possession since the Sharpe case. This delay in the enforcement process has been made necessary because Sharpe successfully defended his actions, of

which possession had been one, in the British Columbia Court. The striking down of this section of the Canadian Criminal Code as unconstitutional – possession being a criminal offence – removed perhaps the most important tool in the police attack arsenal. "Until the Supreme Court rules on this section of the law's constitutionality" both she and Bouchard told me "arrests for possession have been suspended."

Decarie outlined the difficulties in establishing an interconnected force to deal with Internet crime nationwide. Bouchard told us that:

> One percent of all police budgets go to education for police officers and the courses are mandatory. They're given by the RCMP in English and none deal with Internet crimes that include pornography. Even if there were, there are very few officers in Canada who are expert enough to do the work. With the images often depicting Asian or eastern European children, catching the criminals would be almost impossible since there are no reciprocal, universal, extradition treaties in place.

Decarie argued:

> One advantage for the prosecutor is that there is no statute of limitation on child abuse. Today there is more disclosure since society is more open and the Internet has contributed to that openness because of the immense network of communication. While society still considers child molestation a taboo, victims are disclosing more, often because therapies have changed from old practices. The Criminal Code deals differently between sexual relations and child abuse. The age of consent varies from Province to Province (16 in Ontario and 18 in Quebec). A younger child can have sexual relations with an adult if the adult is not a guardian. A minor can have a relationship with another minor. But, where the relationship is proven to be forced, the law specifically identifies this as abuse and the perpetrator is charged under 163.1. The age of consent in the USA varies even more widely: 14 to 18 in some States.

Decarie's opinion is significant because she indicated the problem as child abuse and referred to the Internet as a means of communicating aspects of that abuse. It is this discernable difference, which outlines the separation of perceptions between the involved factions. The act is child abuse but some would argue that the focus of the lawmakers has been placed squarely on the Internet. Therefore, clarity in legislation is essential for the levels of enforcement, not only to do their job but also to know their efforts are being directed toward a common goal. The legislators whose actions need be determined by factual evidence rather than the short-lived anger of public opinion must define that goal. The opinion of Decarie in respect to public opinion was quite blunt.

> Public opinion changes if the molested child being shown is from another country. Most police work is done on public outrage. The public's complaints are acted upon. You just have to call the Director. Nobody complains about the Internet so they aren't going to care about child pornography on the Internet, however, it's being recognized as a growing problem."

Although she did not believe the Internet created more deviants, "something will have to be done about it," she concluded "the problem is it's in the headlines one day and gone the next.

I asked Decarie and Bouchard to give me their opinion on a suggestion. Everyone who accesses and enters sites which contain child pornography, directly or indirectly, somehow uses a credit card. Bulletin boards may allow free entry but they often direct viewers to web-site addresses where child pornography can be found. Credit cards are used in the construction of web sites where children are being abused; So, what responsibility should the credit card companies take since they are benefiting financially from the sale and

production of child pornography; which is expressly forbidden in the *Criminal Code*? Both answered the same way: it would be a huge job to take on the credit card companies. Decarie offered, "Someone would argue that you wouldn't charge Bell for what's being said on the phone just because the phone came from them."

Québec – Assemblée Nationale
Jean J. Charést – Chef de l'Opposition officielle

On June 23, 1999 at 5:00pm, I met with Mr. Jean Charést, then the leader of the opposition Parti Libéral du Québec. Our meeting lasted fifteen minutes and was very productive. Mr. Charést informed me that he had been meeting with groups of young Liberals to prepare for the up-coming youth summit early in 2000. He felt that my topic, child pornography on the Internet, could be incorporated into their presentation.

He was particularly interested in the suggestion of a committee and private funding to support such an effort. He instructed his assistant Stewart Michaelson to arrange a meeting for me with Francois Ouimette, the then Liberal Justice Critic and Jacques Dupuis. Both of whom were in the shadow cabinet.

On leaving Charést's office I called Viau and informed him of my progress. He was surprised and elated that his ideas were going forward. Within two days I received a call and was told that Viau had reported our discussions to his superiors and they in turn had called Bouchard to stop me speaking to Charést again. Their reasoning was that MUC Police funding comes from the party in power, le Parti Québecois, and the Libérals could embarrass

them on this topic. Further meetings were cancelled. The subject had openly become political.

In 2003 le Parti Libéral won the Québec Provincial Election, defeating le Parti Québecois. Jean Charést as leader of the victorious party, now le Gouvernement du Québec, became Premier of Québec. On June 25, 2003, I wrote to Mr. Charést reminding him of our first meeting and requesting a second meeting to continue discussing my topic. The reply I received, September 25, 2003, signed Jocelyn Roch, Scheduling Director, advised that Mr. Charest had been apprised of my letter, that a copy had been forwarded to Mr. Marc Bellemare, Minister of Justice and Attorney General and that the subject matter would receive due consideration. The results of any further communication will be recorded here. As of today, March 15, 2004, there has been no contact from M. Bellemare, M. Charest, or anyone at the governing Parti Libéral. (See Appendix A)

Federal Justice Department – Ottawa
Lucy Angér

The Federal justice department in Ottawa proposes changes to legislation, presents their draft paper into the political arena and waits for Parliament to vote. This process is extremely lengthy and time consuming. The Internet conveys information instantaneously. Something is wrong with this scenario. I proposed as much when I called the Justice department, February 7, 2000. The person who took my call, Shannon, informed me that she would have someone call me back quickly, and she did. Lucy Angér attempted to reach me

and then I her. This continued for approximately two weeks until she was no longer in meetings; we spoke mid February.

As with Charést, she too displayed a great deal of interest, telling me that the Justice department was aware of the problems with the Internet. She described a working group in which Garath Sansom PhD had contributed documentation on deviant behaviour. He had conducted research with John Fleishman, both of whom work for the Justice Department. Their occupation is to assist Government in updating its technology.

Other contacts she gave me were: Emmett Milner, head researcher and national coordinator at the "Criminal Intelligence Service of Canada (CISC)", Detective Sergeant Jacques Viau, Gérvais Ouellet (SQ) and detective Noreen Waters of the Vancouver police department. "All these people," she said "are involved in some way with deviants, child pornography and pedophilia as it applies to the Canadian *Criminal Code* and its relationship to the Internet."

Angér described government efforts to establish working papers and legislation to make the ISP (Internet Service Providers) liable for the content of the sites they promote. Bill C-231 was to do just that. The bill was tabled in the house in November 1999 and dealt with offences on the Internet. This bill combined efforts of policing by the Industry and Justice departments. Regulations for a code of conduct could eventually become law.

"Other countries are also aware of this problem," she said:

> One group, the *Council of Europe* has organized forty member states from eastern and Western Europe to develop legal measures satisfactory to all, in an effort to combine the work of all their law enforcement agencies. Today their effort is being focused

> on Internet crime and in particular how search warrants can be issued that are valid across borders. The organization was formed in the 1950s. International aid is also centered on INTERPOL (International Criminal Police Organization).

Angér admitted that the process would be long and slow. "Also, there are very few experts in the field." She was not pleased that Viau was retiring in May 2000. I was invited to attend working sessions in Ottawa and she asked if I would forward any relevant data from my research to the Justice department. I agreed. I then contacted John Fleishman who assisted Garath Sansom.

Federal Justice Department – Ottawa
John Fleishman

Fleishman said that the data both Sansom and he had collected wasn't conclusive. He argued that Sansom's in-depth research showed that pedophilia had not increased in the last twenty years and the research didn't bear out that the Internet produced more deviants. While the Internet offered a forum for those who wanted anonymity, he didn't feel there had been a sudden explosion of child pornography because of it.

While he did see the need for better policing his argument tended to lean more in the direction that there was already too much censorship. Since censorship was now clouding the lines I decided to contact Garath Sansom for details on his research paper, however, he was going to be out of his office for ten days. In the interim, I was fortunate to contact Jocelyn Leveille, assistant to Emmett Milner.

Federal Justice Department - Ottawa
Jocelyn Leveille

Leveille centered his concerns on the John Robin Sharpe case, as had Bouchard, Viau and Anger. All cases where possession formed part of the charge, as had been the case with Sharpe, would have to wait for the appeal to the Supreme Court of Canada, which was scheduled to begin January 2000. This was crucial in dealing with child pornography on the Internet since photos and stories are purported to be illegal if they are downloaded for possession.

Leveille added that Emmett's role was to coordinate law enforcement agencies through *Criminal Intelligence Service Canada*. Originally this department was to deal specifically with Organized crime where information would be transferred from Federal to Provincial jurisdictions and vice versa. However, in August 1997 the organization of Chiefs of Police decided to add child exploitation to the department's mandate. This, it was felt, would bring the agency into line with similar law enforcement in Europe and the USA.

INTERPOL, as described by Leveille, deals with Internet crimes through the combined effort of twelve police forces working out of Germany. Their crime squad specialties include computer crimes that deal with 'Innocent Images.' "Fifteen years ago," Leveille said, "those images weren't available publicly. Certainly not in one of the only sources around: Playboy. Today, just enter preteen or Lolita into the Internet and you're swamped with sites."

He described the ease with which a traveler can snap pictures with a film-less digital camera, cross a border, download the images into a computer at a 'Cyber Café' and have them reappear on another continent almost instantaneously. For law enforcement this type of crime is very new and to

combat it would require a great deal of time, manpower and funds. "All our best efforts are lagging way behind." He recommended I contact, Jacques Viau and Gervais Ouellet to ask for details on 'Operation Cathedral' otherwise known as 'Wonderland.'

