

ONTARIO SUPERIOR COURT OF JUSTICE

COCHRANE

HER MAJESTY THE QUEEN

against

ANNA WESLEY

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COURT FILE NUMBER 9281/98

V O L U M E    I I

ONTARIO SUPERIOR COURT OF JUSTICE

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HER MAJESTY THE QUEEN

against

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ANNA WESLEY

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P R O C E E D I N G   A T   T R I A L

BEFORE THE HONOURABLE MR. JUSTICE R. BOISSONNEAULT  
on April 26, 27, 28, 29, 30 and May 3 & 4, 1999

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APPEARANCES:

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D. Fuller

Counsel for the Crown

G. Charlebois

Counsel for the accused

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ONTARIO SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

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<u>WITNESSES</u>	Exam. <u>in-Chief</u>	Cr.- Exam.	Re- <u>Exam.</u>
DELGUIDICE, Greg	120	139	
MACK, Luke	144	162	186
10 TOURVILLE, Tony	192	272	316
JAFFE, Peter	228	243	
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WHEESK, Daniel	325	344	370
15 WHEESK, George	373	394	424
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E X H I B I T S

<u>EXHIBIT NUMBER</u>		<u>Put in on Page</u>
1	Record from the Fort Albany school numbered 6047	16
25 2	Records from the Fort Albany school numbered 6046	19

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Transcript Ordered: April 30, 1999  
Transcript Completed: May 7, 1999  
Counsel Notified: July 17, 2002

Honour's hands.

THE COURT: What does I don't think I'll be long mean?

MR. CHARLEBOIS: Five to eight minutes.

5 THE COURT: Great, go ahead.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. I believe we've already established Doctor Kain that you haven't had a chance to examine any of the seven named complainants in the indictment, nor to look at any medical records in connection with them, is that right?

10 A. That's correct.

Q. So can we agree that the physical and psychological potential harm that you see here is based on what you might expect to see because you're at a disadvantage, you haven't actually seen these people.

15 A. That's true.

Q. It's almost tantamount to if my car won't start in the parking lot at the hotel and I call my mechanic back in Ottawa, my car won't start, well he'll say it might be this, might be that, might be the other thing, right?

20 A. I suppose.

Q. Now all of the physical and psychological sequels that you have testified about this morning are obviously in your opinion, is actually prefaced on the fact that this in fact happened, right, that these children were in fact compelled to eat their vomit.

25 A. Yes.

MR. CHARLEBOIS: Thank you sir, no further questions.

THE COURT: That was very good.

MR. CHARLEBOIS: Thank you.

30 THE COURT: We will take the normal morning break.

Thank you very much sir.

R E C E S S

U P O N R E S U M I N G :

THE COURT: This is the cross-examination of Mr. Tourville.

5 MR. CHARLEBOIS: Tourville, it will take about an hour or so Your Honour.

THE COURT: Okay. Members of the jury, you will recall that Mr. Tourville was examined in-chief by the Crown, then we went to the medical evidence to get the doctors back on their way down south. Now the cross-  
10 examination of Mr. Tourville will take place.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. I'd like to start with the first event that you spoke of yesterday Mr. Tourville. That's the one when the boys were coughing in the dorm. We will take them sequentially and  
15 you indicated to us that Anna Wesley had stormed out of her room, given a warning and then you were the next person to cough and that as a result of that, you were disciplined or hit.

Now roughly how many boys were in the dorm at the time this  
20 happened?

A. Roughly about 100.

Q. And I gather that you weren't the only person coughing at that time. A number of boys had colds.

A. Yes that's true.

25 Q. You also mentioned that you were sleeping with the blankets over your head, is that just a personal choice?

A. For the most part, we had to sleep with either a pillow or a blanket over our heads when we were there.

Q. Any reason for that?

A. That's one of Ann's rules.

30 Q. So it wasn't a question of personal choice.

A. No.

Q. All the boys had to sleep with a blanket or a pillow.

A. Yes, when we were having naps or whatever, we had to have a pillow over our heads and at night we use to have blankets over our heads or whatever.

Q. Okay so that basically if somebody walked into the dorm at night, there would be no uncovered heads, like you'd just see bodies under blankets but nothing that you could see, is that right, like no faces?

A. To the best of my recollection, yes.

Q. And that was a rule.

A. That was what we did, yes.

Q. And I just want to be clear in front of the jury, that's what you did because that's what you were told to do as opposed to that's what you did because that's how you preferred to sleep.

A. That's what we were told to do, a rule that we learned over the years.

Q. Bear with me Your Honour, we'll come back to that in a few minutes Your Honour, I can't conveniently find it so I'll move on to something else. So the picture I have is the dorm is dark, all these boys according to your evidence have got blankets or pillows over their head, there's some coughing going on and then what you hear is Ann Wesley's voice warning, warning the group to stop coughing, is that it?

A. Yes but it wasn't one big dorm. We were staying in the older section of the residential school at the time and it was, there was one large room and us smaller kids were off set from there and maybe slept maybe 20 of us in that one. It was more like a hallway and Ann's room was just off to the side.

Q. I mean how I've described it, is that accurate?

A. Well what I'm saying is it wasn't one big dorm, it

was separated.

Q. Okay so you hear her voice, you don't actually see her, you hear this warning, you recognize the voice and.

5 A. Yes I did.

Q. Now to your knowledge at that point, did she go back into her room, do you know?

A. To my knowledge, no, she did not go back to her room.

10 Q. How long after the warning did you cough?

A. Maybe five seconds, I don't know, it wasn't long.

Q. Were other boys coughing at the time?

A. Probably, like I said, it was in two sections, maybe in the other sections, I don't know.

Q. How about in your section?

15 A. Probably.

Q. Do you agree with me it would have been difficult then for Ann or anybody else to determine you were the one coughing?

A. From where she was standing, from where her room was and where I was sleeping, we're only talking maybe 20 feet or 10 feet apart when she came out of her room. We're not talking about a large distance.

Q. But Mr. Tourville, you wouldn't have seen her come out of her room would you, you would've heard her.

25 A. Well yeah, when she came out in a rage and yelling that the next person, you know, whatever. I heard her, yes.

Q. Now the picture I have from the evidence you're giving is that the warning is given to stop coughing or the next person will get it, you hear that but you don't see it because your head is covered under the blankets, right?

30 A. Yes.

Q. The other picture I have is that subsequent to the

warning, you're not the only person coughing, there are other boys in that room coughing, isn't that what you've told us?

5 A. Before the warning, everybody was coughing and as soon as Ann Wesley came out and said words to the effect that the next person that coughed would get it, everybody quieted down, nobody coughed. There was a moment of silence where nobody, everybody was trying to hold their coughs in or whatever but it wasn't a constant coughing like non stop. Like normal, everybody, you know, normal cough.

10 Q. Now when you, after the warning when you coughed, did other boys cough at the same time?

A. Well I can't say for sure if the other boys coughed at the same time but there was a moment of silence after Ann, in her rage, yelled out to the kids that the next person that coughed would get it.

15 Q. Now according to your evidence, after you coughed, you told us the blankets were pulled off you and you told the members of the jury yesterday and I want to be acute about that, 'That she beat you up on your face with her fists'. That's what you told us, right?

20 A. That's what I said, yes.

Q. 'That you had bruises and a bloody nose and that the blankets were soiled with blood.' That's what you told us as well, right?

25 A. Um-hum, yes that's what I said.

Q. Now were you hit with fists or were you slapped?

A. I was hit with fists.

Q. Are you sure about that?

A. Positive.

30 Q. And what about the bloody nose, I mean did you bleed a lot?

A. Well enough to soak my sheets and my pillows



with...I didn't bleed all night mind you but enough to make a mess.

Q. Was there a lot of blood or just a little bit of blood?

A. Well to me it seemed like a lot of blood, yes.

Q. The next morning, were you able to go to class as usual?

A. Yes.

Q. No lasting injury?

A. Not physically, no.

Q. You remember, Mr. Tourville, giving evidence in Moosonee at the preliminary inquiry last May.

A. Yes I do.

Q. And you remember that at that time, Ms. Fuller asked you questions and I asked you questions, is that right?

A. Yes.

MR. CHARLEBOIS: I wonder if His Honour could be provided with the transcript please.

THE COURT: I do not know if I explained this to the jury in my opening. I do not believe so so I will explain the procedure now. There was a preliminary hearing in this matter some time ago. The date will come out. The purpose of a preliminary hearing is not to ascertain the guilt or innocence of the accused person but simply for a judge to ascertain whether there is sufficient evidence to go to trial. A transcript of that hearing is typed out. The transcript can be used, as will be used by Mr. Charlebois to point out some of the passages in the transcript which may or may not be contradictory to the evidence the witness is giving now. Usually what occurs, the solicitor tells me what page and what

questions he feels he wishes to cross-examine on, I  
make a ruling as to whether in fact that evidence, at that time  
is contradictory to the evidence given by the witness now. If  
I do, then the lawyer cross-examines on the basis of  
5 credibility. Is there anything else I should add to this?

MR. CHARLEBOIS: No Your Honour.

THE COURT: Thank you very much, proceed.

MR. CHARLEBOIS: Would Your Honour prefer that I put  
the passages to you first or to the witness?

10 THE COURT: I have to ascertain, I think properly, I  
have to rule whether the passage is contradictory to  
the evidence given by the witness in this trial. It is  
simply not a reading over of the preliminary inquiry.  
That is my understanding of the procedure.

15 MR. CHARLEBOIS: Very well Your Honour. I'd like to  
draw Your Honour's attention to page 172 of the  
transcript. To put the whole context in Your Honour's  
mind.

THE COURT: I have 172.

20 MR. CHARLEBOIS: You have 172.

THE COURT: I am at 172.

MR. CHARLEBOIS: I'd ask Your Honour to start reading  
at line 14, there's a question that starts there with  
the word 'Now' and I would invite you to read down to  
line 26, the answer that starts with 'Yeah'.

25 THE COURT: So down to the bottom of the page.

MR. CHARLEBOIS: Yes.

THE COURT: Okay, just a second, go ahead.

MS. FULLER: Your Honour, I think in fairness you  
should also read page 161 from line three to line 18  
which was the examination in-chief.

30 THE COURT: To line 20.

MS. FULLER: About line 18.

R U L I N G

BOISSONNEAULT, R. (Orally):

5 Eighteen, yes, I think Mr. Charlebois can proceed page 172.

MR. CHARLEBOIS: Q. Mr. Tourville, you've already told us you remembered being initially questioned in Moosonee by Ms. Fuller and then you recalled that I asked you questions.

A. Yes I do.

10 Q. Do you recall being asked the following questions and giving the following answers in connection with the event when you were hit for coughing in the dorm and for the record, I'm reading from page 172, line 14? "Question by me: Now the first occasion you told the Crown about Mr. Tourville, about  
15 the coughing incident and that the covers were pulled off and you were hit on the face causing your nose to bleed, do you recall specifically being hit with a fist or were you hit with an opened hand and a hard slap? Answer: Well it was dark. The dormitories are dark and you don't, so, and it happened so  
20 suddenly that I don't remember." Next question: "Okay so when you told the Crown that she, meaning Sister Ann, hit me with her fist on my face, can we agree that you're not sure whether you were actually hit with a fist or whether you were slapped hard with an opened palm. Answer: Yeah, we could say that, yes." Now do you recall my asking you those questions in  
25 cross-examination and do you recall providing those answers?

A. Yes I do.

Q. Now a couple of minutes ago, I asked you if there was any doubt in your mind whether you had been hit with a fist and you were quite sure that you had been hit with a fist.  
30 There was no doubt in your mind. That's what you told the jury a few minutes ago, is that right?

A. Yes I did, yeah.

Q. And it's obvious isn't it Mr. Tourville that at the preliminary hearing, there was actually some doubt in your mind as to whether you were punched or whether you were slapped, is that right?

A. Could you repeat that question again?

Q. And from the passage that I read to you from the preliminary hearing, can we agree that at the preliminary hearing, you were not sure whether you had been hit with a fist or whether you had been slapped hard with an opened palm.

A. At the preliminary hearing, I was a very reluctant witness and I did not really, I should have been positive more, whatever but I was a very reluctant witness and I didn't...I shouldn't have held my...I should've spoken out more forcefully than I did.

Q. Well what was not forceful sir, you were under oath at the preliminary hearing were you not?

A. Yes I was.

Q. And you're under oath today.

A. Yes.

Q. Now are you telling us that some of the answers that you gave at the preliminary hearing were wrong?

A. No they weren't wrong.

Q. Well now I'm confused, can we first agree that at the preliminary hearing, you weren't sure in connection with this event, this incident whether you had been hit with a fist or whether you had been slapped hard with an opened hand? Can we agree that you weren't sure at the preliminary?

A. At the time I wasn't sure, no. I've had the past year to think about what had happened to me and having been slapped many many times, and having gone through that, there's a big difference between getting a bloody nose and being

slapped or punched. In all the years that Ann slapped me, whether it be in the rec room or whatever, I never remember getting a bloody nose so that's why now, when I think back on it, when I thought back on it over the year or so, to me it only stood to reason that it was a fist.

Q. So are you telling the members of this jury that your memory has actually gotten better a year later. Your memory gets better with age rather than worse with age?

A. When you think about something that traumatic that happened to you, I do think that your memory does get better when you concentrate on it and want to.

Q. But you do agree with me that a year ago at the preliminary, there was doubt in your mind whether it was a slap or a fist, right?

A. A year ago maybe, yes.

Q. Well is it maybe or is it fact that that's the answer you gave under oath Mr. Tourville? Do you agree Mr. Tourville that those questions were put to you and those are the answers you gave under oath? It's a simple question.

A. I wasn't lying, Ann Wesley did punch me but if at the preliminary hearing, if I said a slap, then I was wrong.

Q. Do you recall how long after being hit during that event or slapped, for how long you bled?

THE COURT: For how long he what?

MR. CHARLEBOIS: Q. For how long you bled?

A. It couldn't have been very long, five minutes, I don't know.

Q. Now the second event I want to talk with you about is the one in the kitchen or in the dining room rather and the soup ladle okay.

A. Um-hum.

Q. I think what you've told us about is that it was a

much smaller group because it was in the summer and most of the boys had gone home, right?

5 A. Yes there would be six or ten of us, the wards of the Children's Aid Society there.

Q. And the dining room or at the school.

A. In the summer time.

Q. Now I think what you also told us is that or rather, were you actually talking to the other boy?

10 A. I don't remember.

Q. Is it possible that you were talking to the other boy and that's why you were disciplined?

A. I could've been talking, yes.

Q. And can we agree that one of the rules of the school was that the students could not speak except during the  
15 lunch meal?

A. Yes, that was one of the rules.

Q. Okay, that breakfast was to be eaten in silence, supper was to be eaten in silence but that at lunch time, talking was allowed.

20 A. No, to the best of my recollection, we were never allowed to talk at breakfast, lunch or supper.

Q. Did you know whether those were Ann's rules or whether they were mother superior's rules, from your perspective as a child, did you know?

25 A. From my perspective, I just assumed they were Ann's rules.

Q. So in any event, as to that event in the dining room, it is possible that maybe you were talking to the boy next to you, right?

30 A. It could've been possible, yes.

Q. And that would have been an infringement of the rules at mealtime, is that right?

A. Yes.

Q. And when you claim you were hit with the soup ladle, you didn't suffer any lasting injury as a result of that, did you?

A. Again no, not physically.

Q. Who is the friend who was next to you?

A. Oh I don't remember, this is 40 years ago.

Q. You'd also told us yesterday that you thought that you were also in the process of passing some gristle or some fat to this other boy.

A. Yes that's what I was doing when Ann walked in.

Q. And would that also have been against the rules to pass off some of your food?

A. Yes it would have been.

Q. Particularly the unappetizing part of the food, right?

A. Yes.

Q. Because then that other boy would have been compelled to eat everything that was in the plate.

A. Yes.

Q. So can we agree you were just trying to pull a fast one on this kid next to you?

A. It was just a childish joke.

Q. But in any event, that wasn't allowed either, any more than talking in the dining room, right?

A. Yes that was another rule.

Q. And according to your evidence Mr. Tourville, were you hit with the soup ladle as soon as the nun apparently saw what you were doing?

A. Well when she entered the little cafeteria that we were eating in, I was in the act of doing that deed.

Q. Right.

A. And she seen me.

Q. And were you hit with the soup ladle right away?

A. Well as soon as she got to it and to me.

5 Q. Okay and this other boy that you were possibly talking to and definitely trying to pass off some fat or gristle to, was this boy right next to you when you were hit with the soup ladle?

A. Well sitting next to me, yes.

10 Q. Can we agree it would have been difficult for this boy not to see or witness what was done to you?

A. Well yes.

Q. Any reason why you don't remember this kid's name if there was a much smaller group in the summer time?

15 A. There's, like I said, it happened 40, over 40 years ago. I haven't been in contact with these boys or whatever over the years. I've lived different places. Actually I didn't even remember one guy from the residential school except for maybe a cousin or two.

20 Q. Now you told us that after supper was over, the boys were dismissed to go outside and play and that because you were sad, you told us you went to the swings, a priest came by, talked to you and then you summoned back inside, right?

A. That's what I said, yes.

25 Q. And that subsequent to being summoned inside, what you told us about is that you were further disciplined inside, right?

A. Ah yes.

30 Q. Now the way you explained it to us yesterday Mr. Tourville is that when you were summoned back in by the nun, after speaking with the priest and I'm sure His Honour will correct me. This isn't accurate but what I took down was this. 'When she called, I went inside, she started to slap me all



over in the hallway; she dragged me upstairs still slapping me all the way; she brought me to a room full of shoes; she grabbed one of the shoes and hit me on the face, head and body. She didn't say anything as she was hitting me.' Is that an accurate, is that an accurate paraphrasing of what you said yesterday?

A. Yes it is.

Q. Are you certain that after you were summoned back inside that you were hit inside in the hallway and hit all the way going up until you got to the shoe room where you were hit some more?

A. Yes I'm certain of that.

Q. No doubt in your mind about that.

A. Yes, no doubt whatsoever.

MR. CHARLEBOIS: Could I draw Your Honour's attention to the transcript again, page 163.

THE COURT: Yes, I want to read my notes too.

MS. FULLER: I might just indicate Your Honour that in my notes, I have inside Anna Wesley, slapped him all over, pushing and dragging him up the stairs. I don't have slapping all the way up the stairs.

THE COURT: Well that was a very long paraphrase for a start to paraphrase or summarize actions that took place from the time he was outside, got in, went down the hall, up the stairs, into the shoes room and say, is that what you said yesterday? First, I want to find my notes, you might have to do it in little broken up stages.

MR. CHARLEBOIS: I certainly don't have a problem doing it in shorter spurts Your Honour although it would appear that Mr. Tourville agreed that it was a proper recollection of what he had said yesterday on that

point.

5 THE COURT: Well that is the problem when you have a witness who states he is 21 years old and two or three days later, counsel tells that witness you told us you were 23 years old and the witness is sitting up there saying, did I really say that, I do not know. The atmosphere of this courtroom, whatever can be very intimidating. That is why the rules are that if you are going to quote a witness, you must be absolutely correct in order to avoid any misunderstanding on the part of...

10 ANNA WESLEY: I'm sorry, my hearing is mixed up.

THE COURT: I cannot clarify anything your client cannot hear.

15 MR. CHARLEBOIS: No but I mean this I think, on the basis of what Your Honour had said on whatever, Tuesday or Wednesday, the first day we heard evidence, I have, not only have I attempted, I have made very sure to be very accurate in the passage that I have put to the witness. I have had, while the Crown was putting questions to the witness, you may not have the same opportunity to write...This was examination in-chief, I had the opportunity to take careful notes and I really don't want the jury to be left with the impression that I'm putting unfair passages to the witness...

20 THE COURT: Well don't take the chance. Listen, you are going to have to forgive me if I want to check out the accuracy of what you are going to put to this witness.

25 MR. CHARLEBOIS: No.

THE COURT: I am sorry.

30 MR. CHARLEBOIS: That is certainly within Your

Honour's, in fact it's Your Honour's role...

THE COURT: Duty.

MR. CHARLEBOIS: If I do put it to the witness fairly, then I hope that I'll be, the jury will be told that I was putting it to the witness fairly.

THE COURT: If you put it to the witness fairly, the jury doesn't have to be told anything. Nobody will say a word, right?

MS. FULLER: That's right.

THE COURT: I mean, I do not have to, after every question you put, say, Mr. Charlebois was fair here.

MR. CHARLEBOIS: No but I do believe when the jury was excused, they may have been left with the impression that I had put an improper question.

THE COURT: They were left the impression that I wanted to check and that is it. If I want to check, it is no reflection on your personal integrity, I assure you.

MR. CHARLEBOIS: Thank you.

...JURY RETIRES

R E C E S S

U P O N R E S U M I N G :

MR. CHARLEBOIS: Perhaps before the jury is brought in, what is it that Your Honour would now like me to do with Mr. Tourville?

THE COURT: I am just going to ask you to resume your questioning in the manner in which you see fit. Now if that creates any problems, I will let you know, it is my function.

MR. CHARLEBOIS: Thank you.

...JURY ENTERS

THE COURT: Bring them in please. Members of the jury, I would like to make a comment before we resume.

5  
10  
15  
20  
25  
30

Immediately prior to taking our break, of course I made certain comments to Mr. Charlebois about the question he put to the witness as I felt it could have been a little clearer. Please, this is no indication of any adverse personal integrity on the part of Mr. Charlebois. I know him to be a honourable man. It is simply my job and of course, I may at times, maybe often, be mistaken in my rulings. Everything I say is taken down, everything I say becomes a transcript. If I do make errors, I am thankful that I have a court of appeal that can look at what I did or said and if anything that I do or so is not legally correct, it can be rectified. The administration of justice is not here, the administration of justice is all over but it is my duty to interrupt if I feel a question is inadmissible for any reason but please, I said it again, this is not a reflection on Mr. Charlebois's integrity at all. He has a bull by the horns there, he has to take notes, he has to talk, he has to ask questions, it is a very difficult proposition. We all do our best. I will add this, when I do a charge to a jury at the end of every trial, of course my duty is to explain the law to you but then we also give what we feel is a resume of the evidence and we make it quite clear that if you disagree with me, it is you, what you think is that counts. But after those charges and you retire, you then have a post charge conference. That conference is to examine or the lawyers examine what I have said in the event that I may have been wrong in stating a principle of law to you or I may and it happens and I may have been wrong in quoting evidence to you. That happens so it happens to everybody. It

is not Mr. Charlebois. Mr. Charlebois, do you want to, oh then we get you back in and I change. I tell you, if I figure that I did quote law wrongly, I change it, if I did quote some of the evidence wrongly, I get you back in and straighten it out. Go ahead.

5  
MR. CHARLEBOIS: Q. When you had finished speaking with the priest outside on the swings, you told us that you were called back in by Ann Wesley and that you went back inside the building. Please tell us what happened when you got back inside?

A. Well as soon as I stepped into the entrance that we were using at the time, Ann proceeded to slap me, slap me and push me, maybe drag me and told me to get upstairs.

Q. Okay, you went upstairs.

15  
A. I went upstairs and on the way, I was again slapped or pushed or pulled.

Q. And then when you got inside the room, you told us it was a room full of shoes.

A. It was a room with, yes, shoes were scattered all over.

Q. Okay and that's when you told us yesterday that she proceeded to hit you with something, right?

A. With a shoe, yes.

Q. And do you recall where you were hit Mr. Tourville in the room with the shoes?

25  
A. Well just all over, I was trying to cover my head up.

Q. Were you hit in the face?

A. Could have been, yes.

Q. Could have been, not sure.

30  
A. Like I said, I was hit all over.

Q. All over your body.

A. All over my body, you know, face being part of my body I guess.

Q. Now let's backtrack, again, we've established you were asked questions at the preliminary hearing in Moosonee a year ago and that you provided answers, right?

A. Yes.

MR. CHARLEBOIS: Your Honour, I'd like to draw your attention to page 163, Crown's examination in-chief starting with line 26 and proceeding through to top of page 164, line one.

THE COURT: Yes.

MR. CHARLEBOIS: Q. Mr. Tourville, do you recall in the course of Ms. Fuller asking you questions in Moosonee and after you having explained to her, having been outside, speaking with the priest, question, page 163, line 26. Question by Ms. Fuller: "So in any event, she called you back in. Your answer: Yeah where I was sent directly upstairs to a room that was full of shoes anyways, where she proceeded to grab a shoe that was laying around and again, gave me a few whacks for good measure." Now do you recall being asked that question by the Crown and giving that answer?

A. Yes I do.

Q. Now do you agree that when you answered that question under oath in Moosonee, you did not mention having been hit either after having been called inside or as you were making your way up the stairs.

A. I never mentioned that incident.

Q. At the preliminary hearing.

A. At the preliminary hearing, no, I did not mention that.

Q. Why not?

A. Well my allegations that I'm making towards Anna

Wesley, I thought they were, how do you say, big enough that I didn't need the, I didn't think a court would want to listen to every detail of whatever slap I got, you know, whenever I got it or whatever.

Q. Are you telling the jury Mr. Tourville that at the preliminary hearing, whether the Crown was asking you questions or I was asking you questions, are you telling us that you were giving your evidence selectively?

A. What was coming to my mind at the time, that's what I was answering.

Q. That's not the question Mr. Tourville. At the preliminary hearing...

MS. FULLER: Objection Your Honour, I believe that that's an answer, to his response to the question.

MR. CHARLEBOIS: I would submit...

THE COURT: Go ahead.

MR. CHARLEBOIS: Thank you.

MR. CHARLEBOIS: Q. At the preliminary hearing Mr. Tourville, and the question was, "So in any event, she called you back in and your answer was yeah and I was sent directly upstairs to a room full of shoes, proceeded to grab a shoe laying around and again, gave me a few whacks for good measure", at the time that you gave that answer a year ago sir, did you remember in your mind that you had also been hit downstairs when you got back in and that you had also been hit going up the stairs to the shoe room?

A. These things don't come to mind, when I'm asked the question in court, this is a very foreign environment for me. I can't remember everything that happened while I'm giving my reply as best as I could or as best as I can. But after the preliminary hearing again, when I had time to think about what really happened and not holding my punches and to say, okay,

this is what really happened and this, all of this and this sequence and what not so.

Q. But that's not what precisely what I'm asking you. What I'm asking you is at the preliminary hearing, did you remember that additional detail and choose not to share it?

A. No I did not remember it at the preliminary hearing.

Q. And when did you remember that additional detail?

A. I don't know, it could have been a week, two weeks after the preliminary hearing.

Q. What kind of shoe were you hit with Mr. Tourville up in the shoe room?

A. To the best of my recollection, it was a hard shoe, an old fashioned 1950's cloppers or whatever you called them back then. The charitable organizations used to send shoes up, all assorted stuff.

Q. So as far as you recollected, would you repeat that again a 1950 style what?

A. A shoe with a high heel, not a high heel you wear stiletto high heel but it was, I don't know, a shoe.

Q. A hard shoe.

A. A hard shoe, black shoe, brown, whatever.

Q. Leather type of shoe.

A. Leather type shoe, yes.

Q. Now this was in the summer time you told us, right?

A. Yes it was.

Q. And in the summer time, the boys wore running shoes as part of their clothing.

A. Yes it was.

Q. And is it possible sir you were hit with a running shoe and not a hard shoe?

A. Well that could have been possible. I mean, when I



was being hit with the shoe, I wasn't looking at it.

Q. Well why did you tell the members of this jury just now that it was a hard type leather shoe and now you're telling us when I put it to you, well it might have been a running shoe, I don't really remember?

A. Well the reason why I say, sorry...

THE COURT: Just a minute now.

MR. CHARLEBOIS: Yes.

THE COURT: We talked about possible, possibilities, practically anything is possible.

MR. CHARLEBOIS: Okay.

THE COURT: If you want to speak about probabilities...

MR. CHARLEBOIS: I'll rephrase it.

THE COURT: But possibilities carries very little weight.

MR. CHARLEBOIS: Thank you.

MR. CHARLEBOIS: Q. Is it now your evidence Mr. Tourville that you may have been hit with a running shoe?

A. I may have, yes.

Q. Any bleeding or lasting discomfort as a result of being hit with the shoe?

A. Physically no.

Q. I'd now like to discuss with you the event in the recreation room, when you were in the corner and according to your evidence, you were slapped with the hands of mud or soil or whatever. That's what I want you to focus on now please. Do you recall that this one took place in the summer time when there was a more restricted group of boys or whether it took place when there was a much larger group of boys in the room?

A. To the best of my recollection, it took place in the fall or it could have been the spring but all the boys were there at the time.

Q. Okay so we're talking a situation where in this rec room, there might have been as many as 100 boys, large group.

A. Yes.

5 Q. And I believe you told us that you had been compelled to stand in the corner, right?

A. Yes.

Q. While the other boys were playing.

A. Yes.

10 Q. And Mr. Tourville, would you have been made to stand in the corner because you had done something wrong or infringed some rule?

A. I could have infringed on one of Ann's rules, yes.

Q. And you wouldn't remember what if anything you did that day to be compelled to stand in the corner.

15 A. No.

Q. I believe you've told us she was working on plants when all of a sudden, your evidence is that you were struck from behind with both of her hands over your eyes, is that right?

20 A. Yes.

Q. And that her hands were full of either mud or soil at the time.

A. Yes.

25 Q. Now when you were standing in the corner, were you facing the wall or were you facing the boys?

A. I was facing the corner.

Q. And if you were facing the corner, how did you know that Ann Wesley was working on plants?

30 A. Well before I went to the corner, she was working behind, I had to go by that table where she was working and she had told me to go stand in the corner. She was working on the plants at the time and she was directly behind me.

Q. Is it possible that, just prior to being struck with her hands, is it possible that you broke another rule such as talking to one of the boys playing in the rec room, something like that?

A. While I was standing in the corner.

Q. Yes.

A. No it's not possible.

Q. How can you remember that so precisely 40 years later?

A. Again, these traumatic events that I suffered at her hands seem to stick out more than anything else and I just remember.

Q. So let me get this straight, you're absolutely sure that you didn't break any rule to warrant being struck while you were in the corner, right?

A. Positive.

Q. Yet you don't remember what rule you would've broken to warrant being sent in the corner in the first place.

A. There were so many rules that you could get punished for that it would be impossible to remember.

Q. This was a slap that you received, with the hands full of mud or soil.

A. It was a slap with both hands, yes.

Q. You didn't fall down.

A. I don't recollect falling down.

Q. No lasting injury.

A. Physically no.

Q. Now the last incident or the other incident that you spoke of to the jury yesterday was the incident where you had sprained your ankle and then you went on a...Ann decided that the boys were going to go out for a walk around the graveyard after supper, right?

A. Yes.

Q. And that then, according to your evidence, you were made to jump. Was it over a ditch or something?

5 A. On the way back from the graveyard, there was a ditch running parallel to the trail or road I guess you would call it.

Q. All right.

A. And out of the blue, Anne Wesley told all of us to jump over the ditch.

10 Q. And did you consider that to be a form of mistreatment Mr. Tourville at the hands of Anne Wesley?

A. Well that was just another one of her torments I guess.

Q. Well how deep was this ditch?

15 A. The ditch, it was to the best of my recollection it would have been maybe three feet, two feet wide and maybe deep, two feet at the most.

Q. I'm not quite sure, what was tormenting about being asked to jump through this ditch?

20 A. Well you're limping with a sprained ankle... We walked by there many, many times. We were never ever asked to jump over this stupid ditch but the one time I had a slight sprained ankle, we were told to jump over the ditch.

25 Q. Well how could Anne Wesley possibly have known that you had a sprained ankle, had you told her?

A. Well she was walking with us, it was very obvious to anybody that there's one person walking with a slight limp.

Q. And again, this is something that would have been obvious not only to Anne but to the other boys who were walking with you.

30 A. Well yes.

Q. Did you lean on any boy for support?

A. No.

Q. So can we agree Mr. Tourville that this particular event, the one you've just described about you have a sprained ankle, you go for a walk and you and the other boys are made to jump over a ditch, you considered that to be a form of mistreatment while you were at Ste-Anne's?

A. Yes.

Q. Again, back to the preliminary hearing and the questions that were put to you by the Crown and put to you by me, page 180 Your Honour and specifically lines three to seven.

THE COURT: Page 180.

MR. CHARLEBOIS: Yes Your Honour.

THE COURT: Line.

MR. CHARLEBOIS: Three to about seven, basically the first two questions, first two answers. Or maybe it's premature, maybe I could preface it by something else and then perhaps Your Honour will...

THE COURT: Do you have anything to say about that?

MS. FULLER: Well as Mr. Charlebois knows, this information did form, the incident we're referring to did form part of the statement of the witness. The Crown did not address it.

MR. CHARLEBOIS: Okay, I think, if we are going to get into that, I think the jury should be excluded Your Honour.

...JURY RETIRES

THE COURT: A couple of minutes.

MR. CHARLEBOIS: I'd ask that the witness be excluded as well. I'll make my objection and then I'll make my comments.

THE COURT: Make what objection?

MR. CHARLEBOIS: I feel it's very improper of Ms.

5 Fuller to have left the jury with the impression that it's in his statement. I'm not cross-examining him on his statement, I'm cross-examining him on evidence he gave at the preliminary hearing and to do it in front of a jury, to suggest, well maybe he didn't say it at the preliminary but he said it on another occasion in a statement, in my submission in front of a jury is terribly improper.

10 THE COURT: What do you suggest I do?

MR. CHARLEBOIS: I don't want to give it more weight than it should have and if we drag it to death in front of the jury, it will add more weight. I might perhaps...

15 THE COURT: Is that a do nothing?

MR. CHARLEBOIS: I'm trying to think about it.

THE COURT: Well think about it and tell me if you want to do anything and I will tell you whether I will do it.

20 MR. CHARLEBOIS: Okay.

MS. FULLER: I'd like to make submissions before.

MR. CHARLEBOIS: They've been pretty mature...I could see why Your Honour would be confused. Basically what I should have asked the witness is, at the preliminary hearing...

25 THE COURT: Okay, are we through with what I should say to the jury now and are we into the question. Let's do things in an orderly fashion.

30 MR. CHARLEBOIS: Okay, that's...In terms of what or what I should invite Your Honour to do is perhaps to suggest to Ms. Fuller...If you find first of all that there is merit in what I am objecting to, to suggest to Ms. Fuller that in connection with the next witnesses,

5 if I bring out something that was said now, that wasn't said on the prior occasion, not to pop up and say, well, they said it in the statement or something like that.

THE COURT: I asked you whether you want me to say anything to the jury.

MR. CHARLEBOIS: I'll answer that. I would then ask Your Honour to instruct the jury to disregard that last comment by the Crown.

10 THE COURT: Even though you started by saying let's not blow this out of proportion. I can also tell you that I did not read anything...It may have been improper but I did not read anything into it, it did not have any impact on me. I think if I comment to the jury, I will simply confuse them.

15 MR. CHARLEBOIS: Okay, let's leave it alone.

THE COURT: Okay, secondly.

20 MR. CHARLEBOIS: The point I want to get out of Mr. Tourville is that at the preliminary hearing, he mentioned the coughing incident, the soup ladle incident and the shoe incident and he didn't mention anything about the ditch incident at all, which then brings me to the end of my cross-examination where I put to him towards the end, at page 180, 'Is that it in terms of the mistreatment you remember from the time you were at Ste-Anne's Mr. Tourville. Yes, that's it, we've covered it all. Answer: Yes.' Well then, I'd want him to adopt those questions and answers and say well, why didn't you tell us about it at the preliminary hearing, when I specifically asked you if there was anything else?

25  
30 THE COURT: Okay, I hear you okay. Number one:

5  
'Question: Is that in terms of the mistreatment that you remember from the time you were at Ste-Anne's Mr. Tourville? Answer: Yes it is.' For anybody to comprehend that question, we would have to hear all of the evidence that Mr. Tourville gave in connection to the mistreatment, then ascertain that he did not mention the ditch and then put it to him. Can we do it in a more simple fashion?

10  
MR. CHARLEBOIS: Maybe by suggesting to the witness, did you mention the ditch incident at the preliminary. I expect him to say no. And then ask him why he didn't mention it at the preliminary.

THE COURT: Well no, I do not see anything wrong with that, do you Ms. Fuller?

15  
MS. FULLER: Well Your Honour...

THE COURT: Did you mention anything at the preliminary about the ditch?

20  
MS. FULLER: Your Honour, my only problem is that the inference to be drawn from this is that this is something that's been recently fabricated.

THE COURT: I do not think that that is a question at all, I think it is a question of memory, credibility, whatever else.

25  
MS. FULLER: Well I think it's grossly unfair to a witness. A witness gets in the box Your Honour to answer questions. That's the only...

THE COURT: You do not have to yell at me, tell me this, how do you think it should be done?

30  
MS. FULLER: Well I guess my submission is that it shouldn't be done, that if...

THE COURT: Oh no.

MS. FULLER: I think it's unfair to a witness or unfair



to a witness to question him about not referring to an incident that the Crown didn't ask him about.

5 THE COURT: You think it is not fair for the defence to say, well, listen, you are calling this a mistreatment but you did not mention that at the preliminary inquiry, why, the Crown did not ask me.

10 MS. FULLER: That is if a witness thinks in those terms. To say at the end of one incident, is that it in terms of mistreatment, Mr. Tourville could undoubtedly...

THE COURT: Did you lead that evidence?

15 MS. FULLER: I did not lead that evidence and I did not deliberately. I had a very fragile witness at the preliminary hearing. That was as much as that witness could take and I deliberately withdrew and limited myself to the most serious incidents. Mr. Tourville could talk from now until tomorrow about incidents of maltreatment.

20 THE COURT: Well okay, I think it is fair that the defence ascertain why it perceived mistreatment, was not mentioned at the preliminary inquiry. The answer could be, I wasn't asked, I didn't think about it, I didn't remember, whatever it is, you are entitled to an answer to that and I do not think that I would have to read through the entire preliminary inquiry to ascertain those matters that he did mention and by the process of elimination arrived at what he not mention. Just put it to him simply. I do not see anything wrong with that.

25  
30 MS. FULLER: Thank you Your Honour, I will however be alluding to, referring him to his statement that he gave to the police so that there is no

misunderstanding.

THE COURT: I do not know anything about a statement to the police.

5 MS. FULLER: Well the jury should know that if he didn't say to the preliminary hearing, it's not because it didn't exist, or that he wasn't aware of it, it is in his statement and the jury should be made aware of the fact that though he didn't mention it in his preliminary hearing...

10 THE COURT: I think in reply, you are entitled to that.

MS. FULLER: Thank you.

THE COURT: I do not think you would even have to produce the statement, do you think because you have seen it.

15 MR. CHARLEBOIS: I've seen the statement.

THE COURT: Okay, did he mention it in the statement?

MR. CHARLEBOIS: I believe he did, bear with me for a second.

MS. FULLER: 'The time I hurt my ankle...'

20 THE COURT: I accepted it, it is there. The question is, should you be entitled to refer to it. I think you should if it is brought up now. Why didn't you bring it up at the prelim? Whatever his answer is, I think that Ms. Fuller can get up and say, did you mention it to the police before the prelim?

25 MR. CHARLEBOIS: Well I may even elicit that information from the witness as part of my cross-examination because there's slight discrepancies between what is said in the statement and what he said in court.

30 THE COURT: Well if you are going to cross-examine on a previous statement given to the police, you are

absolutely entitled.

MR. CHARLEBOIS: Now because of the, I'm going to be some time yet with this witness and I'm mindful of Ms. Fuller's problem.

THE COURT: Oh you are, are you?

MR. CHARLEBOIS: I mean, I am staying in Cochrane for the weekend but in fairness to my friend.

THE COURT: What in fairness to your friend, what are you telling me? Do not talk to me in obliques like that.

MR. CHARLEBOIS: I think the Crown has a plane to catch at two o'clock and I think we were supposed to stop at twelve thirty and we lost time due to the...

THE COURT: That...

MR. CHARLEBOIS: Problems with the machine.

THE COURT: That was the understanding, the Crown has an important meeting, we all thought that it would be good to stop at twelve thirty on Friday in any event to give the jury a bit of a break and you are telling me that you are going to go beyond...What time does your flight leave Ms. Fuller?

MS. FULLER: I think it's two ten.

THE COURT: You had better get the O.P.P. to take you up.

MR. CHARLEBOIS: It is twelve twenty eight by the clock on the wall there and I don't think I can complete my cross-examination in the next two minutes.

THE COURT: That tells me nothing, how much time will you take?

MR. CHARLEBOIS: With this witness, I expect probably another 30 to 40 minutes.

MS. FULLER: And I will have re-examination.

5 THE COURT: Are you content to continue your cross-examination on Monday morning and we would lead it off with this little problem about not mentioning the ditch at the preliminary inquiry but mentioning the ditch in the police statement?

MR. CHARLEBOIS: Yes, I'd prefer not to split up my cross but also understand the specific problems we have today and I don't have a problem...

10 THE COURT: I am not asking you to do it now, I am just asking you...

MR. CHARLEBOIS: No, I am content to cross-examine on Monday Your Honour, finish the cross on Monday.

15 THE COURT: Very well, bring the jury in. Members of the jury, there are a few things we have to iron out in relation to the evidence. We could do it now but it would take us way beyond one o'clock. We all thought, counsel thought, I thought it would be best to terminate the cross-examination Monday morning so you would be free to go now but please do not forget my initial admonitions, do not talk to anyone about this case. I am sure you all experienced what I warned you about, not warn you but told you what would happen. Naturally, your family wants to know what is going on and maybe some of your family really want to know what is going on, it would not be proper for you to discuss with them. If you want to discuss the trial with them after, not your deliberations, discuss the trial with them after but for now, I would ask you not to. Thank you very much, ten o'clock Monday morning.

25 ...JURY RETIRES

30 THE COURT: Sir, you are not entitled and I order you not to discuss your evidence with anyone and even with

Crown counsel, you cannot discuss it with anyone when you are in the middle of cross-examination, okay.

A. Yes Your Honour.

5 THE COURT: Thank you very much.

A D J O U R N E D

Monday, May 3, 1999

10 U P O N R E S U M I N G :

THE COURT: Perhaps before we bring them in, I think we left off in relation to the fact that he jumped over, the witness said he jumped over the ditch. It was not brought up in preliminary and I ruled that fine, you could bring it in because the statement was given to the police and I think your last statement was, 'Well I may even elicit that information from the witness as part of my cross-examination because there's slight discrepancies between what is said in the statement and what he said in court.' That was it.

15 MR. CHARLEBOIS: Actually, in fairness to the witness, I had the occasion on the weekend to review what was said on Friday from the witness box and what was said in the statement and in fact, from what I could see, no discrepancies.

20 MR. CHARLEBOIS: Actually, in fairness to the witness, I had the occasion on the weekend to review what was said on Friday from the witness box and what was said in the statement and in fact, from what I could see, no discrepancies.

25 THE COURT: Let us bring the jury in then. Mr. Charlebois.

...JURY ENTERS 10:00 a.m.

CONTINUATION OF CROSS-EXAMINATION BY MR. CHARLEBOIS:

30 MR. CHARLEBOIS: Q. When we stopped on Friday Mr. Tourville, we had started briefly to talk about the ditch incident which you had told the jury about. Now from what I understand from your evidence, you had hurt yourself while

playing earlier that day, is that right?

A. Yes that's right.

Q. Sister Anne had not had anything to do with that injury.

A. No she did not.

Q. Now when the decision was made to take you and the other boys for a walk, I gather you had not told Sister Anne that you had hurt yourself earlier that day, is that right?

A. No I did not, no.

Q. Now you mentioned to the jury that you had a slight limp as you were walking.

A. Yes.

Q. Now I gather you didn't have to hold on to any other boy for support.

A. No.

Q. And you didn't have to use a stick or anything or a branch to walk.

A. No.

Q. So can we agree it would not have been readily apparent that you had this slight limp?

A. I think it would have been apparent.

Q. Were you able to keep up with the other boys as you were walking?

A. Yes but it was very hard.

Q. Now I tempted to take very careful notes on Friday when you were testifying about that incident and at one point in your evidence, when the Crown was asking you questions, you mentioned that you had a slight limp as you were walking and then, further down in your evidence, you added, "I probably would've had a slight limp". Now, that seems to suggests to me that you're not really sure whether you had a limp or whether the limp was apparent. Do you remember anything about that or

anything more about that?

A. No I don't, no.

Q. Is it possible then Mr. Tourville that either you were not limping prior to jumping the ditch or that whatever limp you may have had was so slight that it was not apparent?

A. I remember being in some pain and going on this walk but as far, if I had an exaggerated limp or a slight limp or whatever, I don't, I can't recall. All I can recall is I felt some discomfort while I was walking.

Q. Okay, did you have a chance at any point Mr. Tourville to either re-read or review the evidence that you had given at the preliminary inquiry last May in Moosonee?

A. Last week some time.

Q. A transcript was made available to you and you got a chance to read it.

A. Yes I did.

Q. Okay. Without getting into a complete review of the preliminary hearing, would you agree with my suggestion that when you testified at the preliminary hearing, you talked about the coughing incident in the dorm, do you remember that?

A. Yes.

Q. And you talked about the soup ladle incident in the, not in the kitchen but in the dining room, right?

A. Um-hum.

Q. And you talked about the shoe incident when you were summoned back in after talking to the priest, right?

A. Yes.

Q. Now do you agree that at the preliminary hearing, you never mentioned either directly or indirectly anything about the ditch incident?

