

# BEYOND BORDERS INC.

## *Au-Delà Des Frontières Inc.*

*Ensuring Global Justice for Children*

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## How Canada Allows its Convicted Sex Offenders to Freely Travel Abroad

**Offenders listed on the national sex offender registry have almost complete freedom to travel abroad.** They do not have to report absence from Canada unless it extends beyond 14 days. This notification may be made by mail.<sup>1</sup>

**The passports of convicted sex offenders are not restricted.** Although technically the federal government has the ability to refuse or revoke anyone's passport under the power of Royal Prerogative, "the monarch's historical powers that haven't been superseded by statutes passed in Parliament,"<sup>2</sup> this power is rarely used. The Minister of Foreign Affairs may use this power to refuse or revoke a passport on the grounds of national security,<sup>3</sup> but it has never been used to prevent child sex tourism. The lack of clear principled reasoning for when this power may be used makes the prerogative vulnerable to challenges that it is not consistent with the rule of law, which requires known legal rules to be adequately accessible to the public.<sup>4</sup>

**Foreign authorities most often do not receive notification of a Canadian sex offender's plans to travel to their country.** First of all, given the lack of notification requirements, Canadian authorities would not know beforehand what an offender's travel plans are. Secondly, the R.C.M.P. cite a concern that notifying foreign authorities of sex offenders' travel plans would likely violate the *Privacy Act*.<sup>5</sup>

<sup>1</sup> *Sex Offender Information Registration Act*, S.C. 2004, c. 10 s. 6.

<sup>2</sup> Colin Freeze "Graham thwarted Khadr passport; Minister used rare royal prerogative power to prevent security risk from leaving Canada" *The Globe and Mail* (12 July 2004) A1.

<sup>3</sup> *Order Amending the Canadian Passport Order* P.C. 2004-951 C. Gaz. 2004.II.1310, s. 3 (4).

<sup>4</sup> In *Khadr v. Canada (Attorney General)*, 2004 CarswellNat 4677 (Federal Court) (eC), Khadr is challenging the Minister's decision to refuse him a passport on this ground, among others.

<sup>5</sup> Interview of a Staff Sergeant at the national Royal Canadian Mounted Police office (June 6 2005): He said that it was not a general practice to inform foreign authorities of sex offenders' travel plans and that doing so would likely violate the *Privacy Act*.

Interview of a representative at the Federal Privacy Commissioner's Office (June 6, 2005): He said that section 8.2a of the act contained an exception that might allow police to disclose this information in certain circumstances: "...personal information under the control of a government institution may be disclosed (a) for the purpose for which the information was obtained or compiled by the institution or for a use

**This inaction is starkly contrasted to preventative measures recently adopted in Australia and the United Kingdom.** In Australia front-line passport officials are given specified guidance to make a refusal/cancellation of passport request to a federal Minister if they suspect, among other things, that the person in question might endanger a child abroad.<sup>6</sup>

In the U.K. courts are given the authority to impose a “foreign travel order” upon a previously convicted sex offender under certain circumstances, namely where there are reasonable grounds to believe that the offender will sexually harm a child abroad.<sup>7</sup> These orders last for a maximum of six months, and can be renewed. They prohibit the offender from whichever of the following is specified in the order: traveling to specific countries, traveling anywhere but to specific countries named in the order, and traveling anywhere outside the United Kingdom.<sup>8</sup>

In addition, convicted sex offenders in the United Kingdom who plan to travel abroad for 3 days or more are required to notify police 7 days in advance of their departure with specifics such as their departure date, the destination country, and transportation and accommodation details.<sup>9</sup>

### **Recommendations:**

In light of what other countries are doing, it is apparent that Canada could and should be doing so much more to fulfill its international legal commitments to protect “children from sexual exploitation both within Canada and abroad.”<sup>10</sup> To do this, Beyond Borders proposes that the following or similar legislative measures be adopted:

**1. Canadian courts should be able to impose “foreign travel orders” upon anyone for whom there are reasonable grounds to fear that they will sexually abuse a child overseas.** Partially modeled on UK legislation, two types of orders should be available to Canadian courts: 1. A ban on traveling to specific countries (such as child sex tourism destinations). 2. A ban on traveling to any country that is not specified in the order. Blanket travel restrictions should not be adopted because they would be very vulnerable to challenges under the *Canadian Charter of Rights and Freedoms*.

**2. The foreign travel of anyone listed on the national sex offender registry for committing a sexual offence against a child should be carefully monitored, and the**

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consistent with that purpose.” It seems that disclosing information gathered under a sex offender registry to a foreign government would be consistent with the original purpose of gathering it.

<sup>6</sup> *Australian Passports Act 2005* (Cth.) s. 14 (1) (a) (ii).

<sup>7</sup> *Sexual Offences Act*, (U.K.), 2003, c. 42 s. 114 (3) (b).

<sup>8</sup> *Ibid.* s. 117 (2).

<sup>9</sup> *Ibid.* s. 86.

<sup>10</sup> “Child Sex Tourism Fact Sheet,” online: Foreign Affairs Canada

<[http://www.voyage.gc.ca/main/pubs/child\\_fact-en.asp](http://www.voyage.gc.ca/main/pubs/child_fact-en.asp)>: This commitment is stated on the Foreign Affairs Canada website, and is underpinned by the fact that Canada is a signatory to both the *Convention on the Rights of the Child* and *The Stockholm Declaration and Agenda for Action*.

**foreign authorities of any country that they plan to visit should be notified.** The UK model for monitoring the foreign travel of sex offenders could be adopted in Canada, although the relevant period for which offenders are required to give notice need not be 3 days spent abroad, and it must not necessarily be given 7 days in advance. What is paramount is that the offender should not have a sufficient amount of time to travel abroad and abuse children without giving notice of his travel plans, and Canadian authorities should have sufficient time to notify the foreign authorities beforehand of the offender's intent to travel there. Those listed on the sex offender registry for committing an offence against an adult would not be subject to these provisions

**3. Anyone listed on the national sex offender registry for committing a sexual offence against a child should be prohibited from traveling to child sex tourism “hot spots.”** The Department of Foreign affairs could compile a list of countries that have problems with child sex tourism, or that are unwilling or unable to adequately monitor sex offenders. It should not be too difficult for that department to compile such a list, as extensive and updated travel reports are kept for over 200 destinations.<sup>11</sup> The child sex offender would then be free to travel to countries that have similar standards of law enforcement to Canada and where it would not be any easier to commercially sexually exploit a child, such as the United States or Western Europe. Other countries would be “blacklisted” to child sex offenders. This listing would have to be constantly updated to keep pace with the changing destination preferences of sex tourists.

**Would these measures withstand constitutional scrutiny?** Beyond Borders believes these legislative proposals strike a reasonable balance between sex offenders' rights and the rights of children everywhere to be free from sexual abuse, and would therefore be fully consistent with the *Canadian Charter of Rights and Freedoms*.

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<sup>11</sup> “Country Profiles” online: Foreign Affairs Canada <<http://www.voyage.gc.ca/dest/ctry/profiles-en.asp>>.