

VOLUME V

HER MAJESTY THE QUEEN

v.

ANNA WESLEY

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SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S - V O L U M E V

5	<u>WITNESSES:</u>	<u>Exam.</u> <u>in-Ch.</u>	<u>Cr-</u> <u>exam.</u>	<u>Re-</u> <u>exam.</u>
	WESLEY, Anna		769	861
	LOONE, Leo (Reply)			909
	METATAWABIN, Edward	916	918	923

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E X H I B I T S

15	<u>EXHIBIT NUMBER</u>		<u>ENTERED ON PAGE</u>
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C O U R T    A D J O U R N E D

U P O N   R E S U M I N G

5    FRIDAY, MAY 14, 2003

THE COURT: I understand, Mr. Charlebois, that the issues of identity as an essential element and time and place as an essential element are conceded by the defence, and I should not spend too much time on with that in my charge to the jury.

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MR. CHARLEBOIS: I don't think Your Honour needs to spend any time on that in your charge. They are admitted and if at the appropriate time you would like me to repeat the admission in front of the jury I'll be happy to do so.

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THE COURT: No, with this I can simply tell them that it is agreed upon and....Bring the jury in, please.

....JURY ENTERS (no time available)

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THE COURT: We will now proceed with Miss Fuller's cross-examination of Anna Wesley.

COURT CLERK: Miss Wesley, I simply want to remind you that you're still under oath, okay?

MS. WESLEY: Yes, thank you.

25    CROSS-EXAMINATION BY MS. FULLER:

Q. Ms. Wesley, I'm sure you'd agree with me that there's an enormous gap between what you say happened at the school with respect to these boys and what the boys say?

A. Yes.

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Q. I'd like to ask a few questions to help see whether we can narrow that gap. To make this perfectly clear

to everyone, Ms. Wesley, you do not categorically agree with the portrait painted of you as someone who was filled with rage and cruelty?

A. No.

Q. You do not agree with that portrait?

A. No.

Q. Would you agree with me that that was the portrait of the witnesses painted?

A. No.

Q. Would you agree...

A. Bu...

Q. ...with me that that's what it sounded like, the person they were describing was?

A. Yes.

Q. Okay. Sometimes, Miss Wesley, when we look back on the past, maybe I remember things were a little better than they were and somebody else remembers them a little worse than they were, but that's not the case here is it, the gap is much bigger than that? Between whether or not you slapped somebody and whether you forced them to eat their vomit, it's not just that some people remember it a little better and some people remember it a little worse, is it? Do you understand my question?

A. Will...will you repeat it again, please?

Q. Alright. Sometimes when we think back about something that happened to us we--and there were two people who were there, one person might remember it as a little better than it happened and another person might remember as a little worse than it happened. That happens sometimes doesn't it? People remember things a little differently, correct?

A. Yes.

Q. But this isn't a case of people remembering

things a little differently is it?

A. Yes.

Q. Aren't people remembering things entirely differently?

5 A. Maybe some of them.

Q. Uh-hum. So certainly for some of them it's more than just a question of exaggeration or diminishment of responsibility?

A. No.

10 Q. Do you understand my question?

A. Repeat it again, please.

Q. For some of the allegations such as forcing a child to eat his vomit or kicking him in the head, we're not talking about a case of minor exaggeration or minor diminishment of the facts are we? These are big gaps. There's a big difference between what you say and what they say, correct?

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A. Yes.

Q. Now...you were as you said, the only caregiver for these boys during this operative period time, except when you were away on a leave for a couple of weeks or whatever, but you were their only caregiver, correct?

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A. Yes.

Q. So, whatever the boys say, whether they say you made them kneel, whether they say that you punched them, whether they say that you kicked them, whether they say that you forced them to eat their vomit, one thing we're sure of is they're not confusing you with somebody else. If this happened it would have to be you because you were their only caregiver, isn't that correct?

25

A. Yes.

Q. If a nun was responsible for the things that

30

happened to them it would be you, correct?

A. Yes.

5 Q. And I take it, Ms. Wesley, that in the last 40 or 50 years you have had no quarrel with Luke Mack, Edmond Mudd, Dan and George Wheesk, Tony Tourville, Eli Tookate, Gerard Kioke, or Oliver Wesley? Have you had any quarrel with those men?

A. What do you mean?

10 Q. Any quarrel. Have you had any hard feelings, or bitterness, or fights, or any quarrels with them?

A. No.

Q. Alright. And similarly you had in this time no quarrels or fights with the police who sought out and took statements from these complainants and witnesses?

15 A. No.

Q. No quarrels with the police?

A. No.

20 Q. Alright. If I understand your evidence correctly, you started out looking after about 40 or 50 boys and then that went up every year until about 1962 when you left, at which point you were looking after a little over a hundred boys, correct?

A. Yes.

25 Q. And in fact those numbers kept going up until 1970, didn't they?

A. I left in 1962, after that I...I don't know what....

Q. You never came back to visit?

A. Never. Just for once I stopped there to see my two sisters who lived there, for one night.

30 Q. Uh-hum. But it wouldn't surprise you that the school just kept getting bigger? It wouldn't surprise you?

A. I cannot say anything about it.

Q. And we know that after you left, Brother Lauzon looked after the boys, correct?

A. Yes.

5 Q. And you knew that personally? Did you know Brother Lauzon?

A. Oh, yes. He was...

Q. And how...

10 A. He was the physical training of the boys when I was there...for two years.

Q. So he did sports with them and things?

A. Yes.

Q. Alright. Now, he was...Brother Lauzon...was described as a kind, nice man, would you agree with that?

15 A. Uh, yes.

Q. And while you were looking after the boys on the boys' side, Sister Catherine was looking after the same number of girls on the girls' side, wasn't she?

A. Not the same number. Not the same number of girls. There are more...

20 Q. Well...

A. ...more men...boys...boys than girls.

Q. I suggest to you that there are more little girls in the world than there are little boys, you'd agree with that, correct?

25 A. I don't know.

Q. And are you suggesting that more boys went to grade school than girls did?

A. I don't know, but at my time there were more boys than girls.

30 Q. Well, I suggest to you that they were about the same number of boys as girls, would you agree with that?

A. No.

Q. You don't know?

A. Uh...

5 Q. You were there for 11 years and you don't know if the girls' side had more or less the same number as the boys' side?

A. The boys--there are more boys than girls.

Q. A couple more maybe one year, a couple less another year, isn't that correct? Well isn't it?

10 A. What you saying, thank you, please?

Q. Isn't that correct? A couple more maybe boys one year, a couple more girls another year?

A. I cannot say exactly because I was always busy on my side. But all I know is that there were more boys at the end of the...at the end of my time than girls.

15 Q. But she was there during the time that you were there...

A. Yes.

Q. ...Sister Catherine?

A. Yes.

20 Q. And would you agree with me that she was kind and well liked?

A. I cannot say.

Q. And much of the time that you were with the boys was controlled, wasn't it Anna Wesley? I mean they were either asleep, or they were silent in the dorms, or they were silent in the dining room, or they were outside doing sports? But while they were in the dormitory--while they were in the building with you, much of that time was controlled, wasn't it?

25 A. Controlled by the superiors. The rules were made from Mother Superior and they had to follow them.

30 Q. And Mother Superior, you told us yesterday,



rarely came into the dining room...

A. Yes.

Q. ...and rarely came into the dormitory?

A. Yes.

Q. It was your domain?

A. She'll come sometimes to ask me what's going on and so on, but most of the time we tried to help serve the rules that she made.

Q. Now, you've heard that some of the insults allegedly made by you to the students were in French, and...you seemed to suggest yesterday that you didn't know French, or didn't speak French, but you do know French?

A. I speak French but I never speak French to the children...to the boys.

Q. You did know French because you trained with a French order of nuns.

A. Yes.

Q. And the language among the nuns themselves was French.

A. Yes.

Q. And after you left Ste-Anne's you went to Fort George, which is in Quebec, which is even more French.

A. Yes.

Q. So, when you tell us that you don't speak French very well, you would certainly know some French expressions?

A. Yes, as I said, I...I speak French not very well, but after I went to Fort George it was all French. I learnt more French in Fort George than in Fort Albany.

Q. But even in Fort Albany the children, Luke Mack or George Wheesk who didn't train in a French school or have French parents when they were young, they picked up some French

expressions, so you picked them up too.

A. Yes, when I was a border myself in the old school in 1934 to 1941, most of the sisters were always speaking in French.

5 Q. So you knew certainly more than enough to mouth French insults if you wanted to.

A. Never.

10 Q. Now, you also heard evidence, Anna Wesley, that the sound of your heels on the floor, approaching, and the hard soles of your shoes made contact with the child's head, you heard that evidence?

A. Yes.

15 Q. And you suggested that you wore running shoes with your habit.

A. Once in awhile.

20 Q. It was really only once in awhile though, wasn't it?

A. Once in awhile, but I had shoes too...not high heels, just flat shoes.

25 Q. They were like oxfords.

A. Something like that.

30 Q. Black leather oxfords is what you usually wore in that building where you spent most of your time in the dorm, and in the sewing room, and in the dining room, and in the corridors?

A. Not all the time. I changed shoes whenever I feel...or whenever I need them.

Q. Most of the time you would be wearing black oxford shoes with your habit, isn't that correct?

A. No.

35 Q. It's not true that most of the time you'd be wearing black oxford shoes?

A. No, we were free to do--when we go out in the bush and so on, I had to change shoes.

Q. Most of the time you wouldn't be out in the bush.

5 A. Beg your pardon?

Q. Most of the time you wouldn't be out in the bush.

A. No, but as I said, I did not wear all the time the same shoes...all the time...all the time, no.

10 Q. That's not all you said. You disagreed with me that most of the time you wore black oxfords. But most of the time you did wear black oxfords, didn't you? Because most of the time you were in the school and those were the shoes that were appropriate and modest for the habit.

15 A. We were free to wear shoes in the missions, as we need...as...as appropriate to...to the sisters.

Q. I suggest to you, Anna Wesley, that nuns in the '50s did not wear black running shoes in schools under their habits.

20 A. No, but we wear any kind of running shoes when we want to, and I want to.

Q. When you went outside.

A. Outside or inside. Even inside when I want to...when I want to raise my feet.

Q. In the '50s you wore this enormous habit...

25 A. Yes.

Q. ...with all these layers, with a dress code that was as strict as in the military, and you're telling us that you ran around in running shoes inside because it was more comfortable in the 1950s.

30 A. Depends, yes.

Q. Well....You have heard stated--or you've

stated under oath, that you wouldn't--no, that you couldn't kick a boy wearing a habit because of the garments length and breadth and awkwardness that made it impossible, you said that yesterday, do you remember?

5

A. That's right.

Q. But I suggest to you, Anna Wesley, just like you could--knew enough to mouth French insults, that you could kick in your habit. You were capable of doing it. If we just examine the habit, Anna Wesley, it just covered the ankle, didn't it?

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A. One inch from the ground.

Q. And it didn't drag on the floor.

A. No.

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Q. So there was nothing about the length of the habit that made it impossible to kick?

A. A large, wide...four...four yards around you was hard for me to walk around under that thing...under that habit.

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Q. There was nothing about the length of the habit that made it impossible to kick was there? If my robe went down to the ground, I could kick just as easily, couldn't I?

MR. CHARLEBOIS: Your Honour, that's an unfair comparison because a lawyer's gown is nowhere near 4 yards of material all around.

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MS. FULLER: I'm talking about length, Your Honour.

MS. FULLER: Q. There was nothing about the length that prevented you from being able to kick.

A. But your material is lighter than the material that...what...what we were wearing.

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Q. Just answer the question, Ms. Wesley. There was nothing about the length of your gown that made it impossible to kick, was there?

A. Yes, there was...it was impossible for me.

Q. Even though the gown was above the toes of your shoes?

A. Yes, it was impossible.

5 Q. It was impossible 'cause you want it to be impossible, isn't that why it's impossible?

A. It was impossible for me to kick someone with that dress on.

10 Q. And similarly the four yards of material with large pleats, I suggest to you Anna Wesley that a moments thought make it obvious that that would allow an even wider range of motion for kicking, than for instance me, if I had a long straight skirt, I'd be somewhat constrained, but with pleats and four yards of fabric underneath, you could kick from the knee, you could kick from the hip couldn't you?

15 A. But there were two more layers under it. There were two more layers under the four yards...material. I had another one about three yards insi...under...underneath and then another one like that.

Q. You had a slip underneath the habit.

20 A. Kind of a slip, but long one.

Q. A long slip.

A. Yes.

Q. And other than the long slip what was the other layer?

25 A. I beg your pardon?

Q. You have the habit, you have the long slip, what was the third layer?

A. About the same width.

Q. What was it?

30 A. Another slip.

Q. Two slips?

THE COURT: I'm sorry, I didn't hear that.

A. I beg your pardon?

THE COURT: "Long slip" and then what was the next thing?

5 A. The first ma...the first layer is the habit, the second layer is the...exactly the same...the same material as the first layer and the slip under it. Kind of...the use to call it "petticoat".

10 Q. These were in cotton. Cotton, the fabric was cotton.

A. The third one was a cotton. The first ones were kind of woollen...heavy material.

15 Q. The nuns...accomplished everything in those habits, didn't they?

A. We were.

Q. And they accomplished many more awkward and complicated manoeuvres than just a swift kick, didn't they?

A. I beg your pardon?

20 Q. The nun accomplished many more complicated and awkward manoeuvres in those habits than a swift kick, didn't they?

A. I don't know about them, but for myself a had a very hard time to move my legs under...under these things.

25 Q. The nuns would skate in those habits, run in those habits, hike in those habits, work in the fields in those habits, canoe in those habits. There was nothing restraining about the habit was there?

A. As I said about them, for them, okay, but not for me.

30 Q. You were 29-30 years old when you were there, you were a healthy young woman, correct?

A. Yes.

Q. You had no physical infirmity or handicap, correct?

A. Yes.

Q. Alright. So, I'd like to talk now about the rules. You've indicated that there were many rules, they weren't your rules, they were Mother Superior's rules.

THE COURT: Can you go back a second? I didn't get the answer to what was put to the witness in relation to "she could run, she could skate, she could canoe, she could hike...etc..." What was the answer to that, I didn't get it?

MS. FULLER: They could.

THE COURT: That's the answer "they could"?

MS. FULLER: "For them it was okay, but not me."

THE COURT: Thank you.

MS. FULLER: Q. And in that context you were young and healthy and had no physical disabilities?

A. Yes.

Q. Dealing with the rules. You've indicated those were--today and yesterday, they were Mother Superior's rules and you suggested you had no discretion about those rules, is that correct?

A. Mother Superior made them and asked us to observe them. What do you mean by "discretion"?

Q. "Discretion" means you get to lighten up on the rules or tighten up on rules as need may be.

A. Well they asked us to observe them as much as we can.

Q. You took the rules very, very seriously didn't you, Anna Wesley?

A. Yes.

Q. In fact the rules you've told us were in

writing and they were framed somewhere on a wall.

A. Yes.

Q. And who wrote them out?

A. It must be them, the superiors.

5 Q. And they were put on the wall where?

A. In the re...recreation room.

Q. Can you tell...

A. But they were not written in big letters...type...type writer letters.

10 Q. Typewriter letters?

A. Yes.

Q. And can you give me an example of a few of them that would be on this written-out framed list of rules? Just an example or two.

15 A. What do you mean?

Q. Give me an example of the rules that were written out.

A. When to (inaudible), when to go to the classroom, when...where's the (inaudible) in the hall.

20 THE COURT: Go a little bit slower, please. Could you start over and give it to me a little slower?

A. I beg your pardon?

THE COURT: "When to" is as far as I got.

MS. FULLER: Give us an example of some rules?

A. Is that...

25 THE COURT: Yes.

A. ...what you want?

THE COURT: Well that was what the question was. I didn't hear your answer, I'm sorry. Okay, "When to..."

30 A. When to get up in the morning, when to go to the church as follows...and everywhere...breakfast and silent



here and there. It's the same thing all...it's the same thing all...for everyday.

5 Q. And Mother Superior, as we said, was rarely in the dorm and rarely in the children's dining room, and these areas were really your domain?

A. Yes, but she will pass on the...main...on the hallway if she could hear something or so on. We were wat...she was watching us all the time to observe the rules.

10 Q. So if you wanted to allow children to whisper and talk in the dining room you could have. You had that discretion, didn't you?

A. It depends, yeah.

15 Q. But you usually didn't want to, did you? You usually made the children comply with the rules of silence for breakfast and supper?

A. Yes, because I had to.

Q. It was less disruptive, wasn't it, if everyone ate in silence?

20 A. It depends. All...the...the lunch was always allowed to speak and sometimes supper, breakfast never.

Q. It was less disruptive if children ate in silence, wasn't it?

A. What do you mean?

Q. Disruptive?

A. Yes.

25 Q. It kept order.

A. Maybe.

Q. What was the purpose of the rule?

A. What was the purpose of the rule?

Q. Yes.

30 A. I don't know. I did not make the rules.

Q. I suggest, Anna Wesley, you do know that it was

to keep everything orderly.

A. Yes.

5 Q. And as you said, you determined where the children would sit, so if you wanted to allow a child to sit with his or her friend, or his or her brother, you could have let a child do that.

A. Oh, yes.

10 Q. But you didn't, did you? You made the children sit according to their number...

A. Yes.

15 Q. ...isn't that correct?

A. Yes.

20 Q. And this meant that people sat with not necessarily the people they liked the most, but the people who were the same size as they were?

A. Yes.

25 Q. And so by not sitting with your friends, unless they were accidentally the same size, and by not being allowed to talk, mealtime was not a time for socializing, was it?

30 A. Well they were talking and laughing to each other in front and behind them and so on. And they socializing outside as much as they want to. There was no silent rules for outside.

35 Q. It would be good for children to be allowed to--who were away from home to be allowed to sit with their friends and sit with their family members, wouldn't it?

A. Yes, but as I said, I have to follow the rules that were not made for me--from me.

40 Q. But you already told us that you could have allowed this to happen.

45 A. I could have do it...not...not...I could have do it on my own, but I...I would...I would not follow the

rules, but I did not do it.

Q. It made your job easier to keep everybody organized by their number, didn't it?

A. No.

Q. It didn't?

A. What do you mean?

Q. Well, it made your job easier if I know that Tom, Dick and Harry are always at table number three because they are numbers three, four and five...

A. Oh, yes, now I understand. Yes.

Q. And it made your job easier.

A. Not really.

Q. You knew where you could find them.

A. As I said, they have their own beds, they have their own place everywhere.

Q. Now, you indicated in examination in-chief that sometimes the children were allowed to talk at supper and sometimes they weren't, that wasn't written in the rules framed on the walls?

A. Yes.

Q. Would somebody come and change what was written in the frame?

A. Mother Superior.

Q. From one week to the next?

A. She never changed them. We have to observe the same rules all year round.

Q. So, it wasn't written--or was it written, "You will not eat at dinner--you will not talk at suppertime in the dining room" was that written in one of the rules?

A. Y...yes. They were allowed to speak everyday for lunch--dinner, I mean, and sometimes in...in...in the...for supper when there is nothing to be done right after supper,

Mother Superior would tell us let the children speak in the dining room.

Q. You could have let the children speak in the dining room without permission from Mother Superior.

5

A. No.

Q. You just chose to be as rigid with the rules as possible to make your job easier, isn't that true?

A. No, but I have to observe the...the rules because if I don't Mother Superior will come after us.

10

MR. CHARLEBOIS: I didn't hear the last answer, Your Honour.

THE COURT: It doesn't surprise me, I was coughing. Perhaps you could tell us again.

A. What was it...the last one?

15

THE COURT: I believe the questions was that...it was put to you that you chose to be rigid.

MR. CHARLEBOIS: I got the question but not the answer.

THE COURT: Okay. I didn't get the answer either because I was coughing.

20

Q. You chose to be rigid and to make your life easier, and you said, "No, we had to obey the rules because Mother Superior would come after us"?

A. Yes, that's what I said. That's what I said.

THE COURT: Okay.

25

Q. You locked the children outside during recess and recreation periods, correct?

A. N...not ever...not...not...when...when it is just for a short time, no. But it was still the rules, Mother Superior and the principal that asked us to lock the doors when we were outside, and most of the time I was with them outside.

30

Q. That was their home. The school was their

home, correct?

A. Yes.

5 Q. And sometimes I bet the children would be outside playing and it would be "you're staying out until dinner time" often, wouldn't it be? You go out and you stay, or it's play period, it's not recess, but it's play period "go on out and stay...play, and you can come in at dinnertime."

A. Yes.

10 Q. Alright. Nothing unusual about that is there?

A. Not...

Q. There's nothing unusual about that?

A. Not for us, no.

15 Q. And there's nothing unusual about a child or some children getting cold and saying "I want to come in. I've had enough. I'm cold", isn't that correct?

A. No, most of them were always real rough and liked to play outside.

20 Q. Isn't it correct that some children would want to come in because it was too cold or because they just would rather be inside?

A. Yes, but as I said they have to follow the rules again. And some...

Q. You had to follow the rules again?

A. Yes.

25 Q. And children are pretty inventive, aren't they...finding ways to get around things? Don't you find children are pretty inventive at trying to get around things?

A. What do you mean?

30 Q. Well, you had to stay outside until dinner, and you wanted to come inside because you were cold, one thing you could do is say "Well, let me inside because I have to go to the bathroom" that's something a child could do?

A. Yes.

Q. That's something a child would think of?

A. Yes.

5 Q. And you couldn't have children coming in and out all the time, could you?

A. No, but...but there were always two women working inside the room sewing or repairing clothes, and I told them "If someone knock at the door while I'm quite far away with the other ones, open the door for them."

10 Q. And it would be easier, I suggest, for kids who were cold and didn't want to play outside, but said they had to come in, it would be a lot easier to just say "No, you are staying outside until dinner."?

15 A. I...I never...most of the time they were like children...wants to play...and like...play outside, and we don't stay outside that long.

Q. It would be disorderly if children were coming in and out all the time, wouldn't it?

A. Yes.

20 Q. And I suggest to you, if children soiled their pants outside, it's because you didn't let them in.

A. He never came to ask me when he was outside. It did not happen very often either.

Q. Now, similarly, you say that children were allowed to go the bathroom at night.

25 A. They were always allowed to go. They were free to go to the toilet.

Q. You'd agree with me as well, a good way to get up out of your bed would be to say "I have to go to the bathroom"? It's the kind of thing a kid would say, isn't it?

30 A. Would you repeat it again, please?

Q. If a child didn't want to stay in bed, getting

up and saying "Oh, I was just going to the bathroom" is a pretty easy way to get around staying in bed.

A. Well, I said, they were free to go when they feel like going to...to the washrooms.

5 Q. And I suggest to you that once you put the children to bed you told them they were expected to stay there.

A. Never.

Q. Because it's a lot more orderly if the children all stay in their beds.

10 A. Yes, but to go to the toilet they were free.

Q. Now, you were only allowed to punish children for breaking the rules, correct?

A. Not really. Not all the time. It depends what they are doing.

15 Q. Well, were you allowed to punish the children for things that weren't a breach of the rules?

A. No.

Q. So they had to break a rule. Maybe you didn't always punish them for breaking the rules, but they had to break a rule before you had the authority to punish them, is that correct?

A. Will you...will you repeat it again?

Q. A child had to break a rule before you had the authority to punish him.

20 A. Hmmmm...depends. If it is just a little...little...ummm...if it is not serious I cannot punish him, I have to go the Mother Superior or the prin...the principal.

Q. But you can't punish him if he's not breaking the rules can you?

30 A. No.

Q. Pardon?

A. She...

Q. You cannot punish a child if he's not breaking the rules?

A. No.

Q. One of the rules...written rules--there was no written rule, I suggest, that children cannot wet their beds? There was no written rule?

A. No.

Q. Nothing written down that said a child cannot wet his bed?

A. No.

Q. But it frustrated you, didn't it, that children would wet their beds? It frustrated you.

A. Sometimes.

Q. And children would often repeatedly wet their beds?

A. No.

Q. A bed wetter would repeatedly wet his bed.

A. They were not--well...when there is...when there is one, we have to help him make him get up in the night to help him not to wet his bed.

Q. Because every group of children has...young children has its bet wetters, correct?

A. Maybe, yes.

Q. Well while you were there there were always several children who wet their bed...

A. Not...

Q. ...isn't that true?

A. Not several.

Q. Pardon?

A. Not many.

Q. Not many, but there were always several.



A. There was always some, yes. Maybe one or two.

Q. And you would slap them sometimes for wetting their bed. You would slap them sometimes for wetting their bed.

5

A. Just a little bit like this, yes.

Asking...I...was coming to tell, "why didn't you not get up during the night?" and they said "I'm scared in the dark". So I said "Why did you not call me then?"

