



**HOUSE OF COMMONS  
CANADA**

**STATUTORY REVIEW OF THE SEX OFFENDER  
INFORMATION REGISTRY ACT**

**Report of the Standing Committee on  
Public Safety and National Security**

**Garry Breitkreuz, MP  
Chair**

**DECEMBER 2009  
40th PARLIAMENT, 2nd SESSION**

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# **THE STANDING COMMITTEE ON PUBLIC SAFETY AND NATIONAL SECURITY**

has the honour to present its

## **FIFTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the Committee has reviewed the *Sex Offender Information Registry Act* and has agreed to report the following:





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# STATUTORY REVIEW OF THE SEX OFFENDER INFORMATION REGISTRY ACT

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## Introduction

Sex offences generate a great deal of public concern and suffering for the victims of these offences. As a result of these high personal and social costs, governments are constantly looking for tools and methods capable of reducing the incidence of sex offences and protecting the public against the threat that some sex offenders represent. One attempt to find a solution was the creation, in 2004, of a national registry containing information on offenders who have been convicted of a sex offence or found not criminally responsible on account of mental disorder. This report examines the provisions and operation of the *Sex Offender Information Registration Act*, which established the national sex offender registry (hereinafter, the national registry). This registry has been available to law enforcement agencies in Canada for slightly less than five years.

## A. Committee Mandate and Approach

On February 10, 2009, the Standing Committee on Public Safety and National Security (hereinafter the Committee) decided to proceed with the first statutory review of the *Sex Offender Information Registration Act* (hereinafter SOIRA or the Act).<sup>1</sup> The Act, which came into force on December 15, 2004, provides the legislative basis for the national registry. This review is provided for under section 21.1 of the Act:

21.1 (1) The administration of this Act shall, two years after the coming into force of this Act, be reviewed by the parliamentary committee that may be designated or established by Parliament for that purpose.

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall undertake a review of the provisions and operation of this Act and shall, within six months after the review is undertaken or within any further time that may be authorized, submit a report to Parliament thereon including a statement of any changes to this Act or its administration that the committee would recommend.

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1 SOIRA works in combination with sections 490.011 to 490.032 and related provisions of the *Criminal Code of Canada* and, since September 2008, with section 227 and related provisions of the *National Defence Act*. In 2007, SOIRA was amended by Bill S-3: *An Act to amend the National Defence Act, Criminal Code, Sex Offender Information Registration Act and Criminal Records Act*. That bill was introduced to harmonize the military justice and civil criminal systems with respect to the registration of offenders convicted of sex offences in courts martial. It received Royal Assent on March 29, 2007 and came into force on September 12, 2008.

The primary purpose of the review was to determine what changes need to be made to SOIRA and related legislation to ensure that the national registry is best able to fulfill the purpose for which it was enacted, that is, to help police authorities in Canada to investigate sex offences. To that end, the Committee held three sessions during which it gathered evidence from representatives of the departments of Public Safety and Justice, the Canadian Association of Chiefs of Police, the RCMP, the Ontario Provincial Police, the Privacy Commissioner of Canada, the Canadian Council of Criminal Defence Lawyers, and Jim and Anna Stephenson, the parents of young Christopher, who was kidnapped and brutally murdered at the age of 11 by a sex offender on federal statutory release. It was in his memory that *Christopher's Law*,<sup>2</sup> which established the Ontario sex offender registry, was enacted on April 23, 2001. The Committee also benefited from an audiovisual presentation on the Ontario registry's operation.<sup>3</sup>

This report sets out the weaknesses in the national registry that were revealed over the course of these hearings and concludes with the Committee's observations and recommendations. In light of the review, the Committee feels that statutory amendments are required to SOIRA and related legislation if the police are to have a more effective investigatory tool. The recommendations are designed specifically to help police departments prevent crimes of a sexual nature, solve them more quickly, and more effectively supervise sex offenders in the community. The national registry that this report proposes is inspired by the provisions of the Ontario sex offender registry,<sup>4</sup> which the police officers who appeared before the Committee consider superior, and eliminates the legislative obstacles brought to its attention that hamper the administration and effective operation of the national registry. It is important to make clear at the outset that, by themselves, the suggested changes cannot ensure the national registry's effectiveness. That depends on the support and cooperation of the many stakeholders involved in ensuring public safety at the national, provincial/territorial and municipal levels.

## **B. Structure of the Report**

The report's observations and recommendations can be grouped into seven main themes: SOIRA's purpose and principles; sex offender registration; crimes of a sexual nature committed outside Canada; the information collected in the registry; the reliability of the information kept in the registry; technological developments; and the cost of establishing and maintaining the upgraded registry. These themes are set out in the following sections.

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2 S.O. 2000, c. 1.

3 See appendix A and B for lists of witnesses and briefs submitted to the Committee.

4 The Ontario sex offender registry is maintained and managed by the Ontario Provincial Police on behalf of the Ontario Ministry of the Solicitor General.

## Observations and Recommendations

### A. SOIRA's Purpose and Principles

SOIRA established a national data bank that contains information on certain sex offenders who have been found guilty of designated offences under the *Criminal Code of Canada* (hereinafter, the Code)<sup>5</sup>—such as sexual assault, child pornography, child luring and exhibitionism—or declared not criminally responsible on account of mental disorder. At present, not all the sex offenders covered by SOIRA and related legislation are required to register in the national registry. Pursuant to the Code, it is the Crown that must initiate the registration process. If a court rules that the offender should be registered in the national registry, an order is issued requiring the offender to report to a designated registration office in the 15 days following the issue of the order or the offender's release. In April 2009, the Committee was informed that the national registry contains the names of over 19,000 sex offenders.<sup>6</sup>

SOIRA is designed to help the police in Canada investigate crimes of a sexual nature by giving them access to reliable information on offenders found guilty of crimes of a sexual nature or found not criminally responsible on account of mental disorder. The registry contains information essential to police investigations such as the offender's address and telephone number, the nature of the offence committed, the age and gender of the victim and the victim's relationship to the attacker, any aliases that the offender uses, and a description of any distinguishing marks or tattoos the offender might have.

