PROVINCIAL COURT OF PRINCE EDWARD ISLAND

Citation: R v. Steven Ronald Bowley PEIPC 1

Date: 20140214
Docket: PIFC2013001331
Registry: Charlottetown

Between:

HER MAJESTY THE QUEEN

Informant

And:

STEVEN RONALD BOWLEY

Accused

Citation: R v. Elliott Ross Meschwitz PEIPC 1

Date: 20140214
Docket: PIFC2013002006
Registry: Charlottetown

Between:

HER MAJESTY THE QUEEN

Informant

And:

ELLIOT ROSS MESCHWITZ

Accused

Before Her Honour Nancy K. Orr

Counsel:
Jeff MacDonald - counsel for the Crown
Clare Henderson - counsel for both Accused

Place and date of plea: (Meschwitz) Charlottetown, Prince Edward Island November 4, 2013
Place and date of plea: (Bowley) Charlottetown, Prince Edward Island December 2, 2013

Place and date of oral decision: Charlottetown, Prince Edward Island February 14, 2014

A publication ban was granted in respect to Bowley's charge on September 4th, 2013, and in respect to Meschwitz's charge on November 4th, 2013 pursuant to Section 486.4 of the *Criminal Code* of Canada. It provides that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way in respect of this matter.

CRIMINAL LAW - possession of child pornography - purpose and principles of sentencing

CASES CONSIDERED: ***R v. Sharpe*** 2001 SCC 2; ***R v. Stroempl*** 1995 CanLII 2283 (ON CA); ***R v. Bock*** 2010 ONSC 3117; ***R. v. Kwok***, 2007 CanLII 2942; ***R. v. Smith***, 2008 CanLII 59107 (ON SC); ***R. v. Jewell***, 1995 CanLII 1897 (ON CA); ***R. v. Pommer*** 2008 BCSC 737; ***R. v. Johnston***, 2010 NLTD 117; ***R. v. W.E.*** 2010 NLCA 4; ***R. v. Hammond***, 2009 ABCA 415; ***R v. McArthur*** 2010 A.J. No. 822

STATUES REFERRED TO: ***Criminal Code of Canada,*** Sections 163.1(4)(a)***;*** 718 to 718.2

Orr J.:

Introduction:

[1] Elliott Ross Meschwitz has pled guilty to a charge that he did have in his possession child pornography to wit: digital images and videos contrary to Section 163.1(4)(a) of the ***Criminal Code*** of Canada and amendments thereto. That offence occurred at Cornwall in the Province of Prince Edward Island on Tuesday, the 10th of September, 2013.

[2] Steven Ronald Bowley has pled guilty to a charge that he did on Thursday, the 20th of June, 2013, at or near Cornwall in the Province of Prince Edward Island have in his possession child pornography to wit: videos and images contrary to Section 163.1(4)(a) of the ***Criminal Code*** of Canada and amendments thereto.

[3] There is no indication that these two accused knew each other or had any connection to each other, although they live in the same community. The two cases have proceeded separately, until recently. Since counsel for the Crown and for Defence are the same for each accused, and since the sentencing submissions provided by counsel are inter-related, I will deal with both matters together, and indicate how the principles of sentencing apply to each of them.

Facts on Steven Bowley:

[4] An agreed statement of facts has been filed in respect of Steven Ronald Bowley. As a result of an investigation, and following the execution of a search warrant, Mr. Bowley was found to be in possession of child pornography. Seven exhibits were seized, being data storage devices. Approximately 1000 files were identified to be uniquely child pornography, with 80 % of those having female subjects and the remainder male. Of these files, 85 to 90 % were images, while the rest were videos. The majority of the images portrayed heterosexual sex between adult males and adolescent and child females. The most extreme of these files depicted scenes of vaginal penetration of adolescent females by adult males and fellatio performed on adult males by adolescent females.

[5] When arrested, Mr. Bowley told the police that he had been downloading videos and images of child pornography for twelve years. When he started, he had been the same age as many of the

subjects. He also acknowledged that he knew it was not O.K. to do so and that he was sharing these files by using a torrent program to upload and download the images and videos.

