

THE PROSECUTION OF CHILD SEX TOURISM OFFENCES IN CANADA¹

The 18 brothels in Svay Pak [Cambodia] occupy the left side of the 100-yard street. We sit at one of the open-fronted bars opposite... [and] talk to Michael, a Canadian, and Bruce, an American. Bruce points at two pre-pubescent girls wearing pyjama-like clothes printed with paisley patterns and they both talk freely about “which girls do what”.

Most of the girls are Vietnamese, they say, sold into temporary slavery by parents desperate to bail themselves out of debt. Others are drawn from three local villages. By the time they are seven - but certainly no later than their 13th birthday - their virginity is sold for hundreds of dollars. Thereafter the price diminishes steadily.

Later, Michael and Bruce take two young girls - the younger one is between nine and eleven, the elder no more than a year or two ahead of her - behind the brothels to the private shanty homes beyond. This, we are told, is where the “really young” children are offered.

First, Michael and Bruce pay the madame, known as a “mamas an”, a few dollars. Then, about an hour and a quarter later, they emerge for a smoke and a beer, followed by the girls. They detail what they have done, which is unprintable. They are unconcerned, they say, by the possibility of retribution from the police, explaining that the chances of being arrested in Svay Pak are minimal.²

INTRODUCTION

Given the scarcity of arrests related to child sex crimes in many of the world’s poorer countries, as well as the lack of arrests and/or convictions for such crimes under Canada’s extraterritorial legislation, the nonchalance of ‘Michael’ – the Canadian mentioned above - about being caught and tried for his crimes is not all that surprising. This paper examines the first prosecution of a Canadian national for sexual crimes committed against children in a foreign country, under Section 7(4.1) of the *Criminal Code*, and Canada’s international commitments to prevent and combat child sexual exploitation, and child sex tourism in particular.

¹ This paper was written by Dwight Stewart and Monique Trépanier, with assistance from Nicola Mahaffy, who are members of the Canadian Young Lawyer’s Group of the International Society for the Reform of Criminal Law. The writers’ biographies appear at the end of this paper.

² Excerpt from an undercover report by Daniel Faggio for The Sunday Telegraph, September 2002. D. Faggio, “The approach is unchanging: ‘You want young girl, little girl!’” *Sunday Telegraph*, 15 September 2002, page 12. Reproduced online: Stop Demand: <<http://www.stopdemand.org/wa.asp?idWebPage=8109&idDetails=130>> date accessed: 25 May 2005.

CANADA'S COMMITMENTS UNDER INTERNATIONAL LAW

International efforts to prevent the commercial sexual exploitation of children (“CSEC”) and to encourage the prosecution of those who perpetrate such crimes have gained momentum in the last decade. In addition to international meetings of experts and conferences aimed specifically at combating the child sex trade, a number of countries have passed extraterritorial legislation allowing them to prosecute their nationals who commit sexual crimes against children abroad.³ The world tourism industry has also responded by setting up task forces, monitoring systems and codes of conduct.⁴ Canada has played a role in working to combat CSEC through its participation in international meetings and conferences, through international development initiatives, as a signatory to a number of international instruments, and ultimately, through the implementation of its international commitments.

Canada ratified the Convention on the Rights of the Child in December 1991 thereby committing itself, amongst other things, “to undertake to protect the child from all forms of sexual exploitation and sexual abuse.”⁵ In November 2001, Canada signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁶ This instrument expresses “deep concern” at “the widespread and continuing practice of sex tourism”⁷ and compels States to take “such measures as may be necessary to establish [their] jurisdiction over the offences referred to in article 3, paragraph 1 (which includes offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation), when the offence is committed on [their] territory or when the alleged offender is a national of that State or a person who has his habitual residence in [their] territory”.⁸

³ Australia, for example, has prosecuted 17 of its nationals under its own extra-territorial legislation since 1994. See “Australian Jailed for Child Sex Tourism Offences Committed in Viet Nam”, UNICEF, online: <http://www.unicef.org/vietnam/media_1326.html> (date accessed: 22 May 2005).

⁴ ECPAT International, Child Sex Tourism, online: ECPAT <<http://www.ecpat.net/eng/CSEC/faq/faq3.asp>>, date accessed: 25 May 2005

⁵ United Nations Convention on the Rights of the Child, Art. 34, 20 Nov 89, G.A.Res. 44/25, 44 U.N. GAOR Supp. No. 49, U.N. Doc. A/44/736 (1989) [hereinafter “CRC”].

⁶ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 20 May 2000, G.A. Res. 54/263. UN Doc. A/RES/54/263. At the time of writing, Canada had not yet ratified this Optional Protocol

⁷ Ibid at preamble

⁸ Ibid at art. 4(2)

Canada is also a party to the Convention against Transnational Organized Crime and its supplemental protocol to prevent, suppress and punish trafficking in persons, especially women and children. This supplemental protocol addresses sex tourism in the context of the prevention of trafficking, generally calling on governments to develop and /or strengthen measures to discourage the consumers of the global sex industry who foster all forms of exploitation of women and children.⁹

Canada has also ratified the International Labour Organization's Convention ("ILO Convention") concerning the Worst Forms of Child Labour.¹⁰ The ILO Convention defines a child as a person under 18 years of age, and "worst forms of child labour" as including: "all forms of slavery or practices similar to slavery such as the sale and trafficking of children...";¹¹ and "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance".¹² Article 1 of the ILO Convention requires that members of this organization who ratify the Convention "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".¹³

As a participant in the World Congress on the Commercial Sexual Exploitation of Children that took place in Stockholm in 1996, as well as in a follow-up conference held in Yokohoma, Japan, in December 2001, Canada further committed itself to taking concrete steps to address CSEC. Specifically, participants in Stockholm were called upon to:

1. Give high priority and dedicate more financial and human resources to combating the problem;
2. Promote stronger cooperation among all sectors and strengthen the role of families in protecting children;
3. Criminalize all forms of sexual exploitation of children and penalize offenders;

⁹ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, 2000), Article 9.5.

¹⁰ International Labour Organization, C182 Worst Forms of Child Labour Convention, 1999. Online: <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>. Canada ratified this Convention on June 20, 2000

¹¹ Ibid at art. 3(a)

¹² Ibid at art. 3(b).

¹³ Ibid at art. 1

4. Review, revise, enforce and promote the relevant laws, policies, programmes and practices;
5. Develop methods to prevent, protect, recover and reintegrate children vulnerable to exploitation;
6. Create a climate that helps care givers to fulfill their obligations to children;
7. Mobilize political and other partners;
8. Try to involve more children in the fight against their sexual exploitation.¹⁴

The Stockholm conference also produced an Agenda for Action, which called on governments to develop national action plans with indicators for progress, set goals and a time frame for implementation by the year 2000.

