

Citation: *R. v. Rowat*, 2023 YKTC 21

Date: 20230512  
Docket: 21-00413A  
22-00058  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Phelps

REX

v.

CURTIS STEVEN ROWAT

**Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.**

Appearances:

Noel Sinclair

Jennifer A. Cunningham

Counsel for the Crown

Counsel for the Defence

**REASONS FOR SENTENCE**

[1] PHELPS T.C.J. (Oral): Curtis Steven Rowat is before the Court, having entered one guilty plea on Information 21-00413A for an offence contrary to s.163.1 of the *Criminal Code*, for having in his possession, child pornography, to wit: media files of children involved in sexual acts on, September 10, 2021; and two counts on Information 22-00058, both for offences contrary to s. 151 of the *Criminal Code*, one being for an

offence on August 4, 2017, touching for a sexual purpose on H.L., and the second for an offence between January 1, 2017 and December 31, 2017, touching for a sexual purpose on A.L., both of whom were under the age of 16 at the time.

[2] An agreed statement of facts was filed with the Court and made Exhibit 1 in the proceeding. They outline that a warrant was executed on Mr. Rowat's residence. His personal computer was seized, on which there were images of child pornography:

- 12 images depicting erotic posing with no sexual activity of children;
- 13 images of sexual activity between children or solo masturbation by a child;
- 12 images depicting non-penetrated sexual activity between adults and children; and
- 7 images depicting penetrative sexual activity between children and adults.

[3] With respect to the s. 151 offences, during the summer and fall of 2017 — and I note that Mr. Rowat was 32 years old at this point in time — he invited the two victims, as well as other young persons, to party at his residence in Porter Creek, in Whitehorse, Yukon. He provided them with marijuana and alcohol, and he joined them in drinking alcohol and smoking cannabis to excess.

[4] At one of these parties in early August 2017, H.L. was heavily intoxicated. She went upstairs in the residence and passed out on the bed, periodically regaining

consciousness. During one of these periods of consciousness, she realized that her pants had been removed. She recognized Mr. Rowat in bed with her. Mr. Rowat performed oral sex on H.L. and penetrated her vaginally with his penis.

[5] At another such party in mid-September 2017, A.L. became heavily intoxicated and was left alone with Mr. Rowat. He brought her upstairs to his bedroom. He got on top of her and put his mouth on her mouth, and proceeded to remove all of her clothing at a time when she was so intoxicated that she could not resist. Mr. Rowat undressed himself and vaginally penetrated her with his penis without consent.

[6] And at another party in early October 2017, Mr. Rowat made a move on A.L. while they were sitting on his couch. She blacked out due to her heavy state of intoxication and woke up the next morning at a friend's house with her pants on backwards. She received a message from Mr. Rowat telling her that she needed to take a Plan B emergency contraceptive, and then he proceeded to provide her with such contraceptive.

[7] There is an affidavit and a number of victim impact statements, entered as community impact statements, and marked as an exhibit in this proceeding. The impact statements are presented from the Canadian Centre for Child Protection and are in the words of victims of child pornography and child exploitation. I will not refer to each of them individually, but there is one I wish to quote two paragraphs from, that I think reflects the tone and nature of the harm and the impact on victims of these types of offences generally. It states:

I am writing to tell you what it is like for me to know that pictures of what my father did to me are on the Internet. I am told that there is a known group of my pictures that is labeled the "Marineland" series. My natural father sexually molested me when I was a child. First he woke me up at 3-5:00 in the morning on school nights to take pictures. First the pictures were of me with my clothes on, then he made me take my clothes off for the pictures. Then he made me look at pictures of other people — men and little girls — who had their clothes off. He said it would give me ideas. As things progressed he started molesting me and taking pictures of me in more and more private and uncomfortable poses. He molested me with his own body parts and sometimes with a vibrator. He took many pictures and I know now that he sent those pictures to his "friends" and many other people on the Internet.

[8] It goes on in the statement to state:

I am afraid that someone from the police will call and tell me that they found more pictures on other people's computers. Every time someone else sees pictures or videos of me it feels like they are the ones who hurt me to begin with. It feels like they are the ones who did this to me, like they are my father and they just want to use me for their own pleasure. It is like I am just here for other people's pleasure and am not a person myself with my own wants and needs. If you are looking at pictures or videos of me, or any other child for that matter, then you are hurting every one that you look at. Anyone who looks at those horrible pictures of me or other children are abusing us. Anyone who looks is keeping my pain going for the rest of my life. I cry at night because of this. Even though I don't know the names of all of them, I know that they are out there and I am afraid that they are all around me. My fear keeps me from doing things that other girls my age could normally do, like go to school or have a job or be social with more than just the very small number of people that I really trust.