A. Yes I agree.

Q. And at the preliminary hearing, towards the end of

the questions that I had put to you after I had cross-examined you, do you remember me asking you the following questions and you giving the following answers? And I draw Your Honour's attention to page 180 Your Honour and I want to make it very clear to the court that I'm not, my purpose here in putting the exchange to Mr. Tourville is only for the purpose of refreshing his memory on that point before I move on to other questions.

THE COURT: Which question?

MR. CHARLEBOIS: Line three to about seven and before Your Honour rules, I submit that I have situated Mr. Tourville now in obtaining from him today that he remembers at the preliminary hearing talking about coughing, soup ladle and shoe and admits that he did not mention ditch incident at the preliminary. That is why I want to put that passage to the witness.

THE COURT: Go ahead.

MR. CHARLEBOIS: Q. Thank you. Towards the end of my cross-examination Mr. Tourville, actually just before I sat down, do you recall my putting the following questions to you and you providing the following answers? Page 180, me, "Is that it in terms of the mistreatment that you remember from the time you were at Ste-Anne's Mr. Tourville? Answer: Yes, that's it. Question from me: We've covered it all. Your answer: Yes." Now do you remember that exchange between the two of us?

A. Vaguely but yeah, I remember.

Q. Would you explain to us Mr. Tourville why you didn't mention anything about the ditch incident directly or indirectly at the preliminary hearing?

A. Well you must remember that all this evidence I'm giving or trying to give goes back 40 years, sometimes more than 40 years and I can't remember everything. These are



things I've tried to forget about over 40 years. These aren't very happy moments in my life and I spent 40 years trying to forget about them and there are many other incidents, stuff I never mentioned that happened to me because I just thought they were too minor, that after the preliminary trial, I started remembering and stuff but I was in no way trying to mislead the court or whatever. They're just things I couldn't remember after 40 years. I've tried to forget after 40 years.

Q. Fair enough and in fairness to you, I understand that you had, you had given a statement to the police approximately 1993.

A. It would have been about there, yes.

Q. And in fairness to you, I believe you had mentioned the ditch incident in your statement to the police.

A. Could well have been, I don't know.

Q. You didn't re-read your statement.

A. From the police.

Q. Yeah.

A. I don't think so, no.

Q. Okay now would it be your opinion Mr. Tourville that you got into trouble at that school, trouble as in breaking rules or trouble, would you say that you got into trouble at that school more often than some of the other boys?

A. Can you repeat that again please?

Q. Sure, would you say or would you agree that while you were at that school, you got into trouble or had a tendency for getting into trouble more than other boys?

A. No.

Q. Okay, did you have a tendency for getting caught more often than other boys, caught at breaking rules for instance, caught at not listening?

A. I don't think so, no.

Q. So would your evidence today be that you were just a normal kid and didn't get into trouble any more than the other kids there, at the same time you were?

5 A. Well when I think back on it now, I like to think of myself as a normal kid. I was an altar boy, choir boy, whatever. I wasn't a trouble maker if that's what you're insinuating.

Q. So your evidence is that you were not a trouble maker.

10 A. No, I wasn't a trouble maker.

Q. And that you didn't get into trouble more than the other boys.

A. No.

15 MR. CHARLEBOIS: If I draw Your Honour's attention to page 173 of the preliminary hearing.

THE COURT: Question.

MR. CHARLEBOIS: We'll start with line 11 and down to line 24 or 25 please.

THE COURT: Very well.

20 MR. CHARLEBOIS: Q. Mr. Tourville, again drawing from your evidence at the preliminary hearing, do you recall the following exchange between you and I in cross-examination? You start reading at line 11, my "Question: Now the other incidents that you told the Crown about, the soup ladle incident and then  
25 the one where you're in the rec room in the corner, as you were explaining to the Crown, basically your life at Ste-Anne's, did you seem to get into trouble more often than the other boys? Were you a boisterous kid in those days? Your answer: Well, not a boisterous kid, no, just a regular kid. My question:  
30 Well did you seem to get into trouble more often than the other kids? Your answer: Yes I did. My question: Just bad luck or you'd get caught more often than the others. Your answer:

Probably more bad luck I guess." Now do you recall those questions that I put to you and those answers that you gave?

A. Yes I do.

Q. Your recollection of the preliminary hearing, about you getting into trouble more often than the other kids seems to be different than the evidence you just gave this jury on that point, is it not?

A. It depends what you're talking about here, like trouble. You're asking me if...I don't understand this part. I'm having trouble, no pun intended. You're asking me if I got into trouble, if I misbehaved and so on and so on, or I got into trouble with Anne for no reason whatsoever.

Q. Well Mr. Tourville, before we got...I'm sorry Your Honour.

THE COURT: I did not know that the witness had finished his answer.

MR. CHARLEBOIS: Oh I'm sorry.

A. There were so many rules at Ste-Anne's that...Rules that we didn't know about, that were, whatever Anne's rules were and we always seemed to be, I was especially constantly picked on. Now if you're trying to paint me into being some kind of boisterous trouble making kid, I was not.

Q. Are you finished with your answer Mr. Tourville?

A. Yes I am.

Q. What I want to know Mr. Tourville is why today, you told the jury, I didn't get into trouble any more often than the other kids, I didn't get caught any more often than the other kids and yet when I put the evidence of the preliminary hearing to you, at the preliminary hearing, it was your evidence that you seemed to get into trouble more often than the other kids. That's a different answer is it not?

A. No it's not.

Q. Well maybe you can explain that because it sure seems different to me.

A. If we go back to what I'm trying to explain here as far as getting into trouble, I can do anything to get into trouble. I could look sideways, I could...There were so many rules that there was no way you could stay out of trouble but it did not make me a bad kid or whatever.

Q. Can we agree Mr....Were you finished your answer sir?

A. Yes.

Q. Can we agree Mr. Tourville that on the point or the issue of getting into trouble more often than the other boys, on the very same questions, you gave a different answer at the preliminary hearing and the answer you have given today in court before this jury?

A. Well it was over 40 years ago so.

Q. That's not the question sir. Do you agree that on the one point that I've just put to you about getting into trouble more often than the other kids, that you gave a different answer at the preliminary hearing than you have given the members of the jury?

A. Well yes.

Q. And you were under oath both today and at the preliminary hearing, is that correct?

A. Yes.

THE COURT: In fairness though and you did read the question to him, "Were you a boisterous kid in those days? Answer: Well not a boisterous kid, no, just a regular kid."

MR. CHARLEBOIS: I believe I read that part...

Q. He also said that...

MR. CHARLEBOIS: ...to the witness Your Honour.

THE COURT: Yes, you did and I believe that it's after that that I put suggestions to the witness at the preliminary hearing. I attempted to read the entire exchange in fairness to the witness Your Honour.

5

MR. CHARLEBOIS: Q. Now you also told the Crown and the members of the jury on Friday that a number of years ago, you wound up purchasing a property from the diocese, a property where Anne Wesley then had an apartment, is that right?

A. Yes I did.

10

Q. So that when you acquired this property, she was already in residence there.

A. Yes she was.

Q. And when you purchased the property from the diocese, was it a condition that you keep her on as a tenant or was it left to your discretion?

15

A. It was left to my discretion.

Q. And I understand she continues to reside in that building to this day and you still own the building, is that right?

20

A. Yes.

Q. Now I want to go back Mr. Tourville to the group of boys that you belonged to at the school so many years ago. Roughly how many boys were there at any given time?

A. A hundred.

25

Q. And these boys would range from what, five or six up to 16, 17, 18?

A. Yeah.

Q. And we agree that some, maybe even many of the older boys, the 15, 16, 17, 18 year olds were taller, heavier and stronger than Anne Wesley.

30

A. Yes.

Q. And would it be your evidence that when the

boys...I think we've already established, these were all boys, it wasn't a mixed group right?

A. Yeah, all boys.

5 Q. And can we agree that when the boys were not in school, being looked after by the teachers, that Anne Wesley was basically the only person responsible for looking after and caring for this group of 100 boys?

A. Looking after, yes.

10 Q. And she would look after them at night, she'd look after them in the morning, at lunch time, play time in the rec room or outside after school, supper time and after supper, is that right?

A. Yes.

15 Q. And on week-ends when there was no school, I gather school just went there from Monday to Friday.

A. Yes.

Q. And when there was no school on Saturday and Sunday, she was basically looking after the boys 24 hours a day, Saturday and Sunday, is that fair?

20 A. Yes it is.

Q. And she was doing this alone.

A. Yes I guess.

25 Q. And can we agree that she'd basically be looking after these boys from about six in the morning till about nine thirty at night when it was lights out?

A. Again, yes except for during classes.

Q. Do you agree Mr. Tourville, today, from your perspective as an adult, that that was a very, very large and onerous responsibility for one person?

30 A. Yes I do.

Q. And would you agree that again, from your perspective as an adult, that the only way one person could

keep order and discipline over a group of 100 boys ranging in ages from about five or six to 18 was by being tough?

5 MS. FULLER: Objection Your Honour, I don't think that this witness can give opinion evidence about what methods would work in keeping order and discipline in a group. I don't know that he has the expertise to do that unless he wants to extrapolate from comparisons of Anna Wesley with other people who were looking after the children at the school.

10 MR. CHARLEBOIS: I submit that it is a proper question Your Honour because Mr. Tourville was present at the school at the time and can...It's well settled law that lay witnesses who are not experts are able to provide opinion evidence. I mean, civilians provide evidence about, opinion evidence about speed, about impairment any day, every day in trials and then it's a question that goes to weight. I submit that it's a proper question because it's not phrased in the abstract but it is put to a witness who was there during those years.

15 THE COURT: Okay, you can answer that.

20 MR. CHARLEBOIS: Q. Would you like me to repeat the question Mr. Tourville?

A. Yes please.

25 Q. Would you agree that the only way one person, in this case Anna Wesley, could maintain order and discipline over a group of 100 boys ranging in age from five or six to up to 18 was by being tough?

30 A. I don't think I'm capable of answering that question. I have nothing to compare it with as Anne was my only supervisor and the only life I knew would be in the way that the system was run.

Q. So your evidence would be that you're unable to answer the question.

A. Not capable.

5 Q. Not capable, okay.

MR. CHARLEBOIS: Your Honour, could I draw your attention please to page 171 of the transcript, lines 17 to 21?

THE COURT: Okay.

10 MR. CHARLEBOIS: Q. Mr. Tourville, again harking back to the evidence you gave at the preliminary inquiry...

A. Um-hum.

Q. Do you recall my putting the following question to you and you giving the following answer? Page 171, line 17, "My question: Do you agree with me that the only way any adult  
15 could maintain order and discipline with a group of 100 boys ranging with that age group, the only way a single adult, whoever he or she may be could maintain order and discipline would be by being tough? Your answer: Yes." Do you recall my putting that question to you and you giving that answer?

20 A. Yes I do.

Q. So at the preliminary inquiry Mr. Tourville, would it be fair to say that you were capable of answering that question and that you had answered it in the affirmative?

A. Well I was wrong.

25 Q. So that answer given under oath at the preliminary inquiry was wrong, is that your evidence?

A. That was the wrong answer, yes.

Q. Any other wrong answers at the preliminary hearing Mr. Tourville?

30 THE COURT: How can he answer that question?

MR. CHARLEBOIS: Thank you, no further questions.

THE COURT: Re-examination.



RE-EXAMINATION BY MS. FULLER:

Q. Mr. Tourville, you were asked about the incident with the...Or your evidence was that you were struck with a shoe by Anna Wesley after being brought in from outside and you were speaking to the priest, do you recall giving that evidence?

A. Yes I do.

Q. And in-chief, your evidence was that you thought it was a hard shoe, like a leather soled shoe and just let me put the question to you and it was suggested to you in cross-examination that perhaps it was a running shoe. Now my question arising from that is, can you tell me Mr. Tourville and we're talking about running shoes in those days, what type of soles they had in terms of whether they were relatively soft or hard or what they were made of?

A. They were hard.

Q. Running shoes are made out of what?

A. Running shoes.

Q. The soles of running shoes.

A. The soles, yeah.

Q. Were made out of what?

A. I don't know, same type as you have today I suppose.

Q. And a shoe that was a leather soles shoe, with a leather feel, would the sole of that shoe be harder or softer if struck by, in your view?

A. Well it would be harder.

Q. And I understand that you don't have a visual memory of the shoe that you were actually hit with.

A. No I don't, no.

Q. But do you have a memory of how it felt?

A. It was very painful.

Q. And can you tell me whether the sensation of being hit was more consistent with being hit by a running shoe or hit by a leather soled shoe like an oxford shoe or something?

5 A. Oh like I said, it was very painful and seeing that room, it was just full of leather shoes, I just assumed it was a leather shoe.

Q. All right. You were asked about the incident in the playroom where you were being forced to stand in the corner for something and your evidence was that you were struck across  
10 the eyes by Anna Wesley, who's hands were covered in mud or dirt or whatever she was working in. It was suggested to you that maybe that was because while you were standing in that corner being punished, you were talking to one of the other children in the room. My question arising from that is, from  
15 your position in the corner, where was Anna Wesley?

A. She was directly behind me.

Q. And where were the children in relation to you?

A. They would've been maybe 20 or 30 feet away.

Q. Behind Anna Wesley then.

20 A. Yeah and more to the side.

Q. And how loudly would you have had to talk in order to carry on a conversation with another child in the room while you were being punished in the corner?

A. I would have to be yelling.

25 Q. Is that something you would have ever thought of doing in those circumstances?

A. No you wouldn't dare.

Q. You were asked with respect to an incident that you shared with the court when you sprained your ankle and were  
30 obliged to go on a walk and how the injury was aggravated and it was...Well the first thing we should establish is, regardless of what you said at the preliminary, did you give a

statement to the police, now several years before the preliminary took place, when the investigation was launched?

A. Yes I did.

Q. Would that be in 1993?

A. Yes.

MR. CHARLEBOIS: Your Honour, I don't want to curtail the Crown's re-examination of the witness but how is this re-examination, when in my cross-examination and in fairness to the witness, I elicited a statement in '93 and I elicited that the fact the ditch incident had been mentioned in the statement and not at the preliminary inquiry.

THE COURT: I did not hear you.

MR. CHARLEBOIS: Oh sorry, start over.

THE COURT: No, just the end of it.

MR. CHARLEBOIS: Just the end.

THE COURT: The fact that you mentioned it.

MR. CHARLEBOIS: In other words...

THE COURT: Should be the end of it.

MR. CHARLEBOIS: My submission yes because I mentioned it to the witness in order to be fair to the witness and I elicited in front of the jury that he had mentioned it in the statement in '93 and didn't mention it at the preliminary hearing and I asked him why and he gave an answer.

THE COURT: That is right and I think that whatever evidence there is to show that he did mention it to the police should be put in in all fairness to the witness.

MS. FULLER: Particularly Your Honour, since the witness indicated he couldn't recall what he said in the statement in 1993, that was his evidence. I'd like to show you my copy of your statement and I'd like you

5 to look at it to see if it looks like your statement first of all and then, to review the part of it that I have circled in red to see whether or not that refreshes your memory as to whether or not that incident was included in what you told the police? Does that refresh your memory?

A. Yes it does.

10 Q. And was that incident, one of the incidents that you told the police about when they first came to investigate this matter?

A. Yes I did tell them that.

15 Q. Mr. Tourville, do you know exactly what is contained in the indictment before the court?

A. No I don't.

20 Q. Do you know exactly what elements has to prove?

MR. CHARLEBOIS: Your Honour, unless this witness is a lawyer, I don't think that's a proper question.

25 THE COURT: Well I would think, unless you want to convince me of that, you are not clarifying any of the evidence that was given in-chief or in cross and of course, re-examination is simply that.

MS. FULLER: Your Honour, the suggestion they made to the witness is that somehow he should have said things that were in his statement, that were not brought out at the preliminary hearing and so it is relevant in my respectful submission to adduce from this witness what his, how much responsibility he has for what comes out in evidence that goes before the court.

R U L I N G

30 BOISSONNEAULT, R. (Orally):

That question was put forth by the defence. I do not think it is any fairer for the prosecution to ask this

witness that type of question as it was for the defence, what did you say at the preliminary?

MS. FULLER: I'll put it another way Your Honour.

THE COURT: Pardon me?

MS. FULLER: I'll got about this another way then.

THE COURT: Well go ahead and try, I do not know what you are trying to accomplish though.

MS. FULLER: Q. Were you asked about this incident at the preliminary hearing?

MR. CHARLEBOIS: Which incident?

MS. FULLER: Q. The incident involving the sprained ankle.

THE COURT: That is fair.

A. No I wasn't.

MS. FULLER: Q. Do you understand your role to be anything other than to respond to questions put to you in the witness box?

A. No.

MR. CHARLEBOIS: How is that coming out of cross-examination?

THE COURT: That does not clarify anything. Let's not get into semantics like this, let's look at hard evidence.

MS. FULLER: Q. At the preliminary hearing, you advised the court when asked, "Yes, it seemed I got into a lot more trouble as a boy, then other boys." Can you tell me Mr. Tourville, from a child's point of view, what it seemed to you at the time?

A. Well back then, at the time, I was felt that I was being picked on. As an adult, looking back, do you feel you were treated any differently than the other boys?

A. No, as an adult looking back, I know I was treated

very differently than the other boys.

Q. You know, I'm sorry.

A. I was treated very differently than the other boys.

Q. In what way?

A. At being subjected to endless criticisms, endless punishments, some stricter than others.

Q. It was brought out by Mr. Charlebois that although you were not obliged to keep the accused a tenant, you have not given her notice.

A. No I haven't.

Q. And why is that Mr. Tourville?

A. I'm not a vengeful person, I try and get along with everybody.

Q. All right, now the school as I understand it ran from grade one to grade eight. Did everybody go as far as grade eight and get through grade eight?

A. Not too often, no.

Q. Pardon.

A. Not that often.

Q. All right and would most of the students, the vast majority of the students be under 14 or over 14?

THE COURT: Okay, just a minute. I feel I must interject. I do not know whether you are conducting a new examination in-chief. I see no clarification of anything. That evidence was not brought out specifically like that. The purpose of re-examination is to clarify some of the evidence as you did a moment ago about the apartment. I was going to ask that question but not to get into an examination in-chief all over again.

MS. FULLER: Perhaps Your Honour, I should have brought to the witness's attention the reference I was alluding

to and that was, the suggestion by Mr. Charlebois that many of the boys there were 15, 16, 17 and then it became 18.

5 THE COURT: What difference does it make?

MS. FULLER: The suggestion made by Mr. Charlebois, that all of these boys who were bigger and stronger than Ms. Wesley.

10 MR. CHARLEBOIS: That wasn't the suggestion that I made. The suggestion that I made is that some of them were...

15 MS. FULLER: Many is the word used and I think it is important for the jury to hear that we are dealing with a public school and to have that brought out, what the age, the general age or age range of the children would be.

THE COURT: Well maybe that should have been brought out in examination in-chief.

MS. FULLER: Well in the Crown's respectful submission...

20 THE COURT: No I am not going to let you conduct a re-examination that is going to last an hour. I mean it has a very limited purpose and it is a very useful piece of questioning.

25 MS. FULLER: Q. Thank you Your Honour. Mr. Tourville, it was suggested to you in cross-examination and I believe that the context was with respect to the incident of being pulled up the stairs and slapped, hit with a shoe during that incident. It was suggested that you seemed to remember more details now than you did at the preliminary hearing and my question to you is, how difficult or undifficult has it been for you to draw  
30 yourself back to this part of your life and to those memories?

MR. CHARLEBOIS: How does that, how does that relate to

the questions I put to Mr. Tourville either Friday or this morning?

5 THE COURT: It does not, I think he testified time and again that these things happened 40 years ago and memory, being what memory is, he had the problems that he did not testify. It is clear to me but it is just rehashing it and going over it again. That is not the purpose of the re-examination.

10 MS. FULLER: Your Honour, the purpose for re-examination is to clarify matters that came out in cross. In cross, the witness provided answers that were suggested to the jury to be different in details or circumstance than what was provided at the preliminary hearing. The Crown has the right to clarify those matters and if there are areas that can be clarified further than what the witness thinks of initially, then my respectful submission is that I have the right to be able to put that.

R U L I N G

20 BOISSONNEAULT, R. (Orally):

Okay but my ruling is that he has already answered that and please go on to something else.

25 MS. FULLER: Q. To the extent that your memory of the details is better now or clearer than it was at the preliminary hearing, can you explain to the court the dynamics for why that would be the case?

MR. CHARLEBOIS: Objection, no relevance and not brought out in cross-examination.

30 THE COURT: It is exactly the same question in any event. My ruling is no.

MS. FULLER: Thank you Your Honour, no further question.



5 THE COURT: Mr. Tourville, I wish to thank you very much for what probably has been a difficult time for you in the last couple of days, thank you. You may step down now sir. We will take the morning break.

...JURY RETIRES

11:05 a.m.

R E C E S S

10 U P O N R E S U M I N G :

MS. FULLER: Your Honour, before the jury comes in, I would ask that we withdraw the old indictment before the court, that I would like to put before the court.

MR. CHARLEBOIS: No objection here.

THE COURT: Very well.

MS. FULLER: The original indictment.

15 MR. CHARLEBOIS: It's the one on which Your Honour would have made endorsements in December.

THE COURT: You are filing another one.

MS. FULLER: It is before the court.

MR. CHARLEBOIS: It's the one on which the pleas were entered last Monday.

20 THE COURT: Oh okay, fine. We will withdraw the old indictment and the indictment that we have been proceeding on will remain.

MS. FULLER: Thank you Your Honour.

THE COURT: Ms. Fuller.

25 MS. FULLER: I wish we had summer weight robes Your Honour.

THE COURT: I am sorry.

MS. FULLER: I wish we had summer weight robes to wear.

30 THE COURT: I am told that the air conditioner has broken down. That sun will be beating down on us this afternoon.

...JURY ENTERS

MS. FULLER: The next witness is Mr. Daniel Wheesk.

DANIEL WHEESK: SWORN

5

EXAMINATION IN-CHIEF BY MS. FULLER:

Q. Mr. Wheesk, what is your date of birth?

A. December 2, 1952.

Q. And what community were you raised?

A. Fort Albany.

10

Q. And where did you go to school?

A. Fort Albany, Ste-Anne's school.

Q. I understand that your family lived in Fort Albany.

A. Yes.

15

Q. But that during your early years, you were a boarder at the school.

A. Yes.

Q. And that in grade seven and eight, you were a day student living at home in Albany.

A. Yes.

20

Q. And what were the circumstances that changed when you got older that allowed you to be able to live at home?

A. My father stopped trapping.

Q. You started, you became a boarder at Ste-Anne's from what age approximately?

25

A. I was about six.

Q. Now do you remember whether there was a kindergarten back then?

A. I don't think there was a kindergarten.

Q. Not at that time.

A. At that time, no.

30

Q. I understand you started in grade one.

A. Yes.

Q. And that you skipped a grade.

A. I skipped I think three or four, I can't remember which.

Q. You skipped grade three or grade four.

A. Yes.

Q. You skipped one of the grades in primary school in any event.

A. Yes.

Q. I understand you were president of your grade eight class.

A. Yes.

Q. And that you won a public speaking award at the school.

A. Yes.

Q. And that you were a good student.

A. Yes.

Q. All right, would it be fair to say then that you were at the school from September of probably '58 till 1965?

A. What was that again?

Q. Would it be fair to say that you were at the school from September of '58 until probably 1965?

A. Nineteen fifty-nine.

Q. Nineteen fifty-eight until 1965.

A. Oh yes yes, that's right.

Q. While you were a boarder, who looked after the boys in the dormitories?

A. Sister Anne Wesley.

Q. Now do you remember at some time while you were at the school, maybe when you weren't a boarder, somebody else looking after, coming in and looking after the boys?

A. When I was a boarder.

Q. No, at any time while you were there, did somebody

replace Anna Wesley at some time while you were at the school?

A. When Anna Wesley was the supervisor, she was there full time. She never had any replacements.

5 Q. Yes but what I'm saying is that, were you still going to the school when she was ultimately replaced by somebody?

A. Yes I was, yes.

Q. All right and who would that have been?

A. Brother Lauzon.

10 Q. And would that be while you were still a boarder or after during your time as a day student?

A. I was still a boarder then.

Q. And do you know approximately how long he looked after the boys while you were still a boarder?

15 A. About two years I think.

Q. So the only two people that you recall being there to look after the boys were Anna Wesley and Brother Lauzon.

A. Yes.

20 Q. And when you left the school entirely, do you know who was looking after the boys, that is when you left grade eight?

A. When I left grade eight, the Department of Indian Affairs had taken over.

Q. I'm sorry, I can't hear you.

25 A. The Department of Indian Affairs had taken over at the school and they had their own child care workers looking after the students then.

Q. But back in 1965, there were still boarders. Do you know who was looking after the boys in 1965?

A. Not really, no.

30 Q. Now approximately how many of the years that you were there did Anna Wesley look after you?

A. How many boys?

Q. Approximately how many years while you were there did Anna Wesley look after you?

A. About two years I think, two or three I'm not sure.

Q. Grades what?

A. From grades one to maybe about grade four.

Q. Okay and how did you get along with Brother Lauzon?

A. Pretty well, we got along fine.

Q. Were you afraid of him?

A. No, no.

Q. Were you afraid of your teachers?

A. Not really, no.

Q. Were you afraid of Anna Wesley?

A. Yes I was, yes.

Q. Can you give us an example of how afraid you were of Anna Wesley?

MR. CHARLEBOIS: Your Honour, I wonder how relevant that is. I think the witness can tell us about any specific incidents that are related to facts contained or alleged in the indictment. I submit that to allow the witness to give evidence at large like that is not relevant and is not proper.

R U L I N G

BOISSONNEAULT, R. (Orally):

No, I think his frame of mind at the time is relevant. You can pursue that.

MS. FULLER: Q. Thank you Your Honour. Can you think of an incident that illustrates how frighten you were of Anna Wesley?

A. Yes, one time when we were up in the classrooms during the school day.

Q. I'm sorry Daniel but you'll have to really force

yourself to speak a little more loudly.

A. One time we were up in the classrooms during the school day. I think it was in the morning. I had to go to the washroom and the washrooms that we used, we students used were downstairs in the recreation room but I knew that Sister Anna Wesley was there and I didn't want to go down there because I was afraid of her. So I went down the hall way, far end to use the sink that I knew was there. I thought the room was empty. I went in there, I used the sink as a washroom and there was a priest there using the room as an office and I used the sink as a washroom and I had Father Lavoie lift me. He had to lift me so I could use it without making a mess.

Q. So essentially you peed in the sink.

A. Yes I did.

Q. How old would you have been?

A. I must have been six or seven, I'm not too sure.

Q. That washroom in the recreation room, was that the washroom that the children were expected to use?

A. Yes, yes, there were several stalls in there.

Q. All right, I understand you went to high school.

A. Yes I did.

Q. And where would that be?

A. Kirkland Lake.

Q. Can you articulate for the court Daniel, what was it about Anna Wesley that you were afraid of?

A. She had a very nasty temper when provoked and she would slap anybody who was near her when she was in one of her tempers.

MR. CHARLEBOIS: I have another objection to make Your Honour and I would like to explore that objection in the absence of the jury.

...JURY RETIRES

MR. CHARLEBOIS: I don't mind if the witness remains.

THE COURT: Certainly.

MR. CHARLEBOIS: The last answer given by the witness and I confess, I only got part of it but she had a nasty temper when provoked and then he added something else when his voice trailed off and I didn't get it down.

THE COURT: I have a note that she would slap students.

MR. CHARLEBOIS: Okay, that's what I thought I heard but I wasn't entirely sure. The thrust of the objection, Your Honour, is this. I submit that evidence of this nature, I am not imputing motive to the Crown here in eliciting this information. It may just be the way in which Mr. Wheesk testifies. However, if Mr. Wheesk is allowed to testify about 'she had a nasty temper when provoked, would slap people etcetera', it seems to be eliciting unwittingly from the witness evidence of bad character against the accused that is not related to any specific incidents of assault which is the crux of the evidence this witness is expected to give and it may well, it may well taint the character or image or the accused in the eyes of the jury so I would submit, if Your Honour find merit in my objection, that Mr. Wheesk be compelled to only give evidence as to the incidents and not evidence that in my submission, becomes evidence of bad character at large.

MS. FULLER: Your Honour, my submission is that I have been careful, frankly to a fault in not adducing evidence of other instance, if there is nothing that they add to the narrative. However, the feelings and the attitude of the complaint towards Anna Wesley is something that the jury has the right to hear about and

the reasons for those feelings and that evidence is probative. Its prejudicial value, in my respectful submission is extremely minimal.

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The jury has already heard of numerous incidents of an atmosphere in the school of numerous incidents with respect to the students that have affected these children when they were there and in order to get a realistic understanding or appreciation of the environment and also to appreciate the Crown's submission with respect to animus and pattern, this is probative, probative evidence that if we don't hear it, we will leave the jury with an extremely distorted view of these few individuals as somehow being out of, completely out of the norm of what the environment at the school was like.

20  
25  
30  
So in my respectful submission, it's appropriate when the evidence properly is in response to a question and in order to explain that answer, there is reference to other incidents, it's appropriate that, that evidence come out just as in, if we look at the case law with respect to sexual assaults or domestic abuse, especially domestic abuse Your Honour, the court will often hear evidence of the total environment of violence and intimidation that existed in the household, whether it's with respect to the complainant or with respect to other family members in order to understand the narrative, the context, the issue of animus and any defence that is offered, such as a S. 43 defence or an absence of recent complaint inference to be drawn.



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MR. CHARLEBOIS: If I may by way of reply, this is not a case of domestic violence, it's not a case of sexual abuse, these are allegations of assault, assault bodily harm and noxious substance. More importantly, the law is will settled that until the accused, by giving evidence or calling character evidence puts his or her character in issue, the Crown is definitely precluded in its case as presented in-chief, from making any allegations of that character against an accused person and I submit that this is so, in this particular case, and that it's particularly important when the evidence is being led in front of a jury who cannot as easily disabuse its collective mind of the negative impact the evidence of bad character, as can a judge, who can disabuse his or her mind. That is the first point.

20

The second point is that if during the course of this trial, Ms. Wesley should decide to testify in her own defence, how can she make full answer in defence to matters alleged in the abstract as opposed to specific incidents.

R U L I N G

BOISSONNEAULT, R. (Orally):

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In my view, the atmosphere at the school as allegedly created by Anna Wesley provides simply a backdrop to the specific allegations contained in the indictment. Now I would not want Anna Wesley to be judged by the atmosphere created so the Crown will have to be careful in that area but I think that it does have probative value to lead up to the specific allegations but again, I think the Crown should be careful.

...JURY ENTERS

10:45 a.m.

MS. FULLER: Thank you Your Honour, I've been trying to.

MS. FULLER: Q. Mr. Wheesk, how well did you get along with Anna Wesley during your time there as a boarder?

A. I didn't get along with her, I tried to stay away from her as much as possible.

THE COURT: Do you hear all the evidence Ms. Wesley?

ANNA WESLEY: Yes.

THE COURT: Thank you.

MS. FULLER: Q. I'd like you to take your mind to a particular incident Mr. Wheesk and that incident involves you as a child in the dorm and a belt buckle. Do you know what I'm talking about now?

A. Yes, yes.

Q. Approximately how old were you?

A. I must have been six or seven, I don't remember when.

Q. Okay and what were you doing in the dorm?

A. I had just finished taking a shower with a small group of boys. We were looked after by a bigger boy, an older boy and we were supposed to get dressed and then go downstairs after we had finished dressing and we took showers as they became available to us. When I finished mine, I went to my bed, I put on my clothes, my pants, my shirt but then, when it came time for me to put my belt through the loops of my pants, I played with the buckle first because there was a gun engraved, raised on the buckle. It couldn't be detached from, the gun couldn't be detached from the buckle. It was part of the buckle and I put it over to my right side, my right hip and I pretended to draw it a few times just like I'd seen cowboys do in the movies. That's all I was doing and I kept drawing on the gun. I had a bit of time before I had to go downstairs.

There was no rush but while I was doing that, Sister Anna Wesley came up the steps and had a direct line of view of me from where she was at the steps. She saw me doing that and she came towards me and she walked towards me and she came closer and closer and I just waited by my bedside, then I finished looping the belt around my belt buckle, I finished looping the belt around my pants.

Q. Yes.

A. The loops of my pants.

Q. Yes.

A. And when she got close to me, she slapped me on the face, on the head and said I shouldn't be...She wasn't very pleased I was playing around in the dormitory, that I was supposed to go downstairs immediately after I finished dressing and that was it.

Q. What was her tone of voice?

A. Pardon?

Q. What was her tone of voice?

A. Angry, she was angry. Her voice was raised.

Q. Had you understood what you'd done wrong?

A. I was playing with the belt buckle, that was the thing that I had done wrong, I was playing with the belt buckle.

Q. I understand that there was an incident or several incidents involving the dining room.

A. Yes, yes.

Q. And did the boys all eat in the same dining room?

A. We all did, we all came as a group to the dining room.

Q. One thing I'm not sure, I've never asked but did the girls eat in the same dining room?

A. There was a partition between the boys' dining room

and the girls' dining room. We ate on the north side and they ate on the south side of the building.

Q. Okay.

5 A. There was a wall actually, it was more than a partition, it was a wall.

Q. All right, did you have any problems with the food, the type of food at Ste-Anne's?

10 A. Yes I had, it was just ordinary food but I couldn't stand the taste of it because most of my problem with the food...

Q. What was it about the food that was different?

A. I was used more to game food, foods found in the wild I mean...

Q. Yes.

15 A. Like rabbits and beavers and moose and geese, that type of food.

Q. Yes.

20 A. I wasn't use to that food that was manufactured, processed. I wasn't even use to cow's milk then. I use to find beaver's tail very taste when you roasted it.

Q. And was there an instance when you were eating this food that was served at the dining room when you suddenly didn't feel very well?

25 A. Yes, I throw up after I ate my food one time and I was careful not to make a mess and I throw it right back into the bowl from where I had scooped it up to eat it.

Q. I'm sorry, you.

A. I throw it back into the bowl. I didn't want to make a mess.

30 Q. Why not?

A. I would get into trouble if I made a mess so I didn't want to make a mess.

Q. And how old would you have been?

A. I must have been about six or seven again. It was my first few months at the school I think.

5 Q. Gradually I understand you did get use to the food.

A. Pardon?

Q. Gradually you did accustom yourself to the food.

A. Yes I got use to the food later on.

Q. What happened when you threw up in the bowl?

10 A. When Sister Anna Wesley found out I had thrown up, she came over to me immediately and slapped me from behind and she told me to eat my vomit and I did eventually. While I was struggling to eat it, she strode back and forth behind me in the little aisle between the tables and she was screaming and I forget what she was saying but she was screaming something and  
15 I knew she had told me to eat it but I don't recall the words she used.

Q. You don't recall the words she used.

A. No, no.

Q. But words to that effect.

20 A. Yes but I knew she had told me to eat it otherwise I wouldn't have tried to eat my own vomit then.

Q. How long after you threw up were you slapped?

A. Pardon?

25 Q. What was the time gap from the time you throw up into the bowl until you get the slap?

A. As soon as she reached me from the main aisle, immediately, almost immediately.

Q. All right, where did she slap you?

30 A. The back of my head. I didn't even know she was going to slap me.

Q. You didn't know.

A. I didn't know. I mean I had just thrown up, I

thought she would...I don't know, I just didn't think she would so I wasn't braced for a blow.

Q. What language was she screaming at you in?

5 A. It could only happen in Cree because I didn't speak English then.

Q. Did this happen again?

A. It happened again on two other occasions.

Q. All right and can you tell us about the second time it happened?

10 A. The second time, I threw up again into my bowl and I was careful not to miss the bowl again and sister came over to me to make me eat it. I threw up again, same food I guess.

Q. Now when you say you threw up again, you mean after being forced to eat your vomit, you then threw it back up?

15 A. Yes, yeah, I threw it up again a second time and the second time, I ate it and this time I kept it down.

Q. Why did you eat it again?

A. I was forced to. I had to eat it.

20 Q. And again, if we can just look at the second incident, where is Anna Wesley in relation to you when you threw up in the bowl on the second occasion, the first time on the second occasion?

A. When she learned of it, she came over behind me again and she screamed at me to eat my vomit which I did and then the second time, on the second incident that I vomited, 25 she made me eat it again the second time from...She yelled the instructions to me from behind me, like you know.

Q. So you ate it a second time.

A. I ate it a second time.

Q. And you were able to keep it down.

30 A. I was able to keep it down the second time, yes.

Q. I understand there was a third occasion.

A. Yeah, there was a third separate occasion when I had to eat my vomit.

Q. Could you tell us about that incident?

5 A. Well this time I couldn't eat it. I had absolutely no...I didn't have it in me to eat it again and it was left sitting there through quite a few meal times. I don't know how many meal times it was sitting there at my table and I was supposed to eat it each time we came to the dining room. You could see it from the hall way, my bowl sitting there waiting  
10 for me to eat that.

Q. Were you given any other food other than that bowl with the vomit and the food in it?

A. No, I had to eat that first before I was to be given any other food.

15 Q. Do you recall whether you were finally ultimately able to eat it?

A. No I don't, no.

Q. And on that third occasion, do you recall what it was that Anna Wesley said or did that made you feel you were  
20 expected to eat it?

A. I think she told me to eat it. There was no confusion there.

Q. There was no confusion.

A. I mean that was, she told me to eat it.

25 Q. All right, do you recall when...You couldn't on this third occasion, you just couldn't do it.

A. Yeah.

Q. Do you recall, other than having to face that bowl at the next meal, the next meal, do you recall if there were any immediate consequences of your refusal to eat it?  
30

A. I decided to eat it, that was it. There was nothing else I mean.

Q. Okay so there were no other immediate consequences when you actually refused to eat it.

A. No, just to eat it, that's it.

5 Q. What was the emotion that you were feeling that caused you to do this, to eat your vomit on these occasions?

A. I didn't...Fear...I didn't want to get hit and I was afraid of getting hit, slapped.

10 Q. Is that person here in court today, you haven't actually identified her?

A. Yes.

Q. Where would she be?

A. She's sitting right there.

THE COURT: Identifying the accused.

15 MS. FULLER: Q. Now can you tell me whether or not it would have been evident to the people around you that you'd vomited at the dining room table?

A. Yes.

MR. CHARLEBOIS: I don't think that the witness is in a position to answer that Your Honour.

20 THE COURT: Very well.

MR. CHARLEBOIS: It calls for speculation on the part of the witness.

25 MS. FULLER: Well Your Honour, I would disagree, the witness was there. He would know a person sitting at the table, no different than anyone else sitting at the table, whether the circumstances were such that it would've been evident to other people there that he'd just vomited.

THE COURT: Go ahead.

MS. FULLER: Thank you.

30 MS. FULLER: Q. Would it have been evident to other people that you'd just vomited?



A. Yes, my table mates would've seen it.

Q. Did kids at the school tease each other?

A. Whenever they got in trouble, yes. That was the main sport I guess. They'd laugh at somebody in trouble with Sister Anna Wesley or the teachers and make fun of them.

Q. Did anyone make fun of you either in the dining room or outside in the school yard after these incidents?

A. Not with the vomit, no.

Q. Daniel, I'd like you to take your mind to another incident in which you were feeling unwell during the middle of the night in the dormitory and you actually threw up in your bed.

A. Yeah I remember that.

Q. And about how old were you then?

A. Again about six or seven.

Q. And who was looking after the boys then?

A. Sister Anna Wesley.

Q. Just to clarify a matter earlier with respect to the incident involving the belt buckle, you indicated that she'd asked one of the older boys to help get the boys together or organized.

A. Yes.

Q. And would that happen from time to time?

A. That was the only incident that I remember where an older boy was delegated to look after us.

Q. All right, it was sometime during the night, during the middle of the night that you threw up in your bed.

A. Yes, yes.

Q. And did you get out of your bed and go and tell Anna Wesley that you were ill?

A. Yes when she was in the linen room.

Q. Did you get out of your bed in the middle of the

night and go tell Anna Wesley that you were ill?

A. No I did not, no.

Q. And why not?

5 A. Because she was in her room then, it was night time and I had to wait until morning to tell her.

Q. Why?

A. Well she's sleeping.

Q. So what did you do about the fact that you were  
10 lying in a bed that you'd vomited in?

A. I must've pushed it aside and slept away from it.

Q. I'm sorry, then in the morning can you tell us what  
happened?

A. And then in the morning when she was in the linen  
room.

15 Q. And where was the linen room in relation to the  
dormitory?

A. It was at the front, at the front, we came up the  
steps, I was close to the washrooms, to the toilets and the  
linen room was off to the side, on the north side of the  
20 toilets.

Q. All right.

A. She was working there and I went to tell her that I  
had thrown up in my bed during the night.

Q. Just to clarify a matter, these were the toilets  
25 that were accessible to the children in relation to when they  
were in the dorm as opposed to the toilets in the rec room that  
were in relation to them being in classrooms.

A. Yes, the dormitory toilets were just used for when  
you were in the dormitory.

Q. Okay so you went up and you told her that you had  
30 been sick in your bed.

A. Yes.

Q. And...

A. And she told me to go and stand by my bed and wait for her. So I went and stood by my bed and I stood there for quite awhile because she was busy in the linen room. Then, 5 while I was fidgeting around, I decided to strip the bed because I knew I would be told later on that I'd have to take the sheets down to the chute, laundry chute so while I was stripping the bed, I got slapped from behind from Sister Anna Wesley when she came upon me. I didn't even see her coming, I 10 didn't even hear her come. I got a slap in the back of my head while I was stripping the bed.

Q. What in your mind had you done wrong?

A. She wasn't very clear in her instructions. I wasn't sure what I'd done wrong. I mean she'd told me to go 15 wait by my bed and it took some time before she came to my bedside so while I was waiting, I figured I would clean my bed and strip the soiled sheets from my bed and wait for her to tell me to bring it down to the chute.

Q. And you were just in the process of doing this when 20 you were slapped.

A. I was bent over my bed, maybe straighten up because...Anyway, I was working on my sheets and then I got slapped from behind while I was still working on it.

Q. Did she say anything while, before, after she 25 slapped you?

A. She was yelling something at me and again, she was raising her voice again and she was yelling at me but I forget what it was she was yelling about.

Q. Okay, were you disciplined in your years at the 30 school by other people, either a teacher or someone for doing something wrong?

A. Yes I was.

Q. And can you tell us if the way you were disciplined by others was the same or different then when Anna Wesley hit you?

5 A. From the time I did something wrong to the time I was punished in school, in classrooms, there was a period of time before I received the punishment and I was told I was going to receive a punishment and what for, what the reason was and this would be administered at the principal's office by the principal. And when Sister Anna Wesley punished me, it was on  
10 the spot and I wasn't sure what I had done wrong.

Q. What was the, was there a level of speech or a tone of voice when you were punished by others?

A. There was a little speech given to me.

Q. A little speech given to you.

15 A. Yes.

Q. And in what tone of voice?

A. Harsh but not angry.

Q. And how would you compare that to when Anna Wesley  
20 would punish you?

A. Anna was...The principal was reasonable and spoke to me about the punishment to be administered.

Q. Yes.

A. And when Anna Wesley would punish me, she would,  
25 she was just angry and there was no explanation as to why I was receiving the punishment.

Q. And how did you know she was angry?

A. She was very energetic, she was very very agitated.

Q. Very what?

A. Agitated, I mean it seemed like she took it very  
30 personally what I had done wrong.

Q. And at what level was she...How loudly was she

speaking to you when she was angry?

A. She would be yelling at the top of her lungs. I watched her punish other boys and she would seem to be out of control when she was punishing other boys.

MS. FULLER: Those are all my questions, thank you Your Honour.

THE COURT: Okay, perhaps we should take the lunch break and start at 1:30 p.m. I do not know if it is me but it seems to have gotten a little cooler here. If you are uncomfortable, it is fine with me that you can put your suit on rather than wear the robes.

MR. CHARLEBOIS: Thank you Your Honour but I didn't bring a suit.

THE COURT: You lose.

MS. FULLER: Thank you Your Honour.

THE COURT: You should not talk to anyone about your evidence until the cross-examination is finished, okay.

A. Okay.

...JURY RETIRES

12:10 p.m.

R E C E S S

...JURY ENTERS

1:30 p.m.

U P O N R E S U M I N G :

THE COURT: Members of the jury, you may notice that counsel do not have their gowns on. They were boiling this morning and so was I and I do not have my tabs on, please excuse us.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. Mr. Wheesk, I believe you've told us that for part of your stay, Sister Anna Wesley looked after you and then for the remainder of your stay, it was Brother Lauzon, is that right?

A. Yes.

Q. Okay and was it three or four years that Sister Anna was looking after you?

A. I think it may have been three years.

Q. Now at that time, I believe you've told us you were a residential student but that your parents lived in Fort Albany, is that right?

A. In the summer time they did, in the winter time, they were out on their trapline.

Q. So in the summer time, would you return home?

A. Yes.

Q. And what about during the rest of the year, were your parents gone trapping for just in the winter?

A. Mostly in the winter time they were out trapping.

Q. So they would leave Albany, they'd go trapping and they'd come back at the end of winter.

A. The end of spring.

Q. Okay, when would they leave to go trapping Mr. Wheesk?

A. In the fall, I believe in the fall and they would take us to school and they would be on their way to their trapline.

Q. Now when is it that your parents started, gave up trapping? Was Sister Anne still looking after you then?

A. Brother Lauzon was looking after us at that time.

Q. But in the summer time from all of July and all of August, you would spend it in Albany with your parents.

A. Yes.

Q. And so would your brother George.

A. Yes.

Q. When you were at the school and Sister Anne was looking after you, was another student by the name of Luke Mack

there at the same time you were?