The Yokohama Conference resulted in the drafting of a Global Commitment, which called for enhanced efforts to deal with the root causes that place children at risk of sexual exploitation. It also called for the ratification and implementation of various international human rights instruments aimed at protecting the rights of children.¹⁵

All of the international human rights instruments and plans of action noted above promote cooperation among State Parties and provide the latter with standards for addressing issues of CSEC. Countries such as Canada, who ratify or even simply sign these international instruments, accept a responsibility to participate in preventing and combating the CSEC, including child sex tourism, whether it be by adopting domestic legislation that puts into effect the international recommendations or obligations and their implementation, and/or through other initiatives that promote effective implementation.

¹⁴ The Stockholm Declaration, as summarized by UNICEF, online: <http://www.unicef.org/events/yokohama/> (date accessed: 27 May 2005).

¹⁵ The Yokohama Global Commitment, as cited by UNICEF, online: <http://www.unicef.org/events/yokohama/outcome.html> (date accessed 27 May 2005). Following the Stockholm conference, Canada established a Federal Committee Against the Commercial Sexual Exploitation of Children to examine activities and programs across Canada aimed at combating the exploitation of children and youth in the sex trade. The Committee, chaired by Senator Landon Pearson in her capacity as Advisor on Children's Rights to the Minister of Foreign Affairs, meets four times yearly and produces an annual report (latest one posted is 2001) that lists the activities funded by the Government of Canada (and some Provinces) to combat the commercial sexual exploitation of children

PUTTING THE CANADIAN COMMITMENT TO THE TEST:

Canada enacted extraterritorial legislation through amendments to its *Criminal Code* in 1997, allowing it to prosecute Canadians who sexually exploit children in foreign countries.¹⁶ Further amendments were made to the *Criminal Code* in relation to this issue in 2002¹⁷, to remove a precondition that the government of the country where the offence occurred request a Canadian prosecution.¹⁸

The current provisions dealing with sexual offences against children outside of Canada are pursuant to section 7(4.1) of the *Criminal Code*, which provides as follows:

Offences in relation to sexual offences against children

(4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 173 or subsection 212(4) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Section 7(4.1) references sections of the *Criminal Code* which contain the existing domestic law concerning sexual offences against children. Sexual assault in Canada is defined in section 265 of the *Criminal Code* as a touching without consent of the complainant.¹⁹ Pursuant to section 150.1 of the *Criminal Code*, in respect of a complainant under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge. The premise to these offences is that no person under the age of fourteen years has the capacity to consent to any sexual contact.²⁰ The sections of the *Criminal Code* relating to “sexual interference”, “invitation to sexual touching”, and child pornography, are set out below:

¹⁶ 1997, c.16 (Bill C-27), *An Act to Amend the Criminal Code* (child prostitution, child sex tourism, criminal harassment and female genital mutilation).

¹⁷ 2002, c. 13 (Bill C-15A), *Criminal Law Amendment Act*.

¹⁸ The 1997 amendments distinguished between commercial and non-commercial sexual exploitation. In instances where the allegations did not involve child prostitution, prosecutions could only be undertaken in Canada at the request of the country where the crime allegedly occurred.

¹⁹ Section 271.(1) of the *Criminal Code* prescribes a maximum penalty of imprisonment for a term not exceeding ten years.

²⁰ Section 150.1(1) and (2) sets out that consent is still a defence in the circumstances of a complainant who is twelve years of age or more but under the age of fourteen years, but the accused is twelve years of age or more but under the age of sixteen years; and is less than two years older than the complainant

- Sexual interference** **151.** Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
- Invitation to sexual touching** **152.** Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of fourteen years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
- Definition of “child pornography”** **163.1 (1)** In this section, “child pornography” means
- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or
 - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years; or
 - (b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.
- Pursuant to s.163.2(2) to (4) it is an offence to access, possess, make, print, publish, transmit, make available, distribute, sell, import, export any child pornography.
- Defence** (5) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being eighteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was eighteen years of age or more, the representation did not depict that person as being under the age of eighteen years.
- Defences** (6) Where the accused is charged with an offence under subsection (2), (3), (4) or (4.1), the court shall find the accused not guilty if the representation or written material that is alleged to constitute child pornography has artistic merit or an educational, scientific or medical purpose.

Pursuant to section 6(2) of the *Criminal Code*, Canadian criminal law is, in most circumstances, limited to those offences committed in Canada. This jurisdiction can be extended by federal law, but these circumstances are usually limited to specific offences such as those committed on aircraft, or a space station, or offences with an international component such as hostage taking, offences in relation to nuclear material, or terrorism, or offences against UN personnel. Other offences may occur partially within Canada, and partially outside of Canada such as conspiracy to commit murder outside of Canada,²¹ or possession in Canada of goods obtained by crime outside of Canada.²²

The limits of extraterritorial jurisdiction in Canada were considered by the Supreme Court of Canada in *R. v. Libman*²³. The issue in *Libman* was whether the accused could be prosecuted for a fraudulent telephone sales scheme that operated from Canada but directed the calls to U.S. residents. The territorial principle was affirmed to be the “primary basis” of criminal jurisdiction. A test of “real and substantial connection” was adopted to determine whether an act should be subject to Canadian criminal jurisdiction.²⁴ Justice La Forest set out the standard for determining when the Canadian courts are permitted to assert jurisdiction over acts committed in another state when those acts are connected to the furtherance of a criminal offence in Canada, as follows:

As I see it, all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada. As it is put by modern academics, it is sufficient that there be a “real and substantial link” between an offence and this country, a test well known in public and private international law.²⁵

In light of the Supreme Court of Canada’s reluctance to extend the arm of the Canadian criminal law beyond its borders section 7(4.1) is a relatively radical departure from traditional Canadian legal principles. The only connection to Canada that section 7(4.1) requires is the nationality of the offender.²⁶ The parliamentary and legal justification for this extension of Canadian criminal

²¹ *Criminal Code*, s. 465.

²² *Ibid*, s. 354

²³ *R. v. Libman*, [1985] S.C.J. No. 56 (Q.L.) (S.C.C.)

²⁴ *Libman*, *supra* at para 131

²⁵ *Libman*, *supra* at para 74

²⁶ Prior to the enactment of section 7(4.1) nationality was not seen to be a sufficient link to establish a basis for a Canadian criminal prosecution. In the 1997 case of *R.v.O.B.*, [1997] O.J. No. 1850 (Q.L.) (Ont. C.A.), the

jurisdiction is beyond the scope of this paper²⁷, but it is anticipated that it may be subjected to a future Constitutional challenge pursuant to the *Canadian Charter of Rights and Freedoms*.²⁸

Indeed, at the time the writers decided on the topic for this paper, it was anticipated that just such a challenge would be central to the defence in the case of the *Queen v. Donald Bakker* – the first Canadian to be charged under section 7(4.1) of the *Criminal Code* with committing a sexual offence against a child outside of Canada. Pre-trial arguments were underway when, unexpectedly, the case was resolved by way of guilty plea on June 1, 2005.

Police would not have known about Mr. Bakker's overseas activities if he had not been arrested after a prostitute ran screaming from the bushes in a downtown Vancouver park in broad daylight trying to flee from him. The woman told police Mr. Bakker had filmed a sexual assault against her. In the course of their investigation, the police uncovered videotapes of Mr. Bakker having sex with children between the ages of 7 and 12 in Svay Pak, Cambodia.

