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SUPERIOR COURT OF JUSTICE

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HER MAJESTY THE QUEEN

and

ANNA WESLEY

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V O L U M E V I

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SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

and

ANNA WESLEY

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

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

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

V O L U M E V I

APPEARANCES:

D. Fuller

Counsel for the Crown

G. Charlebois

Counsel for the Accused

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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 I

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Transcript Ordered: May 1, 2003
Transcript Completed: October 9, 2003

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SUPERIOR COURT OF JUSTICE

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

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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 I V

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Keep in mind that their reference to the evidence is simply that, a reference. The evidence is as you find it to be. And even when I give my charge and I refer to the evidence, it is up to you to decide what the evidence is. So, this is not evidence, but simply submissions. And my charge to you is not evidence, but simply a charge which will contain an overview of the evidence. Okay?

10
Go ahead.

MR. CHARLEBOIS: Thank you, Your Honour.
Can you hear me okay, Miss Wesley?

MS. WESLEY: Yes.

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MR. CHARLEBOIS: I will try to be as brief as possible, however, a lot of evidence has been heard over the last three weeks, and necessarily it may take a little longer than I would have hoped it would take.

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When each of you was sworn in as members of the jury three weeks ago, you took on one of the largest responsibilities that a citizen in this country can be called upon to fulfil. That of deciding the guilt or innocence of another fellow
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citizen. Each of you individually and all of you collectively, and no one else, will be called upon to decide if Anne Wesley is guilty or not guilty of the nine counts remaining on the indictment against her. Your task is difficult. Your
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responsibilities are onerous. But, your duty is very solid.

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In Canada, our judicial system is based on two anchors, two pillars, that are embedded deep, deep, deep in the fabric of our judicial system and Justice Boissonneault spoke to you briefly about that in his opening remarks. And those two pillars that the bedrock of our system are first of all the presumption of innocence, and the burden of proof on the Crown to establish each and every element of an offence beyond a reasonable doubt. Anne Wesley remains innocent and is presumed innocent today, until you collectively arrive at a conclusion if you do, that the Crown has established each and every element of the charges against her beyond a reasonable doubt.

Now, in his charge to you later today, Justice Boissonneault will define with a great deal particularity what the presumption of innocence means, what the duty on the Crown is. And it is from Justice Boissonneault that you must take those instructions and carry them out.

I can't insist enough on those two basic principles because Canada, as some other countries, is founded on these basic principles, and we're fortunate to have that in Canada, as opposed to other countries where, again, as Justice Boissonneault alluded to in his opening statement, there is arrest in the morning and sentencing by afternoon with very, very few of the safeguards that we enjoy. And what's important to remember is that those safeguards that I have alluded to, the presumption of innocence and

5 the duty to prove beyond a reasonable doubt, are not only there for the protection of Anne Wesley, or the protection of anyone else who's charged with a criminal offence, they are there for our collective protection. They are there for my protection, your protection, that of each and everyone of our citizens.

10 The decision that you will make in connection with this trial on each of the nine counts remaining based on the evidence that you have heard is almost impossible to correct unless an error of law has been made by the judge in giving you his or her submissions.

15 If you fail to appreciate or weigh the evidence correctly when you deliberate, in our system of justice, that mistake is very difficult, if not impossible to correct. That is why in deciding this case, you as members of the jury, your task is difficult, your responsibilities are heavy, but your duty is very, very solid. But I'm sure that in deciding the case you will perform your duty as juries before you have, and juries after you I'm sure will as well.

25 Now, in this case you'll recall that at the very outset, not quite three weeks ago but close to it, when evidence began to be heard, the defence stood up and admitted identity. The defence admitted that Anne Wesley was indeed Sister Mary Immaculata who had worked as the supervisor of girls at Ste.

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5 Anne's Residential School...or for
boys...thanks...supervisor for boys at Ste. Anne's
Residential School between 1951 and 1962. With
that admission it was not necessary for the Crown
to prove it, although the Crown is always entitled
to prove any fact despite an admission by the
defence. But identification having been admitted,
it was not for the Crown to have each witness
10 identify Ms. Wesley as then Sister Mary Immaculata,
although again I hasten to add that she was not
precluded from doing so.

15 You'll also recall that just before the doctors
testified, the defence stood up and admitted that
vomit was a noxious substance or a noxious thing.
So again, although the Crown is not precluded from
calling expert evidence to establish that fact, it
was not necessary for the Crown to do so because
the defence stood up and admitted it.

20 So, in my submission, it was not necessary to have
a graphic description of what the contents,
constitution of vomit are, and what its' effects
are, or may be, if it's swallowed. I think that
none of us really needed doctors to tell us what
25 the effects might be of swallowing or being
compelled to swallow ones own vomit. But again,
the Crown was not precluded from calling that
evidence. That is her right if she chooses to do
so, in spite of the admission.

30 Now, the thing is, both doctors, Cain and Jaffe,

5 admitted that they had not examined any of the
complainants in this case, either the complainants
on the assault counts, or the complainants on the
noxious substance counts. So all the doctors could
speak about, were...speak about generalities.
"Well this is what I might expect to see. This is
what I might expect to find." Because they
couldn't talk in anything more than generalities,
they had not examined...or apparently even spoken
10 to any of the individual complainants in this
trial. And, I think I tried to put it into
perspective when I asked one of them, I think it
was Dr. Cain, "Well that's almost like if my car
won't start here and I call the mechanic back home,
and I say, "The car won't start. What could it
15 be?" and without having examined or looked under
the hood, "Well it could be this. It could that.
It could be the other thing." But more
importantly, how does or did the evidence of the
experts advance your inquiry? The task that you
20 will have to decide, because identification or
identity hadn't been admitted, the fact the vomit
is a noxious substance hadn't been admitted. How
does it advance your inquiry as to whether or not
Anne Wesley actually compelled the three
25 complainants to eat their vomit? How does that
advance your inquiry about whether or not it has
been proven beyond a reasonable doubt? In my
respectful submission, and it's for you to decide,
their evidence did not and does not assist you in
30 that task. Their evidence only states the obvious.
That, yes, it's noxious, but I think we all know

that from our own personal experience.

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There's only one issue in this trial, ladies and gentlemen, and that's credibility. And I believe credibility's something you're gonna be hearing a lot of today. I'll be talking to you about credibility. I'm sure the Crown will be talking to you about credibility. And I'm convinced Justice Boissonneault will be talking to you about
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credibility. Because that's the bottom line in this trial. Is whether or not the totality of the evidence that you have heard, whether from the Crown witnesses or from the defence witness, establishes guilt beyond a reasonable doubt, in which case you must convict, or raises a reasonable
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doubt in which you case you must acquit.

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Now, before we start looking at the evidence of the civilian witnesses, as opposed to the doctors who testified in this trial, there's something else that I'd like to share with you. In our Canadian justice system, if the defence calls even one witness, then the Crown has the right to address the jury last. And it's not as you saw in this trial a situation where one lawyer calls a witness,
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the other lawyer cross-examines and then the lawyer who called the witness re-examines. After Miss Fuller addresses you today, after I have, I don't get a right of reply. So therefore, what I have to try and do today is not only tell you and share with you what I want to share with you, but also to
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attempt to anticipate what Miss Fuller may be

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telling you about the evidence, the various witnesses, and about what Miss Wesley had to say. Now, Miss Fuller has been performing this task of the Crown Attorney as long as I've been a defence counsel, and both of us have been lawyers for quite a long time. So, I don't profess to be able to anticipate everything that Miss Fuller may have decided to share with you later this morning, because our minds don't work the same way. Now, I'm sure that she will bring to your attention points, facts, suggestions, arguments that I haven't thought about. If that is the case, when you retire to deliberate, I will ask you to attempt to look collectively at what the other side of the coin might be. If the defence lawyer had had an opportunity to reply, what might he have told us about this point? And I'm not asking you that to cover up any slip I may have made, to cover up anything I may have not anticipated, because I can't profess to anticipate everything Miss Fuller's gonna say. I'm asking you to try and look at the other side of the coin for those points that I will not have anticipated, in fairness to Miss Wesley, so that whatever your verdict ultimately is, you will have considered fully and fairly all sides of the coin, not just one side of the coin.

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Now, let's look together at the evidence that we have heard in this trial from the civilian witnesses. And who were the civilian witnesses? Well, we heard from the complainants, the people who say that bad things were done to them, and in

5 certain cases we heard from what we refer to as corroborating witnesses, people who claim to have seen bad things done to some of the complainants, and in this case I'm referring of course to Oliver Wesley, Gerard Kioke and Leo Loone.

10 Luke Mack was the very first witness, well other than Constable Delguidice, of course, who kind of set the stage and explained to us the history of the school, and who filed certain documentary evidence as to when Anne Wesley was there, when she became a nun, when she left the order of nuns, etcetera, but the first complainant who testified was Luke Mack, and he testified way back in the first week of this trial.

15 Now, Mr. Mack's photograph is found at page 3. So, I'll just give you a second so you can look at Mr. Mack's photo so that you can perhaps try to remember Mr. Mack.

20 Mr. Mack testified as to two counts on the indictment. He testified as to a noxious substance vomit count and he testified as to two events of common assault. He testified about having been outside and the doors were locked and he couldn't use the washroom, and he used the vernacular to tell us how he defecated in his pants and that once inside, that according to his evidence, he would have been slapped as punishment for having defecated outside. He indicated that at that time he was between the ages of seven and ten, and that

after being slapped he was told to go to the washroom and wash his pants.

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Now, Mr. Mack also testified as to a time when he was coughing in the dorm and that because it was disturbing apparently Ms. Wesley's sleep, that he was made to kneel, either in the dorm or on the edge of the dorm, but close to the dorm, that he was slapped, and that as he would start to doze off he would be hit and told to kneel straight and not fall asleep.

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Now, what's interesting is that Mr. Mack told us that Leo Loone at the same time, on the same occasion was administered the same form of punishment. That they both were compelled to do this together the same night at the same time.

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Now, as we know, Leo Loone didn't testify once on this trial, he testified twice. I don't recall Leo Loone ever telling us anything about that, do you? If in fact Leo Loone remembered that, isn't it logical that Leo Loone would have told us about this event in the company of Luke Mack, so many years ago?

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The other thing that hits me as being strange in connection with that incident...is the picture I have is all the other boys are in the dorm sleeping, Mack is being punished, apparently with Loone, and every time he starts to fall asleep he gets hit and he gets told to stand-up straight.

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And you'll recall that what Mack told us is that this punishment was because his coughing was apparently interfering with Anne Wesley's sleep. Is it logical that Anne Wesley would then have deprived herself of sleep for most of the night to keep an eye out on Luke Mack and slap him when he wouldn't be kneeling straight, or slap him because he was apparently falling asleep or dozing off while he was kneeling? Is that logical that she would deprive herself of sleep? Apparently, according to Mack, the reason why he was punished in the first place, knowing full well that the next day she had this large group of boys to look after on her own. It will be for you to decide ultimately, but it just doesn't seem to ring true with me. It just doesn't seem to be logical, it doesn't seem to make sense.

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In connection with the vomit incident, Mack claims that he was taking his cod liver oil, as they all did, and that because he vomited in his bowl that he was slapped, forced to eat it and he was called some bad names by the nun who was then yelling at him.

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Now, there's gonna be no white or black...or rather no gray area in these vomit considerations. And I'll be touching on them only briefly because later on I'll be talking to you or discussing with you Anne Wesley's position as she reiterated to you in the witness stand, and then making a few suggestions to you. Because on the vomit

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counts...three vomit counts there are, at the end of the day either you're gonna be convinced beyond a reasonable doubt that the nun forced these three complainants to eat their vomit, or you're gonna have a reasonable doubt on that point, or you're gonna accept the evidence of the nun as she told it to us in the witness stand, that she never did that. On those counts it's gonna be a straight question of credibility, and findings of fact will have to be made by you individually and collectively as a jury.

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The next witness that we heard from, again the first week, was Tony Tourville, and you'll find his photograph at page 7. You'll remember Mr. Tourville...Mr. Tourville, and I'll be getting back to that when I discuss his evidence, he's the one who's Miss Wesley's landlord in Moosonee.

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But, before we deal with Mr. Tourville, I just got to go back a little bit. I just forgot to mention one thing in connection with Mr. Mack. The connection with Mr. Mack, there is no corroboration of his evidence, no corroboration either on the physical assaults and no corroboration on the vomit counts.

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Now it's important to point out, and I'm sure Justice Boissonneault will point it out to you, that corroboration is not a prerequisite to a conviction in criminal law. Far from it. But, when there's no corroboration, what you're left

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with is the evidence of one witness, Luke Mack, I'm using him as an example, and in this case, the evidence of Anne Wesley, another witness. And that may assist you when there's no corroboration, in determining that there may be a reasonable doubt here.

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Let's deal with Tony Tourville, please. The connection with Mr. Tourville, it's one count on the indictment, an allegation of assault causing bodily. Now, Mr. Tourville talked to us about four incidents, I believe, but when I reviewed my...the notes of the evidence with Mr. Tourville, and again, on this point I'm giving you my view, my interpretation, but it will be up to Justice Boissonneault, and I'm sure he will, to make suggestions to you that you must take as law, except when it's dealing with facts because that's your domain.

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Of the four incidents that Tony Tourville shared with us during his evidence, the only one that I could see that might amount to a count of assault causing bodily harm was the cough in the dorm, fists and bloody nose. The other incidents that he talked about, either soup ladle in the dining room, hit with the shoe in the shoe room, or hit with mud on the hands on the eyes in the rec room don't seem to me to amount to assault causing bodily harm.

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Now, I'll deal with all of the events. And again it'll be up to Justice Boissonneault to determine

whether he feels that the one dealing with assault
bodily harm is the fist, bloody nose, cough, dorm,
but I'll leave that domain up to him...to his
expertise.

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Oh, the other one that Tony Tourville shared with
us was the time that he had a limp. They went for
a walk in the area of the graveyard, and that Anne
Wesley had the boys jumping over a ditch or culvert
or something, on the way back. Now, he told us he
didn't tell Anne Wesley that he was injured. What
did she do on that occasion to make him worse? How
could she know he was injured if he didn't tell
her?