[6] Crown counsel indicated that Mr. Bowley had a number of computers, and had all of them networked to the same system, using them together to access and download pornography.

Circumstances of Steven Bowley:

[7] A pre-sentence report was prepared. It indicated he had no prior criminal record. He was 25 years of age, single, and the youngest of four children. While his family was disappointed in his actions, they indicated their continued support of him. He was described in the report as inherently shy, not one to socialize, has never gone on a date and never had a girlfriend. At page 2 of the report it is noted that he suggested watching pornography possibly filled a void for him. He stated that he is not a violent or angry individual and he would never have acted out what was happening in the videos with a child.

[8] According to the pre-sentence report, Steven Bowley suggested his viewing became somewhat of a *"habit*" because he would be surfing the internet and he would eventually click on the program he had previously downloaded. He claimed he would view pornography on the internet about twice a week. He stated he got a "*thrill*" from watching the videos because there was a sense of it being "*taboo and others wouldn't know*". He stated he knew viewing child pornography was wrong. At a certain point, it apparently became undeniably evident to him it was wrong when he was no longer a teenager and not in the same age category as the individuals he viewed.

[9] Mr. Bowley stated he was "*shocked*" when the police knocked on his door. However, at the same time he stated he "*knew it should happen and was the quickest, although not the easiest, resolution to the situation*". He acknowledged that he had his own awareness that the time had come to address what he was doing and being "*caught*" forced a resolution that he was apparently unable to come to on his own. He suggested possibly subconsciously he did not want to stop but he knew he should.

[10] Mr. Bowley graduated from high school. He attended several programs at Holland College but did not find them to his liking. He has not been employed since 2012 due to health issues and is currently in receipt of financial assistance.

[11] He is indicated to have sought counselling to deal with the circumstances of this offence and the stress of dealing with being charged and all that ensues. To date he has not been able to obtain a counsellor, despite trying on several occasions. His family members indicate that Mr. Bowley seems to be coming to terms with the fact that the individuals in the videos are actual people and not just characters or images.

[12] Further in the pre-sentence report, at page 7, Mr. Bowley claimed he did not view the individuals in the videos as "*real people*". He initially did not consider his actions as harming anyone because he was not doing anything to any individual himself. He stated he now realizes, after speaking with the police, the pain these videos cause the individuals involved and their families.

[13] According to the pre-sentence report, at page 8, Mr. Bowley presented as cooperative and polite during the process of completing the report. He appeared to have gained some insight into his offence and was articulate in his communication. He stated his acceptance of responsibility and wrong doing for his behaviour. He stated he would be cooperative with any treatment conditions he may be placed under. As noted, he attempted to seek out counselling on his own and through his family doctor.

Facts on Elliot Meschwitz:

[14] In March, 2013, investigators were able to download several videos from an IP address that was later determined to belong to Mr. Meschwitz's mother. As a result of an investigation, a search warrant was obtained for their home and executed in September, 2013. Mr. Meschwitz was upset and nervous, indicating initially to police that he was "*not into*" pornography. After several images were found, Mr. Meschwitz spoke to counsel and then indicated he wanted to provide a statement. He indicated that when he was around 14, he had started looking at such images. He would view such images and later delete them. He indicated that he took steps to disable the uploading ability. Around the age of 19 he had stopped viewing but 4 to 6 months prior to his arrest he had, in his words, "*relapsed*". Seized from his home was his mother's laptop, which was the family home computer, on which one image was found. Mr. Meschwitz's laptop was seized from his bedroom. On it were found 1369 images of child pornography. There were 3000 child, other or age unknown images. There were 3 movies of child pornography. Crown counsel noted that the majority of the pornographic material on Mr. Meschwitz's computer were not real flesh and blood people, but rather were anime cartoons. They are considered pornographic, nonetheless, as set out in the ***Criminal Code*** definition of pornography. The Crown indicated that 20% of the material in Mr. Meschwitz's possession was images of real people.

