TUESDAY, MAY 8, 2007

R E A S O N S O N S E N T E N C E

STACH, J. (Orally):

My approach to the sentencing of Ralph Rowe on this 6th day of July 2007 is substantially guided by two decisions of the Court of Appeal for Ontario, being the cases of *R. v. Stuckless*[1] and *R. v. D.D.*[2] respectively. The objectives and the principles of sentencing are extensively set out in those decisions and I do not propose to repeat them here.

The submissions of counsel and, indeed, the statement made by Mr. Rowe himself, raised two issues that I think are part and parcel of the mix. They are not the sole focus but they are part of the equation. Those issues are finality and totality. Mr. Rowe expressed some concern about whether he could be repeatedly brought before the Court time and time again in relation to this period of time during which many of his offences occurred.

There is much to be said for the principle of finality. The Crown's ability to prosecute an individual over and over again may well have some limit but it is not, in my view, an arbitrary limit and I am persuaded that that limit has not been reached in so far as the current prosecution is concerned. It is unnecessary for me to speculate whether further prosecution can or will be tolerated having regard for concerns of fairness and the rationale underlying the finality principle.

[1] (1998), 127 C.C.C. (3d)225(Ont C.A.);41 O.R.(3d) 103(Ont.C.A.);

A great deal of attention has also been paid by counsel in submissions to the issue of totality. Mr. Sinding, for the defence, submits that totality is the overriding principle here and the Court should now consider a sentence in a range that the sentencing Court would have given in 1994 had that Court then known that the sexual misconduct included serial anal penetration (in the case of H.M.K.) and repeated attempted anal penetration (in the case of A.J.T.N.).

At the same time Mr. Sinding submits that the 20 pleas of guilty entered by Mr. Rowe during the course of this trial are totally irrelevant at this sentencing hearing. It seems to me that that position by the defence is logically inconsistent with its suggestion that the Court give a holistic view of the matter and sentence Mr. Rowe on the basis of the sentence that would have been given had everything been known. It seems to me by that that the defence tries to have it both ways.

There is ample room for application of the totality principle in this case. In its consideration, and more particularly in its application, it occurs to me that it would be wrong for the Court to bury its head in the sand and ignore in the current sentencing procedure the 20 additional pleas of guilt; they are part of the scope of the criminal enterprise that is before the Court and it is part of a holistic view.

In determining what is a fit sentence in this case it is necessary for the Court to consider, in addition to the gravity of the conduct before it, any mitigating circumstances that may properly find expression in the ultimate sentence accorded.

In that vein it is appropriate that I consider that as he stands before the Court Mr. Rowe is now 67 years of age and, though I cannot vouch for the

[2] (2002), 163 C.C.C.(3d)471(Ont C.A.);(2002);58 O.R.(3d)788.

current state of his health it is known that he has in the early part of 2007 undergone heart by-pass surgery. Nor should it be ignored that Mr. Rowe has not offended in 19 years. By the same token he has, for the last four years, been subject to significant restraints on his liberty by virtue of the conditions of his undertaking.

I have taken the opportunity to examine carefully each of the letters or items contained in Exhibit 5 which consists of a series of correspondence offered by family, acquaintances, friends, employers, landlords and the like who want to convey a softer image of Mr. Rowe to the Court. I daresay it is to his credit that in the period after his release from penitentiary that he has engaged in many acts of charity, volunteer work and has had a positive impact on many people in the British Columbia community in which he now resides.

These are factors the Court has weighed.

In his statements to the Court today, and on prior occasions during this trial, Mr. Rowe has expressed an unqualified apology to his victims and he expressed remorse.

The letters of support filed on behalf of Mr. Rowe reinforce the proposition that his remorse is sincere. Whether that remorse is entirely sincere, however, depends on one's perception. There are some who remain less willing to accept that the expression of remorse has no self-serving purpose.

Justice Fraser in 1994 addressed a different kind of sentencing hearing from the one that I now address. He was not persuaded by Mr. Rowe's expressions of remorse at that time. In view of the enhanced opportunity this Court now has to have seen what has taken place in the interval in Mr.

Rowe's life, I am tempted to view the expression of remorse as more genuine.

Let me take a moment to examine the situation from the holistic view and to do so in a way that incorporates some of the aggravating features of this case that were not known to the sentencing court in 1994.

By way of overview I think it fair to say that from 1975 and continuously until the year end in 1987 Ralph Rowe adopted what, in retrospect, is fairly considered as a purposeful, premeditated, formulary and ultimately predatory approach towards the pursuit of his own personal sexual gratification. More dangerously he was well positioned and well armed to do so.

