

Respectfully Submitted



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POLICY REPORT for Parliamentarians Courtesy of the Association for Reformed Political Action (ARPA) Canada

Commentator Rod Breakenridge makes the case that “the government has no business meddling in the affairs of consenting adults.” Breakenridge points out a double standard between the law’s treatment of pornography and prostitution. “If there are harms specific to the transaction between a prostitute and her client that are not present in the transaction between a female porn actress and a film producer, it behooves those justifying this double standard to spell that out.” Breakenridge admits that many women are forced into prostitution, or are trapped in it. But, he says, “such factors might very well be present in the porn industry”.¹ He, like many others, believes the law should prohibit neither.

A double standard does exist, but the problem lies not with Canada’s prostitution legislation, but with our hollow and outdated obscenity laws. Pornography exploits vulnerable Canadians, objectifies women, and causes social and community harm. And pornography consumption is highly addictive, with measurable physiological and neurological harm. The federal government can combat these negative effects through means like those employed against narcotics, cyber-bullying, and prostitution.

A Pervasive Narcotic – Not Another Art Form

Although sexually explicit materials have existed for millennia, the pervasiveness and effects of pornography today are unprecedented because of its affordability,² accessibility, and anonymity.³ Adults and children alike can be exposed to explicit images and videos on computers, tablets, and smartphones at no cost and without anyone else knowing. Many porn sites do not have age restrictions, and many of those that do can be easily bypassed.⁴ The average age of first exposure to porn is 11.⁵

Policy makers cannot treat pornography simply as another type of speech or “artistic expression” protected by freedom of expression. In many ways consuming pornography is more like smoking crack cocaine. Similarly to illicit drug use and prostitution, freedom must be curtailed when it causes demonstrable harm to children and society. “[N]eurological research has revealed that the effect of internet pornography on the human brain is just as potent—if not more so—than addictive chemical substances such as cocaine or heroin.”⁶

Pornography

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The research of Dr. Norman Doidge shows that brain tissue related to sexual preferences is very malleable. When pornographic images connect unrelated things such as torture and sexual arousal, that visual connection

“can cause previously unrelated neurons within the brain to learn to ‘fire’ in tandem so that the next time around, physical torture actually does trigger sexual arousal in the brain. ...[Pornography] literally changes the physical matter within the brain so that new neurological pathways require pornographic material in order to trigger the desired reward sensation.”⁷

Pornography combines the effect of both dopamine (which, like cocaine, creates a “high”) and opiates (like heroin, which create a release). This leads to addiction and a growing need for increased stimulation leading to, for example, consumption of violent and sadomasochistic pornography. And while the body can get rid of harmful chemical substances such as cocaine, the mind cannot forget the graphic images it ingests.⁸

Pornography: A Scourge on Society

Morgan Bennett writes:

Though sexuality is considered “private” in our society, the social effects of collective sexual behaviors and norms, including the effects of internet pornography, cannot be kept “private”. Because pornography is sexual, it is inherently relational and thus inherently social. How people... relate sexually is crucial to the sustenance of a society because it either incentivizes or de-incentivizes the very foundation of society: the family unit.⁹

Pornography can also destroy relationships and marriages. A 2014 study from the journal *Psychology of Popular Media Culture* noted that extramarital sex is one of the most commonly cited reasons for a divorce. It examined whether people who consume pornography have a more positive attitude towards extramarital sex. The conclusion was that “consistent with a social learning perspective on media, prior pornography consumption was correlated with more positive subsequent extramarital sex attitudes in both samples, even after controlling for earlier extramarital sex attitudes and nine additional potential confounds.”¹⁰ Other research has found that there is also decreased affection and sexual intimacy in a relationship where one partner views pornography.¹¹

“With the advent of the computer, the delivery system for this addictive stimulus [internet pornography] has become nearly resistance-free. It is as though we have devised a form of heroin 100 times more powerful than before, usable in the privacy of one’s own home and injected directly to the brain through the eyes. It’s now available in unlimited supply via a self-replicating distribution network, glorified as art and protected by the Constitution.”

Statement before Congress
Dr. Jeffrey Satinover,
a psychiatrist, psychoanalyst, physicist, and
former Fellow in Psychiatry at Yale

Further, given that pornography now includes videos of toddlers being molested, women being drugged and raped by animals, and women sexually assaulted by gangs of men until their organs are ripped, it is of little surprise that empirical evidence demonstrates that porn:

- generates greater acceptance of violence in sex and leniency towards rapists;¹²
- distorts perceptions about sexuality;¹³
- precipitates sexual callousness;¹⁴ and
- causes many men to become aggressive and anti-social.¹⁵

These negative effects can be expected from hard-core pornography use. But “soft-core” pornography use can lead there as well.¹⁶ Habitual users become less excited by the same type of images and need more shocking and extreme images to continue to satisfy the same desire.¹⁷

Pornography is also inherently degrading and dehumanizing to women.¹⁸ Pornographers and porn consumers treat women as objects or toys; a woman’s worth is determined by her ability to satisfy a man’s sexual desires. Such degradation of women is an affront to human dignity, dangerous, and should not be tolerated.

