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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. RALPH ROWE

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

COUNSEL:

For the Crown: Peter Keen

For the Accused: Robert Sinding

***** PUBLICATION BAN *****

REASONS AT TRIAL

Introduction

[1] In the course of delivering these reasons I will, for purposes of convenience and easy reference, use the full names of the complainants. I hasten to remind all in the courtroom and those watching by video-link that the publication ban previously ordered by the court remains in place. The ban prohibits passing on or 'publishing' any information – not just names – that would identify or tend to identify any of these complainants.

[2] Also by way of introduction I should indicate that, both at the outset of trial and at some stages during trial, some of the charges in the 21 count indictment before me were either withdrawn or dismissed. That disposition of individual counts, together with any disposition of other counts that I make today is summarized in paragraph 74 of these reasons. Finally, I note that brief reasons given by me permitting the admission of similar fact evidence at this trial are set out in appendix "B" attached.

Count 19
D.G.

[3] In count 19 the crown alleges that, between May 1, 1980 and September 30, 1980 Ralph Rowe committed an indecent assault on D.G. at B.T.L..

[4] D.G. is now 40 years old. He was born in B.T.L. and still lives there. In his testimony at trial he told the court about an incident of anal touching and digital penetration that, he says, happened to him when he was a child of 11 or 12. Briefly stated, he testified that he had been swimming with other boys, that they had preceded him out of the water and had begun running, ahead of him, up and over the hill on a nearby path when Ralph Rowe approached him. Both he and Ralph Rowe were then on land near the shore. D.G. was wearing his still-wet shorts and carrying his other clothing in his arm at the side of his body.

[5] Ralph Rowe started patting him on the back, harmlessly at first, but progressing quickly to patting his buttocks, then to putting his arm around his waist and sliding his other hand under the shorts of D.G., fondling his penis and anal area. D.G. says the incident culminated in his feeling a sharp pain in his anal area “like someone pinching you”. In the words of D.G.: “I didn’t see it. I felt it”.

[6] Ralph Rowe also testified at trial. He denied that the incident described by D.G. – or any sexual activity between them ever occurred. Ralph Rowe acknowledges that he probably saw D.G. around, but says that he never really knew him or more precisely: “I don’t remember him at all”. Mr. Rowe testified that although he flew into B.T.L. from time to time he was not then resident there. He says that the M[…] was occupied then by Mr. McNear and his family and that, given the proximity between the M[…] and the swimming area, and the lines of sight between them, there is no likelihood that the kind of incident described by D.G. would ever occur in broad daylight.

[7] It will readily be seen that credibility and reliability of testimony are focal issues here; that these issues cannot be resolved simply by choosing as between two competing versions, but must be seen through the prism established in the criminal law by R v. W.(D)[1]. I am mindful of the propositions that it is not incumbent on Ralph Rowe to prove or disprove anything at this trial. The burden rests on the crown throughout to establish the allegation in the indictment on proof beyond a reasonable doubt.

[8] Mr. Rowe testified at some length during this trial, often effusively. He is a practised speaker and very articulate. In my observation of his testimony I noted a pervasive tendency on his part to minimize his involvement or culpability not only in respect of multiple charges to which he had previously entered pleas of guilty but also respecting charges on which he had been found guilty after trial. Many of his utterances and after-the-fact explanations were ardently made but they are ultimately self-serving and unconvincing. He has a masterful talent for rationalization.

[9] By comparison, his testimony respecting the allegations of D.G. was terse. His assertion that 'nothing happened' is not premised upon his recollection of D.G. but rather upon his non-recollection of him, combined with the additional assertions that he (Ralph Rowe):

(a) was unlikely to have engaged in the conduct alleged [put his finger in a young boy's anus] or,
(b) was unlikely to have attempted it in the circumstances described by D.G..

[10] As to the first of these *additional assertions*, I note the question put to Ralph Rowe by counsel on re-examination and Mr. Rowe's response:

> Q. D.G. testified you put your finger in his anus. Is that the type of sexually offending behaviour you participated in, in the past?
> A. No
> Q. Pardon me?
> A. No

[1] R v. W.(D). [1991] 1 S.C.R. 742; see also R v. C.L.Y., [2008] 1 S.C.R. 5 and R v. J.H.S., [2008] 2 S.C.R. 152.

[11] I observe only that this court previously found that Ralph Rowe digitally penetrated the anus of a young boy of approximately the same age as D.G..[2]

[12] As to the second *additional assertion*, there are in the materials before me numerous established incidents which show Ralph Rowe frequently flirted with the risk of detection yet proceeded anyway, perhaps because he did not regard his conduct as crossing the line, perhaps because he did not take seriously the possibility that he would ever be held to account for it. Ultimately it is idle to speculate why he did so. The bottom line is that he often acted with great audacity, even brazenness.

[13] D.G. was cross-examined at great length. Because his mother-tongue is O., not English, I cautioned counsel to take great care to ensure a clear understanding between questionner and witness as to terminology and time frames and that, absent such clarity, there was a risk I would attach little weight or, indeed, no weight to the evidence, including any alleged inconsistency in it.