[15] It should also be noted that while Mr. Meschwitz indicated he took steps to prevent uploading from his computer, there was at least a point in March 2013 when that did not occur, since that was how Mr. Meschwitz was discovered, by an investigator who was able to down load pornographic material from his computer.

[16] By contrast, Mr. Bowley's computer system was wide open, as nothing had been done to avoid perpetration of the material. The Crown indicated that the size of Mr. Meschwitz's collection was larger than that of Mr. Bowley, but noted that the majority were fantastical depictions and not actual live people.

[17] Because of his actions, Mr. Meschwitz's mother had the police search her home, since he lived with her in that home, and she had to be interviewed in respect of child pornography.

Circumstances of the Elliot Meschwitz:

[18] Elliott Meschwitz is 23 years of age. He is the oldest of three children. He resides at home with his mother. He's indicated to have a good relationship with her. He has a limited relationship with his father. Although he graduated from high school, he did not have a positive experience there, as he had difficulty doing the work, despite working hard at it. He attended Holland College for a

short time, but left when he could not keep up with the work. He has had limited work experience, and was last employed at a local grocery store for nine months in 2011-2012 as a laborer on the night shift. He quit that work because he was stressed out and could not keep up with the part-time work.

[19] Mr. Meschwitz indicated he does not drink or use drugs. He has reportedly struggled with depression issues since he was 13. After being charged with this offence, Mr. Meschwitz was admitted to Unit 9, indicating he went to the hospital because he was planning suicide. He stayed there from September 11th to September 23rd, 2013. He has been seeing a counsellor on a weekly basis since his release from hospital. His therapist, Ms. Clark, indicated initially that the offender found it difficult to share his feelings and discuss his offence. Ms. Clark noted the offender has been improving in his ability to discuss his struggles and has expressed a desire to participate in Sexual Deviancy Counselling and do whatever he can to prevent any further involvement with the criminal justice system. Ms. Clark noted the offender appears to have accepted there will be consequences from his actions, is fearful of going to jail and is willing go continue with counseling.

[20] At page 7 of the pre-sentence report that was prepared in this matter, Mr. Meschwitz accepted responsibility for his actions and stated, *"I am sorry I did it...I want to get help...I don't ever want to go back to that garbage again.*" The offender insisted he has not attempted to view child pornography since sometime in May 2013. Mr. Meschwitz stated he is embarrassed and ashamed of his behaviour. He insisted when he first started searching on his computer he was "*looking for people his own age*" to chat with and he came across child pornography, *"it was like an addiction*." The offender insisted he knew it was wrong and tried to stop. He claimed he was able to avoid it for awhile and then started looking again when he was 17-18 years of age, "*I saw something...it triggered something in my head... I went back to it again on and off." The* offender claimed, *"I would stop myself knowing it was wrong...it got worse as the years went on."*

[21] Mr. Meschwitz insisted he knows he needs help, *"I have to continue seeking help...make sure I don't do it again...I know I did it...I know it was wrong...I have to keep my mind off it."* He stated he *"knows he should be consequenced for his actions*" and added, *"I expect to go to jail...I need help*." The offender concluded he will follow whatever direction he is given and insisted, "*I will continue seeking help as long as I need it."*

Purpose and Principles of Sentencing:

[22] The purpose and principles of sentencing are set out in Section 718 to 718.2 of the ***Criminal Code.***

> **718.** The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct;

[23] The Supreme Court of Canada discussed the various harms related to child pornography in the case of ***R v. Sharpe*** 2001 SCC 2, where at paragraph 92, Chief Justice McLachlin stated:

> Children are used and abused in the making of much of the child pornography caught by the law. Production of child pornography is fueled by the market for it, and the market in turn is fueled by

> those who seek to possess it. Criminalizing possession may reduce the market for child pornography and the abuse of children it often involves. The link between the production of child pornography and harm to children is very strong. The abuse is broad in extent and devastating in impact. The child is traumatized by being used as a sexual object in the course of making the pornography. The child may be sexually abused and degraded. The trauma and violation of dignity may stay with the child as long as he or she lives. Not infrequently, it initiates a downward spiral into the sex trade. Even when it does not, the child must live in the years that follow with the knowledge that the degrading photo or film may still exist, and may at any moment be being watched and enjoyed by someone.

