

**BEYOND BORDERS ECPAT CANADA**

**CANADIAN CHARTER OF RIGHTS AND FREEDOMS  
AND  
CANADIAN PASSPORT ORDER  
LEGISLATIVE REVIEW FACT SHEET**

*In order to understand how passports are issued to child sex offenders, we must look to both the Canadian Charter of Rights and Freedoms and the Canadian Passport Order.*

*The information provided below is a summary of relevant and excerpted provisions only and is not an exhaustive review of the sections noted or applicable law. This Fact Sheet is for information purposes only and is not a substitute for legal advice.*

***Canadian Charter of Rights and Freedoms***

The Canadian Charter of Rights and Freedoms (the "Charter") was enacted in 1982 and specifically outlined rights and freedoms that are the civil rights of all Canadians, and acknowledges that those rights are subject to reasonable limits in a free and democratic society.

In order to understand passport laws and restrictions more fully, it is important to take note of two specific rights granted under the Charter: (i) mobility rights; and (ii) legal rights.

**(i) Mobility Rights**

Mobility rights are set out in Section 6 of the Charter. Section 6 provides as follows:

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
  - (a) to move to and to take up residence in any province;
  - and
  - (b) to pursue the gaining of a livelihood in any province;
- (3) The rights specified in subsection (2) are subject to
  - (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
  - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

(ii) Legal Rights

Legal rights are set out in section 7 of the Charter. Section 7 provides as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Reasonable Limits

The rights granted in the Charter are not absolute and the law recognizes that those rights are subject to reasonable limits. Section 1 of the Charter provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Analysis

While mobility rights are specifically provided for in the Charter, as is the right to liberty, these rights are subject to reasonable limits provided they can be demonstrably justified in a free and democratic society. This means that it is possible at law, provided that it would be deemed demonstrably justified, to reduce or limit the ability of registered sex offenders to travel outside of Canada.

Following a legal review, Beyond Borders simply does not accept that it is a matter of law that a registered child sex offender has an automatic right to travel – and have opportunities to engage in child sex tourism or other similar offences. The rights of the child sex offender to travel, and at the risk of vulnerable children, should be subject to limits and those limits should reasonably be seen to be demonstrably justified in a free and democratic society.

**Canadian Passport Order**

The Canadian Passport Order (the "CPO") is a federal regulation established to set out the procedural requirements, responsibilities and obligations of applicants and Government in connection with the issuance of passports to Canadians. The CPO applies throughout Canada except in the Territories of Canada to the extent that the CPO is inconsistent with the *Yukon Act*, the *Northwest Territories Act*, and the *Nunavut Act*, as the case may be. (CPO, Section 8(1))

- The CPO provides that subject only to the terms of the CPO, any person who is a Canadian citizen may be issued a passport. (CPO, Section 4(1))
- Every citizen who would like to obtain a Canadian passport must apply for a passport and provide all of the information required and meet any specified formal requirements. (CPO, Sections 3, 5 and 6)

#### ***Refusal to Issue / Revocation of Passport***

- The Minister already has the power, in his or her discretion, to refuse to issue a passport to an applicant who stands charged **in** Canada with the commission of an indictable offence or who stands charged **outside** of Canada with the commission of any offence that would, if committed in Canada, constitute an indictable offence. (CPO, Section 9(1) (b) and (c))
- The Minister may also refuse to issue a passport if the applicant is subject to a term of imprisonment in Canada or is forbidden to leave Canada or the territorial jurisdiction of a Canadian court by conditions imposed with respect to
  - (i) any temporary absence, work release, parole, statutory release or other similar regime of absence or release from a penitentiary or prison or any other place of confinement granted under the Corrections and Conditional Release Act, the Prisons and Reformatories Act or any law made in Canada that contains similar release provisions,
  - (ii) any alternative measures, judicial interim release, release from custody, conditional sentence order or probation order granted under the Criminal Code or any law made in Canada that contains similar release provisions, or
  - (iii) any absence without escort from a penitentiary or prison granted under any law made in Canada;

(CPO, Section 9(1)(d))

- Further, the Minister may also refuse to issue a passport where the applicant is subject to a term of imprisonment outside Canada or is forbidden to leave a foreign state or the territorial jurisdiction of a foreign court by conditions imposed with respect to any custodial release provisions that are comparable to those set out in the paragraph above. (CPO, Section 9(1)(d.1))
- **It is particularly important that the Minister MAY (and not must) refuse to issue a passport if he or she has reasonable grounds to believe that the refusal is necessary to prevent the commission of any act or omission that would constitute a sexual offence against children (the offences as identified in subsection 7(4.1) of the Criminal Code). This section of the Criminal Code is reproduced in full below.<sup>1</sup>**