Wonderland had been an intricate web of pedophiles in the United States and Europe that could only join the group if they each possessed 10,000 child porn pictures. It began when someone photographed a child he had molested, in the USA, while she was at a sleepover with his daughter. He then communicated the details around the world on the Internet.

Leveille suggested I speak to Dr. Peter Collins, a forensic psychiatrist in the field of Behavioural Sciences who works for the Ontario Provincial Police and the RCMP in Orilia, Ontario. The Provincial Criminal Intelligence Service in Québec was another place to contact for information, in particular Sylvie Guimond, its Director. I was then advised to stay in touch with CISC to make contact with Milner since there would be a working group established within the next six months on policy.

Federal Department of Industry – Ottawa
Garath Sansom

Garath Sansom PhD is a senior advisor on security to the Canadian Industry Department. His Doctorate in S&M (Sado Masochism) developed his interest in anomalous behaviour. This led to his research, as a private citizen, of child pornography on the Internet in 1992 and 1993. In conjunction with Communications Canada, Sansom published the paper, *"Illegal and Offensive Content on the Information Highway."* In 1995, while a member of the Advisory

Committee on Offensive Content, he was informed that US Senator Exon's *'Decency Act'* was being presented.[5] "This made it necessary for us to show what we were doing in Canada in this area.

The interest suddenly became very intense. There was the issue of different problems. What's the difference between porn and obscenity? The Government's response to these things had been, as long as it's not obscenity, it's tolerated. We had to explain all the details of the Internet: Usenet and bbs":

> Usenet, the 'user's network'...is a world wide distributed bulletin-board system supported by Unix...[a] reviled multi-user general-purpose operating system. Usenet's user base has been expanding from academic and commercial sites to include the many community networks, or 'free-nets', and commercial bulletin boards sprouting up in North America that provide a gateway to Usenet newsgroups...Usenet consists of newsgroups...where users post and reply to 'articles' or postings. Thousands of newsgroups are organized around a multifarious array of topics...world cultures, politics, gender issues: and talk. The alternative hierarchy includes the alt...alt.sex, alt.sex.bondage, and so on. Usenet readership figures show how popular the alt.sex newsgroup is: for the month of October 1993, there were an estimated 3.3 million readers...and approximately 2,300 messages per month (Shade, 1995. p 16-17).

"Pre 1987, computer porn on the Internet was practically zero. I've been looking at charting this technology so that we could see what was going on." Sansom went on to describe the evolution of available technology making reproduction of pictures much easier after 1987 with the arrival of new photographic systems from *Compuserve*. "Prior to that date," he said, "most

---

[5] Authored by United States Senators Exon and Coats, The Communications Decency Act (CDA), passed February 1996, enacted as Title V of the Telecommunications Act of 1996, prohibited posting indecent or patently offensive materials on the World Wide Web, harmful to minors. In a landmark 1997 decision The United States Supreme Court struck down the CDA as unconstitutional.

pornography on the Net was in the form of text or cartoons. Before 1993 there were very few convictions on Morality charges. In 1993, with possession in the law, law enforcement changed their approach because they knew that with possession, they could make it stick." Sansom argued that, "intent to distribute is much harder to prove in a court of law."

When the interview continued we broached the subject of public opinion and how, if at all, it impacts on legislation. Perhaps more directly on whether it reflects legislative decisions for budgets and extra funding for law enforcement. He argued that legislation and budgets are two separate areas. "It did not always follow that what was presented to committees would become law or that there would be funding if it did." Sansom also felt that enough priority was being placed on the subject of child porn on the Internet.

He disagreed with Viau but agreed with Decarie, arguing that the Internet is not creating more deviants. His reasoning was that the issue of the relationship of deviants and pedophiles to child porn on the Net has not been well analyzed:

> The public assumption of the relation of the two isn't backed up with any research data. There is an overlap but one zone doesn't encompass the other. So, how big is the overlap? Certainly from a law enforcement perspective and a psychiatric behavioural policy and a public policy perspective, that's the question. How big is that overlap?
>
> There is an overlap between active molesters, active pedophiles and child pornography but equally there is a range of possessors of child pornography who will never molest a child. What is that zone of the overlap? I don't know. There are a large proportion of child molesters who do not possess child porn. It's not part of their thing. Part of the reason could be that there is a relation between pornographic imagery and passive fantasy rather than active aggression.

> It is true that at one point, child porn on the Internet was zero. It is also true that it is increasing. It is equally true that the numbers of people with access to the Internet is increasing and it is also true that the numbers of bites of information is increasing. So the question is, is the overall amount increasing or not? Is the overall percentage what it was in 1978 when what were being stopped were 4" x 5" glossies at the border?
>
> At that the amount of seized material of child porn was probably 1.3% and I'm not convinced that now the proportion is any higher because of the Internet. Even with availability. In terms of Web traffic, a recent study in *Nature*, a couple of researchers...found, to their surprise, was that pornography was about 5% and child porn was 5% of that. So I'm not convinced that the numbers are going up.

On the matter of regulating Internet Service providers (ISPs), Sansom felt that the industry should regulate itself. "The local ISP may not even see what he is providing to you and I'm not convinced that your ISP should screen all your e-mails and transactions. Canadians don't want ISPs looking in on them when they are doing their banking.

Conclusion

My research into child pornography on the Internet began as a broad study of pornography on the Internet. Almost immediately I was confronted with images of children in sexually explicit and abusive situations. That was in 1999.

After arrangements were made with the various police forces to allow my enquiries to continue, I began compiling data, which has formed the basis of this thesis. Much of that information has been shared with several law enforcement agencies as well as several government departments. However, although I was promised reciprocation, information has been offered sparingly.

I am convinced that this lack of communication has not been perpetrated through any premeditation to deprive this study. Rather, it is another indication of

the disabilities hampering law enforcement, the judiciary and the legislators. There is just not much happening. Decarie specifically said that "most police work is done on public outrage...the problem is it's in the headlines one day and gone the next."

Public outrage, considered a motivation for legislators, is short lived. The general population seems more concerned that the Government may impose another form of control or 'censorship' over their freedom. Laws govern our behaviour in society, or perhaps they are the determinant factor of control. A law doesn't just happen; it begins as an idea, which, if it survives the political jousting, could, in a matter of years, become law; but then given the process whereby bills on the order paper die when a government is dissolved, it may not. The criminal element is learning very quickly how to benefit from technological advancement, but it seems Governments and bureaucracies, are not.

As though my research afforded an open forum, respondents openly shared their personal involvement with the subject of this study: child pornography. Anger and frustration at the lack of available support and funding, while very evident, seemed not to dampen the determination I witnessed among these participants in their fortitude to resolve this rapidly growing problem. The problem continues to exist. Therefore, this cannot be a conclusion; rather, it is yet another phase, the continuation of which demands further in-depth research and study. Having observed aspects of enforcement and control, my attention is now directed toward those accused as perpetrators, in particular, John Robin Sharpe.

Chapter

7

THE SHARPE CASE

Introduction

The case of Her Majesty the Queen v. John Robin Sharpe indexed as R. v Sharpe (1998) S.C.B.C. (Supreme Court of British Columbia) and ensuing court appearances in the British Columbia Court of Appeal and Supreme Court of Canada are a matter of public record. The charges against Sharpe stemmed from his possession of child pornography. It is his defense and subsequent outcome of these trials, which are important to this study.

The Canadian Constitution, which protects the rights of Canadian citizens, was central to his defense. The 'Constitution Act,' 1982 (79) was enacted as Schedule B to the *Canada Act 1982* (UK) 1982, c. 11. It came into force as the *Canadian Charter of Rights and Freedoms* on April 17, 1982.

Given law enforcement's previously noted frustrations with the lack of legislative tools to assist their efforts, R. v Sharpe provides the perspective of a case in which an accused was charged using section 163.1 of the Canadian *Criminal Code*. It also allows us to follow the process from Sharpe's arrest to his court appearances and subsequent arguments against sections of the *Criminal Code* which deal with possession of child pornography. We are then able to continue on to the defense in which he claimed that sections 163.1(1) and 163.1(4) of the *Canadian Charter* were unconstitutional.

The accused and the law

On or about April 10 1995, near Surrey in British Columbia [6], after a seizure by Canada Customs, John Robin Sharpe was charged with illegal possession when he was found with computer discs (CDs), which were seen to contain child pornography. Two charges were laid in connection to these CDs, which consisted of texts entitled: *Sam Paloc's Boyabuse – Flogging, Fun and Fortitude: A Collection of Kiddiekink Classics.* The first charge was laid for illegal possession under section 163.1(4) of the *Criminal Code*, the second for possession for the purpose of distribution or sale under section 163.1(3).

On or about the 13th day on May 1996, Sharpe was arrested for the second time; on this occasion, police entered Sharpe's home with a search warrant and charged him under section 163.1 of the *Criminal Code* after seizing books, manuscripts stories and photographs, which it was determined contained child pornography. This second time, two charges were laid against Sharpe: one charge for possession and one charge for possession for the purpose of distribution or sale.

The defense Sharpe presented to the British Columbia, Supreme Court, focused on several sub-sections of sections 2 and 15 of the Canadian Charter of Rights and Freedoms. The sub-sections in question read as follows: 2(a) *freedom of conscience and religion,* 2 (b) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication,* 2(d) *freedom of association* and 15(1) *Every individual is equal before and under*

the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

British Columbia Supreme Court, New Westminster, British Columbia,
R. v. Sharpe – [1999] B.C.J. No. 54

The Honourable Mr. Justice Duncan Shaw dismissed charges 2 and 4 against Sharpe. In so doing, he struck down and made void subsection (4) of section 163.1 of the *Criminal Code*: that section which encompasses possession of child pornography.

