

“Providing the Same Service?”

Times-Colonist Article Obscures Violence and Blames Child Victims

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Following is a brief analysis of an article that appeared in the Victoria Times Colonist newspaper, Tuesday, January 18th, 2011, p. A4. The full text is reprinted in Appendix 1.

The article is of interest not because it is unusual, but because it so closely mirrors many other news articles on cases of sexualized violence against children. The article suffers from two serious problems.

First, it ignores the Criminal Code of Canada, which states that children ages 15 and under cannot consent to sex. Children ages 15 and under, or 13 in the cases reported in this article, are not developmentally capable of consenting to sex.

They do not fully understand the nature and possible consequences of the actions in question, such as pregnancy, disease or ridicule.

They do not have the physical or social power to refuse because a potential offender may use force or other means of coercion that they cannot control.

And they do not have the rights of adults, which would allow them to seek assistance or redress if harmed.

Some young teens think they are ready for sex, and it is precisely this youthful bravado that perpetrators exploit.

Because children cannot consent to sex in the full and meaningful sense, it is wrong to suggest that children 15 or younger are engaged in sex. (One exception law is if the two people are less than two years apart in age and both 15 or younger.)

Second, sex is by definition mutual and consensual. It requires the participation and consent of two (or more) people. In mutual actions, two people work together toward the same end. The end product of mutual actions is not always positive. For instance, two people may engage in an argument that is mutual but painful.

In sex, consent must be negotiated as the actions occur. Consent to kissing is not consent to fondling body parts. Consent to intercourse is not consent for painful or degrading acts. The two people involved give or refuse consent as they interact.

Violence is unilateral, not mutual, because it involves actions by one person against the will and wellbeing of another.

When the boxer Mike Tyson bit his opponent Evander Holyfield's ear, he shifted from the mutual act of boxing, to which he and Holyfield had consented, to the unilateral act of assault, to which Holyfield did not consent.

The same was true in the attack during a hockey game in Vancouver by Marty McSorley against Donald Brashear. When McSorley used his stick to hit Brashear on the head, he shifted from the mutual act of playing hockey to the unilateral act of assault.

An anonymous contributor to the Toronto Globe and Mail newspaper put the point clearly some years ago: "If you hit someone over the head with a frying pan, you don't call it cooking". Similarly, if you smack someone on the head with a 2x4, you do not call it carpentry. If you take a hammer to someone's car, you do not call it bodywork.

If you attack someone on their genitals, or with yours, you do not call it sex.

In many cases we are quite good at seeing the difference between mutual and unilateral acts. We do not refer to car theft as "auto sharing" or bank robbery as a "financial transaction". But we often fail to see this difference in cases of violence.

Research shows that criminal justice and mental health professionals and the media often refer to sexualized violence by adults against children as sex or intercourse, and use such terms as fondling and kissing. This happens in courts, psychological and psychiatric literature, history texts, and the media.

The Times-Colonist article is another example. It portrays two children, 13-year-old girls, as engaged in sex with an adult male.

Below, we show how this article conceals the full extent and deliberate nature of the crimes in question, reduces the perpetrator's responsibility, and shifts blame to the victims.

We discuss each segment in the order in which it appears in the original.

**A man who used cigarettes to buy sex from 13-year-old girls was childish and stupid but he is not a pedophile, court heard Monday.**

This sentence conceals the power and coercion the perpetrator used to violate the girls. As a male adult, he used his power to bribe and coerce the girls so he could force his penis into their mouths.

The perpetrator could not "buy sex" from the 13 year old girls because they did not have "sex" to sell. The verb "buy" suggests a consensual two-way transaction that benefits both the buyer and the seller. It does not describe repeated acts of violence by one person, the perpetrator, against others.

To suggest that the perpetrator could “buy sex” portrays the 13-year-old girls as sex workers or prostitutes engaged in sex for profit, with the perpetrator.