10

Q. You thought they were too lazy to get up and go to the bathroom?

A. I don't know.

Q. You know, Anna Wesley, that children do not deliberately pee in their beds, in their sheets, don't you?

A. Yes.

15

Q. But you still punished children for it.

A. Punished what?

Q. Children for it.

A. For...

Q. For wetting their beds.

A. Not really.

20

Q. Did you think it would help them not to wet their bed if you slapped them in the morning for doing it?

A. No.

Q. Then why did you do it?

A. Will you...will...will you repeat it again?

25

Q. Did you think it would help a child not to wet his bed if you slapped him in the morning for doing it?

A. No.

Q. Then why did you slap him...

A. Just to...

30

Q. ...if it wouldn't help him?

A. It was not really a slap, it was just pushing

them. Push him a little bit over there. Not really punished him.

Q. Why did you slap him?

5 A. Well, I said "Don't make your bed, just leave it like that, the women will change it" and then push him away...that she could...he could dress himself.

Q. It was a lot of extra work, the sheets...

A. Eh?

10 Q. It was a lot of extra work to pull the bed out, to remake it, to do all that extra laundry day after day...

A. Yes.

Q. ...wasn't it?

A. Yes, not...not...

Q. And it was frustrating, wasn't it?

15 A. Not from me. There were always some women working the laundry and there was always working--women changing the beds.

Q. It was frustrating for you that some of these children continued to wet their bed day after day wasn't it?

A. It did not happen very often. I ne...I ne...

20 Q. You don't want to answer that question?

A. I knew years...there were years that not even a child wet his bed every night.

25 Q. I take it you don't want to answer the question that it was frustrating for you, as their supervisor, to have to deal with this?

A. It depends, sometimes, yes.

30 Q. I suggest to you that so many children remember the cod liver oil incident, and that there have been associations with cod liver oil and porridge, and that that suggests that during part of this time you must have given cod liver oil at breakfast with the porridge, isn't that possible?

A. I gave them cod liver oil during lunch.

Q. Uh-hum.

THE COURT: Sorry, I didn't understand the answer.

MS. FULLER: "I gave them cod liver oil during  
5 lunch."

MS. FULLER: Q. They took the cod liver oil, you  
didn't, correct?

A. Yes.

Q. Something you'd remember doing, getting cod  
10 liver oil at a meal, wouldn't you?

A. What?

Q. Because it tastes so awful.

A. Eh?

Q. Isn't that true, because it tastes so awful,  
15 that's why you remember it?

A. No. I give them because the told--that we were  
told to give them. And I took it very often myself too.

Q. I suggest to you that the only reason that you  
say cod liver oil was given at lunch is because the witnesses  
20 say it was given at breakfast. Isn't that why you're saying it  
was given at lunch?

A. As far as I can remember, I give them during  
lunch time.

Q. Sometimes boys would throw-up because of the  
cod liver oil, sometimes the food, sometimes they were sick,  
25 you didn't really know when a child threw up what the reason  
was necessarily, correct?

A. Yeah.

Q. Correct?

A. Would you repeat it again, please?

Q. When a child threw up, you didn't necessarily  
30 know why he was throwing up?

A. No.

Q. You only knew that his body was rejecting whatever it was inside of its stomach, correct?

A. Yes.

5 Q. He could have been sick, he could have not liked the food, um, there...he could have--his body could have found the food difficult to digest, there are a number of reasons aren't there?

A. Uh-hum.

10 Q. Now was one of the rules that the children were expected to eat everything on their plate?

A. It depends...on the...on each of them.

Q. On the age?

15 A. Well if they want to eat they will eat it, if not, they don't eat it.

Q. Well what does it depend on?

A. On them.

Q. On what?

20 A. They were free to eat what they want and not...or not to eat.

Q. They didn't have to eat what was on their plate?

A. If they don't want to.

25 Q. They don't want to eat, they can just do without, is that what you're saying?

A. Yes.

Q. So, there'd be no reason for you to try to force kids to eat what was on their plate because there wasn't a rule that said you had to eat everything on your plate, correct?

30 A. The Mother Superior told us to feed the children as well as we can, but as I know there will be no

more...no more other kind of stuff to eat if they don't want to eat it, so I said they might as well eat it because there is nothing else after this. We were not allowed to go to the kitchen and choose everything...everything we want for them.

5 Q. So it was your rule that they had to eat everything on their plate.

A. The time (ph).

10 Q. Now, when kids got sick you've indicated maybe there'd be 50, or 60, or 70, or 80 boys in the dorm, and two thirds of them could be sick at the same time, isn't that true?

A. You mean on account of the...

Q. I mean sick in bed with a cough, or a flu, or the measles, or the mumps.

15 A. It happens during the epidemic of flu, or colds, or things like that.

Q. It would just go through the dormitories and probably two thirds of the kids would get sick.

A. More than that, sometimes all of them.

20 Q. Sometimes all of them. And in terms of children getting sick to their stomach, for whatever reason, if you've got 50, or 60, or 70, or 80, or 90, or 100 boys, depending on the year, and it went up every year, did it not?

A. Yes.

25 Q. Three meals a day, 11 years, that's a lot of sick boys?

A. When...when they are sick in bed like that they cannot take their...their three meals a day if they are sick.

30 Q. Right. Well what I'm just trying to suggest to you, Anna Wesley, is that you saw an awful lot of boys throw-up in 11 years.

A. Not quite a lot.

Q. Not quite a lot?

A. Not...not very much, no.

Q. Not very often children threw up?

A. It happens but not...not as often as you think.

Q. Not as often as what?

A. Not as often as you think.

Q. Well childhood illnesses occur to all children, don't they?

A. Yes.

Q. And children get sick and throw-up you heard Doctor Cain indicate more readily than adults.

A. More?

Q. They're more likely to throw-up than an adult if they're sick.

A. Maybe.

Q. And he's a family physician. And all of those kids would have thrown up in 11 years many times each. Each, isn't that correct?

A. Each child?

Q. Each child in the course of 11 years a child will have numerous childhood illnesses and will throw-up in totality many times.

MR. CHARLEBOIS: Yeah but, Your Honour, that question is somewhat unfair because there's no evidence that any of the complainants were at the school for 11 years.

MS. FULLER: That's not par at where I'm going, Your Honour.

THE COURT: Pardon me?

MS. FULLER: That's not where I'm going. It's her knowledge...

THE COURT: Well the premise really is not quite correct, perhaps you could rephrase that question.

MS. FULLER: Alright.

MS. FULLER: Q. In 11 years at the school, you dealt with hundreds and hundreds of boys, correct?

A. Yes.

5 Q. And if they were there for any period of time, any reasonable period of time, they'd be sick because they're children and they've got childhood illnesses, isn't that correct? Vomit

A. Yes.

10 Q. So, you saw hundreds of examples where children threw up.

A. What do you mean?

Q. In 11 years you saw one child or another, all together, throw up hundreds of times.

A. All together...

15 Q. In 11 years experience.

A. No.

Q. You heard the evidence of the complainants that when they felt sick they were very careful to vomit into their bowl because they were frightened of being punished if they vomited on the floor, you heard them say that?

A. Yes.

20 Q. What did you say or do that would cause them to have that fear?

A. What did you say?

25 Q. What did you say or do that would cause the boys to be frightened of throwing up on the floor and getting punished for it?

A. They were not really frightened as much as they say.

30 Q. But they didn't throw up on the floor did they?

A. They throw up on them...on their plates.

Q. Now, nobody deliberately vomits, do they?

A. No.

Q. Just like nobody deliberately wets their bed,  
correct?

5

A. Yes.

Q. Nobody deliberately soils their pants, correct?

A. Yes.

Q. Nobody deliberately coughs at night.

A. Yes.

10

Q. These are things that are part of what makes us  
human, correct?

A. Uh-hum.

Q. That we can't control...

A. Uh-hum.

15

Q. ...the part of our humanity?

A. Yes.

Q. Now, when a child is throwing up the message of  
the body is very clear that I'm rejecting food or I'm rejecting  
whatever is in my stomach, isn't that correct?

A. Yes.

20

Q. And yet your evidence yesterday was that your  
response to a child throwing up in the dining room would be to  
ask them if they wanted something more to eat, isn't that  
correct?

A. Something else, yes.

25

Q. That's what you said. And I suggest to you  
that that's not a normal response to suggest that someone eat  
when they've just thrown up?

A. Whether they are sick because they don't like  
that kind of food, and I try to ask them if they would like to  
have another kind of thing.

30

Q. You felt they should eat everything on their



plate, didn't you?

A. It depends, if they want to eat everything, but I never asked them to eat everything.

5 Q. You refused to accept that you could not control this part of the child's life, didn't you?

A. You?

Q. You refused to accept that you couldn't control a child's vomiting.

A. If I refused to control....?

10 MR. CHARLEBOIS: It's obvious that the witnesses doesn't understand the question, Your Honour.

MS. FULLER: I'll rephrase it.

MS. FULLER: Q. You couldn't control a child's vomiting could you?

15 A. No.

Q. But you could try to force the food back in a child's stomach, couldn't you?

A. Another kind of food if he wants to...if he doesn't like the one that he's...he's vomiting.

20 Q. When you first spoke about this area in examination in-chief, you said that you weren't allowed to go back to the kitchen and ask for something else. That...

A. Yes.

Q. ...what they had to eat was what was available...

25 A. Yeah.

Q. ...and if they didn't want that they couldn't have anything.

30 A. Sometimes I went for my...I went myself and asked the women, "This child doesn't like this" that's what I mean, but I did...I did not...it did not happen very often.

Q. I suggest, Anna Wesley, that you slapped the

children for vomiting the same way that you slapped the children for wetting their beds.

A. Not real...

Q. Isn't that true?

5 A. Not really slapped and slapped and slapped, sometimes just pushed them like this.

Q. A little slap.

A. A little slap.

10 Q. But sometimes you'd slap them for vomiting too, wouldn't you?

A. Not really.

Q. What do you mean "not really"?

A. How...for vomiting?

Q. Yes.

15 A. Well, I said just like this and then leave it like that, or if you are sick don't eat, or something like that.

Q. Okay, so a little slap for vomiting, a little slap for peeing the bed now.

A. The bed, not...not all the time, no.

20 Q. But not all the time?

A. Not really slap, not really...or not really punishment.

25 Q. And that would explain why the children were so frightened of vomiting and getting the nice clean orderly floor dirty, wouldn't it? If they vomited on the floor it'd get dirty, wouldn't it?

A. Yes.

Q. And that's why the children were afraid. It's because they were afraid you were going to slap them.

30 A. When they vomited on the floor the...the women who cleaned up the aisles will do it, not them, and

not...not...not me.

Q. I suggest, Anna Wesley, that you did force the children, as they said, to eat what was on their plate even if it was food that they had not been able to keep down and had  
5 thrown up in their plates.

A. No.

Q. And that you did this to keep the next child from vomiting.

A. No.

Q. To make an example of the child. No?

A. To make an example?

Q. Of the child.

A. Why?

Q. Why?

A. Yes.

Q. So that everyone would look at see "I'm not going to get sick...

A. No.

Q. ...because if I get sick she'll make me eat my vomit."

A. No.

Q. I suggest, Anna Wesley, that that's how controlling you were of these children.

A. No.

Q. Now, Eli Tookate was a sick child with tuberculosis and he said he threw up his food, he took two gulps of food and he threw it up, you heard him say that?

A. Yes.

Q. And you heard Gerard Kioke say "I saw him throw up his food" didn't you?

A. Yes.

Q. Now, all three of you, you and Eli and Gerard,

all remember this incident after 40-45 years and after thousands of meals, correct?

A. Yes.

5 Q. And all three of you have vomited from time to time in your lives, correct?

A. I don't know. Maybe.

Q. You do know. All humans throw up from time to time, isn't that true?

A. Maybe, yes. I don't know.

10 Q. You don't know?

A. All humans?

Q. All humans.

A. Maybe. It depends on each one.

15 Q. You think there are human beings who have never thrown up?

A. I don't know.

Q. Do you think it? Do you think that there's a human being who has never thrown up as a baby, thrown up as a child, thrown up as an adult?

A. Maybe. I don't know.

20 Q. But what do you think about it? Do you think it's likely? It's not, is it?

A. It might happen, but I guess as I...as I said, I can't know.

25 Q. And so all of you have no doubt seen children - or seen other people, not necessarily children, but all three of you have not only vomited yourself, because you're human beings, but you've been in situations where in all probability you've seen other people vomit, correct?

30 MR. CHARLEBOIS: The witness can only answer for herself. She can't answer as to what Tookate, Kioke or anybody else might have seen in their

lifetimes.

THE COURT: Cross-examination, go ahead.

MS. FULLER: Thank you.

5 MS. FULLER: Q. It's probably true isn't it that all three of you have seen other people vomit?

A. I...I don't know about the other ones, but myself, I'm speaking for myself.

10 Q. And isn't it true that the reason that most of us couldn't remember the circumstances surrounding, say our six year old vomit one spring, is because it's not a particularly remarkable event? It's just part of the human condition, isn't it? It's not remarkable. Somebody throwing up is not a remarkable event that should make a vivid impression in your mind, is it?

15 A. Maybe.

Q. Is it? It isn't a remarkable event?

A. Not really for me.

20 Q. Alright. But isn't the reason that all three of you remember Eli Tookate vomiting in his plate is because you forced the vomit back in his mouth?

A. It was not his vom...his vomiting that....I gave him cod liver oil, he spit it out on part of his dish, and the rest of the food was still good. That's the one I asked him to eat and I gave him about two tables...tablespoons full of that stuff that was not contaminated yet.

25 Q. Well, let's talk about memory for just a minute, Ms. Wesley. Alright, "memory"...our memories, okay?

A. Okay, go ahead.

30 Q. Aren't the incidents from our past that we best remember, the ones that either thrilled us, or shocked us, or terrified us, or deeply saddened us, aren't those the incidents we best remember from our past?

A. It depends on each one.

Q. You don't agree that events that were made an emotionally powerful impression on us...

A. Yes.

5 Q. ...are going to be remembered more than walking the dog in the park...

A. Yes.

Q. ...everyday?

A. Yes.

10 Q. So they are. Those are the ones. I mean this is just common...this is human experience. This is common nature that we're going to remember vividly the events that were emotionally powerful in some way for us?

A. Yes.

15 Q. I'm sure you like everyone else can remember an act of incredible kindness on the part of someone, or an event where you felt you were treated very unfairly, that's the kind of thing that we remember, isn't it?

A. Yes.

20 Q. Okay. And wouldn't you agree with me that it's hard enough to remember even some of these memorable events when you're talking about going back 40 and 50 years?

A. Going back?

Q. When you have to go back 40 and 50 years, even memorable events are sometimes difficult.

25 A. It depends on each one of us.

Q. And wouldn't you agree with me that we usually don't remember routine events from our distant pasts...

A. Ye...

Q. ...do we?

30 A. Yes.

Q. Because for instance, if someone said "Well

what did you have for dinner?" you know "four weeks ago...Tuesday" there's no reason for you to remember it, is there?

A. No.

5 Q. If someone were to ask me when was the last time my 14 year old was sick, there'd be no reason for me to remember that...

A. Uh-hum.

10 Q. ...unless something extraordinary happened, wouldn't you agree?

A. Yes.

Q. Alright. Can you tell me what was so significant about the vomiting episodes that were recounted in this courtroom by those witnesses that made them so memorable?

A. Will you repeat it again, please?

15 Q. Can you tell me what is was about the incidents...the vomiting incidents that made them so memorable...the ones we heard about in the courtroom?

A. When they said that I forced them to eat their vomit?

20 Q. Yeah.

A. That's it.

MS. FULLER: That...

MR. CHARLEBOIS: I don't think the witness understands the question.

25 MS. FULLER: I'll put it another way.

MS. FULLER: Q. It would be something you'd never forget, wouldn't you agree?

A. Yes.

30 Q. The scene itself would be unforgettable, correct?

A. Yes.

Q. Alright. Dealing with rules again. Let's look at the dormitory for a minute. The dormitory at Ste-Anne's had really one purpose didn't it, Ms. Wesley, and that was for sleeping, correct?

5 A. Yes.

Q. It was not a place where there were dressers for the children, for their clothes, or little tables, or lockers for their personal things?

A. No.

10 Q. There were only beds?

A. Beds, yes.

Q. There were no toys?

A. No, toys, no.

Q. No books?

15 A. No.

Q. No personal effects in these dormitories?

A. No.

Q. They were not allowed to do anything in those dormitories except sleep?

A. Yes.

20 Q. They weren't allowed to talk, correct?

A. Yes.

Q. They weren't allowed to play, correct?

A. Yes.

Q. They weren't allowed to wet their beds?

25 A. They were not allowed...not to wet their beds, that's what you said?

Q. Yeah.

A. It depends on each of them.

Q. And I suggest...

30 A. And...

Q. ...to you...



A. ...we...we...those who wet their beds we try to help them.

5 Q. You told us yesterday that sometimes a child would wait until morning to tell you if he had been sick in his bed...thrown up in his bed. Sometimes he would tell you at night you said, and sometimes he would wait until the morning, correct?

A. Yes.

10 Q. And that's what Daniel Wheesk said too, isn't it? That his understanding was that he wasn't supposed to disturb you, so he waited until morning. That was his understanding.

A. Yes.

15 Q. Doesn't that strike you as odd, Anna Wesley, that a sick child would prefer to sleep in a vomity bed than to go and tell you that they were sick?

A. They did quite often come and see me during the night to tell me they are sick.

20 Q. Isn't the reason that Daniel Wheesk wouldn't do it is because he knew he'd be punished?

A. No.

Q. Because children when they're sick they want to be cleaned up, they want to be comforted, don't they?

A. Yes.

25 Q. Let's talk about Luke Mack. Now let's move on to our individual complainants here. You indicated...

THE COURT: Well, if you are gonna start that area maybe we had better take the regular morning break.

MS. FULLER: Thank you, Your Honour.

....JURY RETIRES (11:40 a.m.)

30 R E C E S S

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

....JURY ENTERS (12:05 p.m.)

5 MS. FULLER: Q. Ms. Wesley, we were just starting to talk about Luke Mack and you indicated that you remembered him. He's a fellow that actually grew up at Ste-Anne's, didn't he?

A. Yes.

Q. He had no family, did he? He had no family?

10 A. He has his mother and two--one sister and one brother.

Q. But he was abandoned? He was brought to the school...he was abandoned. Brought by to the school by his aunt, wasn't he?

A. Not all the time.

15 Q. He lived there, day in, day out, year in, year out?

A. I think he lived there just for one summer in a...a year and then he went home the next summer 'cause he has his mother, brother and sister.

20 Q. I don't believe that was his evidence, Miss Wesley. He was there all year round like the other C.A.S...

A. Yes.

Q. ...people?

A. Yes.

25 Q. And because he was a ward of the C.A.S. he didn't get to go home at Christmas and didn't get to go home in the summertime, correct?

A. Most of the children that are quite far, that are not from Fort Albany stayed home--stayed there for Christmas.

30 Q. Yes, but in any event, if you were a ward of the C.A.S. you didn't have a choice. You had nowhere to go at

Christmas or in the summertime, correct?

A. Nothing.

Q. These children needed a lot, didn't they?

A. Yes.

Q. And...

A. But I think Luke Mack was not the Children's Aid Society. They did not...it's not the Children's Aid Society that brought him there.

Q. No, it was his aunt that brought him there.

A. His aunt, yes.

Q. Uh-hum. But his aunt brought him there because there was no one to take care of him.

A. Because his mother I think was sick...somewhere...tuberculosis or somewhere, that's why he has to come there.

Q. And he grew up at Ste-Anne's.

A. I don't think so.

THE COURT: My notes indicate that he was born and lived in Winisk, small town up the coast, he was sent to Ste-Anne's when he was approximately five years old, where he stayed continuously until grade eight. I don't have anything about abandonment or C.A.S. or anything like that but....

Q. In any event, his evidence was that he stayed there continuously until grade eight. And I may be confusing his evidence at the preliminary when he said his aunt brought him there. But in any event, if a child stayed there continuously until grade eight it's because he had no home to go to, wouldn't you agree?

A. I remember his mother came to see him once in awhile while he was there.

Q. Yeah...his mother visited once or twice.

A. Yes.

Q. It's not much of a family connection is it? So there was really no one to care what happened to him outside of the school?

5

A. I don't know.

Q. And Luke Mack, I suggest to you was a quiet boy?

A. Yes.

Q. Kind of a shy boy?

10

A. Not really.

Q. And you served in 11 years probably tens of thousands of meals? If we look at three meals a day, hundreds of boys, 365 days a year, and 11 years. Thousands and thousands of meals, correct?

15

A. Just ten months a year. Not twelve months a year.

Q. Well even in the summer for the few people who were there you served them.

20

A. Yes, most of the time they were free. Most of the time during the summer the cook will make...women in the kitchen will make quite a kind of different kinds of meals...two or three kinds of food, and they will serve themselves if they are only...

Q. So the rules didn't apply in the summer?

25

A. Not...not...not during the summer, it's only during the school year.

Q. I see. So, things were more relaxed in the summer? Things were more relaxed in the summer?

A. Yes.

Q. Because there was only a few of them there?

30

A. There was only six or seven.

Q. So you didn't have to apply the rules strictly

like you did in the winter?

A. No.

Q. So when Luke Mack said he was decked over the head with a soup ladle and it was summertime, there would have been no reason for you to do that, would there?

A. Is that Luke Mack who said that...with the soup ladle?

Q. Oh, I'm mistaken, it's Eli, but whoever...

A. It's not Eli either.

Q. It's not Eli either? If Tony Tourville...

A. Yes..

Q. ...were to say that he was decked with a soup ladle in the dining room, in the summertime, there would be no reason for that...to do that to him if the rules were relaxed?

A. Because he was throwing meat...meatballs, potatoes and everywhere...in the dining room with the other boys. He was the one (unclear). I just...I really not him. I just put the aluminum--what do you call that "ladle" on his head. Just once, not all the time.

Q. The point I want us to agree on is that in the summertime the rules were relaxed.

A. Relaxed...they talk and speak and laugh at the dining room every...each meal...breakfast.

Q. And you allowed that?

A. Just...it was during summer...it was holidays, so I give them...Mother Superior gave...gave them...the rules were observed only during the school year.

Q. You had the authority to allow that.

A. No, Mother Superior told us to do that to them.

Q. And you saw Luke Mack...well, you saw him the dining room every single day, correct?

A. Every day?

Q. Yeah.

A. Yes. Oh, yes.

Q. And you'd be serving him every single day, correct?

A. During summer?

Q. No, certainly during winter.

A. Yes.

Q. And during most of the year you would serve him every single day, every single meal.

A. Yes. Sometimes someone of the big boys would help me though...or one or two.

Q. And yet, madam, you indicate that you remember him being sick, and your asking him if he was sick, and him saying "yes." Why would you remember that?

A. Well I remember that because he was sick once. And go ahead....

Q. We agreed that just being sick...just a childhood illness, throwing up is an unremarkable incident.

A. Yeah.

Q. Not worthy of remembering, isn't that true?

A. Yes.

Q. And whether because they took cod liver oil or because they weren't felling well, it's still an unremarkable event for a child to throw up...

A. Yes.

Q. ...correct? But...you remember that it was just once that it happened, and he was probably in his second year, and that you saw him, and that you were serving him, and that you were three tables down, and that you asked him if he was sick, and then he said "yes", and you asked him if he would like to eat something, you remember all those things?

A. Not really.

Q. So when you told us yesterday...

A. Yes.

Q. ...that those were the things that happened,  
and that's what you said, and that's what he answered, it  
5 wasn't true?

A. Yes, I asked him, but going back and forth like  
that...about three tables away from him...I asked him if he  
would like to have something else, yes, that's right.

Q. So you do remember this inconsequential event  
10 and this inconsequential conversation?

A. Yes.

Q. And you know what I mean by "inconsequential"?

A. No.

Q. "Inconsequential" means nothing turns on it.  
15 What's for dinner? When you're sitting down to dinner it's  
inconsequential conversation. "Are you sick?" and a person  
answers "yes" it's inconsequential conversation in the context  
of somebody being sick, wouldn't you agree?

A. Well...

Q. Nothing turns on it.

A. Well when he told that he was starting to vomit  
20 I asked him if he was sick.

Q. Ms. Wesley, I suggest to you that there are two  
possibilities. There may be more but I'm going to suggest two  
to you. The first is that you don't remember Luke Mack ever  
25 throwing up, but you figure you'd better say something, so you  
made up this little scenario about him being sick and your  
going and asking him if he was sick, and him saying "yes", and  
your asking him if he wanted some food. Is that true, did you  
make this up?

A. No.

Q. Well, I'm going to suggest to you then that you  
30

remember him throwing up and you remember him being three tables down because you slapped him, just like you slapped the boys who peed their beds, that you screamed at him, that you called him a "bastard", that you called him a "maudit sauvage", and that you forced him to eat his vomit and that's why you remember it, isn't that true?

MR. CHARLEBOIS: It's not the evidence that was given by Luke Mack about "maudit sauvage" in connection with that particular witness.