[24] Another principle of sentencing is set out in section 718(b) of the **Criminal Code**:

> 718.(b) to deter the offender and other persons from committing offences;

[25] In the case of the ***R v. Stroempl*** [1995] CanLII 2283 (ON CA), Mr. Justice Mordon writing on behalf of the Ontario Court of Appeal stated:

> The possession of child pornography is a very important contributing element in the general problem of child pornography. In a very real sense possessors such as the appellant instigate the production and distribution of child pornography - and the production of child pornography, in turn, frequently involves direct child abuse in one form or another. The trial judge was right in his observation that if the courts, through the imposition of appropriate sanctions, stifle the activities of prospective purchasers and collectors of child pornography, this may go some distance to smother the market for child pornography all together. In turn, this would substantially reduce the motivation to produce child pornography in the first place.

[26] Section 718 (c) and (d) of the **Criminal Code** provide:

> 718 (c) to separate offenders from society, where necessary;
>
> 718 (d) to assist in rehabilitating offenders;

[27] Certainly in respect of both of these matters it is quite clear that both Mr. Bowley and Mr. Meschwitz are in need of and are willing to undergo assessment, counselling and treatment to assist them in over coming their interest in and desire to view this type of material.

[28] Other principles of sentencing are set out in Section 718 (e) and (f) of the **Criminal Code**, which provide:

> 718 (e) to provide reparations for harm done to victims or to the community; and
>
> 718 (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[29] Both accused pled guilty at a very early opportunity, in fact in advance of the Crown's file being fully prepared and the investigation being completed. They have acknowledged their involvement in respect of these matters. They have taken responsibility for that and saved considerable time and effort through the guilty pleas that they have provided in respect of these matters. In both pre-sentence reports, they have indicated acceptance of their responsibility. It is always amazing when you see the comments that they didn't have any appreciation until they met with the police to appreciate that these were real people that they were looking at this harm being

inflicted upon. Yet, when you view the images or the videos that they had in their possession you cannot have any conclusion other than that these are real people who are the subject of these horrendous images and videos. But, they do seem to have come somewhat late to the realization that these are real people whose lives have been effected by the making of this pornography.

[30] In the case of ***R v. Bock*** 2010 ONSC 3117, a decision of the Ontario Superior Court of Justice, the Court indicated:

> [30] Before I review the applicable sentencing objectives and principles, it is important to review the harm that is caused by the possession of child pornography, and the further harm caused by the distribution of child pornography. At the root of all child pornography offences is the hands-on sexual abuse and sexual exploitation of children by those who produce child pornography. That hands-on sexual abuse of children is a criminal offence that is extremely serious and is one that strikes at the core values of any right thinking member of society.
>
> [31] Child pornography captures this sexual abuse of children in an electronic image, creates a record of that abuse, and permits the perpetrator to share that abuse with others. Those who wish to possess child pornography encourage the sexual abuse of children and encourage the recording of this abuse by providing an audience or a market for those who produce child pornography. Therefore, simple possession of child pornography must also be treated as a very serious offence. If the court can deter or reduce the market for child pornography, the court may in turn effectively reduce the sexual abuse of children.
>
> [32]Further, the offence of making available child pornography is incrementally more serious than simple possession as the distribution of child pornography creates a broader market and puts more images in circulation. Each possession, viewing, sharing, downloading, or uploading can be seen as a repetition of the initial hands-on abuse. The more pornographic images that are in circulation and the greater the distribution, the more significant the abuse of the child becomes.

[31] The role that people who possess and share child pornography play in the abuse of children was further discussed by Molloy J. in the case of ***R. v. Kwok***, 2007 CanLII 2942 at para. 50, as follows:

> [50] The depraved individuals who perpetrate this horrific abuse on innocent children obviously get some kind of extra 'kick' out of photographing and videotaping these atrocities and having other people look at them. Advances in technology and the Internet have made it all too easy for these monsters to spread their filth to equally depraved 'collectors' all over the world. The existence of this ready and eager consumer base can only be seen as an incitement to those who would perpetrate further child abuse, and more horrific variations of child abuse....