It seems the defense strategy was to conceal the difference in age and power between the adult perpetrator and the child victims by calling the perpetrator “childish”. This word suggests innocence: Children do the wrong thing because they do not know any better. Even so, the perpetrator was adult enough to gain and keep a responsible, security related job.

That the perpetrator was “stupid” as well, a term defense counsel implies is consistent with “childish”, suggests that he could not have acted deliberately or strategically to violate the girls. We are supposed to believe that he did not know any better.

In contrast, the child victims are portrayed as sophisticated beyond their years, as knowing sex-workers, actively engaged in illegal and immoral sex transactions.

This defense strategy subtly turns the perpetrator into the victim of his own weakness and turns the victims into the perpetrators of their own misfortunes.

The defense gave the court a choice between two views of the perpetrator: Either he was “childish and stupid” or he was “a pedophile”. The term “pedophile” would suggest that the perpetrator had a sickness that was beyond his control. He would then be a danger to all children, not just the two girls in this case. The court would consider this in sentencing.

Of course the psychiatrist had already stated that the perpetrator was not a pedophile. This left the court with the second view, that the perpetrator was “childish and stupid”, a phrase that does not suggest deliberate violence. Many adults who are truly “childish and stupid” do not violate children.

The job of the court is to make decisions based on the perpetrator’s criminal actions. A more balanced view would be that the perpetrator was neither a “pedophile” nor “childish and stupid”. The evidence shows that he repeatedly and strategically used his social and physical power to violate children.

That the perpetrator did not fit the profile of a “pedophile”, according to the psychiatrist, is really not the central issue. He must be seen as a risk to repeat the crimes until he shows over time that he is not.

We can see that the first sentence contains several distortions: The real nature of the crimes is concealed; the perpetrator is portrayed as foolish, not deliberately violent, and relieved of sole responsibility; and the 13 year old victims are portrayed as sex workers engaged in consensual sex.

All the distortions work to benefit the perpetrator and harm the victims.

The first sentence could be written more accurately, as follows: “Defense counsel for a man who repeatedly used his physical and social power to coerce and indecently assault two thirteen year old girls, argued in court that the man was ‘childish and stupid’ but ‘not a pedophile’”.

The article continues:

**Brent Edward D’Argis, 20, appeared in B.C. Supreme Court for sentencing on two counts of sexual interference with children under the age of 16. D’Argis pleaded guilty in September.**

The crime of “sexual interference” is relatively minor compared to the crime of sexual assault, which could have been applied in this case. We do not know why the Crown did not charge the perpetrator with sexual assault.

Was this part of a bargain, in exchange for a guilty plea? If so, the Crown would have an interest in down playing the seriousness of the crimes and the risks posed by the perpetrator, to justify not proceeding with the more serious charge of sexual assault.

Alternatively, the Crown may have felt there was no likelihood of conviction on the charge of sexual assault, though it is difficult to see why given the facts presented in the article.

The Criminal Code of Canada is quite clear on the issue of consent. In this case, the perpetrator violated consent law on three separate points. The victims were incapable of consenting; the perpetrator induced the victims to “engage in the activity” by abusing his position of trust and power as a security guard; and the second victim openly expressed a lack of agreement to “the activity”.

But the Criminal Code confuses sex with violence in two ways that impede the prosecution of cases with child and adult victims.

In the sections on sexual assault, it refers repeatedly to “sexual activity”, “sexual touching”, “sexual intercourse”, and “anal intercourse”. The terms “sexual” and “intercourse” both refer only to actions that are, by definition, mutual and consensual.

If the actions fit the definition of assault, which is unilateral and violent, the same actions cannot fit the definition of sex or intercourse. That is, if it is assault, it cannot be sex. And if it is sex, it cannot be assault.

As well, because the Criminal Code confuses sex and violence, it goes on to suggest that the person committed the crimes for “sexual purposes”. This phrase – “sexual purposes”

- appears in the sections on Sexual Interference (Sec. 151), Sexual Touching (Sec. 152), and Sexual Exploitation (Sec. 153).

