

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. RALPH ROWE

BEFORE: The Honourable Mr. Justice E. W. Stach

COUNSEL:

For the Crown: Peter Keen
Richard Cummine;
For the Accused: Robert Sinding

**** PUBLICATION BAN ****

REASONS AT TRIAL¹

Counts 2 & 3

H.M.K.

[1] H.M.K. grew up in W1[...] Lake, a small First Nations community situate in the remote reaches of Northwestern Ontario. In W1[...] Lake, Oji-Cree — not English — is the primary language of communication. When H.M.K. testified at trial it was readily apparent that English was not his mother tongue. His testimony at trial (given by him in the English language) needs to be approached with that perspective in mind. H.M.K. lacks the language skills to articulate in nuanced, precise terms in the English language. While I must take pains as the trial judge not to speculate nor to overcompensate on this ground, a complete assessment of his testimony requires that his reduced facility in language be considered.

[2] H.M.K. is now 40 years of age. In his trial testimony he told about incidents and activity involving Ralph Rowe and himself that he did not *then* understand properly. He said these

incidents happened to him when he was a child, and that they took place at the First Nations Territory of W1[...] Lake and also at W2[...] Lake. The incidents began when he was age 11. His testimony places the commencement date for the activity as far in the past as 29 years ago.

[3] Testimony at this trial does not indicate when Ralph Rowe became a priest of the Anglican Church. It is nevertheless uncontested that he was at all material times a functionary of the church, an organizer and leader of boy scout and choir groups in some remote communities, and a pilot. Ralph Rowe visited several remote First Nations communities in those capacities, W1[...] Lake and W2[...] Lake among them. He often ‘stayed over’ for a few days at a time, usually at the M[...] in the community he was visiting. It is in this context — H.M.K. as a child, and Ralph Rowe as leader of church and cub groups in the community, and as pilot — that H.M.K. met Ralph Rowe at W1[...] Lake.

[4] H.M.K. said he became involved in cub and choir groups in his community when he was around 11 years old. He spent time at the M[...] pursuing those interests. Games were organized there. Other boys also attended and participated.

[5] H.M.K. says that Ralph Rowe persuaded him to ‘sleep over’ at the M[...]. There were various rooms and bunk beds there. Other boys slept over too. H.M.K. testified that Ralph Rowe “would want me to sleep in his bed...and I did.” The nature of what is said to have happened on some of those sleep overs at the M[...] and H.M.K.’s ‘*recollection*’ of it are very much in issue.

[6] H.M.K.’s testimony regarding what happened in Ralph Rowe’s bed at the M[...] in W1[...] Lake is unpleasant on many fronts. H.M.K. showed obvious emotional discomfort in recounting the core events while testifying at trial and especially so when asked to ‘parse’ the sexual activity in detail. He started with a more generic description saying that Ralph Rowe wanted to do anal sex on him and that anal sex happened. Upon being asked for detail H.M.K. added that Ralph

¹ For a more complete understanding of the relevant background here, the Reasons on Defence Motion (for a stay of proceedings), *R v. Rowe*, unreported [2006] O.J. No. 3203 (Quicklaw cite) should be read in conjunction with these

Rowe had his penis behind me *on* my buttocks.² Incremental detail-seeking questions ultimately yielded a graphic description that left no doubt that H.M.K. was describing full penetration of his anus by Ralph Rowe's penis.

[7] H.M.K. testified that the penile penetration of his anus was painful and that it happened on multiple occasions beginning when he was 11 or 12 years old. It continued, on occasion, until he was 14 or 15. He said that Ralph Rowe did this to him both at W1[...] Lake and at W2[...] Lake. These incidents all occurred at night when he was alone with Ralph Rowe in Ralph Rowe's bed at the M[...], and at both locations.

[8] H.M.K. testified at trial about multiple incidents with Ralph Rowe over a period of 3 or more years. Not all of them involved anal penetration. Some did. Some did not. Nor did all anal penetrations involve penile penetration. Most of the encounters, however, included some form of sexual touching or some combination of sexual fondling-like behaviours. H.M.K. is unable to isolate and recall what happened on each occasion. Because almost 3 decades have passed since the multiple incidents, one would be especially suspicious if he said he could. Nor can H.M.K. recall other peripheral detail, not even the season of the year. The common elements of his recounting are:

- nighttime;
- the M[...];
- being alone in Ralph Rowe's bed with Ralph Rowe;
- multiple incidents of sexual activity there by Ralph Rowe.

[9] I have the impression from his testimony that what stood out in H.M.K.'s mind from all this – because of the pain it entailed – was the penile anal penetration.

Reasons at Trial.

² In my experience presiding over trials in Northwestern Ontario for 16 years it is not uncommon for aboriginal witnesses to misuse pronouns or prepositions.

[10] The court must take a careful approach to assessing the reliability of allegations of historical sexual abuse. That caution is necessary because of the frailty of human memory generally, and especially necessary where events are said to have occurred such a long time ago.³

[11] The reliability of Mr. H.M.K.'s recollection of stated events is a particularly live issue on both counts 2 and 3:

- a) because of his testimony that he made deliberate attempts over long periods of time to suppress his memory of these painful events, and;
- b) because of defence counsel's lengthy and vigorous cross-examination suggesting that his 'recollection' was in fact a case of 'recovered memory' accomplished through the intervention of a psychiatrist.

It is in this context that defence counsel suggested inconsistency between H.M.K.'s testimony at trial and his testimony at the preliminary hearing. For my part, it is in this context that I find the questions of language and understanding most at the forefront.

[12] My impression from listening to, observing and examining the exchanges between defence counsel and H.M.K. at trial lead me to conclude that this is *not* a case of 'recovered memory'. The essence of H.M.K.'s testimony is that the core conduct – the penile penetration into his anus by Ralph Rowe – is a haunting memory that has been in his mind throughout his lifetime. The psychiatrist did not implant the idea. She merely helped him to disclose it. I accept that view. Indeed, I find that view plausible and the testimony supporting it compelling.

[13] In coming to this conclusion I have had the advantage – unusual during a trial – of having a transcript of the witness' trial testimony and a transcript of his testimony from the preliminary hearing. I have read and re-read relevant segments of both. On a contextual and fair reading, I do not recognize an inconsistency that prompts me to attach less weight to the essential account of H.M.K.. I wish only to add an additional comment.

³ See *R. v. McGrath* (unreported) [2000] O.J. No 5735 (Quicklaw cite) where, at paragraphs 11-15 Minden J. reviews a number of relevant cautionary considerations.