[32] Similarly, in the case of ***R. v. Smith***, 2008 CanLII 59107 (ON SC), Clark J. at para. 37 wrote as follows:

> [37] It is self-evident that without the broad base of persons who desire to possess this material it would not exist, at least not on the scale that it presently does. Accordingly, even mere possession contributes to the aforementioned exploitation and degradation of children and, by extension, society in general. In recent years, the advent of the internet has greatly augmented the production and distribution of this vile and pernicious material. The ability to access child pornography in the privacy of one's own home makes it all the more insidious. Therefore, sentences that serve to deter people from accessing this material are required to reduce, in some measure at least, the exploitation of children for this purpose.

[33] Section 718.01 of the ***Criminal Code*** provides that when a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[34] Referring again to the decision in the case of ***R. v. Bock, supra,*** the court stated:

> [38] In summary, general deterrence is one of the most important sentencing objectives in the present case. A court must attempt to deter all members of the general population from possessing and sharing child pornography in order to deter the hands-on sexual abuse of children by those who produce such pornography. Furthermore, given the nature of these offences, it is important for the court, on behalf of the public, to denounce the offender's conduct. Any sentence should constitute a collective condemnation of this criminal activity.
>
> [39] Accordingly, many courts have specifically confirmed, and I accept, that the primary objectives of sentencing in cases of child pornography must be denunciation and general deterrence. In that respect see the ***Kwok*** case at para. 6, the ***Smith*** case at para. 9, ***R. v. Connor***, an unreported 2009 decision of the Superior Court of Justice, at p. 25, and ***R. v. Vasic***, [2009] O.J. No. 1968, at para. 16.

[35] Society has become increasingly more aware of the harm to children that is caused by the possession and accessing of child pornography. The concerns associated with this activity was were recognized by Finlayson J.A. in ***R. v. Jewell***, 1995 CanLII 1897 (ON CA), where he stated:

> [22] … The court must be responsive to emerging concerns that pornography, particularly child pornography, has become an area of criminality that increasingly menaces our young people and threatens our values as a society. Because pornography now can be so easily prepared and disseminated through relatively inexpensive means, such as the hand-held video camera used in the case under appeal, it has emerged as a very real problem in our society.

[36] McLachlin C.J. in ***Sharpe, supra,*** also discussed the exploitation of children that is caused by the production, distribution and possession of child pornography. At paragraph 28, she described its resulting harm as follows:

> [28] ...However, the possession of child pornography contributes to the market for child pornography, a market which in turn drives production involving the exploitation of children. Possession of child pornography may facilitate the seduction and grooming of victims and may break down inhibitions or incite potential offences....

[37] In the case of ***R. v. Pommer*** 2008 BC SC 737, Justice Smith stated:

> [49] Sentencing decisions on possession of child pornography are replete with statements about the paramount importance of denunciation and general deterrence to the imposition of an appropriate sentence for this offence. For example, in ***R. v. E.O.***, [2003] O.J. No. 563 (C.A.) (QL), Cronk J.A., for the court, citing ***Sharpe*** and ***Stroempl***, stated at para. 7:
>
> > Possession of child pornography is a crime of enormous gravity, both for the affected victims and for society as a whole. For that reason, the courts have repeatedly recognized that the most important sentencing principles in cases involving child pornography are general deterrence and denunciation. Further, the offence of possession of child pornography requires the imposition of sentences which denounce the morally reprehensible nature of the crime, deters others from the commission of the offence, and reflects the gravity of the offence.

[38] Section 718.1 of the **Criminal Code** provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[39] Section 163.1 (4) (a) of the **Criminal Code** provides that everyone who possesses any child pornography is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months.

[40] As to the responsibility of the offender in each case, it is Mr. Bowley and in the case of Mr. Meschwitz, it is he alone who is responsible for having committed the offence.

