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SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

and

ANNA WESLEY

V O L U M E I I I

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

and

ANNA WESLEY

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P R O C E E D I N G S   A T   T R I A L

BEFORE THE HONOURABLE MR. JUSTICE R. BOISSONNEAULT  
on April 26, 1999 in COCHRANE Ontario

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Charges: Assault (5), Noxious substance (3,  
Assault cause bodily harm (2)

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V O L U M E   I I I

APPEARANCES:

D. Fuller

Counsel for the Crown

G. Charlebois

Counsel for the Accused

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SUPERIOR COURT OF JUSTICE

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Transcript Completed: October 9, 2003

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SUPERIOR COURT OF JUSTICE

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CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. You speak English fluently don't you Mr. Wheesk?

5 A. Even though you speak English, I know that this is 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 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...

25 THE COURT: Go ahead.

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.

30 THE COURT: Go ahead.

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  
10 English language?

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  
15 lasted an hour and 25 minutes in English, is that right?

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  
when you went to Ste-Anne's and you also told us that Daniel  
20 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.

Q. Okay, no problems. I understand that during the  
30 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?

5 A. Yes we were all at Fort Albany.

Q. And Fort Albany is also the town where Ste-Anne's residential school is located, is that right?

A. That's true.

10 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?

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.

15 A. That's true.

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 he, run into her?

A. I can't remember, that's because she was working where they do the laundry.

5 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?

10 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.

15 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.

20 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.

25 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.

30 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...

15 A. Yellow legs, yes.

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 you sleep in the same dorm?

20 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.

Q. Okay, sorry, what did you tell us the age differential is between you and your brother?

25 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.

15 Q. And some of the older boys, would you agree with me that some of the older boys were taller, heavier than she was?

A. Some of them were tall and some of them were chubby and some of them were skinny.

20 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 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.

30 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 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.

5 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  
10 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  
15 '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?

20 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.  
25 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  
30 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...

10 THE COURT: Of what?

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.

5 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.

10 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.

15 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.

20 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.

25 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.

30 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  
5 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  
10 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  
15 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  
20 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  
25 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  
30 hand.

Q. And while you were kneeling in the corner, the slap

or slaps that you received, were they over the ears again?

5 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.

10 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?

15 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.

20 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.

25 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.

30 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  
5 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.

10 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?

15 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.

20 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  
25 sniffling 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.

30 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?

5 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  
10 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.

15 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  
20 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?

25 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:

30 ...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.

10 Q. And that you wound up in the hospital for, how long was it again?

A. One month.

Q. Your leg wasn't broken was it?

A. No it was just swelling up like a boil.

15 Q. According to your evidence, the nun didn't hit you on the leg did she?

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.

20 A. That's what she was always doing.

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.

25 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?

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.

10 MR. CHARLEBOIS: Q. This skating event and everything you shared with us this morning about the leg injury and what 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?

15 A. When I recall it.

Q. That's an event that you never forgot about sir.

A. Sometimes I forget it but it's always there.

20 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 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?

10 A. Of course.

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.

15 THE COURT: Do you have a copy for me?

MR. CHARLEBOIS: If Constable Delguidice comes back in a minute, we will be able to produce the original to Your Honour.

20 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.

THE COURT: My page two only has two paragraphs.

MR. CHARLEBOIS: Could I perhaps see Your Honour's copy?

25 THE COURT: Well I have two.

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".

30 MR. CHARLEBOIS: That's it.

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.

5 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?

10 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?

25 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.

30 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.

25 Q. Is that what's written down there Mr. Wheesk?

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.

Q. Do you agree that you never told the police that in your statement?

A. It says right here, maybe...

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):

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?

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.

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  
5 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  
10 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  
15 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  
20 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?

25 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.  
30 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.

5 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?

10 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 15 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.

20 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.

25 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.

30 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.

5 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.

10 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.

15 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.

20 THE COURT: I would like a question and answer cross-examination so the jury can understand what is going on.

25 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.

30 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.

5 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.

10 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.

15 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.

20 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.

25 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.

30 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?

15 A. When it was said about yellow legs, like after she retired.

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?