Q. That you called him a "bastard", you called him a "wild dog" and you forced him to eat it.

A. As I said yesterday, I never called him that name, but I heard the other boys from his place calling him many times that name.

Q. You remember the incident because you screamed at him, you slapped him and you forced him to eat his vomit, isn't that true?

A. I didn't. He called me and he said he's six...he's sick, so I went near him, and I never forced him to eat his vomit.

Q. But there's no particular reason for you to remember--for why you remember that incident 40 years ago when nothing at the time...there was nothing at the time that should have brought it to your attention.

A. As I said, I heard people talking about it, you and the other ones, I tried to remember that's why it came in my mind...things. I had no other reason to try to remember it.

Q. What Luke Mack needed, Ms. Wesley, would you not agree, is someone to make him feel good about himself?

A. I tried very often...and the other children were always after him.

Q. Wouldn't you agree that it would a cruel and



shameful thing to do to draw attention to his illegitimacy?

A. What do you mean?

Q. It would be cruel and shameful to call him a "bastard" when he was an illegitimate child, wouldn't it?

5 A. As I said, I never called him that way, but the other boys called him. I tried to stop them but as you...as you know the other children...well if they'll listen or not.

10 Q. You would know that such a thing like belittling a child's parents or his parentage would be very hurtful to a child, wouldn't you? You would know that, wouldn't you?

A. Yes.

15 Q. But I suggest to you, you did it any way because he was an easy target for your frustrations and anger, isn't that true?

A. No.

Q. He was just a little boy when this happened, wasn't he?

A. Yes.

20 Q. Maybe six years old. And his companions would have been around the same age, wouldn't they?

A. It depends, yes.

25 Q. Well I suggest to you, Miss Wesley, that little six year old boys don't call each other "bastard" and "wild dog".

A. You mean you never...they never do it?

30 Q. I suggest to you that little boys call each other things like "you're a big bum", they don't know the meaning, they don't know the significance of such expression?

A. His...his companions each that I heard them calling him "popatoushan" (ph) in...in...in Cree.

Q. I'm sorry, what did you say in Cree?

A. They say "bastard". It's the companions of that age...around...that called him....He arrived in Fort Albany with that name.

5 Q. What was the word you just used? The word in Cree you used?

A. "Popatoushan"(ph) that means "bastard".

10 Q. I suggest to you that, that is not a term that young children use. It is a term that people who are old enough to understand the significance you...use, and you were the one who had used it.

A. I never used it to him. But as children are, as soon as they call the nickname of someone they'll call him that name, even if they understand or not.

15 Q. The person Luke Mack remembers calling him that, he says, is you, doesn't he?

A. I never called him that name.

Q. Luke Mack says he was slapped and made to kneel in the hall for coughing, and then slapped while kneeling when he fell asleep. Do you remember that...

20 A. Yes, that's what he said, yes.

Q. ...him saying that? Uh-hum. And you would agree with me if something like that happened to you you would remember it, wouldn't you?

A. Maybe.

25 Q. And I suggest to you as well that over the years Luke Mack is not the only boy who soiled his pants, "had a little accident" as people say? He wasn't the only child that that happened to?

A. Yes, it happens sometimes with the other ones.

Q. It happens.

30 A. Not very often though.

Q. Right. And the reason it happens, Ms. Wesley,

isn't it because a child just didn't have time to get to the toilet?

A. Maybe or sometimes he...he wants...he wants go and play outside more than that.

5 Q. Right. Either he didn't give himself enough time to get to the toilet...

A. Yes.

Q. ...or there wasn't enough time to get to the toilet.

10 A. It depends if...they...they were free to go to the toilet whenever they want to.

Q. And you indicate that you remember this incident, first of all, correct?

A. Which one?

Q. Luke Mack soiling himself.

15 A. The first one, yes.

Q. Uh-hum. And you tell us that you remember your response to this incident some 45 years ago, was to say "Would you like to go and rest?" and that you asked a boy to give him a tray.

20 A. I what?

Q. You asked a boy to give or bring him a tray.

A. After he washed himself and went to bed?

Q. Yeah. And to give him some towels. And you remember all this, is that correct?

25 A. I usually do that when a boy is sick.

Q. That's my point, Miss Wesley. Just as...it's not really normal for someone to say to a child who just threw up "Would you like some food?", it's not really the expected response when a child soiled his pants to tell him to go rest and bring him a tray of food. He wasn't sick, was he?

30 A. No, but he...as...as I said, he was not quite

feeling well. He had some diarrhea, that's what he said.

Q. Well you didn't tell us that earlier.

A. No, but now I'm telling you.

Q. And you remember him telling you that?

A. I remem...I remember why I sent him to bed.

Q. I suggest to you Miss Wesley that as in the peeing episodes, you did not respond appropriately to these incidents and you're just making up what you think is an appropriate response.

A. It came...it came to my mind, why I sent him to bed. And I asked a bigger boy to bring him some tray...food on a tray. There was always a tray in the dining room that was...that was used for that...when a boy is sick in bed.

Q. So, when Luke Mack says that you hit him on the face and called him all kinds of names and "wild dog" for soiling his pants...

A. No.

Q. ...you don't remember it that way?

A. No, I didn't.

Q. Now you've indicated that--Luke Mack, any ways, told us that he was made to kneel for coughing and he was slapped. Now, you indicated yesterday that you never made children kneel as punishment, is that not correct?

A. Never.

Q. Never. I suggest to you that the reason you say you never made children kneel for punishment is because witnesses have said you made them kneel for punishment, isn't that true?

A. I never made them kneel down for punishment. I know what it is because when...when I was a border myself they made me kneel down very often, and I know how it is, so I never did it to the children of my own.

Q. The kneeling on a cold floor at night would not make a cold or a cough better, would it?

A. No.

5 Q. Let's talk about Tony Tourville. Would you agree with me he was an intelligent boy?

A. Yes.

Q. And he did well in school. He did well in school?

A. Yes.

10 Q. He was an alter boy? He was an alter boy?

A. Alter boy?

Q. Uh-hum.

A. Most of them, not only him.

Q. I didn't ask you if most of them were.

15 A. But I'm telling you that most of...most of them were made alter boys.

Q. I didn't ask you that Miss Wesley.

A. Well...

20 Q. I asked you whether he was an alter boy and the truth is he was an alter boy, wasn't he?

MR. CHARLEBOIS: Your Honour, the witness is answering questions put by the Crown and is volunteering extra information. The Crown doesn't like the answers, well....The answer's responsive to the question asked.

25 MS. FULLER: The Crown's submission is the answer is not responsive, and is suggested with something else.

30 THE COURT: She was asked whether he was an alter boy and she said, "Yes, he was, as were most of them". Nothing wrong with that. Then argument started. I do not believe you should argue with

the witness or the witness you are cross-examining.

MS. FULLER: Thank you, Your Honour.

MS. FULLER: He has--not only was he intelligent and did well in school and was an alter boy, but he's also made a professionally successful life for himself, hasn't he?

A. Yes.

Q. But to you, Ms. Wesley, he was just a C.A.S. child, wasn't he?

A. To me, no. Yes, he was brought there for the...what you call that...the Children's Aid Society....

Q. You described him, this bright, intelligent boy who's done so well, you described him as a C.A.S. boy already marked with violence from his family, as if he were damaged goods.

A. Did I...did I...

Q. Yes.

A. ...describe him as a smart boy or what...when?

Q. You described him as a C.A.S. boy already marked with violence from his family...

A. From his family.

Q. ...when he came to the school.

A. Yes, when they came to the school.

Q. In other words, from your point of view this boy was damaged goods, he was marked?

A. I mean he...he knew what violence is because the Children's Aid Society women told us everything.

Q. What his family background was...

A. I don't remember, but I know that there was violence in there because the whole family was brought to Fort Albany except his mother and the younger brother, I think...don't know.

Q. But why did you tell us he was marked with

violence as a child? Why did you say that, Miss Wesley?

A. Well, Mrs. O'Brien told us that these children are all marked by violence in the family, and that's why I said that.

5 Q. I would suggest that you were trying to tell us that this boys was damaged goods, he was no good...

A. No...

Q. ...isn't that what...

A. ...no...

10 Q. ...you were...

A. ...no...

Q. ...trying to do?

A. ...no, that's not what I mean.

15 Q. Alright. Now, you would agree with me...we spoke about this before, that when one person got sick, most of the kids, if not all of the kids, got sick and that there was nothing that either you or Tony--would you agree with me that there was nothing that you or Tony Tourville should remember about him having a cold and coughing in the night, is there?

A. Uh-hum.

20 Q. There's nothing you should remember about that is there?

A. Nothing?

25 Q. That you should remember about the fact that he had a cold and was coughing in the night. Nothing either of you should remember about it.

A. And I don't remember because so many children coughing sometimes...every year...in the night, so how can I...how can I remember each one.

30 Q. Exactly. It would be impossible to remember every instance where every boy had a cough, wouldn't it?

A. No.

Q. Because you've told us it happened all the time, all boys got coughs from time to time, isn't that true?

A. Yes.

5 Q. And you've told us that you remember him having a cough because he had a bloody nose, but there was nothing remarkable about that because all we--or sometimes the boys got bloody noses when they had a fever or a cough.

10 A. When he came to ask--when...when I--there were many boys sick in bed at that time. That's why I make a turn to treat them, and I saw him nose bleeding in his...in his bed. And most of them had fever.

Q. Well, I suggest to you, Anna, that it was not uncommon for--as you said yesterday, for boys with a cold or a fever to have bloody noses, that you wouldn't remember it.

15 A. I cannot remember each boy, but I--in the years I had been there I saw many boys nose bleeding when they have fever with the flu or things like that...sick in bed...when there's an epidemic coming.

20 Q. But you remembered this boy. You remembered Tony being sick in bed and having a bloody nose, didn't you?

A. Because you...you were the one that told me...he was going to...to remind us that. That's why I remember.

Q. You say the children often came and told you.

A. Eh?

25 Q. Children often came and told you when they were sick, correct?

A. Yes.

Q. So there's nothing remarkable about that either, was there...

30 A. No.

Q. ...somebody telling you they were sick? Well,



I'm gonna tell you, Ms. Wesley, that it's news to me that children who have coughs and colds and fevers usually get bloody noses. That comes as a surprise to me.

5 A. It depends on the sickness. It depends on the flue.

Q. The...

A. Nose bleeding and your nose running and ears even, headaches, flu, fever.

Q. You said yesterday...

10 A. The nurse...the nurse will come and threat them with me and show me how to do them.

Q. You said yesterday, usually children who had a fever and a cold or a cough, had a bloody nose.

A. Yes.

15 Q. That wasn't true, was it?

A. Nose bleeding, oh, yes.

Q. It is not usually the case, that children with a fever or a cold get a bloody nose.

A. It happens, yes.

20 Q. It's not usually...

A. Usually....

Q. ...the case, is it?

A. Well, it happens once in a while, yes.

25 Q. That's not what you said yesterday. Yesterday you said always and then you changed it, and you said sometimes.

A. That's what I said, yes.

Q. And the reason that you're saying this, I suggest to you, is because you have to come up with some explanation of how Tony Tourville could have a bloody nose.

30 A. You came?

Q. That's your explanation for why Tony

Tourville's sheets and pillow were covered in blood and why he had a bloody nose, is because of his fever. That's your explanation.

5 A. Yes, that's...that's what I said too.

Q. But the reason he had a bloody nose is because he was disturbing your sleep and you punched him in the face, isn't that what happened?

A. That's what he said, but it did not happen that way.

10 Q. You punished him for coughing, this boy marked with violence by his family, by punching him with a closed fist, isn't that true?

A. I did not even think of the violence that he had in the family when I went...when I went to...to clean him to help him with his nose bleeding in that bed.

15 Q. And his somebody were to punch a little boy in the face with a closed a fist, it would cause a bloody nose, wouldn't it?

A. I never punched him.

20 Q. But if would cause a bloody nose if someone were to punch a little boy in the face with a closed fist? It would cause a bloody nose, wouldn't it?

25 MR. CHARLEBOIS: Well, Your Honour, that would depend on where the person is hit in the face. If you're hit in the cheek, your nose isn't going to bleed. If you're hit in the forehead, your nose isn't gonna bleed.

MS. FULLER: Well, this witness can answer that question, Your Honour.

30 MR. CHARLEBOIS: This witness has said three times now that she never punched him.

MS. FULLER: I didn't ask that question. This

witness is capable of answering the question, without help from counsel.

THE COURT: Maybe I'll ask the jury to leave for just a couple of minutes.

....JURY RETIRES (no time available)

THE COURT: It is not so much the question that concerns me. First of all, we had the question about "espèce de sauvage" which had nothing to do with Mack, then, of course I do not take perfect notes and I do not have a perfect memory, but I do not recall anything about a trade being brought...Well, just a minute, if I am wrong, I am wrong, take it easy, I'll finish. Thirdly, I cannot recall--I can recall a lot of evidence that Tony Tourville was a troublemaker, a fighter, a stealer, a this, a that, but I cannot recall any evidence that he was marked with violence before he got there...

MR. CHARLEBOIS: I will concede, Your Honour, that at...

THE COURT: I might have missed it. I am just concerned about evidence being put to a witness on cross-examination that is not exactly correct because that could be deadly.

MR. CHARLEBOIS: I will concede that in connection with the "marked with violence" that Ms. Wesley did at one point in her evidence yesterday...

THE COURT: Okay.

MR. CHARLEBOIS: ...volunteer that, not in any great detail, but volunteer it slightly. I will concede...

THE COURT: Well, it is a piece of evidence if she mentioned it...

MR. CHARLEBOIS: ...she did mention it in her examina...

THE COURT: ...slightly, overly, or whatever...

MR. CHARLEBOIS: ...she did mention it in-chief.

THE COURT: ...it is a piece of evidence that can well be used by the Crown in cross-examination. So, that was the only concern I had. I guess I do not have to concern myself too much about it...

MS. FULLER: Yeah.

THE COURT: ...since obviously I did not take it down and did not remember it. So, I will ask the jury to come back in.

MS. FULLER: And Your Honour, just to clarify, I just want to make sure I'm right on this. I wrote down that to Luke Mack, he told her "maudit sauvage" but that's what I wrote down, but perhaps I'm...in my notes but perhaps...

THE COURT: The only reference I recall to "sauvage" was "mon espèce de sauvage" to one of the next or...witness after that.

MR. CHARLEBOIS: I believe it might have been to...I can look it up fairly...

THE COURT: No.

MR. CHARLEBOIS: ...quickly, but it wasn't to Mack...

THE COURT: Well...

MR. CHARLEBOIS: ...was "wild dog" and "bastard".

THE COURT: ...anyway, that problem is out of the way because...

MS. FULLER: Okay.

THE COURT: ...it was retracted. The tray(ph) is not that important. I felt that "marked with violence" was important, and I had not heard it.

MS. FULLER: Thank you.

THE COURT: You can bring the jury in, please.

And I will add it to my notes right now.

MR. CHARLEBOIS: "Sauvage" was to the witness Paul-Martin.

....JURY ENTERS (no time available)

MS. FULLER: Q. The complainant, Tony Tourville, when he was describing the incident about the soup ladle remembers that what he was doing was putting a piece of either gristle or fat that he didn't like, from one person's plate to another, and that he was hit over the head with a metal soup ladle for it. The children played with their food, I suppose, from time to time in the dining room, did they not?

A. Yes.

Q. Trying to get your food that you didn't like from your plate on the floor, to the next guy, anything to avoid eating the parts that you didn't like. It was something children normally do, isn't that correct?

A. Yes.

Q. And there was nothing about this particular incident to make you remember what exactly it was about the food that Tony Tourville was doing, is there?

A. Not really.

Q. And yet Tony Tourville who might have a better reason to remember it if he was decked over the head with a soup ladle, wouldn't you agree?

A. I'd not...I did not really hit him on his head. I just brushed him like that..."what you're doing" I said

"stop" because the other boy was complaining.

5 Q. And in the summertime whatever else might be going on you wouldn't have as much reason to maintain that you were overtired and overworked as you did in the wintertime, isn't that true?

A. Well, if you had been there yourself you'd feel the tiredness even during the summer, and even that when your superior ask you to do another job to replace another sister who is on hol...holidays.

10 Q. You heard Tony Tourville say that you treated him the same in the summer as you did in the winter. Do you disagree with that?

A. Yes.

Q. You treated them differently?

15 A. As I said, there...there was not very much work in the kitchen...the women and the sisters who were in the kitchen will prepare different kinds of foods for the children who are there during summer, instead of preparing big pail...big pot potatoes and so on.

20 Q. When Tony Tourville was disciplined for playing with his food, you could have told him to leave the table, couldn't you have?

A. Yes, but...

Q. You could have told him to stand in the corner, couldn't you have?

25 A. Yes.

Q. You could have told him to go in the kitchen and help the staff, couldn't you have?

A. Yes.

Q. You could have taken his plate away?

30 A. Yes.

Q. There was no rule written as to how to handle

this situation was there?

A. No.

Q. But you weren't allowed were you, to either hit children over the head with metal objects, or to kick them, or do to anything else, were you...

A. During summer?

Q. ...of that nature? Hum?

A. During summer?

Q. Well during summer or winter. You weren't allowed to hit them over the head with metal objects?

A. As I said, that's the only time I remember...that's the only time I said that I hit someone with the ladle on his head. I never used anything else. I never kicked him, as I said before.

Q. You weren't allowed to hit children with metal objects over the head? You weren't permitted to do that were you?

A. No, but it...it happens accidentally all of a sudden like that...you cannot help yourself.

Q. Well, that's what I'm getting at. Sometimes in the heat of the moment we act reflexively. You know, like, you're mad and you just happen to have that soup ladle in your hand, or a dish towel, or whatever, and rather than a little slap with the dish towel, you respond immediately with whatever's there.

A. And I said "stop it" and with the soup ladle....

Q. But I suggest to you that the only time that somebody would warn someone is if they were going to punish them in an appropriate way because there would be time to think about it. That you're not gonna to warn someone that you're going to do something that's forbidden and that frankly is

wrong, like hit them over the head with a soup ladle, you're just going to do it because in the moment you're angry, isn't that true?

5 A. In moment...not really angry, but...the moment...

Q. Yeah.

10 A. ...because I holding that thing...that soup ladle. I did not really hit him, I just brushed his head like that and I said "stop what you're doing". But the other boys was...there were about six or seven boys in the dining room, and they were...they were free to do all they want to. There were speaking and laughing and so on. It was during the summer holidays.

15 Q. Because by the time you warn somebody "if you don't stop doing that, I'm going to hit you over the head with the soup ladle" you'd have time to realize that that was an inappropriate thing to do, wouldn't you?

A. Not really.

20 Q. And your evidence is...your sworn evidence is that you do not remember...or that you remember not disciplining Tony Tourville for talking to a priest, do you remember saying that?

A. Yes.

25 Q. In fact, you don't remember him talking to a priest on any particular day or that day, do you?

30 A. During summer when the seminaries...seminaries...the young priests shouldn't come there, they would usually come to the yard to speak and play with the children, so there was no special intention that...to watch Tony Tourville what...what he was...who he was talking with.

Q. And he indicates that you saw him talking to



the priest, or that, you called him in, rather, he doesn't say you saw him, you called him in after he was talking to the priest and that you punished him by...

A. That's what he...

Q. ...hitting him with a shoe.

A. ...that's what he said.

Q. Huh-hum.

A. That's what he said.

Q. And you indicate that the shoe room was somewhere else, is that not correct?

A. Yes.

Q. Now, but he indicated that it was the shoes that missions or charitable organizations had brought and you were just sorting through them...

A. That's what...

Q. ...that could be, couldn't it?

A. Yes, that's what he said.

Q. But that could be, that there be a box of shoes donated and you were going through them and sorting them out, isn't that true?

A. Yes, but it's not on the boys' side.

Q. Well, you could sort through a box of shoes in any room, couldn't you?

A. As I said for the boys, they were only running shoes, and they have two pairs of each, and when I need something the brother will provide everything...I'll ask him to bring some more shoes. I never made the room full of shoes...full of kind...all kinds of shoes.

Q. You took him for a walk when he had a sprained ankle, didn't you?

A. I did not know he had a sprained...sprained ankle at that time.

Q. It was badly enough sprained that he went to the hospital for it.

A. I went with him to the hospital later on.

5 Q. The last incident that he mentioned was being made to stand in the corner in the playroom. And this was a boy who you say was a troublemaker...

A. Yes.

Q. ...who was frequently disciplined?

A. It depends, yes.

10 Q. And yet you're telling us that you remember the incident that he's referring to because it was an incident where the other boy was crying because Tony had started a fight, and you can't remember the name? You remember the incident he's referring to.

15 A. Yes, but I don't remember the name of the boy because...

Q. How do you remember the incident itself, that all that happened was Tony was made to stand in the corner?

20 A. I did it because the other boy was--came coming to me crying, but I cannot remember the name of that boy. I did not pay any attention about remembering his name, but I know that I told...I know he told me that Tony was making...crying...fighting, so I told Tony to stand in the...in the corner for a while.

25 Q. I suggest you remember the incident because your response was so bizarre, to slap him in the eye with your hands full of dirt.

A. I never...

Q. That's why you remember the incident.

30 A. I never slap him with soil on my hands. He's making that story out of himself.

Q. Now, Mr. Tourville, as you've just said,

according to you he's making these things up, correct?

A. Like the shoe room...the room for the shoes, he's making that one himself, and this one too.

5 Q. And these are terrible things that he's-- allegations that he's made against you, isn't that true?

A. Yes.

Q. And it's caused you to be charged with a criminal offence, isn't that true?

A. Yes.

10 Q. And it puts you through a preliminary hearing and a trial as well, isn't that true?

A. Yes.

Q. And it puts your reputation at stake, isn't that true?

A. Yes.

15 Q. And the person that Tony Tourville described was somebody who was heartbreakingly cruel, wouldn't you agree?

A. Yes.

Q. And he attributes to you shocking acts, isn't that true?

A. What?

20 Q. He attributes to you...he says you're the person who did these shocking things to me. He says that, correct?

A. Yes.

25 Q. And your position is "None of this happened. I didn't do these things" correct?

A. That's right.

30 Q. Well, human nature being what it is, Miss Wesley, I suggest it would cause you to be quite naturally quite outraged by all the harm that Mr. Tourville has caused you by such malicious allegations and attacks on your

character, isn't that true?

A. Repeat it again, please.

5 Q. It would be perfectly natural for you to be outraged at all the harm he's caused you by these malicious attacks on your character.

10 A. I really...not....Tony Tourville lately. I did not say that to my lawyer yesterday. After the preliminary hearings...hearings, I met Tony Tourville at the entrance of my apartment and he said "Poor Anne. No hard feelings" and he kissed me. I...I told my lawyer about it. So he knew that what he did to me probably remember that he had been telling lies or things like that for me. So, I said, "Okay, Tony..." I said, "forget it".

15 Q. "Forget it". You told him, "forget it". Isn't what really happened, is you told him, "no hard feeling"?

A. Well, I try to be a Christian. I try to be friendly with him because now he's a grown up man. I try to forget what...what he said...

20 Q. "Forget it"...

A. ...what he said about me.

25 Q. You were in the middle of this thing. You just finished the preliminary. You knew you were gonna to have to go to trial on the basis of these malicious accusations and you thought you'd just forget about it, is that your evidence...

A. That's my...

30 Q. ...why you said "No hard feelings"?

A. Yeah.

Q. I suggest to you that, "No hard feeling" is a conciliatory kind of remark that people make when they want to say they're sorry.

A. Yes.

Q. And you're the one who wanted to tell Tony

Tourville that you were sorry.

5 MR. CHARLEBOIS: Let's make sure the witness can understand the word "conciliatory". With the evidence...was led yesterday, is that Miss Wesley has a grade seven education. Let's keep the vocabulary simple here.

THE COURT: I recall you speaking in French quite often when you were examining. Go ahead.

10 MS. FULLER: Q. Do you know what "conciliatory" means? You trying to make. "No hard feelings" is what people say when they're trying to make up.

15 A. Yes, that's what I said to him because I thought he was going to be...to be mad with me or...or...or...or to think that I was mad with him, so I tried to tell him that no hard feelings after all...all he did or all he said about me at the pre...preliminary hearings.

20 Q. No hard feelings because you understand that Tony Tourville has to get this off his chest, and that he's telling the truth. And that's what you were telling him. "I understand..."

A. No.

25 Q. ...Tony that you have to do this. No hard feelings." Isn't that the truth?

A. He is my land...landlord and we are very friendly, so I wanted to keep him that way, that's why I said "no hard feelings". I thought he was going to change after all...all he said about me at the preliminary hearings.

30 Q. And I suggest to you that your story about him coming up and kissing you is just created out of your own head.

A. He did. There is another man behind him that is working with him...Charlie Rickard and he saw it what ha...he saw it, but Charlie did not say very much that day. A

few days after I met Charlie and he said "What was it the other day that Tony was kissing you? And he asked me what was it, so I said it's a be...belated New Year's kiss" and he laughed.