[41] The portion of Section 718.2 of the **Criminal Code**, which is relevant to this matter, provides as follows:

> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing
>
> ...(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;

[42] All of the depictions of pornography in this matter, by the very definition, include children under the age of eighteen years.

[43] Section 718.2 (b) of the **Criminal Code** provides that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

[44] In ***R. v. Bock***, ***supra,*** after reviewing a number of Ontario decisions, Justice Henderson concluded that the range of sentence for simple possession of child pornography, by a first offender, with a significant number of pictures or videos in the collection, is a jail term in the range of six months to 18 months.

[45] In the case of ***R v Johnston***, 2010 NLTD 117, Justice Halley referred to the case of ***R. v. W.E.*** 2010 NLCA 4, a decision of the Newfoundland Court of Appeal, which indicated that sentences in the range of twelve to twenty-four months for child pornography were appropriate in that jurisdiction.

[46] The comments made by the Court of Appeal in ***R. v. Hammond***, 2009 ABCA 415, when considering aggravating and mitigating factors in relation to a case similar to this case, are apt:

> [8] ...Apart from the respondent's guilty plea and his otherwise socially consistent behaviour pattern that he appears to have followed, there are no other special mitigating factors revealed in this record. Again we have an offence involving the respondent's self-amusement over an extended period by observing what appears to have been numbers of children being sexually assaulted.

> [11] As pointed out by Fraser CJA for this Court in ***R. v. B.(T.L.)*** 2007 ABCA 61 (CanLII), (2007), 218 C.C.C. (3d) 11, [2007] A.J. No. 169 (QL), 2007 ABCA 61, the use of the Internet for accessing child pornography constitutes "profound and present danger to children around the world": para. 27. The offence of access to child pornography is an essential ingredient to the actual sexual exploitation of children everywhere. It is a crime committed specifically by choice. No aspect of it is tolerable. It is repugnant to all civilized people.
>
> [12] It follows from this that, in principle, a sentencing court that is dealing with a person who has, quite volitionally over a long period time, made recreational use of the products of actual child debasement and abuse must receive condign punishment....

[47] In ***R v. McArthur*** [2010] A.J. No. 822, Anderson, J. of the Alberta Provincial Court reviewed numerous cases and said:

> [19] Many things can be gleaned from the case law but the Court finds that three observations are particularly apt. First, it is clear that the paramount sentencing objectives for these offences must be denunciation and deterrence. The reasons for this are thoroughly canvassed in the seminal case of ***Sharpe***, supra, and the reasons go beyond the sheer moral repugnance of this activity. These are not victimless crimes. Children are victimized, sometimes brutally, in the creation of these images and the children are re-victimized every time the images are viewed. The viewers and those who promote the distribution of child pornography may not be the principal actors in these assaults but they feed the industry. Further, the viewing and acquisition of child pornography is not simply a benign phenomenon without risk to the community at large. It tends to normalize the objectification of children as sexual objects and increases the risk of the sexual fantasies being acted upon and this can not be tolerated.
>
> [20] A second observation is that the case law tends to show that sentence ranges are increasing, particularly since Parliament enacted the mandatory minimum sentences.
>
> [21] Thirdly, although rehabilitation is not the primary sentencing objective in these cases, neither can it, nor should it, be ignored. Obviously, if rehabilitation can be achieved and at the same time a strong and proportionate message of deterrence and denunciation can be sent, society is much better off and the overall purpose of sentencing will have been better served.

[48] Section 718.2 (d) of the **Criminal Code** provides that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.

[49] As I have already noted, there is a mandatory minimum sentence in respect of this matter. It must be noted as well that the mandatory minimum applies for a person who has as much or as little as possession of one image or one video that would be constituted as being child pornography. Whether they have a record or no record, the minimum starts at six months.

[50] The question then is what is the appropriate sentence for these two accused. Appearing before the Court are two male accused who have no prior record. They are of a similar age, with Mr. Bowley being 25, while Mr. Meschwitz is 23. They are both single with no dependents. Neither is employed at the present time, nor recently. Both have limited integration into the community, preferring to stay at home. Mr. Meschwitz acknowledges he

has mental health issues which he needs to address and that he needs to access assistance in that regard. He indicates an addiction to viewing this type of material and describes his recent viewing, during which time he was apprehended for this offence, as a "*relapse*" In a similar vein, Mr. Bowley acknowledged the need to stop looking at this type of material, but an inability to take that step on his own prior to his arrest.