The investigation took more than a year and involved gathering evidence both nationally and internationally, as well as working with such outside agencies as the International Justice Mission, World Vision in Cambodia, the Cambodian National Police, the Canadian Embassy in Cambodia, and the RCMP foreign liaison office in Bangkok Thailand. A civilian forensic scientist with the RCMP crime lab used his expertise in identifying videotaped images to track down the underage sex-trade workers. With the assistance of the Cambodian National Police, a search warrant was executed on a location in Svay Pak and all of the children in the videotapes were identified. Four of the victims were removed from the sex trade industry and taken into care in Cambodia.²⁹

Ontario Court of Appeal did not find a "real and substantial connection" when considering incest with a 13 year old child which occurred in the United States, where both victim and offender were Canadians.

²⁷ This subject is canvassed in convincing detail in "An Evaluation of Canada's Child Sex Tourism Legislation Under International Law" by Melissa Ferens, University of Manitoba, Faculty of Law, December 6, 2004. This paper can be found online at <<http://www.beyondborders.org/Sex%20Law.htm>>.

²⁸ Enacted by the *Canada Act 1982* (U.K.) c.11. Section 1 of the *Charter* provides as follows: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

²⁹ "New child sex law nets Vancouver man 10 years." Neal Hall and Darah Hansen, *Vancouver Sun*, June 3, 2005.

The facts of the Bakker case were so disturbingly violent that seasoned police investigators needed counselling following their involvement in the investigation to help deal with the unforgettable images.

Initially, Mr. Bakker was facing 38 charges involving adult prostitutes in Vancouver, British Columbia, in addition to the charges relating to children in Cambodia. Mr. Bakker plead guilty to one count of sexual assault and two counts of sexual assault causing bodily harm involving three prostitutes in Vancouver. He also plead guilty to seven counts of sexual interference against children under the age of 14 in Cambodia. Mr. Bakker was sentenced to 10 years in prison. He will serve seven years in addition to the time he has served in jail since his arrest on December 2, 2003. Inspector Tom McCluskie, the Vancouver Police Department's lead investigator on the file, commented on the sentence as follows:

“The hope of the Vancouver Police Department is the sentence Mr. Bakker received today will serve as a deterrent to others who travel internationally to victimize these already vulnerable children.”

In rendering his decision, Vancouver Provincial Court Judge Joseph Galati commented on the fact that the so-called “sex-tourism law” had not been tested in the courts.³⁰ However, Judge Galati also commented that; “Right-thinking members of society must be morally outraged.”³¹

CONCLUSION

One measure of Canada's commitment to prevent and combat child sexual exploitation, and child sex tourism in particular, will be whether the nonchalance of the Canadian tourist described in the introduction to this paper is affected by prosecutions and convictions against other Canadians like Donald Bakker. The Bakker case garnered a considerable amount of publicity, with articles in most local and national newspapers, as well as television and radio coverage. There will be debates as to whether a 10 year sentence for such crimes has a sufficient deterrent effect, but the publicity surrounding Mr. Bakker, who was married and had a child, would be sobering to some would-be sex-tourists. However, the fact that Mr. Bakker's crimes against Cambodian children were detected quite by accident suggests that more needs to be done in respect of detection and enforcement.

³⁰ “Pedophile Sex Tourist Receives 10-Year Sentence”, Petti Fong, *The Globe and Mail*, Friday, June 3, 2005

³¹ Hall and Darah Hansen, *Vancouver Sun*, June 3, 2005

This is a new area of investigation for both the RCMP and the Canada Border Services Agency (the "CBSA") the Canadian agency responsible for the passage of people and goods across Canada's borders. The CBSA's detection of travelers for sex tourism emerged as a reactionary measure based on interceptions of child pornography that officers were making at the Points of Entry. Travelers would be intercepted with child pornography material in their possession, and later it would become evident based on the material found that these subjects were engaging in sex with children or minors during their travels. Based on interceptions that were being made, and information from domestic and international partners including Interpol, current "high-risk" countries and patterns of travel were detailed.

It is the hope of the writers that with the change in the Canadian criminal law, and the emergence of new domestic and international cooperation in the detection and investigation of such crimes that Canada will be able to meet its commitments to prevent the sexual exploitation of children abroad.

The Canadian Young Lawyers Group of the International Society for Reform of Criminal Law (Vancouver, British Columbia)

Elizabeth Campbell is currently a prosecutor with the Crown Counsel Office in Vancouver. Prior to July 1999, she practiced law at Harper Grey Easton from 1997. From September 1996 to June 1997 she served as Law Clerk, Supreme Court of B.C. From May to August 1993 and again from January to June 1996 she interned with a public interest law firm in Durban, South Africa. Ms. Campbell was granted a B.A. (Honours), Queens University, 1991; a Master of International Relations, Queens University, 1992; and her LL.B., University of Victoria, 1996. She was called to the British Columbia Bar in 1998.

Nicola Mahaffy is currently a prosecutor with the Crown Counsel Office in Vancouver. From July 2001 to May 2002 she worked as a lawyer for the United Nations Mission in Kosovo, most recently in the International Prosecutor's Office, and returned to Vancouver in June 2002. She had earlier qualified as a Solicitor in England and worked for a short time with the law firm Kingsley & Napley. Ms. Mahaffy has co-authored a paper on the protection of witnesses in the International Criminal Court (1999). She was granted a B.A., University of British Columbia, 1990 and her LL.B, University of Calgary, 1995. She was called to the British Columbia Bar in 1996 and admitted as a Solicitor of the Supreme Court of England and Wales in 1998.

Dwight Stewart practices criminal, regulatory, and constitutional law at Miller Thomson in Vancouver. He has also been counsel to members of the Canadian Armed Forces in proceedings by Court Martial. Mr. Stewart was called to the Bar in British Columbia in 1995, and in the Yukon Territory in 2004. He was granted his B.A. (Honours), from the Royal Military College in 1991, and his LL.B. from Queen's University in 1994. Mr. Stewart is also an adjunct professor at the University of British Columbia Law School where he teaches Trial Advocacy.

Monique Trépanier completed her articles with the law firm of Anthony G.V. Tobin, and was called to the Bar in British Columbia in August 2004. Previously Monique was the Program Coordinator and Researcher at the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) in Vancouver. She graduated from the University of British Columbia with a B.A. (Honours) in History with International Relations in 1995 and completed her LL.B. at the University of British Columbia in 2003. Monique is one of the contributing authors of the ICCLR's International Criminal Court Manual for the Ratification and Implementation of the Rome Statute, 2nd ed., 2003, and author of a paper on Trafficking in Women for Purposes of Sexual Exploitation (Canadian Woman Studies/les cahiers de la femme, 2003 Vol. 22, No. 34).

Elizabeth, Nicola, Dwight and Monique wrote papers for prior conferences as follows:

At the 2003 ISRCL Conference in the Hague, NL on "the Treatment of Victims and Witnesses in the International Criminal Court as Compared to the Canadian Criminal System."