Understanding the Status Quo: Canada’s Empty Obscenity Laws

The Criminal Code only mentions the word “pornography” in Section 163.1, where it defines child pornography. Section 163 regulates “obscenity” by making it an offence to fabricate, distribute, or possess for distribution obscene publications. That means that if pornography is not child pornography or not considered obscene, it is legal to make, buy or sell. The **definition of obscenity** is important here. Section 163(8) states that “*any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.*”

“Undue exploitation” is central to the definition. The Parliamentary report *The Evolution of Pornography Law in Canada* notes “the obscenity standard is today quite ‘liberal.’ In media such as magazines or films... there is considerable leeway; in other, less discretionary forms of expression... tolerance is lower.”¹⁹

In the 1992 *R. v. Butler* decision, the Supreme Court of Canada unanimously upheld the obscenity provisions in the *Criminal Code*. Justice Sopinka concluded

Supreme Court of Canada Test for Indecency

[B]y its nature the conduct at issue causes harm or presents a significant risk of harm to individuals or society in a way that undermines or threatens to undermine a value reflected in and thus formally endorsed through the Constitution or similar fundamental laws by (a) confronting members of the public with conduct that significantly interferes with their autonomy and liberty, (b) predisposing others to anti-social behaviour, or (c) physically or psychologically harming persons involved in the conduct.

Furthermore, “the harm or risk of harm is of a degree that is incompatible with the proper functioning of society.”

that there was sufficient evidence that “depictions of degrading and dehumanizing sex do harm society, and, in particular, adversely affect attitudes toward women.” In 2005, in the *R. v. Labaye* decision (known as “the swingers’ club case”) the Supreme Court articulated a harms-based test for obscenity. Under this standard, the Crown must satisfy the tests outlined in the box above. We respectfully submit that according to this standard, much of the pornography permitted today ought to be banned.

Some argue that the status-quo should remain, leaving it up to individuals and parents to regulate. But that standard is not applied to other instances where the public and societal harms are so significant. Consider bullying: provincial and federal governments have gone to great lengths to combat bullying, even though many forms of bullying are not criminal.²⁰ In response to the new and increased challenges of the cyber age, the federal government launched the “Stop Hating Online” campaign in 2014 to “raise awareness among Canadians of the impact of cyber-bullying, and when this behavior amounts to criminal activity.”²¹

Bill C-13, “Protecting Canadians from Online Crime Act,” introduced in November 2013, went further. Bill C-13 banned the distribution of intimate images without the consent of the person depicted. The bill recognized that the distribution of intimate images can cause substantial harm, particularly in our internet age.

“I’m not making this speech because I want to moralise or scaremonger, but because I feel profoundly as a politician, and as a father, that the time for action has come... This is, quite simply, about how we protect our children and their innocence.”

Former Prime Minister
of the United Kingdom,
David Cameron

Case Studies: Britain & Australia’s Filtering Efforts

In 2013, Britain’s Prime Minister David Cameron made international news by announcing that all homes in the UK would have pornography blocked by their internet service provider (ISP) unless they explicitly chose to receive it. He also announced that possessing pornography depicting rape would be a criminal offense, among other measures.²²

Criticism of this approach was swift, including in Canada. Critics argued that giving ISP’s the mandate of filtering out pornography is a dangerous precedent and interferes with personal liberty and privacy. If the government mandates this, what else will the government require providers to filter? When Canada’s government introduced Bill C-30 (an online surveillance and warrantless wiretapping bill) to combat child pornography, it received fierce criticism, even from the federal privacy commissioner.²³ The government dropped the legislation.

Effectively regulating something as large and fluid as the internet is a huge challenge. There are over 320 million domain names registered online.²⁴ Any of the information on the domains can change in an instant. As Cory Doctorow explained succinctly at *theguardian.com*, there are only two ways to filter all of this: with real human beings or via software. “To filter content automatically and accurately would require software capable of making human judgments – working artificial intelligence, the province of science fiction.”²⁵ And there simply are not enough people to examine all the information that is online.

Another technological response is to create a black list of pornography sites which could be constantly updated, using tips from the public (similar to how cybertip.ca is used to combat bullying). Australia requires this of their ISP.²⁶ ISPs can then be mandated with blocking all of these sites, with a possible option of allowing adults to then opt-in to these sites. Again, there is a host of criticism directed to this approach. Most of the criticism centres on the fact that the filters have limited reach, can easily be bypassed, and require discretion from the person administering them.

Few would argue that filters have no impact. They can at least prevent some people from seeing some pornography some of the time. But does it boil down to trading minimally effective filtering for vast censorship powers held by ISPs? It doesn't have to. Just as we have found ways to enforce laws against child pornography, including through international cooperation, we should make similar efforts against all illegal pornography.