Q. Oh.

THE COURT: Can I go back on one thing that I think should be clarified? My notes indicate that Tony Tourville told the witness "No hard feelings".

MS. FULLER: No.

THE COURT: Is it the other way around.

MS. FULLER: The other way around.

THE COURT: Okay.

MS. FULLER: The witness told Tony Tourville...

THE COURT: Okay.

MS. FULLER: ..."No hard feelings", isn't that correct?

A. Yes.

Q. And after you gave eleven years of your life to that school, doing the best that you could, is that your evidence?

A. Yes.

Q. You were doing the best that you could?

A. Yes.

Q. For someone to then suggest that you had done these unspeakable things would cause hard feelings, wouldn't it...wouldn't it?

A. Yes, but I'm not...I'm not that kind of person. As soon as someone hurts me, I try to forgive.

Q. Because you knew you still had to go through the trial when you spoke to him...

A. Yes.

Q. ...and said...

A. Yes.

Q. ..."No hard...

A. Yes.

Q. ...feelings"

A. Yes. Yes. Yes, that's right.

5

THE COURT: Miss Fuller, how much longer do you think you will be?

MS. FULLER: Uh...maybe another three quarters of an hour.

THE COURT: Maybe or three quarters of an hour?

10

MS. FULLER: Maybe, is as good as I can...

THE COURT: What we can do is take the normal lunch hour and resume...and I suppose we would be getting away at three or three thirty, or we can continue for 45 minutes. I know we have not eaten, we have not had a rest, but I would tend to sort of leave it up to you. I will give you three minutes in the jury room, then you can tell me what you want to do. Continue and leave early, or have your normal lunch hour and finish as we normally would do on a Monday, Tuesday, Wednesday, Thursday. I think it is Friday, is it not? So if you want to take a few minutes and let us know.

15

20

....JURY RETIRES (no time available)

R E C E S S

25

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

THE COURT: The jury has decided they want to go. Is that okay with you? They want to stay.

....JURY ENTERS (no time available)

THE COURT: Ms. Fuller.

30

MS. FULLER: Thank you, Your Honour.

MS. FULLER: Q. Just to clarify one thing

about....The incident that you're referring to, involving--was it Chris Burke? Is that who you were referring to? Where you had the discussion with Tony Tourville and Chris Burke was there, is that what you were referring to?

5

MR. CHARLEBOIS: She never testified to that.

THE COURT: I did not hear that either.

MS. FULLER: I'm sorry...

THE COURT: Chris Burke was there?

MS. FULLER: Chris Rickard?

10

THE COURT: I think you were thinking about that grill she was talking about in the wall.

A. I may have...Charlie Rickard.

MS. FULLER: Q. Sorry?

A. Charlie Rickard.

15

Q. Charlie Rickard. Alright, Charlie Rickard.

Alright. I'd like us to move on to Daniel Wheesk. Now, Daniel Wheesk was another bright boy, wasn't he?

A. Daniel Wheesk, yes.

20

Q. And his evidence of course is that he threw up, and you slapped him from behind, and you told him to eat his vomit, and that while he was struggling to eat, you were striding back and forth screaming at him. And you disagree with that?

A. Yes.

25

Q. Alright. Now, there is no particular reason for you to remember an incident in which one of the hundreds of boys who went through the school threw up, Daniel Wheesk in particular? There's no reason for you to remember an incident like that.

A. No.

30

Q. And if something like that happened to him of course, he'd have a reason to remember it, wouldn't you agree?



If it happened, he'd remember?

A. It depends on him.

Q. And you recall him saying that this happened more than once, and that on one occasion he just couldn't bring himself to eat his vomit, and you made sure that his bowl was in front of his place for several meals afterwards, and you disagreed with that?

A. Agree with what?

Q. Now, I suggest to you that although the kitchen staff might not help you with this, that you could put a child's bowl back in front of his place for several meals if you wanted to.

A. No.

Q. Just to make an example out of him.

A. No.

Q. Isn't that true?

A. No.

Q. It was your dining room, your domain, wasn't it?

A. Yes.

Q. And I suggest to you that in refusing to eat that vomit Daniel Wheesk defied you, didn't he?

A. No.

Q. 'Cause you don't think it took place, right?

A. No.

Q. And if he'd been forced to do it, similarly a tablemate would probably remember it?

A. Will...will you repeat it again, please, that thing?

Q. Somebody sitting at the table across from him or beside him, it's the kind of thing you would remember if you saw your friend being forced to eat his vomit, wouldn't you

agree?

A. Yes.

Q. And you heard Oliver Wesley say that he remembered seeing this?

5

A. Yes.

Q. Now, Daniel Wheesk talked about another incident in which he says that he was sick in his bed, he told you about it, and you told him to go and stand by the bed. That morning he told you "I was sick last night" and you said "I'm busy right now with something else. Go stand by your bed." That could have happened couldn't it have?

10

A. Yes.

Q. And it wouldn't have been his fault if he threw up, would it have?

15

A. Yes.

Q. And you would have had no reason to hit him would you have?

A. No reason, what?

Q. To hit him.

20

A. No.

Q. And if he started to strip the bed that would just be helpful, wouldn't...

A. Yes.

Q. ...it?

25

A. Yes.

Q. But I suggest to you that you did hit him and you hit him because you told him to stand by the bed, not the strip the bed. He didn't have your permission and you were angry with him for throwing up...

A. No.

30

Q. ...isn't that what happened?

A. No.

Q. You indicated that in these circumstances where somebody got sick in bed sometimes it would be you who would have to strip the bed, sometimes it would be the women who did some of the housekeeping...

5

A. Yes.

Q. ...and sometimes the children would help themselves, correct?

A. Yes.

10

Q. And you said, "If he felt like helping, he could"?

A. Yes.

Q. I suggest to you that that was the expectation. If a child was sick, he was expected to strip his bed and to throw the sheets down the laundry shoot...

15

A. No.

Q. ...that there would be no choice?

A. No.

Q. George Wheesk...I believe it was George Wheesk whose evidence was that when you struck him you said "tiens, tiens"?

20

A. Yes.

Q. That's what he said?

A. That's what he said, yes.

25

Q. And that's not a very complicated expression that needs a lot of French understanding? It's a common expression, "tiens"?

A. I never used that word with the children.

Q. It's a very...it's not a word with a whole lot of particular meaning, is it..."tiens"?

30

A. I know because I heard the sisters using that word when I was a border, but I ne...

Q. You heard it a lot?

A. ...but I never used it on the children when I was a supervisor.

5 Q. Well, it's interesting because that's the word--he wasn't a border when you were a border, so he wouldn't have heard it from them, but he does say, "I heard it being used on me" and the only person who looked after him was you, correct?

10 A. Because he wanted absolutely to blame me for everything. Probably he heard that word from the other sisters because the other sisters were using that word too. But I never used it in French, "tiens, tiens" no way...no way.

Q. He heard it used by you because you used it. You picked it up from the other nuns at the school, and you hit him on the head, and with every slap "tiens, tiens" as if to say "take that and that", isn't that true?

15 A. That's not true.

Q. Now, you indicated that if George were to say that he was punished for saying "the river's breaking up" "magistan" (ph) or whatever the word is, it's untrue because at lunch he was allowed to talk, correct?

20 A. Yes.

Q. Would it be true if it happened at dinnertime--at suppertime, I mean?

A. It happened at dinnertime he said.

25 Q. Yes, he did, but we're talking about something that's 40 or 50 years old. And you'd agree with me that if you get punished seriously for doing something wrong, what would be important is that you were in the diningroom, and what you said and what happened to you, it wouldn't be important what the meal was, wouldn't you agree?

30 A. No.

Q. You wouldn't agree?

A. If something happened important for me, no.

Q. It wouldn't matter whether--there'd be no reason to remember in particular whether it was a lunch or at dinner...

A. No.

Q. ...wouldn't you agree?

A. No.

Q. You wouldn't agree?

A. No.

Q. Because the time of--if he says that it was--he spoke and was punished for speaking, it must have been at supertime?

A. You say that you want to, but I don't agree.

Q. Because at supertime he wasn't allowed to speak, isn't that true?

A. It depends...it depends. Sometimes they are allowed to speak at supertime.

Q. Now, you say that you never made him kneel by the wall, correct?

A. It was all connected to same thing...when he said "magistan" (ph) and then I went to grab him, and drag him, and make him kneel down on the wall?

Q. After slapping him on both sides of the head...

A. Yes.

Q. ...with your hands and then...

A. That's what he said.

Q. ...dragging him over to the wall and then continuing to kick him.

A. It's all...it's all a story that he made.

Q. Uh?

A. It's all the things that he said, that did not happen, because the other boys were...were...were allowed to speak, laugh and...start to eat and so on.

Q. It could have happened though that it was at suppertime, and he's wrong about the meal.

A. No.

5 Q. At suppertime you would punish somebody if they were speaking when they weren't supposed to, wouldn't you?

A. What? Repeat it again, please.

Q. Most suppertimes you weren't allowed to talk...

A. No.

Q. ...that was the rule.

10 A. Yes.

Q. Okay, sometimes you were, but most suppertimes you weren't allowed to talk.

A. Yes.

Q. And if you talked you got punished.

15 A. No.

Q. Well, what was the point of having a rule if you didn't get punished for it? Then everybody would talk wouldn't they...

A. Yes.

20 Q. ...Ms. Wesley?

A. Yes.

Q. They'd talk all the time if Anna Wesley would let them have long conversations and chat...they would talk?

A. Yes.

25 Q. But they didn't talk, did they, at breakfast and at suppertime?

A. N...no.

Q. They didn't...

A. Sometimes at suppertime.

30 Q. They didn't talk because they'd be punished if they did.

A. Uh...

Q. You would punish them. "You" the person in charge of the diningroom would punish children who talked at breakfast, or talked most suppers.

5 A. Not really. I would just say that, "You are not supposed to talk...to talk or"....They whispered a lot, but they were not talking loud during supper. Breakfast is the same thing. But they whispered...they were talking to each other. They were whispering quite often.

10 Q. The witness remembers that he was forced to kneel. And you'd agree with me that kneeling is a position of submission and obedience, isn't that correct?

A. No.

Q. You don't think it's a position of submission or obedience?

15 A. As I...As I said, I never made them kneel down.

Q. Uh-hum. Well, kneeling has some--kneeling I suggest was a common punishment at Ste-Anne's and at many catholic schools, wouldn't you agree?

20 A. Maybe, yes. Yes, because I had it myself when I was at the...

Q. Uh-hum.

A. ...a border, but not in my time. I remember so well what happened to me when I was a border, I tried not to use it when I was a supervisor.

25 Q. And the nice thing about kneeling is that it immobilizes the person. If you're on your knees you can't get in much trouble, can you?

A. No.

30 Q. And it's pretty effective if you tell a kid to kneel down, he can't move around, he's stuck on his knees, it's a pretty easy and effective method of discipline, isn't it?

A. Yes.

Q. And I suggest to you that, again, that the reason you say you didn't make any children ever kneel is because they say you did.

5 A. It's what they said, but I never did it. As I said, I had the experience on my...on myself when I was a border.

Q. Dealing again with George Wheesk. If--you admit that he was on one occasion limping and dragging his leg after an injury he got, I believe, skating?

10 A. Yes.

Q. Okay. So, if someone saw you hit him and tell him to keep up, you would not be saying "Well, the reason I hit him is I thought he was putting on an act." That's one thing you wouldn't be saying?

15 A. No.

Q. Because you knew he was injured?

A. Yes.

Q. It was the mother superior who finally saw to it, that he was taken to the hospital, wasn't it?

20 A. That's not...that's not true.

Q. And by this time he was starting to crawl up the stairs because he was in such pain, isn't that true?

A. Yes.

Q. Now, Edmond Mudd, we know that you had to stand in line to go out of the school, correct...

25 A. Yes.

Q. ...all the children, girls, boys, it didn't matter how old you were.

A. Yes.

Q. And you had to stand in line to go in.

30 A. Yes.

Q. Correct?



A. Yes. Yes.

Q. And you were expected to stand in straight lines.

A. Yes.

5 Q. And the lines were either--and this might have changed over the years, stand single file or in pairs.

A. In pairs.

Q. In pairs. And you were supposed to look directly at the person in front of you, correct?

10 A. No.

Q. And you would line up to do many activities, is that not correct?

A. Hum, what kind of activities do you mean?

15 Q. Well, if you were all going somewhere it would not be uncommon to expect a group to line up before they went somewhere.

A. Oh, yes.

Q. Huh-hum. And it was a method of keeping order, isn't that correct?

A. Yes.

20 Q. And you were lined up according to your number.

A. Yes.

Q. You weren't even supposed to talk in the line up, were you?

A. It depends.

25 Q. Once the bell went you weren't supposed to talk though, were you?

A. Yes. Eh?

Q. Once the bell went to line up--children were meant to line up and not talk, isn't that true?

30 A. When...when they are inside, but outside they can speak as much as they want even if they are lined up.

Q. So, you would agree with me, wouldn't you, that if a child in this line up waiting to go in were to accept the dare of a friend and make a snowball and throw it, that would not be allowed?

5 A. I don't understand how you say that. You say they were...they were going to breakfast to...to the other building? I have no reason to stop them touching or making snowballs while...while waiting, or throw the snowball into the snowman. That snowman was not that important to me or to them.  
10 And they made lots of snowmen in their lifetime when they are playing.

Q. Yes, indeed they did, Miss Wesley, but when they were lined up they weren't allowed to make snowmen, were they? Because if everybody started making snowmen and throwing snowballs the line ups would fall apart and there would be  
15 disorder, isn't that what would happen?

A. Yes...yes, but it...it did not happen that way.

Q. And one way to make sure that doesn't happen is to punish the first person who steps out of line.

A. I said it not happen that--I did not stop  
20 him...stop him to play with--to make a snowball.

Q. I suggest to you that you punished children for doing...for not conforming to the line ups or for being disruptive in the line ups, that this is perfectly normal practice for you to punish them.

25 A. Not really punished them, but told them to keep...to keep their place.

Q. Where the dining room was at this point in time, and we know that the school changed shape and buildings for a number of reasons over the years, but where the dining room was at the point in time, where he was allegedly injured,  
30 the infirmary was upstairs, isn't that correct?

A. Injured who?

Q. The infirmary or the hospital was upstairs.

A. It was in the old building where the dining rooms are.

5 Q. Where was the building where the infirmary or the hospital was upstairs?

A. The same...the same building. The dining rooms were on the first floor and the kitchen...

Q. Yeah.

10 A. ...and the orphanage, and upstairs half of the building was infirmary and half of the building was where the sisters lived...where the sisters lived.

Q. So, that's where he said he was. He said "I was in the dining room with the dining room downstairs and the infirmary upstairs", that's what he said, correct?

15 A. Yes.

Q. And he was for a period of time in a dining room where the infirmary was upstairs, that's true, correct?

A. Yes.

20 Q. Now, there's some dispute about the nature of the heating system. You've heard Mr. Mudd indicate that the heating system in the dining room at that time was radiators and you say it wasn't.

A. There were no radia...no radiators in that building.

25 Q. When did they get put in?

30 A. There was a "grillage" called in French, "grill" in English, a hole on the floor, and we could see the two...the two barrels...there was no real furnace in that building. The two barrels attached together. The barrels was made a door at the...at one end to put the wood in, and on each side of that thing there was steels like boxes or something

like that that goes up to send the heat to the second floor.  
There were no radiators in that building.

5 Q. Well, I put it to you, madam, that if somebody  
hit their head on a radiator they'd remember what it was that  
they got a scar from, wouldn't you agree?

10 MR. CHARLEBOIS: Your Honour, I think that's  
speculative. It's one answer given by Ms. Wesley,  
an answer given by Mr. Mudd, upon which the jury at  
one point will have to make an determination of  
fact. I think that to suggest that he'd remember  
something like that more so than she would, is  
unfair.

15 And after Your Honour has actually dealt with that  
observation on my part, I was wondering if we could  
also inquire if Miss Wesley, if Your Honour feels  
it's appropriate, if she needs a break. I've  
noticed that in the last little while her voice is  
apparently becoming somewhat weaker, sighing on her  
part, and she's been being cross-examined now for  
20 actually over two and a half hours with the breaks.  
THE COURT: Okay. Let me delineate what you had to  
tell me in your speech there. Number one, you made  
an objection to a question?

25 MR. CHARLEBOIS: Yes, sir.

THE COURT: Tell me what it is.

MS. FULLER: Your Honour, I'll move on. Whatever  
that objection was...

THE COURT: Okay, great.

MS. FULLER: ...I'll move on.

30 THE COURT: Do you wish to go on, Miss Wesley...

A. Yes.

THE COURT: Okay. Miss Wesley wishes to go on.

MS. FULLER: Q. Alright. At some point in time the dining room got radiators though, didn't it, Miss Wesley?

A. At some time?

5 Q. Yeah, at some time, radiators were put in the dining room?

A. Not in that dining room. Not that one.

Q. At some point in time there were radiators in some dining room.

A. Not at that time.

10 Q. Well, you're saying this didn't even happen, so you don't even know what time it was.

A. No.

Q. So, how can you say not at that time if you don't even remember the incident? George Wheesk...

15 A. That's it...

Q. ...was there for a number of years...

MR. CHARLEBOIS: Your Honour...

Q. ...excuse me, Edmond Mudd was there for a number of years.

20 THE COURT: That's a perfectly good question. Go ahead.

MS. FULLER: Q. Yes?

A. Will you repeat the question again?

25 Q. I said, Edmond Mudd was there for a number of years, so how--and you've indicated that there were radiators put in but not during this incident.

A. There were no radiators in that building up to the last time when we moved to the new building.

Q. But you don't know...

30 A. And he was...and this was the building that was there in 1954, and he was in the school, and there were no

radiators in that building. I know because there was no real furnace and I left...we left...I left that place, that house, one year before I went to the convent, and we used to go downstairs and put some wood ourselves in that kind of furnace that the brothers made. And when I arrived as a supervisor the building was still the same; no radiators, and the boiler for hot water was just beside the kitchen stove.

Q. So, is this something you took a real interest in; the radiators...the heating system?

A. I beg your pardon?

Q. Is it something you took an interest in; the heating system?

A. That's what they used at the school that burnt in 1939...

Q. The...

A. ...and the next radiators we had was the school that built after the fire in 1954.

Q. That's right. And it was built right away the school, wasn't it?

A. When the--1954 school burnt it was...the new school was on...on construction.

Q. Yeah. And as we have said, if the infirmary was upstairs and you saw someone with a head injury it be appropriate...the only appropriate place to take him would be upstairs to the infirmary?

A. Yes.

Q. And it would also be the most convenient place, wouldn't it?

A. Yes.

Q. And if you had to go upstairs you could always get the kitchen staff to continue serving, couldn't you? The kitchen staff...if something happened and a boy needed to be

taken upstairs to the infirmary you'd just go ask the kitchen staff, "Would you finish serving? I'm just going to take this boy upstairs to get some help", you could do that, couldn't you?

5

A. Yes.

Q. So, when you said you'd have to go to the mother superior, you didn't really have to go to the mother superior if something happened. You could just go right to the kitchen, couldn't you?

10

A. Sometimes when he...when she passed there I will ask him some service or not...or to help me or something like that. Go ahead with that, I'll--okay.

Q. In a situation like this, if a boy had split his head and was bleeding a lot, going to the dormitory to fix it up would be out of the way, wouldn't it?

15

A. Could you tell me how...how big was the cut. How big was the wound that he had...he said?

THE COURT: Listen, it is not a very complicated question. She only asked you whether the dorm would be farther away than the clinic, period. Is it farther away?

20

A. Yes.

Q. Uh-hum.

A. Yes, the...the dorm...the dormitory was in the other building across the bridge...

25

Q. Uh-hum.

A. ...towards the creek.

Q. So, it would be out of your way to go there as opposed to just take an injured boy upstairs, correct?

THE COURT: No kidding.

30

Q. So, but of course if Edmond Mudd had that injury happen the way he said, and you took him upstairs to the

infirmary, the first question they'd ask is: "What happened?", isn't it?

A. He said that it happened to him, but it never happened that thing. This I can say it.

5 Q. It's the first question that the nurses would ask if you took him upstairs to the infirmary, isn't it? An injured child; "What happened?", isn't that true?

A. Yes.

10 Q. And if the child were taken upstairs and said to the hospital staff, "Well, I was kicked in the head by Anna Wesley, and hit my head on the radiator" you'd be reported to the mother superior, wouldn't you?

A. Yes.

15 Q. Whereas, if you patched an injury up in the dorm there'd be no questions asked, would there?

A. But I would like to know how much was the injury he said. Did he said how...how big was the cut or what?

20 THE COURT: I think the question, again, was very clear, asking for a clear answer. If he was taken to the dormitory and it stopped there, there would be no questions asked, is that right?

A. Yes.

THE COURT: Okay.

A. Okay.

25 Q. Now moving on to Eli Tookate. You've already agreed with me that there were always children that...that just about always that children that wet their beds, and some children were chronic bed wetters, but Eli Tookate was not one of them, correct?

A. Um, yes.

30 Q. Alright. This man was only at the school for a very brief period of time, isn't that true?



A. Yes.

Q. He was only there for fall and then he ended up in the sanatorium he said in June of 1952. And you have no reason to disagree with that do you?

5 A. It was during winter that he was taken to the sanatorium.

Q. He indicates that he went to the san. in June of '52 and for three months before then he had been in the hospital at Fort Albany.

10 A. Yes.

Q. So that would mean then in the fall in January and February he was in the school?

A. Yes.

Q. That's a pretty brief period of time.

15 A. Yeah.

Q. And he was a new child, and it's not surprising that he might be nervous and he might be homesick, is it?

A. Yes.

Q. And it wouldn't be surprising that in circumstances like this in new surroundings he might wet the bed, correct.

20 A. Yes. Yes.

Q. So, although he didn't have the reputation of a bed wetter, you're not saying that he didn't wet the bed once when he was at the school, are you? You don't remember whether he did or not.

25 A. I don't remember.

Q. Huh-hum. And since you--sometimes would punish someone for wetting the bed by slapping them, you might have slapped him, isn't that true?

30 A. I might.

Q. Pardon?

A. Maybe.

Q. Uh-hum. And he's also indicated that after being hit he was thrown to the floor and kicked.

A. That's not true.

5 Q. And that would be a very unreasonable thing to do to a child who had wet their bed, wouldn't it?

A. Yes.

10 Q. Now, let's move onto the dining room again. Mr. Tookate says that after two gulps of food he vomited...and then he goes on to tell...his memory is something quite horrible, that he said you forced him to eat his vomit and he threw up again. Now, you disagree with that?

A. Yes.

15 Q. Now, you heard his cousin, Gerard Kioke, say that he saw it and he remembers it because he'd never seen such a thing, you heard him say that?

A. Yes, he saw me trying to feed him with the--as I said before, the food that was not contaminated, and he called it "vomit" (sic) that's what he thought it was, his vomit.

20 Q. He saw, he indicated.

A. He was beside him. He...

Q. He said that he saw Eli Tookate throw up, vomit in his plate...

A. With...with spit...spit...cod...cod liver oil.

25 Q. And...

A. And the whole...the whole plate was not contaminated. That's why I tried make him eat up at least two...two tablespoons full of that food. Then he vomited and then I stopped that. I never tried to make him eat his vomit.

30 Q. You say, "Well, I remember he started to feel sick".

A. He was always going down, losing weight and start to cough.

Q. What you meant, Anna Wesley, is when you said "I remember he started to feel sick"...

5 A. N...

Q. ...is he vomited in his plate. That's what you meant, isn't it?

A. No. I mean...I meant that he start...the tuberculosis start to work on him.

10 Q. You felt it would be good for him to eat everything on his plate because it was good food.

A. Not everything. I...I just...start thinking to feed him a little bit because he was not eating most of the time and he was getting thin...lost weight, and he was suspect tuberculosis.

15 Q. And both these witnesses remember that he vomited.

A. That's what--yes.

20 Q. Now, just one other little area in conclusion. You don't have--I understand it was suggested that you don't have much formal education, but you'd agree with me, Ms, Wesley, that we don't go to school to learn kindness and patience, do we?

A. Will you repeat it again, please?

25 Q. It was brought out that you don't have much formal education...

A. That's right.

Q. ...what I'm saying is that that doesn't matter for a job like looking after children, does it?

A. At that time that's what they said, yeah.

30 Q. Because to look after children you need kindness and patience, don't you?

A. Yes.

Q. And you don't go to school to learn that, do you?

A. No.

5 Q. You were not a teenager or a young woman when this--well you were a young woman, but by 1951, you were already about 30 years old, weren't you?