The public does not have access to the national registry. Only the police can access it, and only when they are investigating a crime of a sexual nature. Querying the national registry allows the police to identify possible suspects among the sex offenders living in the area where a crime of a sexual nature has been committed and to eliminate certain people from the list of suspects in order to move the investigation in a new direction. During her appearance before the Committee, Chief Superintendent Kate Lines, Ontario Provincial Police, noted:

That saves a lot of time for investigators, who can now move in another direction [...] Taking someone off the list rather than identifying them has great value when investigative time is of the essence.<sup>7</sup>

Police officers appearing before the Committee during its review explained that time is of the essence when investigating crimes of a sexual nature, especially in cases where a

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5 Section 490.011 of the *Code* defines a "designated offence" by listing the offences for which an order may be imposed.

6 The RCMP manages the national registry pursuant to section 14 of SOIRA.

7 Chief Superintendent Kate Lines, *Evidence*, April 21, 2009.

child has been kidnapped. During her appearance, Ms. Lines presented statistics that illustrate the importance of a rapid response in these cases; she said that in cases where a child is kidnapped and murdered:

- 44% were dead within an hour of the kidnapping;
- 74%, within three hours; and
- 91%, within twenty-four hours.<sup>8</sup>

Under the terms of section 16 of SOIRA, the police may only consult the national registry if they have “reasonable grounds to suspect [that the specific crime being investigated] is of a sexual nature.” When reading the principles on which SOIRA is based, it becomes clear that the legislator imposed this restriction in order to protect offenders’ privacy and the public’s interest in their rehabilitation and social reintegration as law-abiding citizens.

SOIRA’s purpose is based on the following principles (subsection 2(2)):

- a) in the interest of protecting society through the effective investigation of crimes of a sexual nature, police departments must have rapid access to certain information relating to sex offenders;
- b) the collection and recording of accurate information on an ongoing basis is the most effective way of ensuring that such information is current and reliable; and
- c) the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community as law-abiding citizens require that:
  - (i) the information be collected only to enable police departments to investigate crimes that there are reasonable grounds to suspect are of a sexual nature, and
  - (ii) access to the information, and use and disclosure of it, be restricted.

Like the witnesses, the Committee fully supports SOIRA’s purpose. It also agrees with the principle that it is essential to limit access to and communication and use of the information in the national registry in order to protect offenders’ privacy and the public’s interest in their rehabilitation and social reintegration. Nevertheless, the Committee, like a number of the witnesses, feels that the provision that prevents police from consulting the national registry during investigations when the nature of the crime is not yet known is too

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<sup>8</sup> Statistics taken from Brian A. Reaves and Matthew J. Hickman, *Census of State and Local Law Enforcement Agencies 2000*, Bureau of Justice Statistics and Bulletin, October 2002, p. 2.

restrictive. When investigating a crime, enforcement authorities should be able to access the registry when they need to, and their efforts should not be circumvented by overly rigid criteria that may delay an investigation during its most critical moments. The current access criterion, requiring that police be investigating an offence with reasonable cause to believe it is sexual in nature, appears to be too restrictive to allow police to access the registry in cases where the exact nature of the crime may not yet be known (for example in the case of a missing child), but where accessing the registry could prove useful for the investigation.

The Committee learned that *Christopher's Law*, which is the basis for the Ontario sex offender registry, authorizes the police to consult the information contained in the Ontario registry to prevent crimes of a sexual nature or to verify the accuracy of the information contained in the registry.

The statistics on the use of the national and Ontario registries reveal a significant discrepancy. According to the information we received, the national registry is consulted an average 165 times a year<sup>9</sup> and the Ontario registry, around 475 times a day.<sup>10</sup> Despite this difference, none of the Committee's witnesses mentioned a single case in which the Ontario registry had been abused.

Like the police officers that appeared before it, the Committee feels that the restriction limiting access to the information contained in the national registry hampers crime-prevention efforts. The police should be able to use the information in the national registry when the nature of the crime is unknown in order to prevent the commission of a crime, to monitor offenders and to ensure the accuracy of the information in the registry.

In light of these considerations:

#### **RECOMMENDATION 1:**

**The Committee recommends that the *Sex Offender Information Registration Act* and related legislation be amended to allow accredited law enforcement agencies in each province and territory to access the information contained in the national sex offender registry in order to investigate and prevent crimes and apply the Act.**

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9 Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, RCMP, *Evidence*, April 21, 2009.

10 Superintendent David Truax, Ontario Provincial Police, Canadian Association of Chiefs of Police, *Evidence*, April 21, 2009.

## B. Sex Offender Registration

As mentioned previously, the Crown is not required to apply to a court for an order requiring a sex offender to register in the national registry (s. 490.012 of the Code). When the Crown does make such an application, the court must determine whether the application is warranted after imposing a sentence for a designated sexual offence under the Code or finding the person not criminally responsible on account of mental disorder. For certain secondary offences provided for in paragraph 490.011(1)(b) of the Code, the court must issue the order when the Crown has proved beyond any reasonable doubt that the offence was committed with the intent to commit one of the offences of a sexual nature referred to in paragraph 490.011(1)(a).<sup>11</sup> This is the case, for example, of a break and enter for the purpose of committing sexual assault.

SOIRA differs in this respect from *Christopher's Law*, which establishes the Ontario registry. As Mary Campbell, Department of Public Safety, pointed out, some of the offences that can lead to registration in the national registry "are not sex offences on the face of it," while all the offences that can require registration in the Ontario registry are sex offences.<sup>12</sup>

That said, it is important to note that the court is not required to make an order under this section if it is satisfied that the offender has established that, if the order were made, the impact on his or her privacy or liberty would be grossly disproportionate<sup>13</sup> to the public interest in protecting society.<sup>14</sup> In all cases, the court must give reasons for its decision. Finally, the Crown and the offender may also appeal the court's decision in the matter.

Offenders subject to a registration order are required to submit their personal information to the police within 15 days either after the order is issued or they are released, and to keep it up to date.<sup>15</sup> Under SOIRA, the registration must be renewed once a year and within 15 days following a change of name or address. If the offender is absent from his or her place of residence for a period of at least 15 consecutive days, he or she must also inform the registration office of that fact. At that time, the offender shall provide information on the address or place where he or she is staying or intends to stay, and on the actual scheduled dates of departure from and return to his or her principal or secondary residence. The offender is also required to inform the registration office of his or her actual

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11 Appendix C contains the list of all the offences under section 490.011 of the Code.

12 Appendix D contains a table comparing the Ontario sex offender registry and the national sex offender registry that lists the sex offence criteria referred to in *Christopher's Law*. The table was prepared by the representatives of the Ontario Provincial Police.