Prior to rendering his decision, Justice Shaw heard evidence presented by the Crown's witnesses, veteran Detective Noreen Waters of the Vancouver Police Department and Dr. Peter I. Collins a Forensic Psychiatrist. Waters advised the court that, in her opinion, the Internet was responsible for an "explosion of the availability of child pornography" (p.4). She argued that Section 163.1(4) had helped police obtain warrants to search for and arrest molesters who abused children. She further claimed that children are subjected to abuse while being exploited in the production of pornographic taped videos and films.

In Dr. Collins's opinion, there were several aspects why child pornography could be harmful to children. Collins had argued that pedophiles present as normal behaviour, sexual activity between children and adults as well as children with children. These depictions he argued are shown to children for the purpose of lowering any inhibitions they may have.

---

[6] The seemingly vague statements 'on or about and near' were explained by Commander Bouchard as being essential terminology in criminal court appearances. An exact time or place could provide confusion given variances in both time and perceptions of place.

Furthermore, Collins argued, "pornography excites some pedophiles into committing offences." The same child pornography augments pedophiles' "cognitive distortions." he continued. Such distortions, he explained "are erroneous beliefs by which pedophiles justify their aberrant behaviour" (Court transcript, p.4).

Collins presented two studies; the first by W. L. Marshall Ph.D. Marshall's paper, *The Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-Offenders* was offered as evidence that studies showed pornography often incited molesters to commit offences. In the second article he presented, Collins quoted from *Criminal and Developmental Histories of Sexual Offenders* by D.L. Carter, R.A. Prentky, R.A. Knight, P.L. Vanderveer and R.J. Boucher of the Massachusetts Treatment Centre. In this study, he argued, the authors had reported on, p.197, that "mildly erotic stimuli" inhibited aggression while "highly erotic stimuli" increased aggression (p.6).

In his conclusion, Collins stated that pedophiles will very often, genuinely believe that sexual activity between children and adults is perfectly normal. Furthermore, he argued "children are abused in the making of pornography and that pornographic films or photographs are a record of their abuse" (p.5).

Justice Shaw questioned Collins's earlier statement that pedophiles sometimes use pornography to aid in masturbation. The court wanted to know his opinion on how pornography affected both the relieving and inciting effects. The Justice wrote that Dr. Collins was not able to offer conclusive evidence

which of the two had a greater effect. Furthermore, the justice wrote, that Collins, the Crown's second witness, is a clinician rather than a researcher.

Justice Shaw stated that Crown council had conceded s-s. (4) of the *Code* violates the guarantee of freedom of expression as in s. 2 (b) of the *Charter* and that he agreed with this concession (p.7). Therefore, he argued, it was necessary to determine if s-s. (4) was justified under s. 1 of the *Charter*. In examining the constitutionality of 163.1, Justice Shaw remarked that – Ontario (Attorney General) v. Langer (1995), 97 C.C.C. (3d) 290 (Ont. Ct. Gen. Div.); leave to appeal to S.C.C. refused (1995), 42 C.R. (4^{th}) 410n. – was the only other court decision which had addressed the issue.[7]

Shaw's examination of the evidence allowed for a conclusion pursuant to the deleterious and salutary effects of the point in question. Justice Shaw argued that while the *Code* is helpful in protecting children, he had heard no actual evidence to confirm an increase in danger to children, given the statements of the Crown's witnesses; which statements of evidence, he concluded, were based only on assumption and not on fact. He further argued, "There is no evidence that the production of child pornography will be significantly reduced if simple possession is made a crime" (p.10).

Justice Shaw focused his argument on areas of privacy and freedom of expression having reflected on previous precedents in relation to section 2(b) of

[7] Eli Langer, an Ontario artist, was charged October 1993 under section 163.1 of the (then new) Criminal Code, for exhibiting [his] paintings depicting children engaged in sexual acts with adults and other children. The honorable Mr. Justice David McCombs dropped the charges ruling that the works had "artistic merit." Application to the Supreme Court of Canada to hear the Crown's appeal was denied. The Ontario Government seized the works with the intention of destroying them but they were eventually returned to the artist.

the Charter: Ford v. Quebec (Attorney General), [1988] 2 S.C. 712, dealt with a broad interpretation of freedom of expression: R v. Keegstra (1990), 61 C.C.C. (3d) 1 (S.C.C.) argued by Dickson C.J.C. for fundamental *Charter* values in a free and democratic society; and an individual's reasonable expectation through the *Charter* for privacy as described in R. v. Dyment (1998), 45 C.C.C. (3d) 244 (S.C.C.) [8]

In summation, Justice Shaw argued that prohibiting simple possession of child pornography was a profound invasion of personal privacy. He also considered this to be an invasion of freedom of expression, arguing that "the prohibition extends to...all...who make no harmful use of pornography" (p.13). The Crown appealed the case to the B.C. Court of Appeal.

Court of Appeal of British Columbia
R. v. Sharpe BCCA 1999 416 Docket CA025488 Date 30-06-1999

The case was heard April 26th and 27th 1999 in Vancouver, B.C. with judgment being delivered, June 30th 1999. Three justices heard the appeal. The Honourable Madam Justice Southin wrote the reasons for judgment; The Honourable Madam Justice Rowles wrote concurring reasons. The Honourable Chief Justice McEachern wrote a dissenting opinion.

[8] In April, 1982, Brandon Dyment was involved in a car accident. Dyment had consumed one beer and an anti histamine tablet. Without his knowledge or permission, the doctor gave a blood sample to the RCMP and Dyment was charged and convicted for driving while impaired under s.236 of the Criminal Code. Dyment's argument that the police action was against his constitutional rights under s. 7 and s. 8 was upheld by the court. The Crown appealed to the court of appeal where the appeal was dismissed under s. 8. The Crown appealed to the Supreme Court of Canada where the appeal was dismissed.

The Honourable Madam Justice Southin

Opening her argument with the meaning and interpretation of words, Justice Southin wrote that 'child' in her view was someone below the age of puberty. Quoting the *Criminal Code* (*criminal Code, 1892,s. 269*), she argued that for females, child was under the age of twelve while for males, under the age of fourteen. However, she added, "fourteen is the age of consent in Canada and has been, for girls, for over one hundred years...I define a "child" as anyone under the age of fourteen" (p.3).

The Justice continued her remarks describing the many ages and identities of children, as society knows them. As such, she concluded with the statement "when I use the term adolescent, however, I mean anyone between fourteen and eighteen" (p.4). By identifying eighteen as the age up to which a child could be considered an adolescent, she further described the *Criminal Code* legislation, 163.1 (1) in relation to the referent, child pornography and how it related "to a person who is or is depicted as being under the age of eighteen" (p.4).

All of the above preceded Justice Southin's enquiry into the *Code*, its relevance in relation to child pornography, what it prohibited and, therefore, its application to the case being appealed. Again she reiterated the importance of words arguing that 163.1 (1) (b) "forbids possessing materials which 'advocate' or 'counsel'...sexual activity with a person under the age of eighteen". But, she continued "it does not address advocating or counseling such activity" (p.7). Justice Southin emphasized her concern that possession of any written material

should be considered criminal in a "free and democratic society." This she stated was critical to the case.

Concluding her remarks, the Justice evoked memories from history, when under despotic rule, rights have been denied. "Legislation which makes simple possession of expressive materials a crime can never be a reasonable limit in a free and democratic society; such legislation bears the hallmark of tyranny" (p.44). Justice Southin dismissed the appeal.

The Honourable Madam Justice Rowles

Justice Rowles argued from the perspective of legislation being too broad in relation to the charge. Her question dealt with constitutional over-breadth. In R v. Heywood, (1994) 3 S.C.R. 761 at 792-93, 94 C.C.C. (3d) 481, it was argued that "...in some applications the law is arbitrary or disproportionate" (p.50). In recognizing the respondent's argument [Sharpe], Rowles centered on 163.1 (4) being identified as infringing on the "private possession of child pornography" (p.59).

Focusing on the 'proportionality' test, as it was presented by Shaw, Justice Rowles argued the objectives of the legislation against the effects. The British Columbia Civil Liberties Association ("BCCLA") presented its point of view through council, Andrew D. Gay: "...that it is not aware of another Canadian criminal law, either current or historical, that provides for a sentence of incarceration for the mere possession of expressive material" (p.59)

Included in the Justice's argument were references to England's *Protection of Children Act 1978,* which, it was noted, restricts its child

pornography legislation to photographs and pseudo [morphed] photographs, not to written or imaginary works. Other references to the argument of Sharpe have been quoted by Rowles in showing the over-expansiveness of the legislation. His argument, noted by Justice Rowles in her reasons, includes the possibility of child pornography references being so broad that they could include works not shown to pose a danger to children. Similarly, it was argued, the legislation could include people who also pose no danger to children.

In conclusion, The Honourable Madam Justice Rowles argued that the benefits described in 163.1 (4) are insufficient in comparison to the damaging effects; the consequences of which serve to describe a constitutional act that is overbroad. "Even if the importance of the objective itself (when viewed in the abstract) outweighs the deleterious effects on protected rights, it is still possible that the actual salutary effects of the legislation will not be sufficient to justify these negative effects" (p.68). Rowles J. denied the appeal.

