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# **New York State Plea Agreement Provokes Anger Among Officials North of the Border**

By DAVID STABA

CHEEKTOWAGA, N.Y., Nov. 20 — A misdemeanor plea agreement approved last month by a judge in this Buffalo suburb has touched off something of an international incident, with Ontario's top elected official accusing the United States of using Canada as a dumping ground for criminals.

And while the American prosecutor and the judge insist they did nothing to warrant the accusation, that has not cooled tempers north of the border.

It all began when an American, Malcolm F. Watson, now 36, was sentenced to three years' probation after pleading guilty last month to child endangerment and third-degree sexual abuse, both misdemeanors. Mr. Watson, a teacher at a private high school in Buffalo, was arrested in April in a mall parking lot after a security guard saw him in a car with a 15-year-old female student and called the police.

The sexual-abuse charge involved Mr. Watson touching the girl's breast, according to prosecutors. But the Cheektowaga police officer who made the arrest noted in his report that a condom, condom wrapper and tube of lubricant were found in Mr. Watson's car.

Mr. Watson, who had no criminal record, pleaded guilty to the misdemeanor charges with an agreement that he could spend most of the three years' probation in St. Catharines, Ontario, 30 miles northwest of Buffalo, where he lives with his wife and three children. He no longer works at the school. When The Buffalo News described the agreement as a form of "exile," the Canadian press picked up on it, and a political furor began.

"It's obviously not the precedent that we want to allow the Americans to establish; it's not the kind of thing that we're prepared to accept," Dalton McGuinty, the premier of Ontario, told reporters the day after Mr. Watson's plea. "We will certainly work with the federal government — and I hope we'll be of one mind in this regard — to ensure that we don't become some kind of dumping ground for convicted offenders south of the border."

Last month Canadian immigration officials detained Mr. Watson — an American citizen with permanent resident status in Canada — as he tried to cross back into their country. He was released and allowed to remain in Canada pending a hearing before immigration officials scheduled for Dec. 18.

Then Prime Minister Stephen Harper weighed in.

"The government will use every legal means possible to prevent this individual from being free in Canada," Mr. Harper told reporters. "He is, however, a Canadian resident, and Canada's laws in this regard are too loose."

At that point, recalled the Erie County district attorney, Frank Clark, "I said, 'This is nuts; I've got the prime minister of Canada decrying some little plea agreement.' "

To try to muffle the outcry from Canada, the prosecutor's office asked Thomas S. Kolbert, the town judge who approved the original agreement, to modify the sentence and require Mr. Watson to remain in New York for the rest of his probation.

Mr. Clark said he was not pressured into the move by the government of either country. "I felt it would be prudent for me to do something to defuse the situation," he said. "The attorney general of Canada sent me a dirty letter because that's what attorneys general from other countries do."

But Mr. Watson's attorney, Thomas Eoannou, contended that changing the sentence would violate his client's due-process rights.

"We're in here on a motion to modify a sentence where the defendant hasn't done anything wrong," Mr. Eoannou said. "All of a sudden we're back in here and the only difference is 200 newspaper articles."

Mr. Eoannou said forcing Mr. Watson to serve his probation in the Buffalo area would separate him from his wife and children, who would not be able to move to this country for at least 18 months.

He then said that if the judge agreed to the prosecution's request, the case could end up going to trial. "Before the family is destroyed, and before he lives in a country without his family, we will seriously consider withdrawing the plea," Mr. Eoannou said.

Mr. Clark said that avoiding a trial was a primary motivation in going along with the original agreement in the first place, since the girl maintained that she was involved in a relationship with Mr. Watson and her family wanted to end the case quietly.

"They desperately did not want this girl to have to testify — she was in love with this guy," Mr. Clark said.

He added: "I'm not exactly dealing with a victim who is dying to help me. The parents are just beside themselves. What I'm trying to do is to put together a plea agreement that will satisfy justice at both ends."

For his part, Mr. Eoannou said the Canadian outcry should have no bearing on the American courts.

"Does Canada have political concerns about a sex offender living in Canada?" he said. "Of course they do. Should it be addressed through legislation? Perhaps it should. Should it be loaded up on Malcolm Watson in this courtroom because of politics? Absolutely not. That's why the lady of justice has a rag around her head."

The prosecutor and defense lawyer agree that the case hinges on the outcome of next month's deportation hearing.

"I would say the entire ball of wax is what Canada does with immigration," Mr. Eoannou said. "Quite frankly, if Canada throws him out, we're back here and we're living in the U.S. and we're abiding by the terms of probation."

As for the reports that the plea agreement ordered Mr. Watson to stay in Canada except for visits to his probation officer, which fueled the charges of banishment and exile, Mr. Clark said they were incorrect.

"No way in the world we could have stopped him from coming back into the U.S. — he's an American citizen," Mr. Clark said. "If we kept every person who committed Class D misdemeanors from entering our borders, there would be 250 million people living elsewhere."

Chris Mason contributed reporting from Toronto.