[14] Where issues of language and understanding are likely to surface in the trial process, extraordinary care must be taken. The examiner of the witness must take great pains in the first instance to ensure understanding. Where cross-examining counsel, whether crown or defence, seek to rely on real or supposed inconsistency of response through the use of nuanced terminology or by reference to individual differences between multiple historical events, then I think it fair to require the cross-examiner to ensure the terminology is mutually understood by cross-examiner and witness alike, and that the event or time-frame be precisely identified as fairly as may be. In the absence of clarity, less weight or indeed, no weight, may be attached to the alleged inconsistency.

[15] The defence points also to a particular response given by H.M.K. on cross-examination to the effect that he did not know whether it was a finger or a penis being inserted into his anus. I do not regard his response as inconsistent. Read in context, I consider it a reflection of his inability to isolate and recall the specifics of *each* incident. Indeed, Mr. H.M.K. said on more than one occasion that he “knew what it was inside my ass,” and that he knew the difference between the finger and a penis. Both occurred, he said, but not during the same night.

[16] Similarly, there appears to be inconsistency in response as to whether events happened in the same way on each occasion. At some points H.M.K. said they were different. At some points he said they were the same. I do not attach great significance to this. H.M.K. said, during the early stages of his cross-examination, that he could not be precise about each incident because the incidents had been ongoing for a number of years. Against this background of multiple events performed over a period of years it is not surprising that his memory is “fuzzy in parts”. Of significance is that his core memory (of having experienced acts of anal penetration) is well established and has been with him throughout. While it is clear from his testimony that anal penetration occurred sporadically, his testimony establishes that the fondling-like activity was recurrent on all or most occasions.

[17] During the trial both crown and defence agreed that it was open to the court – based upon the agreed factual background – to infer that Ralph Rowe had shown a disposition to put himself

in situations which gave him the opportunity to engage in activities of sexual fondling with young boys towards whom he stood in a position of authority. From the material placed before the court it is not difficult to draw that inference and I do draw it here. While it may fall short of constituting confirmatory evidence in the classical sense, it does support the probable truthfulness of H.M.K.'s testimony that Ralph Rowe encouraged him, while a young boy, into his bed at the M[...] – both at W1[...] Lake and at W2[...] Lake. It supports also the probable truthfulness of H.M.K.'s testimony regarding the recurrent sexual fondling in those environments. Similarly the uncontested material placed before the court establishes that Ralph Rowe was present in W1[...] Lake and W2[...] Lake as priest, boy scout leader and pilot at various intervals spanning the time frames outlined in counts 2 and 3 of the indictment as amended.

[18] Leaders of cubs and boy scouts, priests, and pilots are important positions in Canadian communities. Some cachet or prestige attaches to each of these callings. For one person to be engaged in all 3 capacities in a remote fly-in community is extraordinary.

[19] The defence, here, does not dispute that Ralph Rowe held a position of trust and authority in relation to H.M.K..

Consent

[20] Under our criminal law, in 1970 and today, the consent of a child under the age of 14 is not a defence to a charge of indecent assault.

[21] H.M.K. was born [...], 1966. He testified that the first incident of penile penetration of his anus occurred when he was 11 or 12 years old. Accordingly, whether or not H.M.K. consented to that activity then - or at any time up to the point that he turned 14 - is legally irrelevant.

[22] H.M.K. also testified that Ralph Rowe performed acts of anal penetration on him intermittently until he was about 15. Accordingly, the crown must establish in respect of that

activity, and beyond a reasonable doubt, that H.M.K. did not consent to acts of anal penetration after he turned 14.⁴

[23] For reasons I will expand upon in a few moments I am satisfied that penile and digital penetration occurred both before and after H.M.K.'s fourteenth birthday. On my view of the evidence the crown has also proven beyond a reasonable doubt that H.M.K. did not – or perhaps more properly in the circumstances – could not *consent* to penile or digital penetration of his anus by Ralph Rowe after H.M.K. turned 14. For the moment I will explain my analysis of the law and the evidence that bears on the question of consent here.

[24] The testimony of H.M.K. establishes that he never objected – by his words or his acts – to any of the sexual acts performed on him by Ralph Rowe, whether they involved anal penetration or not, and whether they occurred *before* he turned 14 or *after*. He never told him to stop. Neither did H.M.K. *ever* express explicit approval to any acts of anal penetration or sexual fondling. Verbal communication in the bed of Ralph Rowe at the M[...] was minimal, almost non-existent.

[25] Recognizing that exact time frames can rarely be recalled with precision, I accept the testimony here of a continuum of sexual activity that began when H.M.K. was *about* age 11 and persisted into his 15th year. I infer that the mindset of H.M.K. towards these activities took hold early on and was most probably shaped by the multi-faceted relationship between him and Ralph Rowe. I find from his testimony that H.M.K.'s understanding of these sexual acts was limited and that his understanding of them remained essentially unaltered while they continued: viz.:

“It wasn’t taught to us at our school....;
...I thought it was just normal....;
...at that time I didn’t know.”

⁴ See section 40 of the Criminal Code, in effect between January 1, 1976 and December 31, 1982 i.e. (the time frames set out in counts 2 & 3 of the indictment as amended). See also s. 156 as it then stood.

[26] Under principles of Canadian Criminal law in effect at the time H.M.K. turned 14 there could be no *consent* unless genuinely given through the exercise of free choice. Mere acceptance of what may seem to be inevitable or mere submission to what may seem to be inevitable could not constitute consent.⁵ From the uncontested evidence before me and from the testimony of H.M.K. which I accept, I conclude that there could be no consent at any material time here. The enormous power imbalance between Ralph Rowe and H.M.K. figures prominently in my conclusion on this point.

[27] The defence points to the testimony of H.M.K. that he never raised objection and that he kept returning to the M[...]. The defence submits this testimony, by itself, raises a reasonable doubt:

- whether H.M.K. consented to the activity in fact;
- whether Ralph Rowe knew that H.M.K. was not consenting; or
- alternatively, raises the defence of mistaken belief in consent.⁶

[28] The defence clearly bears no onus to prove or disprove anything in this case. In my opinion, however, the defence submission has no merit on any of these points. I have already addressed the perception of H.M.K. to the sexual activity by Ralph Rowe and I set out brief reasons for my conclusion. The last 2 points of the defence submission address elements the crown must prove or disprove, respectively, based upon the knowledge, the mindset or perception of Ralph Rowe.

[29] The continuum of relevant sexual activity experienced by H.M.K. began when he was well under the age of 14. When it began, Ralph Rowe held a position of authority towards him. The sexual activity, including anal penetration, continued after H.M.K. attained the age of 14 in circumstances where the power imbalance between man and boy remained unchanged. It defies common sense and runs contrary to the evidence before me to conclude that the mere attainment

⁵ *R. v. Doherty*, unreported [2000] O.J. 3163 (Ont. S.C.J.) per Aitken J. at para. 16 and paras. 24-36; See also *R. v. Jobidon* (1991), 66 C.C.C. (3d) 454 (S.C.C.).