Case Study: Iceland & Council of Europe's Efforts

For five years in a row, Iceland was ranked first in the world for women's equal access to opportunity, atop a list of 136 nations surveyed by the World Economic Forum. Other western nations gawked when Iceland's government announced in 2013 that it would be the first western nation to ban violent and degrading pornography. But this is just one more step in a progression of policy measures to protect children and reduce sexual violence against women. The government had already passed a law in 2009 which imposes fines and jail terms on those buying sexual services. Then, in 2010, Iceland made it illegal for any business to profit from the nudity of its employees. As a result, all strip clubs were banned and none exist in Iceland today.

Working to crack down on pornography, Iceland's Ministry of the Interior, Ministry of Education, and Ministry of Welfare joined together to first consult professionals to analyze the effects of violent pornography and then develop a comprehensive and holistic policy regarding violence prevention, sex education, and sexual health.²⁷ The team prepared legislation to ban all violent and degrading sexual material. In addition to drafting legislation, a committee was formed to study the technical, legal, and procedural means necessary to implement the new law.

Not long after these plans made news, a new government was elected in Iceland and the push for pornography laws subsided. But those who think this is just a blip on the radar fail to see the broader context. In 2011, the Parliamentary Assembly of the Council of Europe²⁸ published their report on "violent and extreme pornography", which challenged member states to do more research and to introduce legislation with a focus on violent and extreme pornography. The report also listed specific policy recommendations.²⁹

Country	Legislative Efforts to Combat Pornography
Britain	Opt-in requirement, ban "extreme" pornography
Denmark	Blacklist pornographic websites – require opt-in
Iceland	Banned strip clubs, efforts to ban violent and degrading pornography
Scotland	Banned possession of "extreme" pornography
Germany	Illegal to produce and distribute pornography that involves violence or bestiality
Norway	Illegal to depict sexual activities involving animals, rape, violence, or force.

It is not only Iceland that has heeded this call. The chart on the right details some of the other European countries that have made efforts to combat extreme pornography.³⁰ The point is that western democracies understand the harm and are taking action.

Conclusion & Recommendations

A wide variety of Canadians from across the political spectrum, including leftist feminists and social conservatives, recognize the harm and pain caused by pornography. While there is a role to play for parents, the therapeutic community, educators, journalists, private industry, churches, and pop culture, there is also a role for civil government. Canada already has legislation prohibiting obscene material. Yet the lack of prosecution and the vagueness of the law permits the proliferation of even the vilest forms of pornography. Just as the federal government has taken a lead in combatting narcotics, bullying and prostitution, it can do the same with combatting pornography. ARPA Canada recommends:

- That the House of Commons Standing Committee on Health study the impact of pornography on the health of Canadians, in particular, the factors that heighten risk for dependency and addiction and the effects of exposure to pornography on children and adolescents;
- That the House of Commons Standing Committee on Justice and Human Rights undertake research to determine the relationship between pornography and prostitution and human trafficking and between pornography and other sexual crimes. Further, that it examine the technological means available to effectively restrict criminal activity of this nature online;
- That the House of Commons Standing Committee on Finance examine options for the taxation of pornography as well as taxation of advertising associated with print or electronic pornographic publications;
- That Parliament conduct a long-term educational campaign, similar to its anti-bullying initiative, about the harm caused by pornography and the means to protect individuals and families from it;
- That Parliament amend the *Criminal Code* to clarify the obscenity provisions so that violent and degrading pornography is clearly illegal to produce, distribute and possess;³¹
- That the CRTC and other government agencies take reasonable efforts to ensure their own compliance with the spirit of the law and cooperation with the educational campaign. For example, it is deplorable that the CRTC forced three pornographic TV channels to increase their “Canadian-made” content in 2014.³²
- That all levels of civil government respect the role and authority of the family so that parents can take appropriate measures to raise their children. For example, some provincial governments have driven a wedge between schools and parents by not allowing parents to opt-out of exposure to sexually explicit material which parents believe is inappropriate for their children.

The Government of Canada, in its preamble to Bill C-36, courageously tackled the sensitive issue of prostitution because it understood the cost of having no laws addressing the “social harm caused by the objectification of the human body and the commodification of sexual activity” as well as its “disproportionate impact on women and children.”³³ We respectfully call on this government to see this effort through by taking legislative action against pornography for the very same reasons.

Respectfully Submitted,

Association for Reformed Political Action (ARPA) Canada

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- ¹⁸ Susan Brownmiller, *Against Our Will: Men, Women, and Rape*. (New York: Simon and Schuster, 1975) p. 394.
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- ²⁰ The *Criminal Code* prohibits: making threats of death or serious bodily harm, whether done face to face, online, over the phone or through text messaging; criminal Harassment - repeated tormenting online, with texts, phone calls and/or emails causing the other person to fear for their safety; distribution of intimate images without consent – sharing naked or sexual pictures of another person without their consent (also known as "revenge porn"); and, assaults - including pushing, tripping, slapping, hitting or spitting.
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- ³⁰ *Ibid.*
- ³¹ We find the definition of "obscenity" by the United States Supreme Court helpful: "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way and which, taken as a whole, do not have serious literary, artistic, political or scientific value." (*Miller v. California* (1973))
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- ³³ Preamble, Bill C-36 "An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in *Attorney General of Canada v. Bedford*." Online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6646338&File=24>.