

R.v. Sharpe Factum Summary (2000)

Interveners:

CANADIANS ADDRESSING SEXUAL EXPLOITATION

ECPAT CANADA

ECPAT INTERNATIONAL

INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS

BUREAU INTERNATIONAL DES DROITS DES ENFANTS

BEYOND BORDERS ENSURING GLOBAL JUSTICE FOR CHILDREN

The general principle that the factum of the interveners asserts is that children come first. The rights of children take priority over the rights of adults. The United Nations Convention on the Rights of the Child, by which Canada is bound at international law, states that in all actions concerning children, the best interests of the child shall be a primary consideration (Article 3). In this case, the rights of adult and the rights of children are in conflict. The position of the interveners is that the rights of children must prevail. The adult right asserted is the right to freedom of expression through possession of child pornography. The right of children asserted is the right to be protected from sexual exploitation and abuse. The Convention on the Rights of the Child requires states party to the Convention to undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, state parties must take all appropriate measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials (Article 34). The British Columbia courts, in holding that the Criminal Code child pornography possession law was constitutional, held that the state had to show and failed to show that the law protecting children was a reasonable limit to the adult's right to freedom of expression. The interveners argue that this holding put adult rights first instead of children's rights first. The position of the interveners is that it should be for the adult to show that the unconstitutionality of the law is a reasonable limit on the right of children to be free from sexual exploitation and abuse. The onus should be on the adult, not on the protector of children, the State.