A. Yes he was, yes.

Q. And the three years that Sister Anne was looking  
5 after you, was Luke Mack in your group if you will for that  
whole three years?

A. I don't know when he came but yes, he was part of  
my group, yes.

Q. I know this is going back a long time, maybe you  
10 can't help us but do you remember if Luke Mack was there when  
you arrived or if Luke Mack got there after you did?

A. I can't remember.

Q. But you do have a clear recollection of Luke Mack  
being there in your group for, would it be fair to say, most of  
the time that Sister Anna was looking after you?

15 A. Yes he was.

Q. So Luke Mack, along with you and all the other boys  
would all be taking their meals together in the same big room,  
the dining room?

A. Yes.

20 Q. How were the meals organized Mr. Wheesk and by  
that, I mean was it one long table and all the boys were at  
this one long table or was there like in a cafeteria, a group  
of small tables?

A. There were long tables and long benches and there  
25 were about ten, ten long tables. I'm not sure how many tables  
there were but there was about ten boys to a table I think.

Q. Okay and maybe around ten tables for about 100  
boys.

A. Yes, yeah.

30 Q. Do you remember how the food was served, in other  
words, was it Sister Anna who served the food or was there  
kitchen help to serve the food?

A. I don't recall how the food was served.

Q. And Sister Anne would be the only person looking after the boys in the dining room?

A. Yes she was the only one, yes.

Q. So part of her job then would be to keep order in the dining room at mealtime.

A. Yes.

Q. And again in the dorm, she was the one, the only person looking after the boys.

A. Yes.

Q. And during recreation areas or times, she was the only one looking after the boys.

A. Yes we would move from room to room and she would be the only person in charge of us in each.

Q. And except for the time when you were actually in class and the teachers were looking after you, Sister Anne was the only caregiver you had, right?

A. Yes.

Q. And would it be fair to say that some of the boys of this group of 100 or so were taller and bigger and heavier than Sister Anne?

A. When we lined up, we lined up from the smallest to the biggest and in groups of two. That's when we had to move from say the recreation room to the dining room. We were in two by two.

Q. Okay and do you recall some of the boys being taller and heavier than Sister Anne at that time?

A. Some of them were I think bigger than her, taller than she was.

Q. And the boys would range in age from what to what?

A. From six to I don't know, I never thought of it so I really don't know.



Q. Okay and from your perspective as an adult today, would you say that this was a big job for only one person to look after a group of 100 boys all day long?

5 A. Later on when I became a child care worker myself, I realized that in some ways, Sister Anna Wesley was the Wayne Gretzky of supervisors. She was really good at her job.

Q. And would you agree Mr. Wheesk that the only way one person, whether it was a man or a woman, could keep order and discipline in a group of 100 or so boys, was by being tough  
10 and being strict?

A. I think I was thinking back about it later on, I think she had to be that way to keep order.

Q. Now the incident that you talked about with us this morning involving the belt buckle in the dormitory.

15 A. Yes.

Q. The picture I have is of you after the shower, you've told us you had adjusted the belt and then the belt had a kind of a gun engraved on the buckle and you were pretending drawing an imaginary gun, is that right?

20 A. Yes.

Q. Okay and you had finished dressing by now, is that right?

A. I had on my jeans and my shirt and I was about ready to put on the belt when I thought, I had a few minutes and I would play with it.

25 Q. And was the rule that as soon as you had finished dressing, you were to go downstairs?

A. I think that was it, yes. Actually, there was no rule, it was just we were told to dress up and then go downstairs, each in our turn, not as a group but one by one.

30 Q. Now I know you were having fun but would you say that by drawing an imaginary gun, that you were dawdling as

opposed to finishing getting dressed and going downstairs?

A. It was, there was no reason to rush downstairs, we just had to be down there after we finished so I thought I had a few minutes.

Q. Now one of the things you told us this morning about that incident is that after Sister Anna slapped you, 'She was not pleased that I was playing in the dorm after finishing dressing.' That's what I wrote down. Do you recall telling us that this morning?

A. Yes.

Q. Well how did you know or how did you know at that time that you could play around for a few minutes as opposed to go downstairs right away if you had finished dressing?

A. We were little boys then, we all use to take time to play whenever we had a chance to. I really didn't think about anything much, it was just an urge I had to play for awhile and I did.

Q. Had you been, had you ever done that before, draw an imaginary gun like that?

A. With that buckle, yes I did that at home too, yes.

Q. Do you remember if you'd ever done it at the school beforehand and been warned by Sister Anne not to do that?

A. No, she had never warned me not, never.

Q. Do you remember what if anything Sister Anne said to you that time?

A. With the belt buckle.

Q. Yeah.

A. I don't recall her exact words, I couldn't say just what she said but I do know she was angry at me for playing with the buckle there.

Q. Now you mentioned that there was an older boy who had been supervising the showers before you got dressed, is

that right?

A. Yes.

Q. Okay and who was this older boy, do you remember?

A. His name.

Q. Yes.

A. His name was Gabriel Loone.

Q. Gabriel Loone.

A. Yes.

Q. And from your perspective as a young boy then, do  
10 you remember about how old Loone would have been? He would've  
been older than you, right?

A. He was taller but I'm not sure how old he was.

Q. Was Gabriel Loone in the dorm when you were  
slapped?

A. I think he was in the stalls, he happened to be in  
15 the stalls.

Q. How do you know he happened to be in the stalls Mr.  
Wheesk?

A. Because he'd spoken to me, then he had walked into  
20 the stalls just before Sister Anna Wesley came up.

Q. Now this incident with the belt buckle Mr. Wheesk  
that you told us about this morning, was that one of the  
incidents that you remember well about your stay at that  
school?

A. Actually I had forgotten about the incident until  
25 Gabriel Loone came back to Fort Albany. I hadn't remembered  
that when I was interviewed at the hospital by the OPP  
investigators. That's only when he came back that I remembered  
about the belt buckle.

Q. Because I was going lead into my next question.  
30 Before you gave evidence today or in the last few days, did you  
get a chance to review the statement you gave the police?

A. Yes, well no no, not the statement I gave to the police, the transcript I received, I received the transcript.

Q. Of the preliminary hearing.

A. Yes.

Q. Okay, if there's any part of what I ask you next that you don't understand, let me know and I'll show you the statement to help you okay. You do recall giving a statement to the police don't you?

A. Yes I do, yes.

Q. And that was in December 1992, does that sound about right?

A. It was in 1993, yes.

Q. Okay and you don't have to agree with this suggestion okay. If you need to look at the statement but I suggest to you that in your statement to the police in '92, you never mentioned anything about the belt buckle incident directly or indirectly. Now would you agree with that suggestion or would you like to look at the statement?

A. I don't think I mentioned it then because Gabriel Loone hadn't come back to the community yet. I think he was working out in Kingston, defence, national defence and he was working as a cook in Kingston and he'd been away for several years then.

Q. So if I understand your evidence right, you didn't mention that incident because you had forgotten about it?

A. Yes.

Q. Now if you had forgotten about that incident, the belt buckle incident, would it be fair to suggest to you that it could not have been very significant for you if you forgot about it?

A. Well I did remember vividly afterwards when I saw Gabriel Loone.

Q. Okay now do you remember roughly when Gabriel Loone came back to...Do you live in Fort Albany now?

A. Yes I do.

Q. And you lived there in '92, '93.

A. I was, sometimes I'm away for Albany for a short time.

Q. When did Gabriel Loone come back?

A. I'm not sure, I couldn't give you the year I mean, I don't know.

Q. Was it after you gave your statement to the police?

A. Yes it was after I think, yeah.

Q. And before the preliminary hearing.

A. Yes, before the preliminary, yes.

Q. Did you and Gabriel Loone discuss Ste-Anne's together or your time at Ste-Anne's?

A. No, we don't talk about, we didn't talk about that, we talked about our new interests and our driving, driving around. Cars, we talked about cars.

Q. You talked about cars.

A. Yeah.

Q. Well how did it come about that by Gabriel Loone coming back to Fort Albany from Kingston that you remembered the belt buckle incident?

A. His being there I think triggered the memory back, he jogged my memory just by being there because I started to remember about the things we did together. He happened to be my neighbour in the village and the...

Q. After he came back you mean.

A. Yes, yeah yeah.

Q. Well after Gabriel Loone came back, the healing conference held in Albany in the summer of '92 had been held, is that right?

A. Yes.

Q. And I believe you had been to that healing conference.

5 A. Yes I was there, yeah, not as a participant, as an observer.

Q. Okay and your brother George had been there as well, right?

A. Yes.

10 Q. And at the time Gabriel Loone came back from Kingston to Fort Albany, did you know that the police had started an investigation as a result of the healing conference?

A. I had heard that they were doing the investigation but I wasn't sure...That's all, I just heard that they were investigating.

15 Q. Well in fact, would it be fair to suggest that you had done, you knew they were investigating also because they'd taken a statement from you in December of '92, is that right?

A. Yes they had come to see me at work and they had taken a statement from me, yes.

20 Q. Does it not stand to reason Mr. Wheesk that having attended the healing conference, knowing that the police had started an investigation into Ste-Anne's, does it not stand to reason that you and Gabriel Loone, now your neighbour, would have discussed your time at Ste-Anne's together?

25 A. He was my neighbour when I was attending Ste-Anne's school as a boarder but he was no longer my neighbour when the conference was taking place.

Q. Okay, well at the time that he came back to Albany, can we agree that he was a person that you would've seen frequently?

30 A. At coffee time, yeah. We didn't talk about old memories.

Q. At all.

A. No not at all, no.

Q. I'm sorry.

A. Not at all.

5 Q. Now another incident that you told us about this morning was being sick during the night.

A. Yes.

10 Q. Vomiting in your bed and then, the next morning, telling the nun and being sent to stand by your bed and then you told us that because it was taking some time, you decided to strip the bed on your own and then you told us that you were disciplined as a result of that, of stripping the bed right?

A. Yes, yeah.

15 Q. Now is that an incident that you found significant Mr. Wheesk?

A. Yes, I mean I had vomited and then I got slapped because of vomiting in bed so it stuck in my mind.

Q. So that's when you were aware.

A. Yes.

20 Q. That one stayed with you throughout.

A. Pardon?

Q. That incident stayed with you in your mind throughout, all the time.

25 A. Not really but then I would remember from time to time.

Q. What I'm saying is and I'm not being very clear, I'm sorry, the memory of this particular incident, the vomiting in the bed and being disciplined, the memory of that was never lost on you, it always stayed with you is that right?

30 A. The memory is clear in my mind, yes.

Q. Okay and always stayed clear in your mind.

A. Yes, yeah.

Q. Now you told us that you were slapped for vomiting in the bed. Is that what you just said now?

A. Well I was slapped from behind as I was stripping the bed.

Q. Now please correct me if I'm wrong but I thought you said this morning that the nun had not told you to strip the bed, the nun had told you to go and wait by the bed, is that right?

A. That's right, yeah, she told me to wait.

Q. And you had not specifically been instructed to strip the bed, is that right?

A. No.

Q. Now this incident about vomit in the bed and what happened the next morning which you shared with the jury this morning, would you agree with me that that's nowhere, directly or indirectly in the statement you gave to the police?

A. I don't remember my statement about that, no.

Q. I'm sorry.

A. I don't remember my statement, if I mentioned that in my statement.

Q. Would it help you if you looked at your statement?

A. Yes.

Q. Mr. Wheesk, I'm going to show you in a minute a document, it's about five or six pages long. I'll ask you to look at it first of all and I'll ask you to tell us whether or not that is the statement you gave to Constable Delguidice, the police officer who is here once in awhile, back in December of 1992. We'll do that first and we'll find out if that's your statement.

A. Okay.

Q. Secondly, I'll invite you to look at it if you feel the need and that once you've looked at it, I'll ask you to



confirm that the incident about vomiting in bed and what happened the next morning is not in there, okay.

A. Yes.

5 Q. And if there's any part of this you don't understand, let us know.

A. Okay.

Q. It starts here and it goes on for about five pages. Have you had a chance to read the statement?

10 A. Yes.

Q. Okay, can we first, can you please confirm that it is the statement you gave to the police officer?

A. Yes it is.

Q. And that's the only statement you ever gave to the police in connection with these proceedings, is that right?

15 A. Yes.

Q. Okay, having had a chance to read the statement Mr. Wheesk, do you agree that the incident we've just been talking about the last few minutes is nowhere in the statement?

A. No it's not.

20 Q. You also told the members of the jury Mr. Wheesk that it's an incident that you found significant and it's one that never left your memory from the time it happened, right?

MS. FULLER: Objection Your Honour, that wasn't the evidence of the witness. The evidence of the witness as I recall it was, "I would remember it from time to time" and when asked whether it stayed clear in your mind, the witness said, "It's stayed clear in my mind or the memory is clear in my mind."

25 MR. CHARLEBOIS: I'll rephrase it.

30 THE COURT: Well I have a bit of difficulty in this continuous memory. If you have a continuous memory about everything that has happened to us in our lives.

I do not know, our head would have to be a lot bigger than they are.

MR. CHARLEBOIS: Okay, I'll rephrase it.

5 THE COURT: Recurring is probably something that is best associated with memory. It will recur from time to time or not.

MR. CHARLEBOIS: Q. Perhaps I'll rephrase it. We've established and correct me if I'm wrong Mr. Wheesk but we've established that that particular event was one that was  
10 significant to you, can we agree on that?

A. I only remember actions, I can picture actions in my mind. I can't remember the words or much of anything else. I just remember the actions of a person.

Q. Okay, can we agree that that is an action on the  
15 part of the nun that you found significant during your stay there at the school?

A. When I was being interviewed by the constable in 1992, I tried to remember a lot of things in the time that he was there but I was working then. I was on duty at the  
20 hospital and I really shouldn't have an interview at that time because I had other things on my mind. I had to make my rounds, I had to go see other people, I had to go open the door from time to time. I mean, I may have remembered it but then, when I went up, when I went to get up to do my duties as I was  
25 expected to do, when I came back and sat down, it may have slipped my mind. Also at the time, I may have remembered it but because I had other things to do, I may have forgotten it when I went back to me interviewers.

Q. Well from what I see here Mr. Wheesk, the interview started at 8:05 p.m. and ended at 9:45 p.m. so that's an hour  
30 and 40 minutes. It was a long interview is that right?

A. Yes.

Q. And would it be fair to suggest to you that the police officer was not in any kind of a rush, wasn't putting any pressure on you?

5 A. No, there was no pressure.

Q. Would it be fair to suggest to you that you had all the time necessary to recollect those events you wanted to share with the police, events you felt were significant?

10 A. Well I tried to remember everything that I could during the interview but then I may have just forgotten some when I should have remembered or I may have remembered it and forgot it later on because I was busy describing one event.

Q. Now...

15 A. Besides, whether they heard me or not, I was still nervous when they interviewed me. Although they made no pressure on me, I was still nervous when they interviewed me.

Q. Can I ask why you were nervous that the police were interviewing you? You hadn't done anything wrong.

20 A. No but I was trying to be as clear as possible in my statement and I tried to remember as much as I could in that time that I was interviewed so there was pressure there because they had to try and get everything in that I could you know.

Q. And when is it that you remembered anew or again about this incident in the dorm where you had been sick in the bed?

25 A. It was when I saw Gabriel Loone. Seeing him brought back memories of the time that he was supervising us in the dormitory.

30 Q. Okay so if I understand your evidence correctly, the return of Gabriel Loone to Fort Albany triggered extra memories in your mind, new memories.

A. Well they weren't new...

Q. Well not new but...

A. ...I mean they were already there.

Q. ...memories you hadn't told the police about in your statement.

5 A. Yes, yeah.

Q. At that time Mr. Wheesk, did you call Constable Delguidice and tell him, by the way, there are things I forgot to tell you about when you came to see me?

A. No I didn't, I wasn't even, I didn't even know I could do that.

10 Q. Now you mentioned with us the events when you had been sick in the dining room.

A. Yes.

Q. And what happened as a result of that and the Crown asked you who if anybody, might have seen this and I think you mentioned your seat mates. That might not have been your exact words.

A. Table mates.

Q. Table mates. Now you told us you were ten boys to a table.

20 A. I'm not sure how many boys we were able to be seated at a table but ten might be a good number.

Q. Now these seating arrangements, were you always seated with the same boys for every meal or was it adhoc, in other words, boys would come into the dining room and just sit at any table till you had full tables?

25 A. We were issued numbers and mine was number 16 so people immediately to me would have number 15 or number 16 and so on.

Q. So is it your evidence that you always took your meals same chair, same table.

30 A. I don't think it was a chair, it was a bench.

Q. Okay.

A. Yes, same place, yes.

Q. And would it be your evidence that your table mates to your left and to your right and directly in front of you would always be the same boys as well?

A. Yes, yes. Same things with the beds, we were assigned the same beds and the same lockers, it was the same.

Q. Do you remember the names of most of your table mates or is it just too far back?

A. It's too far back, I don't remember. I remember things from long ago that were unpleasant. Anything that was nice or anything, I forgot.

Q. What about Gabriel Loone, do you remember if Gabriel Loone was one of your table mates?

A. No, he would be with the bigger boys because he was bigger.

Q. Do you remember if Luke Mack was one of your table mates?

A. No I can't say he was one of my table mates, I can't remember.

MR. CHARLEBOIS: Just a moment please Your Honour.

THE COURT: Certainly.

MR. CHARLEBOIS: Q. What about Oliver Wesley, was he one of your table mates?

A. No but he was one of the boarders.

Q. I'm sorry, your voice trailed off there, I didn't quite get that.

A. He wasn't, I don't think he would be because he was a little bit bigger then.

Q. So would it be your evidence, if you remember, that Oliver Wesley would have sat at a different table?

A. I can't remember, no.

Q. Would it be fair to say that to the best of your

recollection, he was not one of your table mates?

A. I can't remember, I can't remember at all.

Q. Now in connection with the events when you were  
5 sick to your stomach. I gather you didn't pay attention to  
where the nun was when you were actually sick, right?

A. No, no, I was too busy retching.

Q. Okay so it would be difficult if not impossible for  
you to tell us if the nun would've seen you be sick or not.

A. Yes it would be impossible.

10 Q. And when you were sick Mr. Wheesk, you told us you  
were sick in your bowl.

A. Yes.

Q. At this point, was there still food in your bowl?

A. No, it was empty.

15 Q. Well you've mentioned how you were disciplined or  
hit in connection with the various incidents you've told us  
about. You shared that with us this morning, right?

A. Yes, yes.

Q. And would it be fair to say that it was always  
20 slaps that you got, never punches?

A. Yes but the hand was always raised high and I think  
the blows were meant to hurt.

Q. Is it your evidence that it was always open handed  
slaps and not punches?

25 A. The hand was always opened, yes yeah.

Q. The slaps never drew blood.

A. No, never.

Q. And in the time that you were there, if you saw  
some of your table mates or other people in the dorm or other  
students who were with you get hit, again, did they always get  
30 slapped, not punched?

A. Mostly they go slapped but once, I saw her kick a

student.

Q. Which one was that?

A. He's not here, it's Peter Metat.

5 Q. And did you ever see, I gather you never had to get medical treatment as a result of being slapped by her?

A. No.

Q. Did you ever see anyone get hit hard enough to get medical treatment or go to the hospital?

A. No.

10 Q. So your evidence is that except for this one boy that you saw get kicked, you never saw anybody get hit with anything except her hands.

A. Yes but where the boy got kicked, he also got slapped and it stuck in my mind that this was the first time  
15 that I saw sister kick somebody in the shins.

Q. Let me show you your statement again okay.

A. Yeah.

Q. Drawing your attention to the first page, first  
20 typewritten page of your statement Mr. Wheesk and that's the same statement we established a few minutes ago as being the statement you gave to the police in '92.

A. Yes.

Q. About halfway down the page, page one.

A. Yes.

25 Q. You told the police, "She" and we're talking about Sister Anne, "She would hit the boys with her hands. I never saw her hit anyone else with anything else except her hands."

A. Yes.

30 Q. "I never saw her hit anyone so that they had to go to the hospital but she hit hard. I got slapped around by her a few times. She would slap anybody at will at any time." That's what you told the police, right?

A. Yes.

Q. And can we agree that in your statement, you never mentioned to the police anything about seeing a boy get kicked?

5 A. No I didn't mention that, no. I thought the statement was about me only so.

Q. Well can we agree that from the passage I just read to you and to the members of the jury, you left the police office with the impression that not only did you just get hit with hands but that anybody else you saw get hit also got hit with hands?

MS. FULLER: Objection Your Honour, I hardly think this witness can give evidence as to what impression was left with the police officer and whether...

MR. CHARLEBOIS: I can rephrase Your Honour by...

15 THE COURT: Please do.

MR. CHARLEBOIS: I'm sorry.

THE COURT: Please do.

MR. CHARLEBOIS: Q. Can we agree Mr. Wheesk that from the passage I have just read to you from your statement, it leads anyone reading that statement with the clear impression...

THE COURT: It is the same thing.

MR. CHARLEBOIS: I still think it's a proper question Your Honour.

25 THE COURT: Well I am telling you it is not and it is very easy to turn it into a proper question. Never mind the impression, I mean the words are there to be read.

MR. CHARLEBOIS: Q. Can we agree that you never told the police anything about a boy or any boys being kicked?

30 THE COURT: Very good.

A. Could you repeat that please?



MR. CHARLEBOIS: Q. Sure, can we agree that in your statement to the police, you never told the police anything about seeing any boy getting kicked by that nun?

5 A. I didn't tell the police because at that time, I didn't remember about that incident. I tried to tell him what I could remember but I couldn't remember everything at that one sitting. There are a few more incidents that I have not mentioned at all, that I have seen.

10 Q. Do you know what the word a measured blow means Mr. Wheesk?

A. I think so.

Q. Okay, when you would get slapped, from your perspective, did it appear to be a measured blow?

A. I don't think so, I think it was full force.

15 Q. Now the Crown asked you questions this morning about differences or distinctions between how the teachers disciplined you or the principal disciplined you and how Sister Anne would discipline you. Do you remember when she was talking to you about that?

20 A. Yes.

Q. Okay, now if you did something wrong in class, was it the teacher who would discipline you or would you be sent down to see the principal?

A. I would be sent down to the principal.

25 Q. Okay and it was the principal who would hand out whatever discipline was required.

A. In the confines of her office, yes.

Q. Okay.

30 A. It was never made a spectacle of when the principal was punishing me.

Q. Now how big were the classes Mr. Wheesk roughly?

A. Pardon.

Q. Roughly how many boys were in the classes, in the classroom?

A. Boys and girls mixed together, about 20 students.

5 Q. Okay so when a student would make a mistake or screw up in class, the teacher who only had about 20 students to look after would not look after discipline, the teacher would send the student, the offending student down to see the principal, right?

A. I think it depended on the offence was done.

10 Q. Okay.

A. If it was very minor, the teacher did the disciplining in class.

Q. Can we agree Mr. Wheesk that when the time came for discipline, the teacher had a far smaller group to look over or  
15 to mind after than Sister Anne did?

A. Yes the teacher usually had smaller groups, yeah.

Q. About 20 against about 100.

A. Yes.

Q. And that if the principal dealt with an offending  
20 student, the principal had an even smaller group, sometimes one, sometimes two to deal with, right?

A. Just one.

Q. Just one and when you said that Sister Anne would hand out discipline immediately.

25 A. Yes.

Q. She was the only one there to look after this discipline and over a large group.

A. Yes.

Q. Are you presently employed Mr. Wheesk?

30 A. No I'm not.

Q. And how long roughly has it been since you've been employed?

A. Since March of last year.

Q. March of '98.

A. Yes.

5 Q. I think we established together this afternoon that you attended the healing conference as an observer.

A. Yes.

Q. And were you at that conference every day?

A. No, I would pop in and out. It was more of a family reunion for me then the conference (Unclear).

10 Q. Was the issue of financial compensation brought up at that conference in those parts of it that you attended?

A. I never stayed very long at the tent where the actual formal conference took place or in their smaller meetings inside the school building itself.

15 Q. Right.

A. So I was never at any actual official mention of conversation. I just heard rumours about it from other people outside and in the community, like in the store or something.

20 Q. And these rumours that you heard outside and in the community were at the time of and right after the healing conference.

A. It may happened after the conference.

Q. Okay and some of these rumours dealt with getting financial compensation.

25 A. Yes but they weren't very clear on how it was going to be administered, the conversation.

Q. Okay.

A. It was just a very vague rumour.

Q. I'm sorry, your voice ran off.

A. It was just a very vague rumour, nothing concrete.

30 Q. Are you personally interested Mr. Wheesk in getting compensation as a result of having given a statement to the

police and going to trial?

A. Well when I was interviewed by the police, I gave my statement as truthfully as I was able to. I gave my statement to the police as truthfully as I was able to and then, I thought it would be read over by an expert in legal matters and that person would decide just how much legal weight my statement would have and from there, there would be a determination made at a later date if I was qualified for a...If I qualified for any compensation. By the time I gave my statement, I had no thought whatsoever. I didn't even know I was eligible for any compensation.

Q. At the time you gave your statement, you did what? I just missed the last part.

A. I can't remember now. I said I gave my statement to the police.

Q. Yes.

A. Answered their questions in the order they asked me the questions and I thought somebody, a legal expert would look over my statement and determine if I had any legal weight. I don't know what the word is, if I qualified for compensation.

Q. Okay and is that compensation under the criminal injuries compensation board?

A. I wasn't sure what it was because I have no legal training whatsoever.

Q. Okay, is it one of your motivations in giving a statement to the police and in giving evidence, this obtaining potentially of compensation?

A. No I gave the police my testimony because they came and asked me. They came and interviewed me and put down my statement. I just cooperated with them, that's all I did.

Q. So getting compensation is not one of your motivations at all.

A. If I qualify, then I will apply for it later on but not right now, no.

MR. CHARLEBOIS: Could I draw Your Honour's attention to the transcript again, page 156, specifically lines nine to 14.

THE COURT: Fine.

MR. CHARLEBOIS: Q. You remember giving evidence at the preliminary hearing in Moosonee last May.

A. Yes I do.

Q. And you remember that Ms. Fuller asked you questions and then I asked you questions.

A. Yes I remember, yes.

Q. Towards the end of the questions I put to you Mr. Wheesk.

A. Yes.

Q. Do you remember the following exchange between you and I?

A. Yes I do.

Q. I'll ask you the questions first, okay. Me, "Question: Are you personally Mr. Wheesk interested in getting compensation as a result of having given statements and going to trial, things like that? Your answer: I have thought about it, yes. Me, question: Okay and is that one of your motivations in giving a statement and in giving evidence? Your answer: One of my motivations." Do you remember that exchange between us?

A. Yes I do, yes. Can I say something about that.

Q. Yeah.

A. That question took me by surprise then and I just said anything that came to my head but later on that night, when I thought about it, I wasn't there because I thought I might get compensation, I was there because I was subpoena to

be there. I was there because of the statement I gave to the police. That should have been my answer then but it took me by surprise your question. I had not expected that type of question so I gave the answer on the spot without giving it much thought.

Q. Well now you've got me confused. It's obvious you understood all of the words in the questions, is that right? You speak English very well. You understood what the question was.

A. Yes and I gave the wrong answer, I didn't give the right answer. I thought about my statement, I mean at the preliminary and at the conclusion, I wasn't happy with my answer at the conclusion, the end of that question itself. I wasn't happy with my answer.

Q. So let me get this straight, are you telling us that you gave the wrong answer at the preliminary?

A. In my mind, yes.

Q. Well I don't understand, what do you mean in your mind...

A. There may be no right or wrong answer but in my own mind, I gave the wrong answer to your question then.

Q. Well that I suppose is one explanation. Now could another explanation be that you want to change that answer now because you don't want to look bad? You don't want to look like you're motivated in giving evidence to get money.

A. I don't think so.

THE COURT: I have difficulty with that. I do not think anybody should be embarrassed to look into or investigate the possibility of exercising a legal right in this country in 1999.

MR. CHARLEBOIS: I bow to Your Honour's ruling, that's not...

THE COURT: It is not a ruling, it is a comment, period.

MR. CHARLEBOIS: It's not a suggestion to the witness, it's to attempt to get an explanation for two different answers...

THE COURT: Go ahead...

MR. CHARLEBOIS: ...on the same point.

THE COURT: Certainly, you are entitled.

MR. CHARLEBOIS: Q. No, I'll leave it at that, thank you Mr. Wheesk.

THE COURT: Re-examination.

RE-EXAMINATION BY MS. FULLER:

Q. You recall at the preliminary hearing Mr. Wheesk, Mr. Charlebois began a discussion about rumours of compensation and that you were asked about those rumours and you'd indicated that you had heard about them.

A. Yes.

Q. And you were asked if you were personally interested and you said you'd thought about it, yes, correct?

A. Yes.

Q. Now is the problem the word motivation?

A. Pardon.

Q. Is the problem you have with this, the word motivation?

A. I don't hear...

THE COURT: Wait a minute, I cannot understand that type of question in re-examination. I hope we will not start all over again.

MS. FULLER: Q. Did you approach the police at any time with allegations against anyone with respect to Ste-Anne's school?

A. No, they came to see me.

Q. And if we want to use the word motivation, what's the primary motivation for you're giving a statement to the police and for you're being here today?

5 A. I don't understand, say that again.

Q. What's the primary, your primary motivation, what was your primary motivation for giving a statement to the police when they asked you to and for giving evidence to the court today?

10 A. Well it's because something had happened to me at Ste-Anne's and I told about it and that's the reason I'm here.

Q. And you were asked whether you were working right now and how long it's been since you were working and then you were asked about the issue of compensation. Mr. Wheesk, would you lie to this court in order to get money?

15 A. No I wouldn't lie, no.

Q. Why not?

A. Why would I not lie?

Q. Why wouldn't you lie about this to get money?

A. It didn't occur to me to lie, I wouldn't lie.

20 Q. And this incident happens, these incidents happened how long ago?

A. About 40 years.

25 Q. And what of you yourself done to pursue what may be your right to any civil remedy or compensation in the last 40 years? What steps have you taken?

A. I have done nothing, I didn't do anything.

Q. You were asked about the difficulty of Anna Wesley maintaining control of the children, the boys.

A. Yes.

30 Q. And you have indicated that other people, whether teachers or Brother Lauzon used different methods.

A. Yes.



Q. And were they able to maintain control?

A. Yes but not to the degree that she did.

Q. And to what degree is that?

5 A. There was hardly any boisterous behaviour when she was around, there was none actually.

Q. No boisterous behaviour.

A. No boisterous behaviour.

10 Q. And what do you mean when you say she was the Wayne Gretzky of supervisors?

A. She was exceptionally good at maintaining order in the dormitory, recreation room, the chapel, everywhere she was.

Q. Thank you.

A. But maybe I should say maybe she used extreme methods to achieve that discipline.

15 Q. Just to clarify this before George Wheesk gives evidence, what is the age differential between you and your brother?

A. Maybe four years, I'm not sure.

Q. And did you both go at the same time to the school?

20 A. He was there earlier than me.

Q. And why is that?

A. He's older, he's older.

Q. All right, Mr. Charlebois asked you whether or not in your opinion, the slaps or hits you received were measured  
25 blows and you said no, they were full force.

A. Yes.

Q. What do you mean by measured blows when you say they weren't measured blows?

30 A. A measured blow would be a blow that's maybe, well be controlled you know.

MS. FULLER: Thank you.

THE COURT: We will take the afternoon break and resume

at three o'clock.

...JURY RETIRES

2:40 p.m.

R E C E S S

5 ...JURY ENTERS

3:00 p.m.

U P O N R E S U M I N G :

MS. FULLER: Thank you Your Honour, I'd like to call George Wheesk to the stand.

JOHN PAUL JACASUM: SWORN

Testified through official interpreter - English/Cree

10 GEORGE WHEESK: SWORN

EXAMINATION IN-CHIEF BY MS. FULLER

Q. Mr. Wheesk, I want you to know that you can give all of your evidence or some of your evidence in Cree, whatever you feel comfortable with and if you want to give some evidence in English, you're allowed to do that as well.

A. Yes.

Q. Could you tell me Mr. Wheesk when and where you were born?

20 A. I was born in Attawapiskat.

Q. When?

A. August 21st, 1948.

Q. I understand Mr. Wheesk that your mother died shortly after you were born.

25 A. Yeah, that's what they tell me.

Q. And that for a period of time, you were sent to the orphanage section at Ste-Anne's as an infant.

A. Yes that's where I was.

Q. And that your father, several years later remarried.

30 A. Yes.

Q. And that you went to live with he and his new wife

in Fort Albany.

A. Yes that's where I grew up, Fort Albany.

Q. And that you started school at Ste-Anne's.

A. Yes.

5 Q. And how old were you? Yes, you started school at Ste-Anne's at what age?

A. When I was six years old.

Q. And were you a day student or a boarding student?

A. I went to school what they call Ste- Anne's school.

10 Q. Did you board there in the sense of sleep overnight there or did you go home after school every day?

A. I don't know how you call it in English but it was something like babysitting, when the kids going to school to be looked after.

15 Q. Yes, did you sleep overnight at the school?

A. Yes of course.

Q. Did you have other brothers or sisters going to the school?

20 A. Yes, as far as I know that all of us were at the school but I don't know about my brother Peter, I don't know if he was there or not but all I know is that all of us, all of my other siblings were there and also for Madeleine.

Q. Was your brother Daniel there?

A. Yes.

25 Q. And what's the difference in age between you and Daniel?

A. Right now I'm 50 years old and he must be in the 40's, like there must be seven years difference.

30 Q. While you were there, who was in charge of the boys in the dormitory?

A. The one sitting over there facing this way.

THE COURT: Identifying the accused.

MS. FULLER: Q. And did you stay at the school all the way through from grade one through grade eight?

5 A. As far as I remember, I went to grade one to six and once I finished that, I went to the other side to do grade seven and eight and I remember Brother Lauzon there at grade six.

Q. When you were in grade seven and eight, did you live at home or did you live in the school?

10 A. Yes I was going back and forth.

Q. So you were living at home in grade seven and eight.

A. Yes.

Q. And in grade six, Brother Lauzon looked after you.

A. Yes.

15 Q. So if you were born in '48 and you started school when you were six, you started in about 1954.

A. Yes probably.

Q. And can you tell us, did you spend more than one year in any grade?

20 A. I don't really recall but I think I might have passed all the grades, that's what I think but I can't be sure.

Q. All right, how well did you get along with Brother Lauzon?

25 A. When he was looking after us, it was good and I enjoyed it when he was there at that time.

Q. Were you afraid of Brother Lauzon?

A. No.

Q. How did you get along with your teachers?

A. I don't recall very well.

30 Q. Do you recall whether you were afraid of your teachers?

A. No I don't think so.

Q. How did you get along with Anna Wesley?

A. She made me afraid. I was very afraid of her because on many occasions, she would just give us a whack for no apparent reason sometimes and like when she wanted things to go her way, that's when she would do that and that is why I was afraid of her.

MS. FULLER: Your Honour, I just want to make sure that the interpreter realizes he can stop the witness if the passages get too long and we can break it up a bit.

INTERPRETER: Okay.

MS. FULLER: Q. So Mr. Wheesk, if you would try to pause after a sentence or so because it makes it very difficult for the interpreter. The interpreter has to remember everything. When during the year, Fort Albany is on the Albany River?

A. Yes that's where it is exactly.

Q. And the Albany River flows into James Bay.

A. Yes the Fort Albany River is a long river and then it goes to the south west and then about ten miles, it flows into the James Bay.

Q. And I understand that around this time of year, there is a break-up of the river.

A. Yes right now it is probably breaking up.

Q. And what is that expression for the breaking up of the river in Cree?

A. The only way I can describe it is in English terms is when the ice breaks up, that's the only description I can give.

Q. What is the word in Cree for that, when the ice breaks up?

A. Machastan.

Q. And is this a significant or insignificant event

back then, back when you were a child? Was it important or not when the ice would break up and the Albany River would break up?

5 A. Yes I use to like saying the word Machastan. I used to like standing there watching the ice, when it flows by there, when it is breaking up.

Q. Do you remember on one occasion, as a child at Ste-Anne's noticing the river breaking up around this time of year?

10 A. Sometimes it would break up around May but on several occasions...

INTERPRETER: Your Honour, when he's referring to a month in Cree, the month he gave there was meant he said September and I think he meant April.

15 A. Yes, around May, it would start breaking up and sometimes it would break up in April.

Q. I'd like you to talk to us about something that happened to you, at the school, when the river was breaking up. Do you remember what I'm talking about?

A. Yes I remember that.

20 Q. Could you tell us about that?

A. This is what happened. When it was lunch hour, when we were eating, I remember when I was sitting there and I turned my head a little bit and there was a window on my right.

25 Q. Turning my head a little bit and there was a window on the right.

A. And I said 'Machastan' when I was looking out the window and all of a sudden, the sister just whacked me there when I was sitting down.

Q. I'd like to know how old you were?

30 A. I don't remember how old I was or what year it was but I think I might have been around eight years old but I can remember being whacked at that time.

Q. And who was it that whacked you?

A. That sister who was wearing a dress, the ex-nun that was wearing a dress.

Q. Are you referring to Anna Wesley?

A. Yes I am still a little afraid of her right now.

THE COURT: I wonder if you could speak up a little sir. The jury is having a bit of a hard time.

INTERPRETER: Okay.

MS. FULLER: I wonder too Your Honour if the interpreter could, I don't think the jury can see, he's facing away from the jury and I am worried that, if he's a little bit more frontal, everyone could see him speaking and it might help.

THE COURT: The interpreter is a little too tall.

INTERPRETER: It's small here too.

THE COURT: Very good.

MS. FULLER: Q. Mr. Wheesk, why do you think you're still a little afraid of her?

A. Because she use to abuse me too much when I was small.

Q. This time when you said 'Machastan', the river is breaking up, where did she hit you?

A. When I was sitting down at a table when we were eating at a long table, she just whacked me on both sides of my ears and she was using both of her hands when I was sitting there and she might have also hit the people sitting on my left and my right side there. She might have hit them also when she hit me on both sides of my ears. She hit me suddenly. My ears felt like a burning sensation and I felt like something snapped inside like a ringing sound.

Q. What did you think you had done wrong if anything?

A. I didn't do nothing, I just yelled out 'Machastan'

when I seen it was breaking up outside. I didn't say it too loud. I might have been whispering when I said it was breaking up but she heard me. I don't know how she could've heard me. She might have been standing nearby while she heard me and that is why she might have whacked me suddenly there when he appeared to have been running there when she hit me.

Q. After she slapped you on both sides of the face or head or the ears, what did she do next?

A. I wasn't done yet, I was just waiting for him to finish.

Q. Oh I'm sorry.

A. That's okay. I guess when she was hitting me there, she would be kind of waiving her arms around and said like, tiens, tiens sound.

Q. Tiens, tiens, would that be accurate, tiens tiens?

A. I don't know if she was talking in Cree or in French but I don't know why she was saying that. It might have been an expression.

Q. All right now after this slapping of the head and was it while she was slapping you she said, "Tiens, tiens"?

A. That's what she would always say there when she used to hit kids.

Q. After slapping you on the head, what did she do?

A. And after that, she beat me up. She grabbed me from behind and dragged me off the bench and I might have hit the children on both sides of me there while she was dragging me off the bench. Like she took me towards the corner, threw me towards the corner causing me, like almost kneel down, she would make me want to like sit down. She was still hitting me at this time there and then I was trying to duck from her blows and then, when I was still ducking from the blows there, that's when she kicked me. She might have done that three or four



times when they say that things happen fast.

Q. She might have done what three or four times?

A. When she was kicking me.

5

Q. Where was she kicking you?

A. Behind me there, around the ribs.

Q. Do you recall whether she was saying anything as she was kicking you?

A. I don't remember but I was crying and then I was moaning too. I was shaking, I guess like a shaking breath, quivering voice.

10

Q. That is, your voice was quivering.

Q. Um.

Q. Your voice was quivering.

A. Yes.

15

Q. Yes, when you were being kicked, what position were you in, standing, sitting, kneeling, lying on the floor?

A. The early part or...

Q. When you...

A. Started to get it.

20

Q. Yes.

A. Or during.

Q. All right, well let's just say started to get hit, what position were you in?

A. We were sitting down at the table.

25

Q. All right and then, when you left the table, how did you get to the corner that you described?

A. She dragged me over there.

Q. And once in the corner, what position were you in?

A. Can I go and show you?

30

Q. Yes, you could show us.

THE COURT: As long as the jury can see you.

MS. FULLER: Q. Perhaps in front of the court reporter

so that we can all see. You are demonstrating a corner, as if there was a corner there. You were sitting back on your knees, sitting back on your heels.

5 A. Yeah, that's how I landed there when she threw me against the corner.

Q. And what happened while you were in that position?

A. That's while she was hitting me.

Q. And after that.

10 A. While I was trying to ward off the blows, I was in that position there, I was holding my head with both hands, trying to ward off the blows.

Q. Once you got to your knees, you've told us about being kicked, were you also slapped while you were on your knees?

15 A. All I know is when I was in that position trying to ward off the blows, everything happened so fast, it's hard to remember when she started kicking me.

20 Q. You've indicated by your gesture that your arms were over the back of your head to ward off blows. In that area of your body, do you recall where the blows, what part of the body was being used to inflict the blows, her hands, her feet and I'm only referring to the area of your head and neck?

A. While she was hitting me, she was using both of her hands to strike me.

25 Q. When she was finished hitting you, did you move or go anywhere or did you stay there?

A. I stayed there for awhile but when other children left after they finished eating, that's when I left also. I don't think I had finished my meal.

30 Q. Speaking of meals, did the children get cod liver oil every day?

A. I don't know when they started, when they use to

give cod oil but I don't know when this all started.

Q. Were they doing it while you were at the school?

A. They use to give it to us while we were  
5 eating...Can I say what I want to say?

THE COURT: Yes sir, absolutely.

A. Okay. I don't mean no harm when I call her this  
but they use to call her yellow legs and that is what people  
use to call her.

10 MS. FULLER: Q. That was her nickname, Anna Wesley's  
nickname.

A. When people use to call her in that kind of name, I  
think it was without of respect but I don't think they meant no  
harm when they called her by that name.

THE COURT: I am sorry but I missed the name.

15 A. Yellow legs.

THE COURT: Yellow...

A. Legs.

THE COURT: Legs.

20 MS. FULLER: Q. Getting back to the cod liver oil, who  
use to give out the cod liver oil?

A. The one that is sitting over there, yellow legs.

MR. CHARLEBOIS: I have an objection to make at this  
point Your Honour and I think it should be heard in the  
absence of the jury.

25 THE COURT: Certainly.

MR. CHARLEBOIS: I would prefer the witness be excluded  
as well.

THE COURT: Just step outside for a second sir, okay.

...JURY RETIRES

30 MR. CHARLEBOIS: If I can just please verify something  
Your Honour. Give me a second please because I want to  
be exact when I make this submission. The reason I

5  
10  
15  
made my objection now and it may be premature but with the presence of a jury, I felt it was better to make it early rather than later. If the Crown is attempting and I may be wrong on this, to elicit from the witness an event in which he would have been compelled to eat cod liver oil and in which he would've vomited and then would've apparently have been compelled to eat his vomit, I would point out firstly that although that evidence was given at the preliminary inquiry by the witness, cross-examination elicited additional facts and if memory serves me right and I was looking for the reference in the transcript, Crown did not seek a committal on that count. In any event, it's not part of the indictment and therefore, I would object to Mr. Wheesk giving any kind of evidence about him getting sick from the cod liver oil and being compelled to eat his vomit, if that's where we're headed.

20  
25  
MS. FULLER: Yes Your Honour, it is true that the Crown did not ask for a committal on that count because the witness at the preliminary hearing indicated that he felt obliged to eat the vomit and that she, he felt she was forcing him to eat his vomit and that she was standing behind him and in his view, making him eat his vomit but he could not remember her having told him to do so or having, I believe...

30  
THE COURT: But anyways, what is the bottom line since he is not, the count is not in the indictment and no committal has been obtained to lead the evidence would be what, on the...

MS. FULLER: His utter terror of this woman, that he was so fearful of her that just her presence behind him during this event was enough to cause indeed his vomit.

As I say, the fact that there was or wasn't a committal is irrelevant since...

5 THE COURT: I do not have any problem with the evidence so far, that he was fearful of her and terrorized of her and that there is evidence to support the fact that she may have assaulted him. What more do you want by leading this other evidence which is unrelated to anything she has been charged with unless you want to pull it in to similar fact later on.

10 MS. FULLER: Well Your Honour, I must admit that thought did cross my mind and particularly in view of the position, as I understand it, the defence at this point that vomitus is not, he is not...vomitus is noxious but that anyone was eating their vomit, that this was something that happened and that she made the person do it. The extent of her control of this person when he was a child and his fear of her is...

15 THE COURT: That evidence is weak in that respect, to allow the evidence of the vomit again, in view of the evidence presented so far where you are backing it up with counts in the indictment, would be prejudicial and would be highly prejudicial compared to the probative value of that because I think the evidence has established...Well the evidence, he has testified that he feared.

20 MS. FULLER: Well there is, the Crown does concede that there is a significant difference in this evidence from either the evidence to be heard or has been heard as to the actual either physical force or verbal coercion and I do concede that this does stand in a different situation than those. However, the fact of the incident is there but I am prepared to move on.