13 The provisions of the Code relating to information on sex offenders and SOIRA do not define "grossly disproportionate impact". The court must therefore turn to jurisprudence for an interpretation of that term.

14 Subsection 490.012(4) of the Code.

15 The obligations regarding appearance are set out in sections 4 to 7 of SOIRA.



or scheduled date of departure if leaving Canada, and communicate the date of his or her actual return no later than 15 days after returning. A sex offender may provide notification by registered mail or in accordance with the regulations to the Act. According to information gathered during this review, roughly 94% of offenders registered in the national registry comply with SOIRA's requirements.<sup>16</sup> Section 12 of the Act provides the sex offender with the right to request a correction in the database of any information relating to him or her, if the offender believes it is erroneous.

The Code provides penalties for offenders who fail to comply with a registration order or who give false information.<sup>17</sup> In the case of a first offence or of a second or subsequent offence on summary conviction, the offender is subject to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. In any other case, the offender is subject to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

Offenders are registered for a specific period depending on the maximum sentence provided for the offence of which they have been convicted (section 490.013 of the Code):

- 1) 10 years for summary conviction offences or an offence for which the maximum term of imprisonment is two or five years;
- 2) 20 years for offences for which the maximum term of imprisonment is 10 to 14 years; and
- 3) life for offences for which the maximum term of imprisonment is life.

However, if a second or subsequent order is made against the offender, under SOIRA, the order applies to the convicted offender for life.<sup>18</sup>

Under the Code, registered offenders may apply for the termination of an order after five years if the order is for 10 years, after 10 years if the order is for 20 years and after 20 years if the order is for life. A court shall make a termination order earlier than

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16 Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, RCMP, *Evidence*, April 21, 2009.

17 Sections 490.031 and 490.0311 of the Code.

18 Both the prosecutor and the offender may appeal the court's decision pursuant to section 490.014 of the Code.

planned if the offender has established that the impact on their privacy or liberty would be grossly disproportionate to the public interest served by including them in the registry.<sup>19</sup> The judge must state the reasons for the decision.

According to the evidence heard, about 50% of offenders found guilty of a designated offence or found not criminally responsible are currently subject to an order for inclusion in the national registry. The low rate of application of orders can be explained by various factors. Mary Campbell, Department of Public Safety, noted in this regard:

We have heard from some officials from the [federal-provincial-territorial] working group that crown attorneys, on some occasions, simply through pressure of time or workload, what have you, forget to ask for the order.<sup>20</sup>

According to Carman Baggaley, Office of the Privacy Commissioner, it is reasonable to expect that as SOIRA becomes more well-known, it will be more extensively applied.<sup>21</sup> The Committee was also told that the order application rate varies widely by province and territory. Inspector Pierre Nezan stated in this regard:

In some provinces, applications are diligently made, while in others, orders are not being sought for a variety of reasons. The absence of an automatic inclusion on the registry of all offenders convicted of sexual crimes has led to the inconsistent application of the law across the country.<sup>22</sup>

To address these problems in terms of the consistent registration of offenders, two approaches were suggested to the Committee. Some witnesses called for registration in the national registry to be automatic for all offenders found guilty of an offence designated under the Code. Others stressed the importance of maintaining the judge's discretion so that only the judge can determine whether an order should be applied in view of the circumstances of the offence and the offender's profile.<sup>23</sup>

Like a number of witnesses, the Committee is in favour of the automatic registration of offenders found guilty of a designated sexual offence or found not criminally responsible, as is the case in Ontario.<sup>24</sup> The list of offences leading to automatic registration in the national registry should however be limited to the sexual offences listed in paragraph

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19 Sections 490.015 and 490.016 of the *Code*.

20 Director General, Corrections and Criminal Justice Directorate, Department of Public Safety and Emergency Preparedness, *Evidence*, April 21, 2009.

21 *Evidence*, April 23, 2009.

22 *Evidence*, April 21, 2009.

23 Brydie Bethell, Barrister, Canadian Council of Criminal Defence Lawyers, *Evidence*, April 23, 2009.

24 Voyeurism is the only offence in the Act establishing the Ontario registry to which section 490.011 of the Code does not apply.

490.011(1)(a), (c), (c.1), (d) or (e) of the Code. Moreover, the Committee is of the opinion that a judge should have the ability to depart from an automatic ruling in *rare* circumstances when he or she is convinced that the impact of inclusion in the registry on the offender's privacy and liberty would be grossly disproportionate to the public interest.

The Committee also maintains that it is best left to a judge's discretion whether or not to issue a registration order for offenders found guilty of the other offences listed in paragraphs 490.011(1)(b) of the Code, and for whom the Crown has demonstrated beyond a reasonable doubt that the offender's intent was to commit an offence listed in paragraph 490.011(1)(a), (c), (c.1), (d) or (e), if applicable. In light of these considerations:

## **RECOMMENDATION 2:**

**The Committee recommends that the *Sex Offender Information Registry Act* and related legislation be amended to provide for the automatic registration of offenders found guilty of offences listed in paragraph 490.011(1)(a), (c), (c.1), (d) or (e) of the *Criminal Code*, except in rare circumstances that warrant a departure from this rule when the judge is convinced that the impact of inclusion in the registry on the offender's privacy and liberty would be grossly disproportionate to the public interest. SOIRA must clearly provide that, in these rare circumstances, the court must justify its decision.**

**Offenders found guilty of an offence listed in paragraph 490.011(1)(b) of the *Criminal Code* for whom the Crown has demonstrated beyond a reasonable doubt that the offender intended to commit a sexual offence listed in paragraphs 490.011(1)(a),(c),(c.1),(d) or (e) shall be subject to an order for inclusion in the sex offender registry, if the court deems such an order to be warranted.**

## **C. Sex Offences Committed Abroad**

Some witnesses pointed out to the Committee that SOIRA does not apply to Canadians found guilty abroad of sex offences comparable to those set out in subsection 490.011(1) of the Code. Ms. Campbell, Department of Public Safety, noted that this issue was raised a number of times by the federal-provincial-territorial working group. She stated:

When a Canadian has been convicted abroad and, under the International Transfer of Offenders Act, is transferred back to Canada under sentence, then of course we know about the offence. It would be fairly straightforward, I think, to consider a model that could include those people. Obviously, it wouldn't be happening at the time of sentencing. It would have to be a special application, but there the facts are known.

The more challenging situation is one where a Canadian has committed a sex offence abroad, completes the sentence there, and perhaps remains in that country or may travel to other countries. A significant period of time, many years, may pass, and then they may return to Canada. It's a very practical question of having the information. It's then a question of a police sharing of information.

