

B.C. court upholds child-sex tourism charges

BY BRADLEY BOUXANE, CANWEST NEWS SERVICE January 30, 2009

The B.C. Supreme Court upheld the constitutional validity of child-sex tourism charges against Canadians overseas in a landmark decision Friday.

Kenneth Klassen, a married father of three, now appears likely to become the first Canadian to go on trial for sex tourism charges. He is accused of 35 sex crimes involving underage girls — some as young as nine — in Colombia, Cambodia and the Philippines, between 1997 and 2002.

His lawyer argued that the sex tourism law was unconstitutional because the offences are alleged to have occurred outside Canada. But Justice Austin Cullen of B.C. Supreme Court said a nation has a sovereign interest in preventing the sexual exploitation of children, regardless of where it occurs.

If convicted, Klassen faces a maximum of 10 years in prison.

Cullen's decision potentially sets the stage for Canada to catch up to other countries with similar legislation.

The ruling could give the Crown more confidence to prosecute sex tourism cases and result in an influx in charges coming to light, said Benjamin Perrin, assistant professor of law at the University of British Columbia.

"The case of Kenneth Klassen is the first decision we have from a court which confirms that Canada's child-sex tourism law is constitutional," said Perrin. "This is a landmark decision that affirms Canada's step to hold our child-sex offenders accountable, wherever they commit their crimes.

"It's a very significant decision which creates an additional tool for prosecutors to point to in pursuing Canadian sex offenders abroad. It also removes one of the excuses for inaction that Canada has relied on in terms of our very poor record in enforcing this law in comparison to other countries like Australia and the U.S., which routinely enforce their legislation and bring their sex offenders home to face trial."

Just three people have been convicted of committing sex crimes against children in other countries since 1997, when Canada introduced its extraterritorial child-sex tourism law.

In 2004, Donald Bakker of B.C. was charged under the law in Canada and pleaded guilty the following year. Another two men — a pair of Quebec aid workers stationed in Haiti — were convicted of sexual exploitation in November 2008.

"Before (Bakker) pleaded guilty, his lawyer was threatening to challenge the constitutionality of the law and that created a bit of a chilling effect on police and prosecutors, who began to wonder if the law would withstand a constitutional challenge," Perrin said. "Canada was not seen as being very active internationally (in) enforcing its laws."

The track record in Australia and the U.S., however, is more impressive, said Perrin.

Perrin said that in the U.S., from 2003 to early 2008, there have been 67 arrests, resulting in 47 convictions with other cases still before the courts under similar laws.

The U.S. Court of Appeal upheld the validity of that country's child-sex laws in 2006.

In Australia, 158 investigations were conducted from 1995 to 2007. Of the 28 individuals facing charges, 19 were convicted, while others remain before the court. The basis of those charges were also upheld in 2006 by the Australian High Court.

Perrin said he hopes the decision by the B.C. Supreme Court can help put some weight behind Canada's law and result in a higher rate of enforcement.

"Now that his constitutional challenge has been rejected . . . (Klassen) will have to face these very serious allegations and be exposed to the potential sentences for the charges if he's found guilty," Perrin said.

"More than that, it creates a great deal of pressure on the federal government to begin to consider whether the government will accept some international criticism and act on it. The federal government needs to make enforcement of this law a priority."