25 A. I guess. Everybody respected the nuns, the brothers and the fathers, they were respected because of the church.

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?

30 A. I had heard about...

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.

5 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...

10 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.

15 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?

20 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...

25 THE COURT: Just a minute please. Do you have anything to say?

MS. FULLER: No Your Honour.

THE COURT: Go ahead.

30 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.

5 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?

10 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?

15 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.

20 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.

25 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.

30 Q. In fact, can we agree that the healing conference took place just before Chief Edmund Metatawabin asked the police to investigate.

George Wheesk - Cr-Ex.

George Wheesk - Re-Ex.

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.

10 A. Yes that is what, I can't say. Yeah that is what I said.

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.

20 Q. What were you doing there?

A. I went there because I wanted to see what could be done about the abuse that we had went through.

Q. And was there a reunion of the school there at the same time?

25 A. Yes that's what, that's what, how it looks like.

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.

15 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?

A. That's true.

Q. "And she scared me too much". Was that true? Was that your thought?

A. That's true.

20 THE COURT: That certainly clarified what he said.

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.

15 Q. Were you injured while you were skating?

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.

10 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?

15 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.

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.

20 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.

25 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?

30 MS. FULLER: Your Honour, my plan was to call two corroborating witnesses who are only going to give evidence on two discrete incidences, 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.

THE COURT: Pardon me?

25 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?

25 MS. FULLER: Well yes, there was a preliminary hearing, all of the incidents that have been raised...

30 THE COURT: Are you happy?

MS. FULLER: ...by the witnesses came out at the preliminary hearing, all of the allegations with

431.

George Wheesk - Re-Ex.

Oliver Wesley - in-Ch.

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  
5 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 -- c  
10 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  
15 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  
20 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  
25 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  
30 a 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?

10 A. Yes, I do.

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?

15 A. Maybe the second year, I think.

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?

20 A. We were given cod liver oil in the mornings.

Q. And did something happen...Without telling us what it was, did something happened that involved the getting of cod liver oil?

A. Yes.

25 Q. And you were given cod liver oil with the morning meal.

A. Yeah.

Q. And who was it that dispensed the cod liver oil?

A. Sister Wesley.

30 Q. And how, what is your recollection of how she did that?

A. she would just walk around the tables and with a spoon give it to us, to each of us.



5 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?

10 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.

15 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.

20 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.

25 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.

30 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 bow.

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

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.

5 Q. Is that different or similar to the word puke in  
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.

10 Q. Right. And were you able to see this happening?  
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  
15 room?

A. She was right, right beside Daniel.

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.

25 Q. On the side of the side. I'm sorry. I just didn't  
catch that.

A. Yes.

Q. Did she say anything to him?

A. She told Danny to eat the food.

30 THE COURT: She told him to eat...

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

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Oliver Wesley - Cr-Ex.

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?

20 A. Yes, I do.

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?

5 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.

10 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?

15 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?

20 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".

25 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.

30 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.

10 Q. Now is that something you remember clearly, Daniel Wheesk being slapped in that instance, that time?

A. That morning yeah.

Q. Do you have a good recollection of that?

A. Yeah.

15 Q. And was that also clear in your mind when you spoke to the police, this incident, this event about Daniel Wheesk?

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.

5 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.

10 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.

15 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?

20 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.

25 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.

30 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?

5 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  
10 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.

15 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?

20 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.

25 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.

30 Q. Now when that evening, when later on that evening did you tell the police that you remembered that Daniel Wheesk got slapped?

5 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.

10 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.

15 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?

20 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.

25 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?

30 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, 10 writing down everything I said.

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?

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?

15 A. Yeah he was given, he was given it.

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.

30 MR. CHARLEBOIS: But I'm also, I'm just trying to focus on this before I go on to the other...

THE COURT: No, but in fairness, you've got to focus on everything he said.

MR. CHARLEBOIS: Thank you, Your Honour.

5 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?

10 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.

15 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.

20 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.

25 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.

30 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.

5 Q. Sure. If you looked at the plate...Maybe you can't 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.

10 Q. Okay. Did it look only to be food that was in the 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?

15 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.