At the 2004 ISRCL Conference in Montreal, PQ, Canada, on "Canada's Approach to Combatting Police Corruption."

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ACTS CAUGHT ON VIDEOTAPE

GUILTY OF SEX TORTURE

DON BAKKER Former Vancouver hotel worker admits to sexual crimes against three local prostitutes and seven young girls in Cambodia **PAGES A3-4**



Don Bakker, whose own videotapes of sexual assaults were seized by police, is to be sentenced today in Vancouver Provincial Court.

Don Bakker, 41, pleads guilty to raping prostitutes, sex with kids

SEX-TOURISM LAW:
Ex-hotel worker is first Canadian convicted of offences abroad under the statute

BY SUSAN LAZARUK
STAFF REPORTER

A sexual sadist and pedophile pleaded guilty to a raft of sex charges yesterday and became the first person to be convicted under a federal law to curb sex tourism.

Don Bakker, 41, whose videotapes of assaults in which he used electrical cords, metal clips and a hiking shoe were seized by police and used as evidence against him, had earlier pleaded not guilty but yesterday changed his plea.

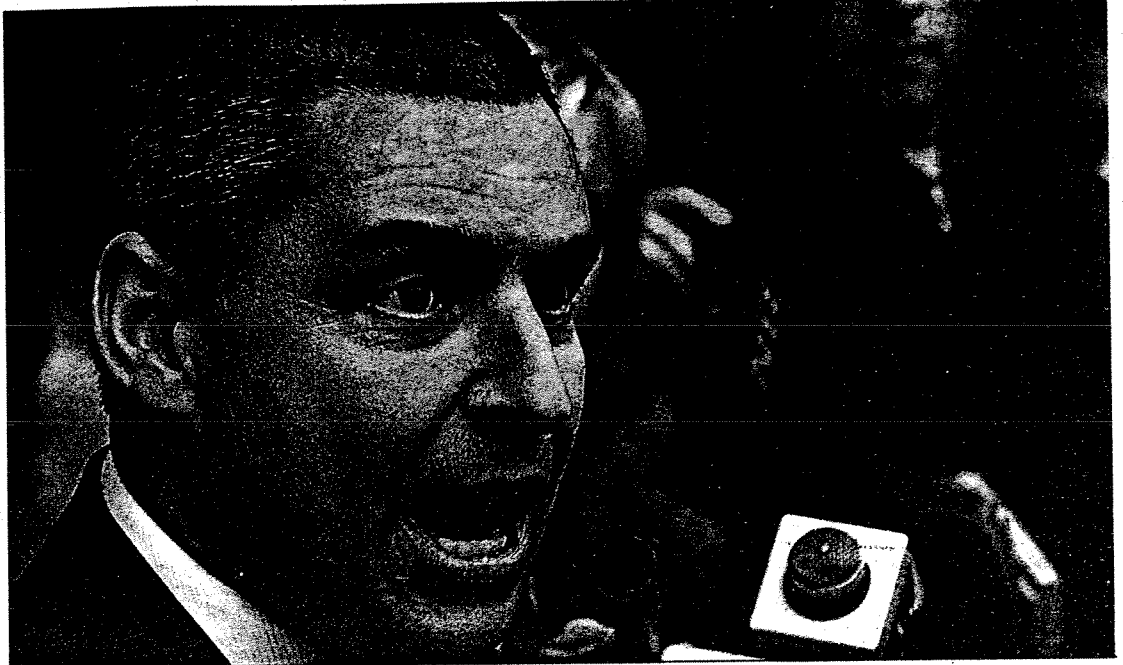
He admitted to sex assault causing bodily harm against two Vancouver women and a sex assault against a third, as well as seven counts of invitation to sexual touching against seven unidentified girls under the age of 14 in Cambodia.

In a plea deal, Crown and defence agreed on a sentence of 10 years and Bakker, a married father of a young child, is to be sentenced this morning.

The former banquet houseman at the Pan Pacific Hotel is the first person convicted under federal sex-tourism legislation that allows Canada to prosecute sex offences committed by a Canadian in a foreign country.

Bakker, a short, balding man in baggy green sweats, prison-issue white sneakers and a short, black leather coat, was visibly shaking when he appeared in Vancouver Provincial Court.

"He's stunned by what he has done," his lawyer, Kevin McCullough, told the judge. "He wishes to tell the court he will never be in court again." McCullough added: "He's had a rough ride" and caused a "great deal of pain for his wife and child."



Bakker lawyer Kevin McCullough talks to reporters outside B.C. Provincial Court after hearing last year. JASON PAYNE FILE PHOTO — THE PROVINCE

Bakker, who has been in custody since his arrest in December 2003, will have that time doubled and deducted from his sentence.

He was charged with 22 offences against Downtown Eastside prostitutes after police found him with a prostitute and video equipment in Crab Park at the foot of Main Street.

BAKKER'S VICTIMS, PAGE A4

Police later found 70 videotapes in Bakker's Dundas Street home. They depicted assaults on prostitutes dating back to January 2000 and images of children from foreign countries.

Police formed a task force of 34 officers to investigate, and one senior officer called the evidence the most disturbing he'd ever seen.

Friends and neighbours were stunned when Bakker was arrested. A childhood friend of Bakker's younger brother, John, who died of AIDS two months before the arrest, said that at the funeral Bakker was overcome with grief and remorse over their distant relationship. The two were adopted by the same family in Penticton, though they came from different biological families.

Neighbours said Bakker was the "closed-door type" and not outgoing. Another said he was quiet and didn't talk much but the family seemed "normal."

His former boss at the Pan Pacific, where Bakker's wife also worked at the time and where Bakker prepared rooms for banquets, expressed "shock" and "disbelief" at the charges.

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Don Bakker has pleaded guilty to multiple counts of sexual assault.

Accused admits to sexual acts with seven girls under 14

BY DAVID CARRIGG
STAFF REPORTER

International child-advocacy group Beyond Borders is relieved that pedophile Don Bakker backed away from a threat to challenge the constitutionality of Canada's new sex-tourism laws.

"Mr. Bakker had threatened to do that [but] abandoned that challenge for whatever reason," said Simon Buck, a Vancouver lawyer

and Beyond Borders spokesman. "We are happy with that. It survived a threatened challenge and it's now the foundation for these type of convictions."

Beyond Borders played a key role in the creation of a 2002 federal law that allows Canada to prosecute sex offences committed by a Canadian in a foreign country.

Bakker is the first person charged under the law. He admitted yesterday to seven counts of sexual

interference with girls under the age of 14 in Cambodia. In late February and early March 2003, Bakker visited Cambodia and paid girls to perform sexual acts upon him while he videotaped the activity.

Last September, Bakker's lawyer, Kevin McCullough, said he would challenge the sex tourism law if his client was committed to stand trial.

"Generally speaking, there is a view that this legislation may have constitutional problems," McCul-

lough said at the time. "My view is that it violates the principle of international law that sovereign nations are allowed to govern exclusively on what goes on in their country."

Bakker was a sponsor of two Cambodian children through World Vision Canada and visited one of those children while he was in Cambodia in March 2003.