25

30

THE COURT: Good.

MR. CHARLEBOIS: I also make the following suggestion if Your Honour thinks that it's proper. Based on a number of discussions that have been held in chambers as to the legal issues in this trial, to assist Your Honour in the various tasks of law you have to perform in this trial, Your Honour and the Crown both know, particularly the Crown to which type of evidence I'm going to be objecting. When the Crown in calling its evidence feels that she may be going into an area that is contentious, could I perhaps suggest that she invite the jury to leave and that we hash it out so that, I listen to the evidence as it's going in but I mean...

THE COURT: I do not think we have had a problem with that so far, it is always a potential problem. You have handled this one very well. You know, why fix it if it is not broken.

MR. CHARLEBOIS: I just wouldn't want the jury to hear evidence...

THE COURT: None of us would want...

MR. CHARLEBOIS: Okay, I'll continue to be vigilant and object in the manner that I have done just now.

THE COURT: Exactly, it is perfect.

...JURY ENTERS

3:55 p.m.

THE COURT: Members of the jury, I know it is only four o'clock or five to four but the heat in this place has got to us anyway today. I think we should break now and come back at ten o'clock tomorrow morning. I would simply like to advise you that it would not be proper for you to discuss your evidence until it is all done, okay.

...JURY RETIRES

4:00 p.m.

Tuesday, May 4, 1999

U P O N R E S U M I N G :

...JURY ENTERS

10:30 a.m.

5 MS. FULLER: Q. Mr. Wheesk, I'd like you to tell the court about an incident when you injured your knee.

A. Can I say something first.

Q. Yes.

A. About my Indian names, is that okay with you?

10 THE COURT: Certainly sir.

A. In my native side, I am called two names. On my wife's side, I am called Tehonatahkwen and when they say in the Cree language I am called Weeskwaskwa and when they say that in Iroquois, it means he comes from another town and in the Cree language, it is called the sweet grass. That is what I am  
15 called in both languages.

THE COURT: Have I got that right, sweet grass?

A. Yes.

MS. FULLER: Q. While you were a child at the school, I understand you hurt your knee, you injured it somehow?

20 A. Yes while I was skating and while I was skating there, I went and stopped suddenly. That's when I fell over and landed on my knee and there had been a hole in the ice and when I fell down, I guess I must have injured myself without realizing it because that's when I started to...

25 THE COURT: Just a minute please, just a second. Ms. Wesley, you cannot hear. Ms. Wesley, I will mention it again, if ever you cannot hear, tell us immediately.

MS. FULLER: A. You indicated that you landed, hurt yourself skating, you landed on your knee, there was a hole in the ice when you fell, you injured yourself and you said,  
30 "That's when I started."

A. And then I guess it was within the two days when I

started to feel the pain and my knee started to swell up and that's when yellow legs there, when I couldn't walk very well, that's when she hit me again.

5 Q. How, you say your knee swelled up and you couldn't walk very well, how did this injury to your knee affect your walk?

A. I was walking with a limp.

10 Q. Was the injury getting progressively better or progressively worse?

A. It was getting hard.

Q. What do you mean by hard?

A. It was starting to feel painful.

Q. I'm sorry.

A. It was starting to feel painful.

15 Q. Is that why you were walking with a limp?

A. Yes, I guess when it started to go like that there, like my knee was kind of bent.

Q. Your knee or your leg was becoming bent.

A. My knee.

20 Q. In what way bent?

A. When it was swelling up.

Q. Did you go for any help about the knee when it first started to swell up and I'm only talking about when it first started to swell up and to become painful and to cause you to limp, did you go to get any help?

25 A. The reason why I didn't tell yellow legs about my leg was I was afraid she would think that I was just making it all up and that's why I was afraid of her.

Q. Did she become aware of the problem you had with your leg and with walking?

30 A. Yes she had seen me when I was like that.

Q. And what did she say or do that leads you to



believe that she was aware of the problem?

A. I knew she would hit me suddenly and that is all I am going to say on that right now.

5 Q. What were you doing that caused her to hit you suddenly?

A. When I couldn't walk very well because of the pain in my knee.

Q. How many times did she hit you?

10 A. I don't know how many times she hit me but she would just hit me suddenly.

Q. And where were you when this happened, in other words, outside, inside?

A. It was in the dormitory when we were getting up in the morning to preparing to go to church.

15 Q. Were you walking on the leg when you were hit?

A. I was trying to walk straight but I couldn't do it and maybe that's why she hit me suddenly.

Q. Were you able to put weight on that knee, that leg?

A. No, not at all.

20 Q. And after you were hit, did you try to do it, to put weight on it?

A. Even if I would've tried, it wouldn't work.

Q. Did you try to put weight on it?

A. Yes I had tried but it was painful.

25 Q. Did putting weight on your knee make it, was it helpful or did it make it worse?

A. Even when I tried to walk on it there, I couldn't do it because it was too painful.

Q. So why did you try to put on weight on it and to walk on it when it was so painful?

30 A. Because I was afraid of her, that is why I was doing that, because she was dangerous.

Q. So I understand finally you did get some medical attention for your leg.

A. Yes.

5 Q. How did that come about?

A. It was, I can't remember if it was either breakfast or lunch but as I was going up the stairs, I was crawling and it was then when I met mother superior. In the native language, we used to call her Weebechoo which means, when you translate it into the English language, it means a walrus.

10 Q. Now who was walrus, who was the nickname walrus for?

A. Mother superior.

Q. Mother superior, okay. Now at this point, when the mother superior saw you on the stairs, you were actually reduced to crawling up the stairs.

A. Yes.

Q. How much long after, was this after you were struck by Anna Wesley?

A. It was when I met her there and then I guess, and then that's when she said that she was going to get to the bottom of this but before she said that there, she asked me where I was going when I was going up.

Q. And what did you tell her?

A. I told her that I had been sent to bed there and when I was with her, that's when I was almost crying there.

25 Q. Was that the same day that you got hit by Anna Wesley or another day?

A. It was at the beginning, at the time when my leg started to hurt but it wasn't, she wasn't like that when I was crawling.

30 Q. Mr. Wheesk, do you remember if it was the same day that you were trying to walk, you were limping and you were hit

that you spoke to mother superior and you were crawling? Did those two things happen on the same day or on different days?

A. It was when my leg was painful, it was about two weeks and it was on my last day when I was at the school when I met, I talked with mother superior and that's when I was sent to the clinic, the hospital.

Q. In relation to that day, when were you struck by the person you've described with the nickname yellow legs who is Anna Wesley and by that, I mean yesterday, we were here and today we are here. Was it the same day or was there a day or two or three between those two events?

A. It was during that time that she didn't do nothing but the only time she hit me there was when my leg was painful at that time but she didn't touch me there when I was at my last day in school.

Q. What type of care did you receive in the hospital and how long were you there?

A. They looked after me pretty good during my stay at the hospital there and I was there for about a month.

Q. I understand your leg was splinted.

A. Yes that's what they done because at that time, it was painful.

Q. And was it the mother superior who sent you to the hospital?

A. She might have done that but I don't really know and she might have said something to yellow legs at that time but I can't be sure.

Q. All right, the hospital, where was it in relation to the school?

A. It was on the other side of the creek.

Q. Could you see it from the school?

A. Yes.

Q. And was it the same nuns who ran or at least was it nuns from the same order who ran the hospital who ran the school?

5 A. Yes.

Q. At that time, was there an infirmary in the school part or in the school itself, was there a room or an area for children if they became sick, other than sending them to the hospital and I only mean when this happened?

10 A. I can't be sure, I don't remember.

Q. But in any event, you went to the hospital, is that correct?

A. Yes of course.

Q. Do you have an idea of how old you would've been when this injury to your knee happened?

15 A. I can't be sure but it might have been when I was in grade five because that's the last time yellow legs was looking after us.

Q. It was while Anna Wesley was still supervising.

A. Yes.

20 Q. Your experiences with Anna Wesley, the person you describe as yellow legs, how did they make you feel about yourself as a person?

A. You mean when I was small.

25 Q. First of all when you were small and then, if there were any long terms effects thereafter.

30 MR. CHARLEBOIS: Objection Your Honour, effects at the time that the alleged incidents occur is a proper question in my submission. Long term effects is not a proper question. We're dealing with charges of common assault, eight charges of common assault here, long term effects is not my respectful submission for this forum. It may be for another forum at another time.

THE COURT: Well in relation to your objection, was it appropriate in your view for the doctors to testify to long terms effects. You know, there's a grey area there...

MR. CHARLEBOIS: Well in fairness Your Honour, whether or not the doctors testified was a matter of a long voir dire motion and then Your Honour made a ruling.

R U L I N G

BOISSONNEAULT, R. (Orally):

I will permit the question.

MS. FULLER: Q. Thank you. Dealing first with how did it make you feel...I'll let you get a glass of water...How did these experiences make you feel about yourself as a person at the time and then if there were any long term effects, maybe you could just tell us?

A. At that time when she was abusing me, when I was young that time and she was abusing me there, I was afraid of her and I was afraid of the outcome of things that were going to be. At that time when I was growing up there, I kind of felt pity for myself and I don't know why she was abusing, had abused me by this and I was afraid of her. I think the reason why I think she was doing this is because of the clothing she wore as a nun as she had authority.

MR. CHARLEBOIS: Your Honour, I object to that, that's purely speculative on the part of the witness. He can't tell us what was in Ms. Wesley's mind at the time, 40 some years ago.

THE COURT: Just a minute, you are quite correct.

MS. FULLER: No submissions.

MS. FULLER: Q. We're only interested Mr. Wheesk, we're only interest in what your experiences made you feel like as a person.

THE COURT: Okay, we can hear this with or without the jury but I do not mind and I think it is fair that some long term effects may describe but if we go over the bounds of propriety, the risk we run is that prejudice may occur and that prejudice may well be more serious than any probative effect you may have so...

MS. FULLER: I'll leave that alone at this point then.

THE COURT: Yes, touch on it, fine, dwell on it is not correct.

MS. FULLER: Q. Thank you Your Honour. If I may move on to the next question. Just for my benefit and that of the court, I notice that you are holding a feather. Would you please explain to us, you weren't holding it yesterday, just what the significance of that is because the jury may be curious.

A. It is in my being a native that I am carrying this eagle feather and through this that will enable me to tell the truth and to help me be truthful in what I am saying and to make me strong.

Q. Now I just want to clarify the time frame Mr. Wheesk, this incident when you injured your knee. Would you have been older than ten years old, younger than ten years old or within that age range?

A. I can't be sure how old I was but I might have been nine or ten years old, somewhere around there.

Q. If you think back to not actually age but how you remember yourself looking at the time, do you remember yourself during this incident as being a big boy or a little boy?

A. I might have been about the average heights of the other boys that were in their height.

MS. FULLER: Thank you, those are all my questions.

THE COURT: Mr. Charlebois.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. You speak English fluently don't you Mr. Wheesk?

A. Even though you speak English, I know that this is  
5 the truth though.

Q. I'm sorry, what was the last thing you said Mr.  
Interpreter?

A. Even though you speak English, I know that it is  
the truth.

10 MS. FULLER: Your Honour, I would like to object to  
that, that question.

THE COURT: I would like to make a comment as to that  
question. I do not know what the purpose of it was.  
We do all know that the Criminal Code provides and the  
15 rules of practice for civil matters provide that trials  
can be conducted in French, trials can be conducted in  
English and I see nothing wrong for a person of the  
First Nation insisting on speaking his own language.

MR. CHARLEBOIS: That's not what I'm challenging Your  
Honour. What I'm going to be getting into with this  
20 witness is what I feel are discrepancies between the  
evidence given yesterday and today and evidence given  
in a statement, in English, in 1993 so I want to  
establish...

THE COURT: Go ahead.

25 MR. CHARLEBOIS: I don't have a problem with the  
witness, as it is his right to testify in the language  
of his or her choice. I do want to establish the level  
of knowledge of English of the witness because the  
statement was given in English.

THE COURT: Go ahead.

30 MR. CHARLEBOIS: Q. Do you agree with me Mr. Wheesk  
and you can testify in the language of your choice sir, but do

you agree with me that you speak English fluently?

A. Yes it's true.

Q. In fact, since 1972, you have been working at the  
5 Department of Indian Affairs in Ottawa, have you not?

A. Yes what you say is true.

Q. And can we agree sir that in the course of your  
work in Ottawa at the Department of Indian Affairs, the  
majority, if not the totality of your work is done in the  
English language?  
10

A. Yes what you say is true.

Q. And in fact, in 1993 when the OPP visited you at  
your office on Wellington Street in Ottawa, you provided the  
police with a five page statement in English, a statement that  
lasted an hour and 25 minutes in English, is that right?  
15

A. Yes what you're saying is true.

Q. Because the police officers, police Officer Faucher  
and police Officer Gilbert only spoke to you in English, is  
that right?

A. Yes.

Q. Now you told us yesterday of the period of time  
20 when you went to Ste-Anne's and you also told us that Daniel  
Wheesk is your younger brother, right?

A. Yes that's true.

Q. Now I understand that Daniel Wheesk is in fact your  
25 half brother. I understand your mother died and then your  
father remarried, is that correct?

A. Remarried, yes.

Q. Now at the time, I'm sorry, you were going to say  
something else.

A. But I still call him my brother, my sibling.  
30

Q. Okay, no problems. I understand that during the  
period of time that you were at Ste-Anne's, your father, your



step-mother and those siblings who were not at Ste-Anne's actually lived in the Town of Fort Albany, is that right?

A. Yes we were all at Fort Albany.

5 Q. And Fort Albany is also the town where Ste-Anne's residential school is located, is that right?

A. That's true.

Q. Now you told us yesterday that for part of a period of time, I believe until you finished grade six, you were a residential student, is that right?

10 A. That's true.

Q. And that in grade seven and eight, you were a day student which means you commuted, you went to school and then back home every night.

A. That's true.

15 Q. Now during the period of time until grade six when you were a residential student, is it not a fact that you were going home every week-end?

A. That's true.

20 Q. And you were also obviously spending Christmas holidays and summer vacations at home, right?

A. All those holidays, even on long week-ends and on Easter and Christmas, we all went home but the other ones that were in the school there, they remained at the school, the ones that were from other reserves.

25 Q. Okay, I think I understand that even when you were a residential student, those students who lived in Fort Albany went home to their families every week-end and also for vacations, right?

A. Yes.

30 Q. And your brother Daniel also went home on week-ends.

A. Of course.

Q. And is it not a fact Mr. Wheesk that for part of the time that you were at the school that your step-mother, Daniel's mother worked at the school, worked in the kitchen, worked in the laundry?

A. She was working in the laundry department.

Q. And do you remember roughly how many years your step-mother worked there or would you prefer we called her your mother or your step-mother, whatever is preferable for you?

A. Well in my native language, I would call her an aunt, same thing applied to my siblings.

Q. Did you say an aunt?

A. Yes.

Q. Now I want to be respectful of how you want her addressed.

A. Yes that's what we would call her, we would call her an aunt.

Q. Okay so let's call her your aunt okay.

A. Because there is no word for step-mother in Cree.

Q. Okay so we'll call her your aunt but we all agree that she was Daniel's mother and she was your step-mother, your father's second wife, right?

A. That's true.

Q. Do you remember how many years while you were at Ste-Anne's your aunt worked in the laundry?

A. She worked there for a long time but I can't remember how many years she worked there.

Q. While you were in the school during the day, would you sometimes see her or cross paths with her?

A. We didn't see very much of her because we were in a different area.

Q. Okay, did you occasionally cross paths with her, run into her?

A. I can't remember, that's because she was working where they do the laundry.

Q. Was the laundry Mr. Wheesk located in the same building where you slept or where you ate or where the recreation room was?

A. It was in a different section.

Q. It was in a different section but was it in the same building sir?

A. Like she was in the older part of the building while we were in the newer part of the building.

Q. I understand that.

A. It was like an 'L' or 'H' sorry.

Q. Okay, shaped like an 'H' but it was all the same structure, is that right?

A. Yes.

Q. Now I'm probably not going to pronounce it right and you can help me with that, the nickname you had for Anna Wesley in Cree, Shashashoo.

A. Shashashoo.

Q. Okay, that's a name that the boys gave her or it's a name that she already had when you got there.

A. As far as I can recall, that's what the people use to call her.

Q. Do you remember if that's a name she had when you got there or if it's a name, a nickname that she acquired while you were there?

A. I can't be sure but maybe the people of Attawapiskat gave her that name.

Q. And Shashashoo means, it's a little bird, a song bird is that right? That's what it means in Cree.

A. Probably.

Q. What do you mean probably, I don't speak Cree at

all?

A. That's what she was called, that's probably what she was called there.

5 Q. No I understand that Mr. Wheesk, but the name, that name...

A. It's a bird.

Q. It's a song bird, is that right?

A. Yes.

10 Q. And it's a small bird, a little bird right?

A. Yes he flies along the bay.

THE COURT: Clarification here, did I get the name down right, yellow legs, never mind the Cree name but yellow legs. I thought...

A. Yellow legs, yes.

15 THE COURT: And yellow legs is a bird sir.

A. Um-hum.

MR. CHARLEBOIS: Q. You and your brother Daniel, did the two of you, were you in the same group when you were at the school? By that I mean did you take your meals together, did 20 you sleep in the same dorm?

A. As I can recall, the young ones they would be together and he was with the young ones but as I as bigger, we would still be in the same building.

25 Q. Okay, sorry, what did you tell us the age differential is between you and your brother?

A. Yesterday I had lunch in seven years with...Today I asked him there and he said he was 46.

Q. And you are 50, is that right?

A. Pardon me.

30 Q. And you are 50.

A. Right now.

Q. Okay now although you and Daniel were in different

groups, was it still Anna Wesley who looked after this whole group?

A. Yes.

5 Q. And from what you can recollect, how many people was she looking after while you were there, how many boys?

A. I can't be sure but it might have been 100 or maybe more.

10 Q. And these boys would range in age from five or six up to as old as 16, 17.

A. Yes that's true.

Q. And she was all alone to do this, no help.

A. Yes.

Q. And some of the older boys, would you agree with me that some of the older boys were taller, heavier than she was?

15 A. Some of them were tall and some of them were chubby and some of them were skinny.

Q. Do you agree with me Mr. Wheesk that you had occasion while you were at that school not only to see Sister Anna but you also had a chance to see a number of other nuns  
20 who worked there, right?

A. Of course.

Q. And would you agree with me that while you were a student at the school, that Sister Anne physically was one of the smaller nuns?

25 A. All I can say is that she was the same height as the other nuns when I seen them.

Q. Okay and can we agree that except when you and the other boys were in class, that Sister Anne was looking after this group of 100 or more boys from early in the morning until  
30 lights out in the evening?

A. Of course she was the one that was babysitting.

Q. From your perspective as...

A. Excuse me, it's not babysitting, it's just a terms that the Cree word, take care of children.

Q. Okay and from your perspective as a man Mr. Wheesk, do you agree that that was a very large job for only one person?

A. Yes it is true what you are saying because she had been put there to look after it because she was able to speak Cree. When we had been put to the school there, we didn't really speak English, we spoke more Cree because that's what we had spoken and while we were in school there, we were using English.

Q. I want to move on now Mr. Wheesk to the incident you shared with us yesterday in the dining room, when you said 'Machastan' okay.

A. Machastan, you're going to get it right by the end of the day.

Q. At mealtime, was it a rule at the school that the boys could not speak?

INTERPRETER: Could you repeat the question again?

A. I'll say it again okay.

MR. CHARLEBOIS: Q. Sure please.

A. And I'll stop so he can say it in English.

Q. Please.

A. I don't remember if there was a rule at that time. During these times when she wanted something done there, she would clap her hands like when we were going for meals or for bedtime and nobody would be talking.

Q. Maybe I didn't make my question clear enough.

A. I can understand what you are saying but there was nothing there at that time, that rule.

Q. Okay, just in fairness to you sir, is it your evidence that on the day you were disciplined for saying that

word in Cree...

5 MS. FULLER: Your Honour, I don't like to interrupt my friend in his cross-examination but on several occasions, there has been a reference to the action being one of discipline suggested to the witness and in my view, it's a question of fact for the jury, whether the action was one of discipline or one of...

THE COURT: Of what?

10 MS. FULLER: Of anger, one of arbitrary frustration, any number of things and that referring to these actions is actions of discipline and unfair characterization.

15 THE COURT: I would think that he could certainly refer to the word, put it to the witness, the witness can answer. If it was not a matter of discipline, a matter of rage for example, fine, it would be opened to the witness to answer. It is cross-examination.

20 MS. FULLER: It is Your Honour but the word is couched in a phrase as an adjective or it is not...The witness has no reason to know whether it has significance as a legal term in this trial, which of course it does.

R U L I N G

BOISSONNEAULT, R. (Orally):

25 I do not think there is anything wrong with the question or the word.

MS. FULLER: Thank you Your Honour.

MR. CHARLEBOIS: Q. On the day that the event, when you said 'Machastan' and then you said you were, sorry, okay, when you said the word...

30 A. Machastan.

Q. Machastan, okay, when you said that word...

THE COURT: I would prefer though that you would use

the English word as translated by the translator and then I think we would all be in the same playing field.

MR. CHARLEBOIS: Q. Fine, I believe the word is for break-up, river break-up.

THE COURT: Well perhaps you have a much more linguistic facility than I have but this word does not mean anything to me right now, if you would.

MR. CHARLEBOIS: Q. When you use the word river break-up.

A. It's ice break-up.

Q. Okay, ice break-up and you were then, according to your evidence slapped and further disciplined.

A. Yes I was taken by surprise at that time.

Q. No, I hadn't finished my question Mr. Wheesk. Are you telling the jury that the boys were allowed to speak in the dining room at mealtime?

A. Nobody would be talking while we would be eating, also in the dormitories.

Q. Right now I just want to talk about the dining room please.

A. Yes I understand you.

Q. Okay so your evidence is that you were allowed to eat or to speak while eating in the dining room.

A. No I'm saying that nobody was allowed to speak while eating.

Q. Mr. interpreter, would you please repeat that last answer. A car went by and I only got part of it?

A. I said that nobody was allowed to speak while eating.

Q. So when you spoke about ice break-up, do you agree that you broke a rule in the dining room?

A. No.



Q. Well if you're not allowed to speak and you speak, isn't that breaking the rule?

A. No.

Q. Do you want to explain that for me?

A. I know that we were not allowed to speak but we would talk sometimes.

Q. Okay so when you would talk or when the other boys would talk in the dining room, that was breaking a rule, was it not?

A. No because I just, I just made an exclamation of ice breaking up there when I seen it and that is why I was hit suddenly.

Q. So although it may have been an exclamation on your part, it still was not allowed, is that right?

A. Even like when no talking was permitted during mealtime, I say that because I wanted to let it be known that it was breaking up.

Q. Who were the boys at the table with you, say each side of you, in front of you?

A. I don't remember very well who was sitting on my right or on my left or in front of me.

Q. Who was the boy that you said this word to?

A. To all of them. It was when I had my head turned sideways there, the person on my right would have heard me but at that time, I was, I said I was saying it loudly, like the way I am speaking, talking right now.

Q. I don't quite understand, are you saying you said it loudly or not loudly?

A. Well when I had my head turned sideways there, when I had said the ice was breaking up.

Q. Yes, did you say it loudly or not loudly?

A. Yes I had said it loudly and I think that's why she

had heard me. I don't know, I don't know how she could have heard me, maybe she was standing close by because she just hit me suddenly. When I had mentioned yesterday that when she had hit me suddenly there, she had heard me, like around my ears when she had used both her hands.

Q. So the witness, for purposes of the record, Mr. Wheesk using the interpreter, took both of his hands and put them on the side of the left ear and the right ear of the interpreter to show us or simulate how he was slapped. Is that a fair assessment Your Honour?

A. That's what she was always doing when she would be hitting the other kids.

Q. So right now, I want to go back to that day, the day we've been talking about for the last ten minutes.

A. Me also.

Q. Now please focus on that day when you said ice break-up okay.

A. Um-hum.

Q. So your evidence is that you were slapped with her hands over both ears, is that right?

A. Yes and also the ones on my left and right there, I might have hit them accidentally.

Q. Would you please repeat that Mr. interpreter?

A. The ones sitting on my left and on my right might have been hit accidentally when she had hit them by accident. While we would be touching each other when we were sitting very close to each other.

Q. And can we agree Mr. Wheesk that these were opened slapped on your ears, they were not punches?

A. Yes that is true what you are saying. Yes when I think back on it there, she might have did, something might have happened to my ears because sometimes I hear noises like a

wind blowing kind of sound.

Q. And would you agree with me that the boys on either side of you and the boy directly in front of you probably would've seen this?

A. Yes they all seen it, everyone there seen it, everyone of us that was in the dining room. She was very dangerous and she would get mad easily.

Q. This slap that you received over both ears, did that happen as soon as you had said that word?

A. Yeah of course, she had come over there very quickly.

Q. And then you told us yesterday that you were then taken off the bench at the dining table and you were made to kneel in a corner, is that correct?

A. Yes when she had pulled me there when she had grabbed me by the back of the shirt and then I had mentioned yesterday that I might have had hit the other children by accident there when that happened, because there was not very much space between us. The same thing probably would've happened to you, like if you would have been abused.

Q. You also mentioned that you were hit in the corner, now were those slaps again?

A. Yes she was using her hands there. I don't know if she might have hurt herself but she might have hurt her hands there when she was doing the striking.

Q. Now by striking Mr. Wheesk, we're talking slaps is that right?

A. Yes.

Q. And when you were in the corner kneeling... Sorry.

A. Like when she was using the opened, like an opened hand.

Q. And while you were kneeling in the corner, the slap

or slaps that you received, were they over the ears again?

A. Yes that's where she would always hit there, like around the head area every time she hit somebody. And I don't know, I can't be sure why she was doing that, maybe because where the bruises wouldn't show.

Q. So just so we're straight on this, you keep using the word hit and I respect that but...

A. Yes, that's what she was doing all the time.

Q. Now...

A. She would be using both her hands.

Q. And when you use the word hit, do you always mean slaps Mr. Wheesk?

THE COURT: Now just a minute now, I do not think there has been any suggestion yesterday, today, at any time from anybody that it is nothing but slaps, not punches. I mean, how many times shall we go over this? The evidence is absolutely crystal clear, repeated several times, slaps.

MR. CHARLEBOIS: Move on to something else Your Honour.

THE COURT: Please.

A. And when I think back on it there, she might have hurt herself there because her hands are bent like gnarled.

MR. CHARLEBOIS: Q. Her hands are gnarled now you mean.

A. Probably.

Q. No well you said her hands were gnarled, when did you come up with that?

A. Like her fingers are bent right now.

Q. Yeah but would you also agree by looking at her that she's an elderly person?

A. Yes because at that time, that's what, she would always be using an opened palm when she would be hitting all

the time.

Q. Just on that last point, you've mentioned her hands are gnarled now. Do you also agree with me that she's an elderly lady?

A. Yes she is old right now but maybe the reason why she's like that is because when she use to abuse me.

Q. Now you mentioned also kicks yesterday.

A. Um.

Q. You mentioned kicks.

A. Yes what you are saying is true, she had kicked me on the ribs from behind, quickly. Every time she would kick me there, I would be moving around because she was hurting me.

Q. Do you remember how many times you were kicked?

A. It happened very quickly there when she was doing this but it might have been two times or four times.

Q. So you're not sure whether it was two times or four times.

A. As I said, it happened very quickly and then when I was trying to evade her blows there, I was trying very hard to be still.

Q. Did the nun fall down when she was kicking you?

A. I can't remember what she did at that time there. After she hit me there, she went about doing things that she wanted to do. I was crying at that time and then I was sniffing there while I was crying because of the abusement and because of the beating she gave me.

Q. While, according to your evidence, the nun was kicking you, did the nun fall down, like fall on her backside?

A. No, not that I can remember.

Q. And do you agree with me Mr. Wheesk that...

A. Why are you saying this? Where do you want to go?

Q. That's for me to know. Now do you agree with me

Mr. Wheesk that at that time, in the dining room, the nun, Sister Anne like all the nuns, wore a long habit, a long gown?

A. Yes, she was wearing, like a cap and like a long robe.

Q. And this robe stretched almost if not to the floor, is that right?

A. Yes right down to the floor, maybe one inch off the floor but it was very long. It was like brown and she was wearing like a black veil. Maybe that's why they are called grey nuns. I don't know which order.

THE COURT: Mr. Charlebois, excuse me.

MR. CHARLEBOIS: I'm just letting the witness finish his answer.

THE COURT: Well I think the witness is cross-examining you. I would prefer that we have a cross-examination, well not rigidly but question and answer. Many of the witness's answers are absolutely not in response to what you are asking but if you are happy that way, that is your cross-examination. By now, I would have thought that you would have asked me to intervene but anyways, let us take the morning break for now. Is that okay Ms. Fuller, I see you are sitting there with a question mark?

MS. FULLER: Oh no Your Honour, that's perfectly all right.

...JURY RETIRES

11:25 a.m.

R E C E S S

U P O N R E S U M I N G:

...JURY ENTERS

11:56 a.m.

MR. CHARLEBOIS: Q. I want to move on to the skating event Mr. Wheesk. Now if I understand this event, after you

injured your leg, you never told the nun about the injury, right?

A. That is true.

5 Q. And if I understood your evidence correctly this morning, you claim that the nun hit you because you were not walking straight, right?

A. Of course.

Q. And that you wound up in the hospital for, how long was it again?

10 A. One month.

Q. Your leg wasn't broken was it?

A. No it was just swelling up like a boil.

Q. According to your evidence, the nun didn't hit you on the leg did she?

15 A. I can't remember.

Q. Well where is it that she hit you?

A. She would be always doing it around the head area.

Q. That time.

A. That's what she was always doing.

20 Q. So if I suggest to you that the nun never hit you in the knee or the leg or the area that was hurt, would you agree with that?

A. Of course because I was in pain.

Q. So you agree with me that you were not hit on the leg or the knee or where you were injured, is that right?

25 THE COURT: Well that is the third time.

MR. CHARLEBOIS: Well I'm getting perhaps.

30 THE COURT: I do not know where you are going with the repetitiveness when it is clear in his examination in-chief and then he tells you three times in cross-examination. I do not want to fetter your cross-examination but I just do not know where you are going.

MR. CHARLEBOIS: It is made more difficult Your Honour when translation is involved and also where the responses made by the witness are not always on point.

5 THE COURT: Okay, go ahead but it seemed to me that it was very clear and right on point as to not being hit on the leg.

MR. CHARLEBOIS: That's fine.

MR. CHARLEBOIS: Q. This skating event and everything you shared with us this morning about the leg injury and what  
10 the nun made to make it worse.

A. Yes that really happened.

Q. Okay, is that an event that always stayed in your mind Mr. Wheesk?

A. When I recall it.

15 Q. That's an event that you never forgot about sir.

A. Sometimes I forget it but it's always there.

Q. And one of the things about that event, would it be fair to say that one of the things you remember clearly about that event is the nun hitting you because you were not walking  
20 straight.

A. Of course because she was always abusing.

Q. I don't want to talk about always Mr. Wheesk, I want to talk about when you were injured skating.

A. That's what she was doing all the time.

25 Q. Can we just talk about the skating event for now please? Is that something that always stayed with you, that the nun hit you because you were not walking straight as a result of having been hurt skating?

A. Of course because it was always bothering me.

30 Q. What was that last word Mr. interpreter?

A. Bothering me.

Q. Do you remember in 1993 giving a statement to the



OPP when they visited you at your work at the Department of Indian Affairs?

A. Yes I remember when the police came there.

5 Q. And do you remember when the police were with you for about an hour and 25 minutes?

A. Around there.

Q. And do you remember that you gave the police a lengthy statement in English?

A. Of course.

10 Q. First thing I'm going to show you Mr. Wheesk is a document, I'll ask you to look at it and I'll ask you to tell us first if that is the statement you gave to the police in 1993, okay.

THE COURT: Do you have a copy for me?

15 MR. CHARLEBOIS: If Constable Delguidice comes back in a minute, we will be able to produce the original to Your Honour.

MR. CHARLEBOIS: Q. If you'd first look at it Mr. Wheesk and identify it as your document and what I'll be referring to Your Honour is page two, paragraph three.

20 THE COURT: My page two only has two paragraphs.

MR. CHARLEBOIS: Could I perhaps see Your Honour's copy?

THE COURT: Well I have two.

25 MR. CHARLEBOIS: Are there numbers on Your Honour's...

THE COURT: I have a cover copy, then I have number two on the top of one page and then three on the top of the other and this has to be paragraph, "One year I was skating".

MR. CHARLEBOIS: That's it.

30 MR. CHARLEBOIS: Q. Are you still reading Mr. Wheesk or can I ask you questions?

A. Go ahead.

Q. We first agree that's the statement you gave to the police.

A. Yes but my English isn't very clear.

Q. When you gave the statement to the police, you were talking and they were writing it down, is that right?

A. Yes that's the way it sounds like.

Q. Well I wasn't there, is that what happened?

A. Yeah.

Q. And after the police had finished writing down your statement, were you given the chance to read it over before you signed it?

A. Yes, that's the way it seems to me but I was trying to, like, make it in plain English but it didn't work out that way.

Q. Well let's not get ahead of ourselves.

A. Um.

Q. Let's not get ahead of ourselves, you spoke to the police, they wrote it down, they gave you a chance to read it over before you signed it, right?

A. Yes that is what happened, what you are saying there.

Q. And did you make any changes to the statement before you signed it Mr. Wheesk?

A. Not at all.

Q. We've already established this morning that you're fluent in English, right?

A. I cannot understand English fluently since I went to school.

MR. CHARLEBOIS: Your Honour, I don't want to beat this to death but I really feel I have to re-visit it.

Q. Didn't you tell us before the break that most if

not all the work that you do in Ottawa for the department is in the English language?

A. Yes that is true what you are saying.

5 Q. So therefore, you read and write memos in English for your work, don't you?

A. Once in awhile, not all the time. When I want to do something different...I didn't always write when I was working, I was taking pictures. By that I mean microfilm.

10 Q. I didn't hear the last part.

A. Microfilm.

Q. Oh microfilm, when you told the police about the skating incident Mr. Wheesk, did you in fact tell the police as follows: " One year, I was skating in the winter and when I put the brakes on, I hurt my knee and cut my knee."

15 A. That's what it says here.

Q. "My knee swelled up and I was made to crawl everywhere I went for a week or so if I'm not mistaking."

A. That's true.

20 Q. "I can't remember the grade I was in but Edmund Metatawabin would know."

A. That's true.

Q. "Sister Anna Wesley didn't even bother with me."

A. At first.

Q. Is that what's written down there Mr. Wheesk?

25 A. That's what it says here.

Q. "I think a few times, she hit me when I was skating."

A. This is not the way the policeman should have wrote that.

30 Q. Do you agree that that is what is written in your statement sir?

A. That's what it says.

Q. "Maybe Joe Koostachin, Toby Loone, Alex Spence and my brothers maybe were there when this happened."

A. That's true.

5 Q. "Anyhow, after a week or so, Sister Francoise saw me on the stairs and she talked to Sister Anna and the next day, I was sent to the hospital."

A. That's what it says.

10 Q. "I complained to my friends when this happened to me."

A. That's true.

Q. "I spent three weeks to a month in the hospital."

A. That's true.

15 Q. "I have a scar on my knee from that incident. This happened to my right knee."

A. That's true.

20 Q. Now I want to go back to what you told the police officers Gilbert and Faucher. "Sister Anna Wesley didn't even bother with me. I think a few times, she hit me when I was skating."

A. What I meant in there was...When I have first said the first time and then when I mentioned that she hit me suddenly, I don't think the policeman might have understood very clearly. That's how it sounds like here.

25 Q. Well when you talk about being hit suddenly Mr. Wheesk, weren't you referring to what happened in the dining room when you said the word ice break-up?

30 A. No, you are going some place else now and you are not saying, like you are saying something different now. What you are saying is you are again, when you were hurt, that what you are reading and you are saying, you are sounding different now. I think it seems like maybe that you want me to say something different, that's the way I look at it.

Q. Mr. Wheesk, instead of spending all your time trying to figure out where I'm going, could I ask you to just answer the questions?

5 A. Okay.

Q. Do you agree that in the statement that you gave to the police, you never told the police that Sister Anne was hitting you when you were walking with the limp?

A. When I had been hurt, that's what she did while I was in pain.

10 Q. Do you agree that you never told the police that in your statement?

A. It says right here, maybe...

15 Q. If you're going to be reading from the statement that I'm putting to you, I wonder Your Honour if for that part of it, the witness could be instructed to answer in English so that I can follow as well? We're going to be getting into a question of semantics here.

R U L I N G

BOISSONNEAULT, R. (Orally):

20 I think the witness is entitled to answer in Cree.

MR. CHARLEBOIS: Q. Just please listen to the question. Do you agree, simply question that you never told the police officers in the statement that Sister Anne had hit you when you were not walking straight?

25 A. This is what I'm going to say to you. This is what I'm going to say to you. The policemen hadn't understood very clearly, maybe because I was speaking English too fast.

30 THE COURT: I really believe that the question is very simple. Did you or did you not tell the police that you were struck by Sister Anna when you had your limp? Did you tell them or not, that is simple.

A. I said it.

THE COURT: Okay, there is your answer.

MR. CHARLEBOIS: Q. And do you agree that in the statement, you indicated that Sister Anna did not even bother with you?

A. At first, that's what I wanted to say.

THE COURT: Well wait a minute, I am going to ask you to be a little more responsive than that. All the lawyer asked is whether you wrote in the statement that Sister Anna Wesley did not bother with you and that is yes or no.

A. The policeman was writing when I was saying.

MR. CHARLEBOIS: Q. Pardon me?

A. The policeman was writing what I was saying.

THE COURT: That is not what the question was. The question was, did you tell the police about it, yes or no, that she did not even bother with you. Did you tell them that or did you not tell them?

A. Yes that's what it says here.

THE COURT: What says what here? Okay, is your answer yes you told the police that?

A. Yes.

MR. CHARLEBOIS: Q. Now when you told this to the police, what we've just been talking about, were you being truthful with the police?

A. Of course, what do you think I could have said? At that time there, when I was speaking there, I was speaking very clearly and maybe that is why that they couldn't have written it very clearly at that time.

Q. You were speaking what, what did you say Mr. interpreter?

A. Like when I was talking there, I might have been talking too quickly. Anna Wesley didn't even bother me at

first.

Q. Hold it.

A. That is what when I had first said it, I had said it at first and then, at first it's in there.

Q. Okay so what you are telling me is that and what you are telling the jury is that these two police officers Faucher and Gilbert, they didn't record your statement correctly, is that what you're telling us?

A. Yes, yes, I was trying to (Unclear) back what I was saying.

Q. Well the police officers didn't write down correctly, listen please, what you had said. You agreed with me a few minutes ago that you were given the opportunity of reading your statement and making changes. At that time, why did you not tell the police, heh, you forgot something here?

A. I didn't really want to say it that way there, at that time when I was in pain, when I remembered, it was bothering me.

Q. You weren't in pain when the police officers went to see you in '93, were you?

A. I was glad when they came there.

Q. Why did you not tell the police officers when you re-read the statement before you signed it, you forgot to write this down what I said to you.

THE COURT: What said to you, you said many things.

MR. CHARLEBOIS: Q. At first, among other things, that's what we've been talking about.

THE COURT: Look it, obviously we are having a bit of trouble in getting responsive answers from the witness.

I think you should cut your questions down a little better, a little more. Do not assume that everything you have in your head, everybody else in this courtroom

knows.

MR. CHARLEBOIS: Okay.

THE COURT: So you can be as clear as possible to obtain his responsive...

MR. CHARLEBOIS: Okay.

THE COURT: I am not finished.

MR. CHARLEBOIS: Sorry.

THE COURT: To obtain his responsive answers as we can rather than what is going on here now.

MR. CHARLEBOIS: Q. Did you read the statement before you signed it?

A. Just roughly, of course because it was bothering me.

THE COURT: Are you satisfied because if you are, fine, it is your cross-examination, that the witness keeps volunteering information while you are pausing to think of another question or...

MR. CHARLEBOIS: No, I'm not happy with that.

THE COURT: I would like a question and answer cross-examination so the jury can understand what is going on.

MR. CHARLEBOIS: The reason that I am stopping is that the witness appears to be giving answers in kind of a cascading fashion. He'll say a sentence, he'll stop and I don't want then be, I don't want to be accused of cutting the witness off in mid answer, that's all.

THE COURT: Okay, have it your way.

MR. CHARLEBOIS: Q. All I want to establish here is that you never corrected what the police had written down.

A. No.

Q. And that you were given a chance to read it over and make changes, right?



A. That's what I wanted to do but again, like, I didn't like it there when I was talking at that time.

Q. What do you mean that's what you wanted to do? If that's what you wanted to do, why didn't you do it, make the changes?

A. Because it was bothering me and it was also very painful to get yellow legs into trouble.

Q. You are getting her into trouble with other parts of your statement so therefore, why not correct what the police had not written down right?

A. Because I have not requested for the policeman to be there because it was on my own doing. I didn't ask me boss.

Q. You did or didn't ask your boss.

A. I didn't ask my boss.

Q. Didn't ask your boss for what?

A. If I could stay there longer when they had come to ask me what had happened in Fort Albany.

Q. You're not suggesting to us that your boss pressured you to get this interview over fast.

A. No, me, because it was bothering me when I was in, like self-pity.

Q. When what?

A. Self-pity.

Q. But in any event, you were with the police from 9:45 a.m. till 11:10 a.m., right?

A. Yes that's what it says, yeah.

Q. I'm going to move on to something else Mr. Wheesk. We established this morning, we established this morning that you were going home every week-end even when you were a residential boarder, right?

A. Yes, week-ends.

Q. Did you ever tell your parents or one of them that

you didn't want to go back to that school because you were getting hit?

5 A. Yes I remember one Sunday there around four o'clock there, that when I was hanging, when I was holding on to one of the tent poles there in the Teepee there when I was crying, when I said that I didn't want to go back there again.

Q. And.

A. One of my siblings there was against it.

10 Q. Did you ever, Mr. Wheesk, did you ever tell your parents and if so, what did they do about it?

A. They didn't really want to agree to it.

Q. Agree to what?

A. When it was said about yellow legs, like after she retired.

15 Q. No, that's not what I'm talking about Mr. Wheesk, I'm not talking about when yellow legs retired. Just listen to the question. Did you tell your parents that you were getting hit at the school and if you did, what did your parents do about it?

20 A. I am going to say it again that I told them but they didn't really like it there, what was said.

Q. Are you saying they didn't believe you?

A. I guess. Everybody respected the nuns, the brothers and the fathers, they were respected because of the church.

25 Q. And also, at the time you gave your statement in '93 to the police, did you know that people who had complained about the church in Alfred, then attempted and in many cases, got compensation from the government, money?

A. I had heard about...

30 THE COURT: Did you say Ste-Anne or Alfred.

MR. CHARLEBOIS: No I said Alfred.

THE COURT: I am sorry, it is the first I hear of this in this trial. Go ahead, I did not want to interrupt but I thought you might have made a mistake there.

MR. CHARLEBOIS: No, no I didn't Your Honour. It was deliberate.

THE COURT: Go ahead.

MR. CHARLEBOIS: Q. Would you like me to ask you the question...

A. I had heard about it there, I had known of it.

Q. Just a moment please, Mr. interpreter did you say I had or had not heard of it.

Q. I had heard of it and I had known of this.

Q. You did know then.

A. Because I was always being newspapers and that's what it said in there and you said that you were looking into this.

Q. So you knew all of this about Alfred and money at the time you gave your statement to the police in '93, right?

A. Yes that's what it says and that is what I had said.

Q. Now let me draw your attention to the last paragraph in your statement. I think, did you write or tell the police...

THE COURT: Just a minute please. Do you have anything to say?

MS. FULLER: No Your Honour.

THE COURT: Go ahead.

MR. CHARLEBOIS: Q. Did you tell the police, "I think it's about time the police investigation takes place about this school. Sometimes I want to punch her, Sister Anna Wesley, maybe restitution would be nice but I will never forgive Anna Wesley for what she did. She scared me too much." Did you

tell that to the police at the end of your statement?

A. Yes.

Q. Now you know what restitution is all about don't you Mr. Wheesk?

A. Yes I had looked it up, the meaning of it in the dictionary.

Q. Well did you look it up in the dictionary before or after you spoke to the police?

A. When I had looked at it there, when you were looking into the matter of Alfred, that's how I remembered.

Q. So when you gave your statement to the police, you knew then because you'd looked it up that restitution meant money, is that right?

A. That's what it says.

Q. Did you give any thought to suing for money either the church or the grey nuns or the school?

A. Of course because I wanted to fight back.

Q. So it's something that's in the back of your mind, is it?

A. On that issue of what I had said, on the issue of the people that had gone to the abusement.

Q. Okay so it's in the back of your mind then to attempt to get money for your treatment at Ste-Anne, right?

A. Of course because I wanted to avenge myself.

Q. Okay now did you go to the healing conference in Fort Albany?

A. I went there.

Q. That was in '92.

A. Around there.

Q. In fact, can we agree that the healing conference took place just before Chief Edmund Metatawabin asked the police to investigate.

A. That's how it looks like.

Q. That's how it happened, right?

A. Yes.

5 Q. And at the healing conference, Mr. Wheesk, was the question of restitution discussed, money, that if you were able to get the police to investigate and to get convictions in court then maybe we can go after the church for money.