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In the incident in the dorm, you'll recall that he
said that she was sleeping, the boys were coughing,
she came out of her room and yelled out, the next
one who coughed was going to get it, that he had
the misfortune of coughing next, and he told us
that she came out, pulled the sheets...or the
cover...blankets off him, hit him with her fists
and it caused the bloody nose that soil the sheets.

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Now, one of the things that I'll be touching on in
my submissions quite a bit, as I said is
credibility. And credibility has to do with, my
submission, the reliability of the evidence. The
more reliable it is, I submit to you, the more
credible it is. In assessing the reliability of
the evidence one of the things I'd invite you to
look at is the consistency of the evidence. If you

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say one thing on one occasion and the same thing on a second occasion about the same incident, and the same thing on the third occasion, then it's more...there's consistency there. And consistency can, not necessarily always will, but can help you arrive at a conclusion that the evidence is reliable and can help you arrive at assessments of credibility.

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Now, Tourville at trial, he was absolutely sure in cross-examination and examination in-chief that he had been hit by Anne Wesley with her fists. Now, you'll recall that I cross-examined him...or maybe you don't recall, I'll remind you that I cross-examined Mr. Tourville, with the transcript of the evidence at the preliminary hearing in Moosonee last May; about a year ago. And I asked him in front of you...or after drawing his attention to evidence he'd given at the preliminary hearing, I should say, I read to him the following passage from the preliminary hearing: "Do you recall specifically being hit with a fist or with an opening hand and a hard slap? Answer: Well, it was dark. He happened to suddenly that I don't remember." Why would he be unsure at the preliminary hearing about whether he was hit with fists or with an open hand hard slap? He didn't remember at the preliminary hearing, but here at trial he's sure it was fists. Again, use your collective commonsense. Because collectively here, between the 12 of you there's an awful lot of commonsense...quite a few years on this planet.

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Does your memory get better with age or worse with age? I tell you, mine gets worse with age. Why would Tourville be unsure at the preliminary hearing whether he was hit with fists or with an open hand hard slap, and at trial he's absolutely sure that he was hit with fists? It's not determinative of the issues...or the issue, ladies and gentlemen, but it's one of the things, this disparity, this lack of consistency on this point, that may assist you in determining whether Tourville's evidence is reliable. Because in order to convict Miss Wesley you have to be convinced beyond a reasonable doubt that Tourville is a credible witness. You have to be, in my submission, convinced beyond a reasonable doubt that his evidence is reliable. How can it be reliable if it's not consistent on the same point? How can there not be a doubt in your mind?

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In assessing, again the credibility of Tony Tourville, at trial I asked him whether he considered himself a troublemaker, and he said, "No, I was a normal kid." Again, I drew attention of the transcript of the preliminary hearing and reminded him that at the preliminary hearing I had asked him, "Did you seem to get into trouble more often than the other kids?" And his answer had been "Yes, I did." Well, why not tell you that at trial? Why not admit, "Yeah, I was a troublemaker. Yeah, I got into trouble more often than the other kids." Why not be consistent about it? Maybe to make himself look good or look better in your eyes?

It will be for you to decide. To elicit sympathy? To make himself out to be a hapless victim? It will be for you to decide.

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In connection with the dining room and the either passing on a piece of gristle or meat or something else to another boy. In cross-examination he admitted that perhaps he had been talking to the other boy, and he says that he was hit with the soup ladle. Now, Anne Wesley admitted that she'd hit him with the soup ladle, and she also told us what the soup ladle was made out of, likely aluminum.

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The shoe incident...or being hit with a shoe is denied. Again, I'll be getting more into that when I comment on the evidence of Ms. Wesley.

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Again, in assessing the consistency and reliability of Mr. Tourville's evidence. At trial I asked him if he thought that the only way one adult, in this case, Miss Wesley, could maintain order and discipline with such a large group of boys was by being tough? His answer was that he was not capable of answering that question. Yet again I pulled out the transcript of the preliminary hearing where I had asked him the same question, and at that time he agreed that "yes" the only she could maintain order and discipline in that context was by being tough. Well again, it's not determinative of guilt or innocence, but why not give a consistent answer on that point? Why say at

trial I'm not capable of answering that question when a year ago he had no trouble admitting at the preliminary hearing that the only way that she could keep order and discipline was by being tough.

Now again in connection with the totality of Mr. Tourville's evidence. There's no corroboration on any of the events that he shared with us. Now again, I won't repeat that for every witness. Corroboration's not necessary, but you're left with Mr. Tourville's evidence on one point and the evidence of Anne Wesley on another point--or on the same points, different evidence.

But perhaps what's most telling in connection with Mr. Tourville's evidence, is not only its lack of consistency in my respectful submission, but there's one part here that I just couldn't get my mind around. Mr. Tourville testified at trial, "I was terrified of Anne Wesley. She subjected me to many beatings. She treated me differently from the other boys. She subjected me to endless criticism and stricter punishment." We established from Mr. Tourville that when he bought the property that Ms. Wesley was already living in as a tenant, the apartment building, that he was not obliged to keep her as a tenant. There was no deal that he had to keep the tenants he had or Anne Wesley in particular, that it was left up to his discretion. He claims that he did not evict her after he took possession of the building because he's not a vengeful person. How credible is that? This is a

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man who tells this trial "I was terrified of this woman. I was treated differently from the other boys. I was subjected to endless criticism and stricter punishment..." How credible is this explanation that in that context he would keep as a tenant the woman that he claims abused him? In my submission it makes no sense. It will be for you to decide.

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The next witness that we heard from was Daniel Wheesk, and he's found at page 9. Now, I forget whether Mr. Wheesk testified towards the end of the first week or early in that short second week where we only sat for two days. It was either on that Friday or the following Monday. He was the younger brother of George Wheesk, the following witness, and George Wheesk was the gentleman who testified with the feather, to help you remember the difference between the two Wheesk's.

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Daniel Wheesk gave evidence in connection with one incident of assault and three separate incidents of vomit, noxious thing. The assault apparently stems from having been slapped in the dorm after taking a shower for drawing an imaginary gun on the belt buckle and pretending to shoot--no, draw and shoot. He also testified as to another incident, so I was actually a little bit wrong when I said that his evidence in connection with the assaults dealt with one incident, it dealt with two incidents. The second time was when he said that he had thrown up at night, waited 'til morning and then the next

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morning while Sister Anne was apparently working in and around the linen closet or linen area, she went to tell him--or he went to tell her rather, that she told him to go wait by the bed, and that he began to strip the bed, although he hadn't been told to strip the bed, and he claims that he was slapped for that, just as he had been slapped for drawing the imaginary belt buckle--the imaginary gun or gun on the belt buckle.

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Now, let's talk about the belt buckle incident first. We established that Mr. Wheesk gave a statement to the police in 1993. And I also established with him in front of you, that nowhere in his statement to the police did he mention this belt buckle incident and being slapped for it. How significant could it have been for him when the police are there to talk to him about any alleged mistreatment he may have suffered at Ste. Anne's Residential School, he doesn't bring it up.

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The throwing up at night and being slapped for stripping the bed, I established from Mr. Wheesk in cross-examination that this memory always stayed with him, it was always clear in his mind, that this was not a memory that he kind of forgotten about. That it always stayed with him. Again, nowhere in his statement to the police is there any mention direct or indirect about this incident. Yet, this is a witness who tells us, "I never forgot that particular incident. It always stayed clear in my mind." If it always stayed clear in

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his mind why not tell the police about it? They were there for the express purpose of collecting allegations of misconduct that Mr. Wheesk may have been subjected to at Ste. Anne's.

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Can you be satisfied beyond a reasonable doubt that these two incidents; the belt buckle, and the stripping the bed and being slapped, actually happened? I submit not.

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Now, Daniel Wheesk also told us about the vomiting incidents and he made reference actually to three separate vomiting incidents. And I won't get into the graphic details, we all know what they were, we've heard three witnesses testify about the-- three complainants testify about them. But again, use your logic. Use your commonsense. Use your experience as people who've all been around for a while.

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It has now been established through the evidence of George Wheesk, the older brother, that at the time that Daniel and George went to the school that Daniel Wheesk's natural mother, George Wheesk's stepmother, the second wife of Mr. Wheesk, worked at the school in the laundry. Why would Daniel Wheesk not tell his natural mother at the school that she was being--that he was being hit by the nun...or slapped? More importantly, why would he not tell his mother who worked at the school, about being compelled not once, but three separate times to eat his vomit? Is it reasonable to think, is it

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reasonable to assume, is it reasonable to accept if
it really happened, that he wouldn't tell his
mother? Especially when his mother was working
there every single day. It boggles my imagination.

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Furthermore, we have evidence that the Wheesk
family, father and mother, lived in Fort Albany
where the school is located. So not only did Mrs.
Wheesk work at the school, we have evidence that
despite being residential borders, that George and
Daniel went home on weekends. If for whatever
reason, and I can't find one, but if for whatever
reason Daniel didn't want to tell his mother about
these allegations of abuse, particularly the vomit
at the school, why not tell his mother or tell his
15
father when he'd go home on weekends. Doesn't it
make sense to you that if it really happened that's
something a kid would tell his parents about?

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Motive, and I'll be touching in that--on that area
in more detail later on in my submissions, if
you'll recall that Daniel Wheesk is one of the
witnesses who told us that he had given some
thought to compensation, and I'll be getting into
that in more detail later on, instead of touching
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on it individually.

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Now, Oliver Wesley was called ostensibly to
corroborate the evidence of Daniel Wheesk on the
vomit. Now, from what I could see of Oliver
Wesley's evidence, there was some lingering doubt
in his mind about whether Daniel Wheesk actually

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swallowed the cod liver oil, was sick to his
stomach and vomited into his bowl, or whether
Daniel Wheesk swallowed the cod liver oil, and
either spit out the cod liver oil immediately, or
vomited cod liver oil only into his food. There
seemed to be on a totality of the evidence some
doubt there about what Mr. Wesley remembers.
Oliver Wesley also states that he then saw Anne
Wesley slap Daniel Wheesk and tell him to eat his
10 food. But, he also tells us that he remembers this
incident well. In his statement to the police
however, we established again by putting the
statement to the witness, that he mentioned nothing
to the police about Daniel Wheesk being slapped on
15 that occasion. Why not, if he remembers the
incident so well? When confronted on that point,
as to why it wasn't in his statement, he said
"Well, I told the O.P.P., and they didn't write it
down." Now how credible is that? Because I'll be
20 coming back to that when I discuss the evidence of
some of the witnesses. In my submission, when I
was able to establish with some of these witnesses
that, "Well, you're telling us this in front of the
jury, but it's not in the statement directly or
indirectly..." two or three of them, "Well, I told
25 the police, they didn't write it down. I told the
police they didn't write it down." Is that
logical? Or is that a witness instead of admitting
"Well, I forgot to tell them" or is that a witness
looking for a face-saving way out? Because if we
30 accept the evidence of these witnesses, not all of
them mind you, but of those witnesses who when

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confronted with a point on a incident that they told the jury about, and that they didn't mention to the police, or that they didn't write down in their statement, "Well, I told the police, they didn't write it down." It must have been an awfully sloppy police investigation. Are you prepared to accept that? I'm not. It's for you to decide. Especially when you had the evidence of Detective Constable Delguidice who outlined the manner in which the statements were collected and taken, the opportunities given to the witnesses to review their statements and make any additions, deletions, subtractions to them before they sign them, and to correct anything the police may not have gotten down right. The police are there to collect allegations of mistreatment or abuse. Does it make sense to you that that's the reason they're there? Some witnesses, and I'm dealing here with Wesley, but it applies to some of the others that I'll be dealing with in a little while, would tell the police, "Well, yeah, I saw him get slapped too" and they wouldn't write it down? That's not logical. That's not credible, but it's for you to decide.

In my submission, the evidence of Oliver Wesley also contradicts the evidence of Daniel Wheesk on one important point. That after Wheesk got sick that what was in the bowl was food and cod liver oil and no vomit. Again, and I appreciate that Daniel Wheesk may have been in a better position to know what was in his bowl than Oliver Wesley, but

5 if in fact Oliver Wesley had seen all three ingredients in the bowl; vomit, cod liver oil and food, would he not have told us about that? In my submission, if you accept his evidence, there's a contradiction on that point, and you then have to determine whose evidence you're going to accept.

10 The next witness that I want to talk about is George Wheesk, the older brother. You'll find a photograph of George Wheesk at page 10.

15 George Wheesk talked to us--or rather, George Wheesk gave evidence in connection with one count of assault dealing with two incidents. The first incident was at mealtime when he used the Cree word to signify "river break-up or ice break-up" and that according to his evidence he was hit by the nun with both hands over the ears, dragged to the corner, made to kneel in the corner and was then kicked three or four times in the ribs. He also testified about the skating incident when he hurt his knee, didn't tell the nun, and would apparently, according to his evidence, be hit because he wasn't walking straight and was lagging behind. Those are the two incidents he talked about.

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30 Again, in connection with George Wheesk, there's no corroboration in connection with the mealtime incident. There is corroboration from Leo Loone in connection with the skating incident.

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No corroboration about the hit with both hands over the ears, dragged to the corner and kicked while he was kneeling. Yet, the evidence we have according to George Wheesk is that this event happened in front of all the boys in the dining room at mealtime. Why can't Wheesk remember the names of one or two people who might have seen this, if it really happened?

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In connection with the skating incident, and where he alleges that he was being hit by Anne Wesley for not walking straight. Again, we pulled out the statement he'd given to the police, and Mr. Wheesk had, and you'll remember Mr. Wheesk, because I remember Mr. Wheesk, was very reluctant in admitting this, Mr. Wheesk finally, most
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reluctantly admitted that he never told the O.P.P. or the investigator that Anne Wesley was hitting him when he was walking with the limp after the skating incident.

