

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

- and -

EDWARD HORNE

Heard at Iqaluit (formerly Frobisher Bay), in the
Northwest Territories, 16 February 1987.

Judgment filed: 17 February 1987.

Reasons for Judgment of
The Honourable Mr. Justice T. David Marshall

Counsel for the Crown:

Counsel for the Defendant:

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REASONS FOR JUDGMENT

The accused, until this matter arose, was a teacher of high repute in the Northwest Territories. That reputation, however, is now entirely shattered.

This demise occurred when Mr. Horne, the accused herein, was charged and pleaded guilty to a 10-count indictment of sexually assaulting, in various and repugnant ways, a large number of his students, and that over a very long period of time. The counts dealt with some 8 boys, ranging in ages from 10-14 and some 24 definite incidents of sexual abuse. The boys are from various communities where Mr. Horne had been sent--now ironically--to teach the children.

The facts leading up to his exposure arose in an unusual and again sadly ironic way.

One wonders at the outset how such conduct, as the accused has admitted to, could go on undetected for so long in the communities. It seems that fear and shame kept the young boys from revealing what had happened. As well, the nature of the communities and their people are, I think, a factor. I will say more on this later.

The first thing that led to Mr. Horne's undoing occurred in 1985. It seems that he gave away to a police officer an old piano, the top of which was nailed shut. The officer pried open the lid and found inside an old roll of undeveloped film. The officer had the film processed, and the pictures he found were suspicious ones: they were of young boys, only scantilly clad. They were the paraphernalia of a paedophile.

Next, in April 1985, unrelated to this case, 3 young persons and one adult were being investigated for the sexual assault of a very young girl. In the course of that

investigation, and the counselling of the young accused persons that followed, it was alleged by them that 2 of them had been victims of sexual abuse in the past by Mr. Horne. This, of course, led to further inquiry, and further inquiry led to many similar accusations and these to charges and finally to a plea of guilty by Mr. Horne.

At the time of his arrest, Mr. Horne was Principal of the school in Apex, a village near Iqaluit (formerly known as Frobisher Bay) on Baffin Island, Northwest Territories.

Mr. Horne had been a teacher and a principal for a long time in the Northwest Territories, and a very good one according to some. His reports by his seniors were exemplary.

He is, on all accounts, a bright man and an accomplished linguist. He speaks Inuktitut and apparently some other languages as well. He is 43 years old and apparently spent time travelling the world, before settling as a teacher in the high North. At first, he taught in Saniqiluak beginning in 1971. He spent one year at Great Whale Cove, where he met and married his wife, a native girl. He himself claims to be of mixed blood. He has 3 children (all boys): one their own, and 2 adopted, aged 7, 2 and 4. He has a B.A. and a Teacher's Certificate. He has always been a teacher of children.

In 1980 and 1981, he taught at Grise Fiord, and in 1981 and 1982 at the then Frobisher Bay School. In 1982 and 1983, he moved to Cape Dorset. He then went to Sachs Harbour, by now a Principal, that was during 1983-85. In 1985, he moved to Apex, and it was while Principal there that he was arrested on these charges. His reports as a teacher were, as I said, exemplary and he was constantly promoted.

The charges involved mutual fondling, masturbation and fellatio. The 10 counts were as follows:

Count 1: Between the first day of December, A.D. 1983 and the thirty-first day of December, A.D. 1983, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on J., contrary to Section 246.1 of the Criminal Code;

Count 2: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1984 and the thirtieth day of June, A.D., 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on E., contrary to Section 246.1 of the Criminal Code;

Count 3: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1984 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on K., contrary to Section 246.1 of the Criminal Code;

Count 4: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1984 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on U., contrary to Section 246.1 of the Criminal Code;

Count 5: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1983 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on T., contrary to Section 246.1 of the Criminal Code;

Count 6: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1983 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit an act of gross indecency with T., to wit: an act of fellatio, contrary to Section 157 of the Criminal Code;

Count 7: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1983 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit a sexual assault on J., contrary to Section 246.1 of the Criminal Code;