A. Yes that is what, I can't say. Yeah that is what I said.

10 MR. CHARLEBOIS: Thank you, Mr. Wheesk.

MR. WHEESK: Your welcome.

RE-EXAMINATION BY MS. FULLER:

15 Q. Mr. Wheesk, what were you doing at the healing conference?

A. When at that time there at the, at the Assembly there when everybody had been brought there together, the people that were at the school there.

Q. What were you doing there?

20 A. I went there because I wanted to see what could be done about the abusement that we had went through.

Q. And was there a reunion of the school there at the same time?

A. Yes that's what, that's what, how it looks like.

25 Q. And were you one of the speakers at that conference?

A. I spoke.

Q. About what?

30 A. When I went there, when I went in there it was dark. Like when, when you go like into a sweat, a sweat lodge that's, that's how we were seated.

Q. No, I mean were you one of the official speakers,

official speakers at the conference?

A. I didn't speak then but I had spoke of the Cree language that so he can still carry it with us.

5 Q. At the end of the statement, you were asked whether you said, "I think it's about time the police investigation takes place about this school". Is that true? Was that your thought?

A. Yes.

10 Q. And you said, "Sometimes I want to punch her". Is that true? Was that your thought?

A. Yes, that's true.

Q. And you said, "Maybe restitution would be nice but I will never forgive Anna Wesley for what she did". Is that true? Was that your thought?

15 A. That's true.

Q. "And she scared me too much". Was that true? Was that your thought?

A. That's true.

THE COURT: That certainly clarified what he said.

20 MS. FULLER: Q. And was that what you said?

THE COURT: He said that in direct examination. He said that in cross-examination and re-examination.

This isn't the place for it. We know what he said.

25 MS. FULLER: It's important, Your Honour, though that he indicates whether it's true or not what was in the statement.

THE COURT: It's important to have re-emphasis and re-examination is not to re-emphasize evidence. It's to bring out new evidence.

30 MS. FULLER: Q. When you told the police that your knees swelled up after the injury and you crawled everywhere for a week or so if you weren't mistaken and that Anna Wesley

didn't even bother with you, what did you mean by, "She didn't even bother with me"?

5 A. After, after I had went through the pain there like she didn't touch me. Like when I, I mean when I was crawling. Then maybe she couldn't have hurt me more. That's what I was thinking.

10 Q. You told the court that the accused hit you while you were walking and then in the statement, Mr. Charlebois read to you that it was written down that Anna Wesley hit you while you were skating. Did Anna Wesley hit you while you were skating?

A. No.

Q. Were you injured while you were skating?

15 THE COURT: I think he answered that question.

A. Yes.

20 Q. Were a lot of the people from Fort Albany hunters and trappers? Were a lot of the people from Fort Albany hunters and trappers during the 50's?

25 THE COURT: That question could have been asked in direct examination. I'm sorry to keep interrupting you but it is very clear to me the purpose of re-examination. It is to bring out or clear up evidence that defence counsel or Crown counsel brings out in cross-examination. There is nothing being cleared up by that.

30 MS. FULLER: There is, in my respectful submission, Your Honour, in that what was brought out in this, from this witness is that the people in Fort Albany went home every weekend. That their families lived at home all year round.

THE COURT: No.

MS. FULLER: Then we will be left with a contradiction.

THE COURT: Then we are.

MS. FULLER: Q. Do you know what the years were, exactly, that your mother worked at the school?

5 A. I can't remember but I only know she was working there when I was going to school there.

THE COURT: And that she worked there for a long time my notes indicate.

MS. FULLER: Q. You told us about an incident in which it was Sunday afternoon four o'clock when you had to go back to the school and you were hugging the tee-pee, you didn't want to go back. Why didn't you want to go back?

A. Because at that time, I knew, I was thinking about the, the abusement the kids were receiving and I didn't want to be abused again.

15 Q. When you told your parents what was happening to you what did they say to you?

A. They didn't want to listen.

MS. FULLER: Thank you.

THE COURT: This would be a good time for the lunch break. I would ask you not to leave the jury room for a minute or so, okay.

...JURY RETIRES

12:55 p.m.

THE COURT: Okay, we have now completed I believe four alleged victims plus two doctors. Do you think if we stop now, we would cut ourselves short next week or can you put a whole witness through this afternoon because we are leaving?

MS. FULLER: Your Honour, my plan was to call two corroborating witnesses who are only going to give evidence on two discrete incidence, that is, they are not being called for their experiences but only for what they saw with respect and I don't imagine that



they will be long witnesses. I interviewed them last night and just in terms of...

5 THE COURT: I can see us leave here at five thirty, believe me. No, if you have two that are ready, they are here, let's go ahead with them.

10 MS. FULLER: Yeah and I deliberately did that because I didn't want to start a complainant, Your Honour, and have overlap of them not finishing before we resume so I...Perhaps we can start with one and see how that goes. I am sure we'd finish one.

15 THE COURT: Oh listen, if you are calling somebody, a witness about what was going on there, I am sure they are going to be questioned in the same fashion as they alleged victims and it is going to take awhile. You are not going to do one this afternoon, I do not think. Experience tells me you will not do one.

20 MR. CHARLEBOIS: One is going to testify in English. My understanding one is going to be testifying through the interpreter.

25 THE COURT: Pardon me?

MR. CHARLEBOIS: The Crown told me at the morning break is that one would be testifying in English and one would be testifying through the interpreter. The one would be testifying through the interpreter will necessarily be longer.

THE COURT: Let's do one, is that okay.

30 MS. FULLER: If we finish with lots of time, could we do another one? If we look like we can be finish by four thirty, can we do two?

THE COURT: We will see.

MS. FULLER: Thank you.

THE COURT: Okay, another thing, you are going to have

5 to give me some help. I, of course, am leaving for my seminar this afternoon and I am going to start preparing my charge this afternoon, this week-end. How do I handle multiple allegations of assault with only one count for assault. Which one do I talk about?

MR. CHARLEBOIS: If we will be discussing law, might I request that the witness be excused from the courtroom if we are finished with him please?

10 THE COURT: Why would the witness be excluded from the courtroom if he is finished?

MR. CHARLEBOIS: Well that is true.

THE COURT: Pretty quick. No, how am I going to explain that, take your pick?

15 MS. FULLER: Well I frankly have not directed my mind to that, Your Honour, only to the extent of knowing that the jury is entitled to hear a narrative of incidents that make up the relationship between the two people.

20 THE COURT: Well I would simply, I cannot give a narrative, I would have to stop at every one of them. Was there a touching, was there consent, on and on and on, if I am going to do every one of them. I am baffled.

25 MS. FULLER: Your Honour, I just hadn't thought to and I would like to review the evidence in terms of whether...In my respectful submission, it is opened to the Crown to invite the court to charge with respect to every incident if there is evidence as Mr. Charlebois did not bring an application for particulars.

30 THE COURT: Okay so if I go over all of the evidence, say four incidents of assault and one count, what do I tell the jury in the end, you know, beyond a reasonable doubt, you find him guilty on that count but I cannot

point out to which incident we are talking about here.

5 MS. FULLER: In the same way, Your Honour, that often a victim of sexual assault will talk about one or several incidents of sexual assault and the jury is entitled to make a finding with respect to any of them. Where it gets to be complicated...

THE COURT: Well they usually say from this time to that time.

10 MS. FULLER: That is correct and they talk about a number of incidents...

THE COURT: Do I have that here?

15 MS. FULLER: Yes you do Your Honour. However, where it becomes problematic is on the issue of sentencing if there is a minor and a major, how do we know what they are sentenced on and because of that, if there were a finding of guilt, because of that, I may invite Your Honour to or take the position that I am only asking for the jury, you know, it's up to them but I'm only inviting the jury to consider certain actions for the purposes of whether or not an assault took place and if it's limited on that way, then, if they find, make a finding of guilt with respect to a serious allegation, then there's no confusion as to what the allegation was.

20 THE COURT: Well the problem Mr. Charlebois may have with that is that, does he know what case he is meeting?

MS. FULLER: Well yes, there was a preliminary hearing, all of the incidents that have been raised...

25 THE COURT: Are you happy?

30 MS. FULLER: ...by the witnesses came out at the preliminary hearing, all of the allegations with

5  
respect to the complainants came out at the preliminary hearing and Mr. Charlebois cross-examined with respect to those incidents and Mr. Charlebois chose not to pursue his right and his initial decision to bring an application for particulars and he may have very good tactical reasons for doing so.

THE COURT: Do you have any comments?

MS. FULLER: I am sorry.

10  
THE COURT: Do you have any comment?

MR. CHARLEBOIS: Not at this stage, I may well after all of the complainants have testified. At this point, I'd feel that it may be premature for me to comment. I am not quite sure what is going to come out of the other complainant. We've actually only heard from four.

15  
THE COURT: So you want to impark your knowledge to me after the whole thing.

MR. CHARLEBOIS: Well actually, I suppose that is the polite answer. The real answer is, I also want to bounce this off with Mr. Legault, my junior who is my guru on the law.

20  
THE COURT: Okay, let the jury go for lunch, we will come back at two o'clock and we will do one witness.

R E C E S S

25  
U P O N R E S U M I N G:

...JURY ENTERS

2:00 p.m.

MS. FULLER: I would like to call Oliver Wesley to the stand please.

OLIVER WESLEY: SWORN

30  
EXAMINATION IN-CHIEF BY MS. FULLER:

Q. Mr. Wesley, I understand you were born on July the

6th, 1950, in Cochrane.

A. That's right.

Q. And that your father worked for the railway and then the family moved to Moosonee and your father also worked for the mission, and that you spent your first couple of school years in Moosonee.

A. That's right.

Q. And I understand that you didn't start school -- not sure when you started school but it may have been a little later than others because of the travelling your family did but that you moved or you started school at Ste-Anne's at around Grade 3.

A. That's right.

Q. And I understand that you were at Ste-Anne's for approximately five years.

A. Yes.

Q. And can you tell me while you were at Ste-Anne's who looked after the boys in the dormitory when you first got there?

A. Hum, Sister Wesley.

Q. And for how many years did she look after the boys while you were there?

A. Around three years.

Q. And after that who looked after the boys for the last two years you were there.

A. I remember Brother Lauzon looking after us for one year.

Q. I understand that at some point in time, Brother Lauzon was ill and that he was sometimes replaced off and on by Brother Hutras.

A. That's right.

Q. Now do you see Anna Wesley here in court today?

A. Yes, I do.

Q. And where would she be?

A. Sitting over there.

5 THE COURT: Identifying the accused.

Q. Now I understand that while you were at Ste-Anne's and while Anna Wesley was looking after the boys, you saw something. You witnessed something happening in the dining room. Do you remember that incident?

A. Yes, I do.

10 Q. All right. And it would have been during those three years. Do you remember, although I know it's difficult, but do you remember which of the three years it would have been that this incident happened?

A. Maybe the second year, I think.

15 Q. And do you remember what time of day it was?

A. It was the first meal of the day.

Q. And how is it you know it was the first meal of the day?

A. We were given cod liver oil in the mornings.

20 Q. And did something happen...Without telling us what it was, did something happened that involved the getting of cod liver oil?

A. Yes.

Q. And you were given cod liver oil with the morning meal.

25 A. Yeah.

Q. And who was it that dispensed the cod liver oil?

A. Sister Wesley.

Q. And how, what is your recollection of how she did that?

30 A. she would just walk around the tables and with a spoon give it to us, to each of us.

THE COURT: Okay. Would you slow down your speech just a little bit, sir? And maybe, I know it is tough to get close to that microphone more than that but if you would try. Can you take it out? Could you face the jury, please, there, excellent.

MS. FULLER: Q. I'm sorry and Sister Anna would walk around the table with a spoon and give it to us, is that what you said?

A. That's right.

Q. All right. Now did you see someone being given the cod liver oil and there was a reaction or it appeared to be a reaction to it?

A. The other guy who was sitting right across from me.

Q. I'm sorry.

A. He was sitting across the table from me.

Q. All right, who was sitting across the table from you?

A. Daniel Wheesk.

Q. And do you know, when we say Daniel Wheesk, where does he live? Where is he from?

A. He's from Fort Albany.

Q. And can you tell me whether this is the same Daniel Wheesk that has a brother George?

A. Yeah, the same guy.

Q. The same guy.

A. Yeah.

Q. And have you known Daniel Wheesk for a long time?

A. Hum, I knew him in school and afterwards, afterwards too, I guess.

Q. Okay so you were sitting across from Daniel Wheesk.

A. That's right, yeah.

Q. And if you could just tell the jury what you saw

happen.

A. He was given a teaspoon of cod liver oil and hum I guess he didn't like and then puked it out right to his bowl.

5 Q. He did what?

A. He puked it out.

Q. He puked it out.

A. Or spit it out right to his bowl.

Q. And was there anything in his bowl?

10 A. At that time, yeah, there was some food in his in the bowl.

Q. And at the time there was some food in his bowl when he vomited.

A. Yes.

15 Q. Do I understand that's what you mean by "puked it out"?

A. That's right.

MR. CHARLEBOIS: Well that's not what the witness said. The witness said, "puked it out or spit it out right into his bowl".

20 MS. FULLER: Q. Is that what I understand by what you mean by "puked it out", vomited?

MR. CHARLEBOIS: Well, Your Honour, that's the crux of the allegations here and the witness used two different words. I object to the Crown leading evidence on that key point.

25 THE COURT: Well, I'm sure she can address it.

MS. FULLER: Q. When somebody pukes, what do they do? What do you understand the meaning of when you say that somebody pukes, what are you saying?

30 A. Well he didn't like the cod liver oil there and then he just, it went back into into the bowl there when it came out from his mouth.



Q. Do you understand the word vomit?

A. Yes, I do.

Q. Is that different or similar to the word puke in  
5 your mind?

A. Hum, any time I don't like anything when I eat it,  
I, I guess I vomit. I vomit.

Q. And when you vomit, what comes out?

A. Hum, everything that's in the stomach, I guess.

Q. Right. And were you able to see this happening?  
10 Were you able to see Daniel Wheesk puking into the bowl?

A. Yes, I did. Yeah.

Q. And do you remember where or can you tell me  
whether or not Anna Wesley was there when it happened in the  
room?

A. She was right, right beside Daniel.  
15

Q. And what was her response, if any, when Daniel  
threw up or puked?

A. She got mad at him.

Q. And how could you tell that she got mad that is to  
20 say, what did she do or say or both do and say that showed you  
she was mad at him?

A. She slapped him.

Q. And do you remember where she slapped him?

A. On the side of the head.

Q. On the side of the side. I'm sorry. I just didn't  
25 catch that.

A. Yes.

Q. Did she say anything to him?

A. She told Danny to eat the food.

THE COURT: She told him to eat...  
30

A. The food.

MR. CHARLEBOIS: I heard the food.

THE COURT: ...the food.

MS. FULLER: Q. And did he eat it?

A. No.

Q. And did you see his bowl?

A. It was right in front of him.

Q. Pardon.

A. It was right in front of him.

Q. And what was in the bowl?

A. Hum, cod liver oil.

Q. What else?

A. And the food.

Q. Was there any vomit from his stomach in the bowl?

A. I think so, yeah.

Q. And you say he didn't eat it.

A. He didn't eat it, no.

Q. And did she say anything else to him when he didn't eat it?

A. She left him alone there and she told me she would get the same bowl again for the next meal.

Q. And did you regularly sit beside or across from or at the same table as Daniel Wheesk?

A. Same table.

Q. All right. And would that be for every year that you were there or just that year or do you remember?

A. Just that year.

Q. All right. And would you have been at the table at the next meal?

A. Yes, I was because we had the same table all the time for every meal.

Q. And what did you see when you came into the dining room for the next meal?

A. He was given the same bowl.

Q. And was the same, was the bowl containing the same contents that you told us about from breakfast?

A. Same, same thing.

Q. Was he given any food?

A. No.

Q. Do you remember what he did?

A. Well he just sat there and didn't touch it.

Q. Do you remember what happened at the next meal?

A. He got the same bowl again.

Q. Was he given any food?

A. No.

Q. Do you remember how long this went on for?

A. About, about three meals like that, I guess.

Q. Had you ever spoken to Daniel Wheesk about this incident?

A. I never did.

Q. Did you go to the police or did the police come to you and question you?

A. Pardon me.

Q. Did you go to the police or did the police come to you to get a statement from you?

A. Oh they came to me.

Q. All right. And would this be part of the statement of what you experienced contained in part of your statement, would that be fair to say?

A. Yes.

Q. When you saw this, when you saw Daniel being told to eat what was in his bowl and being slapped, how did that make you feel?

MR. CHARLEBOIS: How is that relevant? He's not a complainant in the proceedings?

MS. FULLER: Well, Your Honour, in my submission it is

relevant especially considering that the terms or the intention that applies to the section is with intent to aggrieve or annoy.

5 THE COURT: I think your question is proper.

MS. FULLER: Thank you.

MS. FULLER: Q. How did that make you feel sitting across from him and seeing this?

A. When I seen that.

10 Q. Yes.

A. Felt bad about it and I was scared too.

Q. Why were you scared?

A. Maybe I would get the same treatment if I, if I didn't like my cod liver oil.

15 Q. Um-hum. Did you ever throw up your cod liver oil?

A. No.

Q. I just, I'm just not sure I asked you this but the person that you've described as Anna Wesley, do you see her in court today?

A. Yes, I do.

20 Q. And where would she be?

A. She's sitting right there.

MS. FULLER: Thank you. Those are all my questions.

THE COURT: Thank you very much. Mr. Charlebois.

25 CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. You presently live in which city or town, Mr. Wesley?

A. Moosonee.

30 Q. In Moosonee. And how long have you been here in Cochrane waiting to give evidence?

A. Hum, when I came here.

Q. Yeah.

A. Yesterday morning I came in.

Q. And did you happen to...Well first of all, are you and Daniel Wheesk staying in the same hotel for instance?

A. Yes, we are. Yeah.

Q. And have you run into him at the hotel since you got in town yesterday and giving evidence this afternoon?

A. We went to the store together last night. I met him on the road.

Q. What did you last say?

A. I met him on the road there when I was looking for a corner store.

Q. Okay. Have you had any meals with him since you got into town?

A. At the restaurant you mean.

Q. Yeah.

A. No.

Q. Are you familiar with a healing conference that took place in Albany in the summer of 1992?

A. I heard about it, yeah, but I never went.

Q. Okay.

A. But I took a course in one program in Cochrane here about two years ago, I guess. This was called "Healing the child within".

THE COURT: Healing...

A. The child within.

THE COURT: ...the child within. Thank you.

MR. CHARLEBOIS: Q. And you have a clear recollection of this happening at breakfast not at lunch time, right?

A. Yeah.

Q. Where were you sitting in relation to Daniel Wheesk? Were you on one side of him, in front of him?

A. I was in front of him, yeah. I was one side of the

table.

Q. Directly in front of him like I am from the Registrar, that lady there.

5 A. That's right, yeah.

Q. Now you told the jury that Anna Wesley got mad and that she slapped Daniel Wheesk on the side of the head, right?

A. That's right.

Q. Now is that something you remember clearly, Daniel Wheesk being slapped in that instance, that time?

10 A. That morning yeah.

Q. Do you have a good recollection of that?

A. Yeah.

Q. And was that also clear in your mind when you spoke to the police, this incident, this event about Daniel Wheesk?

15 A. Yeah.

Q. The first thing I want to establish, Mr. Wesley, is this. Do you recall being interviewed by the provincial police at the Polar Bear Hotel, in Moosonee, on the 20th of November, 1993, and providing the police with a statement?

20 A. That's where I, that's where it was put in, where I wrote the statement there.

Q. I'm sorry, I didn't hear your response.

A. Polar Bear Lodge, yeah, that's where the place.

Q. Okay, and you provided them with a statement.

25 A. Yes, I did.

Q. Could you look at the document I put in front of you and could you tell me if that's the statement you gave to the police back in '93?

A. Regarding Daniel Wheesk.

30 Q. Well, first of all, could you just tell me whether that's...You only gave one statement to the police. Is that right?

A. That's right.

Q. Could you just tell me, Look over the document quickly and tell me if that's the statement you gave the police.

A. I read it already. It is.

Q. It is the statement. Do you agree that nowhere in your statement dealing with Daniel Wheesk did you tell the police that you saw Daniel Wheesk get slapped by the nun on that occasion?

A. Yes, I did.

Q. You told the police or you didn't tell the police.

A. No, I, I didn't.

Q. Okay. Was this an incident that stood out in your mind well, Mr. Wesley?

A. Yes.

Q. Why didn't you tell the police that you saw Sister Anne slap Daniel Wheesk on that occasion?

A. I remember that morning there he, he got slapped when he, when his cod liver oil got into his bowl.

Q. It's not what I'm asking you. If you remember the incident well, and you've told us you did, why did you not tell the police that Daniel Wheesk was slapped on that occasion?

A. At that time I didn't give it to him, I guess.

Q. I didn't hear your response.

A. I didn't give it to him that time there. That time I wrote the statement there, I didn't write it down.

Q. No, we know you didn't write it down. I want to know why.

A. Well I remembered he was getting slapped after.

Q. What's that?

A. I remembered he got slapped after, I said, after he was, after, after the statement I remembered he got slapped.

Q. Did you call the police back and tell them you wanted to add something?

A. They asked me after that but I didn't, I didn't think about it that time.

Q. Say that again, please.

A. I didn't think about it that time, I said.

Q. Okay. Then you said they asked you something else. Speak slower, please, so I can understand you. You said something about another time. Did I understand that?

A. They asked me if I wanted to add any more things there what if I remembered anything, anything else.

Q. Okay.

A. Regarding Daniel Wheesk.

Q. Yes. Did you tell them then that you had seen him get slapped on that occasion?

A. Not that time, no.

Q. Did you at any time tell the police that you had seen Sister Anna slap Daniel Wheesk?

A. Yes, I did.

Q. When was that?

A. Hum, just at the, the next day, I think, the same evening.

Q. The same evening.

A. Yes.

Q. Well, if we look at the statement here, it was at the Polar Bear Lodge. It started on the 20th, on the 20th of November '93, and according to this, it started at 8:10 in the evening and it finished at 9:45 in the evening, right?

A. That's right.

Q. Now when that evening, when later on that evening did you tell the police that you remembered that Daniel Wheesk got slapped?



A. After I read my over my statement there, after I read over the statement.

Q. After you read over the statement.

A. Yeah.

Q. And before you signed it.

A. Pardon me.

Q. After you read it over and before you signed it.

A. Hum, before I signed it.

Q. What did you say?

A. Before I signed it.

Q. Before you signed it. So it was still within this interview, right? The police officer was still with you at the Polar Bear Lodge between 8:10 and 9:45 in the evening.

A. Yeah, I left about that time, yeah.

Q. Okay. So just so I'm clear on this, you tell the police what happened. They ask you to read the statement over. While you were reading the statement over and before you sign that you remember Daniel Wheesk had also been slapped that time and you told the police about it. Is that your evidence?

A. Yes. I didn't write the statement the police did. Like you wrote it for me.

Q. Okay but you were given a chance to read it before signing it, right?

A. That's right.

Q. And to make any changes you wanted to before change, before signing it, right?

A. That's right.

Q. So did you see, was it a female police officer that took the statement?

A. That's right.

Q. Constable Elaine Moreau, a woman.

A. That was a woman, right, a woman.

Q. Okay a woman policeman or police officer, rather, right?

A. That's right.

5 Q. After you told her before signing your statement that you also saw Daniel Wheesk get slapped that time with the cod liver oil, did the police officer add it to the statement or change the statement?

A. I don't know if she did but she was writing around, writing down everything I said.

10 Q. Well, can we agree that's it's not in the statement at all?

A. It's not in the statement.

15 Q. Okay so can we agree that there's only two possible explanations if what you're saying is true. One is that you didn't tell the police at all or that you told the police and she just didn't write it down.

A. She didn't write it down after I told her, I guess.

Q. That's your evidence.

A. Yes.

20 Q. You told her and she didn't write it down.

A. Pardon me.

Q. You told the police officer and she did not write it down. That's what you're telling this jury.

A. Hum, she didn't write it down.

25 Q. Now when the Crown was asking you questions, the lady, "Told us Daniel Wheesk was given cod liver oil and he either puked it out or spit it out right into his bowl". Do you remember telling us that?

A. Yes.

30 Q. Now did he puke it up or spit it out or you're not sure?

A. Hum, he puked it out.

Q. Well why did you tell us when the Crown was asking you questions, "He puked it out or spit it out"? Why did you use the two words?

5 A. He puked it out because he was already eating his food before he got the cod liver oil.

Q. That's not the question, sir. A few minutes ago, why did you say, "He puked it out or spit it out"? Do you agree with me that puking something out or spitting isn't the same thing? Do you agree with me it's not the same thing?

10 A. Hum, yeah.

Q. I suggest to you, Mr. Wesley, that, well first of all before I get to that, when you saw Daniel Wheesk do this either spit or puke, had he just taken the cod liver oil?

A. Yeah he was given, he was given it.

15 Q. Had it just been given to him?

A. Yes.

Q. So if I suggest to you that he didn't puke but that he spit out the cod liver oil he had just been given into his bowl, would you agree with that suggestion?

20 A. I am pretty sure he puked it out.

Q. Why then, sir, in your evidence to the jury, did you say he was given cod liver oil and puked it out or spit out?

25 THE COURT: No, in fairness to him, he did state after that particular passage, "Everything inside came out. I saw him puke it, puke in the bowl". After that initial puke or spit, he did say several times that it was vomit.

MR. CHARLEBOIS: But I'm also, I'm just trying to focus on this before I go on to the other...

30 THE COURT: No, but in fairness, you've got to focus on everything he said.

MR. CHARLEBOIS: Thank you, Your Honour.

MR. CHARLEBOIS: Q. Let's try it another way, if you're sure he puked, Mr. Wesley, or vomited, why did you also use the word "spit" in your evidence?

A. Maybe, maybe he spit it out too because he didn't like the cod liver oil.

Q. So can we agree that you are unsure whether he spit out the cod liver oil or whether he puked out his food?

MS. FULLER: Well, Your Honour, that's not responsive to his answer that maybe in addition to puking it out he spit it out too.

MR. CHARLEBOIS: It's not what I asked the witness. I suggested to the witness that he's unsure, and I think that's quite proper in cross-examination when the witness has used two words that have a clearly different meaning.

MS. FULLER: That's true, Your Honour, but he has said about three different times that knowing he puked it up.

MR. CHARLEBOIS: Well, this is proper cross-examination that goes to...

THE COURT: Take it easy. Go ahead.

MR. CHARLEBOIS: Q. We agree, Mr. Wesley, that you're unsure whether he puked or spit.

A. I seen him puke, puke the cod liver oil.

Q. He puked cod liver oil.

A. After he was given, yeah.

THE COURT: I seen him puke, puke in cod liver oil. If you're going to quote him, quote him correctly.

MR. CHARLEBOIS: Q. Would you agree that from where you were sitting, looking at the bowl in front of you, that it was not apparent that he had vomited? Do you understand the

question?

A. Say it again.

Q. Sure. If you looked at the plate...Maybe you can't  
5 answer this but if you can, from where you were sitting, could  
you see inside Daniel's plate or could you see what was inside  
his plate?

A. Yes.

Q. Okay. Did it look only to be food that was in the  
10 plate after he had been, according to your evidence, puked?

A. No, it was cod liver oil.

Q. So it appeared, is it fair to say to you or suggest  
to you that the contents of the bowl appeared only to contain  
food and cod liver oil?

A. Something came out from his mouth anyway.

Q. Sorry.

A. Something come out from his mouth.

Q. Okay. And was that cod liver...

A. Puke.

Q. ...oil?

A. Cod liver oil as soon as he got, as soon as the  
20 spoon was put in his mouth there that's when he puked it out.

Q. Okay so the picture I have, because I wasn't there,  
the picture I have is he's given the cod liver oil, puked out  
the cod liver oil immediately in the bowl and all that's in the  
25 bowl at that point is food and cod liver oil. Is that what  
you're trying to tell us?

A. Yes.

Q. And do you agree with me, Mr. Wesley, that at the  
time you were at the school and at that time you saw this  
30 happen, cod liver oil was administered to all the children  
every day. It was part of a, some kind of a program?

A. Yes.

Q. And I think that was to combat some disease or other, right?

ANNA WESLEY: This witness is not loud enough for me. The witness speak to the microphone.

Q. So we have established then, Mr. Wesley, was that the taking of cod liver oil was a necessary part of every day life at Albany in those days, right?

A. That's right.

Q. And what you heard Sister Anne say to Daniel Wheesk was to eat the food. Is that right?

A. That's right.

Q. And when you did not eat the food that you told us, she left him alone and told him he'd get the same bowl at the next meal?

A. He got the same bowl, yes.

MR. CHARLEBOIS: Thank you, sir, no further questions.

THE COURT: Re-examination

RE-EXAMINATION BY MS. FULLER:

Q. Mr. Wesley, you were asked about the statement that you gave. It was indicated that you gave a statement from eight ten to nine forty or whatever, this was a four page statement...

A. Hum, yeah.

Q. ...typed. Is that correct?

A. Yes.

Q. And during that statement you described a number of incidents at Ste-Anne's school. Is that not correct?

A. That's right.

Q. And correct me if I'm wrong but the Daniel Wheesk incident is less than one paragraph of this.

A. That's right.

Q. Did anyone tell you that you should spend a lot of time describing that incident?

A. No.

5 Q. When in telling the police about this, I understand you said, "Sister Wesley tried to make him eat it anyway". Do you recall saying that?

A. Yeah.

10 Q. Now were you asked in exactly...What exactly was it that she did to try to make him eat it anyway? Were you asked that question at the time?

A. I didn't understand the question.

15 Q. Were you asked by the police when you said, "Sister Anna Wesley tried to make him eat it anyway", did the police ask you what was it that Sister Anna did to try to make Daniel Wheesk eat it?

A. They didn't ask me anything. I was just giving a statement.

20 Q. Had they asked you, had the police who interviewed you asked you, what was it that Anna Wesley did to try to make Daniel Wheesk eat his vomit, what would you have said?

MR. CHARLEBOIS: Your Honour, isn't that speculation if the witness was not asked that question by the police officer?

MS. FULLER: Well, the witness was asked...

25 THE COURT: What was the question?

MS. FULLER: If you had been asked by the police and apparently he wasn't, what was it that Anna Wesley did to try to make Daniel Wheesk eat his vomit? What would you have told them is in response to my friend's question, well you didn't tell them that Daniel Wheesk was slapped. You didn't tell them the particulars.

30 THE COURT: Well maybe the jury should know first

whether this was a question and answer type of interview or did Mr. Wesley just sit there and talk.

MS. FULLER: Thank you, Your Honour.

5 MS. FULLER: Q. I understand that in your statement it is a narrative in which you just described certain incidents that happened.

A. That's right.

Q. And when you said, "Sister Wesley tried to make him eat it anyway" what were you remembering when you said that?

10 A. I just remembered that morning.

Q. All right, and I take it you weren't asked whether Anna Wesley hit Daniel Wheesk during this incident.

15 MR. CHARLEBOIS: I don't think the witness can answer that, Your Honour. First of all, it's a leading question and re-examination doesn't permit leading questions. The witness can perhaps be asked what he remembers, if anything, of the police officer asking. I don't think leading questions can be put to the witness in re-examination.

20 THE COURT: I agree.

MS. FULLER: Thank you, Your Honour.

THE COURT: It can be rephrased quite easily.

25 MS. FULLER: Q. Was anything said to you by the police officer to tell you that they were interested in knowing whether Daniel Wheesk was slapped or not during this incident?

A. No.

30 Q. You've indicated that when he, Daniel Wheesk, puked what was in the bowl was food and cod liver oil, can you tell the court whether or not the food that was in the bowl was both food that came from his stomach as well as food that had been in the bowl or whether it was just food from what had started in his bowl?



MR. CHARLEBOIS: I don't think that the witness can answer that, Your Honour. The witness isn't a doctor.

THE COURT: No, he is not a doctor but I imagine that he would be able to tell the difference between cod liver oil and the other two substances we are talking about.

A. There was cod liver oil...

Q. Um-hum.

A. ..that went from his mouth to the bowl.

Q. All right, and you said that there was food in the bowl.

A. Already, yeah.

Q. Let me put it another way. If...

MR. CHARLEBOIS: It's been asked and answered. The question was put to him about...

THE COURT: She hasn't asked the question yet.

MR. CHARLEBOIS: No but the last question the witness answered was cod liver oil and food.

THE COURT: Yes. Well, she has not asked her question yet, you know, if it is not correct, object.

MS. FULLER: Q. You indicated in examination in-chief when I questioned you, Mr. Wesley, that what you mean by puke is what comes up from your stomach. Do you remember saying that?

A. Yeah.

Q. Was what was in the bowl what came up from his stomach or not?

A. He must have swallowed the cod liver oil and ...

Q. I'm sorry.

A. He must have swallowed the cod liver oil and it came up again.

Q. I'm sorry. I didn't...

THE COURT: I didn't quite get it but I only heard cod liver oil.

A. He swallowed the cod liver oil and it came up again.

Q. He swallowed the cod liver oil and it came up again.

A. Yeah.

Q. Did food come up with the cod liver oil or did just the cod liver oil come up, if you understand me?

A. I seen cod liver oil.

Q. You just saw the cod...

A. Mostly, it was mostly cod liver oil that came up.

Q. It was mostly cod liver oil that came up.

A. Yes.

MS. FULLER: Those are all my questions. Thank you, Your Honour.

THE COURT: Thank you very much Ms. Fuller. Members of the jury, this is the last witness you will hear today so you are excused, allowed to go home and be back next Monday for ten o'clock.

...JURY RETIRES

3:00 p.m.

THE COURT: Anything else before we go.

C O U R T   A D J O U R N E D

Monday, May 10, 1999

U P O N   R E S U M I N G :

THE COURT: Bring the jury in please.

...JURY ENTERS

10:25 a.m.

THE COURT: Members of the jury, good morning, welcome back and we will proceed.

MS. FULLER: I would like to call Edmond Mudd to the

stand.

EDMUND MUDD: SWORN

Testifies through official interpreter - English/Cree

5 THE COURT: Is it a matter of mechanics or a matter of the fact that the witness is not speaking loud enough?

Mr. Mudd, you will have to speak right into the microphone so we can all hear you. You can sit down if you wish, it might get you a little closer but try and stay as close to the mic as you can. Is that okay Mrs.

10 Wesley? I asked Mr. Mudd to get as close as he possibly could to the microphone in order that you may hear him. It does not seem that he is a man that talks very loudly. If at any time, you cannot hear what he is saying, please tell me immediately, okay.

15 ANNA WESLEY: Yes.

EXAMINATION IN-CHIEF BY MS. FULLER:

Q. Mr. Mudd, I understand you were born in Attawapiskat on the 9<sup>th</sup> of November of 1947.

A. Yes.

20 Q. And that in September of 1954, you would have been six years old, going on seven.

A. Yes.

Q. And that your father was a trapper, is that correct? Was your father a trapper?

25 A. I don't recall.

Q. It might be my mistake. Did you go to primary school or grade school in the north?

A. Grade school.

30 Q. Meaning grade one, grade two, grade three, grade four, grade, everything until you get to high school is what I am calling grade school, did you go to grade school?

A. Yes.

Q. Did you go to one grade school or more than one?

A. One.

Q. Which one?

A. Ste-Anne's.

Q. And how many years did you go there?

A. More than one year.

Q. More than one year and where did you go after there?

A. Fort George.

Q. And was that another school?

A. Yes.

Q. And was it a school like a grade school too?

A. Yes.

Q. All right and other than Ste-Anne and Fort George, did you go to any other elementary schools or grade schools, other than those two schools?

A. No.

Q. All right so which school did you go to first?

A. Ste-Anne's.

Q. And you say you went there, you started elementary school at Ste-Anne's.

A. Yes.

Q. And you said you went there more than one year, can you tell me whether or not...Can you tell me how many years you went to Fort George, the school there?

A. Four.

Q. All right, four years at Fort George and was that after you went to Ste-Anne's?

A. Yes.

Q. And you went more than one year at Ste-Anne's before you went to Fort George, do you remember whether it was two or three or four years?

A. Not sure but three I think.

Q. Three anyway.

A. Um-hum.

5 Q. Okay so three or four years at Ste-Anne's and then four years at Fort George, after your four years at Fort George, did you do a year of grade school, did you go back to Ste-Anne's?

A. Yes.

10 Q. For how long?

A. One year.

Q. And after that, I understand you went to North Bay to an upgrading school.

A. Yes.

15 Q. About how old would you have been when you finished all of your grade school or elementary school, that is by the time you went, you finished with Ste-Anne's finally, how old would you have been?

A. Roughly 15 or 16.

20 Q. Okay and is that how old you would have been when you went then to North Bay? Would it have been in the fall, in September following that school year that you finished at Ste-Anne.

A. I can't remember.

25 Q. Okay, now Mr. Mudd, you're going to tell us something, about something that happened to you while you were at Ste-Anne school in Fort Albany I understand, is that correct?

A. Yes.

30 Q. Now were you a big boy, you know, 12, 13, 14, 15 or were you a little boy when this thing happened?

A. A little boy.

Q. Would you have been over ten or under ten?

A. Under ten.

Q. We've heard that there was a fire at Ste-Anne school in 1954 and that the dorm burned down, do you recall whether you were there at the school then or not when the fire happened?

A. Yes I was there.

Q. All right so you were certainly there in 1954.

THE COURT: Nineteen fifty-four.

MS. FULLER: Fifty-four.

MS. FULLER: Q. Now Mr. Mudd, when you spoke to the police about when you were at Ste-Anne's, do you recall what you told them?

A. Not exactly.

Q. All right and if I were to tell you that you said, "I'm not sure of the exact years"...

MR. CHARLEBOIS: Well Your Honour, what kind of examination in-chief is that?

THE COURT: And what is your objection?

MR. CHARLEBOIS: My objection Your Honour is that Crown asks the witness whether the witness remembers giving a statement to the police or what he had said to the police in the statement, the witness says "Not really" and then the Crown starts quoting sections of the statement to the witness. That's not the way to refresh a memory of a witness by the use of a statement.

THE COURT: That is correct.

MS. FULLER: Q. If I were to show you a copy of your statement, would it refresh your memory if you were to read that portion of it that I am referring to?

A. Yes.

MR. CHARLEBOIS: The suggestion is the proper way to do

5  
it is to get the witness to acknowledge that it is the statement and then not necessarily draw his attention to that portion of the statement but to allow the witness to read the statement in its entirety if he so wishes so as to refresh his memory. I think it is improper to simply point out a portion of the statement to the witness but it's for Your Honour to decide.

10  
THE COURT: Well I am at the stage where the witness stated he did give a statement to the police but he does not recall exactly what is in it and that is as far as we have gone. What does he recall and when we get into the parts that he does not recall, then perhaps his memory can be refreshed.

15  
MS. FULLER: Yes Your Honour, as Your Honour I am sure is well aware, that before the statement can be put to the witness, the witness must first be asked whether or not his memory would be assisted and may be refreshed by having the statement put to him. Only after a positive answer to that can we get into the issue of the...

20  
THE COURT: I agree totally but we are missing one step. If he does not recall exactly what he told the police, and exactly is a very little minor detail, then we do not even have to go through this whole procedure so what does he recall he told the police, he cannot recall that he told them anything, well then you can go through the procedure.

25  
MS. FULLER: Q. Do you recall what years you told the police you attended at Ste-Anne in your statement?

30  
A. I only gave them a rough, rough...I can't say the exact dates.

Q. Do you recall...

THE COURT: Okay, the accused cannot hear, Mr. Mudd, I will have to ask you again to get a little closer to that mic and perhaps speak a little louder.

5 MS. FULLER: Q. Do you recall what the general time frame was that you told the police you attended the school?

A. No.

MS. FULLER: All right, it is in that area I wish to refresh the memory of the witness.

THE COURT: Mr. Charlebois.

10 MR. CHARLEBOIS: I'm in Your Honour's hands.

THE COURT: Go ahead.

MS. FULLER: Thank you Your Honour.

THE COURT: Do you have a copy for me?

MS. FULLER: I hope so.

15 MS. FULLER: Q. Mr. Mudd, I'd like you to have a look at that statement, does that look like the statement you gave to the police?

A. I must've been mistaking when I said 1960's.

20 Q. Just tell me, does that look like the statement that you gave to the police though, before we get to...

A. Yes.

25 Q. All right and does that refresh your memory, looking at that statement as to what you may have, what you may have told the police about the years that you were there, does that refresh your memory looking at it?

A. No, no.

30 Q. I'm only interested in terms of not whether you actually remember but whether it refreshes your memory in terms of what you told the police, do you recall saying that to the police, a reference to the years that you were at the school?

A. Yes.

Q. All right. Now Mr. Mudd, at that time when you



spoke to the police, you indicated, "I'm not sure of the exact years but it was in the early 60's". In view of what you have told us about the landmarks and the touchstones of where you went to school, when do you feel is your best estimate of when you attended the school at Ste-Anne's the first time?

A. In the early 50's.

Q. All right and do you know why you would've said the early 60's, if you said the early 60's?

A. I don't know why I said that, I don't recall.

Q. All right, now while you were at Ste-Anne's, during those first few years, as a young boy, did something important happen to you?

A. Yes.

Q. And did it involve your getting hurt by someone?

A. Yes.

Q. Can you tell the court how it all started? What were you doing that caused you to...

A. Can I have an interpreter please?

Q. ...get in trouble. Would you feel more comfortable?

A. Yes.

MS. FULLER: Your Honour, I wonder if we could swear in an interpreter.

THE COURT: Certainly, is there one available?

MADELEINE KIOKE: Sworn interpreter - English/Cree

MS. FULLER: Q. Mr. Mudd, as I told you earlier, is your right to answer all the questions in English, some of the questions in English, none of the questions in English, all of them in Cree, depending on what you feel you can best express yourself in so feel free to move back and forth, from English to Cree if you wish even though there's an interpreter here.

And also Mr. Mudd, if you don't need the questions translated, then you can indicate that to the interpreter and only those

questions where you don't quite understand, you can perhaps look to the interpreter for help, all right. All right, could you tell the court about this incident that involved you getting hurt by someone. Where did it all start?

A. In the morning when we were walking going towards where we have breakfast.

MR. CHARLEBOIS: If I can just stop for a moment, Mrs. Wesley understands and speaks Cree fluently and I would like her to be able to hear the responses of the witness in Cree so that she can ascertain that the interpretation is acceptable. She speaks the language and if the witness is going to speak in Cree, I'd like the responses to be loudly enough so that she can hear them in Cree.

MS. FULLER: You will have to speak up Mr. Mudd.

THE COURT: Are you an accredited interpreter?

COURT INTERPRETER: Yes I am.

THE COURT: We have an accredited interpreter, I do not object that the accused hear the answer in Cree given by the witness but we all realize that for the purpose of the record, the accredited interpreter's version is the evidence.

MR. CHARLEBOIS: I accept that Your Honour.

THE COURT: Good, let's carry on.

MS. FULLER: Q. Could you please speak a little louder about where this all started, your answer to that question?

A. One morning as we were standing in line two by two on our way to breakfast.

Q. And was this standing in line inside of the school or outside of the school?

A. Outside in the school yard.

Q. And do you remember the time of year Mr. Mudd?

A. In the fall, in the first snow fall.

Q. And did you line up in two's on a regular basis, was this part of a daily event.

A. Yes.

Q. And did you line up according to size, age, grade or do you remember?

A. Size.

Q. And did you line up with the smaller boys or with the bigger boys?

A. Small.

Q. And when you were lined up, were you allowed to do anything while you were lined up?

A. We were told not to touch the snow.

Q. And did you touch the snow?

A. Yes.

Q. What did you do?

A. There was another boy standing in front, he made a snowman and he said that I would miss it so I throw the snowball at it.

Q. Did you hit anybody with the snowball?

A. No.

Q. Did you get caught for throwing a snowball?

A. Yes.

Q. By who?

A. Sister Anne.

Q. Is she in court today?

A. Yes.

Q. Where, where do you see her? Indicating the accused. Now when you made that snowball standing in line and threw it, do you know where she was?

A. In the boys room, inside the boys room, it was a rec room.

Q. And what makes you say that that's where she was?

A. She came out the door.

Q. Yes, was this right after you made the snowball or  
5 sometime after you made the snowball and threw it?

A. Right after I threw the snowball.

Q. Um-hum and did she either come over to you or  
address you from where she was, speak to you?

A. She addressed me from where she was.

Q. And what did she say to you?

10 A. Wait, I will get you in the dining room.

Q. And what did you understand this to mean, "Wait, I  
will get you in the dining room"? What did you understand her  
to be saying to you?

A. I thought she would hit me.

15 Q. Did you go to the dining room?

A. Yes.

Q. And did all the other children go to the dining  
room?

A. Yes.

20 Q. And when you went into the dining room, I  
understand that the girls and the boys ate separately.

A. Yes.

Q. And you sat with the boys, correct, you sat with  
the boys?

A. Yes.

25 Q. And in the dining room, did she address you or  
speak to you and tell you to do something?

A. Yes.

Q. And what did she say to you?

A. She told me to kneel down.

30 Q. And when she told you that, where were you?

A. I was sitting at the end of the table and I was

told to kneel by the wall.

Q. And did you go and kneel by the wall?

A. Yes.

5 Q. Other than going and kneeling, did you say or do anything else other than kneel on the floor by the wall? Did you do anything else other than kneel on the floor?