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<sup>1</sup> **Offence in relation to sexual offences against children**

**7. (4.1)** Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence

- **UNDER THE CANADIAN PASSPORT ORDER, THE MINISTER MAY (and not must) REVOKE A PASSPORT ON THE SAME GROUNDS ON WHICH HE OR SHE MAY OTHERWISE REFUSE TO ISSUE A PASSPORT. (CPO, SECTION 10(1)).**
- **THE MINISTER MAY ALSO REVOKE THE PASSPORT OF A PERSON WHO (*excerpts only*):**
  - (a) *being outside Canada, stands charged in a foreign country or state with the commission of any offence that would constitute an indictable offence if committed in Canada; or***

**(b) *the Minister has reasonable grounds to believe uses the passport in committing an indictable offence in Canada or any offence in a foreign country or state that would constitute an indictable offence if committed in Canada;***

*(CPO, Section 10(2)(a) and (b))*

- **WHERE THE MINISTER REFUSES TO ISSUE OR REVOKES A PASSPORT ON THE GROUNDS OUTLINED HEREIN, THE MINISTER MAY REFUSE ON THOSE SAME GROUNDS TO DELIVER PASSPORT SERVICES FOR THE MAXIMUM PERIOD OF TEN YEARS. (CPO, Section 10.2(1))**
- **If a passport that is issued to a person has expired but could have been revoked on any of the grounds referred to in section 10, with limited exceptions, had that passport not expired, the Minister MAY (and not must) refuse on those same grounds to deliver passport services, for a maximum period of 10 years, when the facts that could otherwise have led to the revocation of the passport occurred before its expiry date. (CPO, Section 10.4(1))**
- **When a person has been advised by the Minister that there is required to be returned to the Minister, the person shall return it without delay. (CPO, Section 11)**

#### ***Cancellation of Passports***

- **THE MINISTER MAY (and not must) CANCEL A PASSPORT IF HE OR SHE HAS REASONABLE GROUNDS TO SUSPECT THAT CANCELLATION IS NECESSARY TO PREVENT THE COMMISSION OF ANY ACT OR OMISSION REFERRED TO IN SECTION 7(4.1) OF THE CRIMINAL CODE. THIS POWER MAY BE EXERCISED WITHOUT NOTICE.**

**SECTION 7(4.1) OF THE CRIMINAL CODE PROVIDES AS FOLLOWS:**

#### **Offence in relation to sexual offences against children**

**7. (4.1) Notwithstanding anything in this Act or any other Act, every one who,**

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against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the [Immigration and Refugee Protection Act](#).

outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the [Immigration and Refugee Protection Act](#).<sup>2</sup>

*(CPO, Section 11.1(1), Section 11.1(3))*

- If the Minister does cancel a passport under section 11.1 above, the person to whom the passport was issued may, within 30 days after the day on which the person becomes aware that the passport is cancelled, apply to the Minister in writing to have cancellation reconsidered. The person shall be given a reasonable opportunity to make representations. On receipt of those representations, the Minister shall decide if there are still reasonable ground to cancel the passport. The Minister shall give notice to the person without delay of the decision made in respect of the application. *(CPO, Section 11.3)*
- The Minister **MAY** (and not must) cancel a passport if the person to whom it was issued has been advised under section 11 to return their passport, but the passport has not been returned. *(Section 11.2(c))*
- The Minister may authorize either to the Minister of Employment and Social Development or to the Minister of Foreign Affairs to exercise certain functions, including as outlined in section 12(1) of the CPO, such as collecting and verify the information set out in passport applications and processing those applications, collecting and cancelling any valid or expired passports, and withholding and recovering a passport that was issued to an applicant. *(CPO, Section 12(1) and Section 13(1))*
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<sup>2</sup> Criminal Code Sections:

section 151 (sexual interference)

section 152 (invitation to sexual touching)

section 153 (sexual exploitation)

section 155 (incest)

section 159 (anal intercourse) – non consensual and over the age of 18

subsection 160(2) (compelling the commission of bestiality)

subsection 160(3) (bestiality in presence of or by a child)

section 163.1 (child pornography)

section 170 (parent or guardian procuring sexual activity)

section 171 householder permitting prohibited sexual activity

section 171.1 (making sexually explicit material available to child)

section 172.1 (luring a child)

section 172.2 (agreement or arrangement — sexual offence against child)

section 173 indecent acts

subsection 286.1(2) (obtaining sexual services for consideration from person under 18 years)