



**SUPREME COURT OF CANADA**

**CITATION:** R. v. R.A., 2025 SCC 7

**APPEAL HEARD:** March 20, 2025  
**JUDGMENT RENDERED:** March 20,  
2025  
**DOCKET:** 41421

**BETWEEN:**

**R.A.**  
Appellant

and

**His Majesty The King**  
Respondent

**CORAM:** Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O’Bonsawin and Moreau JJ.

**UNANIMOUS** Wagner C.J.

**JUDGMENT READ**

**BY:**

(paras. 1 to 6)

**NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

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**R.A.**

*Appellant*

v.

**His Majesty The King**

*Respondent*

**Indexed as: R. v. R.A.**

**2025 SCC 7**

File No.: 41421.

2025: March 20.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Criminal law — Indecent assault — Elements of offence — Five-year-old complainant touching accused's penis at his invitation after having witnessed him masturbating in bathroom — Accused charged with offence of indecent assault in force at time of events — Trial judge acquitting accused after concluding that facts established essential element of indecency but not element of assault because there had been no direct, intentional application of force to complainant by accused — Court of Appeal setting aside acquittal and entering conviction on basis that trial judge erred by misinterpreting requirement for intentional application of force —*

*Court of Appeal concluding that requirement that there be intentional application of force for assault is satisfied by any intentional contact by adult with body of child in circumstances of sexual nature regardless of whose physical movement initiates it — Conviction upheld.*

### **Cases Cited**

**Not followed:** *Fairclough v. Whipp*, [1951] 2 All E.R. 834; **referred to:** *R. v. R.V.*, 2021 SCC 10, [2021] 1 S.C.R. 131; *R. v. Tyler*, 2015 ONCA 599; *R. v. K.D.M.*, 2017 ONCA 510; *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424; *Fairclough v. Whipp*, [1951] 2 All E.R. 834.

### **Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1970, c. C-34, ss. 149, 244.

*Criminal Code*, R.S.C. 1985, c. C-46, s. 271.

APPEAL from a judgment of the British Columbia Court of Appeal (Willcock, Griffin and Voith JJ.A.), **2024 BCCA 283**, [2024] B.C.J. No. 1465 (Lexis), 2024 CarswellBC 2265 (WL), setting aside the acquittal of the accused, entering a conviction for indecent assault and remitting the matter for sentencing. Appeal dismissed.

*Troy Anderson, Michael Klein, K.C., and Roger P. Thirkell*, for the appellant.

*Mila Shah and Maegan Richards*, for the respondent.

The judgment of the Court was delivered orally by

[1] THE CHIEF JUSTICE — This appeal comes to us as of right from the Court of Appeal for British Columbia. The issue before us is whether the Court of Appeal erred in setting aside the appellant’s acquittal on the charge of indecent assault and entering a conviction. The appellant argues that the Court of Appeal wrongly concluded that the trial judge erred in holding that the appellant’s conduct did not constitute an assault.

[2] We are all of the opinion that the appeal should be dismissed, substantially for the reasons found at paras. 17 to 43 of the Court of Appeal’s decision.

[3] In our view, when an adult intentionally precipitates sexual contact with a child, it satisfies the elements of sexual assault under s. 271 of the *Criminal Code*, R.S.C. 1985, c. C-46 (formerly ss. 149 and 244 of the *Criminal Code*, R.S.C. 1970, c. C-34): see *R. v. R.V.*, 2021 SCC 10, [2021] 1 S.C.R. 131, at para. 52.

[4] Contrary to the appellant’s assertion, the element of force can be satisfied in the circumstances of this case where the child complainant physically initiates the touching of the accused: see *R. v. Tyler*, 2015 ONCA 599, at para. 10; *R. v. K.D.M.*, 2017 ONCA 510, at para. 36. Such an interpretation gives effect to the broad, encompassing language of the provision and its purpose of safeguarding the bodily and sexual integrity of children: see also *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 154.

[5] The trial judge therefore erred in relying on the reasoning of *Fairclough v. Whipp*, [1951] 2 All E.R. 834 (K.B.D.), to hold that the appellant's actions, which are not in dispute, did not constitute an assault. *Fairclough* is not authoritative in Canada. The appellant committed an assault when he intentionally had sexual contact with the child complainant. It did not matter that the child complainant physically initiated the contact following the appellant's invitation.

[6] Accordingly, the appeal is dismissed and the conviction is affirmed.

*Judgment accordingly.*

*Solicitors for the appellant: Thirkell & Company, Abbotsford, B.C.*

*Solicitor for the respondent: Ministry of the Attorney General – B.C. Prosecution Service, Vancouver.*