A. No.

10 Q. All right and did she address you by name or how is it that you knew that she was talking to you?

A. I was the only one in trouble.

Q. All right and where was she when she said go kneel on the floor?

A. Across the room.

Q. Were you looking at her when she spoke?

15 A. No.

Q. What were the other boys doing when you were kneeling?

A. They were sitting down.

20 Q. All right and what were you facing when you were kneeling on the floor?

A. The wall.

Q. And was there anything between the wall and you?

A. The radiator.

Q. And how close were you to the radiator?

25 A. About a foot.

Q. And would that be one of those cast iron old rads that you see in old houses?

A. Yes.

30 Q. And you've indicated you were about a foot away from the, I forget, did you say away from the rad or away from the wall? When you were kneeling, were you a foot away from the rad or a foot away from the wall?

A. The rad.

Q. Okay and where were the other children sitting at tables in relation to you, how far away would you be from the nearest table of children?

A. About three feet behind me.

Q. And when you were kneeling there, were you talking with any of the other children or with anyone for that matter?

A. No.

Q. Was anyone talking to you?

A. No.

Q. Was the dining room noisy or quiet place?

A. Quiet.

Q. Was it quiet enough to hear someone approaching?

A. Yes.

Q. And did you hear someone approaching?

A. Yes.

Q. And what was it that you heard?

A. Her footsteps.

Q. I'm sorry.

A. Her footsteps.

Q. Who's footsteps?

A. Sister Ann.

Q. And what made you think that they were her footsteps?

A. She was the only one with hard shoes.

Q. And what kind of a sound did the hard shoes make on the floor?

A. The sounds that hard shoes make when you're walking.

Q. Were the boys, did the boys shoes...How did the boys shoes sound on the floor?

A. We were wearing running shoes.

Q. And how did they sound different on the floor?

A. Hard shoes make a lot of noise and the running shoes hardly made any noise.

5 Q. You heard what sounded to you like her footsteps approaching and then what?

A. As they got closer to where I was kneeling, I felt a kick in the back of my head.

10 Q. And what did that kick in the back of the head cause your body to do?

A. I hit my head on the radiator.

Q. Had you any way of protecting yourself before it happened?

A. No.

15 Q. And when you hit your head on the radiator, what did they, what happened as a result of hitting your head? Did you suffer an injury to your head?

A. Soon after, I felt something running down my face, on the side of my face.

20 Q. And what was it that was running down the side of your face?

A. My blood.

Q. Was there a little bit of blood or a lot of blood?

A. A lot of blood.

25 Q. And what was your position when you felt the blood running down the side of your face, how would you describe yourself, the position you were in?

A. I was still kneeling down.

Q. Was there anybody nearby when you noticed the blood running down the side of your face?

A. Just her.

30 Q. Did the other children say or do anything when this happened?

A. No.

Q. Were you on your knees bleeding from this here wound for very long before you went somewhere else?

A. No.

Q. And what caused you to leave your position on the floor?

A. She took me out of there.

Q. All right, now were there any other nuns in the dining room at the time, that part of the dining room, that the boys were in?

A. No.

Q. Were there any brothers or priests in the dining room?

A. No.

Q. All right and was that unusual or was that usually the case, that there were no other brothers, no other priests, no brothers, no priests and no other nuns?

A. That's usually the case.

Q. All right so it was only Anna Wesley who was in charge of the dining room at that time?

A. Yes.

Q. Now where would be the quickest place to get medical attention for your head from where you were in the dining room in Fort Albany, where would be the quickest place to get medical attention?

A. Upstairs.

Q. Well what was upstairs?

A. The clinic.

Q. Okay and was that clinic run by the Sisters of Charity as well?

A. Yes.

Q. And did Sister Anna Wesley take you upstairs to the



clinic or the infirmary?

A. No.

Q. Was anyone asked to go and get help?

A. No.

Q. Where did you think you would be taken for your injury to your head?

A. I thought I was to be taken to the hospital.

Q. All right and when you say the hospital, do we still mean the clinic that's upstairs or do we mean another, something else?

A. Yes, the clinic.

Q. The clinic, all right. Instead of going to the hospital or the clinic which is right upstairs, did you go somewhere else?

A. She took me to the bedroom.

Q. She took you to the...

A. The bedroom, to the dormitory.

Q. And was that dormitory close to the dining room that she was in charge of looking after or far away?

A. Far away.

Q. Was it in the same building or a different building?

A. Different.

Q. And did she say why she took you to the dormitory instead of taking you to the infirmary?

A. No.

Q. And when she got to the dormitory, did she say anything to you about the fact of this injury to your head?

A. That's all she said to me was that, "That's what happens to you when you don't listen when you're being spoken to".

Q. And did she say anything else to you about this

injury, this kick to the head that caused this wound or was that the only thing she said?

A. That's all I remember when she said that.

5 Q. Now I understand Mr. Mudd that you didn't actually see her kick you in the head, is that correct?

A. I didn't see her.

Q. Is there any doubt in your mind that it was Anna Wesley who kicked you in the head?

A. Say it again.

10 Q. Is there any doubt in your mind that it was Anna Wesley who kicked you in the head?

A. No doubt.

MR. CHARLEBOIS: Your Honour, the second last answer, was it, I didn't see it?

15 THE COURT: Correct.

MR. CHARLEBOIS: Thank you.

MS. FULLER: Q. Can you tell me whether, in the moments before getting kicked to the head, was there anyone around you or close by you?

20 A. No.

Q. And can you tell me, in terms of the dorm, the atmosphere in the dorm, were children allowed to horse around in the dorm, I'm sorry, in the dining room?

A. No.

25 Q. Did you ever see any fighting in the dining room?

A. No.

Q. Were children allowed to get up and leave their places and go and talk to somebody at the next table?

A. No.

30 Q. If you wanted to leave the table, what did you have to do for any reason?

A. You have to put your hand up and ask permission to

leave.

Q. Were you taken to the hospital for stitches at any time after?

5 A. Not that I recall.

Q. Do you have a permanent scar on your head from that incident?

A. It was obvious at one time but now, it's not that obvious.

10 Q. Could you tell the court where that scar is?

A. Yes.

Q. Where is it? I wonder Your Honour if he could demonstrate it to you or show you the scar in his hairline.

THE COURT: Show me the scar.

MS. FULLER: Yes, unless.

15 THE COURT: Okay, well to show me the scar, he's got to show the scar to the jury. Right now, he pointed to the left peridial area of his head but if I am to see the scar, surely, the jury who are the judges of the facts are the ones that should see it first.

20 MS. FULLER: There may be an issue on this, Mr. Mudd I wonder if, first of all, show me. Your Honour, since the facts of this incident ever happened, (Inaudible)...

25 THE COURT: Well members of the jury, if there is a scar there, you should have a look at it, they should, they are the judges of the facts, I am not and if you want the jury to have a look at the scar, then I can arrange the mechanics, do not worry.

30 MS. FULLER: Your Honour, I just feel, since it is disputed, I feel I should have it demonstrated...

THE COURT: The scar or what happened.

MS. FULLER: The scar.

THE COURT: The scar is disputed, is disputed without defence counsel having a look or what?

MR. CHARLEBOIS: There's a faint white mark about an inch and a half long on Mr. Mudd's scalp, that's all I'm prepared to admit to.

MS. FULLER: Thank you Mr. Mudd.

THE COURT: Defence counsel admits that there is a faint white mark on the left side of the witness's head about an inch and a half long.

MR. CHARLEBOIS: Correct.

THE COURT: Does the Crown agree with that?

MS. FULLER: Yes, it's a line Your Honour.

THE COURT: A line.

MS. FULLER: One and a half inches long, a linear mark.

THE COURT: Well listen, it has to be a scar or a wrinkle and I do not imagine he would have a wrinkle there. Perhaps I should have a look. If I see the same white mark, we could advise the jury that there is an agreed statement of fact, that there is a white mark on the left side of the witness's head who states he was struck there 45 years ago.

MS. FULLER: Yes.

THE COURT: And that, that mark comes from he striking a radiator. I am prepared to go that far.

MS. FULLER: That certainly is sufficient for my purposes.

THE COURT: Could somebody come and show me. Thank you. I see a scar, is that part of the agreed statement of fact?

MR. CHARLEBOIS: Satisfied Your Honour if that's what you see, not a problem.

THE COURT: So Crown counsel, defence counsel and I all

5 agree that there is a scar on the left side of the witness's head. That is an agreed statement of fact that you can accept as a fact rather than in your fact finding duties. We can have agreed statements of facts that you would accept.

MS. FULLER: Q. Mr. Mudd, we are turning to the issue of the dining room, how orderly was the dining room in terms of its atmosphere normally?

10 A. I don't understand.

Q. How strict?

A. It was quiet.

Q. How strict were the rules in the dining room?

A. Very strict.

15 Q. Now when Sister Anna took you back to the dormitory to fix this wound, do you recall what she did to stop the bleeding?

A. No.

20 Q. All right and finally, how did this make you feel about yourself as a person, getting kicked in the head from behind while you knelt on the floor for what you perceive to be throwing a snowball? How did that make you feel about yourself as a person?

A. I don't know what to say.

MS. FULLER: All right, thank you.

25 THE COURT: We will take a break now.

MS. FULLER: I am advised that my next witness is to be here at 11.

30 THE COURT: But you do not know yet. Let's take the morning break and then we will go on to the cross-examination.

...JURY RETIRES

11:18 a.m.

R E C E S S

5  
MS. FULLER: Your Honour, I just wanted to indicate that at the break, we spoke to the victim witness coordinator who is still in Sudbury, actually today, and she indicated that there has been a problem, that the witnesses were at the airport in Albany and evidently, Air Creebec made some kind of error and the tickets were not there and so, they are re-booked coming tomorrow but there is a possibility that somehow, Mr. Eli Tookate is on the plane anyways, was on the plane.

10  
THE COURT: When does the plane come in?

MS. FULLER: Well he would be on his way here if he was on that plane. Otherwise...

THE COURT: The plane has landed.

15  
MS. FULLER: Yes, in Timmins it would have landed.

THE COURT: Oh, in Timmins.

MS. FULLER: Um-hum.

THE COURT: How does he get from Timmins to here?

MS. FULLER: Cab, they all come by cab.

20  
THE COURT: I mean, the biggest fleet of cabs around is the O.P.P. They all come by cab.

MS. FULLER: Indeed they do. There isn't public transit.

25  
THE COURT: Well I will not use as strong a word as astounded but I am certainly surprised.

MS. FULLER: So...

THE COURT: Let's get the jury in, not say anything for now, how long do you think you will be in your cross approximately?

30  
MR. CHARLEBOIS: Thirty to 40 minutes I expect.

THE COURT: Okay, as soon as the cross is finished, let's get on the phones and see if he did in fact get

off the plane and in fact got into...He in fact got off the plane.

5 MS. FULLER: I am going to have Detective Constable Delguidice do that right now while the cross is going on.

THE COURT: Then we will be able to advise the jury soon enough.

10 MR. CHARLEBOIS: At the outside Your Honour, I can't see myself going much...I can't see myself going beyond 12:30 p.m. with this witness at the outside. It's only one incident.

THE COURT: Fine, I would be grateful.

15 MR. CHARLEBOIS: My cross-examinations have been short in this trial Your Honour.

THE COURT: Your know, a lot of these statements that have been referred to have not been tendered as exhibits.

MS. FULLER: No.

THE COURT: Okay, well I will just give this back then.

20 MS. FULLER: Your Honour, I am not allowed to tender, sometimes I would like to but I am not allowed to tender them as exhibits, only in pretty extraordinary circumstances.

25 THE COURT: Well I beg to differ, I think you can take portions out and tender, especially those portions that...

MR. CHARLEBOIS: I would have a problem with that as well Your Honour. I don't feel that...I believe that the statements, just like the...

30 THE COURT: Just a minute, let's stop right there, the problem is not presenting itself, let's not try to solve it.

MR. CHARLEBOIS: Okay.

THE COURT: Bring the jury in.

...JURY ENTERS

11:35 a.m.

5  
CROSS-EXAMINATION BY MR. CHARLEBOIS:

THE COURT: Mr. Charlebois.

Q. Mr. Mudd, the Crown attorney showed you this morning a statement that you had given to the police, is that right?

10 A. Yes.

Q. And that in fact is the only statement you gave to the police and that was in 1994, is that right?

A. Yes.

Q. And I understand and respect that you would prefer to give your evidence in Cree today but can we agree that the statement you gave to the police was given entirely in English?

15 A. Yes.

Q. And can we agree that you understand and speak the English language fluently?

20 A. Yes.

Q. Did you get a chance before you gave your evidence today Mr. Mudd to read or review the statement that you had given to the police?

A. Not this morning.

Q. Well was a copy of it made available to you in the last couple of days?

25 A. Yes.

Q. Okay and did you take the time to read it over, to review it?

30 A. Yes.

THE COURT: I guess I had better get a copy of that.

MR. CHARLEBOIS: Q. I'm sorry Your Honour and before



we get into anything specific Mr. Mudd, would you agree that your memory of your stay at Ste-Anne's school in general is very vague it's been so long?

5 A. I don't really recall everything.

Q. In your statement to the police and perhaps...For the record Mr. Mudd, I put a document in front of you. Can we agree that's the statement you gave to the police in 1994?

A. Yes.

10 Q. At the beginning of your statement sir, you indicated to the police that you thought you had gone there in the early 1960's, is that right, first few lines Mr. Mudd?

A. I had just guessed the first time.

Q. You mean the first time in your statement to the police, you just guessed at the dates?

15 A. Yes.

Q. And for some reason, you didn't mention to the police that you had been to Ste-Anne's for a few years, then had gone to Fort George to a different school for a few years and then gone back to Ste-Anne's, is that right?

20 A. Yes.

Q. Any particular reason why at the time you gave your statement, you didn't indicate or tell the police all this?

A. I didn't think it was important.

25 Q. And it's obvious that when you told the police you'd gone to the school in the early 1960's, you were wrong, is that right?

A. Yes.

30 Q. What happened, what came about to help you remember that you had gone to the school in the 1950's and not in the early 1960's? Did anybody help you remember?

A. No.

Q. Okay nobody helped you remember. What I want to

know is, what happened between the time you gave the statement or after you gave the statement I should say to make you realize that you had gone to that school in the 1950's and not in the 1960's. Something must have happened inside your head.

A. Somebody mentioned to me about the first fire.

Q. Would you repeat that answer please?

A. Somebody mentioned to me about the first fire.

Q. Okay and how did that help you remember Mr. Mudd?

Again Your Honour, could I please ask Mr. Mudd, when he's speaking Cree, to speak it loudly enough so that Ms. Wesley can hear his answers.

THE COURT: Certainly.

A. Could you repeat the question again please?

A. Sure, when somebody spoke with you or talked to you about the fire, how did that help you remember when you had been at Ste-Anne's?

A. Somebody was mentioning an incident that happened during the fire of the 1960's.

Q. Now the incident that we are speaking about, the one you shared with the jury this morning when you threw the snowball, did that happen before the fire or after the fire?

A. I don't know, I don't recall.

Q. Do you know if it happened during your first stay at Ste-Anne's or your second stay? Do you understand what I mean by that?

A. Yes, I don't know.

Q. Now you told us this morning that the incident happened at breakfast, right?

A. Yes.

Q. Any doubt in your mind that it was breakfast or are you sure it was breakfast?

A. I'm sure it was breakfast.

Q. No doubt in your mind.

A. No doubt.

5 Q. Take a look at your statement again will yah, about  
halfway down the first page. Did you tell the police "The  
whole gang of boys at the school were outside, lining up two by  
two to go to another building to eat lunch"? Is that what you  
told the police?

A. Yes.

10 Q. Why did you tell the police that it happened at  
lunch time and there's no doubt in your mind today that it was  
at breakfast?

A. It was the first fall of snow.

15 Q. I'm not talking about the snow, I'm talking about  
the time of day. Can we agree that in the statement to the  
police, you said it happened at lunch? That's pretty clear  
isn't it?

A. I must've meant breakfast.

Q. Can we agree that in your statement to the police,  
you said lunch?

20 A. No.

Q. Sorry, the answer was no.

A. No.

25 Q. Well maybe you misunderstood the question or maybe  
I misunderstood your answer. In the statement, you tell the  
police this happened at lunch time, right?

A. That's what I said but I must have meant breakfast.

Q. So are you telling us you made a mistake on that  
point?

A. Yes.

30 Q. Now you knew that you weren't supposed to throw a  
snowball at that particular point in time, is that right?

A. Yes.

Q. So you broke the rule, do we agree on that?

A. Yes.

Q. And it appears you got caught breaking the rule,  
5 right?

A. Yes.

Q. Now you said and you said the answer in Cree but it  
was translated as follows: That Sister Anne then said to you,  
"Wait, I will get you in the dining room." Is that the answer  
10 you gave in Cree?

A. Yes.

Q. Now in your statement, about half way down, two  
thirds of the way down the front page, basically the same but  
you told the police did you not, "She told me, I'll take care  
of you when we get to where we're going to eat or the dining  
15 room", right?

A. Yes.

Q. Did you expect to be punished for having broken the  
rule and gotten caught Mr. Mudd?

A. Yes.

Q. So the boys sit down for lunch and you're made to  
20 kneel in the corner. That's how I understood it this morning,  
right?

A. Yes.

Q. Breakfast rather, sorry and did you think that was  
25 your punishment being made to kneel and not eat?

A. No.

Q. Now we established this morning that while you're  
kneeling, all you heard were footsteps and that you didn't  
actually see Sister Anne strike you, is that right?

A. No.

Q. Help me out here, no you agree you did not see the  
30 sister hit you.

A. I didn't see.

Q. Can we agree Mr. Mudd it could've been somebody other than Sister Anne who struck you and then she came and took care of your afterwards?

A. I've very sure that she was the one that did it.

Q. If I suggest to you that it could've been somebody other than Sister Anna who hit you, who struck you and that then, she came forward or came over and took care of you after it had happened, do you agree with the suggestion?

A. No.

Q. Your Honour, could I invite you to look at page 55 of the transcript please. Mr. Mudd, do you recall attending a preliminary inquiry in Moosonee last May?

A. Yes.

Q. And do you remember Ms. Fuller asking you questions and then me asking you questions?

A. Yes.

MR. CHARLEBOIS: Your Honour, I'll expect to be making reference to page 55, lines, starting at line eight down through to line 18 or so.

THE COURT: Okay.

MR. CHARLEBOIS: Q. Mr. Mudd, when I was asking questions, do you recall me asking you the following questions and you giving the following answers? "Question: Do you remember how long after you felt the kick to the back of your head you saw Sister Mary Immaculata? Answer: I don't know sir. Question: Okay so I gather Mr. Mudd that it could've been somebody other than Sister Mary Immaculata who hit you, who struck you and then she came and took care of you afterwards, right? Answer: Yes. Me, question: Because we can agree Mr. Mudd that you never actually saw her strike you, right? Answer: Yes." Now do you recall me asking you those

questions and you giving those answers under oath?

A. A bit.

Q. Are you prepared to accept because we have a transcript, we have writings here that were collected by...Do you remember at court in Moosonee, a court reporter, in fact it may have been this lady being in court recording everything with headphones?

A. Yes.

Q. Are you prepared to accept that I asked you those questions and you gave us those answers at the preliminary hearing?

A. No.

Q. Why not?

A. I said it wrong and I said yes.

Q. We'll backtrack a little bit. Do you agree that I asked you those questions exactly as I read them to you and you gave me those answers exactly as I read them to you at the preliminary?

A. No.

Q. So are you saying that the lady, the court reporter didn't get it down right?

A. No I made the mistake.

Q. Well we've already established Mr. Mudd that you speak and understand English fluently, that much is clear, right?

A. Yes.

Q. And you were under oath at the preliminary, you'd sworn to tell the truth, right?

A. Yes.

Q. And at the preliminary hearing, it's pretty clear that you agreed with me that it could've been somebody other than Sister Mary Immaculata who hit you, who struck you and

that she then came and took care of you afterwards, right? You agreed with that at the preliminary.

A. That is what I said but I made a mistake when I said that.

Q. So you made a mistake under oath at the preliminary but you're not making a mistake today, is that what you're telling us?

A. Yes.

Q. Why did you not tell us that at the preliminary, why did you not tell us that, 'No, no, I don't agree with that suggestion'?

A. I did not understand clearly what he was saying.

Q. What part of that question did you not understand?

A. When he asked me if there had been, would have been another person that hit me, that's where I did not understand.

Q. Well the way I asked you the question, I suggest to you, was simple. Did I not ask, "Okay so I gather Mr. Mudd that it could have been somebody other than Sister Mary Immaculata who hit you, who struck you and then she came and took care of you afterwards, right?" Is that a hard question for you Mr. Mudd?

A. I just gave any answer, I was nervous.

Q. Okay so should I understand that at the preliminary hearing, any question that was put to you, you just answered any way because you were nervous?

A. The particular question that you were asking me.

Q. Oh you were nervous for that one but not for others, is that your evidence?

A. Yes.

Q. How come you were nervous when I asked you that question? What was it about that question that made you nervous?

A. I don't know.

Q. So should this jury understand that when you answered that question, you answered the first thing that came into your mind and you didn't worry whether it was the truth or not?

A. I just gave any answer.

Q. What about today sir, when the Crown was asking you questions, were you giving just any answer?

A. No.

Q. Well wouldn't you be more nervous today?

A. I am.

Q. Sorry.

A. I am.

Q. You also mentioned that when this happened, the nun was all alone in the dining room, that's what I understood from your evidence, right?

A. Yes.

Q. So would it be your evidence then that she was serving all the food to all the boys?

A. As far yeah as I can recall.

Q. Would you please repeat that?

A. As far as I can recall.

Q. So what was she doing, she was going into the kitchen and she was bringing out a plate for each boy?

A. They used to bring in a big pot.

Q. And there was no kitchen help helping her to serve the food?

A. No.

Q. And no other nuns or brothers or people would come and help her at lunch time or at mealtime?

A. No.

Q. How many boys were there Mr. Mudd?



A. I don't know.

Q. Okay, ball park, take a guess.

A. Fifty, around 50.

5 Q. And these boys were from young to teenagers.

A. Yes.

Q. And were some of these boys bigger than the nun,  
than Sister Anne?

A. I think so.

10 Q. From your perspective as an adult today, would you  
agree that was a big job for one person?

A. Yes.

Q. To be all alone to look after all these boys.

A. Yes.

15 Q. And can we agree that she looked after you and your  
group of boys seven days a week from morning till night except  
for when you were actually in class?

A. Yes.

20 Q. Now you mentioned that after, according to your  
evidence, you were kicked in the back of the head, that Sister  
Anne then brought you to the dorm, is that it?

A. yes.

Q. Now was the dorm upstairs or on the same floor?

A. Different building.

25 MS. FULLER: I'm sorry, what was the answer of the  
witness?

A. Different building.

MS. FULLER: Yes, that's what I thought his answer was.

MR. CHARLEBOIS: Q. And how long did she look after  
you in the different building?

30 A. I don't know.

Q. And did she take you to the different building to  
look after your cut right after your head hit the rad?

A. I guess a few minutes after.

Q. And at that point, when she took you to the different building to look after your cut, were the boys still all in the dining room, all the other boys?

A. Yes.

Q. So she left all the other boys alone unattended in the dining room and she took you to an entirely different building to look after your cut, is that what you're telling us?

A. I don't know what happened from there.

Q. Well what you did tell us a few minutes ago is that she was all alone in the dining room, right?

A. Yes.

Q. So what I'm asking you is, did she leave... When you left to go with her to the other building to get your cut treated, did you see anyone else in the dining room except the boys?

A. Just the boys.

Q. Just the boys so I guess it would be your evidence would it not that she left the boys unattended in the dining room when she took you to the different building.

A. I don't know, she must have asked somebody to look after them.

Q. But you didn't see anybody, right? Is that your evidence, you didn't see anybody else, any other person in authority?

A. I didn't see no one.

Q. Except the boys.

A. Except the boys.

Q. Now you said Mr. Mudd that while she's looking after...Or actually, before we get to that, were you there at the time of the fire? Were you a student at Ste-Anne's when

the fire took place in 1954?

A. Yes.

Q. Okay and from what you remember, the fire burned  
5 down the whole structure, is that right?

A. I don't know.

MS. FULLER: And I don't know what structure we mean, I  
don't know that it's fair to this witness.

MR. CHARLEBOIS: Q. Okay, I'll rephrase. After the  
10 fire, after there was a fire at Ste-Anne's was there a new  
building built while you were a student?

A. I think so.

Q. And after the new building was built while you were  
a student, did everything start to take place, all the  
activities start then to take place in the new building? By  
15 that I mean, eating, washrooms, dorm, that it all became in one  
building instead of separate buildings?

A. I don't know, I don't recall.

Q. Now you told the jury that while she was looking  
after your cut in the dorm, that she said, "That is what  
20 happens when you don't listen when you are spoken to." Do you  
remember telling us that this morning?

A. Yes.

Q. Take a look at your statement Mr. Mudd. Do you  
agree that in a statement you gave to the police, you don't say  
25 anything about that, directly or indirectly? You don't say  
anything about the nun making any kind of a comment to you  
while she's looking after you. Do you agree that it's nowhere  
in your statement directly or indirectly?

A. I just mentioned the things that came to mind at  
30 the time.

Q. It's not what I'm asking you. Do you agree that in  
your statement, you didn't tell the police officer about the

nun making any kind of a comment to you as she was looking after your wound?

A. I think I mentioned that.

Q. You mentioned it to the police.

A. I think so.

Q. Can we agree that the police officer who took your statement...Are you listening to the question Mr. Mudd...Can we agree that the police officer that took your statement is Detective Constable Delguidice, the police officer who was here this morning and I'm sure you've bumped into, was he the policeman who took your statement?

A. I think it was him.

Q. You think it was him, well that's his name on the statement isn't it, G. R. Delguidice, provincial constable 7455. Is that a yes?

A. I think that was him.

Q. So let me get this straight. Can we agree first of all, you didn't mention it in the statement? It's not written in there at all.

MS. FULLER: His answer was, "I think I mentioned it."

THE COURT: Sorry, I cannot hear you.

MS. FULLER: The witness's answer was, "I think I mentioned it".

MR. CHARLEBOIS: I'm going to get into that aspect of it Your Honour. I don't want it lost on the jury that it's not in the statement and then I'll go on to what he just said.

THE COURT: I do not think the jury is unaware of the fact that it is not in the statement.

MR. CHARLEBOIS: Okay.

MR. CHARLEBOIS: Q. In fact, all you wrote in the statement about that part of it was, "Sister Wesley took me out

of there, took me back to the dorm, fixed up the cut herself as far as I can recall. She never took me to the clinic. That's all I remember." Did I just read properly what's written in your statement about that part of it?

A. Yes.

Q. Now you've told us that you think you mentioned it to the police at the time you gave your statement, is that it?

A. I thought I said it.

Q. Well if you think you said it, it's pretty clear the police officer didn't write it down, right?

A. I thought I said it or I thought it was the woman.

Q. If you said it to the police officer Mr. Mudd, obviously he did not write it down, correct?

A. I don't know.

Q. Well there's only two explanations aren't there Mr. Mudd on that. Either you didn't tell the police officer and that's why it's not in the statement or you did tell the police officer and he didn't do his job properly because he didn't write it down.

THE COURT: Well I do not know about that. It could very well be that he was not asked. There are three alternatives here.

MS. FULLER: The other thing Your Honour is I don't know the format of the statement was. I don't know whether there was a question period and then after they talked, then he took down a formal statement or whether this is all that was said, I don't know.

THE COURT: I do not know that either and the jury does not know that either.

MR. CHARLEBOIS: Your Honour will recall that the first witness called by the Crown was Detective Constable Delguidice and my short cross-examination of that

witness, part of it did entail what his statement taking procedure was at the time the investigation took place.

5 THE COURT: Well what is that evidence?

MR. CHARLEBOIS: I'm sorry.

THE COURT: What was the evidence?

MR. CHARLEBOIS: The evidence was...I haven't got my exact notes in front of me from memory...

10 THE COURT: Well obviously, you can give me from memory what you are talking about now.

MR. CHARLEBOIS: From memory, what he explained is that he would ask questions, people would provide answers, he would write down the answers. He would then invite the people to read over their statement, to make any changes, add or delete anything and then invite them to sign it.

15 THE COURT: Exactly, so we have a 40 minute interview here, 40 minutes. I would ask you to look at the clock to see how long that takes and all of it is reduced to one page and one fifth of a page so question and answer, maybe he was not asked the question and you have not asked him the question.

20 MS. FULLER: Further more Your Honour, there are not questions in this statement.

25 THE COURT: None at all, it is a recital.

MR. CHARLEBOIS: I think it's fairly clear that the only way any of these statements could have been elicited are through questions.

30 THE COURT: Well then, for the sake of clearness, perhaps the questions should have been written down in the statements as well as the answers for the purposes of cross-examination.

MR. CHARLEBOIS: Well that's not my doing Your Honour. I just deal with what I'm given by the Crown as part of disclosure.

5 THE COURT: And I am just trying to be fair to the witness.

MR. CHARLEBOIS: Q. Mr. Mudd, how do you know it was a kick that you got to the back of the head rather than a slap?

A. I wouldn't have hit the radiator so hard if it weren't for a kick.

10 Q. Would you agree that a hard opened hand slap to the back of your head could propel your head forward?

A. No.

Q. Why not?

A. I don't know.

15 Q. Well then why say no if you don't know? Could not or could a hard opened hand slap to the back of your head cause your head to go forward?

A. Maybe.

20 Q. And then your head might accidentally hit the rad, right?

A. Accidentally.

Q. That's what I'm asking, do you agree?

A. No.

Q. Why not?

25 A. It hit me hard when she kicked.

Q. Are you sure she kicked or is it possible she slapped?

A. I don't know.

Q. So maybe it was a slap, right?

30 A. Maybe.

Q. And maybe that accidentally caused your head to hit the rad, right?

A. Maybe.

Q. Because do you remember at the preliminary hearing telling us that Sister Anna was nice when you were being a good boy and you'd get scolded if you were not?

A. Yes.

Q. And do you remember me asking you if she was fair and you responding, "I would say so, yes"?

A. If you were a good boy.

Q. Yeah and do you remember me asking if she was fair...

R U L I N G

BOISSONNEAULT, R. (Orally):

Why don't you ask him the questions directly. That is not the purpose of using the preliminary inquiry. The transcript of the preliminary inquiry is used to challenge the witness's credibility. Now if you want to repeat his testimony in here, that is not allowable. If you want to ask him the question directly, that is allowable.

MR. CHARLEBOIS: Can I add something Your Honour.

THE COURT: I just ruled on your questions. I am not allowing those questions. You can put them directly to him and not saying, do you agree with what you said.

MR. CHARLEBOIS: I'll rephrase.

THE COURT: Please.

MR. CHARLEBOIS: Q. Would you agree that when you were, would you agree that when you were being a good boy or a good student, Sister Anna was nice and that when you were not being good, you would get scolded?

A. Yes.

Q. Would you say that she was fair?

A. Being good, yes.



Q. And again I draw your attention now to the statement you gave to the police. Do you have it in front of you? Do you agree that in your statement to the police, you told the police that Sister Anna was in charge of looking after the boys, that she was nice when the kids were behaving themselves but get her mad and she'd discipline you?

THE COURT: Same thing is it not?

MR. CHARLEBOIS: Your Honour, with the greatest of respect, the use of a statement or the use of a transcript of the preliminary hearing can be used, yes, to challenge the credibility of a witness. It can also be used to refresh the memory of a witness on something said...

THE COURT: You are not refreshing the memory of a witness, you are repeating what you are reading in the statements to the witness and asking him if he agrees. That is not refreshing the memory of a witness who does not recall and you know that. I am not permitting you to read from previous statements and asking this witness if he agrees. You can cross-examine on the previous statements that are inconsistent, that is fine. Other than that, you can carry on with your cross-examination.

MR. CHARLEBOIS: Q. Was she nice when the boys were behaving themselves?

A. Yes.

Q. And would she discipline you and the other boys when you did something wrong?

A. Yes.

Q. Were you going back home in the summer Mr. Mudd?

A. Yes.

Q. Okay and where was home in the years you were at

Ste-Anne's, in which town?

A. Attawapiskat.

Q. Okay, so you'd go back to Attawapiskat every  
5 summer.

A. Yes.

Q. Did you have a good relationship with your parents  
at that period of time in your life?

A. Yes, I only had my mom.

Q. I'm sorry, with your mom.

A. I only had my mom.

Q. Did you tell her about this incident in the dining  
room that you've told us about?

A. By the time I'd go back in the summer time, I  
forget.

Q. So would it be your evidence that when you went  
15 back that summer or whatever summer this incident apparently  
took place, that you had forgotten about it?

A. I never told her.

Q. Okay so you never told her. Are you telling us you  
20 never told her because you'd just forgotten about it?

A. Forgotten I guess.

Q. Okay so can we agree that, that incident at that  
time didn't really bother you very much, if you'd forgotten  
about it by the time you got home?

A. When I think about it now at the time if I had told  
25 my mother about it, she might have done something to her.

MR. CHARLEBOIS: Thank you Mr. Mudd, I have no further  
questions.

THE COURT: Re-Examination.

30 RE-EXAMINATION BY MS. FULLER:

Q. Mr. Mudd, have you ever been slapped before in your  
life?

A. I must've, yeah.

Q. Have you ever been kicked before and I'm talking about other than this incident, have you been slapped before and kicked before, either in the school yard or anywhere?

A. Yes.

Q. All right, does a kick feel like a slap?

A. No.

Q. And what happened to you in the dining room, did it feel like a kick or did it feel like a slap?

A. I would say if felt like a kick.

Q. You were cross-examined about a question that was put to you at the preliminary hearing and that question was...

MR. CHARLEBOIS: Which page Madam Crown?

MS. FULLER: Q. Page 55, "Okay, so I gather Mr. Mudd that it could've been somebody other than Sister Mary Immaculata who hit you, who struck you and then she came and took care of you afterwards, right" and you answered "Yes". How many questions are in that question?

A. I wasn't paying attention.

Q. And can you tell me, sir, you were asked, you said there were about 50 boys at this period of time who were at the school and they were in the dorm and you were asked about the size of them and you indicated that some of the boys were bigger than others, some older boys, is that correct?

A. Yes.

Q. And would the bigger boys sit together and the littler boys sit together?

A. No.

Q. What would be the seating arrangement?

A. Mixed.

Q. Mixed, big and little.

A. Mixed.

Q. You said that you were, you said in-chief, when I examined you, that you were 15 or 16 years old when you left Ste-Anne's, that last year that you were there, do you remember saying that?

A. Yes.

MR. CHARLEBOIS: How does that stem from my cross-examination Your Honour?

THE COURT: I do not know.

MS. FULLER: Well perhaps I would be allowed to put the question Your Honour.

MS. FULLER: Q. And you also indicated that you were a small boy who lined up with the smaller boys and that you were under ten when this happened. My question to you sir is, in cross-examination by the other lawyer, he asked you, "Did this happen, the kick to the head in the dining room, did this happen during your first stay at Ste-Anne's or your second stay" and your answer I believe was, I don't know. I am just wondering if you could clarify that to us, how it could be the second stay when you were 15 or 16?

THE COURT: The evidence speaks for itself but anyway, when you asked how many questions in that four liner in here, your question contained about six or seven. I do not know how he can answer it. But in any event, the evidence on that point is obvious.

MS. FULLER: Thank you Your Honour.

THE COURT: Okay, before we break, I would ask Ms. Fuller to confer with her investigating police officer.

MS. FULLER: Your Honour, one of the Crown witnesses is, who is expected today was able to make it in although there has been some flight problems for the witnesses. This witness will need an interpreter and in fact, even my questioning of him over the lunch hour will have to

be with an interpreter and therefore, I would ask if we could have a slightly longer than usual lunch hour.

THE COURT: One witness came in.

MS. FULLER: I have a complainant here, yes.

THE COURT: Okay, we were having problems, everyone was having problems this morning in getting flights in from Attawapiskat or whatever so we do have one witness.

That is fine. You want a little bit of time to talk to the witness, how does 2:15 p.m. sound?

MS. FULLER: That would be fine, thank you Your Honour.

THE COURT: We will resume at 2:15 p.m., you may step down sir.

...JURY RETIRES

12:40 P.M.

R E C E S S

15 U P O N R E S U M I N G

THE COURT: Are we ready for the jury? Bring it in please.

...JURY ENTERS

2:15 p.m.

20 THE COURT: Ms. Fuller.

MS. FULLER: Thank you Your Honour, I'd like to call Mr. Eli Tookate to the stand and to swear in an interpreter.

ANGELA SHISHEESH: SWORN AS INTERPRETER - English/Cree

25 ELI TOOKATE: SWORN

EXAMINATION IN-CHIEF BY MS. FULLER:

30 Q. Mr. Tookate, I understand you were born on the 15th of July of 1944 in Attawapiskat.

A. Yes.

Q. And that you went to Ste-Anne's residential school

in Fort Albany.

A. Yes.

Q. And how old were you when you went there?

A. Eight years old.

Q. And do you remember what year it was?

A. Nineteen fifty-two.

Q. And do you remember how long you stayed there?

A. Four months.

Q. I understand that you came down with tuberculosis and you had to leave.

A. Yes.

Q. During the short time you were at the school, I understand you lived in a boys's dormitory with other boys.

A. Yes.

Q. Who looked after the boys in the dormitory?

A. Anna Wesley.

Q. And do you see her in court today and if so, could you indicate where she is?

A. Over there, she's sitting over there.

THE COURT: Identifying the accused.

A. Anna Wesley.

MS. FULLER: Q. While sleeping in the dorm one night, did you have an accident and wet your bed?

A. Yes.

Q. Did you get into trouble and if so, how?

A. Yes I wet my bed.

Q. And did you get into trouble?

A. Yes.

Q. And what trouble did you get into because you wet your bed?

A. She pulled me out of bed while I was sitting in my bed.

Q. Who is she?

A. Anna Wesley.

Q. Yes and then what?

A. She hit me at the back of my neck.

Q. And what else?

A. She threw me on the floor.

Q. What else?

A. And she kicked me on my back.

Q. And were you hit and kicked once or more than once?

A. More than once.

Q. Do you know how many times or whether it was a few times or many times?

A. About three times.

Q. Is that three times hitting or three times kicking?

A. For sure she hit me three times the back of my neck.

Q. Yes and how many times did she kick you?

A. About two times.

Q. Okay. Did you wet your bed on purpose?

A. I didn't do it on purpose.

MS. FULLER: I just wonder Your Honour whether the witness is totally facing the window and the whole of the jury is behind the witness. I wonder if we couldn't rearrange the positioning.

THE COURT: Go ahead.

MS. FULLER: I just wonder if Mr. Tookate, if you could trade places with the interpreter so that the jury could see when you are answering your questions.

INTERPRETER: He says I like sitting down but I can face them like that.

MS. FULLER: All right, maybe we could just move the mic over because otherwise, they are just getting to

assess the back of his head. I did not mean for him to turn that much Your Honour, sort of on an angle perhaps.

5 INTERPRETER: I just told him to talk in the mic and at the same time, to face the jury.

MS. FULLER: Thank you madam interpreter.

10 MS. FULLER: Q. I'd like us to talk, I'd like you to tell us about an incident that involved meal time in the dining room. Was the food the same or different than what you were used to?

A. It was different.

15 Q. And one time, at least one time when you were there, did you feel sick during meal time after eating some of the food?

A. Before eating the food, I was sick.

Q. Before eating the food.

A. At first I was given cod liver oil.

Q. Yes and then did you eat whatever the meal was?

20 A. Yes I ate it even though I didn't like it, I forced myself to eat it.

Q. All right now after eating it, what happened, the food that disagreed with you?

A. I vomited.

Q. And where did you vomit it?

25 A. Right in my plate.

Q. And why did you vomit or throw up in the plate?

A. I was afraid I would get into trouble if I vomited on the floor.

Q. And did you vomit a little bit or a lot?

A. A lot because I almost fill up my plate.

30 Q. And when you vomited, who was in the dining room looking after the boys?



A. It was Anna Wesley who was looking after the boys.

Q. And when you vomited, where was she in the room,  
how far away was she?

A. Exactly the same distance where she is sitting.

MS. FULLER: About 15, 18 feet Your Honour.

MR. CHARLEBOIS: It would be more than that I would  
imagine.

MS. FULLER: Twenty feet.

THE COURT: Do you want a tape?

MS. FULLER: Between where the witness is and where the  
accused is. I'm not very good at these things Your  
Honour.

THE COURT: I am not going to hazard a guess, I do not  
know. If you want to get a tape, we can tape it but  
the jury can tell pretty well the distance.

MS. FULLER: Q. The jury can figure it out I guess.  
Did she, Anna Wesley, say anything to you when this happened?

A. You're going to have to eat whatever you've got on  
the plate, that's what she told me.

Q. And did she say it from the distance that you've  
indicated or did she come over to where you were seated?

A. She came where I was sitting.

Q. All right and then she said you had to eat whatever  
it is you have on your plate.

A. Yes.

Q. And what did you have on your plate at that moment?

A. My vomit.

Q. And did you want to eat what was on your plate Mr.  
Tookate?

A. No.

Q. Well did you finally eat your vomit?

A. No I didn't eat it.

Q. Did Anna Wesley do anything other than just telling you to eat your vomit, to make you eat it?

A. She did something.

5

Q. What did she do?

A. She used the spoon and she forced me to eat, she forced it into my mouth.

Q. She forced the food on the plate into your mouth with the spoon.

10

A. Yes.

Q. And were you able to swallow it?

A. No I couldn't do it.

Q. So what happened when she forced the vomit into your mouth, what was your response?

15

MR. CHARLEBOIS: Your Honour, I don't think the witness said vomit, the witness said food.

MS. FULLER: The witness also said what was in the plate.

THE COURT: Ask him what it was.

MS. FULLER: Q. What was forced into your mouth?

20

A. My own vomit.

Q. And what, when she forced your own vomit into your mouth with the spoon, what was your response?

A. I vomited some more again.

Q. And again into the plate.

25

A. Yes the same plate.

Q. And what was Anna Wesley's response to that?

A. She didn't say anything to me but she sent me to bed.

30

Q. All right and can you tell me sir, how did that make you feel about yourself as a person, to be forced to eat your vomit in the dining room in front of your school mates?

A. Like as if I was nothing, as if I was nothing,

that's how I looked at myself.

Q. Were you at school the same time as Gerald Kioke, Gerard Kioke?

5 A. Yes he was there.

MS. FULLER: Thank you sir.

THE COURT: Mr. Charlebois.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

10 Q. You told us this afternoon that you went to Ste-Anne's in 1952, is that right?

A. Yes.

Q. And that you only stayed four months?

A. Yes.

15 Q. You gave a statement to the police in 1994, did you not?

A. Yes that's true.

Q. And you gave that statement to this police officer here did you not, the one I'm pointing to?

A. That's him.

20 Q. Had you had a chance to look over that statement or has anybody...Well first of all, just so we all understand, did you give the statement in Cree or in English Mr. Tookate?

A. In Cree.

25 Q. Okay so I know that Constable Delguidice here does not speak Cree, was there somebody else interpreting for him?

A. Yes it was the native constable.

Q. And was that native constable a Mr. Paul-Martin?

A. Yes that's the one, Peter Paul-Martin.

Q. Do you know if he's related to Eli Paul-Martin?

30 A. To my knowledge, I think he is.

Q. Is he his son, his brother, his uncle, what do you know of their relationship?

A. His cousin, his cousin I'm sorry.

Q. Now before you gave evidence today, did someone review with you the statement you gave to the police?

A. Not all of it.

Q. Well tell us what happened, did somebody read the statement over and was it translated into Cree for you today?

A. Somebody read it for me.

Q. Do you understand or speak English Mr. Tookate?

A. Not perfectly.

Q. Okay, you have some knowledge of English though.

A. Yes.

Q. Did you try to read your statement today?

A. Not today.

Q. Okay, who was the person who read parts of your statement to you?

A. That lady over there.

Q. Okay and she was reading in English and was somebody translating that into Cree or were you understanding what she was reading?

A. She was reading it and it was translated.

Q. I'm just at a lost to try and figure out how to go about getting Mr. Tookate to identify the statement because the Crown just whispered to me that he doesn't read English so and the statement is in English. I was trying to find the best and quickest way to get him to identify the document as being his, short of reading the whole thing and the whole thing translated. Would Your Honour perhaps have an suggestion?

THE COURT: I do not read Cree or speak Cree. We have the statement, I suppose you will want to cross-examine on the statement. If you want to cross-examine him on the statement, you had better get somebody to interpret it. It is the only way. There is no short-cut there.

MR. CHARLEBOIS: Okay because I'll be cross-examining him on two or three areas of the statement so I guess we'd better go through...

5 THE COURT: Well perhaps you could get those two or three areas translated.

MR. CHARLEBOIS: Okay. I'd first need to get the witness to identify the document as being his though.

THE COURT: Did he sign it?

10 MR. CHARLEBOIS: I don't have the original. All I've got are the typed copies provided as part of disclosure.

THE COURT: Well it is typed here, signed, typed, Eli Tookate so you can use that statement.

15 MR. CHARLEBOIS: Q. Yeah, I believe that is what we have here. I've provided to you sir a typewritten copy and then I've given you something that is handwritten. Can you identify the signature at the bottom of page two of the handwritten document? Is that your signature?

A. That's mine.

20 Q. Is that the statement you gave to this police officer that I'm pointing to back in 1994?

A. That's the one.

25 Q. Do you remember how the interview took place sir? Were you just asked to talk about what you remember or were you asked questions?