⁶ *R. v. Ewanchuk* (1999) 131 C.C.C. (3d) 481 (S.C.C.) at paras. 29, 44, 50, 51.

of a 14th birthday by the boy altered the relationship established between them by the position and conduct of Ralph Rowe. The evidence in this case does not take me beyond that. Nor is there any air of reality to the suggestion that Ralph Rowe honestly believed H.M.K. had communicated consent to the sexual activity. Ralph Rowe's behaviour over time was both criminal and criminally reckless.

[30] The testimony of all 5 complainants at trial was vigorously tested on cross-examination, none more so than the testimony of H.M.K.. The cross-examination of H.M.K. was lengthy, multi-faceted, persistent and of such an enduring nature that it inevitably exposed both the strengths and weaknesses of that testimony. I do have difficulty in accepting H.M.K.'s insistence, at one point, that he 'knew' he was age 11 when Ralph Rowe began sexual activity with him. Nevertheless H.M.K. ties the onset of such activity with his joining the cub scout group led by Ralph Rowe and I accept that as a reasonable approximation of H.M.K.'s age at the material time as being around age 11. Much of the cross-examination's focus was quite appropriately centred on H.M.K.'s memory, the potential sources of 'memory' and the reliability of memory. I am satisfied from this process that the truth endured and emerged from the crucible intact.

[31] Attempts to block out or set aside remembrance of an event do not mean in all cases that it is forgotten. I am persuaded that the core events of penile and digital penetration of this complainant's anus by Ralph Rowe are proven beyond a reasonable doubt at both locations.

[32] I think it unnecessary to address each point raised by defence counsel in the course of a lengthy submission made when the evidence was complete. Nevertheless some further comment is in order.

Delay in disclosure

[33] Defence counsel invited me to draw an adverse inference against the credibility of H.M.K. due to his delay in reporting the abuse. I decline. Doing so would run counter to

credible testimony of the complainant that he deliberately tried to suppress remembrance of these events because of their painful impact upon him. There is also before me – in the synopsis⁷ - multiple incidences of late disclosure by several *acknowledged* victims of Ralph Rowe, emanating from a number of aboriginal communities in Northwestern Ontario. Their reasons for non-disclosure, understandably varied, contain some common threads that disincline me from drawing adverse inferences against credibility solely on grounds of delayed disclosure.⁸

Tainting of the complainant’s testimony – intended and unintended

[34] During his cross-examination of H.M.K. and other complainants at trial – and in his final submissions – defence counsel suggested a number of sources of contamination or embellishment of the testimony of the complainants, some accidental, some not. He urged the court to take a guarded approach and to adopt an unwillingness to convict on any offence in the absence of confirming evidence. He alluded to several possible sources of contamination:

- widespread media coverage in Northwestern Ontario of the 1994 sentencings of Ralph Rowe, including an outline of the charges and description of the offences;
- the development of self-help and healing groups including the ‘Ralph Rowe Survivors Group’ where stories of abuse may have been exchanged;
- the commencement of civil law suits against Ralph Rowe, the Anglican Church and Boy Scouts of Canada by complainants and other persons claiming to be victims, where the availability of money damages may be larger in direct proportion to the degree of abuse proved;
- the human tendency to attribute much of what has gone wrong in one’s life to a specific event or events caused by the fault of another person;
- a sub-conscious or conscious willingness to add further vilification on an individual already widely loathed in one’s community.

⁷ Synopses for guilty pleas (Exhibit 1 from an earlier ‘disposition phase’ of the trial respecting counts 4,5,6,8,10,16,19,20,23,25,32,34,38,41,47,48,50,51,54,56).

⁸ See also *R. v. D. (D.)* (2000) 148 C.C.C. (3d) 41 (S.C.C.) per Major J. for the majority at paras 63 and 65.

[35] I agree with the necessity for caution. I disagree with an approach, however, that would have me discounting the credibility of a complainant from the start. I have had the opportunity to see each of the complainants tested on cross-examination in reference to some or all of the suggested sources of contamination. Assessment of the witness' credibility must in each case flow from an appraisal of that witness' testimony by itself and in relation to other relevant evidence admissible on that count.

[36] In the case of H.M.K.:

- he participated from time to time in activities of the 'Ralph Rowe Survivors Group';
- he is one of a number of plaintiffs seeking damages in a civil action based in part on allegations of sexual abuse by Ralph Rowe;
- he openly attributes blame to Ralph Rowe for much of the troubled path his life had previously taken, and still believes Ralph Rowe is to blame for the suicide of his brother;
- H.M.K. had the opportunity to mingle with other trial witnesses.

[37] I found it useful in weighing the testimony of H.M.K. to consider the points raised by defence counsel and to ask myself whether these potential sources of contamination, taken individually or cumulatively, diminish its reliability and more particularly, whether the evidence on counts 2 and 3, taken as a whole, raise a reasonable doubt as to the guilt of Ralph Rowe on those counts. I conclude that they do not.

[38] I find the principal purpose of the survivors group as explained by H.M.K. was to find a healing strategy to enable individuals to carry on with a useful and healthy life. To go beyond that is to engage in speculation over a theory that does not otherwise manifest itself in his testimony.

[39] To be sure, H.M.K. maintains the belief Ralph Rowe is to blame for his brother's suicide. Whether there are logical underpinnings for that belief is not for me to decide. H.M.K. readily

concedes he has no personal knowledge of his brother having been sexually abused by Ralph Rowe. More to the point, I do not discern from the testimony of H.M.K. or his demeanor throughout the trial that H.M.K. is driven by greed or vengeance. Examining his testimony as a whole, it is marked, not by embellishment, but by the absence of embellishment.

[40] While not decisive, some comment about demeanor and bearing is part of the picture. H.M.K. is now 40 years old. He has lived in Thunder Bay for the past 4 years. He attends university there. He appeared in the courtroom as an earnest man, neatly dressed and apparently fit. Despite some difficulties with language and expression, I had the impression he attempted to be accurate and fair in his response to questions. When pressed on cross-examination he occasionally showed some frustration – largely, I thought, over language and his attempt to convey meaning - but remained earnest and non-combative. I find him to be reliable and truthful in telling about what happened to him and who did it.

[41] The defence concedes that, if proven beyond a reasonable doubt, the core conduct described by *any* of the trial complainants constitutes indecent assault, or sexual assault, as the case may be. I find Ralph Rowe guilty on count 3 (at W1[...] Lake) and count 2 of the indictment (at W2[...] Lake), of indecent assault, through acts of anal (penile and digital) penetration.