Count 8: AND FURTHER THAT EDWARD HORNE, between the first day of September, A.D. 1983 and the thirtieth day of June, A.D. 1985, at or near the Hamlet of Lake Harbour in the Northwest Territories, did commit an act of gross indecency with J., to wit: an act of fellatio, contrary to Section 157 of the Criminal Code;

Count 9: AND FURTHER THAT EDWARD HORNE, a male person, between the first day of September, A.D. 1982 and the thirty-first day of December, A.D. 1982, at or near the Hamlet of Cape Dorset in the Northwest Territories, did indecently assault P., a male person, contrary to Section 156 of the Criminal Code; and

Count 10: AND FURTHER THAT EDWARD HORNE, a male person, between the first day of September, A.D. 1982 and the thirtieth day of December, A.D. 1982, at or near the Hamlet of Cape Dorset in the Northwest Territories, did indecently assault S., a male person, contrary to Section 156 of the Criminal Code.

Numerous witnesses testified to the fact that the people of these remote communities felt that an enormous wrong had been done to them by the government in sending to them such a person as Mr. Horne. There is no doubt that that is so.

Evidence was given by a number of professionals in the field of mental health. I accept the diagnosis of Dr. Pascoe, the psychiatrist for the Crown, and I am fully satisfied, on all the evidence, that the accused, Mr. Horne, is a paedophile.

I turn now to paedophilia on which there is debate, it seems, as to whether this is a disease or a behavioural abnormality. At this stage of knowledge, it is largely a matter of semantics, and I do not think much turns on that distinction in any event. It seems clear that it is both abnormal behaviour and a disease in the broad sense. Though much is enigmatic about paedophilia, much is also known. I intend now to describe paedophilia as it has been reviewed to this Court, and as well so extensively reviewed in the recent case of *R. v. Noyes*.¹

First, paedophilia is a sexual desire for children; the children may be male or female and rarely both. So there may be heterosexual, homosexual, and indeed bi-sexual paedophiles.

1. See *R. v. Noyes* (Unreported), June 6, 1986, No. CC 851127 (B.C. S.C.).

The genesis of this sexual appetite for children is not precisely known. Certainly, no single cause is known. Early sexual activity with children, and progress from fantasy to reality, perhaps enforced by circumstances that prevent normal sexual development, will, it seems, cause paedophilia. An example would be extreme shyness or feelings of inadequacy, and the presence of children affording an alternate avenue for sexual activity. For some reason in these unfortunate people--and it seems there may be many reasons--a sexual appetite develops for children. The fact that paedophiles are usually socially immature or awkward would seem to support this hypothesis.²

The next point is the difficult one, and that is, that the condition is a lifelong condition; that is, it is, it seems, incurable. Once the sexual appetite is established for children, it tends to remain. Sadly, these people desire children sexually all their lives.

So once one has developed the appetite, as it were, it never leaves. Paedophiles are compared to alcoholics or perhaps better to heroin addicts, who once addicted are never again apparently entirely free of the attraction and can at any time again fall victim to the drug.

2. See *Noyes, supra*, p. 23; and indeed the evidence in many of the cases reported, and the evidence in this case, bear this out.

In paedophiles, castration, either real or chemical, apparently can control the drive: physical castration, permanently; chemical castration, temporarily. Psychiatric treatment may enhance control, but again apparently does not cure. Paedophiles then will require surveillance by themselves or by others for the rest of their lives.

Paedophiles are variously classified, but a useful triage it seems is that into "fixated" and "regressed" paedophiles. Those that are fixated are hardened, so to speak, in paedophilic activity; the regressive group are attracted to children only at certain times under certain circumstances, for example, when they are under stress.

Generally, it seems paedophiles are devious, manipulative and cunning, planning their lives so that children will always be available to them. This may involve work with young boys without fathers, working with children in sports, teaching children, or perhaps running a gymnasium, ostensibly always to help children. They often prey on children from fatherless homes, troubled homes, or even simple folk unsophisticated in sexual mores and far below them on the social scale. Often paedophiles believe they love to help children, even unconsciously it is thought to be believed--so insidious is their unusual sexual desire.