The Honourable Chief Justice McEachern

Chief Justice McEachern wrote his dissenting reasons in relation to the case, the *Charter*, the arguments presented to the court and his opposition in part to the trial judge [Shaw] as well as the opinions of his fellow Appeal Court Judges. Central to his argument was the theme that children must be protected. As such, he continually made reference to those paragraphs in the *Charter of Rights and Freedoms* which propose just that.

It was his opinion that the sections of the *Criminal Code* of Canada under review, 163.1 (1) and 163.1 (4), did not infringe on the rights of the accused to

the extent they were described by others in the proceedings; rather, they provided protection for the victims of child pornography: the children. It was in deference to children that he argued, "It must be noted...that the protection of persons possessing child pornography, for any purpose, is so far removed from the core values of the ***Charter*** that it rates very low on any scale of importance." He continued, "Any real risk of harm to children is enough to tip the scales in favour of the legislation in the context of this case" (p.84).

Furthermore, he argued, "The important question is whether any particular material falls within the definition of child pornography, not whether that material is "highly" or "mildly" erotic" (p.77). The chief justice's argument was that any material could be deemed as child pornography, pornography or "not pornography at all" (p.77) regardless of the level of expression displayed. It's content whether violent or not, mild or highly erotic is irrelevant in defining child pornography and continued that, any child pornography is harmful to children. Chief Justice McEachern emphasized that Sharpe himself had admitted that "some kinds of pornography is harmful to children and should be prohibited" (p.77).

He noted that the arguments of Justice Shaw stressed the effects of intrusion into the rights of those possessing child pornography rather than the protection the *Code* affords children; but in his view the rights of children took precedence over the rights of the accused, in contradiction to the reasons espoused by Justices Shaw, Southin and Rowles.

"I have no doubt the purpose of s. 163.1 (4) as part of a comprehensive prohibition against child pornography is a legitimate legislative initiative for the protection of children" (p.80). Chief Justice McEachern further argued that any weighing of deleterious and salutary effects of the *Charter*, in respect to the *Code* must account for the advantages of possessing child pornography in respect to the 'market.'

Possession of child pornography, he argued, creates a market which, if it were eliminated would reduce not only possession, sale and distribution, but also the harm and abuse children are suffering by its production. In his conclusion, Chief Justice McEachern proposed that [he] "would allow the appeal, set aside the acquittals, and direct that the trial of the Respondent proceed on all four counts of the indictment" (p.84-85).

R. v. Sharpe – *The Supreme Court of Canada*
Neutral citation: 2001 CCC 2. File No.: 27376. 2000: January 18, 19; 2001: January 26.
ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA
Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

The Court accepted the Accused's (Sharpe) acceptance that "harm to children justifies criminalizing possession of some forms of child pornography" (p.4). As per the arguments of: McLachlin C.J. and Iacobucci, Major, Binnie, Arbour and LeBel JJ.... "The fundamental question therefore is whether s. 163.1(4) of the *Code* goes too far and criminalizes possession of an unjustifiable range of material" (p.4). Counter to this argument, the court argued, the Crown's objective is to disprove the defense beyond a reasonable doubt (p.3).

per McLachlin C.J. and Iacobucci, Major, Binnie, Arbour and LeBel JJ.:

Six of the Supreme Court of Canada's nine judges argued that while the *Criminal Code* offers protection for children, sections contravene the rights of Canadians' in accordance with parts of the *Charter of Rights and Freedoms*. The specific sections were those argued by John Robin Sharpe. However, this majority of the court did not unequivocally agree with Sharpe's defense.

The argument presented here was not to strike down section 163.1(4) as had been the case in the Supreme Court of British Columbia; an argument supported by the majority of justices in the British Columbia Court of Appeal. Rather, the majority of justices of the Supreme Court of Canada appeared to be looking for compromise. Therefore, it was proposed that by inserting two new categories, decriminalizing certain classifications within the code, under section 163.1(4), the remaining sections dealing with child pornography could stand.

Section 163.1 (4), they argued, is disproportionate in its prohibition: "it regulates expression where it borders on thought. To this extent...the infringement of s. 2(b) of the *Charter*, contemplated by the legislation, is not demonstrably justifiable under s. 1" (p.5). The justices continued, that the law encompasses areas describing "two categories of material that one would not normally think of as child pornography and that raise little or no risk of harm to children".

The presentation continues with a description of the two categories in question: "(1) written materials or visual representations created and held by the accused alone, exclusively for personal use; (2) visual recordings created by or

depicting the accused that do not depict unlawful sexual activity and are held by the accused exclusively for private use" (p.4).

The justices, therefore, wrote in favour of upholding section 163.1(4) of the Criminal Code allowing for the continued criminalization of simple possession, while specifying the two exceptions which, in their view, posed no reasoned risk of harm to children (p.4). However, the changes do impact on section 163.1(1) which deals with publication, distribution and circulation of child pornography.

The justices concluded by stating that 163.1(4) would stand as long as the two exceptions were added. Furthermore they reasoned, in their view, "courts should take an objective approach to determining whether material falls within the definition of child pornography; the various statutory defenses (i.e., artistic merit; educational, scientific or medical purpose; and public good) must be interpreted liberally to protect freedom of expression, as well as possession for socially redeeming purposes" (p.4).

Per L'Heureux-Dubé, Gonthier and Bastarache JJ.

Concerning themselves with democratic rights and principles, L'Heureux-Dubé, Gonthier and Bastarache JJ., argued that individual freedoms are not absolute. Furthermore, the justices argued that however the matter of rights and freedoms are viewed, the expression of such rights cannot be solely those of the communicator. The context of expression is always in relation to the meanings conveyed to others which "it must be remembered...the individual right to free expression is exercised within a broad societal context" (p.50).

Arguing a need to monitor that which could be harmful to children, the Justices further disputed any presentation to the court which could in some way limit the rights of those most in need of Parliaments support. In so doing, the Justices presented as precedents, cases which had dealt with freedoms of expression, as defined in the *Charter*, and in particular *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, " where Dickson C.J. stated at p. 779:

> In interpreting and applying the *Charter* I believe that the courts must be cautious to insure that it does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons (p.47)[9].

The dissenting justices argued that the very existence of child pornography, as described in the Criminal code, s. 163.1(1), is in itself both harmful to children as well as society. This reasoning paralleled that of Dr. Peter I. Collins the second witness who appeared in R. v. Sharpe before Justice Shaw of the B.C. Supreme Court. Transcript of the evidence offered by Dr. Collins lists numerous areas within his expertise where, as a Forensic Psychiatrist, he focused on pornography as being harmful to children.

"Children are abused in the making of pornography and... pornographic films or photographs are a record of that abuse" (p.5). Furthermore, the justices continued:

---

[9] R. v. Edwards Books and Art Limited, in The Supreme Court of Canada, appellants and respondents: Her Majesty the Queen, Nortown Foods Limited, Longo Brothers Fruit Markets Limited: Thomas Longo and Joseph Longo as well as Paul Magder. The case centered on whether, as retailers, Edwards, Nortown, Longo and Magder had the right to sell goods on a Sunday in contradiction of the Ontario Retail Business Holidays Act. The Court upheld the Act and condemned those accused. In so doing, the Court argued that "The act was not a surreptitious attempt to encourage religious worship but rather was enacted for the secular purpose of providing uniform holidays for retail workers" (p.3).

> This harm exists independently of dissemination and flows directly from the existence of the pornographic representations, which on their own violate the dignity and equality rights of children. The harm of child pornography is inherent because degrading, dehumanizing, and objectifying depictions of children, by their very existence, undermine the *Charter* rights of children and other members of society. Child pornography eroticizes the inferior, social, economic, and sexual status of children. It preys on preexisting inequalities (p.54).

In concluding arguments, the privacy and protection of children were again repeated by the justices, as central to parliamentary concerns indicated in existing legislation. In their opinion, the laws are in place to destroy available child pornography and, thereby, protect children, not pedophiles. The "beneficial effect on the privacy interests of children is proportional to the detrimental effects on the privacy of those who possess child pornography" (p.81).

The majority ruling of the Supreme Court of Canada, allowing the appeal with two exceptions, sent the case of John Robin Sharpe back to the B.C. Supreme Court for trial. It reappeared, again, on the docket of Justice Shaw as X050427. Trial date was set and took place January 21 – 24, 28 – 31 and February 4 – 7, 2002. Judgment was rendered March 26, 2002.

The Supreme Court of British Columbia
R. v. Sharpe, 2002 BCSC 423 – 20020326 – X050427 – Vancouver

Having been charged on two counts of possession and two counts of possession with intent to distribute, Sharpe reiterated his Charter defense. Defense witnesses were James L. Miller, Professor of English, University of Western Ontario whose courses include comparative literature, gay literature, transgressive literature, literature of taboo, literary theory and methods of literary

criticism and Lorraine Weir, Professor of English at the University of British Columbia whose specialties are literary theory, literary criticism and the history of literary criticism.

Justice Shaw wrote in respect to the items seized from Sharpe that the seizures included photos and film later developed into photographs showing boys in sexual poses as well as being involved with "explicit sexual activity" (p.2). Seized written stories were bolstered by computer discs which, when downloaded added to the total pages authored by Sharpe. Justice Shaw said he would first deal with the written work since the law differs from photographs to written works.

The Justice wrote of 245 written pages – in which were included seventeen short stories (appendix ii), one of which was entitled *Sam Paloc's Boyabuse* – for which he chose the abbreviated referent "*Boyabuse.*" A second story, "*Stand by America, 1953*" received the Judge's focus because the prosecution had stated, in their opinion, this was child pornography. Shaw quoted from the *Code*, "any written material...that advocates or counsels sexual activity with a person under the age of eighteen years ...would be an offence..." (p.7).