[51] Both accused have sought counselling, although Mr. Bowley has had little success to date in accessing such.

[52] The nature of their collections is different. Mr. Bowley has fewer files, but the files he has contain real people. He has more videos than Mr. Meschwitz. Mr. Meschwitz's collection has more files of anime than of real people. There are no cases to indicate whether that is an aggravating or mitigating factor.

[53] As part of the sentencing process, I had to view a sampling of the images which constitute the offences in these two matters. As difficult as that was, having done so, I understand why the case law directs that it is necessary. We know what a broken bone looks like. We know what a black eye looks like. We know what bruises look like. Hopefully, we don't know what the images that are child pornography look like. There simply is no way to describe these images in words, no matter how articulate or descriptive one can be. The old adage that a picture is worth a 1000 words is certainly appropriate in this matter. Words are inadequate to describe the level of depravity that those images demonstrate, or how they haunt you for some significant time after viewing them. It is incomprehensible how someone can view them for enjoyment, much less how that viewing can be ongoing for years, with those images being saved by an accused for repeated viewing. The case law refers to such images as vile, repugnant, and while they are, those words are still inadequate to describe what is depicted in them.

[54] There were a number of videos, particularly in Mr. Bowley's collection. It would be fair to say that there is no such thing as any of these images being good. They all start at terrible and quickly go down from there, but, the video images are much more graphic. They are much worse then still images, because they actually show the sexual activity between the adults and the children. They have music. They have sounds that are reflective of what the sexual activity is. Anyone who could view those videos and not appreciate that someone was being sexually abused in their production would certainly be having a break with reality or certainly in significant denial. Those videos were extraordinarily real.

[55] The actions of both Mr. Meschwitz and Mr. Bowley occurred over a significant period of time. They each deliberately sought out and kept such images in their possession. Each of them knew it was wrong, but they were unable or unwilling to discontinue their criminal activity until they were arrested.

[56] Mr. Bowley's computer system was more sophisticated than that of Mr. Meschwitz, but he took no steps to limit or prevent access to his collection. That was how he was caught.

[57] Mr. Meschwitz's computer system was not as sophisticated as that of Mr. Bowley and he indicated he did take steps to limit access to his collection, although it was inadequate or not in place when the police investigated his actions in this matter.

[58] As it has been noted in some of the cases that I have already referred to, allowing access to your collection such that others can view it, is considered to be an aggravating factor, although neither accused has plead guilty to that charge.

[59] Mr. Bowley had fewer images than Mr. Meschwitz's, but they were of real people. Only 20 percent of Mr. Meschwitz's collection were of real people. However, the interspersion of real images with the anime in Mr. Meschwitz's collection may well have reduced his appreciation of the impact that such depiction had on those real people.

[60] Both Mr. Bowley and Mr. Meschwitz have indicated a willingness to participate in whatever counselling may be appropriate to deal with the various issues that have been identified.

[61] Both have pled guilty, and as I have noted already, in fact entered their pleas prior to the police completing their investigation or categorization of the materials seized.

[62] Mr. Bowley surrendered himself into custody on December 30th, 2013 so he could start serving the sentence in this matter. As a result he has been on remand for 46 days.

[63] Mr. Meschwitz surrendered himself into custody on January 17th, 2014 and he has been on remand for 28 days.

Sentence imposed - Bowley:

[64] Mr. Bowley, would you stand please. I consider the guilty plea that you have entered in respect to this matter. I consider the facts; the principles of sentencing; the fact that you have no prior criminal record; the contents of the pre-sentence report; the submissions by both Crown and Defence counsel; the materials that have been filed in respect of this matter; and the principles of sentencing that I have referred to in detail.

