

Canada and Children's Rights

by David Matas

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To prevent sexual abuse of children, I will limit myself to four suggestions as well. The Convention on the Rights of the Child commits States Parties to undertake to protect the child from all forms of sexual exploitation and sexual abuse¹.

One suggestion I have is that dangerous child sex offenders should not be given passports. Peter Whitmore, a chronic convicted sex offender is accused of kidnapping two boys, a 14 year old from Winnipeg and a ten year old from Whitewood, Saskatchewan. The police negotiated his surrender in Kipling, Saskatchewan last month. Whitmore had violated a supervision order in 2000, going to Mexico, where, according to media reports, he "cultivated relationships" with children. He was found with a notepad containing the names and ages of 13 children.

The Canadian Passport Order authorizes the Government of Canada to refuse a passport for only one offence, the fraudulent use of a certificate of citizenship. The list needs to be expanded to include repeated sexual offences against children, at the very least during the period the offender is serving his sentence in the community.

That same Passport Order allows revocation of a passport if the passport is used in committing a serious offence abroad. But a passport can not be revoked simply because a person has committed child sexual abuse offences in Canada and is likely to do so abroad. Yet, that should be possible, again at the very least during the period the offender is serving his sentence in the community.

¹ Article 34.

The Canadian Charter of Rights and Freedoms provides that every citizen of Canada has the right to leave Canada². But that right is subject to reasonable limits which are demonstrably justified in a free and democratic society³. Right now, sexual offenders may be released from jail but ordered not to leave the country, or indeed, even the province for a fixed period. If a court can, consistent with the Canadian Charter of Rights and Freedoms, order a sex offender not to leave the country for a set period, surely the Government of Canada can make this order effective by denying a passport to such a person during that same period.

Second, the threshold for dangerous offender designation needs to be lowered. Dangerous offender designation means that an offender can be sentenced to life in prison not for what he has done, but for the danger he poses, what he will do.

Peter Whitmore was never designated a dangerous offender because, though he had been convicted many times for sexual abuse of children and was an obvious danger, he had never met the threshold for that designation. The designation can be imposed only if a person has committed a serious personal injury offence.

None of the offences for which Peter Whitmore was convicted fit that description. When it comes to chronic sex offenders, the potential future danger combined with convictions of any sort relevant to the danger should be enough.

Third, Canada needs a public accessible sex offender registry. The BC police allowed Whitmore to visit Alberta for four days and even issued a press release he was going there. Whitmore stayed in Alberta beyond the authorized time. His court ordered supervision expired, in mid June, while he was still there. A court date was set for the end of June to extend the supervision order. But Whitmore did not show up.

² Section 6(1).

³ Section 1.

If the public in Alberta had known, through a publicly accessible sex offender registry, who Whitmore was, the public could have been after the police to get a court order to extend the supervision order before it expired. The police oversight would have been a good deal less likely to have happened.

Right now, there is a national sex offender registry maintained by the RCMP. But the information on the registry is available to police only and not to the public. Moreover, even for police, the registry is available only to investigate unsolved crimes of a sexual nature. The police in Alberta knew about Whitmore. But it was no thanks to the sex offender registry, which even they could not access, because at the time Whitmore was not a suspect in an unsolved sexual crime.

A sex offender registry can be too accessible, as the case of Stephen Marshall showed. Marshall, a Canadian from Cape Breton, looked up on the internet the names and address of two sex offenders, Joseph Gray and William Elliott, on the Maine sex offender registry, went down to Maine and shot and killed them. When confronted by police on a bus in Boston in April this year, he shot and killed himself.

There are legitimate issues, once public sex offender registries are established, about who should be on the registry, how access is obtained, and how much information should be available to the public about the offender. Only those who are truly a danger to the public should be on a publicly accessible registry and not every person who has committed a sexual offence. Public access should require some form of police screening for those who seek information about offenders, to prevent vigilantism. Information about the offender on the registry should be specific enough to prevent cases of mistaken identity.

It is easy to think of what, for a sex offender registry, might be too much. But what we have now nationally, a registry accessible only to police and only even for them for the

purpose of investigating unsolved sex crimes, is far too little.

Finally, I humbly suggest that Canada needs a national plan of action on preventing the commercial sexual exploitation of children. The Government of Canada signed the 1996 Stockholm Declaration for Action which committed Canada to developing such a plan. But since then, there has never been such a plan. Canada does have a couple of national plans and strategies which contain provisions on commercial sexual exploitation of children. There is a broad national plan of action on children launched in 2004. There is very specific strategy to protect children from sexual exploitation on the internet, also from 2004. It should not be that difficult for Canada to develop a plan of action with a specific focus on commercial sexual exploitation of children.

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