[14] The thrust of D.G.'s cross-examination centred on the propositions that his account of 'the incident' was made up; that it was motivated by a claim for money; that his 'memory' was suspect, not real – or alternatively that it was 'recovered memory' through the improper intervention of a counselor who had himself been abused by Ralph Rowe; that his account of the 'events' was marred by collusion and that it was internally inconsistent.

[15] Based upon an unstated premise that the account of digital penetration was made up by him, D.G. was challenged with the fact that, unlike his examination-in-chief at trial, he had made no mention of digital anal penetration when questioned at the preliminary hearing. Mr. D.G. agreed that he had not, explaining it was something he couldn't bring himself to say in his first attendance at a formal court hearing. Upon re-examination, I permitted crown counsel to introduce a prior consistent statement made by D.G. to a police officer. In my opinion the

[2] See R v. Ralph Rowe [2007] O.J. No. 2971 at para. 23. The relevant time frame pre-dated the allegations made by D.G.. No appeal was taken.

statement was admissible to rebut the suggestion of *recent fabrication*. The statement was not admitted, however, for the truth of its contents. The sole basis for its admission was its potential to neutralize a challenge that would otherwise have diminished the weight of D.G.'s testimony. [3]

[16] D.G.'s testimony was also challenged on grounds of an alleged inconsistency in his respective accounts of 'what happened', at trial and at the preliminary hearing. I find no inconsistency in the accounts on which he was challenged.

[17] The most fundamental challenge to the testimony of D.G. related to the source, clarity and reliability of his 'memory' of what, he says, happened to him in the summer of 1980.

[18] During cross-examination at trial, D.G. said that he told his grandparents what Ralph Rowe did to him and they did not believe him. He said that he never spoke to anyone else about the incident until years later, when he was an adult. He agreed that he attempted to suppress that memory in the intervening years; that it took him a long time "to bring it out". After an exchange between Mr. D.G. and cross-examining counsel about the clarity of his memory and the effect of "flashbacks", Mr. D.G. was again challenged with responses he had given at the preliminary enquiry. I set out the relevant segment of the preliminary transcript here only because it provides a convenient outline of the issues that bear on the credibility and reliability of Mr. D.G.'s testimony which ultimately fall to me to determine after considering all of the evidence:

> Q. Okay. How clear is your memory of this incident?
> A. I would say not really clear. I have flashbacks about it.
> Q. So you have a memory of something bad happening to you with Ralph?
> A. Yes, yes that's correct.
> Q. And over time you've been sort of trying to piece together exactly what it is that happened?

[3] See exhibit #1 at trial. See also Paciocco and Steusser, The Law of Evidence, Fifth edition, 2008 at p. 480.

A. No it's just that I put it away inside me I didn't want to bring it up all these years.

Q. So did you sort of lose the memory for a while and it came back to you in a flashback?

A. I never wanted to think about it.

Q. Would you agree with what I said though, you lost the memory and it came back in a flashback?

A. Can you ask me that in a way I can understand it?

Q. I will try. You mentioned you've had flashbacks….

A. Yes.

Q. …about the incident. What do you mean by that?

A. When you, when something happens to you in your life there you don't even want to remember it but eventually you get used to it; you block it. And for me life just goes on for me just to put it aside and not to bring it up there for a while.

Q. So you didn't bring up that memory for a while.

A. Yes I blocked it.

Q. Blocked it. So it was out of your memory for a while and then it came back in a flashback?

A. I know it was always there because eventually it caught up to me.

Q. Did your wife or anyone else sort of help you bring that memory back?

A. My wife helped me with it. Like she encouraged me to try and bring everything out that happened to me in my lifetime in order for me to heal because it has affected my marriage.

[19] From my observations of D.G. in the witness box, from his use of language and example, and from having listened a second time to his entire testimony, I am satisfied that his core memory of the event he described remained intact despite years of attempting to suppress it. I am satisfied that it is *his* memory, not a conjured account planted by a counsellor, nor something that popped into his head pursuant to a 'vision'. To be sure, its impact on his life is something

about which he now has a clearer grasp. Although the impact of that recollection may now have a more telling effect in the form of anxiety attacks, I expressly reject his contention that his memory of the event is better now than before. From his description, he merely feels less compelled to block the memory now, in an effort to confront the issue and find some healing.

[20] As to the date or time frame in which the event is said to have occurred, D.G.'s association of it occurring not long after his family moved nearer to the M[…] and, more specifically, at a time when he attended the other school (for grades 5 and 6) is a practical and sensible association that satisfies me of the temporal component specified in count 19.

[21] There is no evidence of collusion before the court. Indeed, from the only evidence that bears on this issue, I conclude there was none.

[22] D.G. complained of a history of sporadic anal bleeding since the incident with Ralph Rowe. He acknowledged that there was no bleeding or blood spotting immediately after the incident. His testimony as to when it began is imprecise. In sum, the evidence before me is too vague and inconclusive to support a finding that his episodic rectal bleeding was caused by the incident he complains of.