Dave Toycen, World Vision Canada president, said the visit was in a public place and a World Vision

staffer was on hand at the time. Toycen said Bakker also visited one of his sponsored children in March 2000.

"Our staff interviewed the staff over there and the children to make sure there had been no harm done to the children," Toycen said.

Buck was not aware of any other cases before the courts in Canada where accused pedophiles were being tried under the sex-tourism law.

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Bakker preyed on desperate women

SEX-TRADE WORKERS:
He paid drug addicts to let him perform sadistic acts on them

BY SUZANNE FOURNIER
STAFF REPORTER

Sexual sadist Don Bakker's victims were Downtown Eastside prostitutes who were all deeply entrenched drug addicts struggling with mental illness and emotional and physical disabilities.

Six women who testified at his preliminary hearing last September said they were in the grip of debilitating heroin or crack-cocaine addiction — or both — when they allowed Bakker to inflict pain and humiliation on them in repeated and degrading assaults.

One of the woman had a severe learning disability and hearing loss, another suffered from epileptic seizures and what she called a "slow learning" problem, while a third was illiterate and attended a "special school" as a child.

All of the women had either spent time in a mental hospital, a psychiatric facility or had been committed to mandatory treatment.

Bakker, who has a young son, would cruise the Downtown Eastside in a family car with a baby seat in the back. He'd approach the most desperate of women and ask if he could inflict humiliating and painful sex acts upon her while he videotaped the encounter.

A 28-year-old mother suffering from epilepsy said she was "drug-sick" from heroin withdrawal and stood on the corner of Jackson and Hastings Streets all day and all night, without getting a date, on Sept. 22, 2003, while Bakker repeatedly cruised the block, waiting until she was completely desperate for drugs.

As soon as she got into the car, Bakker told her he would take her to Crab Park and inflict painful acts on her, paying extra for each act to which she gave consent.

Over the course of about a year, the woman testified, Bakker sought her out at least three times to inflict pain and degrading sexual acts upon her.

On several occasions Bakker told her he wanted to pretend to kick her very hard in the vaginal area, wearing a hiking boot, and videotape the event.

"He said he'd pretend to kick me, and he did on the first kick, but the second time, he kicked me really, really hard," said the woman, who broke down in angry sobs and wails several times while her mother and female cousins sat listening in court.

"I felt a deep pain, like way inside, and I bent over, crying," said the woman, who could be heard on the videotape played in the courtroom sobbing and wailing in pain.

But she said "the pain from needing my drugs" was so great that she endured the pain inflicted by Bakker, who paid her about \$100 for one date, which she testified was considerably more than any other Downtown Eastside John would do.

In subsequent encounters with Bakker, the woman admitted, she accepted money from him and allowed him to inflict more degrading and painful acts, including kicks in the



Vancouver's waterfront Crab Park, where Don Bakker was arrested after he assaulted a prostitute. JON MURRAY FILE PHOTO — THE PROVINCE



Police search Don Bakker's Dundas Street home in 2004. JASON PAYNE FILE PHOTO — THE PROVINCE

vaginal area. The woman testified that she appears to have permanent difficulties urinating and is seeking medical help.

Another woman, in her 30s, said she became hooked on Ritalin as a teen, cleaned up her drug use, went to training school and became a successful long-distance trucker.

On a trip to Vancouver for the trucking company, she was introduced to crack cocaine and became deeply hooked.

She testified that Bakker picked her up in the Downtown Eastside in the spring of 2003

and took her to Crab Park.

She said Bakker told her to turn around and then slipped an electrical cord around her neck, choking her.

Bakker then whipped her on the buttocks with an electrical cord, leaving her bleeding, swollen and in severe pain, she said.

But the woman agreed to subsequent dates with Bakker.

Vancouver Provincial Court Judge Joe Galati told several of the witnesses, who recoiled in horror at the videotapes played in court or

sobbed and begged not to look at them, that they did not have to watch the tapes but must answer the questions posed by Crown and defence lawyers.

Another woman said Bakker picked her up in his family car, and offered to pay her to let him slap and punch her while he videotaped.

She said she did not intend to agree to slaps in the mouth or punches in the stomach and asked him to stop after the first slap, which he did. Bakker offered her \$5 for every slap that she permitted, in addition to payment for allowing him to perform a sexual act.

A young woman, who testified she was illiterate, said she had two dates with Bakker, both videotaped.

The woman sobbed and denied that she had allowed Bakker to inflict the degrading sexual acts shown on the tape, although she agreed that she did not demand that the date end and offer to give back his money.

All of the women testified that Bakker did not make the "bad-date sheet" circulated by helping agencies in the Downtown Eastside because he requested their permission for the degrading and sadistic acts and never failed to pay.

An assault on another woman with alligator clips was described in an agreed statement of facts submitted in Vancouver Provincial Court yesterday.

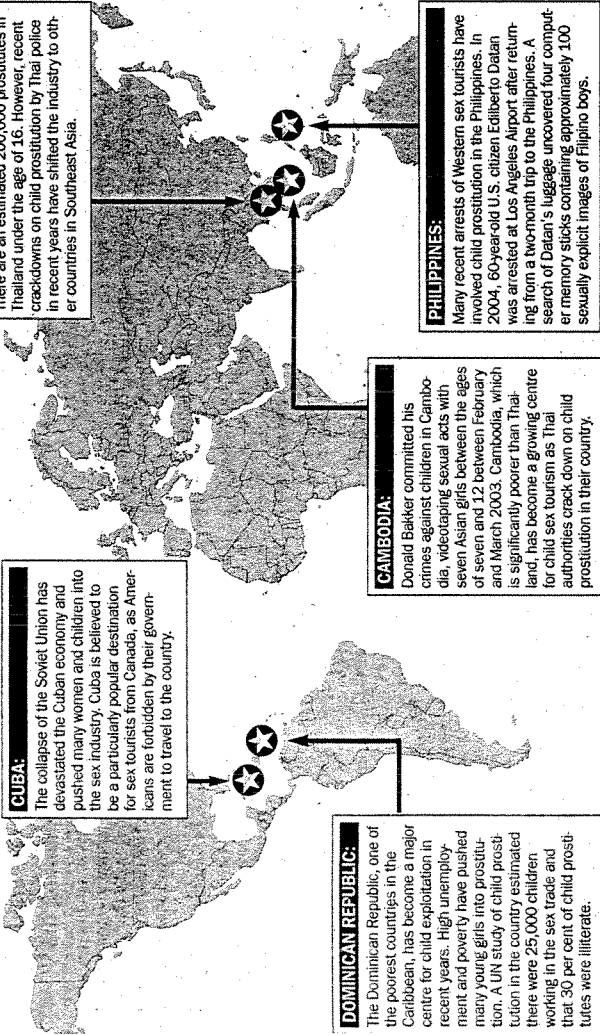
A videotape of the assaults shows the clips were attached to the woman's genitals for almost seven minutes. She cried out for Bakker to remove them, but he didn't and instead pulled on the clips, causing the woman to scream out in pain.

Bakker paid the woman \$20 and she used the money to buy drugs.