20 Q. ...oil?

A. Cod liver oil as soon as he got, as soon as the spoon was put in his mouth there that's when he puked it out.

25 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 bowl at that point is food and cod liver oil. Is that what you're trying to tell us?

A. Yes.

30 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 happen, cod liver oil was administered to all the children every day. It was part of a, some kind of a program?

A. Yes.

449.

Oliver Wesley - Cr-Ex.

Oliver Wesley - Re-Ex.

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?

25 MS. FULLER: Well, the witness was asked...

THE COURT: What was the question?

30 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.

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.

10 Q. And when you said, "Sister Wesley tried to make him eat it anyway" what were you remembering when you said that?

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  
20 witness in re-examination.

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.

5 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.

10 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...

15 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.

20 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?

25 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.

30 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.

5 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.

10 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.

15 A. Yes.

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

20 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.

25 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.

30 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

10 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.

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

15 is saying, please tell me immediately, okay.

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.

20 A. Yes.

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.

Q. Meaning grade one, grade two, grade three, grade 30 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.

5 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.

10 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.

15 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?

20 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  
25 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  
30 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.

10 THE COURT: Mr. Charlebois.

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?

15 MS. FULLER: I hope so.

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.

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  
25 that refresh your memory looking at it?

A. No, no.

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  
30 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.

5

A. Yes.

Q. And did you line up according to size, age, grade or do you remember?

A. Size.

10 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.

15

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.

20

Q. Did you hit anybody with the snowball?

A. No.

Q. Did you get caught for throwing a snowball?

A. Yes.

Q. By who?

25

A. Sister Anne.

Q. Is she in court today?

A. Yes.

30 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.

5 Q. Yes, was this right after you made the snowball or  
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.

10 Q. And what did she say to you?

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?

15 A. I thought she would hit me.

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?

25 A. Yes.

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?

30 A. She told me to kneel down.

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.

15 Q. Were you looking at her when she spoke?

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.

25 Q. And how close were you to the radiator?

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  
5 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.

10 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?

15 A. Yes.

Q. And did you hear someone approaching?

A. Yes.

Q. And what was it that you heard?

A. Her footsteps.

20 Q. I'm sorry.

A. Her footsteps.

Q. Who's footsteps?

A. Sister Ann.

Q. And what made you think that they were her  
25 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.

30 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?

30 A. Just her.

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?

5

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?

10

A. No.

Q. Were there any brothers or priests in the dining room?

15

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.

20

Q. All right so it was only Anna Wesley who was in charge of the dining room at that time?

A. Yes.

25

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.

30

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?

5

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?

15

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?

20

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?

25

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".

30

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?

10 A. Say it again.

Q. Is there any doubt in your mind that it was Anna Wesley who kicked you in the head?

A. No doubt.

15 MR. CHARLEBOIS: Your Honour, the second last answer, was it, I didn't see it?

THE COURT: Correct.

MR. CHARLEBOIS: Thank you.

20 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?

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.

15 MS. FULLER: Yes, unless.

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?

5 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 10 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.

15 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 20 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.

25 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?

30 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.

25 MS. FULLER: All right, thank you.

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  
10  
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.

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...

15  
THE COURT: The plane has landed.

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?

20  
MS. FULLER: Cab, they all come by cab.

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.

20 THE COURT: Okay, well I will just give this back then.

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.

5

...JURY ENTERS

11:35 a.m.

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  
10 right?

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.

15 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?

A. Yes.

20 Q. And can we agree that you understand and speak the English language fluently?

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.

25 Q. Well was a copy of it made available to you in the last couple of days?

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.

15

Q. You mean the first time in your statement to the police, you just guessed at the dates?

A. Yes.

20

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?

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  
5 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?

10 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?

15 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.

20 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.

25 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.

30 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.

20 Q. Can we agree that in your statement to the police,  
you said lunch?

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.

5 Q. And it appears you got caught breaking the rule,  
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  
15 of you when we get to where we're going to eat or the dining  
room", right?