[23] Courts must bring a cautious approach to assessing the reliability of allegations of historical sexual abuse.[4] Inherent in that process is the ability of an accused person, through full and fair cross-examination, to test the evidence against him, to explore its weaknesses, to probe its motivation. In the case now before me defence counsel has fully exercised that right through vigorous lengthy and far-ranging cross-examination of D.G.. Its principal focus on the source and reliability of memory assisted my own assessment of these issues.

[24] I do not discredit all of Ralph Rowe's testimony. Nor, in circumstances where he met hundreds of native boys over a span of almost 2 decades in the north, do I find it surprising that he has but faint or no recollection of some, particularly when they are now grown to adulthood. I

accept Mr. Rowe's testimony that he was not transferred to B.T.L. until 1981. At the same time, he acknowledged that he flew into the community from to time to time before then. The respective accounts of D.G. and Ralph Rowe do not differ on that aspect of the matter.

[25] The demeanour and apparent sincerity of a witness do not establish the reliability of their testimony. They are nevertheless factors that may be taken into account. I do not doubt the sincerity or motivation of D.G.. I find that his core memory of the incident he described remains intact. I accept his account of the incident as truthful.

[26] I disbelieve the assertion (implicit in Ralph Rowe's response to defence counsel on re-examination) that he would not engage in the type of sexually offending behaviour described by D.G.. Nor do I attach any weight to the submission (made by defence counsel in argument) that it is unlikely that Ralph Rowe would have risked detection in the outdoor environment described by D.G.. Save for discrediting these 2 defence submissions I find it unnecessary to consider to evidence of similar fact in the disposition of count 19.

[27] In so far as the testimony of Ralph Rowe relates to count 19, I do not believe it. Nor does it leave me with a reasonable doubt of his guilt on count 19. On the basis of all of the evidence I do accept, I find Ralph Rowe guilty on count 19 of the indictment, as charged.

Count 5
B.F.S.

[28] B.F.S. is a tall angular man. He is now 30 years of age. He is the godson of Ralph Rowe. He testified about an incident between himself and Ralph Rowe that, he says, happened at B.T.L. when he was 5 or 6 years old.

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[4] R v. McGrath [2002] O.J. No. 5735 per Minden J. @ paras. 11-15 (Ont. S.C.J.).

[29] B.F.S. grew up in W[…]. His first contact with Ralph Rowe came about through Mr. Rowe's role as minister and boy scout leader. B.F.S. was in Beavers, a younger version of boy scouts for boys between the ages of 5 and 7. He says that when he was 5 or 6 years old he went to B.T.L. with Ralph Rowe in a float plane and that they stayed overnight. There were activities for young children there, organized by Ralph Rowe.

[30] B.F.S. describes sleeping in a room where there was a bunk. Ralph Rowe was sleeping in another bedroom. Towards morning he woke up because he was cold. He remembers Ralph Rowe telling him he would be much warmer in *his* bed. He got into Ralph Rowe's bed where he lay down facing the window. Ralph Rowe was in the same bed beside him. B.F.S. struggled with his emotions in the witness box as he described Ralph Rowe's arm going around his stomach and feeling what he perceived to be Ralph Rowe's stiff penis between the cheeks of his buttocks. He described Ralph Rowe as "spooning" him and moving back and forth for what seemed to him to be a couple of minutes. He said he was alone with Ralph Rowe in the bedroom and that the bedroom door was open. When someone ultimately walked by the doorway, Ralph Rowe stopped and B.F.S. ran out and went downstairs. B.F.S. said that the contact between him and Ralph Rowe in the bedroom was *over* the clothing and *not* skin to skin.

[31] B.F.S. says that he was never alone with Ralph Rowe after that and there was no repetition of the incident. When asked, he was unsure whether there were other people from W[…] on the float plane. He was unsure why he was chosen to go to B.T.L..

[32] Ralph Rowe's testimony about B.F.S. was explicit. He said that, he saw B.F.S. only 3 times, once as a infant and twice as a small child. He last saw him when B.F.S. was 7 years old.

[33] Ralph Rowe stated categorically that he has never flown 5-year old children without their parents or some kind of adult escort, not even once, not even his godson. He said that B.F.S. never flew with him anywhere. Equally categorical are Ralph Rowe's trial responses to the following questions by counsel:

Q. Did you ever sleep in the same bed with B.F.S.?

A. Never.

Q. Did you ever sleep in the same room with him?

A. Never. Not even in the same house.

Q. Were you ever alone with B.F.S.?

A. No…..

[34] As with other counts, the credibility and reliability of testimony are critical issues on count 5.

[35] B.F.S. presented at trial as a very earnest person of serious demeanour. He found it emotionally very difficult to talk in the kind of detail counsel sought from him about the conduct he attributed to Ralph Rowe. These aspects of his testimony, including his occasional difficulty with emotion are not decisive of the reliability of his testimony but they do merit mention in any accurate portrait of B.F.S. as a witness. His emotions in my opinion were not feigned.

