

## KINSA - January 2005

### The Use of Conditional Sentencing in Child Pornography cases

The Conditional Sentencing regime was introduced in 1996 by the federal government as a way to reduce the use of incarceration for offenders who do not pose a danger to the public. Department of Justice fact sheets indicate that the Conditional Sentence was brought in to reduce the reliance on custody in “safe and principled way”. This sanction was necessary, according to the government, because Canada had “high custody rates” compared to other countries. Based on information provided, the public would logically form the opinion that property crimes and similar offences would be eligible for such a sentence. According to the Department of Justice fact sheets: “The public appears to favour the imposition of a conditional sentence for property offenders and the less serious cases of violence”.

In order for a judge to impose a Conditional Sentence on an offender, the judge must be satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing. (742.1 (b) CCC).

The purpose and principles of sentencing include denunciation, specific and general deterrence, separating offenders from society where necessary, rehabilitating offenders, providing reparation for harm done to victims or to the community, promoting a sense of responsibility in offenders, and an acknowledgement of the harm done to victims and the community. We note that it is an aggravating factor in sentencing if there is evidence that the offender has, in committing the offence, abused the offender’s child, or evidence that the offender abused a position of trust or authority in relation to the victim (718.2 (ii) and (iii) CCC). We also point to the fundamental principle stated in Section 718.1 which stipulates that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

In light of each of these sentencing principles, and the requirement for the imposition of Conditional Sentencing that the offender not ‘endanger the safety of the community’, we are alarmed to observe the frequency at which Conditional Sentencing is used in cases involving sexual offences against children, and specifically Internet-related sexual abuse of children.

As sentencing trends reveal, Conditional Sentencing has in many areas become the ‘norm’ in Child Pornography occurrences. The Toronto Police Service, for example, advises that approximately 50% of its Child Pornography-related cases result in a Conditional Sentence.

We believe that it is misleading for the government and the courts to perpetuate the use of this sentencing regime for cases of Internet-related sexual abuse of children. To indicate that such offenders do not endanger the community is both inaccurate and offensive, particularly to those who have been victimized. The manipulative nature of many who offend sexually against children, combined with the ‘secretive’ method of their offence, would indicate otherwise.

Sexual exploitation of children, whether through commission of the abuse and sharing the child abuse images, or through distribution of the images alone, is a heinous offence which requires societal denunciation through appropriate sentencing. The devastating, long-term impact that such abuse has on the victims' lives cannot be overstated. Each time an abusive image is distributed and/or viewed, the child is again victimized as others view the permanent record of their sexual abuse.

Internet-related sexual offences against children are frequently unreported due to the complexities of child victims, the anonymity of the Internet, and the fact that some of these offenders are viewed as 'upstanding' members of society. Where such abuse has been detected and prosecuted successfully, it is shocking to hear that the individual responsible is eligible to receive a sentence of incarceration "to be served in the community". The fact that the offender is in the community each day reveals that he or she is not, in fact, incarcerated. Further, house arrest is not a mandatory condition of the conditional sentence, which means that some offenders move freely about with no time restrictions. Placing a child pornographer under house arrest is in itself ironic given that many such offenders commit offences at home, and it is impossible to monitor these individuals constantly to ensure that no further inappropriate computer use occurs.

The use of Conditional Sentencing in Child Pornography cases does not reflect the gravity of the offence, nor is it reflective of society's value for our children. Upon the offender's return to the community, we have no doubt that community supervision is beneficial in ensuring appropriate restrictions are in place, as well as supervision, monitoring, treatment, and conditions to protect victims. However it is truly offensive that with the use of Conditional Sentences in these cases, the community portion is the sentence in its entirety.

It is the position of KINSA that the Criminal Code of Canada should be amended to include exemptions to offences for which the Conditional Sentence can be imposed. We recommend that all offences related to Internet Child Pornography be exempt from the Conditional Sentencing regime. Without such amendments, and with the on-going inappropriate use of this sanction, the public will continue to lose confidence and respect in the justice system.

**April 2006**

### **KINSA Conditional Sentence Update**

On July 21, 2005, Bill C-2, the Child Protection Bill, received Royal Assent. KINSA members contributed to the government's decision to amend the Criminal Code resulting in sentencing changes for certain offences. As a result of these legislative reforms, child pornography and other sexual offences against children now carry a mandatory minimum term of imprisonment, meaning that they are no longer eligible for a Conditional Sentence. Further details regarding this legislation can be viewed on the Department of Justice website at [www.canada.justice.gc.ca](http://www.canada.justice.gc.ca).

KINSA supports this legislative change, as it is consistent with our position on sentencing for such offences. We are disappointed, however, to observe that some offences which occurred prior to the November 1, 2005 enactment date of this legislation are still resulting in Conditional Sentences.