Paedophilic appetites are often specific to age groups and body types, and so a certain range of children are chosen as victims. That was the case here.

Treatment then amounts to strict control. An understanding of the problem by the paedophile himself, never allowing himself to be near children, especially alone--thus self-control--is the best hope for treatment. The individual must take control of his sexual appetite. Society--in this case the courts--must, in my view, condition the importance to society of that self-control.

I turn now to the question of the harm done to the victims of paedophilic sexual practice.

First, it was stated--and I accept--that a high proportion of victims suffer severe personality problems after these abnormal experiences. There is a 75% incidence of severe personality problems in these children, as opposed to a 2% incidence in the normal population.

The personality problems of victims are manifest in the victims in a variety of ways. They are thought to be based on feelings of guilt, worthlessness, shame, uncleanness, and a belief in their own sexual perversion.

They show a loss of faith or trust in adults; they evidence great difficulty in future in establishing normal relationships, social or sexual. Nervous disorders, such as

neurosis, insomnia, anxiety and depression, often follow. Serious problems of sexual adjustment and sexual orientation in life often also follow. All show a sharp loss in self-esteem and confusion in their own sexual orientation. Some go on to develop frank homosexuality and paedophilia itself.

I want now to relate the problem of paedophilia to the North. Clearly, the problem for all society is a serious one, but it is, I think, even more serious in the Canadian Arctic. Our communities are remote and problematic in this regard, for a number of reasons that I now relate.

The non-native presence in our northern communities consists often of the mounted police officers, the nurses, and teachers. These people, though a minority, represent and speak the language of power--and indeed they wield power--controlling law enforcement, health and education, not to mention housing, welfare, and other services, though this is changing as native people take on these roles.

The local people are, of course, accustomed to accepting this authority, so often in the hands of the small white community. Because the language and culture of the people are not the language and culture of the authorities, they are much less inclined to question that authority. By reason of this governmental authority in the communities, these people may be much more vulnerable to sexual predatory

activity, be that in the form of homosexual, paedophilic, or heterosexual aggression, than is the usual Canadian child in a setting in southern Canada. Governments and courts, in my view, must be cognizant of this greater vulnerability.

To put this another way. Paedophiles, just as they may seek out organizations catering to depressed and fatherless boys to satisfy their sexual appetites, we may expect will prey on native children in the villages of our North, because of the natural innocence of the people here as regards these unnatural sexual perversions.

Two further problems that exacerbate the matter in the North are that in these villages there are serious problems of language, and there is often no access to counselling or medical care for the family or the child involved. There is not a single psychiatrist in the Northwest Territories and limited counselling possibilities exist, and certainly there is little help for these native boys in remote arctic communities.

In Toronto, or Cornerbrook, or Vancouver, that is, in most other places in Canada, such boys could, I expect, get help more easily. That is not the case here. Governments and the courts must be all the more careful and vigilant in these cases. Further, considering the insidious nature of the crime, and its covert and concealed nature, the community should protect its children by reporting these offences to the appropriate government officials, as soon as they are noticed or suspected.

I turn now to the case law and some relevant Canadian authorities on this topic and cited to me by counsel.

In the case of *R. v. Robert Willoughby*, in the British Columbia Court of Appeal, No. CA 004172, October 11, 1985 (Unreported), Willoughby committed various sexual offences involving some 26 counts, approximately 1,000 incidents against 11 children, between 1974 and 1985, in the town of Terrace, British Columbia. Two of the children were his daughters. The children involved, it was concluded, suffered significant emotional damage from the relationship. There were 400 incidents with one girl, involving the most indecent acts, from her age 5 to 14. Willoughby was an established paedophile, and the Court concluded that society must be protected from his depredations.

Willoughby was 36 years old and married. In that case, the Appeal Court raised his sentence from 8 years to 20 years, to protect children from his "predatory" sexual appetite, and the Court held: "There are cases where the punishment inflicted for grave crimes should reflect the revulsion felt by the majority of citizens for them."

In the case of *R. v. Bennett*, another case in the British Columbia Court of Appeal, July 17, 1986, No. CA 005695 (Unreported), there were 12 counts of sexual assault on young boys. The accused Bennett had no criminal record and had an excellent background.