[36] Like other witnesses, in this trial, B.F.S. was vigorously cross-examined. The essence of his account of 'what Ralph Rowe did to him' was unshaken. While it occurs to me that flight in a float plane for a boy 5 or 6 is a singular experience, it is not surprising that other particulars, whether there were other adults or children aboard, may be less memorable.

[37] In reflecting on his testimony I noted B.F.S. has a civil law suit pending against Mr. Rowe, the church and boy scouts in a proceeding that was launched *after* he went to the police. Although it must be said that the law suit holds the prospect of monetary compensation for him, I do not have the impression that his testimony at this trial was embellished on that account. Nor do I believe it forms his primary motivation for coming forward at this stage of his life.

[38] During a segment of Ralph Rowe's testimony respecting B.F.S. Mr. Rowe stated that he had "flown a lot of young people around but none of them have come forward with these kinds of allegations". Assuming Mr. Rowe intended the statement to be of broad application, it is quite

at odds with the actual history underlying some of his criminal convictions and, in my assessment, untrue.

[39] I had earlier made reference to my perception of Mr. Rowe's testimony as being permeated with a tendency to minimize his culpability for crimes to which he has been found guilty. It is, because of this tendency, his obvious self-interest in these matters and his continued allegiance to church and scout organizations in relation to these very issues that I have no confidence in the quite categorical protestations he makes respecting the allegations of B.F.S..

[40] The fact that B.F.S. is the godson of Ralph Rowe does not give me pause. Ralph Rowe has victimized the sons of his theological colleagues, even in their own homes. [5]

[41] Lest it be deemed necessary to do so, I say expressly that I do not believe the testimony of Ralph Rowe in relation to count 5. It does not leave me with a reasonable doubt of his guilt on count 5. On all of the evidence that I accept, I find Ralph Rowe guilty on count 5 of the indictment.

Counts 6, 7 and 8
M.R.H.

[42] M.R.H. is now 36 years old. He moved to B.T.L. with his family when he was about 6 years of age. His first contact with Ralph Rowe arose out of Mr. Rowe's role as a minister and scout leader in that community and from the "open-door" policy that obtained during Ralph Rowe's tenure there. It was commonplace for children to come in and out, and to play at the M[…]. Mr. M.R.H. testified about incidents of sexual misconduct by Ralph Rowe towards him when he was a child of 8 or 9.

[5] See Crown's Similar Fact Evidence Application Record, Tab 4 at pp. 7-8. See also pp. 5-6.

[43] M.R.H. testified about several incidents of sexual misconduct over a period of years. All are said to have occurred at the M[…]. He says they consisted of fondling at first, with Ralph Rowe using his hands to touch his bum and penis, initially overtop of his clothing, but progressing as time went on to a continuum of acts that included the fondling of his bum area and penis underneath his pants, and of Ralph Rowe "asking him to do things", like touching Ralph Rowe's hard penis with his hands (twice) or with his mouth (once) and asking that he continue "until white stuff came out". He described 2 incidents of anal penetration.

[44] M.R.H. testified that, while he was still a child, he told his parents about what happened to him. He said that this 'telling' resulted only in his receiving a severe spanking from them.

[45] Ralph Rowe testified that he knew M.R.H. fairly well. He recalls him as having a fondness for games and, although not regular in his attendance at scout meetings, as one who came with other children to play at the M[…] from time to time. He does not recall M.R.H. as being one of the children who slept at the M[…].

[46] In response to questions from defense counsel Ralph Rowe testified that he "never" had any sexual interaction with M.R.H.. As to M.R.H.'s allegations of anal intercourse, Ralph Rowe said emphatically: "It never happened".

[47] M.R.H. has a criminal record as an adult. It is not lengthy. It consists primarily of convictions for assaultive behaviour including one conviction for spousal assault. From my perspective his criminal record does absolutely nothing to enhance his creditability as a witness. It remains a factor for me to consider but, in the absence of any convictions for crimes of 'dishonesty', I am not prone to draw an adverse inference as to his creditability. Similarly, M.R.H. acknowledged on cross-examination that, he "would like to" launch civil proceedings against Ralph Rowe, the church and scouts, but said that he has not yet talked to counsel about doing so. For my part, I do not see M.R.H.'s trial testimony as being motivated by money.

[48] On cross-examination the ‘memory’ of M.R.H.’s account – most especially his account of the 2 incidents of anal intercourse – was extensively challenged, interspersed with defence counsel’s repeated suggestions that his evidence was “made-up”. From my observation, M.R.H.’s testimony held up well on cross-examination with one exception. His testimony did founder somewhat in respect to the time – indeed times – when the alleged incidents of anal intercourse were said to have occurred, and I find discrepancy on that issue.