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I submit...that Mr. Wheesk in giving his evidence, was evasive. He's the witness who kept trying to figure out where I was going with my questions. He's the witness who ultimately in trying to
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explain why it wasn't in his statement, tried to claim that his English wasn't that good. Yet, he's also the witness who had admitted that he spoke English fluently, although he chose, as was his right to give evidence through the Cree
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interpreter, he's also the witness who sometimes was correcting what the Cree interpreter was saying

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in English. I got the feeling he thought his English was better than that of the interpreter on some points. He's the witness who's been working at the department of Indian Affairs in Ottawa since 1972. He's the witness who admitted that most of his work, memos, etcetera, are in English, and he's claiming, "Well, it's not in my statement to the police because my English wasn't that good." Goes to logic, it goes to commonsense, it goes to reliability, it goes to credibility in my submission.

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He established...admitted that he was going home on weekends. He admitted that his stepmother worked in the laundry for many years while he was there at the school. I asked him, "Why not tell your parents? Why not either tell your stepmother at the school, or why not tell one of your parents at home on weekends?" His answer was, "I told my parents but they didn't believe me." Now, could it be, and it's for you to decide, that he wasn't believed because Mrs. Wheesk worked at that school everyday. Mrs. Wheesk, although she was working in the laundry...wasn't blind. I assume that Mrs. Wheesk was able to see the goings on, the interaction between Anne Wesley and her two sons, the interaction between Anne Wesley and the other boys under her charge. Maybe Mr. and Mrs. Wheesk, the parents, didn't believe George Wheesk because Mrs. Wheesk never saw any evidence of this type of behaviour happening. Again, it's for you to decide.

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Something else Mr. George Wheesk talked about was money, and I'll get into that when we talk about motive. But you'll recall quite--he's the one who went to the healing conference, he's the one who was aware of the Alfred Compensation plans at the time he gave his statement to the police in '93. We elicited all that from him in cross-examination. And when I talk generally about motive towards the end of my submissions, I'll revisit that in more detail. I'd just ask you to keep in mind that he was one of the witnesses who would like to get compensation out of this.

Just one last point before we leave the two Wheesk's. If Anne Wesley was systematically abusing George and Daniel Wheesk, and or many other boys, but for now let's just confine it to her two boys--or her son and her stepson, would she not have become aware of it? Would she have left her kids at that school? Would she not have gone to see Mother Superior? Would she not have done something? Isn't that normal for a parent? It's for you to decide and it's for you to appreciate.

The next witness who testified, and I believe he testified last Monday, was Mr. Mudd. And we'll find Mr. Mudd's picture at page 5.

Mr. Mudd gave evidence in connection with one count of assault causing bodily harm where he apparently would have thrown a snowball outside at a snowman and told by the nun that he would be taken care of

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in the dining room, in the dining room was made to kneel in the corner, that he heard her footsteps approaching, that he claims to have been kicked in the back of the head, that his head hit the rad, there was blood, that the nun took him to a different building where she tended to the wound, and at that time she told him "that's what happens when you don't listen" or words to that effect.

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Now, and again it's not determinative of credibility, but Mr. Mudd was very vague about when this would have happened. He's unsure as to the period of time in his stay. You'll recall he's a witness who said that he was there initially in the early '50's for three or four years, then he went to Fort George for a couple of years and then he went back to Ste. Anne's for one more year. Elicited in his statement when I put his statement to him, that he initially thought he'd gone to Ste. Anne's in the 1960's, and it's only later that he recollected that actually it had been in the '50s.

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Now, I'm not asking you to make findings of credibility on Mr. Mudd on that point. That's a minor point. It's not going to be determinative of whether you accept or reject his evidence. I just want you to bear in mind that Mr. Mudd was vague, a little bit confused about when he'd been to the school. And that this vagueness and confusion may be one of the things that you put into the platter that determines ultimately credibility. He was unsure as to the time when this incident happened.

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At trial he said it happened at breakfast. In his statement he was sure it had happened at lunch. Now again, it's not determinative of the issue, but it's something else in assessing reliability of the evidence...weight to be given to the evidence. Consistency, in my submission is something important for you to consider.

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Now at trial, Mr. Mudd was sure that it was the nun, Anne Wesley who came behind him and kicked him in the back of the head, thereby propelling his head into the rad. Yet, at the preliminary hearing, and I put the transcript of the preliminary hearing, where again he was under oath, to him, he had to admit that at the preliminary hearing I'd asked him the following questions, he'd given the following answers, "Could you have been struck by somebody other than Anne Wesley, and then she came and took care of you?" His answer was, "Yes" at the preliminary. "Question: Because you never actually saw her strike you, right? Answer: Yes." Now, what's his answer to that at trial? "I made a mistake at the preliminary hearing." That's what he told us. Then I put to him at trial, and I have this verbatim from the trial transcript. My question in front of you: "Should the jury understand that when you answered that question...the one I just read to you at the prelim., that you answered the first thing that came into your mind and didn't worry about whether it was the truth?" His answer was: "I just gave any answer." Well maybe at this trial also he was

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just giving any answer. He was under oath both times. At the preliminary hearing, "I never saw the nun strike me...or kick me." "Could it have been somebody else?" "Maybe, yes." At trial, "I'm sure that it's the nun who struck me...who kicked me."

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Consistency, reliability, credibility, I submit those are three very important ingredients in the mix of assessing credibility.

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If he gave any answer under oath at the preliminary hearing, as he recognized he did, can you be satisfied beyond a reasonable doubt that he wasn't just giving any answer that popped into his mind at trial in front of you? Because after all he was under oath both times. And in assessing that point, I'd ask you this, if an event, especially a traumatic event, makes a lasting impression on you, will you not always remember it the same way? Just think back those of you who've had the misfortune, perhaps, of having been involved in a serious car accident, won't you remember the circumstances of that serious car accident in the same way from year to year? Those of you who may have had the misfortune of undergoing a serious operation in a hospital, won't you remember the circumstances of the operation in the same way from year to year?

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Why doesn't Mr. Mudd remember this allegedly traumatic experience in the same way if it in fact truly happened to him? How can you be convinced

beyond a reasonable doubt with a witness who appears to have been less than completely reliable? Less than completely credible? With a witness who claims; I just gave any answer at the preliminary hearing?

His Honour will tell you in much more detail than I will about this, but it seems to me that if a witness on a prior occasion says something different on the same issue on a later occasion, whether it's a statement to the police, evidence at the preliminary hearing, it may affect the weight of his evidence, it may affect his credibility in your minds, it may affect...it may raise a reasonable doubt.

Just a couple of other points on Mr. Mudd before we leave him. Mr. Mudd's also the witness who said that the nun left all the boys in the dining room and took him to a different building across the creek to treat the wound. Remember when I asked you at the beginning to look at logic? How logical is that that she would leave this whole group of boys unattended in the dining room to walk Mudd across the creek to a different building to treat his wound? Is it logical that Anne Wesley would leave all these boys unattended to take him far away to look after the cut? I don't think it's logical at all, but it's for you to decide.

Another point on Mr. Mudd. He had to admit that nowhere in his statement to the police did he

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directly or indirectly tell the police, "While she was patching me up, she also said something like that's what happens when you don't listen." He didn't tell that to the police, yet, here we go again Mr. Mudd's another witness who's saying "I think I mentioned it to the police, they just didn't write it down." Is that logical? Is that credible? If it is, it must have been an awfully sloppy police investigation. I don't think it was.

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At trial Mr. Mudd said that he was kicked, and being kicked by the nun in the back of the head, propelled his head into the rad. In cross-examination at trial...wasn't sure whether he was kicked or slapped. Maybe it was a slap. Well, in examination in-chief why leave you, as the triers of fact, with the impression that the nun kicked him and then back peddle in cross-examination..."Well, maybe it was a slap." It'd be different, wouldn't it? Why not be consistent? Consistency, reliability, credibility.

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Radiators...Mr. Mudd is sure that his head was propelled into a radiator...a hot water rad...yet, Sister Anne testified that there was no hot water rad in that building not only at that time but at any other time, and that the only time they had hot water rads was in the new building that was built after 1954, and which is clearly not the building that Mr. Mudd is talking about.

Last point on Mr. Mudd. When I asked him in cross-

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examination did he go back home that summer?
"Yeah." "Who was home?" "My mother." "Did you
tell your mother about what had happened?" "No."
"Why not?" "By the time I'd gotten back in the
summer I had forgotten about it." If it really
happened is that something you'd forget about? Is
it logical that if he'd been kicked in the head,
propelled into the rad and treated to that extent,
that by the time he gets home in the summer he
would have forgotten about it? That's his
evidence. That's what he wants you to believe.

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Yes, he has a scar, a very faint scar, and the
defence admitted that Mr. Mudd had a scar on his
head, but did that scar happen before when he was a
young child before he went to Ste. Anne's? Did
that scar happen after he left Ste. Anne's? We
don't know. We have no evidence on that point.
Other than Mr. Mudd's word that that scar was as a
result of that kick by that nun.

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Next witness who testified was Eli Tookate. And
Mr. Tookate gave evidence--I'm sorry, Mr. Tookate
is...page 6.

Mr. Tookate gave evidence concerning one count of
assault and one count of vomit noxious. You'll
remember Mr. Tookate as being the student who was
there only for a short time because he then
developed t.b., went to hospital, initially in Fort
Albany and then I think it was at Moose Factory.
Mr. Tookate claims that after wetting the bed one

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night, he was slapped three times across the neck, thrown to the floor and kicked twice. He also claimed that they had pails in those days, it was at the old building, no running water at that point, they used pails to urinate and defecate, and he claimed that after the boys went to bed at night that they were not allowed to use the pails. That's what he said in examination in-chief. Yet, he's contradicted on that point by Luke Mack who was there at the same time, and Luke Mack said that there were no rules or impediments to using the washroom at night. If you had to go, you went. You didn't need permission. That's also consistent with what Anne Wesley said in her evidence. Cross-examination...I put it to Mr. Tookate that in his statement to the police about the bed wetting incident, there was nothing about being slapped in the neck area, there was nothing about being thrown to the floor. He recognized that it wasn't in the statement, and much like some of the other witnesses, "I think I told the police." Well, it's the investigating officer, Detective Constable Delguidice who took that statement. You had the opportunity to hear the detective constable testify. You formed an opinion about how he went about his duties. If he had told that to Detective Constable Delguidice don't you think he would have written it down?

He is also the witness, Mr. Tookate, who said that in his statement to the police, he was kicked for five minutes by the nun. At trial, "Well, I was

kicked twice in the back." When pushed on this point, has to admit, "Well, in my statement to the police I exaggerated things." Consistency, reliability, credibility.

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He also testified about a vomit incident. Claims that after having been spoon fed his vomit by the nun, that he vomited again into his plate and was sent to bed. That's what he told us. I established through Mr. Tookate this incident never left him. Always stayed with him. Never forgot about it. In his statement to the police, he has to admit when the statement is produced to him, that he never mentioned to the police vomiting again after having been spooned the vomit and food. When asked why his answer wasn't as true, "I don't know why I didn't tell the police." It's an incident that if it happened, is something one assumes he would remember all the gory details of. It's an incident that he recognizes never left him. That he never forgot about. Why not tell the police...this important detail? This is not a trivial detail about when he went to the school. It's an important detail on a matter in issue. "After she spoon fed me the combination of food and vomit, I vomited again." If it really happened, wouldn't you have told the police that? It's for you to decide.

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Mr. Tookate also had to admit in cross-examination that after he'd gone to the hospital, whether it was the hospital in Albany, initially, and then the

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hospital to Moose Factory when he was transferred there at the end of the school year, that his parents went to visit him at Moose Factory. This would have been, if we follow Mr. Tookate's evidence, several months after the vomit incident. Never told his parents about having been compelled to eat his own vomit, and having vomited again after having been so compelled. Yet, this is an incident that never leaves him. Why would he not have told his parents if it actually happened? He was safe. He was in Moose Factory, a couple of hundred miles...or a couple hundred kilometres, I'm not quite sure from Fort Albany, but in any event, far away removed physically and emotionally from the situation. Why not tell his parents if it really happened? In that context isn't that something that we would have told our parents?

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Now, a couple of other points on Mr. Tookate before we leave him. Mr. Tookate claims that he and Mr. Kioke, the corroborating witness, never talked about this incident, but it wasn't in connection with a direct question I put to him. All of a sudden Mr. Tookate in cross-examination when I was pushing him and he was suggesting that maybe I thought he wasn't telling the truth, maybe I thought he was lying, he then pipes up that there's another witness who'll be coming, with an obvious reference to Mr. Kioke. How could he know that Mr. Kioke would be coming ostensibly to corroborate him, if he and Mr. Kioke didn't discuss this in the small town of Attawapiskat up the coast where they

both live? Is that logical? How could he have known unless they discussed it?

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Also what's interesting about Mr. Tookate; when I asked him about his relationship with Mr. Kioke, "Well, I see him walking by, but I don't associate with him or talk to him." Didn't tell us anything more. I was left with impression, as perhaps you were, that he and Kioke were only passing acquaintances who happened to live in the same small village. Yet, what does Kioke tell us? "Oh, Tookate, he's my first cousin. We're good friends." Why wouldn't Tookate have admitted to that? Why would Tookate have left you, the triers of fact, with the impression that Kioke was but a passing acquaintance? And Kioke comes forward and says, "Oh, no, we're not only cousins, were good friends." Maybe it's because--it's for you to decide, but maybe it's because Tookate didn't want you to think that there was collusion, collaboration or cook-up on the vomit incident between him and his cousin Kioke.

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Kioke came to court and corroborated Tookate on the vomit incident on all material points. Kioke in cross-examination also said, "I went back home, I told my parents. I don't think they did anything." Again, use your life experience. How logical is that? Kioke goes home...tells his parents. Kioke and Tookate are first cousins, so the link there between the two families is obviously genetically close. Would Tookate's parents--or rather would

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5 Kioke's parents not have told Tookate's parents,
"Gees, you'd better check into this, this is what
our son is saying happened to your son at Ste.
Anne's." Is it logical, is it consistent, is it
reliable?