I don't think you would find many people who would quarrel in principle with the idea that they should be in a position comparable to that of a person who'd committed that offence in Canada. The question becomes how you get that information, particularly where years may have passed.

While the Committee recognizes that it may be difficult to expand the application of SOIRA to persons not subject to inclusion in the registry because they were not convicted in Canada, it is of the opinion that SOIRA should include a procedure to request that an order for inclusion in the registry be issued for offenders found guilty abroad of a sex offence that is equivalent to the offences listed in the Code. In light of these considerations:

### **RECOMMENDATION 3:**

**The Committee recommends that the Government of Canada examine the possibility of expanding the application of the *Sex Offender Information Registry Act* so that Canadian citizens found guilty abroad of a sex offence equivalent to one of the offences set out in subsection 490.011(1) of the *Criminal Code* are subject to review for an order to be issued for inclusion in the national sex offender registry.**

### **D. Information Collected in the Registry**

The information collected in the national registry is limited by SOIRA. Under section 5, a sex offender must provide his or her given name and surname and any alias, date of birth and gender, address or location of principal residence and every secondary residence, the address or location of every place where he or she is employed or volunteers, the address or location of any educational institution where he or she is enrolled, telephone numbers, height, weight and description of distinguishing physical marks.

Section 5 also provides that the offender may be required to be photographed so that a photo is included in the registry of any observable characteristic that may assist in the offender's identification, such as eye colour and hair colour.

Pursuant to section 8, the person recording the information must also provide in the registry certain information included in the order; namely, the offender's name, the number identifying the record of fingerprints, all offences related to the order, when and where the offences were committed, when and where the offender was found guilty or found not criminally responsible due to mental disorder, the age and gender of all victims and their relationship to the offender, the date and duration of the order and the court that issued it.

The person recording the information may also include any observable characteristic that may help in identifying the offender. Under SOIRA, that person must also record the information in a way that preserves their confidentiality.

According to police officers who appeared before the Committee, the restrictions imposed by SOIRA on eligible information are too strict and hamper police investigations. This includes information that may indicate that the sex offender in question is “inactive” because he or she is incarcerated or deceased. RMCP Inspector Nezan pointed out that this restriction conflicts with one of the principles of the Act, which is that the registry should include current and reliable information. He stated:

If an investigator calls us and is looking for a potential list of suspects or persons of interest, we may inadvertently provide him with a list that has a deceased person on it, and they'll be essentially chasing a ghost or chasing their tails. That's not what we're after, and certainly that was not the intent of the legislation.<sup>25</sup>

In the Committee's opinion, this issue must be addressed to ensure the reliability of the information and to facilitate police investigations. In light of these considerations:

#### **RECOMMENDATION 4:**

**The Committee recommends that the *Sex Offender Information Registry Act* be amended to include new administrative fields in the national sex offender registry, to allow persons recording the information in the registry to indicate whether the offender is incarcerated or deceased.**

Witnesses appearing before the Committee also criticized SOIRA for not authorizing data to be collected on the offender's modus operandi or vehicle. RCMP Mr. Nezan stated that: “the registry is of no assistance to law enforcement in those sexual crime investigations where police may only have a suspect vehicle description as a lead.”<sup>26</sup> Such important information for police investigations is currently included in the Ontario registry. The software program that supports the Ontario registry also allows police officers to filter data using such information. In light of these considerations:

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25 *Evidence*, April 21, 2009.

26 *Ibid.*

#### **RECOMMENDATION 5:**

The Committee recommends that the *Sex Offender Information Registry Act* be amended so that the licence plate number, make, model, year, colour and description of any motor vehicle owned, leased or regularly used by the offender be recorded in the national sex offender registry. Offenders should be required to update this information.

#### **RECOMMENDATION 6:**

The Committee also recommends that the *Sex Offender Information Registry Act* be amended so that the offender's modus operandi may be recorded in the national sex offender registry.

### **E. Reliability of Registry Information**

In order to be effective, the national registry must contain information that is reliable and current. Paragraph 2(2)(b) of SOIRA states that: "The collection and registration of accurate information on an ongoing basis is the most cost effective way of ensuring that such information is current and reliable." We learned that *Christopher's Law* contains more detailed provisions than SOIRA to ensure data reliability. Subsection 4(2) of *Christopher's Law* provides for instance that: "The police force shall make reasonable efforts to verify an offender's address, as provided to the police force by the offender, at least once after the offender last presented himself or herself to the police force under subsection 3(1)."<sup>27</sup> Other provisions are intended to ensure that officials with the Ontario registry are informed in advance of the release of all registered offenders serving a sentence.

RCMP Inspector Pierre Nazan told the Committee that the provisions of SOIRA "prohibit communication between agencies that share the responsibility for managing sex offenders."<sup>28</sup> To address this problem and to ensure data reliability, some witnesses suggested that federal, provincial and territorial correctional services should be required to inform release registration centres of the release of sex offenders subject to SOIRA. The Canadian Association of Chiefs of Police suggested that all provincial, territorial and federal correctional services should be electronically linked with the national registry in order to monitor offenders and to ensure that they report to the registration centre within 15 days of their release.

The Committee is of the opinion that governments' commitment to the national registry requires the mobilization of authorities responsible for monitoring sex offenders.

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27 S.O. 2008, c 3.

28 *Evidence*, April 21, 2009.

The Department of Public Safety should therefore look for ways to promote and enhance cooperation and pooling of information among all partners involved in public safety in order to ensure the accuracy of the information collected in the national registry. To ensure data reliability, police departments must also be able to check the accuracy of the information provided by offenders.