[49] The extensive and well established evidence of similar fact before the court permits the inference that Ralph Rowe had a situation-specific propensity to engage in sexually grooming behaviour and sexual activity with boys, mostly aboriginal, between the ages of 5 and 15 who were under his care and control. I do draw that interference here. Whether this propensity should give rise to the further inference that he proceeded in that way with M.R.H. in reference to the allegations of anal intercourse is somewhat problematic here in view of the discrepancy in M.R.H.’s testimony as to the timing of those 2 incidents.

[50] Ultimately, I accept that Mr. M.R.H.’s account of at least the first such incident of anal penetration is creditworthy. Based upon M.R.H.’ responses on cross-examination, I find that anal penetration was ‘over the clothing’. I am unable to make a finding whether penetration was effected by Ralph Rowe’s finger or penis. I have no doubt that it was for a sexual purpose. I have no doubt that it constitutes an indecent assault.

[51] Lest there be any misunderstanding I expressly say also that the crown has satisfied me that the allegations of fondling, masturbation and fellatio (leading up to the incident of anal penetration) have been established and that such misconduct constitutes indecent assault as a matter of law.

[52] I made some observations respecting the credibility of Ralph Rowe in earlier segments of these reasons. In my judgment those observations must also obtain in reference to Ralph Rowe’s testimony respecting the allegations made on counts 6, 7 and 8 by M.R.H..

[53] I find Ralph Rowe guilty on all counts respecting M.R.H.: on count 6 (for fondling the penis and buttocks of the complainant with his hands) on count 7 (for causing the complainant to masturbate and fellate him) and count 8 (for anal penetration with a part of his body).

Count 18
L.G.

[54] L.G. grew up in W.L. and still lives there. He is now 40 years of age.

[55] He testified at trial in respect of count 19 in the indictment, an allegation that Ralph Rowe indecently assaulted him at the M[…] in W.L. between mid July 1979 and the end of December 1981. He believes he was 9 years old when, as he says, Ralph Rowe inserted his penis into his anus.

[56] One of the principal difficulties L.G. experienced at trial was in establishing his approximate age when that event is said to have happened. He struggled in his attempt to find some time-fixed event or association that would permit him to establish his age or even the year in which the incident complained of occurred. He had enormous difficulty in defining a 'trigger point' for his memory. The major challenge for him however – a challenge directly related to the credibility and reliability of his testimony is acknowledged by him and the crown alike: that he deliberately lied to the court at the preliminary inquiry on a material issue.

[57] There is no dispute that L.G. deliberately lied at the preliminary inquiry by repeatedly stating that he had not launched a civil claim for damages when, in fact, he had already done so. The relevant exchange at the preliminary inquiry is set out as follows:

> Q. And have you spoken with a lawyer, not the Crown Attorney, about getting money for what Ralph Rowe did to you?
> A. No.

Q. You're not involved with any lawsuit or civil suit to sue the Anglican Church or Scouts Canada to get money?

A. No.

Q. No lawyers have ever come up and traveled to W.L. to talk about suing the church for what Ralph Rowe did as far as you know?

A. No.

Q. So your visit to the police in August of 2007 wasn't prompted by someone saying you should make a complaint in order to get money?

A. Excuse me again.

Q. I'll ask a slightly different question. Have you ever spoken with Susan Vella?

A. No.

Q. Have you ever spoken with Elizabeth Grace?

A. No.

Q. Is it your intention to sue Ralph in the future once these criminal proceedings are completed in order to get money for what he did to you?

A. No.

Q. You haven't signed on to any civil suit?

A. No.

[58] He attempted to rectify his position both to the court conducting the preliminary inquiry and to this court by acknowledging the falsity of this evidence. His explanation may well be plausible but, for my part, I remain very troubled by the deliberateness of his initial attempt to mislead, and by his apparent readiness to engage in such a course of conduct.

[59] As to the first problem with the crown's case for L.G., the time of the alleged offence is not an essential element of the offence charged here. It goes rather to a recurring difficulty L.G. had with memory generally. As to the second, it constitutes a serious blow to the reliability of the complainant's testimony in a criminal trial. The combined effect of the two substantially

shakes my confidence in the crown's case on count 18. It is on these grounds that count 18 is dismissed and a verdict of acquittal is entered.

Count 9 and 10
R.J.B.

[60] R.J.B. is now 42 years old. He grew up in B.L. and M.D.. It was in B.L., as a child, that Mr. R.J.B. first had contact with Ralph Rowe in Mr. Rowe's role as minister and scout master. R.J.B. testified at trial in relation to two allegations of indecent assault against him by Ralph Rowe, said to have happened in B.T.L. between 1977 and 1979.

[61] R.J.B. said he was in scouts and 11 or 12 years old when he flew with Ralph Rowe to B.T.L. en route to a scouting conference that was to take place in Thunder Bay. He says that they overnighted in B.T.L. and that the first incident happened at night. He was asleep in a room when Ralph Rowe shook him awake, took him by the arm, stood him up and removed his clothing. Ralph Rowe had him lean over a bed and then "put his fingers in my bum". R.J.B. said that Ralph Rowe did not speak while he did this; that it hurt, and that it lasted "I guess, until he was done his business".