10 Next witness that we heard from was Mr. Loone...
first time. "We couldn't go to our families for
overnight visits on weekends." Contradicted by the
two Wheesk's, George and Daniel, "Yeah, we went
home every weekend. Those of us whose families
lived in Fort Albany." Loone: "Mrs. Wheesk got a
15 job in the laundry in the mid '60s to late '70s"
contradicted by George Wheesk, the stepson of Mrs.
Wheesk, who says, "No, no, my stepmother" or "aunt"
as he called her, "worked in the laundry room while
I was there for many years." Now who'd know
better, a neighbour like Leo Loone or the Wheesk's
themselves?

20 I've already referred to Loone not corroborating
Luke Mack on the kneel-slap incident, and I'm not
gonna say anything more about that, just to reflect
in your collective minds that he apparently would
have been present, and we didn't hear any form of
25 corroboration directly or indirectly on that point.
After bedtime the boys weren't allowed to use the
washroom, says Loone. He even goes into the
sugarbush--not...sugarbush, but the boys eating
maple sugar, all being--eating--diarrhea, and
30 leaving us with a very graphic impression of all
the toilets being full of faeces and nobody

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flushing because they're afraid to get into trouble because they're not allowed to use the washrooms. Get it out of Mr. Loone that, "This incident always stayed with me. I never forgot about it." Yet, we established from Mr. Loone, didn't we, that he gave a long statement to the police, doesn't mention anything about this directly or indirectly in his statement. Why not, if he never forgot about it? Why not, if it's so graphic? Why not, if this incident always stayed with him?

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And furthermore, on this point about using the washrooms, he's directly contradicted on that by Luke Mack who says, "Oh, no, you could use the washrooms at night and anytime you wanted. You didn't need to get permission from the nun."

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Now, you'll recall that on this second point, sugarbush, diarrhea, etcetera, this evidence was given by Mr. Loone...second time around when he gave evidence yesterday in reply.

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And you'll recognize as well that Mr. Loone admitted in cross-examination that he was present for all of the evidence given by Anne Wesley during cross-examination. Now, if that doesn't make Mr. Loone's evidence unacceptable or inadmissible, but it's a question that you can consider as going to weight, and I'm sure Justice Boissonneault will talk to you about that at some point. Remember at the outset of this trial there was an order
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excluding witnesses? And the reason for excluding

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witnesses is so that the evidence that a witness
gives is the product of his or her own mind and
recollection, and not something that the witness
has had an opportunity to adjust or modify by
hearing the evidence given by other witnesses. And
although it's not determinative of the credibility
to be afforded Mr. Loone's evidence, I would ask
you in assessing the weight, if any, to give to
that evidence, to remember and be mindful that
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Loone was in court for most, if not all, of Anne
Wesley's cross-examination last Friday before he
gave evidence.

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Finally, the last witness we heard from in reply
was Ed Metatawabin. And he actually told us
something that I didn't really understand, maybe
you understood it better than I did, about the
heating system over there. We heard about a wood
burning stove or a wood burning furnace, length of
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piping going from one building to another. My only
point there is; why would a kid, because he was a
kid at that time, pay any attention to the heating
system in an institutional building where he would
have been 45 years ago? Wouldn't someone who was
an adult at the time have a better recollection, be
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in a better position to remember what the heating
system was like, than somebody who was a child at
the time? It's for you to decide.

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Your Honour, would you perhaps like me to continue
or....

THE COURT: If you would like to have a break now...

MR. CHARLEBOIS: I'm thinking more for the jury than for myself, Your Honour.

THE COURT: You are very kind. I think the jury would like to have a break.

....JURY RETIRES (11:15 p.m.)

MR. CHARLEBOIS: And perhaps to assist Your Honour and my friend, I expect that probably another 20 minutes should do it.

THE COURT: Thank you.

R E C E S S

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

THE COURT: Okay, just a minute before we bring the jury in. The plan that we talked about, Mr. Charlebois will complete his address to the jury, we will then break for one hour, sandwiches will be brought in for the jury, then....Ms. Fuller, one hour is enough?

MS. FULLER: I believe so.

THE COURT: Will give her charge to the jury after which, I, in all probability will only give a portion of my charge...to complete it tomorrow morning. Okay.

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

THE COURT: Members of the jury, as I told you at the outset the only thing sure about litigation is its unpredictability. What I propose to do today, at this time, is have Mr. Charlebois complete his address to you, take a break for an hour, sandwiches are being ordered for you now for that break, and if Miss Fuller is ready after an hour for her address, she will then deliver the same,

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after which we will take another break and I will start my charge. I do not think I will complete my charge today because enough is enough. What I have to tell you is very important. I have to deal with all of the law in relation with this case. So, what I may very well do is give you simply a portion of my charge. You are not to be sequestered until my charge is over, so you will be free to go home. And tomorrow morning if we could start at nine thirty, you could start your deliberations probably late morning. So this is the game plan so far. I thought I would let you know. Go ahead.

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MR. CHARLEBOIS: Thank you. I want to talk briefly about motive. You'll recall that I touched on motive and money with...very briefly with a couple of the witnesses.

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You'll recall that Daniel Wheesk told us that he was at the healing conference, and one of the things he told us in your presence, was some rumours at the healing conference dealt with getting financial compensation.

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Now, when I talk about motive and financial compensation, again, it's not determinative, it's not a spotlight for you to zero-in on, but it's something else that you can consider in assessing credibility of witnesses, if you find that it has some merit, if you find that some weight should be given to it.

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You'll also recall with Daniel Wheesk that in front of you we raised or I brought out some of the evidence that he had given at the preliminary hearing, as I did with some of the other witnesses, questions and answers, and he recognized that at the preliminary hearing he had been asked the following questions and given the following answers, quote, from the preliminary, "Are you personally interested in getting compensation as a result of giving a statement or going to trial?" His answer was at the preliminary: "I had thought about it, yes."--Or "I have thought about it, yes." Question: "Is that one of your motivations?" His answer was: "One of my motivations."

George Wheesk informed us at trial that at the time he gave his statement to the police around 1993, that he was aware of *Alfred* in the eastern part of Ontario, of financial compensation of lawsuits. He also admitted that he has given thought to suing for money, either the church, the nuns or the school, "Because I wanted to fight back." I asked him at trial...question from me at trial: "So it's in the back of your mind to attempt to get money for your treatment at Ste. Anne's?" And his answer at trail was: "Of course, because I wanted to avenge myself." He also admitted that he had gone to the healing conference in '92. I asked him: "Was the question of restitution discussed at the healing conference?" And what he replied was that if they were able to get convictions that maybe they could go after the church for money. That's

what he said.

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Now, it's not determinative of credibility, but it's one of the things that you can keep in mind in assessing the evidence not only of those two, but also the evidence of the totality of these complainants. You may choose to reject it as being worthy of no weight. You may choose to give it a lot of weight or some weight, it's up to you. My purpose here is simply to bring things that you can bring into the jury room with you...arguments, facts, suggestions, that can help you appreciate what you should do with the evidence. What the motivations may or may not be for these people to come to court.

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In my evidence--or in my submissions, rather, I dealt to quite an extent with why these witnesses did not tell their parents at the time. I'm not gonna go over that again, I've covered it with all the witnesses. And I've indicated to you what I feel might be an interpretation that you could make of that failure or lack of complaint. But also, not only did they not complain, those of them who had the opportunity to their parents at the time, nobody complained to the authorities for 40 to close to 50 years. Some of these allegations go back to 1951, and they're not reported to the police until late '92. Some of these allegations go back to the early '60s...they're not reported to the police until late '92. That's quite a length of time to not say anything. Why not? I submit

5 and it's for you to either accept or reject this
submission or suggestion to you, that these types
of allegations are very different of allegations of
sexual abuse. Often in cases involving allegations
of sexual abuse, the complainant or the victim will
not say anything for years and years and years
because of the fear, because of the shame that is
involved in the inherent nature of those
allegations. But here, the allegations are not
10 sexual in nature, they are physical in nature.
Is it not logical that if these allegations indeed
occurred, that some report, something would have
been said in all these intervening years? Then all
of a sudden these allegations are brought to the
attention of the police in late '92, as a result,
15 or maybe not as a result, but subsequent to this
conference that takes place where at least some of
the witnesses indicate that the issue of potential
financial compensation came up. Doesn't that give
you a motive?

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Now the other witness we heard from in this trial
was Anne Wesley. And Anne Wesley testified as to
her period of time there. She admitted that she
was Sister Mary Immaculata, she admitted that she
25 was the supervisor of the boys, she detailed a
number of boys that she was looking after from the
time she arrived there in '51, a number of boys
when she left in '62, she detailed what the living
and working arrangements were prior to the fire of
30 April '54, then subsequent to the fire of April
'54, she outlined that she had been a border there

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herself from 1934 to 1941. She indicated that she wasn't the one that made the rules, it was Mother Superior. She indicated that she was short and skinny. She described what the habit looked like, and in fact we introduced a picture of what the habit was that they wore in those days, and she described in a great deal of detail the three layers of the habit. And she indicated that the way this habit was made...the consistency of it, the sheer weight of it, the length of it, and the layers of it made it impossible for her to kick even if she'd wanted to.

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Now, Anne Wesley said that the rules made by Sister Superior, that her job was to make sure that the rules were observed. She also outlined that she took the rules very seriously and that she felt compelled to follow the rules, that she had to follow the rules, and that if she didn't follow the rules she might get into trouble with Sister Superior--or Mother Superior.

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Now, in assessing this evidence on the part of Anne Wesley, to follow rules made by the authorities at the school, bear in mind that at the time she was placed there in that position, she had a grade seven education. You told her what to do, she did it. There was no questioning. Bear in mind as well, the context in which she was placed there. An institution in the early 1950's...strict rules, rules there to be followed, rules there to be enforced. She outlined for us that sometimes

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Mother Superior would drop by and relax some of the rules as in: Well, they're allowed to talk at this mealtime, but other than me telling you they can talk at this mealtime, rest of the time these are the rules, follow the rules.

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Anne Wesley admitted that she would sometimes slap the boys a little for wetting the bed because they had not gone to the washroom. Bear in mind the context of those days in the early '50s. It's not the norm today, but was it the norm in those days? She showed us, she displayed using her own face how she would slap the boys. Always opened handed slaps. And whether you agree with this proposition or not, I submit that corporal punishment was more of an accepted fact of life in the '50s than it is today, and that the conduct that we accept--or the conduct that we would not accept or tolerate today, those of us who have children, in relation to our own children, was conduct that may well have been normal and accepted in the '50s. Now this was not meant to be evidence, it's more meant to be anecdotal. When I went to school in the early '60s we had one layperson who could throw a piece of chalk from about 40 feet away if you were talking at the back of the class, and nail you on the forehead with it. It was accepted in those days. Now, you may choose to put some weight, a lot of weight or no weight on this submission or suggestion.

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Anne Wesley also admitted that she would sometimes

slap the boys a little for vomiting, but she is adamant that she never forced them to eat their vomit.

5 She admits that in the case of Eli Tookate she fed him two spoonfuls of food that were not contaminated because she didn't want him to grow too weak. She suspected...maybe not that he had t.b., but that he had some kind of sickness.

10 All of this in the context of her limited education, all of this context of those days.

15 So, Anne Wesley didn't come to court and tell you, "I did absolutely nothing", she didn't come to court and say, "I was worthy of canonization", she didn't come to court and say, "I didn't make mistakes", she didn't come to court and say, "I was perfect." She came to court and she attempted to reveal herself as what she was in those days, doing the best she could in a difficult situation with no help, and making some mistakes. But not the types of mistakes that the complainants would have you believe she was making.

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25 Now, I expect the Crown to suggest to you: Well, how could Anne Wesley remember this particular incident about how this boy, say, got sick in his bed and how she dealt with it? How could Anne Wesley remember how she dealt with Eli Tookate and him getting sick and the spoonfuls? How could Anne Wesley remember how she dealt with this other

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situation because I expect the Crown to say, she dealt with a large number of boys that would change if not from year to year, there'd be some movement...some rollover from year to year, and a group that increasingly got bigger. So, because these situations are fairly innocuous, a kid getting sick or a kid wetting the bed, how could she be expected to remember...and I expect the Crown to suggest to you, unless she felt she had to come up with some kind of explanation. But my submission is this: Yes, there were hundreds of boys over the course of eleven or twelve years she would have looked after, but after these charges were laid Anne Wesley had the opportunity to read these statements. Anne Wesley had the opportunity to sit through a three day preliminary inquiry in Moosonee and listen to the allegations. Anne Wesley had the opportunity to sit through the last three weeks of this trial and listen to the allegations. Anne Wesley had the opportunity to try to isolate out of the hundreds of boys she dealt with over 12 years, "Okay, now I gotta focus on these boys" as they then were, "Do I ever remember this one getting sick? Do I ever remember this one wetting the bed?" to try and focus on the incidents in question.

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In my submission there is nothing irregular, there's nothing unnatural about that, about trying to focus not on the hundreds of boys, but on those boys who were there at the time who made these allegations.

5 Anne Wesley admitted to being tired and overworked. She admitted she'd get frustrated sometimes. She admitted she asked for help, and was told you've made the vow of obedience, now deal with it. She told us...the group getting bigger and bigger and bigger. What kind of a job was this? Start with some 40 odd some boys, eleven years later you're up to over 100, you're all alone, one woman dealing with all these boys, from young boys to mid-teenager, some of the older ones; bigger, taller, heavier than she was, and no breaks, no coffee breaks, no nothing breaks. The only break she had was when they were in class. Other than that, from early in the morning to late at night when lights out, and on weekends, her job was looking after all these boys alone. She admitted to getting frustrated. She admitted to losing her temper. The question that you will have to decide is how she lost her temper. Do you accept the evidence of the complainants as to how she manifested that loss of temper? Or left in a reasonable doubt by her evidence as to how she dealt with the losses of temper? She attempted to show herself to you, warts and all.

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25 She's adamant that she never kicked the boys. She's adamant that the discipline that she would use were opened handed slaps to the temple, to the face, to the head. She recognizes having used the soup ladle on Tony Tourville, but she indicated that he'd been warned to stop. She also indicated that it was lightweight aluminum this soup ladle.