Protected and elevated by his priestly vestment he enjoyed both a ready entrée into dozens of remote First Nations communities in Northwestern Ontario and an aura of immediate trust. He exploited that. At the same time he enjoyed the cachet of a pilot and the lure of an airplane on floats in remote Aboriginal communities. Moreover, he held out to young persons the prospect of involvement in activities of Cubs and Scouts on remote Reserves - where there was little in the way of structured recreation - as a means of attracting vulnerable, trusting, young Aboriginal male children into his midst. He exploited all of these badges of authority and trust.

Regrettably the airplane provided him access to many First Nation's communities and he used it over a period of years that spanned decades, just as he misused the privilege and power of his offices throughout much of that time. Worst of all he exploited and sexually abused children of young age, vulnerable and trusting, who were utterly defenceless; who did not understand and could not understand what he was doing to them.

That is another part of the picture and recently we have added to that a conviction for repeated and persistent acts of penile and digital anal penetration involving H.M.K., and repeated acts of attempted penile anal penetration involving A.J.T.N..

The aggravating factors that the Court must look at in this entire context indicate a considerable measure of premeditation and consistent grooming on the part of Ralph Rowe. The victimization not only involves so very many young boys, it went on for a period of years. While it cannot be regarded as an aggravating factor, his denial of responsibility in so far as H.M.K. and A.J.T.N. is concerned exposed them to the difficult, exceedingly difficult, necessity of having to come to trial to tell in a public forum things that trouble them deeply and will always be a part of their lives. Nor should it be forgotten that the children abused by Ralph Rowe - including H.M.K. and A.J.T.N., but I am speaking now of the others also including the young men whom Ralph Rowe has acknowledged abusing by his guilty pleas during this trial - all of them were Aboriginal children. I do not suggest that Aboriginal children were targeted for any racist motive. However, they presented a more readily available and susceptible target who, perhaps because of their remoteness geographically, were less likely to come to the light of authorities.

I have read the Victim Impact Statements not only of Mr. H.M.K. and Mr. A.J.T.N. but the Victim Impact Statements of the young men in respect of whom the 20 pleas of guilty were entered. It is not light reading. Having considered its scope, it makes one want to howl at the moon.

Mr. Sinding has asked that the Court consider a conditional sentence of 2 years. In my view such a disposition is not proportional when the gravity of the offence and the degree of responsibility is considered. Nor is a

conditional sentence, in my view, consistent with the case law that suggests clearly in cases like the present that the principle of general deterrence and the denunciation by the community towards the conduct find expression in the sentence that is accorded.

It is now almost 20 years since the last incident of abuse. Nevertheless, the lapse of time does not render inapplicable the principle of general deterrence or the community's need for denunciation of the conduct. Nor does the fact that the last sentencing occurred in 1994 alter that equation. The convictions for repeated acts of anal intercourse and attempted anal intercourse require, in my opinion, that Mr. Rowe be incarcerated.

Much of the focus of the trial has focussed on what counsel and the Court have regularly referred to as "more egregious conduct". It would be regrettable, in my view and wrong in principle, if because of our focus at trial on the determination whether there was more egregious conduct, if this left the impression that the offending behaviour of Mr. Rowe that was at play in respect of the offences to which he plead guilty during the course of this hearing, were somehow on the lower spectrum of sexual abuse.

Sexual abuse is act of violence and when committed against children is violence, both physical and profoundly psychological in its impact. And we have witnessed in the Victim Impact Statements just how profoundly damaging sexually abusive conduct can be on the psyche of a child, enduring to the point that it continues to haunt, even during adulthood.

I elect not to exercise the discretion that Justice Fraser exercised in 1994 in invoking the section of the Criminal Code that required that Mr. Rowe serve a minimum number of years before becoming eligible for parole. There are those who are more adept at risk assessment and have greater

information before them than the Court presently has and I will leave it to them. To the extent I can comment on Mr. Rowe's risk of re-offending, I share the view of the Crown that the risk will be ever-present. He has shown signs that it may be manageable but I am persuaded that even upon his release there needs to be conditions intended to secure the safety of the public. I will say more about that in a few moments.

It is the sentence of this Court, Mr. Rowe, that in respect of count 3 of the indictment you be imprisoned for 3 years and in respect of count 2 of the indictment that you be imprisoned for 3 years concurrent with your sentence on count 3.