[9] As the Crown outlined in its submissions, these statements indicate the significant trauma endured as children, by these victims, abused at times by friends and family; the ongoing shame and re-victimization as the photographs are shared and circulate throughout the Internet; the lifetime trauma; and, in some instances, the limited

access to therapeutic assistance, given that these are children from all over the world in different life circumstances.

[10] In *R. v. Friesen*, 2020 SCC 9, the Supreme Court of Canada states, at para 47:

[47] New technologies have enabled new forms of sexual violence against children and provided sexual offenders with new ways to access children. Social media provides sexual offenders “unprecedented access” to potential child victims. The Internet both directly connects sexual offenders with child victims and allows for indirect connections through the child’s caregiver. Online child luring can be both a prelude to sexual assault and a way to induce or threaten children to perform sexual acts on camera. The Internet has also “accelerated the proliferation of child pornography” [citations omitted].

[48] Technology can make sexual offences against children qualitatively different too. For instance, online distribution of films or images depicting sexual violence against a child repeats the original sexual violence since the child has to live with the knowledge that others may be accessing the films or images, which may resurface in the child’s life at any time [citations omitted].

[11] I note that we do not have victim impact statements filed with respect to the

s. 151 offences.

[12] A further quote from the *Friesen* decision, at para. 57:

[57] A number of this Court’s decisions provide insight into these forms of harm. In *R. v. L. (D.O.)*, L’Heureux-Dubé J. emphasized the emotional trauma that the nine-year old complainant experienced from sexual violence. Similarly, in *McDonnell*, McLachlin J. (as she then was) stressed the emotional harm of “the violation of the child victim’s integrity and sense of self-worth and control over her body” that the child victim experienced as a result of being sexually assaulted while sleeping. The likely result of the sexual assault would be “shame, embarrassment, unresolved anger, a reduced ability to trust others and fear that . . . people could and would abuse her and her body” [citations omitted].

[13] I find that, regardless of the reference to age, the same principles apply to any victim of a s. 151 offence — and I have that in mind when imposing the sentence today.

[14] I am faced today with the joint submission from counsel. I accept from both counsel that Mr. Rowat expressed remorse early in these proceedings and a willingness to resolve the matters early in the proceedings, and I give him full credit for his guilty plea, the guilty plea that prevented the two victims from potentially testifying twice in legal proceedings.

[15] I also note, as set out in the defence's book of documents, that Mr. Rowat has a supportive family surrounding him. There are a number of letters before me — from his mother, his father, and his sister — as well as documents from some treatment that he has received.

[16] I wish to quote from one such letter from Mr. Rowat's aunt, Janet Pauch. She writes:

...Earlier this month Curtis came to my house for a visit. With great courage, he told his story of the past seven years including his struggle with drugs and alcohol. He fully explained what the charges are against him. I felt he was very open and honest about the events during this timeframe and he made no excuses for his actions. It was of paramount importance for him to mitigate the damage to his family and stated several times that he was worried about the ramifications for his father, mother, sister, and myself. He expressed great remorse for the course his life as taken and the pain he caused to the victims of these offences.

He understands his struggles will be a lifelong challenge and knows that he must be committed to continued treatment and mental health support. No matter what the future brings for Curtis, his family, including myself, will be there to support him.

[17] Some other letters from his mother, father, and sister acknowledge both the work that he has done to better himself in their understanding of the charges that are before the Court and his remorse for the offending behaviour.

[18] There is also a document in this exhibit from Sage Health Centre, *THE WISDOM OF RECOVERY*, a treatment facility in Kamloops, British Columbia, indicating that he successfully completed a 42-day program.

[19] There is also a letter from Mental Wellness and Substance Use Services in Whitehorse, from Joshua Robinson, indicating that Mr. Rowat attended and accessed services in 2021, 2022, and 2023 — noting that the services received from Mr. Robinson were in addition to his private psychologist who, I am told today, is Dr. Jeremy Baumbach, who specializes in the treatment of sexual offenders — and Mr. Rowat has been accessing treatment on a regular basis with Dr. Baumbach since October 2021.

[20] Counsel for Mr. Rowat noted they made some inquiries into the federal penitentiary system and note that there is comprehensive sexual offender counselling available within the system that Mr. Rowat has indicated that he is interested in attending, and that with the sentence being proposed today, there will be sufficient time for him to attend and complete such counselling in the penitentiary system.

[21] She also notes Mr. Rowat's long-term struggles with mental health and addictions, specifically with respect to depression, anxiety, and social anxiety, and he should be credited for the extensive work that he has done to date with respect to

attending the treatment facility, doing the follow-up in Whitehorse with a private counsellor, as well as through Mental Health and Substance Use Services.

[22] Counsel indicates that Mr. Rowat demonstrated remorse from the very early point of her interaction with him with respect to these charges.