On appeal, he was given a sentence of 4 years in prison. The indecencies in this case were fondling. The Court there concluded that, "Those who sexually abuse children should be given a jail sentence of some consequence." Bennett, as with the accused here, was a man of good intelligence and responsible position. Bennett, too, was married, with 2 teenage daughters at the time.

The cases of paedophilia closely resemble each other. In the Bennett case, the Court pointed out that the accused had become involved with the boys because he belonged to organizations that gave companionship to young boys without fathers or through volunteer service to community organizations. As I have said, the sentence in that case was 4 years. However, the indecencies in the case at bar were more serious than the fondling in the Bennett case.³

In the case of *R. v. Cadden* from Vernon, B.C., County Court, Vernon Reigstry No. 154004C, September 23, 1986 (Unreported), there were 10 counts involved, and the accused was a teacher as well. In that case, the Court pointed out that the position of trust⁴ the teacher is in, the powers a teacher has to coerce and intimidate children through his

3. See Lambert J.'s dissent at p. 10 in that case.

4. See *R. v. R.P.T.* and *R. v. T.S.* (1983), 7 C.C.C. (3d) 109 at 112 referred to.

authority, thus compelling their submission to his desires, is insidious. In that case, a sentence of 7 years was given.

The next case I want to refer to is the case of *R. v. Dr. Stephen James Collins*, a case in the District Court of Newfoundland, 1986, No. C.B. 223 & 296. Collins was a doctor and a minister. Again, the story is similar. He was an unusually accomplished man. His parents were missionaries for the United Church. He was a scholar and was highly respected. But, again, he was attentive and generous to children. He would give them gifts and favours. He took them on trips and entertained them in his home. His sexual acts were not unlike the case at bar. The Court in that case reviewed the authorities in that jurisdiction, and concluded that the emphasis had shifted in favour of incarceration in serious child-abuse cases. The cases from British Columbia that I have cited would confirm that the trend is not limited to the maritimes. The sentence in the *Collins* case was 5 years in prison.

Finally, in the case of *Noyes*,⁵ a situation again very similar to this one, the British Columbia Court found the accused paedophile to be a Dangerous Offender. Had the Court given him a fixed sentence, it said it would have been from 10-12 years. I have carefully considered the judgment in

5. See *supra*, note 1.

that case, and, though it is indeed a thorough review of the problem of paedophilia, I would, with great respect, part from its reasoning in at least one aspect.

Paedophilia is an abnormal sexual appetite with serious and sad consequences. It must need be taken most seriously and vigorously deterred. However, though this sad propensity, I accept, is not curable in any permanent sense, it seems to me that it is a sexual appetite that may, under the right circumstances, be controlled.

There are many sexual appetites that our society successfully limits and suppresses. Repressing certain, very strong, heterosexual appetites is fundamental to organized modern society. Paedophilia is a malignant type of sexual urge; but there is no question, nor has there been any evidence, that, like other unacceptable sexual urges, this one cannot be successfully repressed.

The proscription of ravishing young ladies without their consent is a trite example. The repression of unacceptable sexual practices is as old, I expect, as organized society itself. The commandments of Judaism, Christianity, and the basic tenets of virtually every society, repress unacceptable sexual appetites or desires.

In the case of paedophilia, denunciation by society, and the sanctions attached to its practice must be strong, because of the great menace it represents to society. I will say more on this in a moment, but the point I wish to make is this: that paedophilia, like other sexual appetites, may well be suppressed by self-control and by social sanctions and rigid social monitoring. This, it may be argued, will not work in all cases, just as it does not work in all cases at all times with other sexual appetites. The fact that rape continues to occur in our society is indeed evidence of that. But we can and do suppress it through general deterrence.

A further point it seems worth emphasizing is that the courts must be most careful not to become either maudlin or vengeful in these cases. The Court, I think, may recognize with compassion that the appetites that paedophiles have they do not have by choice.

Indeed, I am sure that the accused here sorely wishes his appetite for young boys did not exist. It is a curse to him to have it, and if he could I am sure he would have shed it--but he cannot. What I mean to say here is that in these cases, where there is a tendency to great social revulsion, these cases, more than others, require our utmost in judicial equanimity.