[62] After this incident R.J.B. went back to bed and tried to sleep, but could not because he was scared. He said that "it happened again" also at B.T.L., at the same place, also after being awakened at night, on the return journey from Thunder Bay.

[63] In his testimony Ralph Rowe acknowledged that he occasionally flew into B.L. to help with the scout group, and on annual visits with them. He said that he also flew into the community in connection with the church. He observed that he remembers R.J.B. as one of the many boys in the M.D.L. group but does not recall very much about him individually. As to whether R.J.B. had flown with him, Ralph Rowe could only say that "if he went anywhere with me at all, he would have been recommended by his scout leader, but I honestly don't remember flying him anywhere".

[64] Ralph Rowe recalls flying to Thunder Bay for scout-related purposes but says that he did so only 3 times over a span of almost 20 years. He attempted to ascribe dates to those occasions but doing so accurately would be a difficult chore for anyone, particularly where log books are no longer available to refresh or assist memory, where the period in question covers nearly 2 decades, and where the number of flights must be measured in the thousands.

[65] Ralph Rowe testified at some length about the nature of flying in the northern region of Canada, the kind of equipment he flew, and the various challenges pilots confront in the springtime of the year where there is a mix of ice-cover and open water. That testimony was interesting but regrettably of little assistance to me in the absence of very specific evidence of specific conditions, at a specific location, at the specific time. I understand that it asks too much of Ralph Rowe or any individual to retain that kind of precise information against a background where decades have passed, so many flights have been taken and the complete absence of log books are part of the mix. It may also be said that a similar level of difficultly obtains for Mr. Rowe in attempting to recall now individuals he saw as children, in incalculable number, over the same decades-long period, so long ago. It is one of the endemic problems inherent in cases where historical sexual assault is alleged.

[66] During his examination-in-chief, Ralph Rowe was specifically asked if he had any sexual interactions with R.J.B.. His answer: “No I never”.

[67] Of the several witnesses who testified at this trial, R.J.B. was by any measure the most compelling. The same description apples to his testimony. He is a serious man of few words. His answers were ‘to the point’. To be sure, his testimony was tested on cross-examination but it was not shaken. While it may be said he was mistaken as to the name or ownership attached to the residence he and Ralph Rowe overnighted in at B.T.L., his description of the general nature of the place and the surroundings there carried resonance. Not unexpectedly he showed some hesitation about peripheral details. Nevertheless, he was an excellent witness.

[68] Here again, I do not discredit all of Ralph Rowe's testimony in relation to counts 9 and 10. As to the essence of what is alleged by R.J.B. to have occurred in B.T.L., however, I do not believe Mr. Rowe. His testimony does not leave me in doubt of his guilt on counts 9 and 10. On the basis of all of the evidence I accept, I find Ralph Rowe guilty on count 9 and guilty on count 10, as charged.

Count 17
A.M.

[69] A.M. is a 31 year old man who grew up in B.T.L.. One of his childhood friends went to M[…] there on a regular basis and it was by tagging along with his friend that A.M. found himself going to the M[…] almost daily. He liked to play hockey in the basement there.

[70] In his testimony A.M. told the court about 3 discrete instances of Ralph Rowe touching him in a sexual way by using his hands to touch him, primarily in the buttocks, and penis. Some of the touching he described was 'over the clothing'; some was 'skin to skin'.

[71] A.M. is a most pleasant young man. His testimony was straightforward. It was given with sincerity that was unmistakable. The difficultly I have is that A.M. has no independent memory of the incidents he described, and it is manifest that his 'recollection' of these events came to him in consequence of help he received from a counselor "to fill in the missing pieces". The difficulty for the court with memory so recovered is the danger that its unreliability is so high that no trier of fact in a criminal trial can reasonably attach weight to it.

[72] The irony here is that in all probability A.M. as a child would have been more vulnerable than most to the propensity that Ralph Rowe so frequently demonstrated by his conduct for much of the decade of the 1980's that A.M. grew up in.

[73] I find Ralph Rowe not guilty on count 7.

Disposition Summary

[74] Disposition of the 21 counts.

Count number	Name of complainant	Finding of the court
1-4	A.N.	withdrawn by the crown
5	B.F.S.	finding of guilty
6, 7 and 8	M.R.H.	finding of guilty on each count
9 and 10	R.J.B.	finding of guilty on each count
11 - 14	R.C.	finding of not guilty on each count
15 - 16	R.F.B.	finding of not guilty on each count
17	A.M.	finding of not guilty
18	L.G.	finding of not guilty
19	D.G.	finding of guilty
20-21	R.D.C.	withdrawn by the crown

Justice E. W. Stach

DATE: July 2, 2009

R. v. Ralph Rowe

Appendix A

Table of Cases Cited

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R v. Corston, [1994] O.J. No. 2862 (Gen. Div.)