In light of the evidence heard:

#### **RECOMMENDATION 7:**

**The Committee recommends that the *Sex Offender Information Registry Act* and related legislation be amended so that the federal, provincial and territorial correctional services are required to inform release registration centre employees in a timely manner of the release of offenders subject to SOIRA.**

**To this end, the Government of Canada should examine the possibility of establishing electronic links between the federal, provincial and territorial correctional services and the national sex offender registry so that information about the release of registered offenders is automatically conveyed to the national registry.**

#### **F. Technical Improvements**

A number of witnesses pointed out that the Ontario's sex offender registry has a better software program than the one used for the national registry. One of the key features of the Ontario registry is its geo-mapping capability. Witnesses told the Committee that this feature allows police officers to view the residence of registered sex offenders when investigating an incident. The police officers who appeared before the Committee consider this a very useful investigation tool. Superintendent David Truax noted in this regard:

In searching for a missing child by querying the registry and utilizing its geo-mapping features, you can identify the first 12 to 15 doors to where you want to dispatch police officers to make a verification, to see whether or not that individual is home, where the individual has been, etc. As alluded to earlier, that eliminates persons of interest in order to advance an investigation with the best possible speed and efficiency.<sup>29</sup>

The Ontario registry also allows for more advanced searches than the national registry since data can be filtered by various factors, such as the victim's age and gender, relationship to the offender and the offender's modus operandi. Kate Lines, of the Canadian Association of Chiefs of Police, gave the following example:

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29 Evidence, April 21, 2009.

If a child were to go missing outside of where we're sitting this morning, perhaps at the corner of Elgin Street and Wellington, Ontario's registry, given its query capabilities, could do a radius search within minutes to identify registered sex offenders in the area and provide their physical description, occupation, and even the vehicles they drive. Within a short period of time, officers could be knocking on the doors of those sex offenders.<sup>30</sup>

In light of these considerations:

#### **RECOMMENDATION 8:**

**The Committee recommends that the Government of Canada invest in the software for the national sex offender registry so that it offers search functions including the geographic representation of a sex offender's address and data filtering by the victim's age and gender, relationship to the offender, location of past offences and modus operandi comparable or more effective than the system in place in Ontario.**

#### **G. Cost of Implementing and Maintaining the Enhanced Registry**

The Committee heard that the provinces and territories currently provide the resources required for the administration of the national registry and oversee the application of SOIRA, although the RCMP national policy centre in Ottawa is responsible for managing the registry itself.<sup>31</sup> During this review, the RCMP informed the Committee that the national registry has an operating budget of between \$400,000 and \$600,000 per year. By comparison, the budget for the operation and centralized management of the Ontario registry is close to \$4 million per year, not including the expenses incurred by local police departments.<sup>32</sup>

The Committee recognizes the difficulty of evaluating the costs of implementing the enhanced national registry proposed in this report since it has no information about the cost of implementing the national registry at the provincial, territorial and municipal levels. That said, since the changes proposed by the Committee are based on Ontario's current registry, it expects that the cost of implementing the enhanced national registry would be partially offset by adopting the same technology used for the Ontario registry. The Committee also expects that the annual cost of the enhanced registry would not be

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30 Chief Superintendent Kate Lines, *Evidence*, April 21, 2009.

31 Director, Corrections and Community Development, Department of Public Safety and Emergency Preparedness, *Evidence*, April 21, 2009.

32 Office of the Auditor General of Ontario, *2007 Annual Report of the Auditor General of Ontario: Chapter 3 – Ministry of Community Safety and Correctional Services – Section 3.11, Ontario Sex Offender Registry*, 2007.



excessive since the mechanisms for the administration of the national program are already in place across the country. Finally, the Committee maintains that the implementation costs would be offset by savings realized by reducing the time required to conduct police investigations and by the prevention of sex offences.

## **Conclusion**

The national sex offender registry is relatively new. During the Committee's review, no information regarding the evaluation of its effectiveness was available. Police officers were nonetheless unanimous in endorsing the registry to the Committee as a useful tool for police in investigating sex offences and even preventing crime in some cases.

The Committee has made recommendations in this report to address what it sees as flaws in the system that interfere with the objectives of SOIRA, which are to help police solve sex offences and prevent their occurrence whenever possible.

That said, the implementation of these recommendations alone will not be sufficient to make the national registry an effective and efficient tool for police departments across the country. To achieve this goal, the RCMP needs the assistance of all partners that have information that is essential to the operation of the national registry, including the Correctional Service of Canada, the National Parole Board, provincial and territorial correctional services and the many provincial, territorial and municipal police departments and public safety ministries.

Finally, the Committee is hopeful that the implementation of these recommendations will provide the police in this country with a more effective and efficient investigation tool and sex offenders will be more closely monitored. That being said, the national sex offender registry is not a panacea, and the implementation of innovative solutions for the monitoring and handling of sex offenders must remain a priority.



## LIST OF RECOMMENDATIONS

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### RECOMMENDATION 1:

The Committee recommends that the *Sex Offender Information Registration Act* and related legislation be amended to allow accredited law enforcement agencies in each province and territory to access the information contained in the national sex offender registry in order to investigate and prevent crimes and apply the Act.

### RECOMMENDATION 2:

The Committee recommends that the *Sex Offender Information Registry Act* and related legislation be amended to provide for the automatic registration of offenders found guilty of offences listed in paragraph 490.011(1)(a), (c), (c.1), (d) or (e) of the *Criminal Code*, except in rare circumstances that warrant a departure from this rule when the judge is convinced that the impact of inclusion in the registry on the offender's privacy and liberty would be grossly disproportionate to the public interest. SOIRA must clearly provide that, in these rare circumstances, the court must justify its decision.

Offenders found guilty of an offence listed in paragraph 490.011(1)(b) of the *Criminal Code* for whom the Crown has demonstrated beyond a reasonable doubt that the offender intended to commit a sexual offence listed in paragraphs 490.011(1)(a),(c),(c.1),(d) or (e) shall be subject to an order for inclusion in the sex offender registry, if the court deems such an order to be warranted.

### RECOMMENDATION 3:

The Committee recommends that the Government of Canada examine the possibility of expanding the application of the *Sex Offender Information Registry Act* so that Canadian citizens found guilty abroad of a sex offence equivalent to one of the offences set out in subsection 490.011(1) of the *Criminal Code* are subject to review for an order to be issued for inclusion in the national sex offender registry.

### RECOMMENDATION 4:

The Committee recommends that the *Sex Offender Information Registry Act* be amended to include new administrative fields in the national sex offender registry, to allow persons recording the information in the registry to indicate whether the offender is incarcerated or deceased.

**RECOMMENDATION 5:**

The Committee recommends that the *Sex Offender Information Registry Act* be amended so that the licence plate number, make, model, year, colour and description of any motor vehicle owned, leased or regularly used by the offender be recorded in the national sex offender registry. Offenders should be required to update this information.

**RECOMMENDATION 6:**

The Committee also recommends that the *Sex Offender Information Registry Act* be amended so that the offender's modus operandi may be recorded in the national sex offender registry.