A. Yes.

Q. Did you expect to be punished for having broken the  
rule and gotten caught Mr. Mudd?

A. Yes.

20 Q. So the boys sit down for lunch and you're made to  
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?

30 A. No.

Q. Help me out here, no you agree you did not see the  
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  
5 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  
10 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?

15 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  
20 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  
25 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  
30 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.

5 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.

10 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?

15 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?

20 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.

25 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.

30 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.

5 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.

10 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?

15 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.

25 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.

30 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  
5 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?

10 A. No.

Q. Well wouldn't you be more nervous today?

A. I am.

Q. Sorry.

A. I am.

15 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  
20 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  
25 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  
30 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.

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.

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.

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.

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.

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?

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  
5 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  
10 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  
15 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  
20 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  
25 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  
30 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.

5 Q. Okay and from what you remember, the fire burned  
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.

10 MR. CHARLEBOIS: Q. Okay, I'll rephrase. After the  
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.

15 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  
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.

20 Q. Now you told the jury that while she was looking  
after your cut in the dorm, that she said, "That is what  
happens when you don't listen when you are spoken to." Do you  
remember telling us that this morning?

A. Yes.

25 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  
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?

30 A. I just mentioned the things that came to mind at  
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  
10 weren't for a kick.

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?

15 A. I don't know.

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  
5 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.

10 Q. Yeah and do you remember me asking if she was fair...

R U L I N G

BOISSONNEAULT, R. (Orally):

15 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.

20 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.

25 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?

30 A. Yes.

Q. Would you say that she was fair?

A. Being good, yes.

5 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?

10 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...

15 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.

20 MR. CHARLEBOIS: Q. Was she nice when the boys were behaving themselves?

A. Yes.

25 Q. And would she discipline you and the other boys when you did something wrong?

A. Yes.

30 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.

5 Q. Okay, so you'd go back to Attawapiskat every 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.

10 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?

15 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 back that summer or whatever summer this incident apparently took place, that you had forgotten about it?

A. I never told her.

20 Q. Okay so you never told her. Are you telling us you 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?

25 A. When I think about it now at the time if I had told 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.

5 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.

10 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?

15 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?

20 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?

25 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?

30 A. Mixed.

Q. Mixed, big and little.

A. Mixed.

5 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.

10 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  
15 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  
20 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.

25 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  
30 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

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.

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

ELI TOOKATE: SWORN

EXAMINATION IN-CHIEF BY MS. FULLER:

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.

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  
10 room. Was the food the same or different than what you were used to?

A. It was different.

Q. And one time, at least one time when you were there, did you feel sick during meal time after eating some of  
15 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?

A. Yes I ate it even though I didn't like it, I forced  
20 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?

30 A. A lot because I almost fill up my plate.

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?

5 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.

10 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.

15 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?

20 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.

25 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?

30 A. No.

Q. Well did you finally eat your vomit?

A. No I didn't eat it.

5 Q. Did Anna Wesley do anything other than just telling you to eat your vomit, to make you eat it?

A. She did something.

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.

20 MS. FULLER: Q. What was forced into your mouth?

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?

20 A. That's mine.

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.

Q. Was it a general question like that Mr. Tookate or was this police officer asking you many questions?

30 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?

15 A. At that time, I didn't really clearly remember anything.

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

5 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.

10 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.

15 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  
20 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.

25 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  
30 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?

15 A. After Christmas.

Q. Now when you wet the bed, was this discovered right away or only the next morning?

A. In the morning.

20 Q. Why didn't you go to the washroom when you felt the need?

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.

25 Q. In that old building, did you actually have toilets or did you use pails?

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."

15 A. That's true.

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.

20 Q. Did she hit you with slaps or with punches?

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?

20 A. Exactly what I had said in my statement.

Q. Okay, did you tell the police this in your statement?

25 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.

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

5  
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.

10  
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?

20  
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.

25  
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?

MS. FULLER: Here by 11:30 a.m.

THE COURT: By taxi.

30  
MS. FULLER: Well I understand that the last witness actually rented a car but I don't know what the arrangement have been made.

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.

5 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...

10 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.