A. Yes.

10 Q. So, you're an adult, you had some years of looking after children, isn't that correct?

A. Yes.

Q. And you'd had many years as a student at Ste-Anne's, correct?

A. Yes.

15 Q. And you'd been treated reasonably and kindly at Ste-Anne's as student, had you not?

A. It depends it was a long time.

Q. Well, you'd the person to know Ms. Wesley, I wasn't there. Were you treated kindly and reasonably as a student?

20 A. Not all the time.

Q. Generally?

A. No.

Q. Generally not?

A. Generally not.

25 Q. Then if you weren't then you'd certainly know what not to do to children, how not to treat them, wouldn't you?

A. Will you say it again, please?

30 Q. Well, if you weren't treated with kindness or with patience, or respect as a student, you'd know that you wouldn't want to treat the children that you were responsible

for that way, correct?

A. I tried to be patient, I tried to be kind to them, but as I said, when you are tired it comes out...you cannot help it.

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Q. The...

A. Because it's not a job for a woman all by herself to look after so many children...different ages.

Q. It wasn't a picnic. It certainly wasn't a picnic.

10

A. Oh, sure not.

Q. But it was a job in which you did know certain things. Ms. Wesley, you knew that these children were completely dependent on you, didn't you?

A. Yeah.

15

Q. And you knew...

A. The authorities put me there, I did not know anything about it. And when I asked to leave they told me I made the vow of obedience so I have to stay there?

Q. You knew you could leave. You did leave.

20

A. Eh?

Q. You knew you could leave. You did leave.

A. Later on.

Q. You were a woman who was 30 years old and older. You had...

A. Yes, but...

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Q. ...you were able to make up your own decisions.

A. Later on I made my own decision.

Q. You knew that the children had no one else to turn to when they were sick or when they were frightened, but you, correct?

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A. That's what they said, yes.

Q. And you knew that the children were isolated

from their families...even from their siblings, isn't that correct?

A. Even from what?

Q. Their siblings.

A. Siblings, oh, yes.

Q. Uh-hum. And you knew that for the first couple of years there with a different way of life and a different language to learn, away from their parents, it was going to be very hard for them.

A. I know that because I...I had that experience myself.

Q. And you knew that they were often lonely, and homesick, and confused, and frightened, correct? Correct?

A. Yes, but, uh, as I said, we tried, the other sisters too, we tried to make the school...the children happy and not too lonesome.

Q. You knew that the parents of these children were for the most part poor, and uneducated, and powerless, weren't they?

A. Yes.

Q. And they were completely dependent on the church, weren't they?

A. Never?

Q. They were completely dependent on the church either to look after their children or for their healthcare or sometimes for jobs, isn't that true?

A. Yes. Yes.

Q. And they were all catholic...just about all of the them.

A. Yes.

Q. The parents were catholic. And you knew that your habit as a Sister of Charity gave you more authority than

just being an adult.

A. Maybe.

5 Q. And you knew that if a child complained about you, the child would have to see you the next day and the next day, wouldn't she--or he?

A. Yes. Yes.

Q. Those children were afraid of you, weren't they?

10 A. Not all of them.

Q. You were entrusted and you knew you were entrusted by their families to protect and nurture and care for them?

A. Yes.

15 Q. And at the end of the day, madam, whatever your problems and burdens at that school, wouldn't you agree with me that they could never justify or excuse the heartbreaking cruelty of the allegations if they were true?

A. Most of the allegations are not true.

Q. Thank you.

20 THE COURT: My sincere congratulations. Right on. Re-examination?

MR. CHARLEBOIS: Yes.

RE-EXAMINATION BY MR. CHARLEBOIS:

25 Q. Crown in cross-examination, much as I did yesterday, talked about rules. And Crown brought out the period of time when you had been a border at Ste-Anne's as a child before you went back there as a nun, right?

A. Yes.

30 Q. When you had been a student at Ste-Anne's between--was it 1934-41?

A. Yes.

Q. Had you been compelled to follow the rules when you were a student?

5 MS. FULLER: Objection, Your Honour, this is not proper re-examination. This was brought out through...

THE COURT: It certainly doesn't clarify anything. It doesn't help anyone in understanding the evidence. Carry on to another question.

10 MR. CHARLEBOIS: Q. How did the rules compare when you were a student from what the rules were like...

THE COURT: Th...

MR. CHARLEBOIS: It's an area that the Crown brought up in cross, Your Honour.

15 THE COURT: Did you hear me?

MR. CHARLEBOIS: Yes.

THE COURT: I made a rule. Please go on to something else.

20 MR. CHARLEBOIS: Q. When you were a nun...that period '51 to '62, if you had not enforced the rules, what if any, trouble could you have gotten into?

MS. FULLER: I object.

THE COURT: It was covered in direct examination, it was covered in cross-examination. Her evidence was that Sister Superior was at the top.

25 MR. CHARLEBOIS: Those were the areas that I wanted to cover in re-examination, Your Honour.

THE COURT: Very well, I am telling you that it is not proper subject matter for re-examination.

MR. CHARLEBOIS: Thank you.

30 THE COURT: Thank you very much. We are of course going to break for the day. We are not quite sure



5 as to what will happen next week. You may be  
hearing addresses from counsel on Monday. If so, I  
will give you my charge on Tuesday, after which you  
will deliberate. It may be, I do not think so  
though, but it may be that I will give you my  
charge on Wednesday. There may be something  
intervening that may happen, I am not sure. But it  
appears that I will be going to you on Tuesday, at  
which time the game of Trivial Pursuit will cease.  
10 .....JURY RETIRES (no time available)

THE COURT: So, we will resume then on Monday  
morning at ten o'clock either with reply evidence  
or pre-charge...

15 MS. FULLER: Argument on similar fact and other  
issues.

THE COURT: Whatever issues you wish to cover and  
then if it is simply the pre-charge in the morning  
you will go ahead Monday afternoon with your...

MS. FULLER: Okay.

20 THE COURT: ...submissions and I will go ahead  
Tuesday morning with my charge. Is that...

MS. FULLER: Yeah.

THE COURT: Okay.

25 COURT CLERK: Does the jury still come in at ten  
o'clock, Your Honour?

THE COURT: Yeah, the jury has to be in at ten  
because there is some question about more evidence  
being adduced.

30 MS. FULLER: Except that, Your Honour, if--we're  
gonna to be arguing anyways, and so that will take  
a bit of time. So if we...

THE COURT: Well, we had better catch them right away. What do you suggest because they are...

MS. FULLER: Yeah...

THE COURT: ...on their way out of here.

5 MS. FULLER: I think they shouldn't come in until lunch or after lunch because...

THE COURT: Do you want to please tell them? At least until one o'clock.

10 MR. CHARLEBOIS: If we're working Monday morning, isn't one normally the time we eat?

MS. FULLER: We don't eat...we don't eat, Your Honour, we don't eat.

15 THE COURT: Listen, because they are coming at one o'clock, it does not mean that we will be getting them in here and starting evidence at one o'clock, we could just be getting ready.

MS. FULLER: We might be finished at eleven.

THE COURT: In any event, we could always get some of the staff to bring a sandwich or something.

20 COURT CLERK: Tell them one o'clock.

C O U R T A D J O U R N E D

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

MONDAY, MAY 17, 1999

25 THE COURT: I have one quick matter before we start. In drafting my charge, when I got to the noxious part of it, I simply stated that the Criminal Code has been amended twice since the early '50s but not to affect these proceedings in any way, and it reads as follows....

30 MS. FULLER: Yes, that's fine, Your Honour.

THE COURT: Okay?

5 MS. FULLER: Your Honour, the legal argument this morning is that of similar fact evidence. Whether or not the evidence would come within the classification of similar fact for the counts on the indictment.

10 Does, Your Honour, need to hear from the Crown on this issue?

THE COURT: I would perhaps would like to hear from you first.

15 MR. CHARLEBOIS: Well, I'll be happy to respond, Your Honour. I might indicate that it's the Crown who wants the similar fact evidence to go in. So it's actually a Crown request, Crown motion, Crown however you want to phrase it.

THE COURT: It is not unusual to ask the opposite party to start first, Mr. Charlebois.

20 MR. CHARLEBOIS: Thank you, Your Honour.

THE COURT: As a matter of fact, it is quite usual.

25 MR. CHARLEBOIS: What we must first remember is that the similar fact rule, the starting point of the similar fact rule is that it is an exclusionary rule. The basic principle is that a trier of fact whether they be judge alone or jury, even in a multi count indictment as we have here, are to consider the evidence of each count separately referred to as either in English the  
30 compartmentalization of the evidence or as the

court...

5 THE COURT: I agree with you that normally every evidence of every count should be kept separate from other counts. The exception of course is the similar fact rule. Are we *ad idem*, number one: That I can apply if I find it appropriate that similar should apply, that I can apply the rule on a multi count indictment rather than the normal way of leading evidence of similar fact pure and simple?

10 MR. CHARLEBOIS: Yes, if you find that the evidence is similar fact evidence, then I think it's clear that you can charge the jury...

THE COURT: Okay.

15 MR. CHARLEBOIS: ...accordingly. I think the questions that we have to determine this morning, are first of all to separate the assault counts from the noxious counts, in assessing the similarity or lack of similarity because I don't think anyone would argue that there's any correlation between the noxious substance counts and the assault counts. Totally dissimilar.

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25 Then the court must consider...if the court finds the evidence is not similar that ends it. That ends the inquiry. If the court finds that the evidence is similar, then the court has to balance the delicate--or the delicate balancing act of does probative value win out over prejudicial effect or does prejudicial effect win out over probative value?  
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Now, the cases that Your Honour was invited to consider or that we made Your Honour aware of on Friday at your request, and that I believe you had a chance to study over the weekend, you were asked to consider a recent Ontario Court of Appeal pronouncement in *B.M.*, you were asked to consider a recent Supreme Court of Canada decision in *Arp*, and you were asked to consider a slightly older yet still very topical Ontario Court of Appeal decision in *M.A.G.* I also provided Your Honour this morning, and indicated to you this morning in the presence of the Crown in your chambers that I would be asking you to consider as well an unreported decision in French the Ontario Court of Appeal called *Huot*, from Madam Justice Arbour.

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Now, quite frankly the *Huot* decision which predates *M.A.G.*, predates *Arp* and predates *B.M.* is being brought to Your Honour's attention because by means of obiter, Madam Justice Arbour indicates that a particular care should be exercised in assessing prejudice probative value where on a multi count indictment the offences flow far back into the past because she is of the view that in that situation the prejudicial value outweighs in many cases--the prejudicial effect, rather, in many cases outweighs the probative value. And she makes a particular reference in *Huot* to the special care that needs to be exercised where the similar fact component is going to be put before a jury rather than before a judge alone. It's important to recognize that in

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Huot, and Huot stemmed from the Alfred cases, Huot stemmed from allegations of sexual abuse in a training school with incidents alleged to have occurred 30, 40, 45 years before, much as is the situation in the case at bar.

Justice Charron who was a trial judge at the time, had tried that in the absence of a jury, or without a jury...it was a judge alone trial.

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And I would ask Your Honour to consider pages 12, the long paragraph stemming into page--stressing into page 13...uh, actually it might be simpler instead of looking at the top of the page Your Honour, it would be numbered 8 in the same type...page 8 in the same type as the...

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THE COURT: I got it.

MR. CHARLEBOIS: Okay.

THE COURT: Do you understand French, by the way, Ms. Fuller?

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MS. FULLER: Yes, I do, Your Honour. I'm sorry, page...

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MR. CHARLEBOIS: Page 8. "Comme je l'ai souligné, les similitudes de comportements dans le cas qui nous occupe, ne sont pas particulièrement remarquables, sauf dans la mesure où elles dévoilent un comportement homosexuel envers des adolescents. Non seulement devons nous constater comme c'était le cas dans B.C.R., le fait préjudiciable du caractère répugnant des actes reprochés à l'accusé a cause en particulier de l'abus d'autorité et de confiance dont ces actes te font preuves et on ne

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peu ignorer le préjudistme particulier créer par le passage du temps dans l'espèce, compte tenu du fait que ces allégations remontent a plus de 30 ans. Les faits préjudiciables du traitement commutatif de ces allégations comme faisant preuve l'une pour l'autre, me semble insurmontable. Je suis donc d'avis que le juge de première instance" who is Madam Justice Charron at the time "a erré en déclarant la preuve offerte sur chacun des chefs comme admissible sous les autres chefs a titre de preuve de faits similaires."

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I'd now invite Your Honour to look at page 9 where Madam Justice Arbour indicates that notwithstanding the mistake, 686(1)(b) the curative provisions of the code come to the rescue of Madam Justice Charron's erroneous application of similar fact in that case. However, at page 9, second sentence, Madam Justice Arbour feels it important to indicate: "Si une telle erreur avait été commise dans le cadre de directives au jury, elle se serait probablement avéré fatale. Ici par contre, les contenues dans le cadre des motifs de jugement très détaillé du juge de première instance."

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And of course it would appear to me that the reasoning of Madam Justice Arbour in that situation is the following: If we let similar fact evidence on the multi-count indictment go to the jury, we don't know whether the jury--well let's look at various scenarios. For instance, if the jury on one of the counts of assault finds a reasonable

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doubt and acquits the accused, then on a different  
count of assault convicts the accused, the jury  
doesn't give reasons, therefore neither Your  
Honour, nor us, nor the Court of Appeal, if it gets  
to that point at some point, can ascertain whether  
the jury arrived at the proof beyond a reasonable  
doubt on an assault count...

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THE COURT: Well, what is she telling us here? Is  
she telling us to be more careful in assessing  
prejudice and probative value when you have a jury?

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MR. CHARLEBOIS: She doesn't quite go that far. She  
appears to say that probative value prejudicial  
effect perhaps more weight should be given to  
prejudicial effect when the allegations go back 30  
or 40 years.

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THE COURT: No, no, I have that principle and that  
makes sense to me. But as far as when you are  
weighing probative value and the prejudicial  
effect, does it make any difference that you have  
jury or you do not have a jury?

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MR. CHARLEBOIS: I believe it does for the following  
reason and although it's not expressly stated by  
Madam Justice Arbour I would extrapolate her  
comment about "Si l'erreur avait été commise en  
avant d'un jury elle..."

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THE COURT: I have difficulty to accept that  
questions of evidence should be decided differently  
before a judge alone or before a judge and jury. I  
mean it is all the same rules. Do we apply  
different rules with a jury? I can see where you  
might be careful in explaining to a jury...

MR. CHARLEBOIS: That's a good point.



THE COURT: ...but it would not affect that basic problem of balancing this probative value and prejudicial effect. I don't know.

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MR. CHARLEBOIS: I think that what--and I don't-- because the Court of Appeal in *Huot* did not specifically spell it out, I'm left to contemplate or speculate. And the spin that I would urge Your Honour to put on that decision, although I recognize that it's not expressly stated in there, is this: If it's a judge alone trial then the judge explains his or her reasoning and it's there for all to see and all to review as to how he or she arrived at proof beyond a reasonable doubt, whether it was on the independent evidence of a complainant, or partly on the evidence of the complainant and partly on the similar fact component to act as corroboration. If it's with a jury and we don't know...

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THE COURT: We never know with the jury, that is the point. We do not know how a jury arrives. They do not make a record of it. They do not...that applies in any jury trial. That is why I say, do I treat jury trials differently when I consider whether similar fact evidence should be mentioned to them? Or, should...they should be charged on that?

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MR. CHARLEBOIS: You mean if in the situation where you find that it applies, obviously?

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THE COURT: Yeah. Do I say, "Well, it's a jury, I do not know what their reasons are going to be so I will not give it to them?"

MR. CHARLEBOIS: No.

THE COURT: I do not know that is what she is telling us. I think the only thing she is telling us here is that be careful when you go back 50 years and be careful how you explain.

5 MR. CHARLEBOIS: Be careful how you assess prejudice and maybe you should be giving prejudice a little more weight when it's...

THE COURT: Does she say that? No, does she? You do not have to...

10 MR. CHARLEBOIS: Well, the plain reading of it in French appears to suggest that, Your Honour.

THE COURT: Okay, I will accept that she said that.

MR. CHARLEBOIS: Now...

15 THE COURT: Okay, so the prejudicial component should be looked at more carefully when you have a jury.

MR. CHARLEBOIS: The other thing that I'd ask you to consider is the purpose for which the proposed similar fact evidence is being tendered. Now, at this stage we haven't heard from the Crown as to the reason why she wishes to tender the similar fact evidence.

20 THE COURT: Well, it is always the same reason, is it not?

MR. CHARLEBOIS: Well there can be many reasons.

25 THE COURT: Well to buttress the count on which she is...

MR. CHARLEBOIS: Buttressing...

30 THE COURT: ...proposing to lead similar fact evidence, or have me charge the jury on the similar fact evidence.

MR. CHARLEBOIS: Well if it's to buttress the

credibility of the complainants who have testified, then I can move ahead and address that. If it's it...

THE COURT: Well, no, move the way you want.

MR. CHARLEBOIS: Okay.

THE COURT: Are we done with Madam Justice...

MR. CHARLEBOIS: Yes.

THE COURT: ...Arbour's decision. Okay.

MR. CHARLEBOIS: Now, if the Crown is purporting to adduce it for a different reason then I'll ask Your Honour for an opportunity of addressing that in reply.

THE COURT: You always--you have the opportunity of reply.

MR. CHARLEBOIS: It can't be buttress--or it can't proffered--or entered in my submission to establish identity because at the outset of this...

THE COURT: No problem here, you do not have to deal with identity, this is a done deal.

MR. CHARLEBOIS: Okay. Well, on that basis, I'm gonna argue forcefully that the Supreme Court decision in *Arp* then has no application, because *Arp* dealt exclusively with similar fact evidence tendered for the express purpose of proving identity.

In a nutshell, and I won't bore the court with all the details, but in the nutshell in *Arp*, the accused had been initially charged with one murder around 1990 or so, there'd been DNA samples or hair samples given voluntarily by the accused at that point, he was discharged at a preliminary hearing

5 and let go. Two or three years later the accused was picked up a second unrelated murder. The police got a warrant to seize the hair samples and other samples that had been voluntarily given by the accused in the first instance, match-ups were done using DNA, and as a result of that the accused was charged not only with the fresh murder, but also charged with the first murder. And at trial the issue was identity. And the similar fact evidence was adduced to establish and to prove identity.

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15 Now, that was--a careful reading of *Arp* makes it clear that it was limited to similar fact evidence used for the purpose of establishing identity.

20 Now, if after a careful reading of *Arp* Your Honour concludes that that's in fact what the limited purpose that *Arp* standards for; to establish similar fact for the purpose of establishing identity, then *Arp* really has no application in the case at bar because we are *ad idem* that identity's not an issue. In which case, we can in my respectful submission discard *Arp* and move on to *M.A.G.*

25 THE COURT: Okay. *M.A.G.*

MR. CHARLEBOIS: Now, I expect the Crown to attempt to convince Your Honour that *Arp* stands for more than the proposition that I have advanced...

30 THE COURT: You will have a right to reply.

MR. CHARLEBOIS: Thank you. But that's my position on Arp.

5 If Your Honour finds that it's the M.A.G. decision which is the decision here that most closely resembles the case at bar, and that it is the...

10 THE COURT: What I read from that is not--I did not read it in relation to case before us. I read the reasoning she goes through from start to finish to arrive at whether similar fact evidence either will be permitted or whether...well she does not deal with the multi-count thing, but I guess we are not talking about evidence at this stage; just what do I charge the jury with in similar fact evidence if I do. But she goes through the analysis and, you know, what comes first, what comes second, what comes third, and then finally we get down to the same thing; probative value, prejudicial effect. But she just sets the order in which the reasoning should follow, and similarity comes down...down the list.

15 MR. CHARLEBOIS: Now, before I get into detail in M.A.G., I'm going to speak briefly of the facts in our case. The trial we've been involved with in the last three weeks.

20 THE COURT: Listen, without disrupting anything, I prepared something on this last week, and I can't ask my officer to go look for it because he will never find it. Can I just absent myself for a minute and a half?

30 MR. CHARLEBOIS: Sure, Your Honour, it's your court.

R E C E S S

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

THE COURT: I just found what I was moaning about this morning about having lost over the weekend. I got it. Go ahead. Sorry.

MR. CHARLEBOIS: Now, if we're going into a more detailed examination of M.A.G. let's look for a minute at the facts in the case that we've been involved with for the last three weeks.

I'm going to suggest that the alleged counts of assault cannot be in any way shape or form found to be similar fact evidence, so that the court doesn't even need to get into the balancing act, prejudicial effect, probative value...

THE COURT: Okay, why so?

MR. CHARLEBOIS: Okay. Because the only common similarity is that school, that nun and the forms that the allegations take place are many and varied. How can a slap....For instance, Luke Mack, made to kneel and slapped for coughing...made to kneel all night, slapped for coughing, how can that have any correlation with Tourville being hit in the dining room with a ladle for passing something else or later being hit with a shoe for speaking to a priest? That's just one example that I'm giving you.

THE COURT: Okay, I agree with that, that the assaults in some cases took different forms.

MR. CHARLEBOIS: They took different forms, they occurred in different spots at the school and for various reasons. And I'd ask you on that point to consider what I had read to you of Justice Arbour

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in *Huot*, page 8, "Comme je l'ai souligné, les similitudes de comportements ne sont pas particulièrement remarquables, sauf dans la mesure ou elles dévoiles un comportement homosexuel envers des adolescents", because in *Huot* there were allegations of sodomy, allegations of felacio, allegations of indecent touching, so although it could all be alleged to be, well, it's all the same Christian brother, it's all at the Alfred Training School, and it's all a homosexual type of demeanour or acts, they took different forms. And my suggestion, it's what we have here. The allegations are of physical violence or physical abuse by one specific nun against students there at the time, but the alleged form of the physical abuse, the alleged form of the physical violence is in many instances different from complainant to complainant.

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THE COURT: Is the fact that the accused went through a worse form of physical abuse when she was a student relevant in establishing generally tolerated similar conduct?

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MR. CHARLEBOIS: Well, I know that there's evidence that the accused gave on her own behalf in connection with that. I must say that I never thought about that in connection with similar fact to the application of similar fact.

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THE COURT: Would the atmosphere and what is permitted in a certain institution, whatever, be relevant in this context?

MR. CHARLEBOIS: You mean--is Your Honour's question whether is would have been relevant--or the

atmosphere when the accused was a border and the atmosphere when the accused was a nun?

THE COURT: Both.

5 MR. CHARLEBOIS: Well the temporal--I think the space of the gap in terms of temporalness would be too different. I think the evidence showed that she was a border there from 1934 to 1941...then would have been a nun there from 1951 to 1962, so that the closest nexus would have been ten years, and then it stretches from ten years to well over 10 20 years.

15 THE COURT: No, no, but when you look at the whole thing, you know, children taken away from home at age five, not to return 'til they are ten, federal government ordering the closure of the school, you know those types of things. Does that come in in whether there was some type of an atmosphere there that was conducive, and that the evidence of some assaults could be used as evidence to buttress 20 other assaults?

25 MR. CHARLEBOIS: I would submit, not, Your Honour, because--and with the greatest of respect because I may be misapprehending the point, Your Honour...the question Your Honour is asking. We all have to be very careful, and I'm sure Your Honour is going to be, but my client not be made the apologist of that school or for the policies of the federal 30 government. And I think the court has to look at the degree of similarity. I am submitting and I won't beat this to death. My submission is going to be that the alleged physical assaults recounted by the various complainants do not have the



character, the stamp, the uniqueness that would make them similar fact evidence.

THE COURT: Okay.

5 MR. CHARLEBOIS: And as I said, I ask you in that context to consider page 8 of Justice Arbour's decision. If you find that the physical assaults or alleged physical assaults do not constitute similar fact that's the end of it.

10 Let's deal now with the noxious substance, the three counts.

15 I concede that the noxious substance counts may well, if accepted by the trier of fact, display that uniqueness or that...that stamp, if you will, that would at first blush make it similar fact evidence subject to probative value prejudicial effect. So, I'm not gonna waste too much time--in fact, I'm not gonna waste any time trying to convince Your Honour that the allegations of noxious or how they were alleged to have been committed would not be similar. I concede that there's sufficient similarity there to allow the Crown to overcome the first hurdle, that is the one of relevance and materiality.

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30 So my submission and suggestion is going to be that in connection with the noxious counts that the court skip the first part of the test and say "okay, the defence concedes that *prima facie* it's similar, let's see if probative outweighs prejudicial or the other way around."

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In connection with the alleged allegations of physical abuse, the court's gonna have to first determine if it is similar, if it's got that stamp, that brand of uniqueness. If not, that ends it. If it does, then we have to make the same balancing act consideration with it. But I certainly urge Your Honour to find merit in my submission that the fact that there were allegations of physical abuse at the same school, by the same nun are not sufficient for the reasons I have already alluded to in my submissions.

Now, with M.A.G., and the operative pages of M.A.G., and I've tried to make it simpler for Your Honour, and distilled it to its essence, the important pages, and they're not all important, but the important pages in M.A.G. that deal with probative value prejudicial effect start at 494 of the C.C.C. decision and go to 505. In connection with that, I find the important paragraphs to be: 494 - paragraph (g), 501 - paragraph (e) as in Edward and 504 - paragraph (h) as in Harry.