5 She also told us that Tony Tourville was
troublemaker. She's adamant, that never ever ever
did she kick a boy, never ever ever did she compel
a boy to eat his vomit, that if a boy got sick, the
boy was either offered another bowl of food, which
may or may not have been the appropriate thing to
do, probably it wasn't, or that the boy was allowed
the opportunity to skip that meal. She's not
saying she was perfect. She's saying to you...or
10 the interpretation I'm suggesting is--what she was
saying to you is, "I did the best I could in the
context of those days, of that institution with no
resources."

15 What she is adamant about in connection with Mudd
is that there were no rads in that building, and
that she never kicked him. She in fact, described
in a great deal of detail what the heating system
was like in the old building where the food was
taken. She outlined to you the improbability of
20 treating Mudd in a different building and leaving
all the other boys unattended.

25 She admitted that she would yell. She said there
were no microphones in those days, there were no
bullhorns. You had a group of anywhere from 40, at
the outset, to over 100 boys, you had to yell in
order to A) make yourself heard. And she testified
you had to yell or raise your voice in order to
maintain order and discipline.

30 She was adamant that she never made the boys kneel,

5 that her form of punishment if it wasn't slaps to
the face, head or temple, that her punishment was
to compel the boys to stand in the corner. And she
outlined why she didn't make the boys kneel,
because she had been subjected herself to kneeling
as a form of punishment when she had been a border
from '34 to '41, and that the experience had been a
very negative one for her, and that she had
determined that that was not going to be one of the
10 forms of punishment that she was going to use.

She also told us that she was never reprimanded by
Mother Superior or by the principal for her
treatment of the boys between '51 and '62.

15 Now, it is reasonable to assume or to accept if she
had been the only nun treating the boys in the
fashion in which the boys claimed they were treated
by her...is it reasonable to believe or to accept
that ultimately that this would not have come to
20 the attention of Mother Superior, if not by the
boys themselves, let's assume for a minute the boys
wouldn't have complained to Mother Superior because
they were scared, is it not reasonable to assume
that another nun there at the time wouldn't have
25 let Mother Superior know, "You know you'd better
keep an eye of Sister Mary Immaculata, I think
she's being tough with the boys"? Is it not
reasonable to accept that one of the lay teachers
who might have witnessed something, might have
30 complained to Mother Superior? Yet, Anne Wesley,
and she's not contradicted, nor corroborated on

this point, indicated to us that she was never reprimanded for her treatment of the boys.

5 I've alluded to her job, to the exigencies of her job, to the difficulty of her job, and I submit that it was an onerous, if not impossible task to maintain order and discipline in that context.

10 Mudd told us that when you were good Anne Wesley was nice, and when you were not good, you would get scolded.

15 Daniel Wheesk told us, "Later on when I became a child care worker myself, I realized that in some ways, Sister Anne Wesley was the Wayne Gretzky of supervisors. She was really good at her job." And I suggested to Daniel Wheesk that the only way that she could keep order and discipline was by being tough and by being strict. He answered, "I think she had to be that way in order to keep o--I think she had to be that way to keep order."

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25 Now, Anne Wesley testified in this trial, and under our criminal justice system no person accused is compelled to testify and if that person chooses not to testify not only can the Crown Attorney not comment on the inability of the person to testify, but the judge can't comment on it either. So if she'd chosen not to testify you wouldn't have heard a word of it neither from me, from the Crown, nor from the judge. Anne Wesley, age 73 this summer, took the stand and told you what she remembered of

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her time at Ste. Anne. She then underwent a rigorous cross-examination that lasted some two hours and 35 minutes from a very experienced Crown Attorney. What more could Anne Wesley have done in front of you to attempt to establish that she is not the person that the complainants have painted her out to be, but to take the stand, tell you how she remembered it from 45-50 years ago, and then be subjected to a rigorous cross-examination? What more could any one of you do in similar
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circumstances to attempt to establish the facts, to attempt to establish your innocence?

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As I said at the outset of my submissions, this case is going to be decided on credibility, on facts as you find them. And when you retire to deliberate, I would ask you to consider the "buzz words" for want of a better word, that I kept using in my submissions about; consistency, reliability, credibility, the logic of the explanations or lack thereof given by the complainants in assessing
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credibility, and find that in many, if not all instances, there are gaps, laps, things that don't ring "okay", or ring "true". I would then ask you to compare the evidence given by Anne Wesley, who in my respectful submission showed herself to you
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warts and all and didn't profess to be perfect, but to doing the best that she could under these onerous circumstances. And when you have weighed all of the evidence, I would ask you to find Anne Wesley not guilty of the charges that have been
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laid against her.

I was longer than I expected to be, but I thank you for your patience and for your attention, not only today but throughout this trial.

5 THE COURT: Thank you very much, Mr. Charlebois. As I told you, I think lunch is being brought in now, we will break until one fifteen, at which time Miss Fuller will do her address to you.

....JURY RETIRES (12:10 p.m.)

10 THE COURT: Anything else?

MR. CHARLEBOIS: Not from me.

R E C E S S

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

15JURY ENTERS (1:15 p.m.)

THE COURT: Members of the jury, Miss Fuller will now deliver her final address.

20 MS. FULLER: Your Honour, members of the jury, I'd like to first thank you for being here, for giving up your time, and in some instances I know your wages. But you've done that to judge this criminal case, and this criminal case is not like most criminal cases. All criminal trials are important, but this one is a very important case...this jury trial, for a number of reasons. It is a case that has captured air time and ink time in the national news, and it's not just because it's historical, historical in the sense of causing people to remember and bring back painful memories of 40 years ago, and it's not just important because it's part of this country's history and part of the history of the Cree people, part of its' interest

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and its' importance, is its' account of how we become socialized, how our freedoms and our ability to thrive are affected by those we're dependent on.

5 This is a trial that contrasts the rule of law with Anna's rules. Now, the rule of law in our country says that no one is above the law; neither man, nor woman, neither white man, nor Cree, neither young person, nor old person, layperson, or religious person. The rule of law says that no one is beyond 10 its reach however back...far back we may reach. And this is a comfort to know that for serious matters, for indictable offences it will never be too late to seek redress, to seek an 15 acknowledgement of wrongdoing, a sense of vindication, to force, what I suggest we have here, a bearing of witness to things that shouldn't have happened.

20 The triggering event to what launched a five year investigation, of which this trial is only a small part, was what we've heard was the healing conference or reunion in Fort Albany in 1992.

25 The trial itself offers a wonderful metaphor for what happened in 1992. We heard in the trial the term, over and over again "magistan" (ph), like the break-up of the Albany River in the spring after a very long winter, the collective painful memories of former students overflowed like the flooding of 30 the riverbanks. All of those memories were buried for so long finally coming out, finally coming to

light, but first the courage of a few, and then a few more, and then a few more.

5 You know the rule of law says that it is never too late and no one is above it. As well, no one's rights are less worthy of protection than another's. And that is important in this case.

10 We've heard the evidence of Luke Mack, abandoned as a child who grew up feeling worthless, who has a criminal record, who hasn't worked in years. Luke Mack is just as worthy of your protection, of the law's protection as you are or I am, and in fact, Luke Mack is probably in greater need of its protection.

15 The evidence as well was that, "Well Tony Tourville, he was a C.A.S. kid, he was already marked with violence when he came here." The law does not say, "Hey, maybe he was abused, but he was already marked, so what's the difference?"
20 Everyone gets the same protection...whatever you come with, whatever baggage you come with, whichever scars you happen to have.

25 The focus' has been suggested already is nicely narrowed to credibility. Did these incidents happen? And if they didn't happen, then all these people called by the Crown have given perjured evidence. That is the case. If they didn't
30 happen, there's no other explanation. This is not a case of somebody making a mistake. It happened,

the allegations happened or they didn't happen.

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It's a long indictment and I think you'll be grateful to know that I'm not going to go through the indictment count by count. I'm not going to go through each witness' evidence piece by piece. What I want to say is that all of these incidents deal with the same thing in different forms. They deal with the invasions of the physical security and dignity of children. And the central purpose of the criminal law is to protect members of society from such invasions. Under our law it is an assault to slap, let alone kick or punch, an adult unless it's a consensual fight or there's self-defence. Under our law it is an assault to slap, never mind kick or punch a child. Only if a child is misbehaving and only if the correction is reasonable, is it not an assault under our law.

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Now in this case you heard no evidence, no evidence of misbehaviour. Even Anna Wesley said, "I wouldn't hit a child for throwing a snowball or talking in the dining room, let alone kick a child for doing the same." No, what these children apparently did wrong was draw attention to themselves. Draw attention to themselves in some way for being children, for being human....And we know that if Anna Wesley slapped a child for wetting his bed or for throwing up at the table or in bed, that in itself would be an assault because it does not constitute wrongdoing or misbehaviour.

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What are the incidents we have to consider? I'll just block them out. First there are the three counts of administering a noxious substance. His Honour will direct you that you can use each of these counts, the one to corroborate the other. And in our law that's sometimes allowed where the allegations are very distinctive or similar. The reason is of course; what are the chances of three people all falsely accusing Anna Wesley of such bizarre and dehumanizing behaviour? Luke Mack, Daniel Wheesk, Eli Tookate, they corroborate each other, that these things actually happened, that they were forced to eat their vomit. What are the chances with respect to these counts, members of the jury, that two independent witnesses would come forward and say, "I saw her do this despicable deed...force a child to eat his vomit"?

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Once you think about the significance of there being three who say this of the corroborating evidence, I think it will be quite easy for you to then conclude that of course she intended to aggrieve or annoy because it's an irresistible conclusion considering the nature of the noxious substance itself.

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Now there are two counts, two counts of assault bodily harm. There is the allegation of Tony Tourville that he was punched in the face for coughing. He was struck with sufficient force to cause a bloody nose. And there's the account of Edmond Mudd that he was made to kneel for throwing

a snowball, then kicked in the head from behind causing him to strike a rad that was right in front of him, and to cause a head injury.

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His Honour will give you the law regarding bodily harm, but I suggest that if you believe that the assaults took place, you won't have any difficulty finding that there was bodily harm, because kicking somebody in the head and causing a head wound directly or indirectly is surely assault bodily harm, is it not? And striking a child for coughing with sufficient force to draw blood, is surely assault causing bodily harm even without the added evidence of the gravity of psychological harm that's caused when basic needs are unmet, the need to be cared for when you're sick, and when that need is responded to with brutality.

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The vomit eating, the assault occasion bodily harm, then there are the four common assaults, and these are Eli Tookate...assault for bedwetting, Luke Mack, either assault for coughing or the assault for defecating. George Wheesk, assault for saying "magistan" (ph). Daniel Wheesk, assault for throwing up in his bed sheets. The only issue "credibility". If you're satisfied beyond a reasonable doubt that these allegations are true, then you must convict.

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A great deal of time was spent by the defence on consistency, accuracy, statements...I disagree with the defence. If a witness says exactly the same

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thing three times about something that happened 40 years ago, I'd figure he had a script and he memorized it. I suggest to you that that's not how recollection works. We remember things--first of all we don't remember things forever, but we remember things a little differently every time they come to mind. We can't recall with absolute certainty. We take snapshots of impressions of things that happen to us.

And, inaccuracy, yes, there are discrepancies galore, and so there should be, and so there would be. But we do not determine credibility by the fact that there are inaccuracies. Being inaccurate is not being dishonest. They are not the same thing. It was suggested that of course the officer would get every single word. Just through the course of this trial you heard the defence and I saying, "The witness said this, I have it in my notes"... "No, the witness said that, I have it in my note", we can't even get it down right. It is very important that you use your commonsense in assessing that there will be errors and mistakes and nervousness and lack of reflection and reluctance to face painful memories, but the questions is: Are these witnesses believable? And to help you decide that you do have to consider, "Well, why wouldn't they tell the truth?" some motive? You've heard there's no quarrel between the complainants and Anna Wesley. There never has been. So that's not the reason. There's nothing in it for the corroborating witnesses, so that's

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not the reason for them to lie. The defence says, "Well maybe...maybe they would do this for money". I would ask you to remember your impressions of these witnesses. Is that what you think? I would ask you to look at the photographs. Look for instance at this gentle wreck, Luke Mack, and asked yourself whether he struck you as someone about to start a civil suit? What did they say? What did they tell us about their coming forward? Luke Mack when asked whether there was any advantage for him he said, "You guys subpoenaed me". He didn't get what even the point was. Tony Tourville...and it was never contradicted that he was a very reluctant witness. Daniel Wheesk, "The police approached me, I have tried to tell the truth". And significantly, people do what they want to do. If Daniel Wheesk or any of them wanted to get some kind of financial satisfaction would they have done it? Daniel Wheesk...it's been 40 years and he hasn't done anything yet. So that's not the reason is it? Edmond Mudd, he says, "I didn't actually see Anna Wesley hit me". Now, if you were going to lie about getting kicked in the head by Anna Wesley in order to get money, wouldn't you at least make sure that you saw the person out of the corner of your eye so that you could say, "Oh, yeah, I saw her, I saw her do it"? But he doesn't say that. He says, "I know it was her". And he's got lots of reasons to know...the fact that he was being punished, that he was made to kneel, that he heard her footsteps, there was no one close by, that in the dorm she said, "That's what you get for not

5 listening", that he...she took him to the dorm instead of taking him to the infirmary where you'd think you'd take somebody if they were injured. Mr. Charlebois says it's not logical that she would take Edmond Mudd to the dorm. You're right, it's not, unless you were trying to hide something, unless you didn't want people to know that she'd kicked a kid in the head and split his head open.

10 George Wheesk, he says, "Well, restitution would be nice", yeah, so, it's his right. It's his legal right if he wants to get restitution. There's nothing suspicious about this. This was not an evasive witness, I suggest, this was still a frightened witness who indicated he's still
15 frightened now.

20 And finally, Eli Tookate, who says, "Motive? Motive? What's my motive? To get this off my chest." And in the most unselfconscious statement from the witness box during this trial, he said, "Oh, my goodness you don't believe me." It rang true, didn't it? "You don't believe me, and I'm trying to tell the truth."

25 Now, let's look at the accused's situation. It's a little different. Mmm...we do have reason to lie here. Anna Wesley still works for the church. Anna Wesley still has her reputation. Anna Wesley knows it's a whole lot easier to just deny than to look in the mirror at a portrait painted of a woman filled with rage and cruelty, and say, "Yeah, that
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was me."