R v. E.F.H. (1996), 105 C.C.C. (3d) 233 (Ont.C.A.), aff'd [1997] S.C.C.A. No. 256

R v. D.V.L., 1998 CanLII 5982 (Ont. C.A.)

R v. V.I.W., 1995 CanLII 706 (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 (MB Prov.Ct)

R. v. L.X.F., [1996] A.J. No. 314 (Prov. Ct.)

R v. Stewart, [1994] O.J. No. 811 (C.A.)

R v. Burke, (2005) Ont. CA at para 30 (also citing R v. D.(D), [2000] S.C.J. No. 44)

R v. Bickford (1989), 51 C.C.C. (3d) 181 (Ont.C.A.)

Swietlinski v. the Queen (1980), 55 C.C.C. (2d) 481 (S.C.C.) at 8

R v. Baney (1971), 6 C.C.C. (2d) 75 (Ont.C.A.)

R v. McCallum, [1970] 2 C.C.C. 366 (P.E.I. Sup.Ct.)

Fairclough v. Whipp, [1951] 2 A11 E.R. 834 (K.B.)

R v. Burden (1981), 64 C.C.C. (2d) 68 at 69 (B.C.C.A.)

R v. E. (L.), (1995), 94 C.C.C. (3d) 228 (Ont. C.A.)

R v. Doherty, [2000] O.J. No. 3163 (Sup.Ct)

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.) at page 5 of QL version

R. v. Alderton (1985), 17 C.C.C. (3d) 204 (Ont. C.A.)

R. v. Taylor (1985), 19 C.C.C. (3d) 156 at 161-162 (Alta. C.A.)

R. v. Ramos [1984] N.W.T.J. No. 18

Appendix B

R. v. Ralph Rowe
Reasons on application to admit similar fact evidence

THE COURT: At this stage of the proceeding I am asked to rule on the Application brought by the Crown seeking the admission into evidence at this trial of similar facts. The scope of the evidence for which the Crown seeks admission is set out in paragraph 34 of the factum of the Crown, filed, in reference to this application. Accordingly I do not propose to outline in these oral reasons the precise scope already appropriately outlined in the factum.

Similarly counsel agree, with one exception noted during the argument presented by counsel on the Application, that the factum contained in the Crown's application record correctly sets out the law respecting the admissibility of similar fact evidence. I am grateful for that; it spares me the necessity of having to outline at length the applicable law. I am grateful also because that outline provided a useful guide for my consideration and analysis of the issue.

I begin with the proposition that similar fact evidence is presumptively inadmissible in a trial. The risk of its misuse is one of the principal reasons that in 18 years of presiding over

criminal trials I have only rarely permitted its admission. In that same vein Defence counsel points to my in-trial ruling in a 2006 trial involving Mr. Rowe. I am constrained to note that, in my view, the circumstances which obtained in that 2006 hearing differ from those which obtain now. To begin with the Crown in 2006 asked the Court to permit the introduction of similar fact evidence involving fondling-like behaviour in support of allegations at issue in that trial which, by comparison, consisted of far more egregious conduct than fondling-like activity. Accordingly the Court was not persuaded, given the potential for its misuse, that similar fact evidence should then be admitted for the purpose sought.

The situation on the ground has changed since 2006. Among other things the Court registered convictions in respect of much of the egregious conduct that had been alleged. It found that the Crown had established beyond a reasonable doubt that anal penetration had occurred and that there was a pattern of behaviour on the part of Mr. Rowe over a period of years including grooming activity made possible by his positions of authority in the community and particularly among children, as a priest and as a Boy Scout leader.

In order to permit the admission of evidence of similar facts this Court must be persuaded of its relevance to an issue at trial. In paragraph 33 of its factum the Crown submits that that issue in this case is whether the accused had, at the time of the relevant offences, a situation specific propensity to sexually assault boys aged between the ages of five and fifteen who were under his care and control.

In the course of submissions made by counsel I expressed some reluctance about defining the issue in that way because defining it in such a fashion couches it in the same language as the very question I am being asked to decide. While the Crown may be correct in its position I prefer to approach the matter from the perspective of the credibility of the complainants. That is certainly a live issue in this trial and, if admitted, similar fact evidence would constitute circumstantial evidence that tends to support the accounts of each of the complainants. Its admissibility for that purpose or for any other appropriate purpose is premised upon the degree of connectedness that is established between the similar fact evidence offered and the offences that are in fact alleged at trial.

In my estimation the degree of similarity or connectedness is very considerable. I will advert

briefly to the factors that a Court will consider in coming to a conclusion on that question. Among them is the proximity of time of the similar acts. In the case before me the evidence of similar acts spans a broad period that dates from the early 1970's until approximately 1988. At first blush the mere span of that time might be said to detract from the issue of similarity. Throughout that entire period however Ralph Rowe occupied a position in the various First Nations communities in which he attended, both as a priest and as a Scout or Cub leader. The incidents of abuse, I should say the incidents of *proven* abuse, sexual abuse, are staggeringly large in number. They range in severity from relatively low level sexual assault, consisting of fondling-like activity, to the most serious end of the spectrum that being actual anal penetration. I have indicated that the spectrum of activity over that period was wide-ranging. Nevertheless the number of incidents both at the low, mid-level and high level of the spectrum of seriousness, take place with such frequency, that whether the activity alleged at this trial be at the relatively low end of the seriousness spectrum or at its upper levels, the details of individual events are quite often strikingly similar in their circumstances.