[65] In respect of this matter, the Crown has recommended a sentence of 12 months in custody. I believe that is a reasonable recommendation and in the circumstances I impose a period of 12 months in jail. I give you credit for the time that you have served on remand, of 46 days. I give you that credit on the basis of 1.5 for each day served, which is what you would have been entitled to in ordinary circumstances had you been sentenced on the day that you went into custody. By my calculations that would be 69 days credit. So, it is 12 months less 69 days commencing as of today's date. Upon your release from custody you will on probation for a period of three years. There will be a $100 assessment for the victims of crime fund with 18 months to pay.

Sentence Imposed - Meschwitz:

[66] Mr. Meschwitz, would you stand please. Again, sir with respect to your matter, I consider the guilty plea that you have entered in this matter; the nature of the charge; the facts that are before the Court; the contents of the pre-sentence report; the fact that you have no prior criminal record; the distinctions that I have already referred to with respect to your case and that of Mr. Bowley; the principles of sentencing; the cases that have been submitted by Crown counsel and the submissions of both Crown and Defence in respect of this matter.

[67] The Crown's recommendation in this matter is a sentence of 10 months in jail. I believe that is a reasonable recommendation. I believe for the reasons that I have noted and the nature of your collection and the differences that have been noted with respect to the computer system, that a lessor sentence than that of Mr. Bowley in respect to this matter is appropriate, but not by a significant amount, given that there is some difference, but not a significant difference.

[68] I impose a sentence of 10 months in jail, less credit for the time that you have served on remand of 28 days. I give you credit at the rate of 1.5 for each day served, for 42 days credit. So, it is 10 months less 42 days. It is appropriate in my view to give a credit of 1.5 in this particular matter, given the fact that you did surrender yourself into custody in advance of the sentencing and that is what you would have received had you been sentenced at that time. In respect to both Mr. Bowley and Mr. Meschwitz, it is not their actions that have delayed this matter from proceeding to sentencing at an earlier date.

[69] There will be a $100 assessment for the victims of crime fund in respect to this matter with 18 months to pay. There will be a period probation for a period of three years from your release from custody. Please have a seat.

[70] The probation orders will be the same for each of you. With respect to the terms of the probation, upon your release from imprisonment, you will each be placed on probation for a period of three years, the terms of which are as follows:

1 Keep the peace and be of good behaviour;
2. Appear before the Court when and if required to do so;
3. Notify your Probation Officer in advance of any change of name or address, and promptly notify your Probation Officer of any change of employment or occupation;

Those are the statutory conditions. They remain in effect throughout the period of the probation. The following conditions are additional. They remain in effect unless you come back before the Court, and the Court changes them.

4. Report to and be under the supervision of a Probation Officer, and report in person immediately upon your release from custody, and thereafter, at such times and places as directed by the Probation Officer;
5. Undergo such assessment, counselling and treatment for the use of alcohol, drugs, mental health problems, and/or the behaviour which led to

these offences as may be prescribed by your Probation Officer, in consultation with the appropriate mental health, medical or professional counsel, which may include in-patient and residential programs, as well as participation in programs for sexual deviancy, assessment, counselling and treatment, if so prescribed;

6. Refrain from associating with persons and frequenting places which may from time to time be prescribed to you by the Probation Officer;

7. Refrain absolutely from owning, possessing, using, accessing or acquiring any pornographic material of any nature whatsoever;

8. Refrain absolutely from possessing any computer, computer software, or computer peripherals, such as a cell phone, or any other devices capable of downloading pictures or images from the internet;

9. Refrain absolutely from acquiring or maintaining or using an internet or email account;

10. Permit a peace officer or probation officer to enter your residence without warrant between the hours of 8:00 a.m. and 8:00 p.m. no more than twice a month and only for the purpose of confirming that you do not have possession of a computer or any device that is capable of accessing the internet or any email account.

[71] There will be a DNA order, SOIRA order, a forfeiture order and a Section 161 prohibition order granted in respect of each of Mr. Bowley and Mr. Meschwitz. Those orders will be read into the record and I have signed the various orders in respect of each accused.

February 14, 2014

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Orr J.