

Senate Inquiry - Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010

Introduction

My name is Paul McMahon. I was tempted to identify myself as a concerned citizen, but this is way too grandiose a title. I am, or at least was until recently a regular run of the mill apathetic citizen. Sure, I vote, I even attempt to understand the positions of the main candidates so that I can direct my vote thoughtfully. Beyond this, I have previously had no real engagement in the political process.

My interest in this matter has been stimulated by recent proposals in the area of internet regulation. When viewed in their totality these proposals would seem to indicate a grave misunderstanding and consequent high level of mistrust of the internet as a medium for communication and interaction.

Before moving to the issues at the heart of this inquiry I would like to take a moment to acknowledge the tragic incident that inspired this bill. I am a parent myself and cannot begin to imagine the pain and anger that Carly Ryan's parents must be feeling. If I thought for a moment that this bill could prevent something similar from occurring in the future, it would have my wholehearted endorsement. Sadly, I believe if this law had been enacted a decade ago, it would have done nothing to protect Carly.

Summary

It is my submission that:

- 1) The offences under this bill are too broadly defined and the defences are too narrow
- 2) The bill offers platitudes and tokenism in the face of a real problem that deserves a more serious thoughtful response.

Scope of offence

I think the best way of illustrating my first concern is to paint a picture for the committee of a person who has repeatedly misrepresented their age to minors.

My mother is a wonderful, wonderful lady. I would entrust my own children too her without the slightest hesitation. It is simply not in her nature to harm a child or to allow anyone else to harm a child.

Yet she insists on telling my son who is 9 and my daughter who is 7 that she is 21. She started telling them this before they had any capacity to evaluate the merits of her claim and continues to do it even though they are now old enough to appreciate the biological and mathematical implausibility of her claim. I have seen her do this face to face and am aware that she has done it over the telephone. I have no doubt that if I allowed my children to use online chat or social networking sites she would have made the same claim over the internet.

This is a very ingrained behaviour for my Mum. She has done it for as long as I can remember. I couldn't even guess how many people she has misrepresented her age to, but it would be many people (adults and minors alike).

I don't understand why she misrepresents her age, but it is a harmless enough affectation. I don't believe that the parliament ought to prevent her from indulging this small vanity and I certainly don't believe she ought to be imprisoned if she continues this behaviour.

Effectiveness as a deterrent

I doubt that most people can really put themselves inside the head of internet predators and understand what makes them tick. However, it seems highly implausible that someone who would otherwise use the internet to set up a meeting with a minor in order to engage in unlawful sexual activity or to commit acts of violence or murder would have a change of heart because they didn't want to commit the offence of misrepresenting their age. Anyone who sets off on such a path is acting with premeditation to commit serious offences that already carry heavy penalties. I can see nothing in this bill that would give them pause to reason. If there are issues with the evidentiary standards required by the existing grooming and procurement laws, tackle these problems directly do not introduce a new offence which runs the risk of being too wide in scope and ensnaring unintended victims.

Summary

Predatory behaviour online is a real problem. It demands serious solutions which tackle the problem at its base, not tokenistic legislation which skirts around the issue without doing anything concrete to protect those who are most vulnerable.