



CANADIAN SHOOTING SPORTS

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COMMENTARY: Mandatory Registration Violates Charter Rights of Convicted Sex Offenders?

Any rational person would believe mandatory registration of individuals who have **not** committed a crime would violate their Charter Rights and Freedoms. That's reasonable and rational.

Apparently, it's also very un-Canadian. In Canada, criminals have rights. Law-abiding citizens? Not so much.

Canadian judges have routinely ruled that registering convicted sex offenders, namely those individuals convicted of sexual crimes, is a violation of their Charter rights.

Few would argue the rationality of keeping sexual predators, convicted or otherwise, away from our loved ones. Yet our judicial system routinely insists they should not suffer from "arbitrary, overbroad and grossly disproportionate" violations of their civil rights. Those are the exact words of Alberta Court of Queen's Bench, Justice Andrea Moen, in her written ruling in *R. v Ndhlovu*, 2016 ABQB 595 (<http://canlii.ca/t/qv923>).

Her concern seems reserved for a 19-year-old male who went to a party and, despite repeatedly being told to stop, seriously groped and fondled two women.

Justice Andrea Moen concluded her written ruling with this:

"[119] In my view, the mandatory registration for all sex offenders upon conviction of two or more offences, without regard to the seriousness of the offences or the offender's propensity to reoffend is overbroad. The goal of the legislation is to assist police with investigating past crimes and preventing new ones. The Crown conceded that the Registry captures individuals who will never re-offend. In my view, including offenders on the Registry who have little to no chance of reoffending bears no relation to protecting the public. Subjecting all offenders, regardless of their future risk, to onerous reporting requirements, random compliance checks by the police, and internal stigma, goes further than what is necessary to accomplish the goal of protecting the public, and is therefore overbroad."



The Sex Offender Information Registration Act's stated purpose is: "*to help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.*"

It is not up to the judge to decide who is and is not at risk to re-offend. It is a judge's job to apply the law as written by Parliament.

However, it appears that's not how Justice Moen views her role.

Continued Moen: "The law as it stands will now place Mr. Ndhlovu on police radar for the rest of his life anytime a sexual offence is committed by a black man of average height in his neighbourhood. I find that requiring him to register bears no connection to the object of assisting police officers in the investigation or prevention of future sex crimes. Thus, subjecting him to the reporting requirements, compliance investigation and further possible interference from police is in violation of his Charter protected right."

Interesting conclusion. What is even more fascinating is that those same mandatory registration and compliance measures are not a violation of the Charter protected rights of Canadian firearm owners.

In his landmark research paper "*How The Firearms Act (Bill-68) Violates The Charter Of Rights And Freedoms*," Dr. Ted Morton wrote the following:

"If the Supreme Court applies the same Charter rules to law-abiding firearm owners as it has to impaired drivers, drug dealers, prostitutes, pimps, single parent welfare recipients, abortion providers, murderers, refugee claimants and owners of child pornography, that is — if it applies the law of the land with an even hand — then it will be forced by its own precedents to declare the Firearms Act unconstitutional and thus of no force or effect."

But when it comes to gun owners, even the Supreme Court of Canada happily ignores its own precedents. In the reference hearing on the Firearms Act brought forward by the Alberta government, the Supreme Court opened its defense of that onerous law with this statement:

"The issue before this Court is not whether gun control is good or bad, whether the law is fair or unfair to gun owners, or whether it will be effective or ineffective in reducing the harm caused by the misuse of firearms."

That was all the (lack of) rationalization needed to violate the Charter rights of millions of law-abiding Canadians who have never committed a crime.

One has to question — how far has a nation fallen from common sense and decency when it views the rights of sexual offenders above those of law-abiding citizens?

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