But if the crimes are violent in nature, not sexual, why would we infer that the perpetrator's purposes were sexual? Should we not infer, consistent with the nature of his actions, that his purposes were violent?

In this case, the perpetrator used his position of power and trust to identify especially vulnerable girls as victims, bribe and coerce the girls, and force his body onto and into their bodies, despite the open resistance of one of the girls. This is not consistent with any definition of sexual activity.

To infer that the perpetrator was acting on "sexual purposes", we would have to ignore the specifics of his actions.

This problem in the Criminal Code and in prosecutions based on the Criminal Code – that is, all prosecutions - is most obvious when the victims are children.

If sex is not possible without consent, and if children 15 and younger cannot consent, then it is wrong in every case to refer to children as involved in sexual activity.

To refer to the child victims as involved in sex is, in this sense, to violate the Criminal Code, specifically the sections about minors and consent.

But the problem of confusing sex with violence is no less misleading and harmful when the victims are adults. We would not refer to bank robbery as a "financial transaction" even if we could prove the robber's purpose was to achieve financial independence.

Likewise, we cannot infer a perpetrator who forces his body onto or into the victim is acting on sexual purposes just because he feels physical pleasure.

If the perpetrator truly wanted to have sex, he would have approached an adult in the first place. He would certainly not have bribed and coerced the person in whom he was interested. And he would certainly have stopped when that person refused to consent, rather than suppressing her resistance, and concealing his actions.

The word "interference" covers a wide range of actions and normally does not refer to criminal actions. "Interference" suggests a comparatively mild form of action, not the repeated and deliberate indecent assaults (to use the old Criminal Code language) present in this case.

There is nothing in the phrase "sexual interference" by itself that refers clearly to a crime.

The article goes on:

**Court heard that the former Tillicum Centre security guard provided one 13-year-old girl with cigarettes and rides home in exchange for oral sex between July 2008 and January 2009.**

The word “provided” suggests that the perpetrator had a positive and non-violent intent. One person provides others with what they want or need. In this case, the perpetrator used “cigarettes” and “rides home” to deceive and entrap the victims.

We would not say that a bank robber “provided” a gun to the teller. A perpetrator does not “provide” a victim with coercion. In this case, the cigarettes and rides home were literally part of the coercive strategy used to set up and complete the assaults.

The word “exchange”, like the word “buy” used earlier, suggests non-violent actions of mutual benefit. The perpetrator’s coercion of the two girls is completely concealed. Again, the victim could not provide her side of such an “exchange”, in this case “oral sex”, since by law she cannot consent to sex in the first place.

This sentence obscures the frequency of the crimes and omits mention of how many times the perpetrator violated the victim(s) between the dates presented.

The blaming of the first victim is continued in descriptions of the violence against the second victim:

**D’Argis and the teen co-opted another 13-year-old girl who, despite her objections, was coerced into providing the same service on one occasion.**

This sentence portrays the first victim as a co-perpetrator in the assaults against the second victim. By suggesting that the perpetrator and first victim acted together, as co-perpetrators, the writer conceals the greater social and physical power and sole responsibility of the real perpetrator.

While the article states that the second victim was “coerced”, it nevertheless describes the sexualized assault as a “service” provided by the victim to the perpetrator. Clearly, the second girl resisted overtly (or the word “coercion” would not have been used) and so she could never be said to have provided a “service”. Instead, she was overpowered and the perpetrator forced her to take his penis into her mouth.

The word “providing” in “providing the same service” connects the second assault to the first and builds on the earlier use of the word “providing” (in reference to the perpetrator providing “cigarettes” and “rides home”) to suggest mutual actions. It suggests an exchange: You provide me with X and I provide you with Y. The true nature of the perpetrator’s actions is all but lost.

The idea that the violence was really an exchange ties into a host of clichés about violence: that “it takes two to tango” and is really “tit for tat”, that the victim “is no angel” or “gives as good as she gets”. These clichés blame victims and are a ready resource for a perpetrator who wants to claim that forcing his penis into the mouth of child was a “service” he received.