Now at 494, paragraph (g), in assessing--paragraph (g) "In assessing the prejudicial effect of the proposed evidence, consideration should be given to such matters as: How discreditable it is, the extent to which it may support an inference of guilt based solely on bad character..."

THE COURT: Just a minute. I'm not reading the same. Four ninety four...

MR. CHARLEBOIS: Four ninety four, paragraph (g) as

in George.

THE COURT: Oh, okay, I was reading...up...okay.

MR. CHARLEBOIS: "...in assessing the prejudicial effect of the proposed evidence, consideration should be given to such matters as: 1) How discreditable it is, 2) the extent to which it may support an inference of guilt based solely on bad character, 3) the extent to which it may confuse issues, and 4) the accused's ability to respond to it."

Now, I'm not challenging here, one and four because the jury already has heard that evidence; the one that's sought to be proposed or adduced to similar fact evidence as part of the indictment. So how discreditable or not it is, they've already heard. So you don't need to consider that. Four, the accused's ability to respond to it. You don't need to consider that either. Especially in a case where the accused has chosen to give evidence in her own behalf. So then, what Your Honour has to look at in, in my submission, in determining the prejudicial effect is the extent to which it may support an inference of guilt based solely on bad character, and three, the extent to which it may confuse issues.

Now, I'm gonna ask Your Honour to pay particular attention to that. Because--let's deal first with the extent to which it may confuse issues. This jury is going to be called upon to really decide only one issue in this trial, and it's credibility.

5 We all know that. Now, why does the jury need in  
assessing the credibility of one complainant, to  
look at the evidence of the other complainants?  
All of the complainants have testified. In two of  
the cases, Oliver Wesley has given corroborating  
evidence in connection with the complainant, Daniel  
Wheesk and George (sic) Kioke has given  
corroborative evidence in connection with the  
complainant, Eli Tookate. So not only has the jury  
10 heard the evidence of the complainants, in two of  
the six complainants that evidence has been  
partially corroborated, at least insofar as certain  
counts are concerned...

THE COURT: There are only three, are there not?

MR. CHARLEBOIS: Sorry?

THE COURT: There are only three complainants.

MR. CHARLEBOIS: No, there's six complainants, Your  
15 Honour.

THE COURT: In relation with noxious?

MR. CHARLEBOIS: No, no, I was dealing with the  
20 evidence as a whole.

THE COURT: Oh, oh, okay.

MR. CHARLEBOIS: So in connection with the six  
complainants in this trial, two have been partially  
corroborated on some of the counts, and in  
particular on the noxious substance counts, which  
25 are probably the most serious.

THE COURT: They corroborated which ones now,  
Tookate?

MR. CHARLEBOIS: Tookate is corroborated by Kioke.

THE COURT: Yeah.

MR. CHARLEBOIS: And Daniel Wheesk is corroborated  
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by Wesley...Oliver Wesley.

THE COURT: Right.

MR. CHARLEBOIS: Now...

5 THE COURT: Does the strength of the Crown's case...  
if you tell me...I am not saying that the case is  
strong, I am just saying, would the strength of the  
Crown's case be something that would be taken into  
account in not allowing similar fact evidence?

10 MR. CHARLEBOIS: I don't recall the cases dealing  
with that one way or another. Perhaps Miss Fuller  
will be able to find something that I haven't been  
able to...

THE COURT: Well pure commonsense would tell me the  
opposite.

15 MR. CHARLEBOIS: That the stronger the case the less  
you need.

20 THE COURT: The stronger the case, if you have it,  
put it in. If you have similar fact evidence that  
satisfies the similar fact evidence rules of the  
stronger the case, all the more reason to put it  
in, isn't it?

MR. CHARLEBOIS: I don't quite...I'm not quite  
prepared to subscribe...

THE COURT: Well the Crown should be...

MR. CHARLEBOIS: ...to that reasoning.

25 THE COURT: ...the Crown should be entitled to put  
forth all of her evidence...of its evidence,  
whatever you want to say. And if similar fact  
evidence is a factor, a strong case certainly would  
not diminish the Crown's chances of having similar  
fact evidence come into the picture.

30 MR. CHARLEBOIS: I...

5 THE COURT: A weak case maybe because then I would  
be--maybe that much more prejudicial. Do you want  
to convict somebody on similar fact only? Of  
course, I am pushing it to its illogical  
conclusion, but....Would a judge be entitled to  
reason this way: I will strengthen the Crown's case  
by allowing similar fact evidence that I otherwise  
would not allow? Or could a judge say, I will not  
allow similar fact evidence because the Crown's  
10 case is as far as I am concerned right now is  
strong enough? What do I know? The jury knows. I  
do not think the strength of the case has much to  
do with anything.

15 MR. CHARLEBOIS: Well the case law seems to be  
silent on it. They seem to just deal with--the  
probative value; is what purposes is it being  
tendered for? What does the Crown want to do with  
this similar fact evidence?

20 THE COURT: Maybe the reason it is silent on it is  
that it just does not have anything to with it. I  
would think that should not have anything to do  
with it. I do not think the strength of the  
Crown's case has anything to do with admissibility  
of similar fact evidence if it should be admitted  
or if it should not be admitted. It should stand  
25 on its own.

30 MR. CHARLEBOIS: Okay, well then I'll move onto  
something else. As I said, the extent to which it  
confuses the issues...I mean this jury has now  
heard from the complainants. They've heard in  
two...in specific instances, corroboration from  
other witnesses who are not complainants, and

they've heard from the accused.

5 THE COURT: Well the Crown does not propose to present more evidence. The Crown just proposes to submit to me that I should instruct them properly in the appreciation of similar fact evidence. How could that confuse them? I do not think it is a very...very complicated part of the charge, is it?

10 MR. CHARLEBOIS: Your Honour, no, I disagree there. It certainly one of the areas that, I, as a lawyer, have always had the most trouble with, and certainly from what other colleagues tell me it's an area that they have trouble with, and it's obviously an area that's being visited and revisited fairly frequently by the Court of Appeal and the Supreme Court of Canada. M.H.C., B.C.R., all these alphabet soup cases since 1990, many of them have dealt with similar fact evidence.

15 THE COURT: Well with the concepts, okay, maybe. Okay, let's call it "confusing" by its very nature; not in this particular case. Not because of the evidence in this particular case. As a matter of fact, I do not think it is confusing at all.

20 MR. CHARLEBOIS: Well, let's move on...

THE COURT: But, similar fact evidence rules are confusing, okay, I will...

25 MR. CHARLEBOIS: Let me try and--as I said, I'm happy to make my argument first. We can't lose sight of the fact though that it's the Crown who's got to overcome this hurdle, not me. She trying to get...or the Crown is trying...

30 THE COURT: What are...

MR. CHARLEBOIS: ...to get...

THE COURT: telling me? What are you tellin me?

MR. CHARLEBOIS: That the Crown's trying to get something in and I'm trying to keep it out.

THE COURT: Yeah.

MR. CHARLEBOIS: Okay. Now...

THE COURT: You telling me you want to sit down...the Crown take over now?

MR. CHARLEBOIS: No, not at all.

THE COURT: Okay, well, let's carry on with the argument.

MR. CHARLEBOIS: In assessing the prejudice, probably the best argument I can make to Your Honour, is, according to *M.A.G.*, 494, paragraph (g), "The extent to which it may support an inference of guilt based solely on bad character."

THE COURT: I appreciate that agreement--that argument. If we were facing an application by the Crown to bring in similar fact evidence...brand new evidence, evidence that has nothing to do with the case itself other than for the purpose of the similar fact argument, but here they have heard the evidence. They have heard the evidence of the three complainants, they heard the evidence...they heard the cross-examination of the three complainants, they heard the explanations of the accused, they are going to hear Miss Fuller's version of those facts, they are going to hear your version of those facts, and they are going to hear my charge when I go over the evidence. What is the prejudice now?

MR. CHARLEBOIS: The prejudice as I see it is that -  
-and I'm just taking names out of the air here on



5 these noxious substance, with no relation to their  
specific evidence, let's say the jury in their  
deliberations have some doubt as to the veracity or  
credibility of Mr. Tookate, then--and would be  
prepared to acquit the accused on that count, but  
say, feel that Mr. Wheesk, another noxious count,  
is credible, then how can justice be done if they  
say "Well, we've got a doubt about Tookate, but  
we'll convict on the Tookate count as well."

10 THE COURT: How can we guess what the jury is going  
to do as far a credibility after hearing all of us,  
all the evidence and they're in deliberating? How  
can we guess at that? Otherwise, if your argument  
would be correct, then it should never be  
permitted. But that is not the state of the law.

15 MR. CHARLEBOIS: No, the state of the law is  
normally it doesn't go in unless probative value  
outweighs prejudicial effect.

20 THE COURT: Period. That is the whole thing here.  
I don't know why...

MR. CHARLEBOIS: And if it's similar--I'm conceding  
that the noxious is similar. I'm not conceding the  
physical violence is similar.

25 THE COURT: I read you. I hear you. Not only is  
the noxious similar, it is something that is so  
unusual that it grabs your attention, does it not?

MR. CHARLEBOIS: Yes, I agree, which is why I'm not  
making...

THE COURT: And...

MR. CHARLEBOIS: ...submissions on that point.

30 THE COURT: ...exactly. You know, so....But then  
your argument that a slap here, a push there, a

kick...

MR. CHARLEBOIS: A kick...

5 THE COURT: ...there, in that context may not be similar fact evidence. There is a difference between the two. I agree with you.

10 MR. CHARLEBOIS: Now, I'd invite Your Honour again to look at the other two paragraphs that I had mentioned, 501 (e) and 504 (h). In 501 (e), if the matter is not an issue at all the evidence should not be admitted because it's irrelevant. Now, we know they can't be adduced in this case to prove identity because it's conceded.

THE COURT: Right.

15 MR. CHARLEBOIS: So I expect the Crown to say that it's going to be offered for the purpose of buttressing the credibility. If that's the purpose then obviously it's relevant and not irrelevant. But then, you have to look at 504, paragraph (h)...last sentence. "The forbidden line of reasoning is that which leads to the conclusion that the accused committed the offence with which he is charged, based not on the strength of the evidence, which has a connection to the issues in the case, but rather on the strength of the evidence that he is a bad person who would have a tendency to commit this offence." That is why the courts are loathed to allow similar fact evidence unless...

20 THE COURT: That's why the courts say they are loathed to allow it, and always allow it.

25 MR. CHARLEBOIS: Now, my bottom line submission here, now that I've canvassed the facts and

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canvassed the law, it simply this: Because there's one central issue only in this case, credibility, why does this jury who cumulatively, no doubt, have a lot more commonsense than those of us who've been working with the law for the last 20, 30 years...they don't need help in determining--I mean other than normal instructions from a trial judge, they don't need help in determining--or extra help in determining the issue of credibility. They've looked at the witnesses, they've been allowed to take notes, they've heard the issues, they've heard the corroborating witnesses, they can make up their own collective mind.

THE COURT: They are entitled to all that the law allows them to give. That is what they are entitled to.

MR. CHARLEBOIS: Okay. I'm...

THE COURT: It does not matter how strong the case is, how weak the case is.

MR. CHARLEBOIS: I'm submitting that at the end of the day and for the reasons I've alluded to in my submissions, that the prejudicial effect here outweighs the probative value in connection with the noxious, and that they should be charged on compartmentalizing the evidence...or compartmentalizing each count, period. And that in connection with the physical, we need not even get into a consideration of probative prejudicial because the conduct alleged is not similar enough to be called similar fact evidence in the first place, and that accordingly on the physical counts the jury should be charged on compartmentalizing

the evidence.

5 THE COURT: Okay. Deal with the assaults, okay?  
Just so you know where I am starting to think, the  
noxious is something that is a little more  
extraordinary than we normally see, and that may  
affect the similarity agreement quite a bit. But I  
did follow the assault argument quite closely...

10 MS. FULLER: Your Honour, my submission of course is  
that the noxious arguments are not only similar,  
they are positively identical. And what all the  
cases have made clear is that...

THE COURT: You do not have to deal with...

MS. FULLER: ...only the...

THE COURT: ...the noxious.

15 MS. FULLER: Yes, but only with respect to the issue  
of identity, do the facts have to be strikingly  
similar. So the fact that we have varying types of  
assaults is certainly not determinative of the  
issue. And on that particular point...I could  
just...refer you to...just because it puts it  
20 context, Your Honour, to *F.B.B.* a decision of the  
Nova Scotia Court of Appeal in 1993, that was...

THE COURT: Hold it now.

25 MS. FULLER: ...reversed in part by the Supreme  
Court of Canada but obviously not in this part.  
And in that case there was evidence of previous  
assaults by the accused on other children in the  
household. Even...

THE COURT: Which case is that now?

30 MS. FULLER: It's called *F.B.B.* and it's a Court of  
Appeal decision from Nova Scotia that went...

THE COURT: Well...

MS. FULLER: ...to the Supreme Court of Canada. But the...

THE COURT: Just a minute...

MS. FULLER: I don't think I--I don't know whether you have a copy of it Your Honour, but I...

THE COURT: Oh.

MS. FULLER: ...I...I...

THE COURT: Okay.

MS. FULLER: It was referred to in the summary of cases. And the reason that that case is useful is that the court says that, "Evidence of previous assaults by the accused on other children in the household, even though not of a sexual nature, was admissible as similar fact evidence on charges of sexual assault." In other words, not only were they not the same sexual assaults, they weren't even sexual assaults. And they were admissible to reveal the regime of dominance and violence imposed by the accused upon the victim and her siblings, and to explain why no mention had been made of the abuse for over 20 years.

THE COURT: Do you have a copy of that case? Do you have a copy of the Supreme Court decision?

MS. FULLER: I don't have a copy...I don't believe I have a copy of the case, but I refer to it because those are the facts, Your Honour, and what we're referring to or...

THE COURT: Well what did the Supreme Court of Canada have to say about the regime of domination and all that? I would be interested to read it.

MS. FULLER: The decision of the Supreme Court of Canada was...reversed the decision in part with

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respect to other issues. And I didn't pay attention to the other issues and didn't read the Supreme Court of Canada's decision. However, this memo is dated November '98. This decision was 1993 and the Supreme Court of Canada decision was 19, huh, huh...Well...

THE COURT: Well, I should...

MS. FULLER: ...actually, interesting...

THE COURT: ...read it.

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MS. FULLER: ...it says "1991", Supreme of Court of Canada reversing in part...1991. Unless it's gone up and down, as it could be, several times. But I didn't want to get into a lot of legal argument because I agree with Your Honour that what it boils down to is; Okay, probative value versus prejudice. 15  
And what are we talking about in terms of similarity? And in that case which is reported at 1993, 79 C.C.C., 3<sup>rd</sup>, 112, the court indicated that it was not only admissible to reveal a regime of thought, dominance and violence imposed upon the 20  
victim and her siblings, but also to rebut the defence of innocent association. The Court of Appeal also found there was a pattern of behaviour by the accused at the same time and place that the offences were being committed against the 25  
complainant, and furthermore there was a degree of distinctiveness, uniqueness and striking similarity in the evidence relating to the abuse of the siblings and the abuse underlying the offence 30  
against the complainant. Although they were not, having said that, the siblings were talking about physical abuse, the allegations were sexual abuse.

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And similarly in a case...and it's General Division decision January '94 in M.C. the court said that, "Although some of the allegations involving one of the complainants referred to certain sexual acts, it did not occur with other complainants..." this did not prevent the evidence from qualifying in similar fact. "The accused was either apparent or stood in local per entice to all of the complainants and the similar fact evidence provided the necessary background or context to understanding the living conditions of the complainants with the accused, the evidence showed a pattern of dominance involving various forms of abuse occurring in the homes where the accused lived."

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In this case they all happened at Ste. Anne's, they all happened within this ten year period, they all happened with respect to a trust relationship and a relationship of dominance between Anna Wesley and the complainants.

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The court also said in that case that it could be used to explain the length of time that had passed between these events.

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But just dealing with this issue, Your Honour. First of all, my position is that the cases don't require a striking similarity as they do for identity where you could see we had the wrong person. It's important. But in this case as well, my argument is that there is similarity.

5 They aren't the same acts, but they arise and  
manifest the same unusual characteristics, the same  
aspects of the accused exercising control in  
extreme control as Dr. Jaffe said, control to the  
point where, you know, the body rejects something  
and she's gonna force it down their throat again.  
She will control even bodily functions. And of  
course both of these actions, the noxious  
10 substances and the assaults are assaultive in  
nature. You will recall that in two out of three  
cases, the coercion is accompanied by slaps, and  
slaps are common in all of these cases, and the  
intention is to aggrieve or annoy, which is similar  
with respect to the situation in the assaults. All  
15 of the allegations, Your Honour, go to support a  
reign of terror, of absolute control by this woman,  
as Daniel Wheesk said "she went to extreme measures  
to maintain control." It is not a coincidence that  
both the noxious substances charges--in fact the  
20 pattern that emerged had not occurred to me until  
the trial started. The distinctiveness of the  
pattern emerging here, that all of the noxious  
substances charges and the assaults involve a  
denial by Anna Wesley of basic human aspects.  
25 Matters for which these children had no control,  
and were particularly shocking to us because these  
children --these are not matters that children  
could refrain from doing or not refrain from doing.  
They're all bodily functions. We urinate. "If you  
wet the bed, you get a slap. You should have gone  
30 to the bathroom." You defecate. "Well, you stayed  
outside too long. You should have come in sooner."



As if children intentionally wet their beds,  
intentionally soil their pants.

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Vomit - "Well, I think they had to eat everything  
on their plate, and I felt it was good for them to  
eat that cod liver oil, and I'm sure that it was in  
a--that the area where the cod liver oil was spit  
out was somewhere different." But the witnesses  
for the Crown say, "I threw up my food" and she  
said, "Eat it. Eat everything on your plate."

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Coughing - Again, it's something that a child can't  
control. It's our humanity. We get sick. You  
cough, and as Mr. Charlebois said when--suggesting  
that there was no similarity between Tony Tourville  
and Luke Mack, well of course there is. Luke Mack  
says he coughed, he got slapped, he also got told  
to get on his knees. What did Tony Tourville say?  
He coughed and he got punched in the face. Why?  
"Because I coughed." Did you think coughing was  
allowed...or were you allowed to cough? And Tony  
Tourville said "I don't think so."

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Getting injured - both of the complaints with  
respect to the injuries were neither...both of  
these complaints were of injuries that she didn't  
cause, but she had no tolerance for. She was  
unable to accept their injuries. In the one case,  
according to both the corroborating evidence and  
the complainant, slapping the child for not being  
able to keep up. Letting the injury get so bad  
that it was the Mother Superior who intervened and

the child was hospitalized. He was dragging his foot and crawling up the stairs before Anna Wesley would acknowledge that--was made to acknowledge that something had to be done.

Getting sick, you will recall the evidence of Daniel Wheesk...he threw up in his bed, he waited for her by the side of the bed, he slept the whole night with the vomit in his bed rather than tell her.

These children all knew something's wrong, you don't go for help, your needs to not get addressed and you do not bring them to her attention.

She comes to the side of the bed and hits him and screams at him at the top of her lungs for getting sick...for getting sick, for being children. You heard the evidence of Daniel Wheesk, "I got hit for playing with the gun in my belt." You heard the evidence of Edmond Mudd, "I got hit for throwing a snowball while in lineup." These are all bizarre. These are all irrational responses by a woman whose responsibility was to, according to her, apply the rules. And as she admitted, no, there was no rule that you can't wet your bed. There was no rule that you can't cough. Obviously, there was no rule that you can't be sick. And they're all of a piece, whether you vomit or whether you're coughing, you are in need of care and comfort. You are in distress when you are injured, when you wet your pants, when you...you are in need of something that

5 this woman was completely incapable of providing or knowing how to respond to. And her response in everyone of these instances was violence. Violence that made everyone of these complainants feel worthless. That their needs did not merit attention.

10 So, the Crown's submission is that all of these actions inform each other. That they go, unlike the case cited by Charlebois, the Court of Appeal decision where they say that "Le seul but d'appuyer la crédibilité de chacun des témoins..." In our situation there's certainly more than one reason for the admissibility of the evidence. It is to prove the real intent of the accused. That is that this woman was so filled with rage and hostility, the first time you hear it you think, "you know it's hard to believe" and then you hear another instance "well..." and another, and another. To prove the *actus reas...* to hear that a child be forced to eat their vomit, it's a pretty big burden for somebody to come to court and say that someone would make them do that, because it seems so inhuman to us. It's hard for us to believe. To prove that it was done, that this happened, the evidence is useful. And similarly with respect to that you would be assaulted for complaining about being unwell, or having an accident, or coughing, or throwing up. To prove a common plan, to corroborate evidence of the complainant where identity or *mens rea* is not an issue. To illustrate the background and history of

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the relationship between the complainant and the accused, these are all, Your Honour, all...examples of purposes in addition to credibility.

5 And I would refer just briefly to the *Leroux* decision which was a Northwest Territory Supreme Court case in August of '98 where the court noted, "The evidence was relevant, similar fact evidence was admissible on the accused trial for sexual assault...the evidence was relevant to the 10 credibility of the complaints. The necessity for the trier of fact to understand the context in which these offences occurred, to determine whether there was a pattern of behaviour, whether there was a nexus in terms of time frame, relationship 15 between the complainant and the accused, the circumstances in which the offences occurred..."

20 In every single circumstance the child is doing something that he can't help doing, and he is punished for it, and the manner in which it occurred.

25 The only other case I would refer Your Honour to is...again, it's *K.S.*, 1998, General Division case where the court said there was a common pattern to the licks (ph) administered by the accused. "And the evidence of one complainant that another was 30 beaten was receivable. The similar fact evidence was also receivable with respect to the issue of bodily harm. In that evidence of what happened to someone other than the witness was probative of the

conditions of the home, which in turn was relevant to the issue of vulnerability." And this an unreported decision that is referred to.

5 Dealing with--so the position of the Crown is that we have this nexus of...this bizarre and extremely unlikely that every single one of these complainants should be coming to us presenting  
10 allegations that show this pattern of neglect of their basic needs, as Doctor Jaffe said, we determine abuse by the--not only the action but by the relationship, the extent to which our basic needs are furnished." And in this case, the basic needs of these children time and time again were  
15 neglected.

20 So, the Crown's submission is that even if I had to establish that there was considerable similarity, that the Crown has established it in the facts of this very unusual case. But that apart from that, Your Honour, what we look at in terms of...as you have said, we're talking probative value versus  
25 prejudicial effect, the three things that the court considers in terms of probative value...how probative is it, is the strength of the evidence. Well here the Crown is adducing eyewitness evidence of complainants who stand for a count in the  
30 indictment in their own right, not a "maybe", it maybe it was the accused who was responsible for these other matters, but the accused was responsible for these other allegations. In addition to the strength of the evidence there is

5 the extent to which the proposed evidence supports the inferences to be drawn from it, which correspond to the degree of similarity between the prior misconduct and the offence.

10 What are the inferences to be drawn from the proposed evidence? Well, obviously, Your Honour, they are inferences that the one act occurred in the same context with the same pattern of behaviour, with the same hostility or animus directed towards these children as the others.

15 As well the court must consider the extent to which the matters it tends to prove are at issue. They are the whole issue. And I would give you an example of that Your Honour because I think that this is the crux of the situation. It comes into play both in terms of assessing probative value and prejudicial effect, and that is: Well, does this really support an inference of guilt based "solely" is the term "on bad character" or does it really go to an issue? The Crown could call...or could not call, but the Crown could attempt to call evidence on the bed-wetting issue, through witnesses to say to contradict her evidence and establish she assaulted children for bed-wetting, to support the argument of Eli Tookate, by adducing evidence that on prior occasions she in fact not only assaulted, when she said, "I always tried to help bed-wetters" that she in fact put a diaper on Alphonse Tourville and paraded him around the school to solve his bed-wetting problem, dressed another child up as a girl

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and in front of the girls' section told the girls that this is what happens when you wet beds. I think the court would say, "Miss Fuller, that is relevant to counter her argument that Ms. Wesley only tried to help." But it would lead to an inference of guilt based on bad character. It would be far more prejudicial. However, in the case...the cases or the facts before you Your Honour...the facts at issue and the issues are the same. The same violent, assaultive and dehumanizing behaviour.

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And when we talk about commonsense, I think that commonsense does have a place here. And it's only commonsense that for the court to decide, or for the jury to decide whether or not it is likely that Anna Wesley punched Tony Tourville in the face for coughing in his bed one night that on other occasions he (sic) slapped Luke Mack, and on other occasions when a child was sick he (sic) slapped them by their bedside, all in the dorm. And on other occasions when children were throwing up she slapped them and forced them to eat their vomit.

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And that for the court to say, "members of the jury compartmentalize this" runs counter to the evidence that should be at their disposal.