**RECOMMENDATION 7:**

The Committee recommends that the *Sex Offender Information Registry Act* and related legislation be amended so that the federal, provincial and territorial correctional services are required to inform release registration centre employees in a timely manner of the release of offenders subject to SOIRA.

To this end, the Government of Canada should examine the possibility of establishing electronic links between the federal, provincial and territorial correctional services and the national sex offender registry so that information about the release of registered offenders is automatically conveyed to the national registry.

**RECOMMENDATION 8:**

The Committee recommends that the Government of Canada invest in the software for the national sex offender registry so that it offers search functions including the geographic representation of a sex offender's address and data filtering by the victim's age and gender, relationship to the offender, location of past offences and modus operandi comparable or more effective than the system in place in Ontario.

## APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p><b>Canadian Association of Chiefs of Police</b></p> <p>Kate Lines, Chief Superintendent Ontario Provincial Police</p> <p>David Truax, Superintendent Ontario Provincial Police</p> <p><b>Department of Justice</b></p> <p>Douglas Hoover, Counsel Criminal Law Policy Section</p> <p><b>Department of Public Safety and Emergency Preparedness</b></p> <p>Mary Campbell, Director General Corrections and Criminal Justice Directorate</p> <p>Clifford Yumansky, Director Corrections and Community Development</p> <p><b>Royal Canadian Mounted Police</b></p> <p>Pierre Nezan, Officer in Charge National Sex Offender Registry</p> <p>Leo O'Brien, Officer in Charge Behavioural Sciences Branch</p>	2009/04/21	15
<p><b>As an individual</b></p> <p>Anna Stephenson</p> <p>Jim Stephenson</p> <p><b>Canadian Council of Criminal Defence Lawyers</b></p> <p>Brydie Bethell, Barrister</p> <p><b>Office of the Privacy Commissioner of Canada</b></p> <p>Carman Baggaley, Strategic Policy Advisor Legal Services and Policy Branch</p> <p>Lisa Campbell, Acting General Counsel Legal Services, Policy and Parliamentary Affairs Branch</p>	2009/04/23	16
<p><b>Ontario Provincial Police</b></p> <p>Kate Lines, Chief Superintendent</p> <p>Jim Mascola, Sergeant</p> <p>David Truax, Superintendent</p>	2009/05/12	21



# APPENDIX B LIST OF BRIEFS

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## Organizations and Individuals

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Canadian Association of Chiefs of Police

Ontario Provincial Police





# APPENDIX C

## LIST OF DESIGNATED OFFENSES

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### Section 490.011 of the *Criminal Code of Canada*

**490.011** (1) The following definitions apply in this section and in sections 490.012 to 490.032.

"designated offence" means

(a) an offence under any of the following provisions:

- (i) subsection 7(4.1) (offence in relation to sexual offences against children),
- (ii) section 151 (sexual interference),
- (iii) section 152 (invitation to sexual touching),
- (iv) section 153 (sexual exploitation),
- (v) section 153.1 (sexual exploitation of person with disability),
- (vi) section 155 (incest),
- (vii) subsection 160(3) (bestiality in presence of or by a child),
- (viii) section 163.1 (child pornography),
- (ix) section 170 (parent or guardian procuring sexual activity),
- (x) section 172.1 (luring a child by means of a computer system),
- (xi) subsection 173(2) (exposure),
- (xii) paragraph 212(1)(i) (stupefying or overpowering for the purpose of sexual intercourse),
- (xiii) subsection 212(2) (living on the avails of prostitution of a person under age of eighteen),
- (xiv) subsection 212(2.1) (aggravated offence — living on the avails of prostitution of a person under age of eighteen),
- (xv) subsection 212(4) (obtaining prostitution of person under age of eighteen),
- (xvi) section 271 (sexual assault),
- (xvii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),
- (xviii) paragraph 273(2)(a) (aggravated sexual assault — use of a restricted firearm or prohibited firearm or any firearm in connection with criminal organization),
- (xviii.1) paragraph 273(2)(a.1) (aggravated sexual assault — use of a firearm),
- (xix) paragraph 273(2)(b) (aggravated sexual assault), and
- (xx) subsection 273.3(2) (removal of a child from Canada);

(b) an offence under any of the following provisions:

- (i) subsection 173(1) (indecent acts),
- (ii) section 177 (trespassing at night),
- (iii) section 230 (murder in commission of offences),

- (iv) section 234 (manslaughter),
- (v) paragraph 246(b) (overcoming resistance to commission of offence),
- (vi) section 264 (criminal harassment),
- (vii) section 279 (kidnapping),
- (vii.1) section 279.01 (trafficking in persons),
- (viii) section 280 (abduction of a person under age of sixteen),
- (ix) section 281 (abduction of a person under age of fourteen),
- (x) paragraph 348(1)(d) (breaking and entering a dwelling house with intent to commit an indictable offence),
- (xi) paragraph 348(1)(d) (breaking and entering a dwelling house and committing an indictable offence),
- (xii) paragraph 348(1)(e) (breaking and entering a place other than a dwelling house with intent to commit an indictable offence), and
- (xiii) paragraph 348(1)(e) (breaking and entering a place other than a dwelling house and committing an indictable offence);

(c) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983:

- (i) section 144 (rape),
- (ii) section 145 (attempt to commit rape),
- (iii) section 149 (indecent assault on female),
- (iv) section 156 (indecent assault on male), and
- (v) subsection 246(1) (assault with intent) if the intent is to commit an offence referred to in any of subparagraphs (i) to (iv);

(c.1) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as enacted by section 19 of *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, chapter 125 of the Statutes of Canada, 1980-81-82-83:

- (i) section 246.1 (sexual assault),
- (ii) section 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm), and
- (iii) section 246.3 (aggravated sexual assault);

(d) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988:

- (i) subsection 146(1) (sexual intercourse with a female under age of fourteen),
- (ii) subsection 146(2) (sexual intercourse with a female between ages of fourteen and sixteen),
- (iii) section 153 (sexual intercourse with step-daughter),
- (iv) section 157 (gross indecency),
- (v) section 166 (parent or guardian procuring defilement), and
- (vi) section 167 (householder permitting defilement);

(e) an attempt or conspiracy to commit an offence referred to in any of paragraphs (a), (c), (c.1) and (d); or

(f) an attempt or conspiracy to commit an offence referred to in paragraph (b).

