

# Judge makes surprising ruling on child pornography

By IAN BAILEY

VANCOUVER (CUP) -- A B.C. Supreme Court judge has ruled that possessing child pornography should not be a crime because laws against it violate the Charter of Rights and Freedoms.

Justice Duncan Shaw ruled the section of the Criminal Code "is declared void" because it contravenes charter provisions guaranteeing freedom of thought, belief, opinion and expression. Shaw acknowledged in his 33-page decision released Friday that child pornography can be harmful.

But he adds: "There is no evidence that demonstrates a significant increase in the danger to children caused by pornography."

Shaw's bombshell ruling outraged many, including a father whose son was abducted and killed by notorious pedophile and serial killer Clifford Olson.

Gary Rosenfeldt described Shaw's argument as "ludicrous" and noted that pornography is commonly in the possession of serial killers and sex offenders.

"We don't have proof that the pornography leads to the crime, but there's no question about it: There's a relationship between pornography and crimes against children," said Rosenfeldt, head of the Ottawa-based group Victims of Violence.

Until it is appealed, Shaw's ruling becomes law in British Columbia. It can be cited in other province's courts but it is not binding on them.

"I'm not sure it means a great deal," said one Ontario Crown attorney.

"I haven't read the decision so I can't comment on it, but it seems like a bit of a bizarre decision," said Robin Flumerfelt.

Shaw's ruling came in a

case that involved pornography possession charges against John Sharpe of suburban Surrey.

Police raided Sharpe's home in April 1995, seizing CDs, photos and writings about child pornography. Many photographs seized were of nude boys. Titles included Sam Paloc's Flogging, Fun and Fortitude, A Collection of Kiddie Klink Classics.

Sharpe, a writer who defended himself, argued the Criminal Code section covering pornography violated his charter rights. The 65-year-old, former Vancouver city planner, said he is pleased with the ruling.

"I argued freedom of consciousness -- one has the right to be in possession of one's own thoughts," he said. "In a sense, this puts child pornography on the same footing as other pornography."

The Crown argued possession of child pornography puts children at risk from pedophiles.

But Shaw said "only assumption" supports the idea that materials advocating sex crimes with children actually prompt people to do such things.

"There is no evidence that the production of child pornography will be significantly reduced if simple possession is made a crime," Shaw wrote.

He went on to say that a person's belongings are "an expression of that person's essential self."

Shaw said it is debatable that laws against possessing child pornography protect children and that's not enough to justify invading someone's privacy.

"The intrusion into freedom of expression and the right of privacy is so profound that it is not outweighed by the limited beneficial effects of the

prohibition," he wrote.

"I find that the limited effectiveness of the prohibition is insufficient to warrant its highly invasive effects."

Attorney General Ujjal Dosanjh said he has to study the ruling before making a comment or deciding on an appeal.

"A decision will be made with respect to [an appeal] next week," said Geoffrey Gaul, a ministry spokesman.

"We don't want to do anything that jeopardizes the prosecution and consequently, it's not appropriate to comment on the facts of a case."

Sharpe has also been charged with distributing child pornography. He will appear in court Feb. 1.

In his ruling, Shaw said distributing child pornography poses a greater risk than simply possessing it. Barring distribution is "far less invasive of an individual's freedom of expression and right of privacy."

"Possession for the purpose of sale or distribution of such material can hardly be justified on any level of understanding," he wrote.

Allan Borovoy, head of the Canadian Civil Liberties Association, said he has long had concerns the law is too broad and suggested it is ripe for being struck down.

"Even as we recognized there is some repugnant material devoid of redeeming merit, the problem is that if you use the definitions in the Criminal Code, they were capable of reaching to legitimate material, and even works of art."

Liberal critic Barry Penner said the province should appeal immediately "to look after children in B.C. and protect them from being abused by sexual deviants."

Meanwhile, a Reform MP wondered about Shaw's fitness to sit on the bench.

"I believe the powers that be should take a look at the

judgment values of Justice Shaw because this decision by him and his reasonings are so far out of synch with where I believe Canadians are," said Jim Abbott, Reform's critic for the federal Solicitor General's department.

"Any judge that puts other rights above the protection of children does not reflect the values of Canadian

society."

But Vancouver lawyer Peter Ritchie described Shaw as a cautious member of the bench.

"Judge Shaw is a very careful judge, reputed to be a very careful, conservative, analytical," said Ritchie. "[He's] careful in his judgments and certainly not given to any rash conclusions."

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