[23] In fact, Mr. Rowat did speak on his own behalf expressing shame, guilt, and remorse for his actions. He apologized to both of the victims, their families, and their partners. He indicated that the behaviour is not how he was raised and not who he once was and not who he knows he can be moving forward. He specifically recognized the wrong with respect to child pornography and the victimization by accessing child pornography.

[24] As noted by the Crown, and as set out quite extensively by the Supreme Court of Canada in *R. v. Friesen*, the primary consideration in sentencing for offences against children, as set out in s. 718.01 of the *Criminal Code*, is that of denunciation and deterrence. It is also a statutory aggravating factor in s. 718.2(a)(ii.1) indicating:

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years

...

shall be deemed to be aggravating circumstances;

[25] In the joint submission, Crown have submitted a sentencing position that is consistent with the principles set out in *Friesen*. I do not tend to go through all of the case law that they filed. I will note that I do have *R. v. McCrimmon*, 2022 YKCA 1 in

front of me from the Court of Appeal of Yukon with respect to the offence of child pornography.

[26] The joint recommendation is for a sentence of four and one-half years in custody, which I think balancing the mitigating factors with the aggravating factors of the circumstances being statutory aggravating, as well, as pointed out by the Crown, the profound and long-lasting impact of the crime on the victims, the recent decision of *Friesen*, from the Supreme Court of Canada, calling for increased sentences on these types of offences, and the element that he referred to as a breach of trust are consistent with a breach of trust in inviting young people into his home as guests, where they should feel safe, providing them, and encouraging them to consume alcohol and cannabis to the extent that they can no longer defend themselves and then abusing them — and I note that, as pointed out by the Crown, providing alcohol to 15-year-old youth is in and of itself illegal — balancing those aggravating circumstances with the mitigating ones that I have outlined, I am prepared to adhere to the joint submission.

[27] Mr. Rowat, I am sentencing you with respect to Information 22-00058, Count 2, for the offence contrary to s. 151 of the *Criminal Code* to a period of custody of two years.

[28] On the same Information, Count 4, also for an offence contrary to s. 151 of the *Criminal Code*, I am sentencing you to two and one-half years consecutive. That is for a total of four and one-half years of custody on that Information.

[29] For the offence on Information 21-00413A, Count 5, the offence for the possession of child pornography contrary to s. 163.1(4), applying the principles of totality as outlined by counsel, I am sentencing you to one year of custody current.

[30] The total period of custody that you are being sentenced to today, moving forward, is four and one-half years.

[31] You will be subject to a firearm prohibition pursuant to s. 109 of the *Criminal Code* prohibiting you from possessing any firearm, ammunition, and explosive substances for a period of 10 years, and prohibiting you from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for a period of life.

[32] You will be required to provide the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis pursuant to s. 487.051 of the *Criminal Code*.

[33] You will be required to comply with the *Sex Offender Information Registration Act* for a period of 20 years.

[34] There will be an order pursuant to s. 161 of the *Criminal Code* with two conditions. The order will be for a period of ten years, which will commence after your period of imprisonment. The terms will be that:

- 1. You will be prohibited from being within two kilometres of any house where either H.L. or A.L. ordinarily resides; and

- 2. You will be prohibited from seeking, obtaining, or continuing any employment, whether or not the employment is remunerated or becoming or being a volunteer, in a capacity that involves being in a position of trust or authority towards persons under the age of 16 years.

[35] Pursuant to s. 164.2, there will be a forfeiture of the electronic device or devices seized by the RCMP in relation to the child pornography offence.

[36] Given your current employment status, the victim fine surcharge on these offences will be waived.

[37] I direct that copies of exhibits 1 through 3 from this proceeding be directed to Correctional Services Canada, as requested by the Crown.

#### [DISCUSSIONS]

[38] MR. SINCLAIR: Crown directs a stay of proceedings on the remaining outstanding charges before the Court today.

[39] THE COURT: Mr. Rowat, you deserve credit for the efforts that you have made to date with respect to rehabilitation. It is not a small feat to go out and attend treatment at a residential facility. I note in the reports that you chose to stay longer than you originally planned to and you followed that through with counselling here in Whitehorse, both privately and, as indicated, through Mental Wellness and Substances Use. Your efforts are noted in the sentence that you were given today. These are

very, very serious offences that you committed but your effort certainly did a lot towards the sentence that you received today.

[40] I do wish you the best of luck in continuing that journey. You have a long road ahead, but you have a supportive family with you. I believe that if you take advantage of your opportunities within the federal system for that counselling and continue your efforts upon release, you will have a very productive life moving forward. I do wish you the best of luck.

[41] Thank you, counsel, for all of the materials today and your submissions.

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PHELPS T.C.J.