5 So when we're talking about motives, think about who has a motive and whether those motives are real or fanciful suggestions to throw a red herring into this case.

10 In assessing the evidence we have to look at how the Crown witnesses responded to suggestions made to them, that they were mistaken, that they left things out. And again on credibility, how do people respond when they want to lie? They just dig their heels in. They say, "I don't care if every other nun could canoe and hike and walk and jump and work and...in a habit, I couldn't." I gave her lots of opportunity to correct herself, to say "Yeah, maybe I could." I showed her it couldn't have been the length, I showed her it couldn't have been the width, no, maintain your denial.

20 Whereas, the defence witnesses indicated...you heard their evidence, "I made a mistake, I was wrong. Yes, in my statement I realized I must have exaggerated if I said she beat me for five minutes, but it seemed that long at the time. I spent 40 years trying to forget. I was finally persuaded to give evidence and I've had a year since the preliminary to think about it." And when you think about something traumatic your memory does get better. It gets better when you concentrate. It gets better when you want to, when you have time to

appreciate to bring back those memories.

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So, again on credibility, you've got the issue of corroborating witnesses. How does that help you? Well, the defence would suggest...the defence has to do something with those corroborating witnesses. There's nothing in it for them. So, what is this? Some kind of collaboration is the suggestion. Collaborating with their friends, putting a story together. Well, the suggestion was made that Gerard Kioke was helping Eli Tookate, but that suggestion, members of the jury, will not stand scrutiny. It's clear that the evidence was clear that Gerard Kioke happened to be approached by the police a year before the complainant, Eli Tookate. And among the things he told the police was that he witnessed this vomit eating exercise. Now, maybe it happens sometimes in this life that someone will say to a buddy, "Look, I told the police something, will you back me up?" Maybe that happens, but I suggest to you what doesn't happen is somebody saying "I backed you up to the police, now would you go and tell the police something? Tell them what I said." before he even thought of it. In other words, the suggestion doesn't make sense.

We heard the evidence of Oliver Wesley supporting the evidence and corroborating the evidence of Daniel Wheesk. Well, there's not much a story to get straight if you're gonna cook your stories up. "Anna Wesley made me eat vomit." Well, if Daniel Wheesk was recruiting Oliver Wesley to help him

5 he'd at least make sure that Oliver Wesley was sitting at the same table, in his evidence. But what was his evidence? He didn't know. He couldn't remember whether Oliver Wesley was even at the same table. Collaboration, I think not.

10 Leo Loone, George Wheesk...Leo Loone says "I saw George Wheesk, I saw him slapped for not being able to keep up. He was dragging an injured leg." Leo Loone we know lives in Fort Albany, George Wheesk lives in Ottawa, what was in it for Leo Loone? Nothing. Nothing, but a desire to set the record straight.

15 Edmond Mudd...well, Edmond Mudd said, "I was kicked, I hit a radiator." No effort was made by the defence to cross-examine on that point. Edmond Mudd's evidence stood until we were surprised to know that it was an issue on Thursday. It was just a fluke that Friday morning, Mr. Matatawabin
20 happened to be there, happens to be the same age as Edmond Mudd, happened to be at the school at the same time as Edmond Mudd, and knows that that old building with the dining room downstairs and the hospital upstairs had hot water rads, and in fact,
25 he says, "Still does today. The building's still there and the hot water rads are still there."
This is a man who lives in Fort Albany.

30 We have corroborating evidence which I suggest, members of the jury, which is of great value to you.

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Let's look at Anna Wesley's evidence and hold it up to the light. First, there were the straight denials; "I never made a child kneel". I suggest that that's given because Luke Mack tells you that he was forced to kneel on a cold floor for most of the night and slapped for coughing. Anna Wesley says, "I wouldn't do a thing like that. I remember what it was like to kneel. That's what the nuns did for me, and I wouldn't do that" it's a discipline that is suggested by her to be too cruel and inappropriate. If you believe that Anna Wesley would force children to eat their vomit, force the spoon right down their throat, slap them and make them eat their vomit, would kneeling be too cruel and inappropriate?

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"I didn't speak French to the students" it's a straight denial. Well, it's a denial because George Wheesk says, that as she was slapping she'd say "Tiens, tiens". First it was suggested in-chief by Anna Wesley that she didn't really speak French, and then when pressed well, "Well, yes, I guess I do. It was a French Order. I was trained and lived and worked with French nuns. And yet, yes, there were expressions that I heard when I was at school as well..." and she was the only caregiver, so is it a coincidence that George Wheesk just happens to hear the same expressions, the same French expression? Because it's a little detailed but it's significant, because if we're untruthful about the little things, aren't we more likely to be untruthful about the big things?

And in these cases I would ask you to use your commonsense to come to the conclusion that the Crown's witnesses' evidence is preferable.

5 I've already alluded to the denial about being able to kick with a habit. "No, it's just not possible" and this was evidence that, never mind in cross, in chief she had lots of--mentions many times that just not something you could do. It's just not, true though, is it? It's just not capable of being true when you analyse it. So what does that tell you, if she would lie about not being able to kick?

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15 Now, I would move onto what I would submit to you are the contradictions. The Crown's witnesses, Luke Mack and Oliver Wesley say cod liver oil was what was given at breakfast time, given with the morning meal, given with porridge, and in cross-examination she admitted, "Well, yeah, I guess you might remember if you had cod liver oil every morning with your porridge because you'd associate the two, probably for the rest of your life." But, Anna Wesley says, "No, I only gave cod liver oil at lunch" and I suggest she says that to discredit the Crown witnesses. In cross at the very most she'd say was "Well.." in terms of whether it was breakfast or lunch, "...to the best of my recollection it was lunch."

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30 We heard the contradiction about rads, no rads. This is a pretty significant issue, the heating system. The defence says there's no reason for Mr.

5 Metatawabin to know the heating system. Well, there's no reason perhaps for Anna Wesley to remember the heating system, but there's a really good reason, and it's about an inch and a half long on the head of Edmond Mudd to remember that the heating system was a hot water rad, because he's got the scar to prove it.

10 There was the contradiction...children were always allowed to use the washrooms. And you'll recall that Eli Tookate said, "No, he couldn't". And you heard Leo Loone corroborate that evidence. "No, you couldn't and I remember vividly an example of not being able to and the children being prepared to make a terrible mess rather than flush the toilet and bear the consequences." It's the kind of thing you'd remember. "Children could come inside and use the bathroom even though I locked the doors. Absolutely there is no way they had to stay outside if they had to use the bathroom."
15 Well, Luke Mack says you couldn't get in, and Leo Loone says you couldn't get in if it was during recreation time, you couldn't get in.

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25 So, who you gonna believe? Isn't it pretty clear that at the very least, Leo Loone is not a party to this matter, he has no interest in it, he's not a complainant, he's not an accused, he's what we call a neutral witness. Isn't it the case that Anna Wesley's contradictions of discredit Crown
30 witnesses to try to suggest that she was a reasonable person?

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What does Anna Wesley remember? She remembers that Tony Tourville was a troublemaker. Tony Tourville, oh, yeah, he was intelligent, yeah, he was an alter boy--well they all were, he was a good student, oh, yeah, he's a successful person, oh, yeah, no, no, he was a big troublemaker that Tony Tourville. I suggest to you that he was a thoughtful and articulate witness. And I suggest to you that Anna Wesley showed a tiny glimpse of her former self when she said, "Oh, yes, Tony Tourville, he was already marked with violence from his family when he arrived. They told us the stories." What did that make Tony Tourville? It made him a vulnerable target, a target for her discontent and her rage.

Somebody who apparently speaks of Tony Tourville in such a negative way "troublemaker" accused him of stealing as a child, marked with violence, is this woman going to come up after the preliminary hearing, after he's done essentially a character assassination and accused her of despicable actions and say...touch him on the arm...body language... touch him on the arm...and say "No hard feelings" in a conciliatory way? I think not. I think your knowledge of human nature is that that's not how we would respond. You would be furious, you would be outraged, and at the very least you would stay away. This witness, Mr. Tourville said that she said "No hard feelings, it'll be like it was." If only it would all go away and be like it was, isn't that what Anna Wesley would like?

5 I said at the beginning of the trial that we have
to rely, and the reason that your skills are so
valuable, your just commonsense skills, are because
in trials like this you have to rely on them. It's
not the law books that usually determine these
cases, it's the witnesses. And there's an area
that I did go into in cross-examination and I want
you to consider, and that's memory...that's memory.
10 And you heard the evidence, even after some debate,
Anna Wesley agreed, no, we don't remember run of
the mill, insignificant or inconsequential facts in
our like life, and yeah, we remember the ones that
were painful or joyful or shameful. But, Anna
Wesley will have you believe that her memory is
different than others. It's no answer to say,
15 well, she had a preliminary hearing, that's like
saying, well, no, it wouldn't be reasonable to
remember 45 years ago, but it is reasonable to
remember something 44 years ago, since the
preliminary hearing was last year.

20 Again, using Tony Tourville as an example. Recall
the recreation room incident over 40 years ago.
Her version is nothing happened. "I put him in the
corner for misbehaving." "That's it, that's all?"
25 "Yeah." Well, I'm sure most of you have either
family experiences yourself, or children, and if
asked to remember the details of either being sent
to your room or sending a child to his or her room
a year ago, five years ago, ten years ago, you
30 couldn't do it, because it's unremarkable. So if
nothing happened, you wouldn't remember it. But

5 Anna Wesley remembers it was Tony Tourville's fault, it was another boy, he made him cry, I put him in the corner, this is a kid who was a troublemaker, she said, he would have been in the corner half the time, I assume, but she remembers this incident. Why does she remember? Because she recognized the facts of slapping Tony Tourville in the face with her hands covered with mud, and I suggest that's why she remembers. And these incident--this particular incident is not on the indictment, but it does assist you to know the nature of the relationship between a C.A.S. kid, Tony Tourville and Anna Wesley, a vulnerable target.

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15 You heard the evidence of Anna Wesley that, "Yes, I remember Luke Mack throwing up 45 years ago." She denies the part that would explain why Luke remembers it, that he was forced to eat his vomit. And there's no real explanation why she could remember it. And what is she saying? Well, she remembers him being sick, she thinks it was in his second year, she was three tables over, she went up to him...and what was the nature of the unforgettable conversation? She asked him if he was sick. She can remember that. And she asked him if he'd like something to eat.

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30 Now, members of the jury, I submit you won't have any difficulty in coming to the conclusion that anything as uneventful as childhood illness 40 years ago by a woman who looked after hundreds of

5 children day after day for 11 years, is impossible to remember at all unless something remarkable happened. And you have to ask yourself whether or not there's any ring of truth to, "I asked him if he was sick, and then I asked him if he wanted something to eat."

10 You see the Crown's position is that this a woman who never responded appropriately to childhood illnesses or childhood injuries. She didn't know how, so when she gets to trial, she's making it up as she's going along. "Oh, yeah, I asked him if he was sick" that would have been evident "and I asked him if he would like some more food" more food? Someone who'd just vomited; I don't think that's what you say. And this is after she said, "You ate what came out of the kitchen or you didn't get anything else" changed later to "Well, we could sometimes get something else". This is what she would have you believe, but it's a scenario that just doesn't work, does it?

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30 As well, the count regarding Tony Tourville, the next person--and there's a--you know when you think about it, there's a good reason for Tony to remember an incident where his loneliness and powerlessness and the unfairness for being punched for coughing would be ingrained on him. Anna Wesley says, "Oh, yes, I remember, I remember that incident, Tony Tourville coughing." Hundreds of children, 365 days a year, 11 years, when one got sick they all got sick. Anna Wesley remembers, she

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remembers going to him. The bloody nose, her explanation; they always had bloody noses when they were--had the colds or the flu. And that got changed to; they sometimes had bloody noses when they had a cold or the flu, and that got changed to; well, it depended on the illness. How many of you have children? How many of you have ever seen a child sick with a bloody nose? This is probably an explanation that Anna Wesley rationalized the next morning when she went into that dormitory and saw Tony Tourville's sheets and pillow bloodied. Whoops, must have been the fever, must have been a cold. Because if it was so common, if it was so common place for people to get bloody noses she wouldn't remember it. But to think about it, she essentially admits the bloody nose, and the explanation is clear, being struck with sufficient force to cause that bloody nose.

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Well, I could go on and on, but I won't. My point is that there are obvious reasons for the complainants to remember these incidents. They were emotionally powerful and damaging. They should stand out vividly, and you should feel perfectly confident relying on them. Relying on them and making findings of guilt. But the same cannot be said for Anna Wesley's recollections.

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Anna Wesley presents herself as having been reasonable and having tried to help children when they were sick or when they were hurt. And what was the evidence of the children's response to her,

5 if you wanted to just assess that? Well, Daniel Wheesk recalls being so afraid of her that he would go to the bathroom at the other end of the school in a sink, rather than have--and risk having an accident, rather than cross her path in the playroom where the toilet stalls were. What did she do or say to make him so fearful?

10 George Wheesk got an injury skating and didn't say anything about it. He just let it get worse and worse. The limp became a drag, the drag became crawl. Why didn't he say anything? Because kids learn quickly, they had no allusions. This is not something that was going to result in care. What did it result in? According to George Wheesk and Leo Loone, a slap.

15 Tony Tourville indicated he just tried to be invisible. The children, and also you have his injury, he says, "You just...you just wouldn't...you wouldn't raise it" and again because these are things that called attention to these children. It was far better for them to call no attention to themselves.

20 You have the evidence of all three of the complainants who said that they were vomiting in the dining room and forced to eat their vomit. And what's the interesting thing about their evidence? There first concern was not with themselves, but it was not getting vomit on the floor because they knew they'd get in trouble, they knew they'd get

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punished. You can't attribute that to the '50s. You can't attribute that to anything but a reign of terror in the school by the supervisor because for every one of these instances you have to ask what did Anna Wesley do or say to make these children so terrified? And I suggest to you that what she did is exactly what the children said she did.

