Constitutionality of Child-Sex Tourism Law in Canada

In the recent case of *R. v. Klassen*, the B.C. Supreme Court upheld the constitutional validity of child-sex tourism charges laid against Canadians who commit illegal acts while overseas.[1] The first case to challenge the constitutionality of such charges dealt with Kenneth Klassen, who was accused of committing 35 sex crimes involving underage girls. The alleged crimes took place in Columbia, Cambodia, and the Philippines.[2] Mr. Klassen's counsel argued that section 7(4.1) of Canada's *Criminal Code*[3] (Offence in relation to sexual offences against children) was unconstitutional as it violated sections 7, 8, 9, 10(a), 10(b), 15 and 32 of the *Charter of Rights and Freedoms*.[4]

The main issue before the court was whether it was constitutional to apply Canadian law to acts committed overseas by Canadians. All the alleged victims were foreign nationals victimized outside of Canada. Only the accused was a Canadian citizen. Counsel for the accused asserted that application of the *Charter* was limited to Canadian territory, arguing that the common law stressed the importance of sovereignty and that the basis for jurisdiction is territoriality.[5] It was also argued that there is no direct relation between the alleged acts outside of Canada and the Canadian public, which the *Criminal Code* is supposed to protect; therefore, the extension of the law to these acts is outside Parliament's jurisdiction.[6] Justice Cullen was not persuaded by the counsel for the accused.

Crown counsel cited section 132 of the *Constitution Act, 1867* which gave Canada "all the Powers necessary or proper for performing the obligations of Canada . . . arising under Treaties."[7] Canada, Columbia, Cambodia, and the Philippines have all signed and ratified the United Nation's Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.[8]Justice Cullen ruled that section 7(4.1) of the *Criminal Code* was constitutional because Parliament has the power to enact extraterritorial legislation and the majority of the world's countries have signed the Optional Protocol.[9] Furthermore, he dismissed the contention that the accused's rights under the *Charter* would be infringed, stating that the accused was still guaranteed a fair trial under section 11(d) of the *Charter*.[10]

This recent decision by the B.C. Supreme Court strengthens Canadian constitutional law as it pertains not only to child-sex tourism, but also to any conduct prohibited by Canadian criminal law if it is carried out by a Canadian in another country that, along with Canada, is party to an international agreement. This recent decision brings Canada in line with other common law jurisdictions such as Australia and the United States.[11]

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[1] Bradley Bouzane, "Charges are appropriate for overseas child-sex offences, court rules" *Vancouver Sun* (31 Jan 2009).

[2] “Child-Sex Tourism Law Stands, Judge Rules” *Toronto Sun* (31 Jan 31 2009).
[3] *Criminal Code of Canada*, RSC 1985, c C-46 (CanLII).
[4] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (CanLII).
[5] *R v Klassen*, 2008 BCSC 1762 at paras 15 and 17 (CanLII).
[6] *Ibid* at para 12.
[7] *Ibid* at para 35.
[8] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, GA Res. UN GAOR, 54/263 of 25 May 2000 entered into force on 18 January 2002 UN Rights of the Child [Optional Protocol].
[9] *Constitution Act, 1867* (UK), 30 & 31 Vict, C 3, reprinted in RSC 1985, App. II, No 5 (CanLII).
10] *Supra* note 5 at para 52.
[11 *Supra* note 1.