Counts 27, 28, 29 & 30
S.J.N.

[42] When he testified at trial, S.J.N. was 36 years old. He was born on [...], 1971. He grew up in B1[...] Lake and continues to live there.

[43] While a child in B1[...] Lake, S.J.N. heard about camping trips that were being run by Ralph Rowe through the Boy Scout organization. He says there was not much to do on the reserve and he was attracted by the activities and games offered through the Boy Scouts. S.J.N. is not sure how old he was when he first met Ralph Rowe, but believes he was between the ages

of 11 and 16 years. He describes Ralph Rowe as being in B1[...] Lake “on and off.” He knew that Ralph Rowe had a float plane and that he flew it. He believed Ralph Rowe then to be a reverend in the Anglican Church.

[44] S.J.N. joined the cubs and scouts at B1[...] Lake. He says Ralph Rowe was nice when he first met him. “Things were good. We went out camping and stuff; we played games.” In the period that followed, S.J.N. says that a lot of things happened including “some stuff I don’t really remember.” He added that these ‘things’ happened in the M[...] at B1[...] Lake, in the basement of the M[...] or in Ralph Rowe’s bedroom there. S.J.N. recalls 4 rooms upstairs in the M[:]: 3 bunk rooms and Ralph Rowe’s room. He recalls that the kids, including himself, enjoyed being at the M[...]. He said kids slept there.

[45] S.J.N. testified initially that Ralph Rowe fondled him. His testimony provided very little detail. Parts of many of his responses included the phrase that he “did not know much anymore.” S.J.N. was also manifestly uncomfortable in speaking of these ‘things’. He was ultimately asked what was the most physically painful thing that Ralph Rowe did to him. He answered that the most painful thing was when he “put his finger in me . . . he put his penis in me – he put his penis in my anus. It hurt.”

[46] S.J.N. recalled occasions where he heard kids crying in Ralph Rowe’s room during the night. He says he tried to listen. He recalled one actual incident with his cousin, D.B., now deceased. He says that Ralph Rowe touched D.B.; that D.B. touched S.J.N.; and that S.J.N. touched D.B.; and that all this occurred in Ralph Rowe’s bed.

[47] S.J.N. was unable to say how old he was the last time that bad things happened to him. He said he didn’t remember anything much anymore: things “come and go” in his memory; he was uncertain about some things that happened in the past; he has kind of blocked things off. He made it clear that he was “a kid back then” and did not understand what was happening to him.

[48] Much greater detail about the touching, and more particularly, the incidents of digital and penile penetration by Ralph Rowe emerged on cross-examination as compared to his examination-in-chief. Interspersed throughout many of S.J.N.'s responses, however, was the frequent acknowledgement by him that he had problems remembering things from way back. When it was suggested on cross-examination that the incidents with the finger in his anus never happened or that the incident with the penis in his anus never happened, however, he was firm in stating: "no, it happened...it happened."

[49] On cross-examination, S.J.N. acknowledged having a very serious memory problem as a result of a head injury he suffered in a truck accident. He does not recall if a specific diagnosis was ever made but acknowledges freely that both his long-term and short-term memory have been adversely affected by the injury. Nevertheless, he said that these 'things' (abuse) live with you. "Sometimes you remember and sometimes you don't but there is not a day goes by that you don't think about what occurred." He also recalls, with some disappointment, that the elders did not believe him when he told them about what happened to him.

[50] I formed the impression that S.J.N. was totally sincere in giving his testimony. His testimony was marked throughout by a large measure of fairness and evenness in response. He answered questions directly, even if his answers were often sparse. He, too, experienced some difficulty with expressing himself fully in English.

[51] S.J.N. has a persona which inspires confidence. One is attracted by his straight-talking nature.

[52] I have the impression that S.J.N. was eminently fair in his description of what Ralph Rowe did to him and, if anything, was prone to understatement rather than overstatement. I am left with the impression that the testimony of S.J.N. as it relates to the incidents of digital and penile penetration by Ralph Rowe is probably true. What is disquieting about his testimony, however, is the frequency and repetition of his own acknowledgement of problems with his short-term and long-term memory. It is on that account that I hold his testimony falls short of

the criminal standard of proving the guilt of Ralph Rowe on any of the counts contained in counts 27 to 30 of the indictment beyond a reasonable doubt. In the result, I must find Ralph Rowe “not guilty” on counts 27, 28, 29, and 30.

Count 1
W.A.M.

[53] W.A.M. spent part of his growing up years in Rocky Bay, Ontario. In the spring of 1971, he moved with his parents to W1[...] Lake. He was then age 11.

[54] W.A.M. was born [...], 1959. He is now almost 48 years of age but looks very much older. He testified at this trial about an event of forced fellatio that occurred at W1[...] Lake in the spring of 1971.

[55] W.A.M.’s testimony at trial was markedly different from that of other trial witnesses. He was relatively comfortable in the witness box as he gave his testimony. He did not have a problem with language, either in understanding or expression. Indeed, he was quite articulate in English. The most remarkable difference however, is that, unlike other witnesses who testified, W.A.M. provided extensive detail of collateral matters and extensive, sequenced detail of acts leading up to, during, and after the sexual event he complains of. He recalls, for example, the names of two playmates who were with him on the occasion he first met Ralph Rowe at W1[...] Lake. He remembers conversations in some detail before, during and after the event complained of.

[56] Unlike other witnesses there is only one alleged incident involving W.A.M. and Ralph Rowe in a sexual way. W.A.M. appears also to be a man of high intelligence which, together with the single-event incident may account, in part, for his extensively more precise and detailed recollection of that event and the surrounding circumstances.

[57] W.A.M. says that in the late spring of 1971 he had been playing in a log cabin on a hill not far from the Co-op store. He saw his cousin, whom he named, and from whom he unsuccessfully sought some money for food. As W.A.M. proceeded along the trail towards the church he says he looked to his *left* and saw Ralph Rowe coming from the *right* side of the Anglican church, walking towards the M[...]. W.A.M. says he ran toward him and asked him for money. Ralph Rowe replied that W.A.M. should work for his money the same way as he and others did. Ralph Rowe then went to his cabin. W.A.M. followed him believing he would have to perform some cabin-cleaning or water-hauling chores for Ralph Rowe in order to earn some money. Inside the cabin, W.A.M. stood approximately 3 to 4 feet away from Ralph Rowe. Ralph Rowe took off a black thing (something to do with the church). Ralph Rowe pulled down the zipper of his jeans and pulled out his penis. He told W.A.M. to come toward him and feel him which W.A.M. says he did reluctantly. A few moments later, Ralph Rowe cupped his hand behind W.A.M.'s neck and shoved his penis into the mouth of W.A.M.. W.A.M. said he was really scared and thought immediately that "this was not right." He made for the door intending to leave the cabin. Just as he was about to leave, Ralph Rowe called him back and gave him a two-dollar bill. Though he said he wasn't feeling good, W.A.M. went to the coffee shop and bought a chocolate bar and a pop. He later threw the pop away without drinking all of it. A while later he saw his mother cooking, outside, on a wooden block, and told her what had just happened. She became angry with him and scolded him for lying about a priest. He could not understand why his mother did that to him. He went inside their home. He cried on the bed. Approximately 5 days later he told his grandmother what happened. She told him not to say these things or they would 'come back to bite you.'