Shaw had stated that since it must be proven a work either counsels or advocates sexual crimes with minors, the "possession of such material is not a crime" (p.7) within the definition of child pornography in the *Code*. "Regardless of the approach I apply, I arrive at the same conclusion," he argued; "that

Boyabuse and Stand by America, 1953 do not counsel or advocate the commission of sexual crimes against children" (p.8).

While describing both works as 'morally repugnant' Shaw continued to argue that, in his opinion, neither story suggested the pursuit of sex with children. However, he concluded, if his judgment was wrong in regard to advocating or counseling, then he would address the defense of 'artistic merit.' Artistic merit is described in section 163.1 (6) of the *Criminal Code* as being a valid defense against a charge of child pornography if it is proven the work is either educational, scientific, serves a medical purpose or could be considered as 'art.' The defense's witness Professor James L. Miller was called to give his opinion on Sharpe's written works.

Professor Miller presented to the court an opinion which offered that both *Boyabuse* and *Stand By America, 1953,* did indeed have literary and artistic merit. Miller's conclusions were derived from an evaluation of the work, which, in his opinion consisted of an anthology of stories linked together chronologically and thematically. A style, he observed, which suggested a known literary structure.

Describing both works as parodies written allegorically he suggested Sharpe's plots had shown an increased sophistication as the writing progressed. This opinion was contrary to the Crown's witness, Professor Paul Delaney, Chair of the Department of English at Simon Fraser University, who had said that after reviewing the work, from different avenues, he could find no artistic or literary merit in Sharpe's writing:

> Mr. Sharpe's style is crude and almost childish in its simplicity; there are spelling and grammatical errors, ambiguities and incomplete phrasing; there is no significant variation or dimensionality; the characterization is as crude and simple as the narrative prose (p.15).

Professor Weir, the defense's second witness, believed that both titles in question had artistic merit. Her opinion was based on a perspective of evaluation she referred to as "Classical Hermeneutics" which was in contrast to "Sacramental Hermeneutics." The latter, she advised the court, defined a moral viewpoint for examining texts based on biblical teachings.

Wanting to separate her evaluation from moralistic tendencies, Weir explained her assessment as being both intrinsic and extrinsic; an examination of the original text to determine the literary quality along with comparisons to works by the author as well as comparative works by other authors. In preparation for the court appearance, Weir read all of Sharpe's written work.

Her conclusion was that the works contained considerable irony and fortitude in their literary expertise. Both methods, she argued "displayed Mr. Sharpe's skill as a writer" (p.15). Furthermore, Professor Weir argued similarities between Sharpe's works and those of Victorian era authors; here she made comparisons of style which drew on the works of Victorian era poet, Algernon Charles Swinburne (1837-1909). Some of this author's works dealt with depictions of schoolboy flogging. Weir considered the fortitude displayed by the boys, in these writings, to be similar to that in Mr. Sharpe's works.

In his summation, Justice Shaw said that he gave "substantial weight to Professor Miller's evidence" (p.13) as well as being "impressed with Professor

Weir's opinion evidence" (p.15). Of Professor Delaney, Shaw stated "I do not accept this evidence" (p.17) neither would he accept Professor Delaney's opinion arguing that the evidence presented had been greatly influenced by moral standards. The issue at hand, according to Shaw was artistic merit not morals.

Justice Shaw wrote that he found the Crown's second witness, Dr. Shaberhan Lohrasbe, a forensic psychiatrist, unqualified to express an opinion on the artistic merit of Sharpe's work. Lohrasbe, who assesses and treats sex offenders, considered *Boyabuse* and *Stand By America, 1953*, to be violent and pornographic. Sharpe's work, he stated, "conveyed the idea that violence and sex are enjoyable" (p.18). This, argued Shaw, was irrelevant in a case whose defense is artistic merit not pornography.

The Crown had argued, Sharpe's work was produced simply as pornography and not as art. Sharpe had been arrested for possession of pornography and possession with the intent to distribute. Shaw, however, dismissed this claim stating that:

> In my view, the defense of artistic merit under s.163.1 of the *Criminal Code* does not depend upon whether the written material is considered "pornography". The question to be answered is whether the writing has artistic merit, irrespective of whether the work is considered pornographic (p.19).

Shaw continued his summation by stating he accepted the evidence of the two defense witnesses over the one Crown witness. He did not mention Dr. Lohrasbe, one can only assume, since Lohrasbe had not offered evidence from the perspective of artistic merit. Furthermore, Shaw set aside the Crown's

arguments dealing with the seized written material since it had presented its case focused on pornography.

Having considered all the evidence presented to the court, Justice Shaw concluded Sharpe's work dealt with sex and violence directed at boys at or under the age of 12 years of age. He compared it to works of the Marquis de Sade (1740 – 1814) in which were scenes of violence and sexual acts perpetrated on women and children. Scenes, he said, which were far in excess, for their violence than those of Sharpe. He acknowledged the scholars who presented evidence and noted that they had identified artistic merit in de Sade's work.

Comparisons between Sharpe and other authors led the Justice to add his own views, having personally read Sharpe's writings:

> On my reading of *Boyabuse* and *Stand By America, 1953*, I find evidence of artistic merit...his characterization is thin, but it does exist and at times is expressed with a reasonable degree of skill...Mr. Sharpe shows skill in the literary quality of his work and the literary devices he uses...His works indicate that he is a writer who seeks to express himself in a manner that has literary merit (p.19).[10]

Mr. Justice Shaw found Sharpe not guilty of all counts which dealt with seized written material. His reasons for judgment included the evidence of artistic merit as well as no evidence that the works advocated or counseled sexual crimes against children; consequently he concluded, the works are not illegal. Sharpe was found guilty on charges of possession of child pornography in the form of photographs. On May 2nd. 2002, Sharpe was sentenced to four months detention, at home, under electronic monitoring.

Conclusion

Studying R. v. Sharpe allows the observer an opportunity to view in microcosm that which society is controlled by, its laws. As Commander André (Butch) Bouchard said during his earlier interview, "laws are a book that we live by; it's the system that lets us down." And perhaps, more than anything, it is that system which came under scrutiny during the Sharpe trials.

Dissenting judges all referred, in their reasons, to the importance of protecting children. Justices who argued in favour of Sharpe's rights, rarely, if ever, discussed the rights of children: the rights of the victims. Rather, it was the rights of the accused which received their attention. And R. v. Sharpe became the precedent by which subsequent justices will rule. Therefore, we must surely ask the question, in these trials, did the system perform favourably or not?

In question are the two documents which form the crux of the argument: the *Charter of Rights and Freedoms* and the *Criminal Code* of Canada. Both documents exist to protect Canadian society and we must ask whether they do? R. v. Sharpe more than anything has allowed us to see how the controlling, structural levels referred to in this thesis, law enforcement, Judiciary and legislators work to uphold the principles expounded by the *Charter* and the *Code*. The judgments of Justice Shaw produced a great deal of public outrage in the media. Since legislators are influenced by public opinion, was the outrage justified? Under a section of the *Criminal Code* specifically worded to allow law

[10] Yet Shaw was just as unqualified as Professor Lohrasbe to express an opinion on artistic merit.

enforcement opportunity for arrest on possession of child pornography, Mr. Sharpe was the accused perpetrator; a known pedophile.

While appearing before Justice Shaw, representing himself, Sharpe was successful in establishing his rights over those of his victims. The Justice disregarded the evidence of Crown witnesses preferring to rely on his own judgment. Significant here was Shaw's reference to the only precedent available, that being Ontario v. Langer whose artistic depictions were considered child pornography although no actual children were involved.

Even more important during this trial was the fact that there was no quantitative evidence offered for either side. There were no statistical data presented to corroborate either argument and so, Shaw established a qualitative judgment against the code. His decision that Sharpe's rights had been violated avoided supporting the rights of children, something that society itself often does.

A similar pattern occurred in the B. C. Court of Appeal where Justices Southin and Rowles argued the code represented too broad a spectrum of control. Again, there was nothing quantitative, no substantive data, no precedent dealing with child pornography where children were involved. Therefore, judgment relied on the subjective views of the two justices. Rights, as they were presented favoured the accused not because Southin and Rowles declined to offer protection to children, but rather that they were, as was Shaw and subsequently the Supreme Court Justices, confronted by a process which

seems unable to substantiate evidence quantitatively meaning they could not conclusively prove harm to children.

This argument was presented within the reasons for judgment by the six justices of the Supreme Court in conformity with the majority arguments of the preceding cases in which John Robin Sharpe appeared. Surprisingly, the judges argued that Parliament did not require "scientific evidence" to write the law that criminalizes possession causing possible harm to children. By the same token, the Supreme Court's majority accepted the arguments of widely held views from the Supreme Court of British Columbia and the Court of Appeal of British Columbia that the Code is too broad in its application for protecting children. It was agreed by the majority that children are not in harm. There was no scientific evidence presented to substantiate this argument either.

Nor was scientific evidence apparent in the decisions of Justice Shaw. Repeatedly the judge chose to include his own opinions over those of expert witnesses arguing artistic merit in the writings when most would have preferred he address the issue of the child pornography which was seized from a known pedophile. Shaw established precedent which legislators, the judiciary and law enforcement will have to deal with in the system, when applying laws that deal with child pornography.

Chapter

8

RECOMMENDATIONS AND CONCLUSIONS

Recommendations

1.