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SEX TOURISM : A GLOBAL PROBLEM

Experts say sex tourism is a worldwide problem. But certain countries have gained a reputation for having significant child-sex industries, including:



Victims' reluctance makes sex tourism charges tough to lay

BAKKER FALLOUT | Poor children in poor countries incredibly vulnerable,' UNICEF expert notes

BY CHAD SKELTON
VANCOUVER SUN

VANCOUVER | Don Michel Bakker's conviction this week for sexually assaulting young girls in Cambodia — the first conviction of its kind under Canada's "sex tourism" law — is a major milestone, according to those who fight child sexual exploitation.

But they warn that successfully prosecuting such people remains extremely difficult.

"The fact that Canada has a law and you had a prosecution under that law is a sign of progress," said Pamela Shifman, an expert on child sexual exploitation with UNICEF in New York.

But Shifman noted that such prosecutions aren't easy because victims are often reluctant to come forward.

"Sex tourists prey on poor children in poor countries, particularly girls [who] are incredibly vulnerable," she said.

Bakker was the first Canadian to even be prosecuted under Canada's sex-tourism law, despite the fact that the law has been in place since 1997.

And his crimes were only discovered when police investigating his assault of prostitutes in Vancouver discovered a videotape he made of himself assaulting Cambodian children between the ages of seven and 12.

Rosalind Prober, president of the child-advocacy group Beyond Borders, said Bakker's case is typical.

"A lot of the time, child sex tourists are found because they just can't resist taking pictures," she said.

Since successful prosecutions are so difficult, Prober said, one of the key purposes of sex-tourism laws — which are in place in more than 30 countries — is to act as a deterrent.

Unfortunately, she said, Canada hasn't done nearly enough to make people aware of the law.

"When the legislation went into effect, they were totally negligent in not informing Canadians," she said.

"There were prosecutors who didn't

even know this legislation existed." In contrast, the U.S. State Department has given grants to the aid agency World Vision to place billboards in countries like Thailand and Cambodia with the slogan: "Abuse a child in this country, go to jail in yours."

And in Europe, several airlines — including Air France and Lufthansa — have begun showing videos during international flights warning passengers they could be prosecuted at home for sex crimes abroad.

Prober said her group is working on getting similar videos on flights from Canada.

Because the law is so poorly known here, said Prober, the biggest advantage of Bakker's arrest is probably that it will let people know that Canada has sex-tourism legislation.

"This does the country a huge favour because ... now people all across the country will know it's a crime," she said.

Prober also said that while investigating sex-tourism cases is difficult, there is more this country could be doing to pursue abusers — such as placing more RCMP liaison officers in Asia to investigate child sexual abuse.

Jamie Zaitchak, a spokeswoman with U.S. Immigration and Customs Enforcement, said her agency has made fighting sex tourism a priority and has charged 14 Americans with abusing children overseas since a new law was passed in 2003.

"We've seen a lot of cases in southeast Asia [and] our offices there have very strong relationships with [local] police, and are accustomed in how to efficiently investigate these cases," she said.

Reynald Doiron, a spokesman with the Canadian Department of Foreign Affairs, said Canada doesn't conduct its own investigations of child sexual abuse overseas and would only launch a prosecution if a foreign government provided it with enough evidence to support a charge.



UBC Physics & Astronomy and TRIUMF

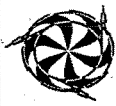
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Bakker gets 7 years for violent sexual assaults and kiddie sex

SENTENCE: Judge says it must reflect the moral outrage of right-thinking people



Don Bakker wiped his eyes as he was led from court yesterday.

BY SUSAN LAZARUK
STAFF REPORTER

A Vancouver father and husband who sexually tortured or assaulted 10 women and little girls was sentenced yesterday to seven years in prison.

That means Don Bakker, 41, will likely be free on parole in 4½ years, after serving two-thirds of the sentence. He will be eligible to apply for early parole in a little over two years and day parole six months before that, a corrections spokeswoman said, but it's unlikely he would be successful.

The sentence amounts to the 10 years jointly requested by his lawyer and the Crown. Vancouver Provincial Court Judge Joseph Galati took into account on a two-for-one basis the 18 months Bakker has spent in custody since his arrest in December 2003.

Bakker pleaded guilty to sex assault causing bodily harm against two Vancouver prostitutes in attacks that included alligator clips, an electrical cord and a hiking boot, and to sex assault against a third, as well as seven counts of invitation to sexual touching involving girls as young as seven years of age in a Cambodian brothel.

His conviction is the first under Canada's sex-tourism law, which allows prosecution of a crime that occurred in a foreign country.

The short and balding Bakker, in baggy green sweats and an Ohio sweatshirt, held his head down and blinked rapidly as the judge recounted the evidence. He wiped his eyes as he was led from court.

Galati said he took into account the guilty plea, which spared the victims from having to watch the



Defence lawyer Kevin McCullough said his client accepted responsibility for his actions. PHOTOS BY NICK PROCYALO — THE PROVINCE

videos Bakker taped of his crimes.

The judge said he saw "the agony of the pain and shame that these women exhibited" while viewing them during a preliminary hearing.

He also said the Crown's case "was not without its problems" because "the victims were not perfect witnesses." The bodily harm was witnessed by a gynecologist only on video and the "constitutionality of the sex-tourism law is not a foregone conclusion," the judge said.

Galati said he also took into account that Bakker has no previous record, is married with a child, has always been an industrious worker in steady employment and was upset when he pleaded guilty.

The judge noted that the assaults, including the two that inflicted bodily harm, were consented to, "but at law a victim cannot consent to the infliction of bodily harm."

And Galati said the drug-addicted prostitutes "were willing to

endure violence, pain, humiliation and degradation to secure enough money for their next fix," which "did not escape the attention of Mr. Bakker."

"Right-thinking members of society must be morally outraged by the circumstances of the offences," said the judge, and the "sentence must reflect that sense of outrage."

He said the Cambodian child-sex trade "only exists or largely exists because of Mr. Bakker and others like him."

Of the original 38 sex charges against Bakker, some didn't make it past the preliminary hearing because of lack of evidence, and others referred to the same crimes, said Stan Lowe of the Attorney-General's Ministry.

Defence lawyer Kevin McCullough said Bakker accepted the plea deal instead of opting for a long trial after which he could be declared a dangerous offender for life. *Times of*



Attorney-General's Ministry spokesman Stan Lowe said some of the initial 38 charges couldn't be backed by evidence.

"He accepted responsibility and he accepted the sentence," he said. "He obviously wants to get on with the opportunity to rehabilitate himself."

Bakker is headed for federal prison and will be assessed for six to seven weeks, said corrections spokesman Dennis Finlay.

He said the most important step for a sex offender is to acknowledge his problem, "to learn how to control his impulses and live in a community without giving in to those impulses."

Finlay acknowledged there are waiting lists for treatment but said offenders who have a fixed-date sentence are given priority over those serving life terms.