[58] The testimony of W.A.M. was similarly precise in detail as to the mechanics that led to the incident of forced fellatio he described, including what Ralph Rowe did with his right or his left hand and the sequence in which he did it.

[59] Now 47, W.A.M. has had considerable life experience including a very extensive criminal record⁹. Although extensive, I do not discern from his criminal record a recent conviction for a crime of dishonesty that would lead me, on that ground alone, to take a negative view of the credibility of W.A.M.. I remain guarded about his testimony nevertheless. W.A.M. was a voluble witness who excelled, at times, in circumlocution. He is the kind of witness who, when asked the time, will tell you how to build a watch.

[60] In his responses to many questions, W.A.M. unhesitatingly supplied great detail and great specificity. When challenged, however, he was well capable of retreating into a... “it happened a long time ago...I can’t tell you the specifics...”.

[61] At a number of intervals throughout his testimony I had the impression that it sounded rehearsed. There was an abundance of small detail, glibly expressed. When confronted by apparent contradiction between his trial testimony and his testimony at the preliminary hearing he usually found a safe, if unconvincing, retreat. One such excerpt in the preliminary transcript pointed to by counsel contains a reference to Ralph Rowe *unbuttoning* the front of his jeans as compared to Mr. W.A.M.’s trial testimony about Rowe having *lowered his zipper*. While nothing will turn on a small discrepancy of that kind, it adds to the building disquiet over the reliability of his detailed account.

[62] W.A.M.’s trial testimony about the single event of forced fellatio may well be true. In looking at his testimony as a whole, however, I just do not have confidence in the reliability of his detailed assertions respecting the event. Although it may be true, the testimony of W.A.M. does not satisfy me beyond a reasonable doubt of the guilt of Ralph Rowe on count 1 of this indictment as amended. I find Ralph Rowe not guilty on count 1.

⁹ Exhibit #1, at trial.

Counts 43, 44, 45 & 46
A.J.T.N.

[63] A.J.T.N., now 32, spent part of his growing up years both in W1[...] Lake and at B1[...] Lake. He testified at trial about events that occurred when he was a child of 6 or 7 in B1[...] Lake.

[64] He was about 6 or 7 years old when he began his involvement with the Beaver group at B1[...] Lake. Meetings of the Beavers were held at the P[...] or at the M[...] in B1[...] Lake. The leader of the Beavers and Cubs was Ralph Rowe. A.J.T.N. testified that he 'slept over' at the M[...] quite often. He slept in a bedroom with other boys, some sleeping in bunk beds and some sleeping on the floor. Ultimately, he described a number of incidents involving Ralph Rowe that occurred inside Ralph Rowe's bedroom at the M[...]. He described Ralph Rowe's bedroom as being furnished with a bed, a dresser and a mirror.

[65] The earliest incident A.J.T.N. recalls occurred at a time when he was 'sleeping over' at the M[...]. He began the night in the bedroom with the other boys. During the night, however, he says that Ralph Rowe took him to his (Rowe's) room. On the bed in Ralph Rowe's room, Ralph Rowe began 'fondling him, rubbing his ass and his penis' at first, and then attempting to penetrate A.J.T.N.'s anus penilely. At that moment, Ralph Rowe was positioned behind A.J.T.N. on the bed. A.J.T.N. said that he felt Ralph Rowe's penis and that Ralph Rowe was "trying to put it in...more like trying to push it" into his anus. When that occurred, A.J.T.N. said that it hurt and he was scared. He reacted on that first occasion by suddenly thrusting his arm back behind him and hitting Mr. Rowe, perhaps in the penis area. With that, Ralph Rowe stopped momentarily. Then Ralph Rowe placed his penis between the legs of A.J.T.N. and started moving back and forth. A.J.T.N. says this went on for a while and then Ralph Rowe stopped. After Ralph Rowe stopped, A.J.T.N. went back to the room where the other boys were sleeping and did not see Ralph Rowe again that night. With respect to this first incident A.J.T.N. assumes that Ralph Rowe moved him from the larger sleeping area while A.J.T.N. was still sleeping. A.J.T.N. just recalls waking up in Ralph Rowe's bed.

[66] A.J.T.N. said that incidents of attempted penetration happened twice. He was, however, taken to Ralph Rowe's bed several more times. Sometimes Ralph Rowe "made me jerk him off or he made me rub his ass". A.J.T.N. said that when he did not cooperate with him, Ralph Rowe would hit him on his body or squeeze him hard on his body to the point that A.J.T.N. got bruises from the force applied.

[67] A.J.T.N. has no recollection of the precise date or year in which the first incident occurred. He says it occurred during the summer but cannot say what month. He recalls Ralph Rowe having made a second attempt to penetrate him anally. Here again, he cannot recall when it occurred but says it happened "in the same year" as the first such incident.

[68] A.J.T.N. was born on [...], 1974. He could not recall how old he was on the last occasion that Ralph Rowe did anything of a sexual nature to him.

[69] On cross-examination A.J.T.N. reiterated his belief that he was 6 or 7 years old at the time the incidents of attempted anal penetration took place. However, he is not sure whether he told the police several years later that the incidents occurred when he was 8 to 10 years old. On cross-examination he agreed that he could not be sure of the exact year when this happened.

[70] In regard to the second incident of attempted anal penetration, A.J.T.N. testified that Ralph Rowe held him differently during that second attempt as compared to the first. (It will be recalled that during the first such attempt A.J.T.N. thrust his arm back and had come into contact with Ralph Rowe). On the second occasion A.J.T.N. described Ralph Rowe as holding his (A.J.T.N.'s) arms over A.J.T.N.'s head. Also on that second occasion, A.J.T.N. said that Ralph Rowe positioned his legs over A.J.T.N.'s legs. It is not clear from A.J.T.N.'s account at trial how he averted anal penetration on this second occasion. A.J.T.N. says that he "moved away" from Ralph Rowe. A.J.T.N. readily conceded on cross-examination that Ralph Rowe was much the stronger of the two and that, had he elected to do so, Ralph Rowe could easily have overpowered him.