In respect of count 43 the Court orders that you be imprisoned for one year concurrent with your sentence on count 3 and similarly on court 45 that you be sentenced to one year also to run concurrently with your sentence on count 3.

For the purpose of management in the period after your release from prison, the Court makes the following orders:
That there be an order under Section 110 that prohibits you from the possession of firearms, ammunition, prohibited weapons, devices, ammunition and explosive devices for your lifetime.

I order pursuant to the Criminal Code that you provide a sample of a bodily substance sufficient for DNA testing purposes and for purposes of the DNA databank.

I order pursuant to Section 490.012 of the Criminal Code that you be prohibited from attending a public park, public swimming area, daycare centre, school ground, playground or community centre where persons under the age of 14 years are present or can reasonably be expected to be

present.

You are prohibited under Section 161(1)(b) from seeking, obtaining or continuing any employment or becoming a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of 14 years. There will similarly be an order under that section prohibiting you from using a computer system for the purpose of communicating with a person under the age of 14 years.

You have inspired Mr. Rowe, from your family and from a circle of friends in B.C., a system of support. It is plain to me that these are people who care about you deeply. I urge you to maintain your contact with them as a means of support for the period of time that you will be incarcerated. It is not hopeless; that too will come to an end. You have demonstrated that with the assistance of this circle of support and with proper conditions and management that you can re-enter the community and continue your service to others and to the church.

I have made the endorsements accordingly on the indictment. This sentencing hearing will stand adjourned.

MR. KEEN: Your Honour, there are....

THE COURT: Just a moment. Go ahead.

MR. KEEN: There are three issues, Your Honour, that need to be dealt with. I don't believe Your Honour ordered the registration under the Sexual Offender Information Registry Act.

THE COURT: I think I did for 20 years. That is what my endorsement says.

MR. KEEN: That's the....thank you.

THE COURT: I may have overlooked that, sorry.

MR. KEEN: Thank you.

THE COURT: I should also note that the prohibition order that I made in

respect of Section 161 applies for lifetime.

MR. KEEN: Thank you. And the third issue Your Honour - I didn't hear it - but Your Honour imposed sentences with respect to the individuals that went to trial. Your Honour did not impose a sentence with respect to the 20 individuals in which there were guilty pleas.

THE COURT: Thank you for that. I had made a note and intended to say that the plea agreement prevents me from imposing any prison sentence in respect of those offences and although I am mindful of the submission that you made Mr. Keen inviting the Court, nevertheless, to order a term of imprisonment and make it consistent, or make it concurrent rather, with the sentence on count 3, I elect not to do that. Again, it is part of the reason for my saying that the victims in respect of those cases ought not to regard themselves as creatures of a lesser God or as having been only lightly abused. It is serious conduct. But what I meant to say and did not is that the orders that I made under Section 110, the DNA order, the registration for sexual offenders and the prohibition orders made pursuant to Section 161 are all made in conjunction with, and intended to reflect the, to take into account the pleas of guilty by Mr. Rowe to the 20 offences.

I do not know that it is doctrinally or procedurally necessary for me to make a specific order as to sentence. In view of the plea agreement I elect not to do more than have it form part of the rationale for imposing the control orders that I did. Thank you.

MR. KEEN: Thank you, Your Honour.

THE COURT: We will stand adjourned.

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THEY BEAR THE ORIGINAL SIGNATURE OF LORI D. SUMMERS, AND ACCORDINGLY ARE IN DIRECT VIOLATION OF ONTARIO REGULATION 587/91 AS AMENDED, ADMINISTRATION OF JUSTICE ACT, JANUARY 1, 1990

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SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

RALPH ROWE

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R E A S O N S O N S E N T E N C E

BEFORE THE HONOURABLE JUSTICE E.W. STACH
on July 6th, 2007 at KENORA, Ontario

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CHARGES: s. 156 C.C. x17 - Indecent Assault
s. 246.1(1) x10 - Sexual Assault

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INFORMATION CONTAINED HEREIN IS PROHIBITED FROM PUBLICATION PURSUANT TO SECTIONS 486(4.9) and 539 THE ORDER OF D. FRASER, Ontario Court of Justice DATED January 31, 2005

APPEARANCES:

P. Keen & R. Cummine — Counsel for the Crown

R. Sinding — Counsel for Mr. Rowe

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Lori Summers, certify that this document is a true and accurate transcript of the recording of R. v. R. Rowe in the SUPERIOR COURT of JUSTICE held at KENORA, Ontario taken from Recording No. 1-SCJ-CR-44/2007 which has been certified on Form 1.

July 18, 2007 .....

Lori Summers