**KEY DIFFERENCES BETWEEN THE ONTARIO SEX  
OFFENDER REGISTRY AND THE NATIONAL SEX  
OFFENDER REGISTRY**

**SUBMITTED  
BY THE  
ONTARIO PROVINCIAL POLICE**



## Key Differences between the Ontario Sex Offender Registry and the National Sex Offender Registry

	<i>Ontario Sex Offender Registry (Christopher's Law)</i>	<i>National Sex Offender Registry (Sex Offender Information Registration Act)</i>
<b>Purpose</b>	Investigative tool to aid police in preventing and solving crimes of a sexual nature.	Tool to help police investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.
<b>Essential Features</b>		
<b>Access by police</b>	For crime prevention or law enforcement purposes	On reasonable grounds for investigating crimes of a sexual nature
<b>Disclosure to public</b>	No public access; police services may <u>disclose</u> information obtained from the registry under subsection 41 (1.1) of the <i>Police Services Act</i> for the purpose of protecting the public or victims of crime	No public access
<b>Who must report</b>	<u>Automatic registration</u> for any resident for a criteria sex offence	<u>Anyone subject to a court order</u> (on application of prosecutor) for a criteria sex offence <sup>1</sup> if the court is satisfied that it is not grossly disproportionate to public interest
<b>Criteria Offences</b>	See appendix B for details	
<b>Reporting period</b>	Within: <ul style="list-style-type: none"> <li>• 15 days after <u>completion of custodial sentence</u> or on being sentenced (non-custodial)</li> <li>• 15 days after being found not criminally responsible and given an absolute or conditional discharge</li> </ul>	Within: <ul style="list-style-type: none"> <li>• 15 days after <u>order is made</u> (if convicted but not given a custodial sentence)</li> <li>• 15 days after receiving an absolute or conditional discharge, if found not criminally responsible</li> <li>• 15 days after release from custody (pending appeal or after serving custodial sentence)</li> </ul>
<b>Notification of absence</b>	15 days prior to ceasing to be a resident	Not later than 15 days if outside Canada for 15 days or more

<sup>1</sup> Offenders already on the OSOR are eligible to be entered onto the national database once personally served with a notification to register (form 53). Their obligation to register begins one year after the date of service of notice to register or after an unsuccessful application is made for an exemption order, whichever is later or when an exemption order is quashed.

	<b>Ontario Sex Offender Registry (Christopher's Law)</b>	<b>National Sex Offender Registry (Sex Offender Information Registration Act)</b>
<b>Offences/Penalties</b>	<p>Offenders who fail to comply with the act or provide false information under the act are liable, upon conviction, to:</p> <ul style="list-style-type: none"> <li>• a fine of not more than \$25,000 or imprisonment for not more than one year or both (for first offence)</li> <li>• a fine of not more than \$25,000 or imprisonment for not more than two years less a day or both (for a subsequent offence)</li> </ul>	<p>Within 15 days upon returning to Canada</p> <p>New Criminal Code offence – maximum of 6 months in prison for a first offence and up to 2 years for any subsequent offence and/or a \$10,000 fine in either case</p>
<b>Duration of Reporting Requirement</b>	<p>Two tiered system that begins on first reporting date :</p> <ol style="list-style-type: none"> <li>1. Offenders must comply for 10 years, if the maximum sentence for the criteria offence is not more than 10 years</li> <li>2. Offenders must comply for life, if the maximum sentence is more than 10 years, or if convicted of or found not criminally responsible for more than one criteria sex offence</li> </ol>	<p>Three-tiered system that begins on issuance of court order (form 52):</p> <ol style="list-style-type: none"> <li>1. 10 years – summary, 2 and 5 year maximum imprisonment</li> <li>2. 20 years – 10 or 14 year maximum term</li> <li>3. Life – maximum life sentence or prior sexual conviction</li> </ol>
<b>Review Mechanism</b>	None	Offenders may apply for a termination order at halfway mark (5, 10 or 20 years) of their reporting obligation
<b>Pardons</b>	Removed from the system	Offender information removed upon receipt of H.M. Royal Prerogative or Sec. 748 Pardon
<b>Access by Offender</b>	Copy of information contained on the system provided <u>on request</u>	Copy provided upon information being collected, upon information being registered onto the database and upon request from offender
<b>Freedom of Information</b>	Does not apply in respect of information collected	SOIRA added to Federal Access to Information Act under Schedule 2
<b>Vehicle Information</b>	Offenders are required to report vehicle information during registration	No requirement to report vehicle information

	<b><i>Ontario Sex Offender Registry (Christopher's Law)</i></b>	<b><i>National Sex Offender Registry (Sex Offender Information Registration Act)</i></b>
<b>Geo-mapping</b>	OSOR registry includes maps to identify offender residences in relation to offences/incidents	No maps

## CRITERIA SEX OFFENCES

<i>Christopher's Law</i>	<i>Sex Offender Information Registration Act</i>
<p>Designated Offences:</p> <ul style="list-style-type: none"> <li>▪ Sexual offences against children outside Canada</li> <li>▪ Sexual interference</li> <li>▪ Invitation to sexual touching</li> <li>▪ Sexual exploitation, sexual exploitation of person with disability</li> <li>▪ Incest</li> <li>▪ Bestiality, compelling the commission and in the presence of or by a child</li> <li>▪ Child pornography</li> <li>▪ Parent or guardian procuring sexual activity</li> <li>▪ Luring a child by means of a computer system</li> <li>▪ Exposure</li> <li>▪ Stupefying or overpowering for the purpose of sexual intercourse</li> <li>▪ Living on the avails of prostitution of a person under age of eighteen (aggravated offence)</li> <li>▪ Obtaining prostitution of person under age of eighteen</li> <li>▪ Sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm</li> <li>▪ Voyeurism</li> <li>▪ Aggravated sexual assault (asa); asa and use of a firearm</li> </ul> <p>Removal of a child from Canada</p>	<p>Designated Offences:</p> <ul style="list-style-type: none"> <li>▪ Sexual offences against children outside Canada</li> <li>▪ Sexual interference</li> <li>▪ Invitation to sexual touching</li> <li>▪ Sexual exploitation, sexual exploitation of person with disability</li> <li>▪ Incest</li> <li>▪ Bestiality (1 only)</li> <li>▪ Child pornography</li> <li>▪ Parent or guardian procuring sexual activity</li> <li>▪ Luring a child by means of a computer system</li> <li>▪ Exposure</li> <li>▪ Stupefying or overpowering for the purpose of sexual intercourse</li> <li>▪ Living on the avails of prostitution of a person under age of eighteen (aggravated offence)</li> <li>▪ Obtaining prostitution of person under age of eighteen</li> <li>▪ Sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm</li> <li>▪ Aggravated sexual assault; asa and use of a firearm</li> <li>▪ Removal of a child from Canada</li> </ul>
<p><b>As a result of the passage of Bill 16 which was proclaimed in December 2008, anyone who receives a Form 52 and resides in Ontario will be required to register with the OSOR.</b></p>	<p>Any of the following <u>secondary offences</u> (if the intent was to commit a designated offence and if the prosecutor establishes intent beyond a reasonable doubt)</p> <ul style="list-style-type: none"> <li>▪ Trespassing at night</li> <li>▪ Murder in commission of offences</li> <li>▪ Manslaughter</li> <li>▪ Overcoming resistance to commission of offence</li> <li>▪ Criminal harassment</li> <li>▪ Kidnapping</li> <li>▪ Abduction of a person under 14</li> <li>▪ Breaking and entering with intent</li> <li>▪ Abduction of a person under 18</li> </ul>