Canadian *Criminal Code* amendments

My recommendation is that there be amendments to the *Criminal Code* whereby researchers would be able to work in conjunction with and under strict supervision of law enforcement. Academic license is essential if there is to be a compilation of responsible, empirical data, but this will never happen if the threat of arrest hangs over the researchers.

2.

Budgets and tools

Budgets must be increased substantially and resources improved. All the police officers interviewed complained about the unacceptable situation whereby, law enforcement works with confiscated computers because their own are old. The tools must be provided if they are to do the job of protecting children and exude efficiency. Budgets would need to reflect the cost of equipment as well as the necessary person-hours required to do the job properly.

3.

Policy

A national policy must be initiated allowing for trained officers, expert in Internet surveillance, to link all Canadian law enforcement together.

4.

Recruitment

An effort must be made to bring new officers into the field of electronic surveillance to provide new generations of law enforcement when the experts retire or resign. This model would provide consistency and the necessary structure from which to develop realistic quantitative data to assist all levels of decision making; replacing subjective with objective thought.

5.

Monitoring by ISPs

I would recommend that there be a concerted effort on the part of the Federal governing party to seriously consider previously unsuccessful, opposition, private member's bills to have ISPs monitor all Internet activity related to child pornography.

6.

Seminar

It is my recommendation that a seminar be planned for the very near future. The location of which should be Ottawa, the nation's Capitol. Funding would be requested from the office of the Solicitor General. Organization of the seminar would be coordinated by Concordia University's Sociology and

Anthropology Department in conjunction with the RCMP. Lieutenant Gervais Ouellet of the S.Q. has already expressed a willingness to work with the University.

Interested parties would be invited to present published papers and any unpublished work they may have that would be related to the topic – Child Pornography on the Internet. I would hope to add a special guest to the list of participants: Max Taylor PhD, Professor of Applied Psychology and Director of the COPINE Project, department of Applied Psychology, University College Cork, Ireland. Professor Taylor has spoken in Canada before and I know Lieutenant Ouellet meets with him from time to time.

The COPINE Project is probably the major agency of its type in the world having originally been formed to contribute to the development of facilities for street children. More recently, it has focused on the sexual exploitation of children on the Internet. As such, it is an important vehicle for the collaboration of Taylor and his co-authors, Dr. Ethel Quayle and Ms. Gemma Holland, with whom he has published several works dealing with child victim related issues. This would give an excellent overview of the European perspective.

During the interviews conducted for this thesis, a need was often expressed for a Canadian forum to discuss child pornography, something which originated with Jacques Viau. The object in mind would be to combine data and direction from the various levels of involvement, law enforcement, judiciary, legislators (Federal and Provincial), media, clinicians and researchers as well as invited members of the public. The purpose and eventual expectation would be

to provide a clear and concise Canadian plan with which to influence future legislation.

7.

Supply and demand – purchases by credit card

The recommendation would be that all credit card purchases related to child pornography be reported, by the credit card companies, to law enforcement agencies. While such a recommendation would seem to present a monumental task, I would argue that all corporate accounts are subject to audit. As such, transactions can be identified and linked to either the producers or the purchasers of child pornography. By identifying the purchasers, we would remove the market, which in turn would go a long way toward the eventual elimination of the production.

I originally presented this recommendation in 1999 (p.88-89) but was told that it would be extremely difficult to acquire the assistance of credit card companies. Knowing that the *Criminal Code* expressly forbids anyone to benefit from such illegal sales, one would wonder if banks and credit companies fully appreciate that they may be inadvertently contributing to such transactions by not performing a measure of self-regulation as it affects a portion of their sales.

The FBI's 'Operation Avalanche' identified purchasers of child pornography on-line but did not extend the operation to include the on-going assistance of credit companies or banks. While arrests have been minimal, for those individuals identified in Operation Avalanche and subsequently, Operation Snowball and operation Ore, one has to believe that business institutions would

be a great deal more successful in self-regulating given the stigma which would be attached should they not cooperate. Considering that these corporations would surely not be willing participants in illegal activities, their recruitment to this recommendation, I believe, could be highly successful in going a long way to eliminate the problem as well as protecting children.

Finally, we must recognize the ability of businesses such as these to circumvent borders in their international trading. The power and influence held by these companies could prove to be the catalyst legislators, Jurists and law enforcement agencies need to afford the type of progress internationally required to eliminate child pornography from the Internet.

Conclusion

Andre (Butch) Bouchard Retired from the Montreal police force in July 2004. Jacques Viau retired; Noreen Waters retired; Emmet Milner retired; and Dave Jeggo retired. Their reasons for leaving the police varied but what they had in common was that each was an expert in the field of child pornography. Moreover, each was cognisant of the effect the Internet has had in perpetuating the abuse of children.

The abuse of children is probably one of the most detestable actions anyone can perpetrate on societies most vulnerable. Given the prolific writings on child abuse, this distressing legacy has been around for a very long time. However, with the growth of the Internet, what had been an issue carried out secretly, became a very public and very lucrative business for some extremely unscrupulous people.

Because of the Internet, the sexual abuse of children in child pornography has become a commodity very much in demand on-line. The public show their disgust and ask for ways to restrict its showing; the media sensationalise the occasional arrest but do little else. Crown Prosecutors have been shown to refuse cases dealing with child pornography (see Detective Noreen Waters) and Judges determine the outcome of child pornography cases based on subjective reasoning which often does not take into consideration the basis of the original arrest: that children were victimized (see Sharpe). Legislators seem to amend the laws because of public outrage not because children are being abused. This is why Viau recommended a committee (p.68).

This research has shown no concise plan of action linking the various law enforcement agencies, the judiciary or legislators. Furthermore, the different administrative levels viewed child pornography on the Internet differently. What was obviously an immediate concern for some was not a priority for others.

Dr. Peter Collins, a clinician dealing with deviants and pedophiles categorically described an increase in deviant behaviour because of the internet; while Justice Shaw declared himself more capable in judging the subject than Collins. He chose to decide John Robin Sharpe's fate based on literary, artistic merit rather than possession of child pornography in written form.

From the beginning, I heard "we have to protect the children" but there is little evidence that much has been done to accomplish that. It could be the lack of willingness on the part of those in authority to consider this problem to be one of theirs and to take it seriously. It could be a lack of determination. Whatever the reason, the Internet continues to expand, as does the abuse of children.

The subject unfortunately is endless. This thesis has only touched the surface and I hope in so doing, has opened avenues of thought which, if followed might correct a societal abhorrence which we should all be extremely concerned about. We would also do well to pay particular attention to the development of the Internet. Therefore, this conclusion is not an end but only a beginning to research, which must continue until we do 'protect the children'.

* * * * * * * *

REFERENCES

Arnaldo, Carlos A.
2001 Child Abuse on the Internet: Ending the Silence, Oxford: UNESCO Publishing/Berghahn Books
Besharov, Douglas J.
1988 Protecting Children from Abuse and Neglect: Policy and Practice, Springfield, Illinois: Charles C. Thomas
Blackwell, Tom
2004 "Municipality may block child porn web sites" National Post: June 23
Bryden, John
2000 "Child porn seen as election sleeper" Southam Newspapers: October 16
Committee on Sexual offences against Children and Youths
1984 The Badgley Committee, Sexual Offences against Children, Law and Government division, Ottawa: Library of Parliament
de Kerckhove, Derrick. Wade Rowland, ed.
1997 Connected Intelligence: The Arrival of the Web Society, Toronto: Somerville House Publishing
Department of Justice Canada
2000 Borders Conference – Rethinking The Line: The Canada – U.S. Border, Vancouver: The Research and Statistics Division, Department of Justice
Ess, Charles, ed.
1996 Philosophical Perspectives on Computer-Mediated Communication, Albany, New York: State University of New York Press
Fife, Robert
1999 "Child porn is flooding into B.C. Reform M.P. repeats call for Ottawa to override Charter" National post: vol. 1 NO. 108, March 3
Fife, Robert and Mark Kennedy
2004 "P.M. soft on kid porn, Harper says" Canwest News Service: June 19
Galton, Gwen and Lynn Morgan
1994 The Internet: Beginners Guide and workbook, Mississauga, Ontario: Gwen Galton Consultants
Gibson, Pamela-Church and Roma Gibson, eds.
1993 Dirty Looks, Women Pornography Power, Worcester, Great Britton: BFI Publishing
Goodman, Danny
1994 Living at Light Speed: Your Survival Guide to Life on the Information Superhighway, New York: Random House
Government of Canada
1982 The Criminal Law in Canadian Society, Ottawa: Government of Canada
Gumperz, John J., and Dell Hymes
1986 Directions in Sociolinguistics: The Ethnography of Communication, Padstow, Cornwall: T. J. Press Ltd.