* * * * *

I turn now to the case of Mr. Edward Horne before this Court.

The great purpose of the criminal process is the protection of the public--in this case, the protection of innocent young native boys in remote arctic communities from the damaging practices of a paedophile: a paedophile posing as a teacher as an example and as figure of authority. The criminal law, if it is to serve its great purpose of protecting the public, must strongly repel such a deplorable invasion.

Considering the principles of sentencing, and considering the nature of the offence and its ravaging effects on its victims, this Court is of the view that deterrence must be the focus of sentencing in these cases. The authorities I have referred to indicate a trend to denunciatory as opposed to rehabilitative sentences. In the case of *Noyes*, *supra*, the Court was prepared to go even further and declare the accused a dangerous offender.

I am of the view, for the reasons I have given, that the sentence should be very strongly denunciative. The Court must, however, maintain compassion and, as I have said, ~~strain for appropriate equanimity in dealing with what is~~ for most people a most odious crime. Rehabilitation should be considered in all cases but especially in these cases

for reasons of individual deterrence, so that this accused may develop the insight he needs and learn to control this terrible appetite that he has.

Having said that, and considering the circumstances of the accused, his guilty plea, and especially the fact that he is the father of 3 very young boys and has a wife to care for, and considering as well the circumstances of the crime here, especially the vulnerability of our northern reaches to the serious harm and the paucity of resources for treatment in the North, the sentence of the Court must say loudly and clearly to those who are paedophiles and who might be inclined to come to the North to prey on northern children, that they, if and when found out, will be treated most inhospitably here.

Finally, I might add that I have taken some time to consider the circumstances of this case, as dispassionately and, as I have said, with the equanimity such cases require. Having considered the matter as best I can, and considering the state of the understanding of paedophilia itself at this time, I have come to the view that the sentence must be a very strong general deterrent, and as well a strong individual deterrent. The hope for society, and indeed for the paedophile himself is that he develop the self-control required to resist this impulse. In my view, a strongly deterrent sentence will best serve that purpose.

The sentence of the Court is, for all these reasons, a period of 6 years in a federal penitentiary.

Counsel for the Crown has to his credit prepared and described the facilities available at the various federal institutions, and the Court will send with the warrant of committal, and these reasons for judgment, a recommendation that the accused, Mr. Horne, be given all possible help and psychiatric care available in taking control of himself and gaining insight into his condition before his discharge from prison.

In the view of this Court, to express community revulsion at the insult to each child and each family, each of the counts should attract the following sentence:

Count 1: A charge under Section 246.1 at Lake Harbour on child J., the sentence of the Court is 6 years in prison;

Count 2: A charge under Section 246.1, again occurring at Lake Harbour with child E., the sentence of this Court is 6 years in prison, concurrent;

Count 3: Again in the Hamlet of Lake Harbour, a charge under Section 246.1, a sexual assault on child K., a sentence of 6 years in prison, concurrent;

Count 4: A charge of sexual assault on child U., at Lake Harbour, the sentence will be 6 years, concurrent;

Count 5: Again at Lake Harbour, in this case for an act of sexual assault on child T., there will be a sentence of 6 years, concurrent;

Count 6: Again Lake Harbour for an act of gross indecency with another child, in this case with another child, under Section 157 of the *Criminal Code*, 5 years in prison, concurrent;

Count 7: For a sexual assault on another child J., under Section 246.1 of the *Criminal Code*, 6 years, concurrent;

Count 8: Again an act of gross indecency with another child (J.) in Lake Harbour, under Section 157, 5 years, concurrent;

Count 9: For the indecent assault on child P. in 1982, in Cape Dorset, a period of incarceration for 5 years, concurrent;

Count 10: For indecent assault, again in Cape Dorset, again in 1982, a further period of 5 years, concurrent.

The total sentence then, on all counts, will be 6 years,
the sentences being served concurrently.



T. David Marshall
J.S.C.

Yellowknife, N.W.T.,
12 February 1987.

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SC 3734

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