***Christopher's Law***

***Sex Offender Information Registration Act***

Predecessor offences:

- Rape
- Attempt to commit rape
- Indecent assault on female/male
- Assault with intent
- Sexual intercourse with a female under age of fourteen
- Sexual intercourse with a female between ages of fourteen and sixteen
- Sexual intercourse with step-daughter
- Gross indecency
- Parent or guardian procuring defilement
- Householder permitting defilement

Predecessor offences:

- Rape
- Attempt to commit rape
- Indecent assault on female/male
- Assault with intent
- Sexual intercourse with a female under age of fourteen
- Sexual intercourse with a female between ages of fourteen and sixteen
- Sexual intercourse with step-daughter
- Gross indecency
- Parent or guardian procuring defilement
- Householder permitting defilement

Attempt or conspiracy to commit a designated sex offence

Attempt or conspiracy to commit a designated sex offence



# REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 15, 16, 21, 34, 36, 40 and 41](#)) is tabled.

Respectfully submitted,

Garry Breitkreuz, MP

Chair



## Supplementary Opinion of the New Democratic Party

Don Davies, M.P.

This is the first statutory review of the Sex Offender Information Registration Act. The primary goal of this review is to determine what changes need to be made to the Act to ensure that the Registry created by the Act is best able to fulfill the purpose for which it was enacted.

This purpose is two-fold: to help police services investigate and solve crimes of a sexual nature, while preserving society's interest in the rehabilitation of sex offenders. In both cases, the over-arching objective is to make our communities safer places for everyone.

Indeed, those very principles are enshrined in the Act. Section 2 explicitly points to the public's interest in furthering police investigations of crimes of a sexual nature by giving police rapid access to certain information relating to sex offenders, as well as the public's interest in the rehabilitation and reintegration of sex offenders into the community, thereby ensuring that they do not re-offend.

The New Democrat position during the Committee's study has been to work to strengthen the Registry so that it can most effectively achieve its purpose, and to ensure that public safety is protected by preserving the necessary balance between the aforementioned principles.

This report contains some extremely positive recommendations to improve the Registry's effectiveness, and to close loopholes that were present in the original legislation. New Democrats support all of these measures, and played a role in initiating a number of them.

These recommendations include enabling the Registry to track whether an offender is incarcerated or deceased, allowing police to track offenders' vehicle information, ensuring that sex offenders convicted abroad are required to register upon return to Canada and

providing for better communication between federal, provincial and territorial corrections agencies and the police who maintain the Registry.

We believe that, overall, the report's recommendations will result in a Registry that is more complete and effective. There is, however, one area in which the report does not adequately reflect the opinion of the New Democratic Party.

The report proposes a system of automatic registration for sex offenders, while allowing for "rare circumstances that warrant a departure from this rule when the judge is convinced that the impact of inclusion in the registry on the offender's privacy and liberty would be grossly disproportionate to the public interest." To the extent that this proposal preserves judicial discretion, we agree. The evidence that the Committee heard was that the primary failing of the current system of registration was that prosecutors were inadvertently neglecting to apply for registration. The evidence we heard around judicial discretion, on the other hand, was that the system was working well. In fact, the Committee heard from a Department of Justice official who stated that "right now it is working fully as intended, whereby probably 90% of applications that are brought before the courts result in an order of the court for the individual to register."

New Democrats believe that public safety requires giving judges discretion to keep people off the Registry who do not pose a risk to the public. In fact, we heard direct evidence that if the Registry is overpopulated by those who do not pose any real threat of re-offending, as will inevitably occur with a fully automatic system of registration, the Registry's utility as a tool for police to rapidly investigate crimes is actually diminished.

It is the New Democrats' position that the Act ought to be amended to make registration automatic upon conviction for offences proceeded by way of indictment, with the ability of the offender to make the case why such an order ought not to be made. It is our view that the current test in this regard, namely, that an accused must show that the impact of registration on his privacy or liberty interests is "grossly disproportionate" to society's

interest in making the order, constitutes an appropriate and heavy burden that will only be discharged in the most clear of cases.

By this process, we can cure the problem of prosecutors neglecting to make the request for registration by making such a request automatic upon conviction. It also maintains the present location of the onus on the offender to show why an order ought not to be made, and with a heavy burden at that. At the same time, we may also preserve the very important principle of judicial discretion that is so critical to the administration of justice.

For offences proceeded by way of summary conviction, we support the present system in the Act that allows prosecutors the discretion to make an application for registration. We again favour the rigid and heavy burden on the offender to show why such an order ought not to be made in such cases if an application is made.

In this manner, we can preserve the important concept of prosecutorial discretion. In the New Democrats' view, the Crown prosecutors of our country are skilled and professional officers of our courts whose judgment is essential both to securing convictions and distinguishing cases that justify registration from those that do not. We would point out that prosecutors must have the discretion to negotiate terms in order to obtain convictions or guilty pleas in appropriate cases, and preserving their ability to do so often serves to obtain convictions where otherwise guilty offenders might walk away free.

The New Democrats believe that the Registry is an important and essential tool in helping to keep our communities safe. We believe that sex offenders who present a danger to our communities ought to be registered. We believe that our judicial system must have the discretion, flexibility and strength to ensure that the Act effectively achieves the most fundamental aim of all: to keep our communities safe.

It is our view that the Report, with these amendments, would result in a Registry that is more likely to achieve this goal.