Hall, Neil
1999 "Possession of child porn upheld in B.C. province pledges to appeal to Supreme Court" Vancouver Sun: July 2
Harper Christopher
1998 And That's The Way It Will Be, New York: New York University Press
Health Canada
1990-1993 Child Sexual Abuse: Professional Training and Public Education, Ottawa: Health Canada
Hymes, Dell
1964 Language in Culture and Society, New York: Harper & Row
Hymes, Dell
1974 Foundations in Sociolinguistics, Philadelphia; University of Pennsylvania Press
Information Highway Advisory Council
1995 The Challenge of the Information Highway, Ottawa: Industry Canada
Jenkins, Philip
2001 Beyond Tolerance: Child Pornography on the Internet, New York New York University Press
Jones Steven G. ed.
1997 Virtual Culture: Identity and Communication in Cybersociety, London, Thousand Oaks: Sage Publications
Jones, Steven G. ed.
1995 Cybersociety: Computer-Mediated Communication and Community, Thousand Oakes, California: Sage Publications
Jones, Steven G. ed.
1998 Cybersociety 2.0: Revisiting Computer-Mediated Communication and Community, Thousand Oaks, California; Sage Publications
Lacombe, Dany
1988 Ideology And Public Policy: The Case Against Pornography, Toronto, Ontario: Garamond Press
Majendie, Paul
1999 "Police are losing the fight" (Reuters) National Post: March 2
Marshall, Elaine
2004 "Toronto cops help track child-sex victims" Gazette: March 27
McAuliffe, Wendy
2001 Police lack resources for paedophile hunts, Operation Cathedral. ZDNet (UK) News Story
McGrath, William T. and Michael P. Mitchell eds.
1981 The Police Function in Canada, Toronto: Methuen
Moore, Dinty W.
1995 The Emperor's Virtual Clothes, Chapel Hill, North Carolina: Algonquin Books of Chapel Hill
Morton, F.L.
1990 Law, Politics and the Judicial Process in Canada, 6th. Edition, Calgary: The University of Calgary Press

MTV News: Archive
2003 Pete Townshend: MTV.com
North County Times
2002 Vigilantes mistake paediatrician for pedophile and attack home, The Californian, N.C. Times, nctimes.net: San Diego
Palmer, Adrian S., Peter J. M. Groot, George A. Trosper Ed.
1981 The Construct Validation of Tests of Communicative Competence, Washington: Tesol
Parker, Graham
1933 An Introduction to Criminal Law, Toronto: Methuen
Pilieci, Vito
2003 "Microsoft's MSN to shut down most web chat" Gazette: September 24
Pilieci, Vito
2003 "Microsoft cashes in on web chats" Gazette: September 25
Pilieci, Vito
2003 "Microsoft stalks on-line pedophiles" Gazette: November 3
Price, Monroe E., ed.
1998 The V-Chip Debate: Content Filtering From Television to the Internet, Mahwah, N.J.: Lawrence Eribaum Associates
Quayle, E, G. Holland, C. Linehan and M. Taylor
2000 The Internet and Offending Behaviour: A case Study, The Journal of Sexual Aggression 6 p.p. 78-96: Whiting and Birch Ltd and NOTA
Quayle, Ethel and Max Taylor
2001 Child Seduction and Self-Representation on the Internet. CyberPsychology & Behaviour, Volume 4, Number 5, 2001: Mary Ann Liebert Inc.
Rider, David, Rick Mofina and Jim Bronskill
2003 "Ottawa accused of doing too little" Gazette: July 10
Roth, Alex
2002 "*Son says he didn't view child porn on father's computer*," Union Tribune Staff Writer, the San Diego Union-Tribune: San Diego
Ryan, Harriet
2002 Trial Report, Westerfield: COURTTV.com
Saxton, Barrie J. & Ronald T. Stansfield
1990 Understanding Criminal Offences, Toronto: Carswell
Sansom, Gareth
2001 Child Pornography: From Commercial Collapse to Computer-Mediated Consumption, Ottawa, Canada: Gareth Sansom
Sansom, Gareth
1999 Computer-Mediated Child Pornography: Towards an Empirical Baseline, Ottawa: Gareth Sansom
Sharma, Jasmine
2000 Letters to the Editor "Protect children from pornographic thoughts" Gazette: February 1
Shea, Virginia
1994 Netiquette, San Francisco: Albion Books

Simmel, Georg
1971 On Individuality and Social Forms. Donald N. Levine ed., Chicago: The University of Chicago Press
Simmel, Georg
1949 (1910) The Sociology of Sociability, American Journal of Sociology, vol. L.V. 254-261
Taylor, Max. Ethel Quayle and Gemma Holland
2001 Child Pornography, The Internet and Offending
Taylor, Max
2002 The Nature and Dimensions of Child Pornography on the Internet, ASEM Resource Centre, Child Welfare Initiative. Combating Child Pornography On the Internet, Vienna, 29 September - 1 October 1999
Taylor, Max
2001 Child Pornography and the Internet: Challenges and Gaps: This paper was presented as a panel presentation to the 2nd World Congress Against the Commercial Sexual Exploitation of Children, Yokohama, December 2001
The Council of Europe
1998 European Committee on Crime Problems – Comité Europeen pour les Problemes Criminels (CDPC): Strasburg, Austria October 6
The Council of Europe
2000 European Committee on Crime Problems – Comité Europeen pour les Problemes Criminels (CDPC), Recommendations on Substantive Criminal Law Provisions: Strasburg, Austria January 10
Vienna Commitment Against Child Pornography on the Internet
1999 Combating Child Pornography on the Internet. September 29 to October 1, Hoffburg, Austria
Wolff, Kurt H. ed.
1950 The Sociology of Georg Simmel, The Free Press of Glencoe, London: Collier-MacMillan Limited

INTERVIEWS

All interviews were conducted by the author either, face-to-face or by telephone

Angér, Lucy, Ottawa, 1999, 2000. By telephone
Bertrand, Paula, Ottawa, 2003, 2004. By telephone
Bouchard, Commander Andre (Butch), Montreal, 1999, 2000, 2001, 2002, 2003, 2004. Face-to-face
Charést, Jean J., Montreal, 2000. Face-to-face
Collins, Dr. Peter, PhD, Orilia, 1999, 2004. By telephone
Décarie, Lyne, Montreal, 1999
Field, Paul, London, England. 2003. Face-to-face and by telephone
Fleishman, John, Ottawa, 1999, 2000. By telephone
Franklin, Dorothy Ahigren, Ottawa, 1999, 2000. Face-to-face
Gillespie, Detective Sergeant Paul, Toronto, 2004. By telephone
Jeggo, Superintendent Dave B., Ottawa, 1999, 2000, 2001, 2002, 2003, 2004. Face-to face and by telephone
Leveille, Jocelyn, Ottawa, 1999. By telephone
McColl, Inspector Earla-Kim, Ottawa, 2003. Face-to-face
Milner, Staff Sergeant Emmet, Ottawa, 1999. By telephone
Ouellet, Lieutenant Gérvais, Montreal, 2000, 2001, 2002, 2003, 2004. Face-to face
Sansom, Gareth PhD, Ottawa, 1999, 2000, 2002. By telephone
Secondi, Detective Sergeant Francesco (Frank), Montreal, 2000. Face-to-face
Strachan, Inspector Jennifer, Ottawa, 2004. By telephone
Viau, Detective Sergeant Jacques, Montreal, 1999, 2000. Face-to-face
Vickers, Chief Superintendent Kevin, Ottawa, 2003. Face-to-face

Appendix A

Correspondence

30 April, 1999

Michael Green
81 Oakland Rd.
Beaconsfield, Quebec
H9W 3C8

Dear Sir,

It is with pleasure that I confirm our joint venture. After reviewing the documentation supplied to me concerning your sociology course #498h/4AA Category: 61297 at Concordia, it has been decided that the MUC Police department will be pleased to work in conjunction with your project. The liaison between my department and yourself will be Commandant André Bouchard, chief of the Morality, Alcohol & Narcotics section south division.

You have already been advised of our confidentiality policy and all other legal aspects of our joint venture. It is acknowledged that this present course will terminate in April or May 2000. At this time we will review our agreement to see if further research is required.

Sincerely,

André Bouchard Commandant
Morality, Alcohol & Narcotics section
South division

c.c. Professor Anthony Synnott
Concordia University
Sociology Department

Office of the
Prime Minister

Cabinet du
Premier ministre

Ottawa, Canada K1A 0A2

September 1, 2000

Mr. Michael Green
81 Oakland Road
Beaconsfield, Québec
H9W 5C8

Dear Mr. Green:

On behalf of the Right Honourable Jean Chrétien, I would like to thank you for your letter requesting a meeting with him.

The Prime Minister appreciates your interest and has asked me to thank you. Unfortunately, I must inform you that the Prime Minister's schedule is such that he will not be able to meet with you at this time.

However, I have forwarded a copy of your correspondence to the Honourable Lawrence MacAulay, Solicitor General of Canada, for his consideration.

With best wishes, I remain,

Very truly yours,

Bruce Hartley
Executive Assistant
to the Prime Minister

c.c.: The Honourable Lawrence MacAulay

BH/nd

Canada

Solicitor General of Canada
Solliciteur général du Canada
Ottawa, Canada K1A 0P8

0 3 NOV 2000

Mr. Michael Green
81 Oakland Road
Beaconsfield, Québec
H9W 5C8

Dear Mr. Green:

The office of the Prime Minister of Canada brought to my attention your letter of July 19, 2000, concerning child pornography on the Internet.

First, let me assure you that the safety of Canada's children is of primary concern to this Government, as well as to Canadian law enforcement agencies. The Royal Canadian Mounted Police (RCMP) and Criminal Intelligence Service Canada (CISC) have developed guidelines to assist Canadian law enforcement agencies in their efforts against the sexual exploitation of children.

As you indicated in your correspondence, there are many dedicated people in Canada who are working on both prevention and enforcement issues related to the sexual exploitation of children on the Internet. In fact, in 1998, CISC began developing a national strategy to assist Canadian law enforcement agencies to combat the sexual exploitation of children. Many initiatives are being carried out by law enforcement agencies such as the RCMP, the Sûreté du Québec, the Ontario Provincial Police, as well as municipal police services across the country. CISC has identified child pornography on the Internet as a priority issue and has dedicated resources to the coordination of criminal intelligence and support to investigations. Similarly, several Government of Canada departments, such as Industry Canada and the Department of Justice, are included in the legislative and regulatory aspects of child pornography.