15 ...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?

20 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?

25  
30 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?

10 A. I'm not sure.

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?

20 A. Yes, you read it over again.

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 10 told it to the police?

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?

15 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.

20 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 30 way.

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.

5 Q. Is there anything else in that passage, that part 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...

10 INTERPRETER: Like he says for her to take her time to hit me so what I asked him here is to differentiate 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.

15 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?

A. It didn't take her five minutes but she kicked me alright.

20 Q. Because today you said that you were only kicked twice, right?

A. Yes that is true, that's the truth.

25 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.

30 Q. I didn't say that, what do you mean by that?

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.

35 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, 10 that he didn't say that. In fact, I think he said it 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?

5  
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.

10  
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.

15  
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.

20  
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.

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.

25  
THE COURT: Maybe we will do it in installments.

MS. FULLER: Your Honour, would you like then to resume at 11:30 a.m.

30  
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.

THE COURT: Okay.

MS. FULLER: For legal argument.

20 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.

25 MS. FULLER: I doubt that we will be finished the legal argument then.

30 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

10 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.

15 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.

20 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.

25 THE COURT: Mr. Charlebois.

30 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 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 spring of 1994, in any event, well before the time at which time charges were laid in the fall of 1997.

20 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.

15 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.

20 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."

25 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."

30 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.

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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.

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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.

5 THE COURT: What is a pallet?

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.

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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.

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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.

THE COURT: How long do you think the adjournment should be if there is an adjournment granted?

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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.

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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.

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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...

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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?

5 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?

10 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...

15 THE COURT: Take your time.

R E C E S S

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

20 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.

25 MR. CHARLEBOIS: Yes.

THE COURT: Is that the aftermath?

30 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.

5 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?

10 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.

15 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...

20 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.

25 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-

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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.

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.

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MR. CHARLEBOIS: Yes Your Honour. In connection with  
George Scott.

THE COURT: Um-hum.

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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.

THE COURT: Um-hum, is that it?

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MR. CHARLEBOIS: In terms of what the Crown intends to  
use...

THE COURT: Scott, yeah, Scott.

MR. CHARLEBOIS: Yes.

THE COURT: Okay. Are you now going into the law of  
disclosure?

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MR. CHARLEBOIS: Yes.

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.

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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  
lawyers in 1996, I believe, for a review and  
recommendations were made on the 100 or so complaints  
25 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  
sure that we were clear on what we were proceeding on  
and at that time, we reviewed and I reviewed all of the  
30 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...

20 MS. FULLER: Or complaints were made...

THE COURT: The police felt that there was nothing there.

25 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.

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.

5 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?

10 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.

15 THE COURT: That is...

MS. FULLER: No but this is a screening rational...

20 THE COURT: That is your responsibility and your decision to make.

MS. FULLER: Absolutely.

25 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.

30 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  
30 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...

THE COURT: Well that is what you want to do though.

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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.

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THE COURT: Consented to what?

MS. FULLER: To charges.

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THE COURT: To charge.

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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?

5 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.

10 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.

15 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.

20 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.

25 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

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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.

10 MS. FULLER: Well Gary says that the purpose of the adjournment is to give the defence an opportunity to prepare an affective cross-examination.

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  
15 these witnesses.

20 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.

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.

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  
30 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

5  
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.

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MS. FULLER: No, it is the Crown's problem.

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.

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.

20 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.

25 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

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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...

15 THE COURT: The onus...

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 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.

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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  
10 sooner but it is not necessary in this case.

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.

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  
25 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  
10 should have not occurred, the information was available  
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.

15 MR. CHARLEBOIS: I'm asking...

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  
20 testify.

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  
25 how about exclusion? And if I do not exclude, I will  
entertain submissions in relation to adjournment, why  
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 malefictis 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.

20 MR. CHARLEBOIS: So that's why I'm not getting into it.

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.

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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.

10  
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"...

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THE COURT: Hold it, hold it, okay, just a second. The initial disclosure...

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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...

20 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.

25 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  
30

allowed to testify.

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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.

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THE COURT: Do you have any more law whether I can exclude that evidence?