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THE COURT: Is that it? Do we have an argument in relation to the reply evidence?

MR. CHARLEBOIS: Does Your Honour want me to reply to the physical...

THE COURT: No. How about the reply evidence problem? Has that been solved or...

5 MS. FULLER: Uh, no, Your Honour.

THE COURT: Okay, what is the problem?

MS. FULLER: There isn't a problem, Your Honour.

THE COURT: Oh, there isn't? Okay.

10 MR. CHARLEBOIS: Of course there's a problem. It was mentioned this morning. I don't know--I suspect that the witness sought to be called is Leo Loone. I have no idea what Mr. Loone is going to purport to say in reply. First of all, I'd like to ascertain if the witness is Mr. Loone.

15 THE COURT: Well, you know maybe there is not a problem at all here, that the reply evidence is proper reply evidence. I mean, go right ahead and give it to the jury if you talk.

MR. CHARLEBOIS: How can we gauge that, Your Honour, until we...

20 THE COURT: I said, "If you talk".

MR. CHARLEBOIS: I'm sorry?

25 THE COURT: I said, "If you talk", and if there is a problem well then we can hear submissions and I will make a ruling as to whether it is proper reply evidence or collateral or whatever.

MR. CHARLEBOIS: My unders...

THE COURT: I do not know why I was told that ten minute witnesses...creating so much of our time...

MR. CHARLEBOIS: I understood...

30 THE COURT: ...unnecessarily.

MR. CHARLEBOIS: I understood this morning, and I



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may be wrong, but I understood this morning that Miss Fuller said that she would prefer to outline the proposed evidence of the reply witness on the record. I may have been under a misapprehension there.

THE COURT: Well, if you do, you do, that is fine with me.

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MS. FULLER: Yes, Your Honour, but I used the time that we had this morning to prepare the similar fact argument and I still have to interview my witness who is here, and write out a little blurb on what he will say.

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THE COURT: Well, why did you not tell me ten minutes ago. Sure, let's take a break for how long you want.

MS. FULLER: I think...

THE COURT: Fifteen minutes? And you will be prepared to tell Mr. Charlebois what the evidence will be...

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MS. FULLER: Yes.

THE COURT: ...so he can ascertain whether he feels it is collateral or proper reply?

MS. FULLER: Yes.

THE COURT: Okay. Very well.

R E C E S S

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

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MS. FULLER: Your Honour, there are two witnesses in reply that the Crown wishes to call. The first would be Leo Loone and it would be a recall on the issue of whether or not the children were made to kneel as punishment, and you will recall that we

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have a couple of complainants who indicate they were made to kneel, and Anna Wesley's evidence categorically on at least four different occasions said she never ever used punishment...kneeling as punishment because of her experiences at the school. That is evidence that goes to the allegations before the court. It would not have been appropriate similar fact evidence. It would have been not--the fact of kneeling would not have been a similar incident, kneeling itself not being an assault. That is one issue that Leo Loone can speak to. And I might advise the court that Mr. Charlebois is aware of Leo Loone's statement in this regard that he gave to the police in 1992 or 3 about this incident where he was made to kneel for hours and hours in a hallway and was slapped for falling asleep, as punishment. And that was provided as part of the delayed disclosure. It's now going on four weeks he's had it, Your Honour...this particular statement. Certainly before the accused gave evidence.

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But in any event, the Crown cannot anticipate what evidence is gonna to be called by the defence.

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As well, Leo Loone can give evidence with respect to other people being made to kneel. It was a common occurrence. A common practice of punishment by Anna Wesley.

As well, Leo Loone can give evidence that children were not allowed to go to the bathroom after they

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went to bed. And you've heard the evidence of Anna Wesley indicating that "no, children were allowed" both with respect to when they were in their bed at night and when they were outside playing. And Leo Loone would indicate "no, you were not allowed to come into the school and use the bathroom at playtime". And in fact, he can give a very specific incident with--it's not just general memory of not being allowed to go to bed--or not being allowed to use the bathroom after bedtime. He recalls an incident where the boys all had diarrhea as a result of some maple sugar fest and they had too much sugar and they all had diarrhea and they all--in the night...and the toilet bowl became full because no one would flush the toilet because they knew that if they did they would get in trouble.

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He would also give evidence that you had to eat everything on your plate. That even gristle, even muscle...you were expected to do it, and he knew he had to do it, it was not an option. And you will recall the evidence of Anna Wesley that "no, they didn't want to eat, they didn't have to". And yet the evidence of the witnesses and the position of the Crown is not only did you have to eat it, but if you threw it up you still had to eat it. Food was good for you, you will eat it.

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The evidence of Ed Metatawabin who happens to be here this morning, is that he went to the school from the period of 1953 to about 195...I forget

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eight or nine, and he recalls that during that period of time the building that was the old hospital and dining room was heated with hot water rads. And of course that is an important feature that was not made an issue until Mr. Charlebois who did not cross-examine Edmond Mudd on this issue, adduced through his client that; no, there were no hot water rads in that building. There was this grillage...this grill system with vents. There was no radiators, therefore, he couldn't have been kicked in the head and hit his head upon the radiator as he indicates. Obviously, the Crown couldn't have anticipated that that factor would be an issue, and therefore in the Crown's submission...

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THE COURT: There were no hot water rads in the new building?

MS. FULLER: Pardon?

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THE COURT: There were no hot water rads in the new building?

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MS. FULLER: I don't know about the new building. All I know is that the time period that both Edmond Mudd and Anna Wesley are referring to is in the old building and it's a...

THE COURT: Okay.

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MS. FULLER: ...it wasn't the dorm, it was the separate building that had the hospital and the diningroom, and he says, "I cracked my head on that steel hot water had..."

THE COURT: I heard that.

MS. FULLER: ...rad, and she says "no, there were no hot water rads."

THE COURT: Is there anything else?

5 MS. FULLER: Those are the only two witnesses and that is the evidence....Oh, Ed Matatawabin, I'm sorry. The second point, the rad and the kneeling he recalls specifically being made to kneel as punishment by Anna Wesley. And again, Anna Wesley who contradicts the witnesses on this and puts them in...their credibility at issue, says "I never ever made a child kneel by way of punishment" so if 10 there is evidence to say "yes, you did", that is evidence that rehabilitates a witness that she attempts to contradict, and is admissible in my respectful submission by way of reply since this is the first time that the Crown could be aware of her 15 position that no one was ever made to kneel. Not Luke Mack, not anyone. It was not George Wheesk, not anyone.

THE COURT: What is your position on the kneeling?

MR. CHARLEBOIS: That it shouldn't go in. I've got a number of submissions to make and...

20 THE COURT: Whoa, whoa, whoa. What is your position on not being able to go to the bathroom after you went to bed?

MR. CHARLEBOIS: It shouldn't be allowed. I can tell you what I feel should be allowed.

25 THE COURT: What should be allowed?

MR. CHARLEBOIS: Mr. Metatawabin, on the radiators or heating system in the old building because the Crown could not have anticipated that. I recognize that.

30 THE COURT: Okay. What else?

MR. CHARLEBOIS: That's it. And I'm prepared to

make extensive submissions.

5 THE COURT: I think that you would be splitting your case if I would allow all of that in. I don't think that I should allow the evidence of kneeling. Kneeling was dealt with with many of the witnesses. To buttress the case at this stage on a collateral issue, it is not...there is no charge there that she unlawfully made them kneel, so I do not think that evidence should go in.

10 I agree with Mr. Charlebois that the fact that the rad should be met, and I also agree with the Crown that the bathroom issue was never cleared up. They stated they couldn't go, she stated they could go.

15 As to eating everything in their plate, we heard evidence on that, and it is collateral anyway.

So, we need evidence on the rads and on the bathroom.

20 MS. FULLER: Would that be inside and outside, Your Honour? There are allegations with respect to both inside and outside...response.

THE COURT: What the bathrooms?

25 MS. FULLER: Yes. Outside they weren't allowed to-- she indicated that anybody could come in, I...

THE COURT: The evidence that I understood from the complainants was that they couldn't use the bathrooms at night...

MS. FULLER: Yes.

30 THE COURT: ...that they couldn't use the bathrooms when the door was locked...

MS. FULLER: Yes, during the day.

THE COURT: ...and the evidence I heard from the accused was that they could use the bathrooms anytime they wanted to.

MS. FULLER: Right.

THE COURT: That can be cleared up.

MS. FULLER: Thank you, Your Honour.

COURT CLERK: Ready for the jury?

THE COURT: We are ready for the jury.

COURT CLERK: Would you bring the jury in, please?  
....JURY ENTERS (No time available)

MR. CHARLEBOIS: Perhaps I should indicate formally for the record because it hasn't already been done, that the defence rests.

THE COURT: We now, as I explained to you originally, after the defence is through with its case, the Crown has a right to lead witnesses--or lead evidence through witnesses, in reply in very narrow areas to meet certain things that have not been dealt with and brought out in cross-examination.

MS. FULLER: I'd like to recall Leo Loone to the stand, please.

COURT CLERK: Mr. Loone, I simply want to remind you that you are still under oath from last week, okay?

RE-EXAMINATION (REPLY) BY MS. FULLER:

Q. Mr. Loone, you gave evidence, I believe last week, with respect to certain matters, and I have a couple of more questions to put to you as a result of the defence case. First of all, we know you were at that school for a number of

years during the late '50s early '60s. During that time, Mr. Loone, while you were...you and the other boys, while the boys were outside during play period, whether it was stay outside 'til dinner or recess or whatever, were students allowed by Anna Wesley to come in and use the toilets in the school?

A. No.

Q. And how sure or unsure are you of that?

A. I remember, uh, specifically uh she mentioned that if anybody needed to go to the washroom uh before going outside we'd have to go before going outside.

Q. Alright. And did accidents happen while people were outside?

A. Uh there was a number of kids that had problems uri...urinating...problems, and couldn't hold their uh uh urine in, so, uh there were those kids that had uh that had accidents, yes.

Q. Okay. And what about once you went to bed at night...the uh...once you went to bed at night--first of all, did the boys go to the bathroom before they went to bed?

A. Uh, yes, we...we had to line up to go to the, uh, to the uh...to the...to use the washrooms.

Q. Alright. And once you were put to bed at night were you allowed to get up in the night if you needed to go to the toilet and use the toilet?

A. Uh, no, we weren't allowed to.

Q. And is there an incident that you recall specifically about that...that makes you remember that you weren't allowed to?

A. Uh, I recall uh, uh, there were times, uh, there was one time specifically that I recall...it was in the spring we would go out and have uh, uh, "sugar party" we used to call it, that was put up by the uh brothers of the mission



to uh, to have uh some kind of a syrup mixture with uh...in snow, and we'd have a lot of it...

Q. Maple syrup?

A. ...we'd have it--syrup, yeah.

Q. Uh-hum.

A. We'd have a lot of that and uh...and when we came back to the uh...to the school after uh...after a whole day out there, kids would have problems with uh diarrhea...after...after bedtime, and when we...when uh...when they knew...when we knew that we couldn't uh flush the toilet and go into the washrooms, all the...all the bowl...the toilet bowl was filled up because we couldn't flush it...

Q. Well you could, but what would happen if you did?

A. We could, but we were scared that the sister uh just a door away would hear the...the toilet flushing and we'd get punished for it.

Q. And when you say "the sister" who do you mean?

A. Uh Anne Wesley.

Q. Thank you.

RE-EXAMINATION (REPLY) BY MR. CHARLEBOIS:

Q. This incident about the sugar bush party, the boys having diarrhea, the toilet bowls filling up, is that something you remember well, Mr. Loone?

A. Uh it's very vivid in my mind, yes.

Q. Okay. It's something that always stayed with you?

A. It always stayed with me because um it was outstanding, yes.

Q. Did you say "outstanding" that was the word?

A. Yeah, it's outstanding in my mind. It was uh

that...that uh...that time, yes.

Q. Okay. And that's a memory that never left you, right?

A. Yeah.

Q. Do you agree with that?

A. Yes, I agree.

Q. Mr. Loone, you gave a statement to the police didn't you, in connection with this investigation?

A. Uh, yes.

Q. Do you remember what year that was, sir, approximately?

A. Uh, it was sometime after the uh reunion we had up there in 9...the summer of '92.

Q. Okay, so sometime after the healing conference in '92, you had occasion to give a statement to the police...

A. Yes.

Q. ...is that right?

A. They uh were doing the investigation, yes.

Q. Did you give just one statement, sir, or more than one?

A. Uh, there was only one.

Q. Alright. And I'll be showing it to you in a minute, but do you recall it as being a lengthy statement, sir?

A. Uh, it's quite...it was quite lengthy, yes.

Q. Yeah. In fact, I'll show it to you in a minute, I was trying to find the original here through the police but I...the original is not handy for us, but, the typewritten copy that I have is double spaced and actually covers one, two, three, four, five pages and just a little bit. First of all, do you agree with, Mr. Loone, that that is your statement?

A. Yes, it is.

5 Q. Okay. And is that, Mr. Loone, from looking at the format of the statement here, it would appear that about-- after giving the statement to the police, and you'll have to bear with me because the copy I have is formatted differently than yours...may I look at this, please? Sorry, Mr.

Loone....That--after giving the police a...almost four page typewritten, double-spaced statement, that you then added quite a number of things, right? You started out by saying, "I wish to add some things that I forgot."? Do you see that?

10 A. Yes.

Q. Okay. And then you went on to relay other events at the school, is that correct?

A. Yes.

Q. For about another page and a bit.

15 A. Uh-hum.

Q. Have you had a chance to read your statement, Mr. Loone, either last week or today?

A. Uh, yes.

20 Q. Okay. Would you agree with me, Mr. Loone that nowhere in that lengthy statement to the police directly or indirectly you make any reference to this incident about the boys all having diarrhea, the boys wouldn't flush the toilets because they were scared that Sister Anne would hear the flush and the boys would be punished for it? Do you agree that nowhere directly or indirectly in your lengthy statement to the police is there a reference to that...it's silent?

25 A. The uh...when I was making my statement at the time that they were uh questioning me about my story of what...what had happened to me during that time, there are numerous things that I...that I hadn't mentioned, that I could...

30 Q. Mr. Loone...

A. ...that I could add on even today that I...that I haven't had a chance to talk about.

Q. That's not the question, Mr. Loone.

A. Yes.

5 Q. Do you agree, sir, that your statement to the police, that lengthy statement...

A. Uh-hum.

10 Q. ...makes no reference directly or indirectly to the incident who've just talked to us about...about sugar bush, diarrhea, flushing toilets, punished for flushing the toilets...

A. Yeah.

Q. ...do you agree with that?

15 A. If I was asked directly I would have answered it the way that I recounted it right now.

Q. Mr. Loone, that's not what I'm asking you. It's a simple question, sir. Do you agree that your statement is entirely silent about that incident, yes or no?

20 A. Yes, it is silent, but I would have...but I would have attested to it if I was asked, yes.

Q. Well, you're the one who just told this jury before I put the statement to you that this incident, this memory, this particular one, never left you, it's always stayed with you, didn't it?

A. It always does. It always is today, yeah.

25 Q. Well, if it always stayed with you, sir, and you never forgot about it, as you've told this jury, why didn't you tell the police?

A. Because it ne...it never...uh because I...I...it wasn't asked of me at the time.

30 Q. Uh-hum.

A. I would have...I would have told them about

it. It's something you can't forget.

Q. Well, if it's something--well, anyway, it's not in the statement, right?

A. Yeah, and it's something you can't forget...

Q. Yeah.

A. ...I want to...I want to point that out too.

Q. Okay. While we're point things out, the other thing I want to point out...you were present in court on Friday for the entire cross-examination of Anne Wesley, weren't you?

A. Yes, I was.

Q. Were you also present for her examination in-chief? That's when I was asking her questions Thursday.

A. No, I wasn't here.

Q. But you were present for all of Miss Fuller's cross-examination on Friday?

A. On Friday I was here for most of it, yes.

Q. Thank you, sir.

RE-EXAMINATION BY MS. FULLER:

Q. Just one question, Mr. Loone. Would you have had any reason to believe that the police or the Crown....Would you have had any reason to believe that the police or the Crown would be interested in the toilet practices at the school when you gave your statement?

A. No.

Q. Thank you.

THE COURT: Thank you very much, sir, you can step down.

A. Yeah.

MS. FULLER: I'd like to call Mr. Ed Metatawabin.

EDMOND METATAWABIN: SWORN

EXAMINATION IN-CHIEF BY MS. FULLER:

5 Q. Mr. Metatawabin, I understand you were born in Fort Albany and went to Ste-Anne's School for about eight years from 1955 or 56 until 1963, is that correct?

A. Yes.

Q. And then thereafter you went on to high school?

A. High school in Kirkland Lake, yes.

10 Q. And I understand that you were instrumental in an investigation being launched into the residential school allegations of abuse, is that correct?

A. Can I expand on that?

Q. No.

THE COURT: No.

A. Okay.

15 Q. Just say "yes" or "no".

A. Yes.

Q. Alright. Now, I understand, sir, that you were not subpoenaed as a witness here today, you just happened to be here today?

A. Yeah, I just happened to be here, yes.

20 Q. Alright. And that I just happened to see you before I was coming into court...

A. There was a reason...

Q. ...and I asked you a few questions?

A. Yeah. There is a reason for being here for me.

25 Q. Uh...

A. So can I...

MR. CHARLEBOIS: If this witness...

30 THE COURT: Listen, this is reply evidence. The rules are very, very strict for a very, very good reasons, so I am going to ask you to be careful.

MS. FULLER: I will, Your Honour.

Q. Mr. Metatawabin, we can only speak about a very narrow issue.

A. Okay.

5 Q. Do you recall my asking you about when you were at the school, whether there is an old building known as "the old hospital" that had the hospital upstairs, the diningroom downstairs?

A. Uh, the building is still there. It's referred to as "the old hospital".

10 Q. Alright. And I understand it served many functions over the years and decades?

A. Yes. Yes.

Q. Alright. And while you were at the school what do you recall it being used for?

15 A. Uh, we used it first thing in the morning as a chapel in the very top and then followed by uh, uh, a meal, so three meals a day...

Q. Uh-hum.

A. ...and then classrooms during the day.

20 Q. Alright. And where was the dining room? On what floor?

A. Dining room was in the uh main floor.

Q. Alright. And was there a hospital part in the building?

A. In the middle...

25 Q. In the middle...

A. ...section.

Q. ...floor?

A. Yeah.

30 Q. Alright. Do you recall, sir, what the heating system was in this building while you were there?

A. The heating system is still there today even

though not in...not in operation. The uh...there's stove...wood stoves, large ones...

Q. Huh-hum.

5 A. ...and there's piping from the garage in a...in a tunnel connecting to the hospital, so it's...it's connected to a system of heating in the old hospital.

Q. And what type of heating system is it?

A. Radiators, they're all over the place.

10 Q. Radiators. So this is a hot water heating system?

A. At the time I didn't know, but we know now.

Q. Alright. Are these like the big old radiators that you see in old buildings?

A. They're very heavy...

15 Q. Okay.

A. ...in steel.

Q. Thank you very much.

MR. CHARLEBOIS: I'll need a moment, Your Honour, because this statement from this witness was just given to me as he started to testify in-chief.

20 It's hand written and it's not long, but I'm in the process of reading it. I'll need a couple of minutes. I don't think that nobody needs to leave or anything.

25 THE COURT: Well, start reading.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. You were born in what year, Mr. Metatawabin?

A. In '47, I was told.

Q. In 1947, you were told?

30 A. By my mother.



THE COURT: Do you have personal knowledge of your date of birth?

5 Q. Now when you arrived at the school, from what this statement says around 1955 or 1956, would this have been after the big fire in 1954?

A. After the big fire, yes.

Q. So, when you arrived at the school you would have been eight or nine years old, is that about it?

A. Or maybe uh six...

10 Q. Well you were born in '47...

A. ...seven, eight...

Q. ...you arrived in '55, that would make you roughly eight. If you arrived in '56, would make you eight or nine, wouldn't it?

15 A. I graduated in '63. I finished grade eight in '63.

Q. Okay.

A. And I was there to finish eight grades.

20 Q. Well, to your best recollection. I'm just going here by the dates you gave in this statement. To the best of your recollection how old were you when you arrived at Ste. Anne's?

A. I was uh quite young. It's not something we counted then. I don't know how old I was, but I'm just going by the calendar.

25 THE COURT: Okay.

A. And I know for sure I graduated in '63. I finished grade eight, so I just assumed I did one grade each year.

30 Q. Okay, we've established through your evidence that you arrived there after the fire, right?

A. Uh-hum, yes.

Q. And if I suggest to you that the fire took place in April of 1954 would you agree with that suggestion?

A. No, I wasn't there, we were in the bush at the time, I don't know.

5 Q. Okay. So, if I go by your statement here and you arrived at the school either in '55 or '56, and you were born in October of 1947, and I suggest to you, sir, that when you arrived at the school, if you arrived in the fall of 1955, you would have been approximately eight years old, if you  
10 arrived in the fall of 1956, you would have been approximately nine years old, does that make sense to you?

A. Would I be 13 by 1963?

Q. No, sir, in 1963, if you were born in '47, that would make you...in the spring of '63 that would make you 15 and in the fall of '63 it would make you 16.

15 A. Yeah. Well, I was the same age as the high school students approximately.

Q. Well, would you then agree with me that...although you are sure of your date of birth, that your unsure of the exact years you arrived at Ste. Anne?

20 A. Even the date of birth is under question because the records were burnt and there was a lot of guessing.

Q. But surely, sir, one of your parents would have informed you of your date of birth, that's not records?

A. Yes. Yes.

25 Q. And that's why you know you were born on the 20<sup>th</sup> of October '47, correct?

A. That's what they tell...tell me.

Q. Okay. Now...

30 A. At the beginning it was 1948, but there was a correction to '47, and I don't know why that happened.

Q. Now, as a boy of whatever age, eight, or nine,

from Fort Albany?

A. Oh, yes, after high school I went to university.

5 Q. Okay. So, my question, Mr. Metatawabin is the following: How do you know whether or not the heating system changed at any time between 1955, 1956, and what you know of it today?

A. Uh, there was no, uh, means to deliver oil at that time.

10 Q. I'm sorry, would you repeat that, please?

A. We never saw any fuel...drums. We saw a lot of wood.

15 Q. Okay. But what I'm saying is; between the time you were in Kirkland Lake or the time any of your other extended absences from the school, it is conceivable during your extended absences that the heating system could have changed, right?

A. Yeah.

20 Q. And you'd have no way of knowing that. You could just tell us the heating system is today, right?

A. You're talking about the old hospital?

Q. Yes, the building you've been testifying to.

A. It's not heated today.

25 Q. Okay. Now, from what you recall then, you were telling us that it was in the basement, a big furnace that you would see wood thrown in? Is that right?

A. Yeah, there's a furnace in the old hospital, as well as the new residential school building.

Q. Okay. For the time...

A. It was all...it was all wood.

30 Q. Okay. For the time being now, sir, I want to confine it to the old building, okay,

A. Yeah.

Q. ...it's the only one I'm interested in.

A. Yeah, we see wood being thrown into the furnace.

5 Q. Now, you mentioned something about...in your evidence about piping.

A. Uh-hum.

Q. You would see piping?

A. Yeah.

10 Q. And the piping was coming from the basement?

A. Uh, there was a garage...underground tunnel connected to the hospital and within the underground tunnel was piping.

15 Q. Okay. Now, where was the hospital? Was it a different building?

A. Different building. It was uh, I would guess about 30 feet between the buildings...maybe more...30 to 40 feet.

20 Q. You mention that the dining room was--I forget whether you said quite small or very small--what do you recall about the size of the dining room?

A. There were a lot of us...a lot of students. I think there were about one, maybe three large dining room...dining tables.

Q. Uh-hum.

25 A. Long....Maybe four. But it was quite crowded.

Q. Okay. Thank you, sir.

RE-EXAMINATION BY MS. FULLER:

30 Q. Mr. Metatawabin, to clarify, you indicated when you spoke to me that there was the dining room on the main floor, the hospital on the middle floor, the chapel on the top

floor, and you were talking just now about a tunnel connecting to the hospital which was a different building, is that at a different stage, or what are we talking about there?

5 A. I think uh that building...the old building uh connected to the hospital uh...it was there as a garage for the missionaries.

Q. Uh-hum.

10 A. And also as a mechanical function...containing the...the wood stove. So that's where all the...the fire was being built.

Q. Right.

A. And the water came from that stove onto the hospital.

15 Q. Right, but what I want to know is, are there two hospitals at the same time? One in the middle floor of that building, and another in another building?

THE COURT: Are we going to have another direct examination? I thought this man...

MS. FULLER: Well it came up in cross, Your Honour.

THE COURT: Can I finish?

20 MS. FULLER: Certainly, Your Honour, excuse me.

THE COURT: I thought we were talking about the existence of radiators, here.

MS. FULLER: We are.