He said sex offenders have "relatively low reoffence rates" of six to seven per cent after 3½ years, which drops to three to four per cent with treatment. Finlay said parole conditions for offenders include release

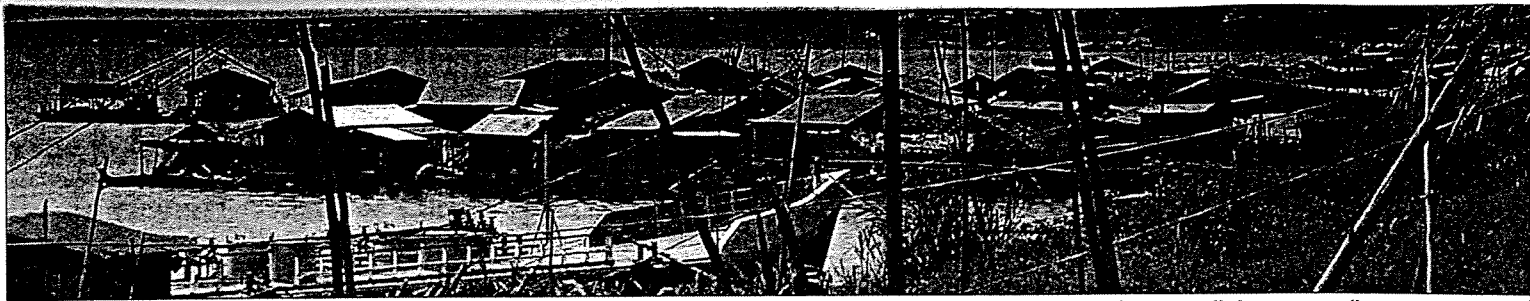
prevention, but after the sentence is completed, corrections officials no longer track success.

Forensic psychologist Dr. Patrick Bartel said studies that rate treatment of sex offenders are "inconsistent" and that pedophilia is the most difficult to treat.

Andrew McWhinnie, who runs a social support network for sex offenders in communities, said: "If [a sex offender] feels it's OK to go to Cambodia to buy sex from young girls, that's definitely a belief system that needs correcting."

Finlay, Bartel and McWhinnie agreed that there is no cure for sex offenders, especially pedophiles, but that they can learn with help how not to act on their sexual impulses, support that needs to be maintained for life.

"The litmus test is when he [Bakker] is released," said Bartel. *slazaruk@png.canwest.com*
with a file from Ethan Baron



In this Cambodian village, 90 per cent of the female children are sold into sexual servitude by desperate families — or by parents who just want a little extra spending money.

Children's trauma 'absolutely massive'

BRIAN MCCONAGHY: Richmond man found room in Cambodia where abuse took place

BY ETHAN BARON
STAFF REPORTER

RCMP forensic scientist Brian McConaghy stared hard at Donald Bakker when the pudgy predator walked into court to be sentenced yesterday.

Bakker satisfied his sexual perversions not only in Vancouver, but in poverty-racked Cambodia, a nation dear to McConaghy's heart. McConaghy and his Ratanak Foundation have been doing charity work in Cambodia since 1991. At home in Richmond, he has two adopted Cambodian boys.

It was McConaghy who played a critical role in putting Bakker away. Seven of Bakker's victims, girls aged seven to 12, were what Vancouver Provincial Court Judge Joseph Galati yesterday called "sex slaves" in Cambodia.

Kids such as these are snatched by pimps from homes, orphanages and street corners. Parents, some desperate to feed starving kids, some just greedy for a new TV, may sell a daughter to a pimp for \$100, McConaghy said.

In one Cambodian slum of a few thousand people, 90 per cent of the girls are sold into sexual servitude.

"That's what they grow up to do," said McConaghy.

"That's life. That's your destiny." Cambodia, devastated under the Pol Pot regime and its infamous killing fields, endured nearly two decades of civil war, leaving it one of the poorest countries on earth.

Cambodia's minister for women's affairs, Mu Soc Hua, said earlier this year that 30,000 children are sold for sex in her country.

Said McConaghy: "The situation is a result of 30 years of societal trauma, and then that's being exploited by rich Westerners who know that this country is totally traumatized and doesn't have the infrastructure or finances or resources to protect [its] own people."

Sold children end up in brothels in towns such as Svay Pak, where Bakker found his prey. It's a filthy,



Brian McConaghy and his Ratanak Foundation work to rehabilitate children saved from the sex trade in Cambodia. — THE PROVINCE

four-square-block mess of crude buildings and shanties, about 70 of them brothels.

Older girls are posted outside the brothels to entice cruising foreign men. The younger children are often hidden in outbuildings, brought out when brothel staff conclude the visitor is a pervert and not a policeman.

Inside the brothels, rats and cockroaches scurry through rooms with plywood walls. Stained, disintegrating foam mattresses lie on dirt or concrete floors. On these mattresses each girl services five to seven men a night.

"The degree of trauma is absolutely massive," McConaghy said.

"It's really nothing we can comprehend in the West."

McConaghy's detailed knowledge of Cambodia's sordid underbelly paid off when he accompanied Vancouver police and RCMP to Cambodia during the Bakker investigation.

McConaghy set up his laptop there with Bakker's videos, and by comparing features such as calendars and wall fixtures, identified the very room in which Bakker filmed himself having sex with children.

The children, McConaghy said, hold virtually no hope of rescue.

"They're beautiful little children," he said.

"They've been sold so they have no understanding of a safe home or parents that care for them. They are simply a product to be bought and sold, used and abused."

A few non-governmental groups, such as the International Justice Mission, are working with the Cambodian government to help the children. But it's risky work.

"When you rescue a little child from a brothel there, it's just like stealing cocaine from a dealer here. It's a product. They want it back. And they're criminals."

Those who are saved may end up in a rehabilitation facility set up by the Ratanak Foundation.

"When they're rescued, and you

give them a teddy bear or a hula hoop, you just see a little child emerge, you see a little smile, you hear a little laugh."

McConaghy, raised in the violence of Belfast, Northern Ireland, went to Cambodia in 1991 on a charity mission.

That trip gave birth to the Ratanak Foundation, named for a Cambodian girl who died for lack of medical care.

The Christian-based foundation continues to provide medical and public health infrastructure to Cambodia and has funded three orphanages that are home to hundreds of kids.

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Pedophile sex tourist convicted

Man's guilty plea averts trial in case involving videos of women, child victims

BY JANE ARMSTRONG, VANCOUVER

A sexual torture case that involved unspeakably cruel and degrading acts on women and children — some captured on videotape — came to an abrupt end when a banquet worker pleaded guilty to a string of sex attacks on prostitutes in Canada and underage girls abroad.

In a surprise move, Donald

Bakker, the first Canadian to be charged with being a travelling pedophile, pleaded guilty in a Vancouver courtroom yesterday to 10 counts of sexual assault. Three of his victims were women from Vancouver's skid row, but seven attacks were inflicted on girls under 14 while he was travelling in Cambodia.

"He's stunned by what he has done," Mr. Bakker's lawyer, Kevin

McCullough, told a provincial court. "He wishes to tell the court he will never be in court again."