Who first used the term “service” in this case. Was it used in court? If so, by whom? And if it was used, was it challenged? Or was it used solely by the Times-Colonist writer?

The second victim openly resisted the violence. This proves that there was no exchange or service and that the perpetrator used his power, including his power to coerce the first victim, to suppress the resistance of the second victim.

**Crown counsel Clare Jennings argued the crimes warranted jail time of 12 to 18 months. But defence lawyer Tom Morino argued for a low-end sentence of 90 days served on weekends, saying his client was “an immature, stupid fool for having allowed himself to get into this situation”. Morino said the crime was one of opportunity and not predation.**

Mr. D’Argis is entitled to a full and vigorous defense. The case the defense counsel seems to have presented is interesting because it is designed to take into account the concerns of the Court, especially as regards sentencing.

In sentencing, the Court must consider the “intent” of the perpetrator, In law, intent goes to the question of the level of responsibility and character of the perpetrator, and his risk to re-offend.

Intent cannot be seen directly because it exists in the mind. So the court must infer the intent of the perpetrator from his actions.

An “immature, stupid fool” is the kind of person who makes mistakes, not the kind of person who sets out intentionally to select and prey upon vulnerable children. He is the kind of person who will eventually grow up and stop making mistakes. At least this is the gist of the defense argument.

The idea that the perpetrator “allowed himself to get into this situation” further conceals the strategic nature of his actions.

But what was “this situation”? It could be none other than two girls who, the defense implies, were waiting to be abused - or, waiting to “provide” a “service” for the perpetrator. This portrays the girls as the real problem, the catalysts of the abuse, the “situation” the perpetrator fell “into”. In fact there was no “situation” for the perpetrator to “get into”.

This argument demeans the girls and calls their character into question. They become objects, there to provide an immoral service that the accused, being childish and stupid, could not resist.

**[Defence counsel] pointed to psychiatric reports which found no evidence of pedophilia, a sexual fixation with children. “We are not talking about how to deprogram a pedophile”, Morino said. “We are talking about teaching a young man to grow up”.**

Many adults who repeatedly violate children are not seen as pedophiles because they have, or are interested in having, sex with consenting adults, and do not engage in certain fantasies. Whether the perpetrator is a pedophile is relevant for sentencing, but only as one indicator of future risk.

That the accused does not meet the psychiatric criteria for a pedophile does not reduce his sole responsibility for his crimes or the harm to the victims.

In arguing that what is needed is “teaching a young man to grow up”, the defense suggests that immaturity is the real problem, even though the perpetrator is an adult. If immaturity were the problem, we would expect that virtually young man, on his way to becoming a mature adult, would prey upon 13-year-old children.

Further, if the perpetrator did not have the maturity to know his actions were wrong, why did he hide them?

**Justice Geoffrey Gaul reserved his decision on sentencing until Friday. The offence carries a mandatory minimum sentence of 45 days in prison and a maximum of 10 years. Jennings said the two girls were both living in foster homes at the time of the crimes. “They felt dirty, depressed and disgusted”, Jennings said. She also noted D’Argis was “working as a security guard at the time and so had a responsibility to uphold the law.”**

We now learn that the victims are among the most vulnerable members of society, perhaps already victims of violence, at least facing tragic family circumstances. In foster care and away from their families, we can guess that the girls were already in distress.

How did the perpetrator select these two girls to violate? Was it a coincidence? Or did he use his position as a security guard to gather information about the children hanging out at the mall? Was this how he saw who smoked, who had no money, and who had no ride home?

The Crown rightly noted that the perpetrator had a responsibility to uphold the law. But so does every citizen. More importantly, the perpetrator in this case was in a position of

trust. It was his job to ensure the safety of anyone on the premises. It seems that he used his position to gain knowledge of and then prey upon the children.