25 THE COURT: I've heard more evidence as to hospitals and buildings and dining rooms and...every but radiators. The man mentioned a radiator once. There were radiators. Everybody left it alone. How long are we going to go on here talking about peripheral matters...other than radiators?

30 MS. FULLER: I just wanted to clarify, Your Honour, about the hospital issue, whether...

THE COURT: Well, what's the hospital got to do with this? If it has something to do with it, by all means...

5 MS. FULLER: It does have to do with a count on the indictment, Your Honour.

THE COURT: Go ahead.

MS. FULLER: Thank you.

10 MS. FULLER: Q. Perhaps, I'm just not understanding, Mr. Metatawabin, but in that old hospital building, you indicated that when you were first there there was the dining room on the main floor, the hospital on the middle floor and the chapel on top.

A. Yes.

15 Q. Right. And now you're talking about a tunnel leading to the hospital. Is this a different building or are we talking about the same building?

MR. CHARLEBOIS: He already testified it was a different building, Your Honour.

20 MS. FULLER: Could the witness answer the question?

MR. CHARLEBOIS: No, I'm making an objection.

THE COURT: If I could, I would quit. I do not see the relevance of your questions. I really do not, but in case I am missing something here, go ahead.

MS. FULLER: Thank you.

25 A. The uh garage was the mechanical source.

Q. Yes.

A. Or the heating source.

Q. Yeah.

A. And the piping went under a tunnel...

30 Q. Yes.

A. ...towards what we ref...what we call is "the

old hospital".

Q. The "old hospital building". So it's all the same building we're talking about then?

A. It's two buildings.

Q. The garage and the old hospital building with the dining room in it?

A. Yeah.

Q. Thank you.

THE COURT: Thank you very much, sir.

MS. FULLER: That's all the reply evidence, Your Honour.

THE COURT: Thank you. Members of the jury, even though it is not our fault, I feel that I owe you an apology. You were brought here today for this. No more evidence will be offered. I assure you it was something totally beyond all three of our control that happened over the weekend, that we cannot proceed with the addresses of counsel this afternoon. Had I known soon enough, we could have probably called you this morning and told you not to come and just do this evidence we just heard here, tomorrow morning immediately before the addresses, but that didn't happen. So, we brought you over here for less than an hour, again. What will happen next, for sure, I will hear the lawyers' pre-charge submissions. They mentioned to me what they would like to hear...or what areas I should cover in my charge. It does not take very long. We'll do that this afternoon.

Tomorrow morning at 9:30, if you do not mind. Sir, you are from Kapuskasing, I hear, is that okay? At

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9:30 we will start with the submissions from the lawyers, starting with defence counsel, then with Crown counsel, after which I will give my charge. And I hope that by mid-afternoon my charge should be complete, and you should be ready to start deliberating. In case you cannot agree tomorrow, you will be sequestered. This is it. Once my charge is given, you go into the jury room and you do not get out unless we put you to bed. You may bring a few things with you in case you cannot agree tomorrow and have to stay overnight. I think then too, we will take the Trivial Pursuit Game. There is nothing wrong with that, by the way. I would ask you to be here tomorrow at 9:30.

....JURY RETIRES (No time available)

THE COURT: Shall we go for lunch or do you want to just give your submissions...take ten minutes?

MR. CHARLEBOIS: I'd be prepared to do it now, Your Honour.

THE COURT: Okay. You too? I can advise you on the similar fact argument, I will charge the jury on similar facts on the question of noxious substances, I will not charge the jury on similar facts on the six counts of common assault and one count of assault causing bodily harm having occurred over a period of 11 years while she was in the care of hundreds and hundreds of students. I believe that they are two distinct areas. I do not believe that the probative value required in relation to the assaults...they're strong enough. Even though there are only three counts in the noxious substance matter, I think that those are



charges that are extremely rare, incidents that are extremely rare again, and that their probative value in that case exceed the prejudice because you have three of them. Three very, very unusual occurrences. So, if that will help you for your submissions, you want to take ten minutes?

MR. CHARLEBOIS: I'm prepare to go now. I'd prepared those ahead of time, but I don't want to...

THE COURT: Yeah, I am prepared to go for ten minutes.

MR. CHARLEBOIS: ...take the Crown at a disadvantage.

THE COURT: Ten minutes.

R E C E S S

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

THE COURT: What areas do you suggest I cover?

MR. CHARLEBOIS: Over and above what has already been discussed; only two supplementary areas, Your Honour.

THE COURT: Okay.

MR. CHARLEBOIS: One touches briefly on the similar fact evidence ruling that you have just made.

THE COURT: Okay.

MR. CHARLEBOIS: With respect, I would suggest that Your Honour in charging on similar fact evidence be inspired by the comments found at page 356 in *Arp*, which sets out a seven-step test.

THE COURT: Okay.

MR. CHARLEBOIS: I believe Your Honour has *Arp*.

THE COURT: I have it. I read it. I intended...

5 MR. CHARLEBOIS: The only other point that I would like to make and the only other suggestion I would urge Your Honour to consider, is to...whatever area you feel is appropriate in your charge, make reference to the absence of recent complaint, and authority for that proposition is *R. v. Henrich*...

THE COURT: Thank you.

MR. CHARLEBOIS: H-E-N-R-I-C-H, 29 O.R. 3<sup>rd</sup>...

10 THE COURT: Well, I have it right here, so...

MR. CHARLEBOIS: Thank you. And I draw particular attention in *Henrich* to page 747, paragraphs "D" through to "G"...

THE COURT: Okay.

15 MR. CHARLEBOIS: ...where the Court of Appeal was inspired by a paper presented by Marc Rosenberg before he became a judge.

THE COURT: I can read it.

MR. CHARLEBOIS: And Your Honour can read it as well as I can read it to you.

20 THE COURT: Okay.

MR. CHARLEBOIS: And that Your Honour also in *Henrich* be inspired by page 748, paragraph "E" as in *Edward*...just to make sure I got the right page, that's the one that talks "This court's decision in *O'Connor*..." That's how it starts.

25 THE COURT: Okay.

30 MR. CHARLEBOIS: And Your Honour can read that as well. The purpose there is that...be suggesting that at some point where you feel it's appropriate, that some mention be made that the absence of recent complaint at the time, or the absence of recent complaint in the intervening years...absence

of recent complaint at the time to their parents,  
plus absence of recent complaint...

THE COURT: I see it. I know what recent complaint  
means...

MR. CHARLEBOIS: Okay.

THE COURT: ...of course...

MR. CHARLEBOIS: That...

THE COURT: ...I have only dealt with that concept  
in terms of sexual assault, so I will have to think  
about it in terms of this type of...

MR. CHARLEBOIS: Okay. My submission...

THE COURT: ...but I will read it.

MR. CHARLEBOIS: ...my submission is simply going to  
be that the jury 'may', not 'must', draw an adverse  
interest from--an adverse inference, I should say,  
from the absence of recent complaint. I'll let  
Your Honour read the reasoning and see if you feel  
it's appropriate.

THE COURT: Okay.

MR. CHARLEBOIS: Those are the only two points I  
wanted to bring to your attention.

THE COURT: Great. Thank you. Ms. Fuller.

MS. FULLER: Your Honour, quite frankly, I didn't  
feel that recent complaint was as an area where--  
that this was the type of case where...

THE COURT: Usually...

MS. FULLER: ...Your Honour would feel it be  
appropriate.

THE COURT: ...you know in something in a pre-charge  
submissions counsel tell me what they would like to  
see...

MS. FULLER: All right.

THE COURT: ...in there. I go back up there, I read it, I think about it...

MS. FULLER: All right.

5 THE COURT: ...if I think it is appropriate, "yes", if I do not think it is appropriate, "no", it's just that the purpose of this is not to forget something.

10 MS. FULLER: Okay, all right. Thank you, Your Honour. It's just that with respect to recent complaint--and I'll just--I have a file in the car, and if I find the case I'll send it up to you.

THE COURT: Slip it under my door.

15 MS. FULLER: I'll slip it up to you, Your Honour. But my recommendation is that only in a case where the absence of recent complaint gives rise to an inference should Your Honour comment on. And it's hard to imagine a case in my view or...

THE COURT: How often have we dealt with that?

MS. FULLER: Where...

20 THE COURT: It's just the difference here is that I am dealing with a different type of situation. I am not dealing with someone that crops up after 20 years. I am dealing with a whole system that has taken a century. A century...

MS. FULLER: Yes.

25 THE COURT: ...to come to a head. So...

MS. FULLER: Yes.

THE COURT: ...you know...

MS. FULLER: So...

THE COURT: ...I will read that and I will....

30 MS. FULLER: All right, now with respect to...there's another couple of areas...as I

understand the law, the fact that a substance is noxious, is *prima facie* evidence of an intention to aggrieve or annoy on the issue of intent.

THE COURT: Just a minute now...

MS. FULLER: Uh...

THE COURT: ...that's interesting. *Prima facie* evidence...

MS. FULLER: Yes, of a...

THE COURT: ...that it...

MS. FULLER: Is meant to aggrieve or annoy. That... in case the admission of noxiousness is pretty obvious.

THE COURT: What I can tell you what I...written so far dealt with pretty well the natural consequences of one's acts, and that is about all I have touched. I did not know that it was *prima facie*-- you will have to give some authority for that.

MS. FULLER: Your Honour, that's my understanding. I must admit, as I was sitting down here looking at the indictment I thought of it. And again, I'd probably have to...

THE COURT: I need something...

MS. FULLER: ...guarantee it.

THE COURT: ...before I would say it is *prima facie* stuff.

MS. FULLER: I'll have to pull that out of the back of the car too, Your Honour. But...

THE COURT: It is very important that as in every criminal trial...

MS. FULLER: Yes.

THE COURT: ...that the intent is proven beyond a reasonable doubt. And sometimes you have to go to

the circumstances...

MS. FULLER: Yes.

THE COURT: ...and leave with the fact that a person intends the natural consequences of their acts, and look...

MS. FULLER: Yes.

THE COURT: ...at the evidence, and this and that, and this and that. But as far as *prima facie*...

MS. FULLER: Your Honour, I'll just...

THE COURT: ...evidence of intent?

MS. FULLER: Yes. Just to make sure that I am right on that I will...

THE COURT: Yeah, you had better.

MS. FULLER: ...pull that out of the back of my car too.

THE COURT: I have a little difficulty with that.

MS. FULLER: And as well on the issue of the ABH charge concerning Edmond Mudd, Your Honour should direct them with respect to the issue of causation. That if you kick somebody in the head who's a foot from a radiator and his head goes forward, and he smashes his head and splits his head and it bleeds, that in criminal law if it's approximate cause, that's good enough. In other words, the fact that Anna Wesley didn't take his head and propel it with...in her hand into a radiator, does not make her...

THE COURT: Would that...

MS. FULLER: ...would not allow her not to be...

THE COURT: ...would that not be part and parcel of the whole action?

MS. FULLER: It would be my submission that it was.

THE COURT: That would not be my assumption.

5 MS. FULLER: Uh-hum. It's just that it came out in cross-examination. Mr. Charlebois through a witness--it was probably the complainant, indicated, "So, then you would have hit the rad by accident". Well, as accidental as hitting a rad is when you're...

10 THE COURT: Well, surely if Mr. Charlebois pushes you in the path of a car, that act of assault is not just the push.

15 MS. FULLER: Yes, it's hitting the car. All right, Your Honour, those are I believe the....Oh, yes, and also with respect to...about the bodily harm. The Crown's submission is that...you know, with respect to assisting the jury as to what we mean by bodily harm, that we can include anything more than a trifling nature, any breaking of the skin and it would also include psychological harm.

20 THE COURT: Well, here, just a second. What I had intended to say about that is as follows...if it is not right you can tell me.

MS. FULLER: Sure.

25 THE COURT: "In one count Anna Wesley is charge with assault causing bodily harm. The meaning of bodily harm is set out in the Criminal Code in the following words: "Bodily harm means any hurt or injury to a person that interferes with the health or comfort of the person, and that is more than merely transient or trifling in nature.

30 Second...that the be bodily harm suffered by the alleged victim...was caused by Anne..." Okay,

that's what I said about bodily harm.

MS. FULLER: Uh-hum. Your Honour, I would...

5 THE COURT: Whoa, whoa. "Give the words" wait a minute now. "That the alleged victim was actually assaulted and suffered bodily harm. Give the words "hurt" or "injury"...that infers with the health or comfort a person. Give these words their ordinary meaning, consider all of the evidence in this relation." I think that covers it.

10 MS. FULLER: Your Honour, the Crown's submission is that in view of the evidence that you've heard, the jury is entitled to consider psychological harm. Especially with respect to the count concerning Tony Tourville who indicates that he is...

15 THE COURT: Hey, listen, I do not know if you had a look at the evidence of the two doctors.

MS. FULLER: Yes.

20 THE COURT: I do not think there is any need for me to emphasize harm, what kind of harm, which harm. They went over it so clearly, and I practically put their evidence down verbatim.

MS. FULLER: Thank you, Your Honour.

25 MR. CHARLEBOIS: I have one question just based on Your Honour's last comment and then I was going to ask you separate from that for a little bit of guidance on my jury address. Not on preparing it, obviously, but on two points. First of all, just based on what Your Honour has said, could I inquire as to how and to what extend in the charge Your Honour is going to put emphasis on the  
30 psychological harm concept and things like that? The reason...



THE COURT: I will not try to put emphasis on any part of anybody's evidence. I am going to give it to the jury in a manner in which I think they heard it.

5

MR. CHARLEBOIS: Okay.

THE COURT: You know...

10

MR. CHARLEBOIS: That's fine. The other thing that I wanted to ask because I never had occasion to do jury address where Your Honour is the presiding judge, and obviously different judges give counsel different latitude. To what extent would I be allowed to talk to an extent about the law as long I prefacit (ph) with "Of course what I say to you is not the law as you should take it. You've got to take it as to what Justice Boissonneault's gonna tell you".

15

THE COURT: What the lawyer's usually do...you know, the law about reasonable doubt is the law. I have heard some judges say "I don't want you to touch it". I do not think that is right. Presumption of....Like those big things, but start getting cute in some of the law in *Arp* and this and that and everything else because I will stop you right dead.

20

MR. CHARLEBOIS: Okay. I didn't want to get into *Arp*...

25

THE COURT: No, I am just....

MR. CHARLEBOIS: No, no.

THE COURT: Do you know what I am telling you? Generally what criminal law is about, I can counsel....I do not think you can give a proper address without referring to it.

30

MR. CHARLEBOIS: Will you allow me to paraphrase in

my jury address the test or credibility in D.W.  
while prefacing it with "Now of course it's Justice  
Boissonneault who'll tell you what the law is."

THE COURT: That's my job.

MR. CHARLEBOIS: So you'd rather I keep that out.

THE COURT: You know that I am going to give it to  
them to the letter anyway.

MR. CHARLEBOIS: Okay. The other thing, just  
because obviously the more I know now, the less I'd  
have the tendency of being interrupted tomorrow.

THE COURT: I will tell you, you would have to be  
pretty bad before I interrupt you in the middle of  
an address.

MR. CHARLEBOIS: Okay.

THE COURT: The only thing I usually do very, very  
seldom, I cannot recall the last time, is perhaps  
tell the jury, "Counsel shouldn't have said that".

MR. CHARLEBOIS: Okay.

THE COURT: I am not going to stop you dead in your  
tracks.

MR. CHARLEBOIS: The only other point where I've got  
--one of the things I intend on touching, unless  
Your Honour feels it's inappropriate, I certainly  
feel that it is very appropriate, is without  
relating it to the legal concept of recent  
complaint, that in assessing credibility they  
should, you know, "Hey, why didn't they talk about  
it for that long?"

THE COURT: I will tell you, I have dealt--of course  
we have all dealt with recent complaint extensively  
throughout our careers. In this context I want to  
think about it.

MR. CHARLEBOIS: Would you please repeat that?

5 THE COURT: In this context I want to think about it. Why didn't Anne Wesley complain when she was there because it was worse? This is not your run of the mill...well there are no run of the mill cases of course, but it's not your normal recent complaint that we deal with in a sexual assault with all the law that's evolved out of that. Like I say, you are talking about a century of something there.

10 MS. FULLER: Can I just--Your Honour, I've...one way of handling this, I have no objection to Mr. Charlebois in his jury address saying a hundred times, "Those people should have complained either immediately or thereafter." And I'll answer it. But in view of the facts...the nature of the facts, for Your Honour to suggest that it may be an inference that they should draw, that direction should only be given where you're of the view that a negative inference is appropriate.

15 THE COURT: I agree. And in that context I want to think about it...

MS. FULLER: Yeah.

20 THE COURT: ...because I do not think there is a negative...

25 MS. FULLER: No.

THE COURT: ...inference to be drawn here.

MS. FULLER: But I don't mind him suggesting that...

30 THE COURT: The only thing that pulled this out about what I can tell, is a chief who pushed...got an investigation and had a healing....Otherwise....I want to read it and I

want to think about it, and if you want to lay a bet on it, do not make it too big.

5  
MR. CHARLEBOIS: The only reason I'm raising it now is that the last thing I want to do is hammer to the jury tomorrow, "Well, why didn't these people complain?" and then have Your Honour in your charge saying, "Well, really it's not important whether they complained or not."

10  
THE COURT: Well, then I have Miss Fuller here telling me, "Go ahead and do it a hundred times." But, I do not know what your purpose is. I know what your purpose is. If I consider it has any probative value on this case, of course I will, I have great doubts about that. The way the whole thing has evolved.

15  
MR. CHARLEBOIS: Of course...

20  
THE COURT: Do you recall the doctors' testimony about if you do certain things to people for such a period of time and do these things, what happens to them? It is hardly conducive for them to go running to the law like you would, I would, or you would.

MR. CHARLEBOIS: Well...

25  
THE COURT: That was pretty powerful medical evidence.

MR. CHARLEBOIS: It will be for the jury to--I mean....

30  
THE COURT: You want me to ask the jury to make an inference that they are lying because they came forth so late. I will think about it. Okay. It is up to me in the end, anyway. I see what you are saying. I see what you are saying. But I think

you may comprehend a bit where I am sitting.

5  
MR. CHARLEBOIS: I understand where Your Honour is sitting...the....Now, in a lot of the medical evidence we heard dealt with long term harm as opposed to what's noxious, what's this, what's that, and to what extent Your Honour will be treating it in the charge, I don't know, but it seems to me long term psychological harm is relevant to the issue of sentencing, not to the issue of guilt or innocence.

10  
THE COURT: Not to the issue of drawing an adverse inference for not complaining for 50 years? Come on now. Anyways, I appreciate what you say, but this charge, you know, the bottom line is my charge...

15  
MR. CHARLEBOIS: Yes, sir.

THE COURT: ...and if I do go awry you can have it looked at, and I will be the first one to welcome you.

20  
MS. FULLER: Your Honour, one last word. The evidence of the medical physicians on this goes to, in my respectful submission, the degree to which the substance was not--the administering of it was noxious. It's a question of the extent to which this would cause harm. So it's relevant to that issue.

25  
THE COURT: It might be relevant to the issue of recent complainant too.

MS. FULLER: And absolutely relevant to the issue of recent complaint.

30  
THE COURT: So, let's just do our best and wait for a verdict.

MR. CHARLEBOIS: Is it nine thirty then, Your Honour, tomorrow?

5 THE COURT: Yeah, so you get a little....Any idea how long you usually address the jury for? You know just...I'm not....I just wonder how much of mine I can get in before noon...or before one o'clock.

MS. FULLER: I hope I won't be foolish enough to speak more than 45 minutes, Your Honour.

10 MR. CHARLEBOIS: I can't give you a ballpark at all.

THE COURT: Well, I might be a little longer.

R E C E S S

TUESDAY, MAY 18, 1999

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

THE COURT: Mr. Charlebois, on the question of recent fabrication or...

MR. CHARLEBOIS: Recent complaint, Your Honour?

20 THE COURT: Recent complaint, of course the sections in the Criminal Code were abrogated some years ago in relation to recent complaint and a series of sections. But what I can tell; they do not include assault, they do not include noxious substances.

So in all fairness, I do not know how I can preclude you from putting that to the jury. So....

25 MR. CHARLEBOIS: So, I gather that Your Honour feels that I can address the jury on that point? I just want to be quite sure on that?

THE COURT: Yes.

MR. CHARLEBOIS: Thank you.

30 THE COURT: That is the way I read the law. They abrogated it for all of the sexually related

knowledge of the noxiousness is *prima facie* evidence of intent, so I would not want to be taken at my word on that.

5 And the only final point, Your Honour, is that with the court's permission, I will be saying to the jury, "In this country an adult is not allowed to slap another adult, and an adult is...

THE COURT: That is assault, is it not?

10 MS. FULLER: Yes. An adult is not allowed to slap a child unless he's misbehaving and it's reasonable. That is Section 43, but it's just commonsense.

15 THE COURT: Well, go ahead. You know, you can put forth the arguments that you feel further your points of view. I assume you will be reasonable. If I feel you are not, I will bring it to the attention of the jury, that is all.

MR. CHARLEBOIS: On...

20 THE COURT: The *prima facie* evidence thing, you will have to show me law.

MR. CHARLEBOIS: Okay.

MS. FULLER: I know. I just...I can't be certain.

THE COURT: Okay.

25 MR. CHARLEBOIS: If you feel that it's necessary, I have my noxious file in there. I haven't really looked at it recently...

THE COURT: I don't--listen, she just made her submission...

MR. CHARLEBOIS: Fine.

30 THE COURT: ...in connection with that. I am not touching it...

MR. CHARLEBOIS: Okay.

THE COURT: ...on the basis of her submissions. Why do you...

MR. CHARLEBOIS: Okay.

THE COURT: ...why do you want to dig yourself a hole in here?

MR. CHARLEBOIS: Okay. On the issue of Section 43, the...

THE COURT: You tell the jury what you feel is reasonable...

MR. CHARLEBOIS: That's fine.

THE COURT: ...that they should deduce from that.

MR. CHARLEBOIS: Now, I'll be putting it, just so we're all...know where I'm going here. One of the things I intend on them...'cause at Section...

THE COURT: Listen, I do not have to vet(ph) your...

MR. CHARLEBOIS: Very well, Your Honour.

THE COURT: ...respective submissions...

MR. CHARLEBOIS: Okay.

THE COURT: ...the jury. If after there is something that grossed that comes out, that we made gross mistake, I will attempt to...

MR. CHARLEBOIS: Thank you.

THE COURT: ...correct it. And as far as going along with a lot of law, no...

MR. CHARLEBOIS: Okay.

THE COURT: ...but as I told you, I do not know how you are going to address the jury without talking about...

MR. CHARLEBOIS: Okay.

THE COURT: ...reasonable doubt and...

MR. CHARLEBOIS: Okay.

THE COURT: ...that type of thing.

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MR. CHARLEBOIS: One of the things...one of the things Your Honour had asked me yesterday is how long I might expect to be.

THE COURT: You be as long as you want to be.

MR. CHARLEBOIS: There's gonna be a lot of ground to cover.

THE COURT: You do not want to risk giving them too much though.

MR. CHARLEBOIS: What's that?

THE COURT: You do not want to risk giving them too much.

MS. FULLER: Your Honour, the clerk has brought to my attention something. It might be useful if these were distributed now. I don't....

MR. CHARLEBOIS: Sure.

MS. FULLER: I have no objection. They can look through and...

THE COURT: Those are what; the...

MS. FULLER: These are the photographs.

THE COURT: Okay.

MS. FULLER: And...

THE COURT: Okay, so I will explain the photos to them and the reason. How about the verdict sheet; after?

MS. FULLER: It doesn't matter to me. Actually, it may be useful for them too.

COURT CLERK: I only have one verdict sheet.

MS. FULLER: Then maybe after.

THE COURT: No, I think the verdict sheet is normally given after I give my charge.

MS. FULLER: Yeah.

THE COURT: Say, "Here it is"....okay. Very good,

shall we bring the jury in?

MR. CHARLEBOIS: Yes, please.

THE COURT: Bring the jury in, please.

COURT CLERK: Is this to be made an exhibit?

5 THE COURT: The photos are...well...what harm...what harm could it do? Make them an exhibit. Exhibit whatever.

COURT CLERK: Exhibit Number Five.

THE COURT: A, B, C, D, E, whatever?

10 COURT CLERK: Composite exhibit...they're all the same.

EXHIBIT NUMBER 5: Photos, re: witnesses, Produced and Marked.

15 THE COURT: Yeah. Let's see one of them...just before.

....JURY ENTERS (No time available)

20 THE COURT: Before counsel addresses you, with consent of counsel, the...Detective Delguidice had photographs taken of every witness just to help you picture the witnesses while we are talking to you about the evidence. So we have a composite exhibit number five with the photographs of every one of them.

25 And I wish to thank Constable Delguidice for preparing that for us.

30 Okay? I wish to--of course now is the time where counsel will make their submissions to you as to the evidence and as to what findings you should arrive at.