[71] A.J.T.N. rejected outright the suggestion by cross-examining counsel that, in reference to both incidents, Ralph Rowe had simply been rubbing his penis against the buttocks of A.J.T.N.. A.J.T.N. restated adamantly that he (Ralph Rowe) was “trying to put his penis in my anus...that’s what I felt.” A.J.T.N. similarly rejected the suggestion of cross-examining counsel that he had forgotten what really occurred and that the “memory” of it was now coming back to him in an embellished form. A.J.T.N. answered that the “memory” had never been lost, and never could be, even when he didn’t want to think about what happened.

[72] A.J.T.N. was very emotional during those parts of his testimony where he was asked precisely to describe what occurred to him. In my view, his emotion was not feigned. It was real and palpable. At one point, defence counsel pointedly suggested to A.J.T.N. that the two incidents of attempted penile penetration simply did not happen. A.J.T.N. said: “I remember. He did that to me. It happened.”

[73] There was a discrepancy in A.J.T.N.’s trial testimony as to how extensively or fully he confided to his parents about the specifics of what Ralph Rowe did or attempted to do to him. Nor is it clear at what point in time he told them. A.J.T.N. conceded on cross-examination that he told both of his parents that Ralph Rowe had been touching him in private areas, trying to put his penis in my anus. It is clear from his testimony that A.J.T.N.’s parents, particularly his father, reacted angrily to the report and accused A.J.T.N. of lying, essentially saying “why would a reverend do that to you?”

[74] I do not make much of the apparent initial contradiction as to the detail of A.J.T.N.’s reporting to his parents. I found him to be a credible witness who was not discredited despite vigorous cross-examination. In my assessment, A.J.T.N. is a truthful and effective witness whose account of what it is that happened to him is reliable. Nor do I regard the long period of non-disclosure as having a negative impact on the credibility of A.J.T.N.’s account. His long silence is the less surprising in view of the angry reaction of his own parents to the initial telling. Even after he told his girlfriend about it in 1995, A.J.T.N. was scared of what people would think.

[75] In 2003 A.J.T.N. went to the police. Thereafter he consulted a lawyer with reference to a claim for damages against the Anglican Church and the Boy Scouts. A.J.T.N.'s lawsuit has been settled. He is required by the terms of his release not to talk about the compensation he received. On my part, I do not discern any reason, ulterior or direct, that detracts from the reliability of A.J.T.N.'s trial testimony before me.

[76] In counts 43 and 45 of the indictment, Ralph Rowe stands charged with committing an *indecent assault* against A.J.T.N. between May of 1980 and January 3, 1983. Counts 44 and 46 charge Ralph Rowe with *sexual assault* against A.J.T.N. in a time frame from and after January 4, 1984 to January 4, 1985. There is no distinction of substance between the essential elements necessary to constitute the offence of indecent assault and those necessary to constitute the offence of sexual assault¹⁰. On January 4, 1983 the Parliament of Canada repealed the offence of 'indecent assault on a male'. On January 4th 1983 the offence of sexual assault came into effect. There is no difference in penalty between the two. On January 4, 1983, A.J.T.N. was 8 years, 4 months and 25 days old. It will be seen that the *time frames* (in count 43 and 45 on the one hand, and count 44 and 46 on the other hand) straddle the dates when indecent assault would have been the operative charge and the period after January 4, 1983 when the offence of "sexual assault" was introduced into the *Criminal Code of Canada*.

[77] During his examination-in-chief, A.J.T.N. was asked how old he was when the first incident of attempted penile penetration of his anus took place. He answered that he was probably 6 or 7. He did not know the date of the second such incident but testified that it happened in the same year. On cross-examination A.J.T.N. was asked whether he remembered telling the police that he was 8 to 10 years old when the first incident occurred. He answered that he was not sure what he told the police. He did concede that he was not sure of the exact year that the first incident occurred.

¹⁰ See *R. v. A.E.R.* [2001] O.J. No. 3222 (Ont. C.A.) (Quicklaw Cite) at para 35.

[78] I think it more probable that A.J.T.N. was 6 or 7 years old during these occurrences because he also associates an age of ‘6 to 7 years’ when he began his involvement with Beavers. In point of fact there is no actual evidence before me that A.J.T.N. offered a different *time frame* for the event when he spoke to the police in 2003. At most, he ‘might have’ mentioned a different time frame. The evidence as to the time of the occurrences may be slender but I find from it that count 43 and count 45 are the operative counts.

[79] Consent is not an issue on any of the 4 counts of the indictment that involve A.J.T.N.. Of greater moment here is whether the crown has satisfied me, beyond a reasonable doubt, that the more egregious conduct of attempted anal penetration by Ralph Rowe has been established.

[80] In my opinion the more egregious conduct is established by the evidence.

[81] A.J.T.N. testified that he was in Ralph Rowe’s bedroom more than just a couple of times. He said that *other* fondling-like behaviours occurred on those occasions. He made no reference to being held or restrained by Ralph Rowe respecting that less serious fondling-like activity. A.J.T.N.’s only references to being held or restrained are in relation to the 2 instances of attempted anal penetration. A.J.T.N. described being ‘positioned’ by Ralph Rowe respecting these 2 incidents and as a prelude to them. He says he experienced a sensation of physical pain, again, not something he described in reference to Ralph Rowe’s other sexual activity. Asked more particularly about the sensation he actually felt, A.J.T.N. said he felt Ralph Rowe was trying to put his penis – “more like trying to push it” – into his anus. A.J.T.N. reacted to the 1st such attempt by moving his arm back behind him towards the area the sensation came from. I infer, in reference to the 2nd incident of attempted anal penetration, that Ralph Rowe too may have learned from the 1st incident, in that on the 2nd attempt A.J.T.N.’s arms were held over his head by Ralph Rowe. Nevertheless, A.J.T.N. says that no matter how hard Ralph Rowe pinched him or squeezed him “I would not let him” [penetrate me].

[82] There is no doubt, given the size, age and strength disparity between them, that Ralph Rowe could simply have overpowered A.J.T.N.. There was some risk to doing so however. It

would doubtless be more clever for Ralph Rowe to revert to conduct which was being tolerated by the child as opposed to using overpowering strength more likely to draw attention.

[83] I find that the testimony of A.J.T.N. on these points is credible. I accept it as true.

[84] There is no general test to distinguish an attempt from mere preparation.¹¹ In the circumstances as I have found them to be, however, Ralph Rowe had fully completed the attempts at penile anile penetration in each instance. The nature of the findings I made establish the criminal intent of Ralph Rowe beyond a reasonable doubt. I find Ralph Rowe “guilty” on counts 43 and 45 of the indictment. More particularly, I find in reference to counts 43 and 45 that the more egregious conduct of attempted anal penetration has been established.