Mr. Bakker's case was in pretrial arguments when he abruptly announced he wanted to abandon his trial by jury and appear before a provincial judge, where he entered the guilty pleas.

By pleading guilty, Mr. Bakker avoided a trial, which court officials had warned would be unsettling and graphic because the husband and father had videotaped his crimes. At one point, a court official warned reporters that they might require counselling.

After his arrest, police seized more videotapes from his home and car. They said the images captured by the accused had shaken even the most hardened officers.

Apart from the severity of violence against the victims, the case was disturbing because it came out of the blue. Police said they had no inkling that a predator was stalking Vancouver prostitutes. None of the women shown in the tapes complained to police.

Mr. Bakker was arrested in broad daylight in December of 2003 after a prostitute ran screaming from bushes in a downtown park with

Mr. Bakker in pursuit. The woman told police he had filmed a sexual assault on her and was carrying the camera in his bag.

According to admissions of fact released yesterday, the tape contained disturbing images of various sexual assaults in Vancouver between January of 2000 and December of 2003.

Police also found two videotapes in the trunk of Mr. Bakker's car containing almost five hours of recordings showing him engaged in sexual acts with different women, most of them drug-addicted prostitutes.

The tapes included a woman screaming in pain and pleading with her tormentor to remove alligator clips he had placed on her genitals in exchange for \$20.

"Mr. Bakker pulls on the clips, causing [the woman] to scream out in extreme pain," the admissions of fact say.

In another assault, Mr. Bakker is seen whipping a woman with an electrical cord, causing "significant redness, broken skin and raised welts, which Mr. Bakker made a point of videotaping."

See TORTURE on page S2

Man's guilty plea a vindication for sex-tourism law

TORTURE from page S1

Still another assault shows Mr. Bakker kicking a woman, who had been a prostitute since she was 12, in the genitals.

The tapes also depicted three separate incidents of Mr. Bakker sexually assaulting girls between 7 and 12 in Svay Pak, Cambodia, between February and March of 2003. The area, outside Phnom Penh, the country's capital, is known for its brothels, many of which have been reported to house underage girls.

The guilty plea is a vindication for Canada's so-called sex tourism law, which has never been tested in court, said Rosalind Prober, president of Beyond Borders, which lobbied for Canada's law.

"We hope it sends a message to Canadians that there will be no tolerance for this type of behaviour with the hyper-vulnerable children around the world."

The group will ask to make a victim-impact statement on behalf of children who are sexually preyed on by Canadian travellers.

Mr. Bakker was facing 22 charges involving adult prostitutes in British Columbia and another 16 charges related to children in Asia.

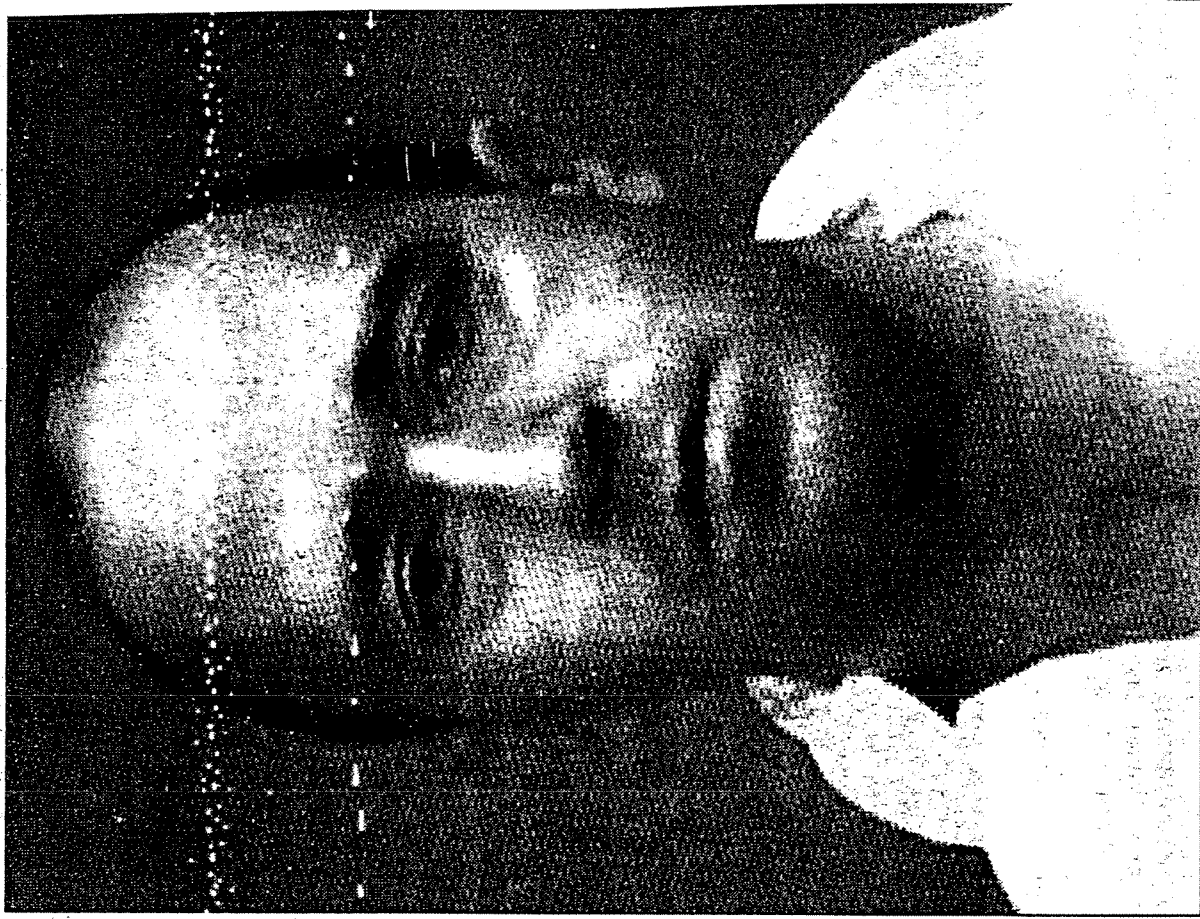
According to police, Mr. Bakker told the women up front that he wanted to inflict pain, but the acts escalated into violent assaults that involved "extreme pain" and degradation.

"We hope it sends a message to Canadians that there will be no tolerance for this type of behaviour with the hyper-vulnerable children around the world."

Mr. Bakker pleaded guilty to one count of sexual assault and two of sexual assault causing bodily harm involving three prostitutes in Vancouver. He also pleaded guilty to seven counts of sexual interference against children under the age of 14 in Asia.

"He's had a rough ride," Mr. McCullough said of his client, who sobbed and shook with emotion. The case has caused "a great deal of pain for his wife and child."

Before yesterday's guilty pleas,



JOHN LEHMANN/GLOBE AND MAIL

Donald Bakker told women he wanted to inflict pain.

Mr. Bakker sought to have the sex-crime tourism law enacted in charges separated into two trials; 2002 and permits Canada to prosecute sex offences committed by a Canadian in a foreign country, rather for the charges abroad. The federal law aimed at stopping regardless of that country's own laws.