A. I was asked to say what happened to me.

30 Q. Was it a general question like that Mr. Tookate or was this police officer asking you many questions?

A. He asked me different questions, all about my stay in Fort Albany.

Q. Okay now I'll perhaps invite you madam interpreter to look at the statement, the typewritten one that I put in

front of you. At the beginning of your statement, did you tell this police officer, "I attended Ste-Anne's residential school as a residential student for only one year in 1951."

5 A. That's what I had said.

Q. Okay now today you told us that you went there for a few months in 1952. Was it '51 or '52 or you're not sure?

A. I am quite certain that it's 1952.

Q. Why did you tell the police officer 1951?

10 A. Of course my memory wasn't that good because it's been such a long time.

Q. Or maybe you found out that Mr. Kioke didn't get there until 1952.

A. He was there because I seen him too.

15 Q. What I want to know is why you told the police officer you went to the school in 1951 while you're telling this jury you went in 1952?

A. Didn't I just tell you clearly that I had missed, my memory wasn't that good and I clearly remember now.

20 Q. So your memory wasn't that good when you gave your statement to the police, is that what you're telling us?

A. Like I said, I didn't remember it clearly because it has been such a long time but ever since I've been thinking about it, it started, my memory just started to come back.

25 Q. And the fact that Mr. Kioke didn't get there until 1952, that didn't help your memory at all?

MS. FULLER: Before the witness answers, there is no evidence before the court that this witness knows about Mr. Kioke being there or when he was there or any significance to this matter.

30 THE COURT: The only evidence we have in relation to Mr. Kioke is the fact that they were there together.

MR. CHARLEBOIS: I still submit Your Honour that I can

put any...I've had of course the benefit of Mr. Kioke's statement and I submit respectfully...

5 THE COURT: Do not start telling me about other people's statements that have not testified.

MR. CHARLEBOIS: I think I can make the suggestions to the, any relevant suggestions to the witness particularly when it pertains to an important, what I perceive to be an importance in the dates.

10 THE COURT: You are entirely correct but just do not start...

MR. CHARLEBOIS: Q. How good was your memory at the preliminary hearing Mr. Tookate?

A. At that time, I didn't really clearly remember anything.

15 Q. You didn't remember anything clearly at the preliminary hearing is what you're saying.

A. Not everything, I couldn't remember clearly everything.

20 Q. Do you remember at the preliminary hearing, this lady asking you questions and then me asking you questions in Moosonee last May?

A. Yes I remember that.

MR. CHARLEBOIS: Page 186 Your Honour, we'll start at about line 17 down to about line 25.

25 THE COURT: Yes, go ahead.

MR. CHARLEBOIS: Q. Do you remember me asking you the following questions and you giving me the following answers in Moosonee?

A. Yes I remember.

30 Q. Me: "So when you told us you went there for that short period of time, you would've been about six, seven years old. Your answer: Yes about that, yeah."

A. I thought it was in 1951.

Q. My question: "Okay, you were born in 1944, that means you would've been there sometime around 1951, is that right? Your answer: Yeah."

A. Yes I remember it clearly.

Q. You remember me asking you those questions and you giving me those answers, right?

A. Yes I remember.

Q. So when you gave me that answer at the preliminary hearing sir, were you telling me the truth?

A. You can see that I had mistaken about the years, like when I said it was in 1951, I was the one that got mixed up those years.

THE COURT: Listen, in fairness to this witness, first he was asked, he would have been six, seven years old. His answer was, "Yes, about that, yeah." So about six or seven. It does not necessarily mean six or seven and we go on, "That means you would have been there sometime around 1951. Now around 1951 could be 49, 50, 51, 52, 53. In fairness to him, you should have pointed that out to him.

MR. CHARLEBOIS: I put that exchange to him Your Honour. I read that part of the exchange to him so as not to take the exchange out of context. Your Honour will recall the parts I wanted to put to the witness were line 17 to 25 and not just the years suggesting he'd been there in '51.

THE COURT: Um-um.

MR. CHARLEBOIS: So that part of it, that part of the exchange was read to the witness and translated for the witness.

THE COURT: But the purpose of cross-examining the



witness on a previous statement in a preliminary inquiry is to challenge his credibility. Now the words around and about were put to him but then further questions were put to him.

MR. CHARLEBOIS: At the preliminary.

THE COURT: Yes.

MR. CHARLEBOIS: Yes and I think quite frankly that that's quite proper.

THE COURT: Go ahead, keep on.

MR. CHARLEBOIS: And perhaps just to answer more clearly Your Honour's concern, we already have the date of birth of the witness at the preliminary as we got it today.

THE COURT: I heard that, I said you can go ahead with your cross-examination. I am not astounded at the abouts and the maybes considering the fact that 48 or 49 years have gone by.

MR. CHARLEBOIS: Q. In any event, so we're all clear on this, when you spoke to the police, you felt you'd been there in '51 and at the preliminary hearing, you still felt you'd been there in '51, right?

A. Yes.

THE COURT: Again, I think it would have been a little fairer to put to him that he thought at the preliminary that it was about 1951, not in 1951 as you put it to him, especially in view of the fact of the passage of time. You have to be careful.

MR. CHARLEBOIS: The witness said six or seven Your Honour. He was born in 1944, six would take us in the entire year 1950, seven would...

THE COURT: You can argue that to the jury okay. I am just telling you when you are putting a question to

5 this witness, be fair about them. Do not say you said  
51 when he said about 51. That is all I am saying.  
You can go ahead and cross-examine him till tomorrow if  
you want and make your submissions to the jury as to  
what they should take from this testimony but I am  
simply asking to put what he said to him correctly, the  
abouts and the maybes must be included.

MR. CHARLEBOIS: Thank you.

10 MR. CHARLEBOIS: Q. You started going to the school  
what, in September?

A. Yes.

Q. And when were you removed from the school, before  
or after Christmas?

A. After Christmas.

15 Q. Now when you wet the bed, was this discovered right  
away or only the next morning?

A. In the morning.

Q. Why didn't you go to the washroom when you felt the  
need?

20 A. I have said some many times over and over again  
that we were not allowed to go to the washroom after going to  
bed.

Q. In that old building, did you actually have toilets  
or did you use pails?

25 A. They only used the pails at that time.

Q. So what you're telling us is that you couldn't use  
a pail during the night.

A. Not while we were sleeping.

30 Q. Now you described what happened the next morning  
and you described what the nun did, right?

A. Yes that's true.

Q. You mentioned being hit at the base of the neck,

were those slaps?

A. I can't say whether she had a closed fist or if she had an opened hand.

5 Q. Let me try to help you. At the preliminary hearing Your Honour, page 187, line two to six.

THE COURT: Was that 187?

MR. CHARLEBOIS: One eighty-seven, lines two to six.

THE COURT: Okay.

10 MR. CHARLEBOIS: Q. Do you remember me asking you this? "Question: Now you said that the next morning after you wet your bed and you were hit and when you were hit, it was with an opened hand. Answer: Yes. Question: To the back of the head. Answer: Uh-huh."

A. That's true.

15 Q. Okay, you remember those questions and answers.

A. Yes I remember that.

Q. Does that help you remember, was it slaps?

A. All I remember is she hit me.

Q. Did she hit you with slaps or with punches?

20 A. I cannot differentiate the two but I know that she hit me.

Q. Mr. Tookate, you know that this is a slap, this is a punch, right?

A. I know that.

25 Q. At the preliminary hearing, you did agree with me when I suggested that you were hit with an opened hand.

A. Yes I remember.

Q. And was that your best memory, your recollection at the preliminary?

30 A. To my knowledge, I don't think it was a clear memory of it. It's just a recollection. Even now, I'm still not really sure if she had an opened hand or a closed fist.

Q. In response to my question at the preliminary, why did you not tell me that you didn't, you weren't sure if it was an opened hand or a closed fist?

5 A. You know what happened to me that time at the hearing, I was so nervous and I was so afraid, I couldn't hardly talk.

Q. Were you telling us the truth at the preliminary hearing?

10 A. I thought I was telling the truth.

Q. Now you told us today that after being hit at the back of your neck that you were thrown to the floor and hit, right?

A. That's the truth.

15 Q. In your statement to the police, I suggest to you that you did not mention having been hit to the back of the head and you did not mention having been thrown to the floor.

A. I don't remember.

Q. You don't remember what?

A. Exactly what I had said in my statement.

20 Q. Okay, did you tell the police this in your statement?

INTERPRETER: Excuse me, I wasn't listening because he earlier this afternoon, he told me that he goes to the washroom very frequently so I asked him, I don't want him to have an accident here.

25 THE COURT: We will take a break, regular break.

...JURY RETIRES

3:14 p.m.

R E C E S S

U P O N R E S U M I N G :

30 MS. FULLER: Your Honour, I should advise the court that because of the Air Creebec problems with witnesses, that the two witnesses who are expected in will not be

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in until about 11:30 tomorrow and my suggestion continues to be that, any legal argument that we could make, we could make in the morning if there is to be a legal argument and in any case, that was going to be my submission and this way...

THE COURT: I am sure Mr. Charlebois would not object to that.

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MR. CHARLEBOIS: No, I just understood, from the last discussions we had on this point this morning, the Crown needed to reflect as to whether or not we would be having legal argument or not.

THE COURT: I think this is what the Crown is telling you.

15  
MS. FULLER: Well the Crown's reflection will be before dinner and it will not be a lengthy...

THE COURT: The Crown's what?

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MS. FULLER: Reflection on this issue will be an intellectual exercise undertaken before dinner and I can talk to my friend after dinner and let him know, one way or the other but in any event, we cannot proceed with a witness until the witnesses get here.

MR. CHARLEBOIS: That is fine, I don't have a problem with that. Is the witness expected here at 11:30 a.m. or just in Timmins?

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MS. FULLER: Here by 11:30 a.m.

THE COURT: By taxi.

MS. FULLER: Well I understand that the last witness actually rented a car but I don't know what the arrangement have been made.

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THE COURT: We will tell the jury now that after the cross-examination is terminated, the other two witnesses cannot fly in until 11:30 a.m. and be back

then, okay.

MS. FULLER: Maybe we should give a half hour of grace, twelve o'clock to be on the safe side. If they're supposed to be here at 11:30 a.m. Your Honour.

THE COURT: You want to talk to them.

MS. FULLER: Well I have spoke to one but the witness that I do propose to call first but that half hour sometimes...

THE COURT: Okay, that is fine, bring the jury in.

MS. FULLER: The investigating officer has indicated he will go to the airport and pick them up to ensure that they will be here at limited tax payers expense.

THE COURT: Actually, it would probably cost more to get an officer up there and back.

...JURY ENTERS

3:27 p.m.

THE COURT: Members of the jury, less that I forget, we are having trouble synchronizing Air Creebec and this trial. The two next witnesses that are expected will not be here tomorrow until 11:30 a.m., twelve o'clock at the latest but I would like to get one hour's evidence in before the lunch break so I would ask you to be here for noon. Is that okay?

MR. CHARLEBOIS: Q. Where we stopped, we were talking about the slaps and thrown to the floor so let's start over. In the statement you gave to the police, you said, "When we went to bed for the night, we weren't allowed to get up to go to the bathroom. One night, I peed the bed and the next morning, Anna Wesley found out. She started kicking me all over for about five minutes." Why did you not tell the police anything about being slapped?

A. At that time, I couldn't remember everything.

Q. Why did you not tell the police that you got thrown to the floor?

A. I thought I told them that.

5 Q. You thought you told the police about the slaps or about being thrown to the floor?

A. When I was thrown to the floor.

Q. What about slaps, did you tell the police officer about slaps?

A. I'm not sure.

10 Q. Okay so you're not sure you told them about slaps but you think you told them about thrown to the floor, right?

A. Yes that what I had said, the time when I was thrown on the floor.

15 Q. It's pretty clear that that's not in your statement about you being thrown to the floor, right?

A. I never looked at that statement.

Q. I just read the part to you, do you want me to read it to you again?

A. Yes, you read it over again.

20 Q. "When we went to bed for the night, we weren't allowed to get up to go to the bathroom. One night I peed the bed, the next morning, Anna Wesley found out. She started kicking me all over for about five minutes." That's the statement about that part of it. Nothing in there about being  
25 thrown to the floor, right?

A. Yeah.

Q. So either you didn't tell the police or you told the policeman here I'm pointing to and he didn't write it down.

A. Can you repeat that?

30 Q. Sure, either you didn't tell the police about being thrown to the floor or you told this police officer and he did not write it down.

A. To my knowledge, everything seems look different what I had said.

Q. I don't understand, explain that again please?

5 A. I did not say that, what it says on the statement, it sounds so different.

Q. Tell me if there's something here you don't understand okay. That part of the statement that I have read to you two times now, are you saying that that is not how you told it to the police?

10 A. Some of the statements I didn't, some of the statement, the way it's written, I didn't.

Q. I didn't what?

MS. FULLER: I wonder if we could move the mic over a little bit, the witness's mic over a bit. We're back into the same situation.

INTERPRETER: Would you repeat the question again please.

MR. CHARLEBOIS: I don't remember what it was.

INTERPRETER: I have to think in Indian first when I'm talking to him.

THE COURT: It must have been pretty important.

MR. CHARLEBOIS: Q. Two times now Mr. Tookate I have read a portion of your statement to you, right?

A. Yeah.

25 Q. And the feeling I get is that you don't remember saying that or you remember it differently. That's what I want you to explain to us.

A. Like when, for her to take her at least five minutes kicking, to kick me, it's not the truth. It's not the way.

30 Q. Okay, when you told the police, "She started kicking me all over for about five minutes, that is not the



truth, is that what you're trying to say?

A. Not the way.

Q. Is there anything else in that passage, that part  
5 that I read to you that is not accurate, that is not the truth?

A. Not to my knowledge, the only part for her to have  
taken her five minutes...

INTERPRETER: Like he says for her to take her time to  
hit me so what I asked him here is to differentiate  
10 that kicking and hitting but he says for her to take,  
to take her five minutes to hit me, I didn't say that  
he says.

MR. CHARLEBOIS: Q. Okay, let's take it step by step  
because that's important. So the nun did not kick you all over  
for about five minutes, right?

15 A. It didn't take her five minutes but she kicked me  
alright.

Q. Because today you said that you were only kicked  
twice, right?

A. Yes that is true, that's the truth.

20 Q. So would you agree that you exaggerated when you  
said that she had kicked you all over for about five minutes?

A. I didn't say that but I can say that she had kicked  
me.

Q. I didn't say that, what do you mean by that?

25 A. You are trying to confuse me here. You're trying  
to put, make me say as if nothing happened to me.

Q. Just answer the question will you?

A. That's what I'm doing.

30 Q. You were kicked twice in the back, you weren't  
kicked for five minutes, right?

A. That's the way, that's how it happened.

Q. So when you told the police you'd been kicked all

over for about five minutes, you made it sound worse than it was, right?

5 MS. FULLER: Objection Your Honour, as I understand this witness's evidence, he disputes that and does not understand that part of the statement, that is that he said that Anna Wesley kicked him for about five minutes. As I understand the last few minutes of his evidence, it was to the effect that that wasn't right, that he didn't say that. In fact, I think he said it 10 three times, that he doesn't recall saying that and so this reference to what his intentions were when he told this to the police or whether he was exaggerating or not is what I think is causing problems.

15 MR. CHARLEBOIS: I realize it's being made more difficult when the witness doesn't understand the language that I'm questioning him or her in. By the same token, all I've got to go on is this statement and either he said that or he didn't say that. If he 20 didn't say that, the police officer got it wrong or the witness is exaggerating. I mean it's proper cross-examination.

25 THE COURT: I believe he did state that he did not recall saying that to the police officer but if you are having difficulty understanding the witness because of a language barrier, I would also think that maybe he is having difficulty understanding you because of the language barrier.

30 INTERPRETER: Your Honour, he's not feeling too good right now. He is diabetic and he's got the shakes. He said he has to take something.

THE COURT: Certainly, we will take a break. Does he want to stop for the day?

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COURT INTERPRETER: He says he got up at five this morning, he said he wanted to continue on but I said, I asked him would it be better for you to rest first so he can have clear conscience.

THE COURT: And did he say okay?

COURT INTERPRETER: It's up to you.

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THE COURT: No, it is not up to me, tell him that it is totally up to him and to do exactly what he thinks he should do for his health which is a lot more important right now than anything else going on in this courtroom.

COURT INTERPRETER: Okay, let's stop for today.

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THE COURT: As a matter of fact, tell him I was going to insist, he has to take his rest and he has to take care of his diabetes.

...JURY RETIRES

3:53 p.m.

MS. FULLER: Your Honour, I can advise the court when we broke for lunch, that this witness was shaking pretty seriously. We were quite concerned.

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THE COURT: I have no doubt at all in my mind that this is the time to stop and we are going to stop.

MR. CHARLEBOIS: In any event, I would probably be with the witness for another 35 to 45 minutes.

THE COURT: Maybe we will do it in installments.

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MS. FULLER: Your Honour, would you like then to resume at 11:30 a.m.

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THE COURT: I would like Mr. Tookate to go back into the body of the courtroom or even leave the courtroom and I will bring the jury in, not to embarrass him, I will bring the jury in after he is gone and just tell them that this is it for today, that he is not feeling well for reasons of health. Okay and in case I forget, tell

him after you are outside, that if he does not feel good tomorrow at anytime, to tell me right away.

...JURY ENTERS

4:00 p.m.

5 THE COURT: Members of the jury, the last witness, Mr. Tookate, is not feeling well. He is visibly not feeling well. I am told by the Crown that even at noon, he was shaking quite a bit during the break so we are not going to continue today. Defense counsel tells me he has about half an hour to complete his cross-examination. I would suggest that we resume at 11:15 a.m., how does that sound?

MS. FULLER: Certainly Your Honour.

10 THE COURT: And is that okay with you? Okay, 11:15 a.m., then we will proceed to complete the cross-examination and the two other witnesses, by then, will have been taken down by the police officer from Timmins. So you are excuse for the day, thank you very much. Do you want to resume at...

15 MS. FULLER: Nine thirty.

20 THE COURT: Okay.

MS. FULLER: For legal argument.

25 MR. CHARLEBOIS: I wonder if tomorrow morning, we could resume only at ten rather than 9:30 a.m., the reason, at noon hour, I called my office. There's a matter that I'm going to try to resolve tonight with Mr. Legault, the other lawyer who assists me but it's possible that my direct intervention may be required tomorrow morning by telephone is I can't get it resolved tonight so I would appreciate ten tomorrow.

30 MS. FULLER: I doubt that we will be finished the legal argument then.

MR. CHARLEBOIS: Well that's indeed if there is a legal

argument. I guess I won't know that till suppertime.

THE COURT: Are you hoping?

MR. CHARLEBOIS: Pardon me?

THE COURT: Are you hoping?

MR. CHARLEBOIS: I have an opened mind.

THE COURT: We will resume tomorrow at ten o'clock.

C O U R T   A D J O U R N E D

Tuesday, May 11, 1999

U P O N   R E S U M I N G :

MS. FULLER: Good morning Your Honour.

THE COURT: Good morning.

MS. FULLER: There are two aspects to the application this morning. The first is an application for similar fact evidence and before we can deal with that, there is the defence objection to the evidence on the basis of late disclosure and an application to have that evidence not allowed by the defence on the basis of the charter.

I am in Your Honour's hands but it does seem to me that since there is no point dealing with the similar fact evidence until the late disclosure issue has been dealt with, that my friend, it would be his, appropriate for him to open with his objection to its admissibility as the onus is on him in a charter, with a charter violation to state the objection and to seek the remedy.

THE COURT: Mr. Charlebois.

MR. CHARLEBOIS: However Your Honour wants to do it. I agree that we have to deal with the *Stinchcombe* application because if you find merit in the

*Stinchcombe* application, we really do not have to argue similar fact.

5 What I would suggest is I don't mind indicating to the court, making my argument now. I would appreciate an opportunity of replying after the Crown has responded prior to Your Honour making a ruling.

THE COURT: You always have a right to reply.

10 MR. CHARLEBOIS: My understanding is that, as part and parcel of its similar fact evidence motion, the Crown is going to seek to introduce three components: The first one will be to illicit from Eli Paul-Martin, one of the witnesses arriving by provincial cab later today, not only evidence...

15 THE COURT: An alleged victim witness.

MR. CHARLEBOIS: Yes.

THE COURT: Okay.

20 MR. CHARLEBOIS: Not only evidence as to his own treatment but also an allegation as to treatment that he saw administered, allegedly by my client, to another boy.

25 Now, I accept that Mr. Paul-Martin's statement including that portion of it referable to what he witnessed involving another boy was disclosed in timely fashion. So at the appropriate time, we'll have to deal with whether or not Mr. Paul-Martin can testify as to that as part of similar fact or whether Mr. Paul-Martin will be limited to his own treatment.

30 So the *Stinchcolme* application is not in reference to Paul-Martin's statement. I just wanted Your Honour to

have all the narrative in front of you.

5 On the other hand, I was provided, by the Crown, with two statements, one by a Mr. George C. Scott and another one by a Mr. Leo Loone. Those statements are lengthy, those statements allege a number of matters and parts of those statements refer to allegations which the Crown wants to use as part of its similar  
10 fact evidence motion. Neither Scott nor Loone are complainants in this case.

15 Although I don't have, on the basis of the typewritten copies that I was provided with, the dates upon which the police obtained the statements from Scott and from Loone. I understand the Crown will concede that they were obtained in the course of the investigation so presumably, sometime between the fall of 1992 and the  
20 spring of 1994, in any event, well before the time at which time charges were laid in the fall of 1997.

THE COURT: Can you tell me, if I can jump ahead a little bit, did Scott or Loone testify at the preliminary inquiry?

MR. CHARLEBOIS: No.

25 THE COURT: And can you tell me when you got the statements?

MR. CHARLEBOIS: The statements were faxed to me on the 22<sup>nd</sup> of April. They came into my fax machine at 3:45 p.m.

THE COURT: When did this trial start?

30 MR. CHARLEBOIS: April 26<sup>th</sup>. So basically, they arrived at my office at the end of the day, on Thursday and the trial started on the Monday and obviously in my case,

5 the Sunday was a no-brainer, if I can use that expression because it was a day used for travel. The covering letter, along with the statements, that was addressed to me by Ms. Fuller, read, "These are statements of witnesses who may be the basis of a similar fact application, re: noxious substance charges. However, I won't be making the application if I make it in the first week, call me."

10 THE COURT: Say that again.

MR. CHARLEBOIS: Yeah, basically, it meant it was a hurriedly sprawled note basically saying, don't worry about it now, if I make this application, it won't be made during the first week of the trial, it will be made later.

15 The following day, the 23<sup>rd</sup>, on Friday, I faxed back to Ms. Fuller at 1:45 p.m., "I received your fax with statements of Scott and Loone at 3:45 p.m. yesterday. I confirm that you have not yet decided if you will be called these witnesses. In the event that you choose to call them, I will object to there being heard on the basis of later disclosure."

20 Again, for the sake of completeness, I also added, "Are there any other statements in your possession or in that of the police that are relevant to this trial and have not yet been disclosed. Please confirm that no further such statements exist."

25 Now I think I will make my argument firstly in the vernacular and then I will turn to the law. It's quite clear that these statements were in the hands of the

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police well before the charges were laid against Ms. Wesley. In fact, they form...What the Crown did in connection with this investigation or what the police did is seven or eight people were charged as a result of this investigation. A large brief, very similar to that large binder behind me, was tabulated and covered many, many pages in connection with Ms. Wesley. Certain parts were disclosed and they are numbered pages, although not sequentially. In the case of my former client, Ms. Kakaychewan, again, another binder was prepared and sent to me with sequentially numbered pages.

It's quite clear from the Scott and Loone statements, 1279, 1280, etcetera, that these statements were in the hands of the police at the time of the initial investigation. It's also equally clear that they were not disclosed at the time of the initial request for disclosure, prior to the preliminary hearing, after the preliminary hearing and that I only became aware of them on the eve of trial of their existence, as well as in their content.

Now before I get into, as I said, the discussion of the law, let me flush out my argument in the vernacular. Why does the Crown want to use these statements? Answer: To buttress an application for similar fact evidence in connection with noxious substances. Does the Crown need this expert evidence to establish prima facie, the commission of the noxious substance charges? In my submission, no.

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There are three allegations of noxious substances. In two cases, the complainants have already testified. In the third case, we expect Mr. Paul-Martin to testify today or tomorrow. In connection with one such count, we heard from Oliver Wesley, as a corroborating witness. He corroborated Luc Mack. In connection with Mr. Tookate, the witness who is on the stand now, we expect that his evidence is going to be corroborated by a Mr. Kioke who is disclosed in timely fashion. Therefore, with direct evidence on the part of two and presumably three complainants, once Mr. Paul-Martin testifies, and on the basis of apparent corroboration from one and soon to be two eye-witnesses, how does the evidence, if allowed, of Scott and Loone buttress the Crown's case? In my submission and to use a football analogy, it becomes judicial piling on.

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I also want the court to be mindful that often, one of the purposes for calling similar fact evidence is to establish identity. I remind the court that at the outset of this trial, the identity of Anna Wesley, as being Mary Immaculata, who was a caregiver for the boys at Ste-Anne's residential school between the fall of 1951 and 1961 or two was admitted by the defence and was admitted by the defence in connection with all complainants. So that although it was open to the Crown, to continue to attempt to establish identify, identity was admitted by the defence.

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Now with that in mind, with that background in mind, and considering that the evidence that would be given by Scott and Loone is for a corollary purpose on this

5 trial and not a direct purpose on this trial. It seems to me that the *Stinchcolme* application has to be looked at in light of the purpose which the Crown will seek to make of the evidence if allowed. So the bottom line in my respectful submission is, does the Crown need the evidence of Scott and Loone to make out its case of the three noxious substances count on a prima facie basis? My answer is, no.

10 The question then becomes, should that evidence have been disclosed as part of the initial Crown brief? The evidence is overwhelmingly yes. When either the Crown or the investigating officer, Constable Delguidice vetted the proceeds of the investigation and chose to disclose in non-numerical sequence, those parts of the brief that they collectively felt were relevant, it's clear that a vetting process took place because if I look at my table of contents on this voluminous trial, first page as disclosed as page 481 of obviously a much large brief. And then it goes on to page 808, being the last page disclosed but it's not in any...Well, parts of it are in numerical sequence but it's not a complete collective numerical sequence. So in the vetting process took place, there's no doubt those two statements should have been disclosed because they're relevant.

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30 Now *Stinchcolme*, *Haggar*, *O'Connor* in the Supreme Court of Canada, all three, Leo Angus T. from our Ontario Court of Appeal have all dealt with the issue of late disclosure and what the remedies are and basically, the entire pallet is before a trial judge when untimely

disclosure is raised and the pallet ranges from the top down.

THE COURT: What is a pallet?

5 MR. CHARLEBOIS: It would be like what a painter uses with five or six different colours of paint on it.

THE COURT: An easel.

10 MR. CHARLEBOIS: No, an easel is what they paint on, this is like you know, when they are wearing the beret and they've got the little, it looks like a plate of little paints.

THE COURT: Well.

15 MR. CHARLEBOIS: I will rephrase it. The list of potential remedies that are available for untimely disclosure range all the way from a stay of proceedings when there's an abusive process and it's the clearest of cases down to a mistrial in appropriate cases down to an adjournment with or without costs in other cases. Of course, the adjournment with cost is always a favourite of defence counsel down to the very simplest remedy which is simply not allowing the late disclosed evidence to be heard. It's fast, it's expeditious and it's inexpensive.

25 I'm not suggesting here that the late disclosure is so flagrant as to invite the court to even consider an abusive process. I'm not suggesting that the late disclosure is flagrant enough to invite the court to consider a mistrial. But in my respectful submission of the panoply of remedies that are available to you, to jump out, one more so than the other, you simply find that yes, this evidence should have been disclosed a long time ago, it wasn't, it's not absolutely

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necessary for the Crown to make out a prima facie case to have this evidence. I'm not going to allow this evidence to be heard, end of story. The alternative and it seems to me that the only other alternative that's available to Your Honour is if you find that this evidence should go ahead is to grant the defence an adjournment which a) inconveniences the court b) inconveniences the jury and I will be asking the court and I brought those cases up the last time I was up here, if an adjournment is in the works or something Your Honour is considering, I am going to be asking for costs on the solicitor client basis and I have been successful on one occasion in the past in convincing one of your brothers in then general division, now Superior Court, to grant that as an appropriate remedy for eve of trial disclosure.

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But why go through that entire exercise because even if you grant an adjournment with costs, that will lighten the burden on my client but it still will inconvenience the court, the Crown and most importantly, the jury. It seems to me that Your Honour, with the greatest of respect cannot simply dismiss my application and compel me to go ahead with this new evidence in the course of the trial. I submit that that would be unfair because one thing that is consistent about the case law, is that when there is late disclosure, and the courts find that the trial should nevertheless go ahead, that an adjournment, at the very least is the appropriate remedy and that of course...And as I said, the case law now has been such that when it's as a result of improper, ineffective disclosure, not improper,

ineffective disclosure is a better word, but costs inappropriate circumstances for a proper remedy.

5 But as I said, why should we go through that entire exercise which will still inconvenience many people when the simplest remedy here is for Your Honour to find...I agree this should have been disclosed a long time ago, it wasn't, let the trial go ahead with what evidence was disclosed in a timely fashion, end of story.

10 THE COURT: How long do you think the adjournment should be if there is an adjournment granted?

15 MR. CHARLEBOIS: Probably until the middle, until the beginning rather, not the middle, the beginning of next week and with costs on a solicitor client basis assessed against the Crown for the lost days, either three lost days or...Either three or three and a half lost days.

20 THE COURT: Now if I would grant that adjournment, any prejudice caused by late disclosure would be rectified.

MR. CHARLEBOIS: No, I'm not prepared to concede that, I'm going to make further argument on that.

25 THE COURT: Well, okay, I just do not understand your position when you tell me that an adjournment till the beginning of next week would be acceptable.

MR. CHARLEBOIS: No, I'm just pointing out potential remedies Your Honour. It seems to me, what I'm really looking for...

30 THE COURT: Well the purpose of an adjournment is to be able to investigate the material that was late in being disclosed so that is the purpose of the adjournment, I would think. So all I'm asking, is that the time it

would take you?

MR. CHARLEBOIS: I would just like to confer with the Crown for one moment on these lengthy statements if I may.

THE COURT: Do you want a break?

MR. CHARLEBOIS: Pardon?

THE COURT: Do you want to take a break?

MR. CHARLEBOIS: No, I think I can just whisper something.

THE COURT: Go ahead.

MR. CHARLEBOIS: I short break might be helpful Your Honour. I don't necessarily think you necessarily have to go upstairs, I don't think it will take long but...

THE COURT: Take your time.

R E C E S S

U P O N R E S U M I N G :

MR. CHARLEBOIS: In connection with Loone, I understand that what the Crown wants the court to allow is eyewitness evidence of Loone corroborating George Wheesk, the man with the feather, about the knee injury that he testified to and the aftermath of that knee injury.

THE COURT: The alleged assault that occurred.

MR. CHARLEBOIS: Yes.

THE COURT: Is that the aftermath?

MR. CHARLEBOIS: That should have been disclosed way back when so that Wheesk could be cross-examined on that, at the preliminary hearing, not just at the trial. The other reason the Crown wants to...So in connection with that aspect of it, it's got nothing to do with similar fact evidence, it's got to do with attempting to late call a corroborating eyewitness to

an assault.

THE COURT: Okay.

MR. CHARLEBOIS: The Crown also wants to call Loone for the purpose of testifying to an event that occurred to him in the dining room. The Crown wants to call Scott...

THE COURT: Now wait a minute now, does this have to do with vomit?

MR. CHARLEBOIS: No, it's an incident where allegedly, Loone threw a piece of meat or a piece of food at another student, found that to be funny and were allegedly, Ms. Wesley would have poured the soup on his face, searing his forehead and then compelling him to eat it on the floor like a dog.

Now as far as I'm concerned, that's not even similar fact evidence but at this stage, we're just dealing with late disclosed evidence and in connection with Scott...

THE COURT: Okay so those are the two things for Loone, corroboration and something that happened to him.

MR. CHARLEBOIS: With Loone.

THE COURT: Yes.

MR. CHARLEBOIS: Now I don't want to make my similar fact evidence at this stage but I mean, I can't possibly see how that's similar fact evidence, to substantiate noxious substance and vomit and in connection with the corroboration of the skating incident involving George Wheesk, that should have been disclosed as part of the initial disclosure, just like the statements of Kioke and Wesley, where the other corroborating eyewitnesses so that I could cross-



examine at the preliminary hearing as opposed to floating a trial balloons to George Wheesk at trial and living with the answers in front of the jury.

5 THE COURT: Or maybe conduct an investigation if you wish.

MR. CHARLEBOIS: I'm sorry.

THE COURT: Or maybe conduct an investigation if you wish.

10 MR. CHARLEBOIS: Yes Your Honour. In connection with George Scott.

THE COURT: Um-hum.

MR. CHARLEBOIS: I understand that the purpose of calling Scott would be to have him tell the jury about an incident in which he threw up in the dining room and was apparently or allegedly compelled to eat his vomit and lunch which were together.

15 THE COURT: Um-hum, is that it?

MR. CHARLEBOIS: In terms of what the Crown intends to use...

20 THE COURT: Scott, yeah, Scott.

MR. CHARLEBOIS: Yes.

THE COURT: Okay. Are you now going into the law of disclosure?

MR. CHARLEBOIS: Yes.

25 THE COURT: Maybe I should hear from Ms. Fuller.

MR. CHARLEBOIS: On the facts...

THE COURT: In relation to the facts.

MS. FULLER: Thank you Your Honour.

30 THE COURT: Well first of all, do you agree that disclosure of Loone and Scott's statements were made April 22<sup>nd</sup> at 3:25 p.m.?

MS. FULLER: I do Your Honour.

THE COURT: Nineteen ninety-nine.

MS. FULLER: That is correct Your Honour.

THE COURT: And that the statements were taken in 1992  
5 or 1993.

MS. FULLER: That is correct.

THE COURT: Is it admitted that this is, does cause some  
prejudice to the defence?

MS. FULLER: Absolutely not Your Honour but emphatically  
10 not Your Honour. But if you would like to hear more  
about the facts...

THE COURT: The facts.

MS. FULLER: As Your Honour has heard evidence, there  
15 were some 900 statements taken by the police by  
numerous officers. There was a team of at least five  
who were initially on this case. Police officers  
initially screened out themselves numerous allegations  
either because they felt that there was no charge or  
because they felt that the charges were too minor to be  
20 considered.

Then the matters were brought to myself and two other  
25 lawyers in 1996, I believe, for a review and  
recommendations were made on the 100 or so complaints  
that were made or 150 or 200 or whatever it was. Those  
recommendations were made to a panel including the  
assistant deputy minister and at that point, we were  
asked to go back and review the matters again, to make  
30 sure that we were clear on what we were proceeding on  
and at that time, we reviewed and I reviewed all of the  
matters and again, decisions were made on the basis of  
certain screening criteria that would accomplish a  
number of things, one, not bring forward an indictment

5 that included too little, too late and really be abusive with this time frame involved; not to have an indictment that included matters where there was individual minor offences standing on their own.

10 At some point, during that screening process, numerous and I say numerous vomit eating allegations were screened out, not just these two, there were many and they were screened out on the basis that, there were no other charges or allegations attached to them and the reason for that was that initially, they police had thought that these matters were just matters of intimidation. It was the charge they had in mind. It was only when they came to the Crown...

15 THE COURT: Just go back so I understand clearly now, initially when the vomit complaint...

MS. FULLER: Charges...

THE COURT: ...charges were made...

MS. FULLER: Or complaints were made...

20 THE COURT: The police felt that there was nothing there.

MS. FULLER: Well they felt that the appropriate charge was intimidation and intimidation was a summary conviction matter. So it wasn't considered very seriously.

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30 Similarly, common assault. They felt there was no point in considering them. Our position, in order not to be over zealous was, if you had...First of all, that no, there was a more appropriate charge than intimidation and that was administering a noxious substance and there was debate on this issue, whether

or not it was an appropriate charge.

THE COURT: But it was your shot to call.

MS. FULLER: It was my shot to call and my conclusion was, the way to handle the debate and the issue of its appropriateness, was to take a light handed approach towards these charges and I recommended...

THE COURT: Take a what?

MS. FULLER: A light handed approach, in other words, I recommended that the police only lay charges of administering a noxious substance if they were also going to lay other charges and that is why, every charge of administering a noxious substance was accompanied by an assault. There was an assault and there was also this evidence. This was a new way of or I certainly believed at the time, it was a charge that hadn't been used for this fact situation before and I wasn't...I thought it was an appropriate use but again, I didn't feel it was appropriate in matters this old for the Crown to be over zealous.

THE COURT: That is...

MS. FULLER: No but this is a screening rational...

THE COURT: That is your responsibility and your decision to make.

MS. FULLER: Absolutely.

THE COURT: No problem there.

MS. FULLER: Absolutely.

THE COURT: If the noxious matter was not connected with an assault, then, that was not going ahead with.

MS. FULLER: It didn't go ahead and similarly, the Leo Loone scenario, because having his meal thrown on his head and being told to eat it off the floor and then, being told when he was eating with his hands, no, eat

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it like an animal off the floor, because of the contents of what he was told to eat was not vomit, it was not a noxious substance either so it wasn't the subject of a charge and these, along with dozens of other counts were screened out.

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Now my friend was aware that they Crown's discretion had been exercised in favour of the accused way back in 1990, late '96, '97, that the Crown had chosen and that she had benefited from the Crown's decision not to lay certain counts of administering a noxious substance because there were no other charges involved. Mr. Charlebois was aware of that. We didn't...

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THE COURT: Well he is shaking his head but...

MS. FULLER: Well I'd called a meeting in my office, in the regional office and I'm quite sure that he may have forgotten it but I certainly recall disclosing the fact and certainly the fact...

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THE COURT: Disclosing what fact, the fact that you were not...

MS. FULLER: The fact that the Crown was not, sorry...

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THE COURT: Just a minute now, the fact that you were not going ahead with noxious charges unless they were accompanied by an assault, then you were not going ahead with they Loone food charge because it was not vomit and that you were not going to produce George Wheesk as a witness.

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MS. FULLER: No Your Honour, the Loone charge, I wasn't even mindful of because it wasn't a charge. I only made Mr. Charlebois aware generically that there were lots of vomiting charges that we weren't proceeding with either because there were no other supporting

charges or because the complainants chose or did not consent to those charges being laid.

5 THE COURT: Okay, all I would like to know, how does this tie in with the fact that the defence was not given the statements from Loone or Scott? How do you tie those two in and now, you want to bring that evidence?

10 MS. FULLER: All right, the Crown did not give statements from Loone or Scott or Sackaney or there must be a dozen or two others...

THE COURT: But are the dozen or two others going to be witnesses?

MS. FULLER: No they aren't.

15 THE COURT: Okay, well that is what I am getting at, why...

MS. FULLER: All right...

20 THE COURT: I understand that you had multiple actions to look at, you had multiple decisions to make. The point though is this, why didn't defence receive proper disclosure...I mean, it is 1993 the statements were taken, why did the defence not receive these statements during the six year period of time and not get it until a day or two before trial? That is the point of this whole...

25 MS. FULLER: Well Your Honour, the position of the Crown at the preliminary and thereafter was that the Crown might call similar fact evidence and my friend was aware of that with respect to the vomit eating incidents. However, again and it is because of the complexity of this case, my decision not to explore this area in much depth was because once a decision was made not to lay charges, in my view, it would've been

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very confusing to a jury to call people to say, they've been forced to eat their vomit and no charges were laid with an indictment...

5 THE COURT: Well that is what you want to do though.

MS. FULLER: No, it was only that week, the week of the 22<sup>nd</sup>, on the Monday, it could have been the Friday afternoon but I believe it was the Monday that... This criminal trial process, Your Honour, in my respectful submission is like this, that you never stop thinking about how to improve or augment your case until the case is over and things do come to you. Maybe it should've occurred to me sooner but on that Monday, I thought, wait a minute, maybe there were cases that we didn't screen out for these, reasons that would be difficult to understand and I phone up Greg Delguidice and I say, is there any way that you could find out on your computer whether there were other allegations of vomit eating that weren't screened out by the Crown and as it so happens, he was able, through his computer, to be able to pull out instances where the complainant had not consented and that is pretty, an understandable distinction for a jury to make.

15 THE COURT: Consented to what?

MS. FULLER: To charges.

25 THE COURT: To charge.

MS. FULLER: So it was screened out and it also would make it a stronger case for the Crown, that the complainant hadn't wished, it certainly rebuts the suggestion of collusion, that the complainant hadn't wished these matters to go ahead and therefore, the Crown had not laid the charges.

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And it was only then that I realized that, well that would be something that I could do and I phoned Mr. Charlebois on the Monday morning and I knew he was, we were in conversation, as Your Honour knows, as we got closer to the trial and I did not hear back from him and then I phoned again on Tuesday and I left a message and I supposed I should've faxed him everything but I knew he was very busy. Wednesday he phoned me, Wednesday morning, I was court all day, I couldn't take the call and finally Thursday, I faxed him the statements. But what Your Honour also has to realize in this context is that, initially, my intention was to only adduce similar fact evidence arising from the complainants themselves and there were a number of counts where the complainants said they saw other people forced to eat their vomit but after reviewing the evidence, I concluded that, that's just more of the same, the same witness saying I saw the same thing from somebody else. It doesn't enhance it.

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THE COURT: Listen, there is no question in my mind that you had a tiger by the tail but I come back to the same point, why is the defence expected to accept information a day or two before trial that has been available since 1993? That is the, well if you want to call it the *Stinchcolme* application saying, listen, I cannot, you cannot use that evidence and if you want to use that evidence, then here are the remedies.

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MS. FULLER: Your Honour, the only time I was seriously, that I really felt compelled to direct my mind to these new incidences was after we had the benefit frankly of a judge alone trial and I saw how the evidence went in and I thought to myself, how I might change the pattern



or change my procedure...

THE COURT: When was the judge alone trial, I cannot recall right now, in January?

MS. FULLER: No, it was in November and at that time...

THE COURT: January, February, November, when was it?

MS. FULLER: It was in November and December. We finished it the first week in December.

MR. CHARLEBOIS: We finished it on the 22<sup>nd</sup> of November.

THE COURT: November, okay so then you start thinking about it and then we go down to the 22<sup>nd</sup> of April.

MS. FULLER: Yes.

THE COURT: You know, similar fact evidence and I am looking at Scott's evidence here.

MS. FULLER: Yes.

THE COURT: That would be suggest to argument as far as similar fact goes. That is pretty potent evidence. No, that is evidence that is meant to discredit.

MS. FULLER: It is meant to establish the actus reas. It's very probative evidence.

THE COURT: It is meant to discredit the accused. It is very, very potent and for him, I cannot see the defence getting that a day or two before trial.

MS. FULLER: Well it is not a day or two, I mean if we want to be exact, Your Honour, it is four and a half days before the beginning of the trial.

THE COURT: I am not counting Saturday and Sunday.

MS. FULLER: But we are also talking about, let's not talk Your Honour just about the eve before trial, the reality is that, my friend has had this for nearly three weeks. This has been a leisurely paced trial. My friend has over 20 years experience at the bar and when we talk about what the remedies are, Madam

5 L'Heureux-Dube has said very clearly, your remedy is, you get the disclosure and if necessary, you get an adjournment. You do not get an adjournment just because, just because we have to punish the Crown.

THE COURT: Oh no, an adjournment is simply to get in, to be able to investigate the matter of course.

MS. FULLER: Well Gary says that the purpose of the adjournment is to give the defence an opportunity to prepare an affective cross-examination.

10 THE COURT: Well there you go.

MS. FULLER: And other cases...

THE COURT: Okay, I will not get into semantics about that.

15 MS. FULLER: But Your Honour, the reason it's important is that, Mr. Charlebois has had two and a half weeks of time to digest...

THE COURT: Mr. Charlebois has had two and a half weeks sitting in this courtroom cross-examining people, listening to examinations in-chief.

20 MS. FULLER: And that is what he does every other week of the year as well Your Honour. There is no difference between this week except that we have had more down time.

25 THE COURT: Are you telling me because he has 20 years experience, he should be treated differently than if I would have a lawyer here with two years experience and a question of disclosure of evidence?

30 MS. FULLER: On the question of remedy, yes because an unrepresented accused Your Honour has the right to say, I can't prepare a full answer in defence but let's keep our feet on the ground Your Honour, what is the practice of lawyers preparing for trial? Mr.

5 Charlebois received the expert evidence opinion in March. Now arguably, they would take some time to digest. We are talking about three paragraphs, long paragraphs of two people and we're asked for an adjournment to prepare cross-examination last Wednesday, last Thursday, last Friday was opened and available time.

10 I indicated that I was going up the coast to interview these witnesses. I heard nothing from Mr. Charlebois that he either was interested in coming, that he would like me to make some inquiries for him, to my mind, no efforts have been made by Mr. Charlebois to contact these witnesses.

15 With respect to the other corroborating witnesses who he says, well I should've had this at the preliminary, I could've cross-examined, not only did Mr. Charlebois not cross-examine those witnesses but did not make requests of the Crown to have those witnesses there at the preliminary hearing.

20 THE COURT: Did he know they existed?

MS. FULLER: They were in the Crown brief Your Honour. It's a preliminary hearing and as we all know...