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There are two things that I would like to examine in parting, and I want you to examine them with a critical eye. The first is the suggestion, "I didn't know any better" and the second is, "I couldn't do more". Let's deal with the first, she didn't know better. She knew what it was like to be made to kneel for being a student herself. She admitted to knowing that these children were isolated and needy and frightened and confused and completely dependent on her. She knew it would be very painful for an illegitimate child to be called a "bastard". She knew that these children had nowhere to turn, and she agreed she knew that their parents were poor, uneducated, completely dependent on the church, and Catholic. She knew that her religious habit cloaked her with authority that non-religious people didn't have.

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Well, we have as suggestions of the defence that these children would complain if these things happened. Is it even a possibility? As Tony Tourville said, "It's just not something you did." And who would you see the next day after you complained? Anna Wesley. And the day after? Anna

5 Wesley. And the day after, and the day after.
Much as may to the fact that George Wheesk said he
told his parents and they didn't believe him. Or
as he said, "They didn't want to listen. It was
the Catholic Church." How could a nun, how could a
sister treat anyone so badly? But you will recall
his memory. "It was late Sunday afternoon and I
was holding onto the tent pole of the teepee, I
didn't want to go back" crying.

10 Luke Mack had no one to tell.

15 Eli Tookate said, "What could they do?" And he was
right. What could they do?

20 These children had no illusions, as I've said.
They knew they should keep their mouth shut, and
to the extent that it was over, it was shameful and
it was better to put it beyond them.

25 Anna Wesley knew, as we would all know, that if she
couldn't do the job, if she couldn't handle this,
these children without harming them, then she had
to leave. She had to get help for her anger and
her discontent as well. And we know she knew she
could do that because ultimately she did leave.
She did leave the church...or leave the order.
30 Anna Wesley knew that she had a duty to these
children and their families who entrusted their
offspring with her, to tell Mother Superior, she
knew that. She knew that it was her duty to take
that child, Edmond Mudd, to the hospital clinic

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upstairs to get him treatment that he needed for the head injury that she caused and the scar that she left there, and to admit it because she'd have to because the nurse would say, "What happened?" The defence is right, it's not logical that she'd go to the dorm. She took him there to the dorm, at great inconvenience, to avoid being found out.

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Now the second and last thing I want to explore with you is, "I couldn't do more. I was overworked and I was overtired." I'm sure she was. Terrible behaviour is often brought about by difficult circumstances. But we don't say to the offender "Well your background excuses you." It is useful when determining penalty, but not responsibility. We are all responsible for our actions. We all have freewill. And Anna Wesley had much more freewill than the children who she was responsible for and who were completely dependent upon her.

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We have heard Anna Wesley try to hide behind the robes of Mother Superior..."I had to do what I was told." "It was Mother Superior's rules" "I was just a cog in the wheel at Ste. Anne's". Well what about those rules? It's no wonder that Luke Mack had a hard time relating his treatment to the ideas of the rules. He said, "Yeah, we had rules in high school, now that I understand." But as far as getting punished for breaking the rules he said, "Well, I might have broken them without knowing it. Yeah, I thought it was against the rules to cough." Anna's rules were completely arbitrary. "Anything

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could bring about punishment", as Tony Tourville said. This was not Mother Superior's rules. Anna Wesley admitted that she had no authority from Mother Superior, or under the law, for that matter, to punish a child who hadn't broken the rules, who hadn't done anything wrong. She admitted it was not written in the rules that you could slap or kick a child for wetting the bed, for soiling himself, for throwing a snowball, for throwing up, you couldn't do it, it wasn't in the rules, it wasn't authorized. And the only time that Mother Superior is mentioned in this trial is to say that basically she stayed away from Anna Wesley's domain, and George Wheesk saying it was Mother Superior's intervention that caused his knee injury to finally get the medical attention that was long overdue.

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Whatever the sins and the failures of the residential school system and Ste. Anne's School itself, in this trial the only evidence we have of the complainants is of fair treatment and a lack of fear towards everyone else but Anna Wesley. She cannot lay this at Mother Superior's door.

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To the defence, "I couldn't do more", I would suggest that Anna Wesley could have done less. Less harm, less gratuitous violence is what Anna Wesley could have done. She could have done things differently, taken a plate away instead of hitting a kid with a soup ladle, comforting a child who is sick instead of slapping him, letting a child be

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sick, but she couldn't. Anna Wesley had to force that child to eat his vomit because somehow to Anna Wesley he was defying her when he vomited, when he wet the bed, when he soiled his pants, when he coughed, and these were things that had to be punished.

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As I said, I will not...going through the evidence of these complainants because it's your job to separate the wheat from the chaff, and I would remember things slightly inaccurately as I'm sure my friend has done, and I'm sure you'll be corrected in your own memories, and I'm sure His Honour will correct whatever errors I have made in my recollections.

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Anna Wesley was in a position of trust towards these children. She had absolute authority over them. A responsibility to guide and nurture and protect them. It is a trust she abused terribly.

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The last suggestion I put to her which Anna Wesley did not confront, and I put it to you, and that is whatever her workload and whatever her problems, there's just no justification or excuse available to her if the allegations of these witnesses are true.

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And members of the jury, my final submission to you is that these allegations are too heartbreakingly cruel to be anything but true. That at the end of the day, members of the jury, never forget that

responsibility for our actions is ours alone. And I'm asking you to find Anna Wesley guilty on all counts. Thank you.

5 THE COURT: Thank you very much. We will take a 12 minute break. I only intend to go over some general principles of law, plus the background type evidence given by the police officer and the doctors, for this afternoon, okay?

10JURY RETIRES

R E C E S S

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

15JURY ENTERS

C H A R G E T O J U R Y

BOISSONNEAULT, J.:

20 Members of the jury, we have now heard all the evidence and the arguments of counsel, and now the most difficult aspect of your duties must begin. My duty is to explain the law applicable to this case and relate that law to the evidence so that you may arrive at your verdicts.

25 I want to express my appreciation to you for your attentiveness throughout, your punctuality because it has been difficult the way we have been interrupted on and on, and that has been a great assistance in the orderly conduct of this trial. I also wish to thank both counsel for the thorough and fair manner in which they have conducted the case before us.

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As jurors you have a direct deciding voice in the administration of justice. You are engaged in one of the most important duties which a Canadian citizen can be called upon to perform. You sit in judgment of your fellow man. On the one hand, it is of fundamental importance that no person should ever be found guilty of a criminal offence which he or she did not commit. On the other hand, you are the guardians of the legal rights of the community in which you live. The community relies upon you to ensure that those who commit crimes are strictly but fairly dealt with according to law, as I will explain it to you. Your responsibility as jurors is to protect persons from unjust convictions and to protect the safety and security of the community by finding guilt against persons who have committed crimes as proven according to the laws of our country.

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I wish to make two matters clear at the outset. Firstly, I am the sole judge of the law; you must take the law as I give it to you, without question. If either counsel said anything about the law which differs from my instructions, you must accept my version. You must forget the 1985 Criminal Code. You are not allowed to decide this case on the basis of what you think the law is or what you think the law ought to be.

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Secondly, you the jurors are the sole judges of the facts. Nothing becomes a fact in this case until you find it to be so. I have both a right

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and an obligation to make comments on the evidence, primarily for the purpose of assisting you in applying the law to the facts as you may find them. I may also consciously or otherwise, express my opinion on the credibility of some evidence. I wish to make it clear that you are not bound by any of my comments on the evidence, nor are you bound by the comments of counsel in that regard. The accused has a right to be tried by a jury of her peers, and therefore, any view I may have as to the evidence, or which you think I may have, is totally irrelevant. I will strive to remain impartial, but if you think I lean one way or the other, please consider that as irrelevant.

While I will deal with most of the evidence which strikes me as being important, you must consider all of the evidence. If your recollection of the evidence differs from mine or from counsel, then it is your recollection upon which you must rely. It is for you and you alone to decide the facts of this case. You must do so on the basis of the evidence presented here in the courtroom. You must ignore anything you have heard or read outside of the courtroom. Counsel made a comment that the press or the media had something to say about this case; I didn't see it, if you did, please ignore it because you must consider only the evidence, the arguments of counsel and my charge in arriving at your verdict.

Both counsel expressed they thought that this was

5 one case of credibility of witnesses. In deciding what the facts are in this case, you must be the sole judges of the truthfulness of the witnesses and of the weight to be given to the testimony of each one of them. In deciding whether a witness is worthy of belief, you should bring to bear your common everyday experience in such matters. Simply exercise good common sense, which after all is the very strength of the jury system.

10 You may believe all the evidence given by a witness or of an exhibit, part of that evidence, or none of it. In determining whether to believe a witness, you should consider such things as his or her ability and opportunity to observe, the ability and opportunity to remember, you should consider such things as the appearance and manner while
15 testifying before you, his or her power of recollection, and especially in this case, in view of the substantial time lapse since the alleged
20 offences, any interest, bias, or prejudice, a witness may have, any inconsistency in a witness' testimony, as well as the reasonableness of a witness' testimony when you consider it in light of all of the evidence of the case.

25 You are not obliged to accept any part of the evidence of a witness just because there is no denial or contradiction of it.

30 Having decided what evidence you accept, you will consider it as a whole in arriving at your verdict.

5 You may draw reasonable inferences from facts you have found to have been established, but you may not find imaginative possibilities for which there is no factual support. You are not entitled to speculate. Your verdict must be based on accepted facts; not unsupported conjecture or speculation.

10 I tell you as a matter of law that the accused is presumed to be innocent of the charges. This is not a charity given to this accused. It is perhaps the most fundamental principle in our criminal law applying for the protection of all of us. This presumption of innocence stands unless and until the facts as found by you, prove the accused is guilty beyond a reasonable doubt. You are to presume that the accused is innocent throughout your deliberations, and you may only find her guilty if after considering all of the evidence, arguments of counsel, and my charge on the law, you are satisfied that the Crown has proved beyond a reasonable doubt that the crimes occurred and that the accused committed them.

15 Briefly on reasonable doubt; as I will go over it again, after having gone over the evidence. A reasonable doubt is an honest and fair doubt based on reason and common sense. It is not an imaginary or frivolous doubt. Proof beyond a reasonable doubt has been achieved only when you feel sure of the accused's guilt. Keep in mind that it is rarely possible to prove anything with absolute or mathematical certainty. So the burden on a Crown

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is to prove guilt beyond a reasonable doubt.

5 Hereafter when I speak of proof or the Crown establishing something, or like words, this is the degree of proof that I referred to; "proof beyond a reasonable doubt."

10 The Crown has the burden of proving the guilt of the accused beyond a reasonable doubt. To do so, the Crown must prove each and every essential element of the offences to that degree, and this burden never shifts. There is no burden on the accused to prove anything.

15 As to the essential element part of my last utterance, I will refer to what are the essential elements of the various offences later on in my charge point by point.

20 The standard of proof beyond a reasonable doubt does not apply to individual pieces of evidence in the case standing alone. You do not test each piece of evidence to see if it by itself is proven beyond a reasonable doubt. Instead, you must look at the whole body of the evidence and then ask yourself if on the totality of the evidence and the facts you accept therefrom, the Crown has proven its case beyond a reasonable doubt. If the evidence and the facts you find therefrom, satisfies you beyond a reasonable doubt that the accused has committed the offences charged, then you must find her guilty and convict her.

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Conversely, if you are left with a reasonable doubt as to whether the Crown has proven any one or more of the vital elements of any one or more of the crimes charged, you must give the accused the benefit of that doubt and acquitted her; that is find her not guilty.

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I will now go over the background evidence, that I call, in relation to this case. The first witness in the trial was Detective Constable Greg Delguidice of the Cochrane Ontario Provincial Police Detachment. He testified as follows: In November of 1992, he was assigned to investigate certain allegations of wrongdoings at the Fort Albany residential school.

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In August of 1992, the First Nation people held a healing conference for former students at the school called "Saint Anne's" in Fort Albany. Fort Albany is situated on the West shore of James Bay.

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As a result of the healing conference an investigation was launched after the Fort Albany chief attended police headquarters with allegations of abuse at the school over certain years. The investigation was conducted from November of 1992, to mid 1996. In the end, over 900 people were interviewed.

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Information revealed that in 1892, the Catholic Oblate Order established a mission in Fort Albany. In 1902, they were joined by the Sister's of Grey

Cross. In 1903, the first school opened its doors. The school building as it exists today, was built in 1954-56, after the original building burned.

5 Fort Albany has approximately 1500 inhabitants, primarily Cree. It is an isolated community that is only accessible by water or air plane in the summer and by winter road in the winter.

10 Neighbouring Cree villages such as Kashechewan, Attawapiskat, Peawanuk, and Fort Severn are located hundreds of miles up the coast. It is from these communities and from Ojibwa communities in Northwestern Ontario that the school drew its students.

15 Fort Albany during the operation of this school had no industry or employment. Its citizens trapped for a living. This entailed travelling and was usually a complete family endeavour. Constable Delguidice testified that even now the community does not have full sewage systems, that the residences are small, there is no telephone service, the village is poorly developed, and the majority of the people are poor.

25 Saint Anne's School opened in 1903 with 33 pupils, and over the years reached a level of 285 to 300 pupils. The school closed its doors in 1976 by order of the federal government because of the geographical area from which the school drew its students'. They were mostly borders of the Cree First Nation with some Ojibwa Indians. The school

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was operated by priests, brothers and nuns. They were mostly non-aboriginal. The students' ages ran from 6 years to 14 or 15 years.

5 Historical records of the school are few because of floods or fire over the years. Records do show that Fort Albany students went home on weekends, and those from other communities only in the summer, and a few stayed year round.

10 A personal file exists on what Anne Wesley, the accused, who's religious name was "Sister Mary Immaculata". She arrived at the school July 27, 1951, as supervisor of the boys. The next move shows that she went to Ottawa in 1962 and Fort George in 1963.

15 The school was first destroyed by fire in 1939, rebuilt and again destroyed by fire in 1954.

20 As to the statements signed by the various witnesses you heard, including the statements referred to in this trial of course, Detective Delguidice had this to say: "The witnesses were summoned, interviewed, and the police officer wrote down what was said." He stated he paraphrased what was said in some cases. I would ask you to keep this in mind when I later discuss the statements and their contents. Also keep in mind that 900 people were interviewed.