Count 13
R.G.M.

[85] R.G.M. grew up in the First Nations Territory of B2[...] Lake. He was born there on [...] 1970. He described Ralph Rowe as a respected figure in his community, an Anglican priest, Cub and Scout leader, and pilot. R.G.M. was about 7 years old when he joined the Cub group that Ralph Rowe led.

[86] B2[...] Lake is a remote fly-in community. Ralph Rowe had been flying into B2[...] Lake on a regular basis, occasionally staying there for a week or even longer periods of time. The cubs and scouts meetings were held at the school in B2[...] Lake, mostly in the evenings. The Cub/Scout group consisted of about 10 children.

[87] R.G.M. testified that a number of fondling-like incidents (by Ralph Rowe towards him) began at the school when R.G.M. was about age 9. They started one day when he sought permission to leave the Cub meeting to go to the washroom. Initially, Ralph Rowe showed him to the door of the washroom and went back to the meeting. The washroom door had a self-

¹¹ See *R v. Cline* (1956), 115 C.C.C. 18 (Ont. C.A.)

closing mechanism and the door was closed when R.G.M. used the urinal. On subsequent occasions, Ralph Rowe entered the washroom while R.G.M. was present in it and using the urinal. Ralph Rowe approached him and began fondling R.G.M.'s crotch area, foreskin and penis. No one else was present in the washroom during any of these occasions. On one occasion, however, R.G.M. heard someone trying to come into the washroom. Ralph Rowe immediately said out loud: "We're in here. Go back out there." R.G.M. says these washroom incidents occurred about 7 times over the span of a 2 or 3-year period until he was 12 years old. On 2 such occasions Ralph Rowe kissed R.G.M.'s penis. Ralph Rowe told him: "it's okay...it's alright." He told R.G.M., however, not to tell anyone about them.

[88] There were other incidents.

[89] Ralph Rowe stayed at the agency cabin while in the community. The agency cabin is situate about 500 to 600 feet from the school where the Cub meetings were held. On one occasion at the cabin, Ralph Rowe began rubbing R.G.M. on his anal side. The incident was confined to 'rubbing' and was brief.

[90] R.G.M. described other incidents of fondling while accompanying Ralph Rowe in the plane, and once on a camping trip.

[91] R.G.M. says that it was not until he was in grade 9 in high school — when the school taught about sexual abuse — that he realized what Ralph Rowe had been doing to him was wrong. Still, he told no one about his experiences with Ralph Rowe until at least 10 or 12 years later. He says he was too ashamed and did not want anyone else to know.

[92] The testimony of R.G.M. impressed me as credible. From his testimony and his statement at trial, it was clear that he had a very strong sense of being betrayed by Ralph Rowe. R.G.M.'s life had spiraled downward into a pattern of heavy drinking that started in his second year in high school. I have the impression that R.G.M. understated rather than overstated the extent and nature of the sexual contact perpetrated by Ralph Rowe. Even by this account,

however, I have no difficulty in finding Ralph Rowe guilty of indecent assault in count 13 of the indictment, as amended.

[93] I do not downplay the seriousness of the sexual misconduct of Ralph Rowe towards R.G.M. or its serious consequences for R.G.M.. Both on cross-examination and on re-examination, however, R.G.M. did not put the misconduct at a higher level than kissing his penis and playing with his foreskin and crotch area.

[94] R.G.M. was clearly a child at the time. Accordingly, it was impossible for him to consent to that activity. Even so, Ralph Rowe duped him into believing that the conduct was okay.

[95] I find that the crown has established that the multiple sexual acts against R.G.M. by Ralph Rowe did occur and that the nature of the misconduct clearly meets the test for indecent assault. In consequence, although I enter a finding of “guilty” in respect of count 13, I am obliged to say that I do not regard the sexual misconduct described by R.G.M. as falling into the more highly egregious category of sexual misconduct that the crown sought to establish.

Summary

[96] The indictment before the court in these proceedings set out 56 counts of sexual assault or indecent assault by Ralph Rowe. Many of the allegations of sexual misbehaviour respecting these 56 counts involved sexual fondling-like behaviour and fell within the terms of a plea agreement made between the crown and defence counsel in 1994. During the course of this trial Ralph Rowe voluntarily entered pleas of guilty to 20 counts in the current indictment. The crown withdrew 24 counts. Trial of the remaining 12 counts proceeded in the normal course. The purpose of trial on these 12 counts was twofold: first and foremost trial was necessary to determine the innocence or guilt of Ralph Rowe on the charges. In the event of a finding of guilt on one or more of the charges after trial, there remained the necessity of determining whether the conduct in any of these 12 counts on which Ralph Rowe was convicted involved sexual

misconduct more egregious than sexual fondling-like behaviour and, therefore, outside the terms of the 1994 plea agreement. It is useful then to list all of these dispositions and, for the purpose of the sentencing, to keep them separately categorized.

[97] I shall begin with a list of the counts on which Ralph Rowe entered a plea of guilty during the course of trial and in respect of which a finding of guilt was entered:

Pleas of Guilty

<u>Count number</u>	<u>Name of complainant</u>	<u>Charge on which Ralph Roe convicted</u>
4	A.S.	Indecent assault
5	G.A.W.	Indecent assault
6	A.J.M.	Indecent assault
8	R.B.B.	Sexual assault
10	S.D.B.	Indecent assault
16	I.G.M.	Indecent assault
19	R.S.	Indecent assault
20	L.B.	Indecent assault
23	G.L.B.	Sexual assault
25	R.D.C.	Sexual assault
32, (as amended)	R.A.N.	Indecent assault
34	J.T.M.	Indecent assault
38	C.J.D.C.	Sexual assault
41	C.B.F.	Sexual assault
47	G.T.F.	Sexual assault
48	M.D.B.	Sexual assault
<u>Count number</u>	<u>Name of complainant</u>	<u>Charge on which Ralph Roe convicted</u>
50	R.C.A.	Indecent assault

51	G.G.N.	Sexual assault
54	H.B.N.	Sexual assault
56	A.C.B.	Sexual assault

[98] The convictions on the counts set out above all involve sexual misconduct towards young male children. The incidents occurred over a broad sweep of years between 1975 and 1987. They involve 20 victims. Victim impact statements are filed with the court as exhibit #2.