25 THE COURT: Mr. Charlebois is about to have an apoplexy here.

30 MS. FULLER: Well Mr. Charlebois should calm down because his health is too important to put it at risk like this. This is evidence that was in the Crown brief and they could've been subpoena by the defence. They were not subpoena, they weren't cross-examined. There is no right in law to...There is no charter right

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for the defence to be able to cross-examine. Yes Your Honour, I concede that I should have had my head on correct sooner, to realize that maybe, I would call this evidence and should have maybe sought it out sooner.

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THE COURT: Listen, the subjective problems you had and I fully realize that they were great have nothing to do with improper disclosure or late disclosure defence wise. Anna Wesley cannot be refused a legal right because you had 900 people on your hands. That is not Anna Wesley's problem. She is being tried under very serious charges here today.

MS. FULLER: No, it is the Crown's problem.

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THE COURT: That perhaps started off not being realized how serious but they are very serious.

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MS. FULLER: Yes, no, Your Honour is absolutely right, it is the Crown's problem and burden but I mean, I suppose that the issue, as well, to every wrong there is a remedy and to the extent that there is a wrong, that there is delayed disclosure here, not non-disclosure but delayed disclosure, one of the remedies would have been a re-election and when I spoke, I phoned Mr. Charlebois and said to him, Mr. Charlebois, if you want, I will consent and in fact, charter cases indicate that this is a remedy, if you want a re-election, I will consent. Not only will I consent, I will not call the evidence because it was never my intention to call the evidence.

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THE COURT: What does that have to do with late disclosure?

MS. FULLER: It is a remedy Your Honour that is offered. The courts say there...

THE COURT: They wanted a jury trial, she is entitled to one.

MS. FULLER: Yes she is.

5 THE COURT: And because the Crown discloses material in a late manner, a favour will be granted and an agreement to re-elect to judge alone. We know the history about judge alone and judge and jury in this case or in this investigation.

10 MS. FULLER: It was an option that I offered to Mr. Charlebois is what I am saying Your Honour and an indication that the Crown would not be calling it. But in any event, Mr. Charlebois did not...This is not a case for costs and I think the case law is pretty clear that there has to be shown to be some impropriety.

15 THE COURT: You do not have to spend any time on that. I have no problem with costs.

20 MS. FULLER: My friend concedes, it is not a case for mistrial, it is not a case for stay of procedures so that leaves exclusion, adjournment or has there been prejudice? Now prejudice does not mean that there is more evidence in the Crown's quiver, that is not prejudice. We have heard nothing from Mr. Charlebois as to how the addition of two pages has rendered him unable.

25 THE COURT: Well I have not even seen the statements and I have cut Mr. Charlebois off with all due respect to what he had to tell me, to hear from you.

30 MS. FULLER: But all I am saying Your Honour is that Madam Justice L'Heureux-Dube indicates, yes, an adjournment where necessary and there has been now nearly three weeks from the time that this was faxed to Mr. Charlebois to now and in fact, that evidence has

even been reduced since there was another person that the Crown decided not to...

5 THE COURT: I do not count the trial time, especially when I consider the fact, number one, Mr. Charlebois is from Ottawa. I do not know but I can hear from him, I do not think he has any support staff here to get into these statements while he is conducting a trial and while he is preparing for the next day of trial, on and on and on.

10 MS. FULLER: Well Mr. Charlebois has a junior who has been working very hard.

THE COURT: I do not know that.

MS. FULLER: Your Honour...

THE COURT: The onus...

15 MS. FULLER: Your Honour, the...

THE COURT: You cannot hear me because I am not talking in the mic.

20 MS. FULLER: In a case called Cassidy, the court refused the accused motion for production of the witness for questioning since the proper form for challenging a witness's story, this is interviewing a witness a few days before trial on the listing of statement, the proper forum would be cross-examination in front of the jury. So really, what we are talking about it, how long does it take a trial lawyer with 20 years

25 experience to prepare a cross-examination of two witnesses who are going to say, one, she forced me to eat my vomit and two, she forced me to do something degrading and dehumanizing and I saw George Wheesk being hit for when he couldn't walk.

30 THE COURT: I do not know how long it takes Mr. Charlebois to do anything except cross-examine. I do

not know how long it takes him to do anything else but...

5 MS. FULLER: But Your Honour, we are people of the world, we are people who live in the real world and we all practice law and we have to impose a remedy, if it's appropriate and if it's necessary. That's my only, my submission is that it's neither appropriate in this case, although the Crown should have disclosed sooner but it is not necessary in this case.

10 THE COURT: Okay. You do agree though that the only two remedies, under these particular circumstances would be a refusal to accept the evidence or an adjournment if I find late, late disclosure and prejudice.

15 MS. FULLER: If you find prejudice, yes, I agree. That's the only two I can think of because Mr. Charlebois did not exercise the option...

THE COURT: I think that is your opinion also, is it not Mr. Charlebois, two remedies?

20 MR. CHARLEBOIS: Yes, I take it that Your Honour does not want to hear me on the issue of costs.

25 THE COURT: I do not think it is proper. Costs, I think it is pretty clear and decisions that have been rendered lately anyway, that there has to be some bad faith on the part of the Crown. There was absolutely no bad faith, not from what I can see so far on the part of the Crown. The mountain of information she had to sit through was great but then, that is not going to be placed on Anna Wesley's head.

30 MR. CHARLEBOIS: The remedy that I am seeking is the exclusion of the evidence. If we're going to...

THE COURT: Okay.

MR. CHARLEBOIS: If anything else is going to be

considered, I'd like the opportunity...

## R U L I N G

BOISSONNEAULT, J. (Orally):

5 Why don't you both...I believe that under all of the  
circumstances, regardless of all of the problems the  
Crown had from the beginning in this investigation in  
1992, that there has in fact been late disclosure that  
should have not occurred, the information was available  
10 since 1992, 1993. If the information is to be used in  
this trial, it should have been placed in your hands  
far before April 22<sup>nd</sup>, okay. So I find that there is  
late disclosure. Now I will hear your submissions as  
to what I should do.

MR. CHARLEBOIS: I'm asking...

15 THE COURT: Late disclosure is such that there should be  
a remedy.

MR. CHARLEBOIS: I'm asking Your Honour to exclude the  
evidence, that is not to allow Scott or Loone to  
testify.

20 THE COURT: Okay, I wondered if you would have any law,  
either one of you on the principle of exclusion of  
evidence for late disclosure that I can look at. I  
know there is law on the question of adjournment but  
how about exclusion? And if I do not exclude, I will  
entertain submissions in relation to adjournment, why  
25 and for how long. Do you want to get your law  
together? We can take a break, well we have been at it  
for an hour now.

30 MS. FULLER: Well Your Honour, this was my friend's  
application and his application was for the remedy of  
exclusion and I would expect that the law, if there is  
law, that in these circumstances entitles him to



exclusion without malefitis by the Crown. He would be presenting to you...

5 THE COURT: Well I am saying present it to me, do you want to break for five minutes to get it together?

MR. CHARLEBOIS: No, I'm prepared to deal with it now and because Your Honour has found the disclosure to be late, I have calm down but I want, I want it on record that many...

10 THE COURT: Everything goes on record.

MR. CHARLEBOIS: Many of the factual allegations made by the Crown in part of her submissions about what she told me, when I heard about it were simply not at idem at all. One of us has got a completely different recollection of what was said and when it was said. I don't accept for a moment, most of the factual propositions or submissions that have been made by the Crown as to what I learned or what...

15 THE COURT: Whatever the Crown said, my finding was that there was late disclosure.

MR. CHARLEBOIS: So that's why I'm not getting into it.

20 THE COURT: And you are entitled to a remedy and depending on what else, you both have to tell me.

MR. CHARLEBOIS: The only cases I can bring to the attention of the court, other than *Stinchcolme* is Leo Angus T. which is the decision of the Ontario Court of Appeal.

25 THE COURT: Leo.

MR. CHARLEBOIS: Angus T. as in T, the letter T.

THE COURT: Okay.

30 MR. CHARLEBOIS: And I draw Your Honour's attention to page seven.

THE COURT: Um-hum.

MR. CHARLEBOIS: "It is obviously not" and what I'm reading for is the C.C.C. version, what I've given Your Honour, unfortunately is a different version but it's at page seven. I can't quite indicate you where.

THE COURT: At page seven.

MR. CHARLEBOIS: Yeah, page seven of your copy.

THE COURT: Okay, just a minute, just tell me what words you want to start with.

MR. CHARLEBOIS: "It is obviously not an imperative".

THE COURT: Okay, I have that.

MR. CHARLEBOIS: "In every case of untimely disclosure to direct a new trial. In many cases, it will be possible and desirable for the trial judge to fashion a remedy that is less drastic." One paragraph down where the Court of Appeal paraphrases part of *Stinchcolme*. It indicates, "Initial disclosure should occur before the accused"...

THE COURT: Hold it, hold it, okay, just a second. The initial disclosure...

MR. CHARLEBOIS: "Should occur before the accused is called upon, initial disclosure should occur before the accused is called upon to elect the mode of trial or to plead. These are crucial steps which the accused must take which affect his or her rights in a fundamental way. It will be of great assistance to the accused to know what are the strengths and weaknesses of the Crown's case before committing on these issues. What are the legal consequences flowing from the failure to disclosure? My opinion when a Court of Appeal is called upon to view a failure to disclosure, it must consider whether such failure impaired the right to make full answer in defence.

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Ever since the Crown's duty to disclose has been elevated to a constitutional imperative, courts have been interpreting the duty in a very strict fashion". And, just draw Your Honour's attention, page eight, again, paraphrasing *Stinchcolme*, "Neither an offer to recall witnesses not an adjournment can cure a substantive breach of the right to receive timely and full disclosure." I read that to mean that one of the cost effective ways in a jury trial of providing a remedy is simply by not allowing the Crown to call the late disclosed evidence. Now let's deal with prejudice for a minute.

THE COURT: Are you through with that decision now?

MR. CHARLEBOIS: Yes. In connection with the Scott statement where he apparently is an eyewitness to the George Wheesk skating incident and its aftermath, had I had, as I should've had that statement prior to the preliminary hearing over a year or a year ago, it is obvious that I would have asked George Wheesk additional questions in cross-examination.

The fact that I get this statement on the eve of trial and that I had a period of time to digest it before Wheesk testified last week does not assist me because the Crown has put a lot of emphasis on my experience at the bar. Well, what other things that you learn with experience at the bar and I'm sure Your Honour remembers that from your own experience at the bar, is that you kind of like to know what the answer is going to be, particularly in front of a jury before you ask a question in cross-examination and if you look at the transcript of the preliminary, I floated a lot of crowd

5 balloons in cross-examination at the preliminary, many of which, pursuant to the answers I got at the preliminary were not questions that I asked or areas that I touched on at trial in connection with the complainants.

10 It would have been foolhardy of me to float trial balloons to George Wheesk when he testified in front of the jury last week without having had the benefit of putting those questions or similar questions to him in cross-examination at the preliminary.

15 Furthermore, it would've been just as foolhardy of me to cross-examine George Wheesk on the George Scott allegations knowing full well that I was going to be arguing that Scott not be allowed to be called as a witness. If I had left it in the mind of the jury, that there was this George Scott fella floating around and what he saw and what he might have seen or not seen and then Scott doesn't get called up at trial, that would've left a lingering doubt in the minds of the jury as to why Scott was not called. So I wasn't going to mention George Scott's name until a ruling was given by the judge. In connection with...

25 THE COURT: Actually, you are right, it would have been improper cross-examination to bring out evidence that you did not intend to prove later on.

30 MR. CHARLEBOIS: Or evidence that I wasn't even sure the Crown would be allowed to lead because one of the things, one of the things I did fire right back at Ms. Fuller after I got these statements is that I would be objecting to the admissibility of these witnesses being

allowed to testify.

5  
Now that takes care of the eyewitness part of it. In connection with the other Scott allegation about him being compelled to eat his vomit, the prejudice there is that had I had all of that information and compounded that with the disclosure I already had about other allegations of vomit eating, what would my initial election have been. I can't answer that.

10  
Would I have stayed with a jury, would I have opted judge alone, would I ever have opted for a trial before a provincial division judge. One thing that is clear from all of those disclosure cases, whether at the Court of Appeal or at the Supreme Court of Canada is that a defence counsel needs all of the building materials, needs all of the tools before he or she can start fashioning or constructing a defence and that you need all of those tools early on in the proceedings.

15  
THE COURT: Do you have any more law whether I can exclude that evidence?

20  
MR. CHARLEBOIS: Nothing exactly on point. I can try to find something on point in the next half hour.

THE COURT: Do you want time to research.

MR. CHARLEBOIS: On the issue of exclusion.

25  
THE COURT: Yes because if, you know, if I consider exclusion, most certainly I have to rely on, consider precedence.

MR. CHARLEBOIS: Well it's not exclusion in the standard S. 24 (2) remedy mode, it's simply not allowing the Crown to call the evidence.

30  
THE COURT: Okay so you do not have any law, you do not want any time to look for law.

MR. CHARLEBOIS: Yes please.

THE COURT: You want time.

MR. CHARLEBOIS: Yeah.

THE COURT: Okay, do you have any law on the point?

MS. FULLER: Your Honour, there are a number of cases that are highlighted in the legal aid summary of cases on these matters and there's one case after another where the court has held that the appropriate remedy is not exclusion but rather is an adjournment. However, they don't go into the reasoning too much. However, there are numerous cases. The one that I referred to, Your Honour, before was the Cassidy decision, which is a weekly criminal bulletin.

THE COURT: Which is what?

MS. FULLER: Twenty-two weekly criminal bulletins, 2<sup>nd</sup>, 212. The Crown interviewed an individual a few days before trial and elicited a statement going to a crucial issue. The police had interviewed the individual before without obtaining any relevant information and she had not been called at the preliminary. Although the witness's statement was immediately disclosed to the accused, he sought it to have it excluded since it changed the entire complexion of the trial. The court explained that this was not a case of non-disclosure but rather one of late disclosure, of late arriving evidence. The court stated that the proper remedy would be an adjournment to allow the accused time to prepare, to deal with the new evidence and the court also refused the accused's motion for production of the witness for questioning since the proper form for challenging a witness's story would be...

THE COURT: Okay.

MS. FULLER: But the...

THE COURT: Do you have a photocopy of what you have  
5 there so I can read it and maybe pull the reports out,  
give a copy to Mr. Charlebois.

MS. FULLER: Certainly Your Honour, it's all  
compressed...

THE COURT: I am going to look at your remedy of  
10 exclusion, if in law I am entitled, I will consider it.  
I will look at the remedy of adjournment. I would ask  
you both to or singly to consider whether that is  
appropriate and if it is appropriate, for how long.

MR. CHARLEBOIS: I would like to advance one point on  
15 that proposition. How will an adjournment cure the  
defect in connection with that part of George Scott's  
evidence, that he witnessed George Wheesk's skating  
incident. Wheesk has been examined, cross-examined,  
re-examined and released. An adjournment will not cure  
that.

MS. FULLER: Your Honour...

THE COURT: So what do you want, a mistrial?

MS. FULLER: The case law...

THE COURT: No, no, do you want to lay this down, what  
25 is your point, what do you want? You just cannot throw  
these things out without suggesting a proper  
conclusion.

MR. CHARLEBOIS: I threw it out as part of my initial  
submissions Your Honour, as to why I did...I mean...

THE COURT: You left me with two options, one, exclude  
30 the evidence; two, adjournment. That is what you left  
me with when you argued. Now let's not play ring-  
around-the-rosy here and change things as we...Well I

5  
guess you are entitled but it is very confusing and I am asking both of you and you obviously do not have it, to let me have some law that you may have found, fine. If not, I will go back to my chambers and research the point.

10  
MR. CHARLEBOIS: Your Honour, this is how I see it. For the trial to reach, we are well into the trial. For the trial to reach a timely conclusion, I feel the appropriate remedy is not to allow these witnesses to testify. If the court feels that the witnesses should be allowed to testify...

15  
THE COURT: No, the court feels that it does not know whether it is entitled to exclude the evidence and wishes to look at precedence in that area, that is what the court feels.

20  
MR. CHARLEBOIS: Okay, if the court reaches the conclusion that Scott should be allowed to testify as an eyewitness to what happened Wheesk, to George Wheesk, because I cannot reincorporate my cross-examination of Wheesk and why I've indicated clearly why I didn't cross-examine him on evidence that I was going to be raising an issue as to the admissibility of, then it may well be that if you allow this evidence to go in, I won't have any choice but to ask for a mistrial because I can't...

25  
THE COURT: So now you are asking for a mistrial. I just want to get it clear so now we have...

MR. CHARLEBOIS: It's not my first choice, it's a poor third option.

30  
THE COURT: It was not the choice at all about a half an hour ago, now I know that we are talking about exclusion, we are talking about an adjournment and we



are talking about a mistrial.

MR. CHARLEBOIS: Only in connection with Wheesk.

Obviously if there's a mistrial, it's got to be...

5

THE COURT: No, no, I just want to know what I have to consider here, I know what the facts are.

MR. CHARLEBOIS: I'm not pushing for a mistrial, I'm pushing for exclusion. If they're going to be allowed...

10

THE COURT: And if you do not get exclusion, you are going to trade off and want a mistrial.

MR. CHARLEBOIS: It's that I can't then re-cross-examine Wheesk, he's come, he's gone.

THE COURT: So you are telling me if I do not exclude, you want a mistrial.

15

MR. CHARLEBOIS: I may have no choice but to ask for one.

THE COURT: Well never mind what you may or may not, is that what your position is?

MR. CHARLEBOIS: I'd like a few minutes to look it up.

20

THE COURT: Why don't you talk to Ms. Fuller too, I am sure there is something that can be worked out.

MR. CHARLEBOIS: I don't think anything can be worked out on this point...

THE COURT: As a matter of fact, I can see...

25

MR. CHARLEBOIS: ...between the two of us. I think it's going to be a matter of adversarial submissions and then Your Honour decides.

30

MS. FULLER: Well Your Honour, with respect to that last submission about my friend being irreparably harmed by not being able to cross-examine, the responsibility in this case where my friend has been told before the trial opens, I may be calling similar fact evidence and

5 that is as good as I get on any of my witnesses. He had a responsibility to bring that application before the trial opened, to say, Your Honour, the Crown has indicated that she will may be bringing similar fact evidence, I want a ruling of the court on this issue so that when I examine these witnesses, I know whether or not I can cross-examine. That application was not brought by my friend.

10 THE COURT: I do not think that you can lay that on his shoulders in view of the fact that you supplied him with the material for what you would apply for similar fact evidence two days before the trial. That does not wash with me, I am sorry.

15 MS. FULLER: Your Honour, the courts have said it is his responsibility to...

THE COURT: Listen...

MS. FULLER: ...bring the application.

20 THE COURT: I can see where there may be an area that you can get together on. If you cannot, I will decide. Anyway, that is what my function is and...

MS. FULLER: Thank you Your Honour.

25 THE COURT: ...I would like some law on whether I am entitled to simply exclude the evidence and if I come to the conclusion that I cannot, then the ball will be in your park sir. As far as an application for an adjournment, I do not know how I could deny you that but I would have to look very closely at the time, the reason and that type of thing. So I would urge you both, even though you are a little bit at odds right now, I am looking at this and I am saying, definitely  
30 if you will stop digging in, that some compromise can be reached that will not prejudice your client because

of the potential that can happen and that will not weaken your case at all and I would expect...You have had 20 years at the bar sir, you have had, you will not tell me?

MS. FULLER: Twenty.

THE COURT: Well with the combined 40 years at the bar, a ten minute conversation on this particular narrow point might just get things on the rails. If not, I will simply have to decide and get it on rails.

MS. FULLER: Thank you Your Honour.

MR. CHARLEBOIS: Something else, we still...I'm just wondering about the jury because even if we resolve the disclosure issue, we would then have to get into the second volet, which is the similar fact.

THE COURT: Is volet something like a palais?

MR. CHARLEBOIS: So would it be wise to ask the jury to come back only after lunch?

THE COURT: Leave the jury up to me, okay.

MR. CHARLEBOIS: Yes sir.

THE COURT: Thank you.

R E C E S S

U P O N R E S U M I N G :

MS. FULLER: Your Honour, during the recess, I have had an opportunity to discuss the matters that we were debating before and I can advise the court that I believe Mr. Charlebois and I have reached some kind of common ground and I am prepared to withdraw my application to call similar fact evidence with respect to George Scott and Leo Loone and I understand my friend is content that the Crown call George Scott with respect to corroboration of the witness, George Wheesk.

THE COURT: Is that Scott or Mr. Loone?

MS. FULLER: I am sorry, Leo Loone with respect to corroboration of George Wheesk.

5 THE COURT: So Leo Loone will be called to corroborate the evidence of George Wheesk and as far as the evidence of George Scott and the evidence of Leo Loone in relation to the food allegations are withdrawn for the purposes of proving similar facts.

MS. FULLER: This trial.

10 THE COURT: This trial. Is that satisfactory Mr. Charlebois?

MR. CHARLEBOIS: That is satisfactory and it should also be indicated that this compromise was reached definitely with the valuable assistance of the court.

15 THE COURT: Thank you very much. Bring the jury in, we are ready.

MR. CHARLEBOIS: Yes, I will probably be with Mr. Tookate probably until we break for lunch.

THE COURT: Great.

...JURY ENTERS 12:02 p.m.

20 MR. CHARLEBOIS: Your Honour, I am going to try to be as accurate as I can in terms of recollecting where we were yesterday. I took the time to check with the court reporter to where we were but I would ask Your Honour for a little bit of leeway there if I happen to misstate some of the evidence.

25 THE COURT: Very well, how are you feeling today sir?

ELI TOOKATE: Much better.

THE COURT: Thank you.

30 COURT CLERK: Mr. Tookate, I simply wish to remind you, you are still under oath.

THE COURT: Mr. Charlebois.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

MR. CHARLEBOIS: Q. When we stopped yesterday sir, we were talking about your statement to the police and where you had said in your statement to the police that she started  
5 kicking me all over for about five minutes and we had established that in your evidence at the trial, you had said that she had kicked you on the back two times and we were at a point and I believe that's where you got ill and we stopped and we were at a point where I was suggesting to you and I am now  
10 suggesting to you that in your statement to the police, about being kicked all over for about five minutes, that you exaggerated that part of your statement. I'm sorry, did the witness respond?

INTERPRETER: No, excuse me, I must tell you guys that when some of the witnesses or anybody that doesn't  
15 speak English, even when you tell them something and they keep on nodding, um hum, things like that, so that doesn't mean he's agreeing with something. It's just like, some people are so use to saying um-hum, you know so.

MR. CHARLEBOIS: Q. There was a question put to the  
20 witness, can he answer...

INTERPRETER: That's what he was doing.

A. At that time when the statement was taken, he says  
25 I thought that was the time it took, a long time it took for her to kick me.

MR. CHARLEBOIS: Q. Do you agree that your evidence to the jury was different? You told the jury you got kicked two  
times.

A. That's true.

Q. And that you told the jury that you got kicked only  
30 in the back, not all over right?

A. Yeah, yes just my back.

Q. So that when you told the police in your statement that you were kicked all over for five minutes, you made a mistake, is that right?

A. Yes I over exaggerated and make a mistake.

MR. CHARLEBOIS: Perhaps Your Honour, I don't want to re-cross-examined on the point that may have been covered yesterday. Could I get assistance from your notes please as to whether I had covered in cross-examination yesterday that in the statement, there was no reference to slap or thrown to the floor. I believe I did but I just didn't want to overlook the area.

THE COURT: I have a note, nothing in statement about being thrown to the floor; yes; not sure if I told the police about being slapped but told them about being thrown to the floor.

MR. CHARLEBOIS: Okay, thank you Your Honour.

MR. CHARLEBOIS: Q. Now when you say the nun kicked you Mr. Tookate, how was the nun dressed? Did she have a habit, a nun's uniform?

A. The way the nuns used to dress, their habits, that's what she was wearing.

Q. So that's what she was wearing when you allege you were kicked.

A. Yes, that's how she was dressed.

Q. Let's go back now to the incident where you were sick in the dining room according to your evidence, okay. You told us that you were given cod liver oil and then you got sick.

A. Yes it's true.

Q. How did you take the cod liver oil?

A. It was given by the spoon, using the spoon.

Q. How long after you took the cod liver oil did you

get sick?

A. Right after I swallow it.

Q. Did you take the cod liver oil before you would eat  
5 the meal?

A. That's what she used to do, she used to give us  
before eating our meal.

Q. On this occasion that you got sick, had you started  
to eat before you took the cod liver oil?

A. No I was, like I said, we used to be given our cod  
10 liver oil first.

Q. So you take the cod liver oil and did you spit out  
the cod liver oil or did you swallow it?

A. I swallow it, all of it.

Q. Okay and then you threw it back up according to  
15 your evidence.

A. I didn't vomit it out, it came up and I swallow it  
back again.

INTERPRETER: The cod liver oil he's talking about.

MR. CHARLEBOIS: Q. Okay, did you keep it down then?

A. It didn't come out again.  
20

Q. So just so I'm clear on this, the picture I have is  
you swallow the cod liver oil, it comes back up into your mouth  
or your throat and you swallow it again.

A. That's how it happened.

Q. So you never actually threw up the cod liver oil  
25 into your plate, it didn't leave your mouth.

A. That's what I mean when I, that's what I mean when  
I said it came up and I swallow it back.

Q. And would it be that you did not want to eat your  
30 food because the cod liver oil did not agree with your stomach?

A. I didn't like the food that I was given.

Q. So you were not eating any of the food at that

time, is that right?

A. Like I had told you before, like I had to force myself eating that food that I was given and that's why I was sick.

Q. Okay and the nun came over and said you'll have to eat what's in your plate, is that right?

MS. FULLER: Before the witness answers Your Honour, I would have an objection and that is that, it should be clear to the court that we are talking about two different incidents and the one is being run into the other. This witness is talking about a discussion about when he had cod liver oil and...

THE COURT: I am sorry.

MS. FULLER: When he had cod liver oil and he didn't like it and he swallowed it anyways.

MR. CHARLEBOIS: Can we, before we make this objections, can we make it in the absence of the jury please?

THE COURT: Perhaps it might be a good idea.

...JURY RETIRES

12:24 p.m.

THE COURT: Okay, at different occasion, it takes me by surprise, the evidence in-chief was that, "I was sick after getting cod liver oil, I ate it, forced myself. After eating it, I vomited in my plate, I was afraid I would get in trouble if it was on the floor, I vomited a lot, almost filled my plate and was in the dining room 20 feet away. She said eat what is on your plate, she came where I was sitting. I did not want to eat vomit, no, I did not, I didn't eat it. She used a spoon and forced the vomit in my mouth. I couldn't swallow it, my own vomit." That generally is what my notes, he vomited again in the same plate and he was sent to bed.



MS. FULLER: Your Honour.

THE COURT: Now this here deals with a different...

MS. FULLER: Yes Your Honour...

THE COURT: Would that not be...

MR. CHARLEBOIS: Before my friend, I just want to ascertain that in fact and it may be overkill on my part, I just want to ascertain that this witness doesn't understand English at all. If he does, he can remain. If he understand some English, I want to exclude the witness.

THE COURT: Do you understand English sir?

A. Yes.

THE COURT: Yes.

A. Yes.

THE COURT: I would ask you to step out for a second, okay.

A. Okay.

THE COURT: Anyhow, my comment would be this. If defence counsel is eliciting evidence of a different incident, then that would have to be carefully and properly gone over in re-examination. I do not know that I can tell him he has a different incident, I do not know that.

MS. FULLER: Well Your Honour, my recollection of the evidence is that the witness is talking about not liking the food and cod liver oil is one of the foods that he didn't like and that he didn't want to eat. But the incident that he was telling the court about in terms of eating the food and bring it all back up again is clearly a different incident since the witness...

THE COURT: Well it is clearly a different incident or clearly, it is different testimony as to the same

5 incident so this is up to the cross-examiner. You cannot you know, coach your witness while he has been cross-examined but you certainly have a right to re-examine and this would be a perfect situation where re-examination would clarify a nebulous situation.

MS. FULLER: My only concern is that the witness may be on one wave length and my friend is on another.

THE COURT: Well what do you expect me to do?

10 MS. FULLER: Well it would be helpful if Mr. Charlebois were to ascertain or clarify that we're talking about the same incident.

THE COURT: I cannot tell Mr. Charlebois how to cross-examine. I did not know...

MS. FULLER: My concern is it is misleading.

15 THE COURT: ...until you got up, that there might have been a different incident but I do know this, that you cannot give testimony, you can only question your client. If Mr. Charlebois is muddling the waters, we can only thank the rule of re-examination for you to clear it up.

MS. FULLER: Thank you Your Honour.

MR. CHARLEBOIS: I'd like to make submissions on that.

THE COURT: To what purpose, to what end? I just told you, you can cross-examine.

25 MR. CHARLEBOIS: No, I realize that but then, to give the Crown an unfettered right of re-examination...

THE COURT: The Crown has the right of re-examination.

MR. CHARLEBOIS: This witness has testified about one vomiting incident.

30 THE COURT: What do you want, do you want a ruling from me? If you want a ruling from me, tell me what the ruling is you wish or continue your cross-examination.

What do you want me to rule?

MR. CHARLEBOIS: That as part of re-examination, the Crown should not be allowed...

5 THE COURT: Why don't you wait until the Crown starts re-examining before you make your objection. Why deal with that now? I am just telling the Crown that this is where things are cleared up, in re-examination.

Now, if the Crown asks a question you find objectionable, stand up, object and I will rule, okay.

10 MR. CHARLEBOIS: I can see, I can foresee objections at that stage, definitely.

THE COURT: Why tell me now, she might not say anything, I do not know.

15 MR. CHARLEBOIS: Because I don't want the Crown, in re-examination, to bring out further evidence of other alleged vomiting incidents that should've been brought out in-chief. This witness has testified as to two incidents, one...

20 THE COURT: I am going to tell you to continue your cross-examination. If the Crown wants to re-examine and you find a question objectionable, bring your objection then.

MR. CHARLEBOIS: Very well.

THE COURT: Bring the witness in please and the jury.

25 ...JURY ENTERS

12:30 p.m.

MR. CHARLEBOIS: Can I continue Your Honour?

THE COURT: Yes.

30 MR. CHARLEBOIS: Q. At the time we stopped, I was telling you that yesterday you had said that the nun came by and said, "You will have to eat whatever is in your plate." Do you remember telling us that yesterday?

A. Yes I remember that.

Q. Now at that time sir, can we agree that there was only food in your bowl?

A. No it's not true, he doesn't agree.

5 Q. Okay well you told us you took the cod liver oil, you swallow, it came up, you swallow it again, right?

A. That's true.

Q. I asked you if anything left your mouth at that time and you said "No".

10 A. No, he didn't have anything in his mouth.

Q. And nothing left your mouth, right?

A. Nothing.

Q. Therefore, how can there be anything but food in your plate?

A. I told you only after I vomited in my plate.

15 That's when she came to see me, I told you that before.

Q. When did you vomit in your plate?

A. After two gulps of my food, that's when I vomited.

20 Q. Now you told us that after she had used the spoon to get you to eat some of it, right, that you got sick again. Do you remember telling us that yesterday?

A. That's exactly what I said yesterday.

Q. Now is that the fact that some of the food and vomit was spooned into your mouth and that you vomited again? Is that something that always stayed in your head?

25 A. Yes all the time.

Q. That's something you never forgot about in all those years, right?

A. I never, it's always there.

30 Q. You always remembered clearly about this incident that after the nun spooned food and vomit in your mouth, that you vomited again, is that right?

A. Yes.

MR. CHARLEBOIS: Was Your Honour left yesterday with the witness's statement at the end of the day or was it returned to the police officer?

MS. FULLER: Dangerous thing to do Your Honour.

THE COURT: You have it.

MR. CHARLEBOIS: Unfortunately I don't have a copy for the interpreter, just my own. I think we had a spare copy yesterday.

THE COURT: Well maybe you took that too.

INTERPRETER: Excuse me, the copies were sitting here when we left yesterday along with a written one and a typed one.

THE COURT: That is right. I recall what the interpreter is saying. She handed me the typed one and I took the written one and handed them to the clerk.

MS. FULLER: Why don't I just give my copy.

MR. CHARLEBOIS: Q. By the way Mr. Tookate, this, sir, I'm talking to you, is it just the one time that this happened to you, that you threw up your food?

A. Yes just once.

Q. In your statement to the police, did you say to the police and I see you glancing at the statement sir, I just want to ascertain, do you read English?

A. Yes I read English very well.

Q. In your statement to the police, did you tell the police, "On three separate occasions at mealtime, I threw up in my plate"?

A. That's what I said, that's what I had said, I'm not lying what I had said in the statement.

Q. Well you just finished telling me sir that you only had one incident where you vomited. You just told us that, didn't you?

A. For sure once.

Q. So therefore if it's for sure once, when you told the police on three separate occasions at mealtime I threw up in my plate, you were exaggerating again, weren't you?

A. I agree that I must have over exaggerated what I had told.

Q. The police.

A. Yes.

Q. Now in your statement, "Our meal was some kind of meat, I'm not sure. On all three times that I threw up, Anna Wesley came to me and told me I had to eat everything in my plate." Actually Your Honour, I don't want to feather the interpreter or the witness. The witness can answer in the language of his choice but he just told us he reads English very well. Maybe I can just read the portion in English without needing to translate.

R U L I N G

BOISSONNEAULT, R. (Orally):

I think if the witness wants to make use of a translator, the witness is entitled to do so.

MR. CHARLEBOIS: Q. "I didn't want to eat it, then she grabbed the spoon and forced it into my mouth. She forced the vomit into my mouth, she would make me eat maybe a quarter or a half of it. After she did this, she sent me to bed. That's all I can say." Now can we agree that's what you told the police about the vomit incident?

A. That's what I must've said when they asked me the questions.

Q. Now can we agree that nowhere in there did you tell the police you got sick after taking cod liver oil?

A. Nothing is written there.

Q. So nothing is written there, can we agree you never

told the police about getting sick after eating cod liver oil?

A. Like I said, there's nothing written there.

Q. I know there's nothing written there. What I'm  
5 suggesting is it's not written there because you didn't tell  
them.

A. I never talked about the cod liver oil in there,  
that statement.

Q. Now we've already, you've already agreed with me  
10 that that incident about the one time when you had to eat your  
vomit always stayed with you your whole life, yes?

A. That's true.

Q. In that statement sir, you never told the police  
that you vomited again in your plate after the food and the  
vomit were spooned into your mouth, right?

15 A. I never told them that.

Q. In fact, all you told the police "She grabbed the  
spoon, forced it into my mouth, she forced the vomit into my  
mouth. She would make me eat maybe a quarter or a half of it.  
After she did this, she sent me to bed. That's all I can say."  
20 Mr. Tookate, you've told this jury this incident never left  
you. You've told this jury that after the vomit and the food  
were spooned into your mouth by the nun, that you vomited again  
into your plate. Why didn't you tell the police that you  
vomited again after the spoonfuls were put into your mouth?

25 A. At that time, I wasn't, I wasn't in a great state  
of mind. I couldn't think right. That's the time when I lost  
my grand-child.

Q. Well you remembered enough to give the police, is  
it Your Honour who has the original statement, the handwritten  
30 one?

THE COURT: No I do not have it. I handed that over to  
the clerk last night.

MR. CHARLEBOIS: Q. You were with the police officer long enough to produce what turned out to be a page and a half written statement, right?

5 A. Yes.

Q. And you told the police all kinds of things about this vomit incident in your statement, right?

A. Yes.

Q. I'll suggest to you, you didn't tell the police anything about vomiting again after having the vomit and food 10 spooned into you because it didn't happen, never happened, do you agree with that suggestion?

A. Yes there's nothing written there.

Q. I know there's nothing written, what I'm suggesting to you is that it's not written, you didn't tell the police 15 that because you did not vomit again after having the spoonfuls.

A. Oh my goodness, you don't believe me. I know what I went through.

Q. I'm suggesting to you that you didn't tell the 20 police about that because it didn't happen that way. Do you agree with that suggestion?

A. Somebody will be here, the person that witnesses what happened to me.

Q. I'm not asking about other witnesses, I want you to 25 answer the questions I'm putting to you.

A. Can I ask you a question, are you...

Q. No, it's not up to you...

THE COURT: Please.

A. Are you suggesting that I am lying about my 30 testimony?

MR. CHARLEBOIS: Q. That will be up to the jury to decide later on, not for me.



5 MS. FULLER: I disagree Your Honour, it does appear to be the suggestion being made by my learned and well educated friend and since that is a suggestion, the witness should be assisted, yes, that is what I am suggesting so that it's clear.

10 MR. CHARLEBOIS: It's not up to me to let the jury or rather let the witness know where I am headed with my cross-examination. I can make to this witness any relevant suggestions based on the evidence or on statements given on prior occasions compared with evidence given at trial. It's entirely proper and whatever weight if any, the jury decides to put on it will be for the jury to decide at the appropriate time.

15 MS. FULLER: And it's entirely proper for the witness to ask for clarification of a question or a suggestion that was made to him.

THE COURT: Go ahead Mr. Charlebois.

20 MR. CHARLEBOIS: Q. Thank you. You've told us many times this morning, several times rather that this incident about the vomit always stayed with you, never left you. Why did you not tell the police officer about vomiting again?

A. I don't know why I didn't tell the police, it would've been written here in the statement.

25 Q. Maybe you didn't tell the police because it never happened that way, do you agree with that?

A. No I disagree with that.

Q. Now we established yesterday that you left the school after several months because you got sick. Did you go back into your family?

30 A. No I didn't, I went to the hospital.

Q. Okay, after you left the hospital, did you go back to your family?

A. Yes after I was discharged from the hospital.

Q. Do you remember how long you were in the hospital after you left Ste-Anne's school?

A. I was discharged in 1958.

Q. Were you in hospital for seven years?

A. I went in at the hospital in June 1952.

Q. Okay so six years, you were there till 1958.

A. Yes, that's how long.

Q. Now while you were in the hospital for that lengthy period of time, did your family visit you?

A. Yeah while I was at Moose Factory, they came to visit me.

Q. Okay and how long was that after you left school, Ste-Anne's school?

A. He said in June 1952 when I was taken to the hospital but prior to that, I was in the hospital at Fort Albany for three months.

Q. Okay, while you were in the hospital in Fort Albany, did your family or your parents visit you?

A. They were not there.

Q. In June of '52 when you went to the hospital in Moose Factory, did your parents visit you about that time?

A. Yes they came.

Q. Did you ever tell your parents about what had happened to you at Ste-Anne's, either getting hit or the vomit incident?

A. I never told anything to my parents.

Q. Why not, you were out of the school, you were in Moose Factory, you were far from Fort Albany?

A. What could they do?

Q. Why didn't you tell them?

A. Like I said, there's nothing they could do.

Q. Gerard Kioke, you know Gerard Kioke.

A. Yes since a long time.

Q. You told us yesterday that he was at the school  
5 same time you were, right?

A. Yes he was there.

Q. Who got there first, you or him?

A. Like in the fall, we got there, both of us got  
there at the same time.

Q. And since the police began investigating this  
10 matter in 1992, which town have you been living in?

A. I was in Attawapiskat.

Q. What about Kioke, has he been living in  
Attawapiskat as well?

A. Yes, that's where he was.

Q. And Attawapiskat is a small community, is that  
15 right?

A. Yes it is small.

Q. So Mr. Kioke is someone that you would have seen  
and continue to see regularly, is that right?

A. Yes I would see him walking by but I don't  
20 associate with him to talk to him.

Q. You and Mr. Kioke have never discussed this  
treatment that you had at the school.

A. Never.

Q. Why did you tell us a few minutes ago when we were  
25 talking about the vomit incident that there will be a witness  
coming or words to that effect?

A. I'm pretty sure because the reason why I said that  
is because Gerard's Kioke was there, he had seen what happened.  
He must've seen. I'm not suggesting that he seen it but he  
30 might have.

Q. How did you know or suspect that Gerry Kioke might

be coming here to give evidence?

A. I already know that because before I came here, around in the springtime, I already know how many people were coming here.

Q. I'm sorry madam interpreter, would you please repeat that answer. I missed it.

INTERPRETER: He says that I already knew who was coming here. I'd already knew that during the springtime.

Q. And how did you know that, did Mr. Kioke tell you that in Attawapiskat?

A. No.

Q. How did you know he'd be coming since the spring?

A. It was his wife, his wife had told me that Elise Kioke, that my husband will be going down there too and she never told me that he was going to testify on account of me. She never told me anything.

Q. So your evidence just to be clear on this is that you never discussed with Gerard Kioke what happened to you at Ste-Anne's, is that what you're telling us?

A. I never.

Q. Did you discuss it with his wife?

A. No, no.

Q. Let's move on to something else sir. I'm almost finished with the witness Your Honour.

THE COURT: Okay.

MR. CHARLEBOIS: Q. Move on to something else sir. Are you presently employed Mr. Tookate?

A. Not at the moment.

Q. And how long have you been without employment sir?

A. I finished work in 1997, the summer of 1997.

Q. Okay, is it that you retired at that point or there

Eli Tookate - Cr-Ex.

Eli Tookate - Re-Ex.

were no longer any job?

A. That's how my seasonal job was. I was only working 36 weeks.

5 Q. Okay now have you decided or have you given any thought to suing for money because of what happened to you at Ste-Anne's?

A. Remember what I said there, remember what I said last summer, I never thought of money or anything like that.

10 Q. Since last summer, have you given it any thought?

A. Never, never.

MR. CHARLEBOIS: Thank you sir.

RE-EXAMINATION BY MS. FULLER:

15 Q. Mr. Tookate, why are you giving evidence here today, what's your reason for telling this court what happened to you?

A. The reason why, the reason why I am telling this in the courtroom is because I have lived with this situation for the longest time and by talking about it, it's just like 20 releasing.

Q. When you went to the hospital in Fort Albany, sick with the tuberculosis before you went to the sanatorium in Moose Factory, was that right as soon as you left Ste-Anne's, did they put you in the hospital? Is that the time frame?

25 A. Yes.

Q. All right, you indicated in your statement sir, to the police, that it was on three occasions that you threw up and were forced to eat your vomit and then, you indicated that, here at trial, that it happened one time and in cross- 30 examination, you said for sure, once. What about the other two times you referred to in your statement?

MR. CHARLEBOIS: I would object to that question Your

5 Honour, I submit that it doesn't, it doesn't come out per say of the cross-examination. The witness said one thing on a prior occasion, was absolutely sure about something else at trial and I would submit that to re-visit it, simply reemphasize something that may have been said on a prior occasion is not the proper subject for re-examination but it's for Your Honour to decide if the question is proper.

10 THE COURT: Thank you very much. I would like clarify on that point.

MS. FULLER: Q. Does the witness remember what the question was?

A. Yes.

15 Q. And what is the answer, why did you say for sure once here and you said three times to the police? What about those other two times?

A. Because I'm telling the truth right now what I said.

20 Q. All right, when you told the police three times, what were you referring to then?

MR. CHARLEBOIS: Your Honour asked an answer in my respectful submission, Your Honour permitted the question and the witness said, he's telling the truth now which leads me to conclude that it happened once.

25 THE COURT: I will let her ask the question anyway.

MS. FULLER: Q. What did you mean when you told the police back then, three times?

A. Like I said, at that time, that's what I had thought but I thought over and over about it again.

30 Q. All right, when you didn't say in your statement that after you were forced to eat your vomit, you were, you vomited again in your plate, was there any question put to you

by the police officer at the time about what specifically you did with the vomit in your mouth, after being forced to have it in your mouth?

5 A. At that time, the police never questioned to find out exactly what had happened to me.

Q. I just want to clarify something, Mr. Tookate, you talked about the food that you ate that made you throw up in your plate and eating it again and you talked about not liking the cod liver oil and forcing yourself to swallow it. Did 10 these two things happen at the same meal or at different meals?

A. Different place.

Q. Thank you.

15 THE COURT: Mr. Tookate, when the police talked to you, it was on the 8<sup>th</sup> of June, 1994, close to five years ago, is that correct?

A. Yes, around there, '94.

THE COURT: And they talked to you for about half an hour.

A. Around there.

20 THE COURT: When did you find out that you would have to talk to the police officers?

A. When they came and got me...

COURT INTERPRETER: I have to ask him when they came and got me...

25 THE COURT: I will ask him...

COURT INTERPRETER: No, no, I didn't want to say they came...

30 THE COURT: I want to know if they...When they came to get you, is that the first time you knew you would have to talk to the police officers?

A. Yes, that was the first time.

THE COURT: So you did not have much time to think about

things.

A. No, not much time.

THE COURT: And the police officers mainly asked you questions.

A. Some, not everything.

THE COURT: You were 50 years old at the time.

A. Yes, about that.

THE COURT: And you were talking to them about things that happened 42 years before.

A. Yes, there was some stuff that I made a mistake on. Like I said, when I was talking about the years, 1951.

THE COURT: Thank you very much sir. You can step down. You have one witness for this afternoon or two.

MS. FULLER: I think one, Your Honour.

THE COURT: One, how about resuming at 2:30 p.m.

MS. FULLER: That would be great, thank you.

THE COURT: Sorry I kept you this long but we will resume at 2:30 p.m.

...JURY RETIRES

1:00 P.M.

R E C E S S

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THIS IS TO CERTIFY that the  
foregoing is a true and accurate  
transcription from the record  
5 made by sound recording apparatus,  
to the best of my skill and  
ability.

*Carole Brisson*

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10 Carole Brisson  
Court Reporter

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