.../2

Canada

You may also wish to know that CISC, along with Industry Canada and the RCMP's High Tech Crime Unit, have been discussing with the Canadian Association of Internet Providers (CAIP) opportunities for Internet service providers to assist law enforcement on issues related to child pornography on the Internet.

Regarding your research paper, I provided a copy of your correspondence to the RCMP, and I have been informed that you are invited to share your research paper with Superintendent D.B. Jeggo, the Officer-in-charge of the RCMP's Economic Crime Branch. You may write to him at the following address:

Royal Canadian Mounted Police
1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

In this regard, Superintendent Jeggo can review your research paper and determine the appropriate mix of public and private sector officials that might be assembled for further discussion and presentation of your findings.

I trust that this information is satisfactory, and I thank you for having taken the time to write regarding this important issue.

Sincerely,

Lawrence MacAulay

Lawrence MacAulay, P.C., M.P.

June 11, 2003

Chief Superintendent Kevin M. Vickers
Director General, National Contract Policing Branch
Community, Contract and Aboriginal Policing Services
Royal Canadian Mounted Police
1200 Vanier Parkway,
Room B521
Ottawa, Ontario
K1A 0R2

Dear Chief Superintendent Vickers,

It is with great pleasure that I'm writing this letter to thank you for the courteous way you received me in Ottawa on Monday of this week. My research into child pornography on the Internet has been progressing steadily for the past five years but on Monday, I felt that everything had been elevated to a new level.

That level showed me by you response that progress is being made by being more inclusive to relevant information, rather than exclusive. I believe that's what I have been looking for and, because of that, it will be my pleasure to provide you with a complete written proposal from Concordia University, signed by a faculty member, dealing with the details we discussed.

Perhaps you would be kind enough to let me have a copy of the written mandate with which the newly formed committee is functioning. That would be very helpful for my research and also an additional benefit when we prepare the proposal.

Thanking you again and looking forward to continuing what I hope will be an on-going association between the University and the RCMP, I remain,

Yours truly,

Michael Green

June 12, 2003

Inspector Earla-Kim McColl
OIC Operational Policy Section
National Contract Policing Branch
CCAPS
Royal Canadian Mounted Police
1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

Dear Ms. McColl,

I wanted to thank you for your input at the meeting on Monday. The situation we discussed, child pornography on the Internet, is a very distasteful one and I was very pleased to hear your perspective for the children involved. Unfortunately, they are almost always on the periphery of society and as such, are the most vulnerable. My research will continue to focus on the elimination, or at least the reduction of the demand, and hopefully in turn, the reduction of the supply.

We are meeting at Concordia University this afternoon to prepare an outline for the proposal that will be sent to Chief Superintendent Vickers. When it's ready, I will forward a copy to you.

Thanking you, again, I remain,

Yours truly,

Michael Green

Gouvernement du Québec
Cabinet du premier ministre

Montreal, September 25th, 2003

Mr. Michael Green
MDL corporate services limited
3535 ST-Charles Blvd. Suite 401
Kirland, (Quebec)
H9H 5B9

Dear Mr Green :

On behalf of Mr. Jean Charest, Premier of Quebec, I acknowledge receipt of your letter of June 25th, 2003.

Please feel assured that your correspondence has been brought to Mr. Charest's attention and will receive all due consideration. In this regard, a copy of your letter has been forwarded to Mr. Marc Bellmare, Minister of Justice and Attorney General, for his review.

Yours sincerely,

Jocelyne Roch
Scheduling Director

c.c. Mr. Marc Bellemare

Québec

Gouvernement du Québec
Cabinet du premier ministre

Montreal, October 30, 2003

Mr. Michael Green
MLD Corporate Services Limited
3535 St. Charles Blvd., Suite 401
Kirkland (Quebec)
H9H 5B9

Dear Mr. Green:

Thank you for your letter of October 9, 2003 inquiring about a possible date to meet with Mr. Charest to discuss the growing problem of child pornography on the Internet.

Rest assured that Mr. Charest is very much concerned with this situation. Unfortunately, his particularly busy schedule does not permit us to suggest a possible date to meet with you in the foreseeable future. Consequently, a copy of your correspondence has been forwarded to Mr. Marc Bellemare, Minister of Justice, for consideration.

Once again, on behalf of Mr. Charest, thank you for bringing this matter to our attention.

Yours sincerely,

Marie Parenteau
Scheduling Director

Ville de Montréal

Service de police

January 21st, 2004

Mr. Michael Greene
81, Oakland Rd.
Beaconsfield (Quebec)
H9W 5C8

Dear Sir:

It is with pleasure that I confirm our joint venture. After reviewing the documentation supplied to me concerning your sociology course #498h/4AA, category 61297 at Concordia, il has been decided that the Montreal Police Department will be pleased to work in conjunction with your project. The liaison between my department and yourself will be Commander André Bouchard, Chief of the Major Crime Division.

You have already been advised of our confidentiality policy and all other legal aspects of our joint venture. Il is acknowledged that this present course will terminate in April or May 2005. At this time, we will review our agreement to see if further research is required.

Sincerely,

André Bouchard
Commander
Major Crime Division

f/n 1619.402

Appendix B

Operation 'Snowball' NCECC and CISC data

PROJECT : 6399-5 **Statistical File Summary**

National Child Exploitation Coordination Centre

	Pacific Region		Northwest Region					National Capital Region					Atlantic Region				Total
	BC	YT	AB	NT	SK	MB	NT	Ontario			Quebec		NF	NS	NB	PE	
	"E" Div.	"M" Div.	"K" Div.	"G" Div.	"F" Div.	"D" Div.	"V" Div.	OPP	Toronto	Other	SQ	SPVM	"B" Div.	"H" Div.	"J" Div.	"L" Div.	
Suspect(s)	386	4	30	11	52	82	4	228	241	400	287	140	8	59	34	6	1972
Eliminated	2			3	24	18		24	16	44	261		4	9		1	406
Transferred	2			4	6	1	1	2	9	25			1	2	5		58
Investigated	386			7	46	62	3	197	226	309	21	140	5	52	29	5	1488
Residential Search	2			5	18	48	2	40	6	5			8	0			134
Computer Search	41			5	12	52	2	71		20							203
Door Knocks	10			2	13			61		2			4	0			92
Arrest(s)	1				1	35	2	17	6								62
Charges																	
Person Charged	8		1		1	39	2	32	20	1							104
Charges Recommended	8				1						21						30
Charges Laid	8				1	12	7	42	29	23							122
Possess Child Porn	6		1		2	30	5		17	1							62
Attempt to Possess C.P.						17											17
Making Child Porn						2			1	1							4
Distribution of Child Porn						4				1							5
Importing Child Porn									6								6
Other Obscene Material						1			1								2
Other Sex Related					1	7	1		1	1							11
Drug Related						1											1
Firearm Related						10				2							12
Fail to Comply								1	4								5
Other	2					4											6
																	0
Disposition																	
Plead Guilty	1					5	3		1								10
Found Guilty																	0
Stay of Proceedings	2						1	1									4
Conditional Sentence								10									10
Found Not Guilty																	0
Jail Term								1	1								2
Other	3					1	1	3		1							9
																	0
Jail Term Period (in Months)								24	17								41

1. Information contained in this table represent the information provided to NCECC as of 2003-10-31 by the participating agencies.
2. The initial coordination of this file was the responsibility of Criminal Intelligence Service Canada (CISC) until the formation of NCECC on 2003-04-01.
3. The provincial information was provided with the collaboration of the Provincial Bureaux of CISC.

Prepared by: Paula Bertrand
Criminal Intelligence Analyst
National Child Exploitation
Coordination Centre

Date: 11/1/2003

Appendix C

Interview consent form

CONSENT FORM TO PARTICIPATE IN RESEARCH

All interviews will be in a controlled environment. The subject will be expected to answer some prepared and other random questions. Answers will be freely given, with no coercion, and anecdotal responses will be required. The subject will be free to terminate the interview at any time. Unless the subject wishes otherwise, all details of the interview will be non-confidential.

This is to state that I agree to participate in a program of research being conducted by Michael Green as part of his M.A. Sociology study, at Concordia University. I am aware that the study is being conducted in the field of child pornography and in particular, child pornography on the Internet, under the supervision of Professor Anthony Synnott (514-848-2424#2153). Given the nature of the subject matter, I have been apprised of a document in Mr. Green's possession allowing him to conduct this research with the approval of Commander André Bouchard of the Montreal Urban Community Police Department.

- I have been informed that the purpose of the research is to gather data from my knowledge of child abuse, child pornography and child pornography as it applies to the Internet. I also expect to be questioned on how this subject impacts on my professional connection within:

Please check one:

- Law enforcement
- The Judiciary
- The Legislature

- I have also been informed that statistical data and related information connected to the subject of child pornography may be required of me.

CONDITIONS OF PARTICIPATION

- I understand that I am free to withdraw my consent and discontinue my participation at any time without negative consequences.
- I understand that my participation in this study is non-confidential.
- I understand that the data from this study may be published.
- I understand the purpose of this study and know that there is no hidden motive of which I have not been informed.

I HAVE CAREFULLY STUDIED THE ABOVE AND UNDERSTAND THIS AGREEMENT. I FREELY CONSENT AND AGREE TO PARTICIPATE IN THIS STUDY.

NAME (please print) _____

SIGNATURE_____

WITNESS SIGNATURE_____

DATE_____

I agree that for the purpose of this study, these questions can be in the English language.