That the girls felt “dirty and disgusted” shows that they clearly felt and understood the unilateral and violent nature of the crimes. True sexual partners do not feel “dirty and disgusted”.

**The crimes had a coercive element to them, with D’Argis offering rewards for sex with girls he knew were children, Jennings said. And on one occasion one of the girls objected and was still forced into providing a sexual service.**

It appears that the Crown also portrayed the violence as sex, even as it noted the element of coercion.

In fact, the crimes were by definition violent. The phrase, “a coercive element”, minimizes the violence, particularly the strategies used by the perpetrator to suppress the second victim’s overt resistance.

What does the word “rewards” mean in this case? We cannot tell from the article if this was the word used by Crown or added by the writer. In any case, the term distorts the way in which the perpetrator used “cigarettes” and “rides home”, from a position of power, as a means to trap the victims.

We cannot judge the Crown presentations without seeing the court transcript. But it appears from the article that the Crown (a) portrayed the crimes as sexual, (b) portrayed the girls as sexual partners with the perpetrator, (c) portrayed the perpetrator as a sexual partner with the girls, (d) shifted responsibility to the girls, (e) reduced the severity of the crimes, and (f) obscured the strategies used by the perpetrator to commit the crimes.

In effect, the Crown supported the case made by the defense. This is not unusual in Canada. Research shows that Crown often uses language that mutualizes the violence and so inadvertently supports defense arguments.

Judges also confuse violent and unilateral crimes with mutual and consensual actions, in sexualized assault and wife-assault cases in particular. And there is some reason to believe that the language used by the Court effects sentencing decisions.

In fairness, the Crown in this case was to some extent forced to present its case in the language of the Criminal Code and, in so doing, distort the very crimes it worked to prosecute. To present the crimes accurately, the Crown would be forced to work against the biases of the Court and the Criminal Code.

For this reason, we contend that the Criminal Code of Canada violates the rights of child victims of sexualized violence to equal protection under the law.

Journalists do not operate under the same rules as Crown Counsel and Judges, however. A free press is free to use accurate language and, with its editorial powers, to question the false descriptions apparent in these kinds of cases.

If a bank clerk were portrayed as an accomplice in a bank robbery because she handed over the money when the robber pointed a gun at her face, we would rightly witness a public outcry. Tragically, we can print equally absurd distortions in cases of violence against children and not even notice.

In this article, the Times-Colonist reproduces distortions that are common in our society, in an era when violent humiliation of girls and boys and women is routinely portrayed as sex, for instance, in the co-called “porn” industry.

This article is but one recent example. The Vancouver Sun and Vancouver Province, as well as Macleans magazine, recently published articles that are equally inaccurate and unjust.

We contend that articles of this kind fail to meet even minimal standards of journalism. They reveal prejudice and a shocking lack of critical analysis. They are harmful in that they further false myths about sexualized violence, and portray innocent children as participants in sex with violent adults.

The Times Colonist should retract this article, print an apology to the victims and their loved ones, and take steps to ensure accurate reportage in future.

Acknowledgment: Thank you to Mary Munro for finding this article, drawing it to our attention, and providing her own independent analysis.

## Appendix 1: Full Text of Article

Victoria Times Colonist Tuesday, January 18th, 2011, p. A4

A man who used cigarettes to buy sex from 13-year-old girls was childish and stupid but he is not a pedophile, court heard Monday. Brent Edward D'Argis, 20, appeared in B.C. Supreme Court for sentencing on two counts of sexual interference with children under the age of 16. D'Argis pleaded guilty in September.

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Jennings said the two girls were both living in foster homes at the time of the crimes. "They felt dirty, depressed and disgusted," Jennings said. She also noted D'Argis was working as a security guard at the time and so had a responsibility to uphold the law.

The crimes had a coercive element to them, with D'Argis offering rewards for sex with girls he knew were children, Jennings said. And on one occasion one of the girls objected and was still forced into providing a sexual service.

Thanks to Mary Munro for finding this passage and drawing it to our attention.