Nor does the Court have any concern about the *strength* of such evidence of similar facts.

The evidence of similar facts is supported largely by actual convictions of the Court or Courts, and findings made by them, that from the beginning of that period until the end are consistent with an individual accused who engaged in grooming behaviour and in which he used his authoritative, used or misused his authoritative position as priest and Scout leader in a fashion that wreaked havoc on a vulnerable group of young aboriginal boys.

The analysis under the heading of ‘similarity’ does not require that all allegations be identical. Suffice to say that I view the issue of similarity both broadly and in detail. The degree of connectedness in my opinion is overwhelmingly compelling. Having said that I am no less aware now than before of the dangers of misuse of evidence of similar fact. I am no less mindful of the risk of misuse now than when I gave reasons on a similar voir dire in 2006. It is an issue in respect of which I must continue to be mindful and about which I am satisfied that I can appropriately instruct myself to do so.

I want to say a word at this stage about collusion. Mr. Sinding for the Defence vigorously asserts that the possibility of exchanges between the complainants in this case and others and or amongst themselves; that the notoriety that this and other

charges against Mr. Rowe of sexual assault; and the common interest of some of these complainants in civil proceedings claiming damages, taints the reliability of the allegations now made and, more to the point, affords a basis upon which the Court should find the existence of collusion.

It is not seriously contested that it is possible that there were exchanges among them. Nor is it seriously disputed that this and other like cases involving Mr. Rowe have attracted their share of notoriety. In this proceeding as in the earlier trial some of the complainants had also instructed counsel to launch civil claims for damages either against Mr. Rowe personally, the Anglican Church or the Government of Canada or all of them.

What must be demonstrated however is more than proof of mere opportunity. There is before me no hard evidence that persuades me that there is an air of reality to the allegation of collusion. There is nothing there that would persuade me to trigger my gatekeeper function to exclude the evidence on that basis.

In conclusion the Crown has persuaded me that this is a proper case to permit the introduction of the similar fact evidence outlined in paragraph 34 of the factum. Some of the individuals who were listed as complainants at the commencement of trial

have either had their allegations withdrawn or otherwise terminated. Accordingly, while it is my intention to permit the evidence of each of the complainants to be admitted as similar fact evidence respecting the allegations involving other complainants, the order ultimately has to be modified to reflect the fact that some of the charges have been withdrawn or terminated. That aside I direct that the application succeed, as asked.

Having come to that conclusion I wish only to add one additional thought. In Regina vs. Handy, in paragraph 42, the Supreme Court of Canada decision makes reference to situations where the word of children was sometimes unfairly discounted. In the case now before me the complainants are all aboriginal men who testified at this trial regarding alleged incidents of sexual abuse by Ralph Rowe against them when they were children. The language of the trial is in English. None of the complainants, in my estimation, are completely at ease in the English language. Their difficulty with the language of this trial, despite the availability of interpreters, enhances the risk that, without more, their testimony may be discounted. That is one of the factors, I should indicate, that I took into account in my assessment of the impact that the admission of similar fact evidence would have on the fairness of this trial.

That concludes my reasons in reference to the Crown,s application for similar fact evidence.

THIS IS TO CERTIFY THAT THE FOREGOING 11 PAGES IS A TRUE AND ACCURATE TRANSCRIPTION FROM THE RECORD MADE BY SOUND RECORDING APPARATUS, TO THE BEST OF MY SKILL AND ABILITY.

M.L. CURTIS, COURT REPORTER

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Appendix C

Table of Cases Cited

R v. Arp (1998), 129 C.C.C. (3d) 168 (S.C.C.)

R v. B.(C.) (2003), 171 C.C.C. (3d) 159 (Ont.C.A.)

R v. B.(R.) (2003), 68 O.R. (3d) 75 (Ont.C.A.)

R v. Batte (2000), 49 O.R. (3d) 321 (Ont.C.A.)

R v. C.R.B. (1990), 55 C.C.C. (3d) 1 (S.C.C.)

R v. Handy (2002), 164 C.C.C. (3d) 481 (S.C.C.)

R v. Shearing, [2002] 3 S.C.R. (3d) 33 (S.C.C.)

R v. Trochym, [2007] S.C.J. No.6 (S.C.C.)

COURT FILE NO.: 08-070
DATE: July 2, 2009

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. RALPH ROWE

BEFORE: Justice E. W. Stach

COUNSEL: Peter Keen, for the Crown

Robert Sinding, for the Accused

REASONS AT TRIAL

The Honourable Mr. Justice E. W. Stach

DATE: July 2, 2009