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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.

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MR. CHARLEBOIS: On the issue of exclusion.

THE COURT: Yes because if, you know, if I consider exclusion, most certainly I have to rely on, consider precedence.

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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.

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.

5 THE COURT: Okay, do you have any law on the point?

10 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.

15 THE COURT: Which is what?

20 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...

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THE COURT: Okay.

MS. FULLER: But the...

5 THE COURT: Do you have a photocopy of what you have 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...

10 THE COURT: I am going to look at your remedy of 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.

15 MR. CHARLEBOIS: I would like to advance one point on 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.

20 MS. FULLER: Your Honour...

THE COURT: So what do you want, a mistrial?

MS. FULLER: The case law...

25 THE COURT: No, no, do you want to lay this down, what 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...

30 THE COURT: You left me with two options, one, exclude 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

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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.

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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...

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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.

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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...

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THE COURT: So now you are asking for a mistrial. I just want to get it clear so now we have...

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MR. CHARLEBOIS: It's not my first choice, it's a poor third option.

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.

15 THE COURT: So you are telling me if I do not exclude, you want a mistrial.

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 if you will stop digging in, that some compromise can be reached that will not prejudice your client because

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5 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.

10 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.

15 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.

20 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 :

25 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  
30 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?

5 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.

10 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.

15 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?

20 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.

25 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.

30 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.

5 Q. Did you take the cod liver oil before you would eat 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?

10 A. No I was, like I said, we used to be given our cod 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.

15 Q. Okay and then you threw it back up according to 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.

20 MR. CHARLEBOIS: Q. Okay, did you keep it down then?

A. It didn't come out again.

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.

25 Q. So you never actually threw up the cod liver oil 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.

30 Q. And would it be that you did not want to eat your 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?

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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...

15  
MS. FULLER: My concern is it is misleading.

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.

20  
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.

10 Now, if the Crown asks a question you find objectionable, stand up, object and I will rule, okay.

MR. CHARLEBOIS: I can see, I can foresee objections at that stage, definitely.

15 THE COURT: Why tell me now, she might not say anything, I do not know.

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.

25 THE COURT: Bring the witness in please and the jury.

...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?

15 A. I told you only after I vomited in my plate. 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.

5 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.

10 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.

15 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?

20 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.

25 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.

30 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  
5 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.

10 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  
15 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):

20 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  
25 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  
30 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.

5 Q. I know there's nothing written there. What I'm 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.

10 Q. Now we've already, you've already agreed with me 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.

15 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?

A. I never told them that.

20 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." 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.

30 Q. Well you remembered enough to give the police, is it Your Honour who has the original statement, the handwritten 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.

10 Q. I'll suggest to you, you didn't tell the police anything about vomiting again after having the vomit and food spooned into you because it didn't happen, never happened, do you agree with that suggestion?

A. Yes there's nothing written there.

15 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 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.

20 Q. I'm suggesting to you that you didn't tell the 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.

25 Q. I'm not asking about other witnesses, I want you to 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.

30 A. Are you suggesting that I am lying about my 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.

30 Q. Now we established yesterday that you left the school after several months because you got sick. Did you go back into your family?

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?

5 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.

10 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.

15 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.

20 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.

25 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?

30 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.

5 Q. You told us yesterday that he was at the school  
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.

10 Q. And since the police began investigating this  
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?

15 A. Yes, that's where he was.

Q. And Attawapiskat is a small community, is that  
right?

A. Yes it is small.

20 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  
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.

25 Q. Why did you tell us a few minutes ago when we were  
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.  
30 He must've seen. I'm not suggesting that he seen it but he  
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

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 releasing.

20 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.

30 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-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  
10 the cod liver oil and forcing yourself to swallow it. Did these two things happen at the same meal or at different meals?

A. Different place.

Q. Thank you.

THE COURT: Mr. Tookate, when the police talked to you,  
15 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.

20 A. Around there.

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...  
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THE COURT: I will ask him...

COURT INTERPRETER: No, no, I didn't want to say they came...  
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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.

5 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.

10 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.

15 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.

20 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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