Counts of the indictment withdrawn by the crown

Counts 7; 9; 11; 12; 14; 15; 17; 18; 21; 22; 24; 26; 31; 33; 35; 36; 37; 39; 40; 42; 49; 52; 53; 55.
(24 counts withdrawn)

Disposition of the 12 counts that proceeded to trial

Counts	Complainant	Finding of the Court
2 & 3 (as amended)	H.M.K.	Guilty on both counts 2 and 3

[99] The court made findings of digital and penile penetration by Ralph Rowe of the complainant's anus in respect of each of count 2 (at W2[...] Lake) and count 3 (at W1[...] Lake). The sexual misconduct found here is more egregious than fondling-like behaviour of a sexual nature. It falls outside the plea agreement.

Counts	Complainant	Finding of the Court
27, 28, 29, 30	S.J.N.	Not guilty on all counts

Count	Complainant	Finding of the Court
1	W.A.M.	Not guilty

43, 44, 45, 46	A.J.T.N.	Guilty of indecent assault on each of counts 43 and 45; not guilty on counts 44 and 46
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[100] In respect of counts 43 and 45, the court made a finding, on each count, of attempted anal intercourse, the effect of which is to place the sexual misconduct into the more egregious category. The convictions on counts 43 and 45 are not captured by the plea agreement.

Count	Complainant	Finding of the Court
13	R.G.M.	Guilty of indecent assault

[101] Despite the finding of guilty in respect of count 13, the crown has failed to establish that the sexual misconduct complained of falls into the more egregious category. The sentencing disposition on count 13 is subject to the plea agreement.

Justice E. W. Stach

DATE: July 6, 2007

Appendix

Cases Considered

R. v. D. (D.) 163 C.C.C. (3d) 471 (Ont. C.A.); *R. v. Cook* [2006] O.J. No. 4675(S.C.J.); *R. v. Folino* [2005] O.J. No. 4737 (Ont. C.A.); *R. v. Mwamba* [2006] O.J. No. 4023 (O.C.J.); *R. v. G.A.W.* [2007] N.S.J. No. 49 (N.S. Sup. Ct.); *R. v. L.T.* [2006] M.J. No. 292 (MB Prov. Ct); *R. v. Wark* [2006] O.J. No. 2202 (O.C.J.); *R. v. Watrin* [1997] A.J. No. 587 (Alta. C.A.); *R. v. Chase* (1984), 13 C.C.C. (3d) 186 (N.B.C.A.); *R. v. Chase* (1987), 37 C.C.C. (3d) 187 (S.C.C.); *R. v. Alderton* (1985), 17 C.C.C. (3d) 204 (Ont. C.A.); *R. v. Taylor* (1985), 19 C.C.C. (3d) 156 (Alta. C.A.); *R. v. Ramos* [1984] N.W.T.J. No. 18; *R. v. R.J.E.* [1999] B.C.J. No. 322; *R. v. L.K.K.* [1996] O.J. No. 209; *R. v. MacQuarrie* [1998] N.S.J. No. 76 (N.S. Sup. Ct.); *R. v. Stewart* [1994] O.J. No. 811 (C.A.); *R. v. F.M.* [1999] O.J. No. 4381; *R. v. W.S.* (1994), 90 C.C.C. (3d) 242 (Ont. C.A., leave to appeal refused); *R. v. A.G.* [2000] 1 S.C.R. 439; *R. v. McGrath* [2000] O.J. No. 5735 (Sup. Ct.); *R. v. Corston* [1994] O.J. No. 2862 (Gen. Div.); *R. v. Muelken* [2001] O.J. No. 543 (Sup. Ct.); *R. v. F.(J.)* 177 C.C.C. (3d) 1, (Ont. C.A.); *R. v. Selles* (1997), 116 C.C.C. (3d) 435 (Ont. C.A.); *R. v. Lamirande* (1988), 41 C.C.C. (3d) 314 (Man. C.A.); *R. v. L.X.F.* [1996] A.J. No. 314 (Prov. Ct.); *Justice v. Cairnie Estatic et al* (1999), 136 Man. R. (2d) 84 (Q.B.); *R. v. Skolnick* (1982), 68 C.C.C. (2d) 385; *R. v. Sharpe* [2007] B.C.J. No. 626 (B.C. C.A.); *R. v. Jackson* [1993] 4 S.C.R. 573 (S.C.C.); *R. v. Thatcher* [1987] 1 S.C.R. 652 (S.C.C.); *R. v. Bickford* 51 C.C.C. (3d) 181 (Ont. C.A.); *R. v. M.L.M.* [1994] 2 S.C.R. 3 (S.C.C.); *R. v. Ashlee* [2006] S.C.C.A. No. 415 (Alta. C.A.); *R. v. Bellman* (1998) 106 N.R. 151 (England, House of Lords); *R. v. Ewanchuk* 131 C.C.C. (3d) 481 (S.C.C.); *R. v. E.(L.)* 94 C.C.C. (3d) 228 (Ont. C.A.); *Regina v. Baney* 6 C.C.C. (2d) 75 (Ont. C.A.); *R. v. Doherty* [2000] O.J. No. 3163 (SCJ); *Jobidon v. The Queen* 36 C.C.C. (3d) 340 (S.C.C.); *R. v. O'Connor* 123 C.C.C. (3d) 487 (B.C. C.A.); *R. v. D.V.L.* [1998] O.J. No. 1492 (Ont. C.A.); *R. v. V.I.W.* [1995] O.J. No. 1602 (Ont. C.A.); *R. v. E.F.H.* [1994] O.J. No. 452 (OCJ); *Regina v. R.W.* 74 C.C.C. (3d) 134 (S.C.C.); *R. v. Dubreuil* 125 C.C.C. (3d) 355 (Ont. C.A.); *R. v. D.D.* [2000] 2 S.C.R. 275 (S.C.C.); *R. v. Noble* [1997] 1 S.C.R. 874 (S.C.C.); *R. v. A.E.R.* [2001] O.J. No. 3222 (Ont. C.A.); *R. v. N.V.B.* [1998] O.J. No. 2294 (O.C.J.)

Statutes Cited

Tremear's Criminal Code 1992, Provisions 1992 – 1996, Section 272; Martin's Criminal Code, 1984; Martin's Criminal Code 1983, Section 246.1

Texts and Articles Cited

Sullivan and Driedger on the Construction of Statutes, Butterworths, 4th Edition; Criminal Pleadings & Practice in Canada, Ewaschuk, Canada Law Book, 2nd Edition; The Law of Evidence in Canada, Sopinka, Lederman and Bryant, Butterworths, 2nd Edition

COURT FILE NO.: 05-16

DATE: July 6, 2007

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. RALPH ROWE

BEFORE: Justice E. W. Stach

COUNSEL: Peter Keen and Richard Cummine,
for the Crown

Robert Sinding, for the Accused

REASONS AT TRIAL

The Honourable Mr. Justice E. W. Stach

DATE: July 6, 2007