30 The evidence of the next witness I wish to go over

5 is ironically the last witness, Leo Loon who's
testimony dove tails in part with that of Detective
Delguidice. Leo Loon lives in Fort Albany, he's
been on the First Nation counsel for eight years,
and is involved in mental health work. He stated
that in the 1950's many families made their living
by trapping. It was a nomadic life where families
left in early fall by canoe to come back after
break-up in the spring. This type of life changed
10 in the early '60's with the advent of construction
in Fort Albany and gradually has disappeared more
and more.

15 Leo Loone stated that the Roman catholic church had
a lot of influence on the lifestyle of the
community. Its members were looked up to. The
church was depended upon. Eventually, his father,
a trapper, went to work for the church.

20 Leo Loone was a student at Saint Anne's from 1958
to around 1963 when his father, quote: "pulled him
out". Initially he would visit his home for only
three hours on Sundays even though his family was
from Fort Albany. But, as he stated, "This
loosened up gradually". He was a neighbour of
25 George Wheesk and Daniel Wheesk, from whom you have
heard. He stated Mr. Wheesk worked as a baker for
the church in the early '60's, before that he had
trapped and George and Daniel had stayed at the
school. Mrs. Wheesk was a laundress at the church
30 in the '60's and early '70's. He further testified
in relation to George Wheesk's allegations, but I

will go over with that when we get to that testimony.

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Two medical experts testified in this trial giving us a background on the hypotheticals that were placed to them. Dr. Peter Jaffe holds a PhD. in clinical psychology, is a professor in departments of psychology and psychiatry, as well as the director of a family court clinic which deals with children who are victims of abuse and violence. He was qualified as an expert, he's testified at all levels of courts in Canada, as well as the United States. He also deals with the impact of abusive and violent behaviour against children. He deals with both psychological abuse, as well as physical abuse. Psychological abuse, as he stated, being the intimidation, humiliation and instilling a feeling of worthlessness in children and the impact of this behaviour.

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Dr. Jaffe's experience is not disputed by the defence.

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He stated children could be harmed physically leaving clear signs of harm. They can also be abused psychologically, which leaves less visible scars. Clearly, harm includes psychological harm. This includes how they come to view themselves, the world around them, their trust in other people, and their interaction with the community. Children, he stated, beyond being given the basic necessities are usually also given love and attention, and

5 shown that they are valued as they are growing up. He stated that when we talk about abuse, normal development is arrested. This trust of adults is violated. Children who are never hugged and
10 kissed, never told they are loved, are ignored or never praised, will create individuals who will have a lot of difficulties. That, he states, is a form of abuse. He felt that the relationship between a child and someone who may abuse them is relevant. If the abuser is a person in a trust position, including a teacher or a caregiver or a person in power, the impact is much more serious. Children would be even more vulnerable in a residential school in his opinion.

15 In a relation to a child vomiting, this is a time when the child needs the caring, nurturing and reassurance. It is obvious one would never consider them eating their own vomit. He stated that a lot of what we see in abuse and violence is really ways to control and humiliate or dominate
20 someone. It's an ultimate statement of control and domination an adult can have over a child. Also he stated when someone is being abused in front of their peers the child is put on display, and that not only affects the victim, but the witnesses
25 also. A climate of fear and control and care is created for the other children, the victim gets the message that he or she has no power over he or she's life, there are no clear rules anymore. Children in this context will become vulnerable. They have no friends or family they can turn to,
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they have no support system, no safe harbour. The risk factors would be severe. The doctor found it hard to imagine where a child would be taken from its family to live in a residential school where your beliefs, your culture, your language is not valued. To be uprooted, and in that context, to be abused, would be an example of some of the worse risk factors with severe effects. Poor self-esteem, running away, abuse of drugs, abuse of alcohol, marital problems, criminal activity, those he states, are some of the risks.

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He felt that residential schools would render the Aboriginal residential school student extremely vulnerable to short term and long term effects.

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Being forced to eat one's vomit would be extremely harmful abuse, especially in a residential school context. The children were most vulnerable and dependent. In fact, children of Aboriginal residential schools would require the highest standard of care...having been sent away from the families, customs and beliefs. The greater the deprivation, the greater the harm when abused.

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Those answers or that testimony given by Dr. Jaffe, of course, was as a result of questions... hypothetical questions being put to him. He did not examine any of the victims, did not read any of their personal records or any of their medical records.

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Brian Kane who next testified is a medical doctor; he also did one year of residency in psychiatry and practical family medicine in rural areas, including native communities in the James Bay area since 1971. He also became an assistant and an associate professor at Queen's University, teaching psychological aspects of medicine. He was the coordinator of the Queen's University in Moosonee/Factory medical program. In 1990, he developed a residency program in Aboriginal health issues. He worked also in Ethiopia, as well as with Mother Theresa.

In short, he's an expert in the area of providing family medicine in both mental and physical medicine in the James Bay area to the Indian Natives residing in the small villages on the shores of James Bay and Hudson Bay.

He stated that the concept of harm in the context of this case includes both physical harm and psychological harm. He was given a general hypothetical background information about residents of Saint Anne's School, their ages, when they attended, the length of their stays, and certain details of some of the treatment they allegedly received. This doctor also did not examine any of the complainants, nor did he look at any medical records in that relation.

Defence counsel however agrees the doctor can testify as to the physical characteristics of

certain acts complained of, as well as their psychological factor.

5 The doctor was also informed of Anna Wesley's role as the primary caregiver at the school. He was struck by the fact that the children were removed from their families, and for the most part taken to a remote community where they were totally dependent on Anna Wesley. They had no one else to turn to and if that relationship with Anna Wesley was not a beneficial, loving, nourishing relationship then he felt they were out on a limb.

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15 In this context, to be made to eat your own vomit, causes psychological harm and possible physical harm. There is a possibility of severe, lifelong psychological damage as there were no supports around as this one allegedly done before one's peers. He stated, "It's such a gross injustice on an individual that I would say 99.9% would carry that scar for life. They leave a victim with the same saddened negative feelings with a sense of worthlessness, despair, isolation, and anger, and shame, and humiliation." "You don't develop normally", he states. "They often time run into depressions, problems with the law...there are many consequences. Absence of positive self-image creates a risk of suicide, drug abuse and alcohol abuse. There is a risk of perpetration from generation to generation."

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30 Doctor Kane then described the risk of physical

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harm in vomiting, the fact that the body was rejecting something. He described vomit, partially digested food, he stated that vomiting was not a pleasant thing, causes distress on the child. He further stated that he could not imagine this distress in initially vomiting to the distress of being forced to eat it. There could be aspirations, there could be spasms physically, also there could be problems with the esophagus and the development of ulcers and inflammation.

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In cross-examination, Dr. Kain stated that even though he did not examine the complainants or see the medical records, the psychological and physical harm he described is what he would expect to see in people who are forced to eat their vomit in the circumstances as alleged, as related to him.

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That is the medical information, but there is one more matter which I wish to deal with, because I do not want you to leave here with a wrong impression to take home with you tonight.

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Certain comments were made by defence counsel in his address to you in relation to George Wheesk. My impression of his testimony was that he had heard of Alfred and that people there got money. Asked if he had any thought of suing, he said, "Of course. He wanted to fight back." Fight back also for people that were abused. He stated restitution was discussed at the healing meeting. Now, this evidence was presented to you for you to consider a

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motive for George Wheesk's testimony, but what I consider a little more serious is that you were told by defence counsel, words to the effect, "If we get convictions, maybe we can go after the church." Now, I didn't recall that testimony. My notes didn't indicate that that testimony was given, and the court reporter's notes did not indicate that that testimony was given. He did not say this, and you are asked to infer that he would lie to get a conviction when he never mentioned the word. I believe that that would be a little misleading, and I would not want to leave you with that impression.

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As for Daniel Wheesk's testimony that was referred to, my notes indicate that he stated simply that if he qualified, "I would accept it, but I would not lie to get it."

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In law, if he is entitled, I do not see anything wrong or nefarious in accepting it. So, I just did not want you to leave here with the impression that at least George Wheesk said, "Well, I'm looking for a conviction so I can get some money." It is not at all what he said.

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There was also a large passage of time that was brought to your attention, where no one complained, and that maybe you should draw an adverse inference because they did not complain. But before you draw that adverse inference, look at all the evidence.

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Children were removed from their homes at age five and six, they were taken to remote communities for long periods of time, they became totally dependent on Anna Wesley and the people of the cloth at the school, they were on the evidence, deprived of a beneficial, loving, nourishing relationship. The doctor described them as "out on a limb". They were isolated. The church in Fort Albany was revered. The church provided the only jobs for Fort Albany families. They were the boss. The evidence...the medical evidence is that the children did not develop normally. Self-expression was stifled by rules.

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So before you decide, and you may well decide to draw an inference, an adverse inference because no complaints were made until the police investigation, I would ask you to consider what...the evidence I have just given you, and whether under these circumstances you would expect anybody to complain, and to whom.

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So this is the end of this part of my charge. Tomorrow I will go over the evidence of all of the witnesses, I will further explain reasonable doubt to you, I will explain the law on assault to you, I will explain the law on noxious substances to you, and the law on a few other things that I just cannot remember right now.

I think you will be deliberating by eleven o'clock or so. So I thank you very much for your

5 att...it's been a long day for you, I know, but you have been attentive throughout and I thank you. This is a fairly difficult trial and you have some work cut out for you. Is there anything else I should...How about nine thirty, is that okay...especially, Mr. Kapuskasing? Oh, by the way, congratulations to whoever is celebrating his or her birthday today.

....JURY RETIRES (3:05 p.m.)

10 MR. CHARLEBOIS: May I say something in connec...

15 THE COURT: What do you want to say? I mean, usually the comments related to the charge comes at the end of the charge, rather than midway through. But if you feel that there is something I could correct midway through, it might be more beneficial. Go ahead.

20 MR. CHARLEBOIS: The comment dealing with my having misstated the evidence of George Wheesk, I call that directly from page 306 of the trial transcript of which I had ordered a copy, which should be identical to the copy Your Honour has. Now, my copy's in my car. I'll double check it this afternoon.

25 THE COURT: Check it out.

MR. CHARLEBOIS: But...

THE COURT: No, no, listen, no...

30 MR. CHARLEBOIS: That's any...any references that I made to the evidence of the witnesses because I wanted it to be absolutely correct, I ordered from Madam Court Reporter...

THE COURT: Okay, you do not have to explain...

MR. CHARLEBOIS: ...the trial evidence and it's page 306.

THE COURT: ...anything...Just a minute, now, will you listen to me?

MR. CHARLEBOIS: Yes.

THE COURT: You do not have to explain anything to me. If I misstated that, you can be sure that I will straighten it out.

MR. CHARLEBOIS: Thank you.

THE COURT: But I checked my notes, I checked the court reporter's notes, did not check the type written statement, but if that is the case, I will straighten it out. Get me a copy of it for sure. Otherwise, that can be very unfair to you.

MR. CHARLEBOIS: Thank you.

THE COURT: Do you have some pre...

MS. FULLER: I'll wait, Your Honour.

THE COURT: Good.

C O U R T A D J O U R N E D (3:15 p.m.)

WEDNESDAY, MAY 19, 1999

BOISSONNEAULT, J.:

....JURY ENTERS

MR. CHARLEBOIS: I'm not up, Your Honour, I'm just trying my gown, Your Honour, it's the only reason I'm up.

THE COURT: You will not be getting up for a while, so I do not mind it. Members of the jury...go ahead.

COURT CLERK: Are counsel satisfied that all members of the jury are present?

MR. CHARLEBOIS: Yes.

5 THE COURT: Good morning. Yesterday, I made a comment in relation to a submission made by Mr. Charlebois in relation to George Wheesk's testimony, that was in relation to the financial motivation. I was wrong. Dead wrong. And I shall read the evidence to you now, from the transcript.

10 In his submissions, Mr. Charlebois stated, "So, it's in the back of your mind to attempt to get money for your treatment at Saint Anne's" and his answer at trial was: "Of course, because I wanted to avenge myself." Further in the transcript of the submissions, Mr. Charlebois stated, "I asked him, was the question of restitution discussed at the healing conference?" and what he replied was: "that if they were able to get any convictions, that maybe they could go after the church for money." I told you that that evidence had not been given. I was wrong but not totally. Here is what occurred. It was by way of question by Mr. Charlebois at trial. "And at the healing conference, Mr. Wheesk, was the question of restitution discussed? Money, that if capable to get the police to investigate and to get convictions in court, then maybe we could go after the church for money." So that was in the form of a question rather than an answer, by Wheesk. But to this question, Wheesk answered "Yes, that is what uh, I can't say. Yeah, that is what uh I said." So that is the evidence on that part, and that is as much time as I am going to spend on that.

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5 I now propose to go over the evidence of the alleged victims and witnesses. This will be followed by a charge on the law applicable to the specific offences, general principles of law applicable to all criminal trials, and then conclude with what or how you should approach your task in arriving at your verdict.

10 You have the photographs of the alleged victims of whom to refer to, and you can do so as I give you the summary of their testimony that I took down.

15 The first victim to testify, Luke Mack, involved counts 1 and 2; a count of assault and a count of noxious thing, which I will refer as "noxious thing" as a brief summary. As I say, he was the first witness, he was born and lived in Winisk, a small Native village on James Bay, he was sent to Sainte Anne School in Fort Albany when he was approximately five years old, where he stayed continuously until he finished his grade eight when he was approximately 15 years old. He stated Anna Wesley was his constant out of class supervisor until she was replaced by brother Lauzon...after he was about ten years old. He stated he was treated well by Anna Wesley's replacements for short periods as well as by other nuns, priests or 20 brothers. He was however, afraid of Anna Wesley. He stated he was given cod liver oil by Anna Wesley and vomited in his bowl. He stated she struck him, made him eat the vomit in the bowl and called him a 25 "bastard". His mother and father had not married. 30

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He stated he ate his vomit while being yelled at. He also testified that after coughing at night in the dorm, he was made to kneel on the floor for what seemed to him to be all night. He fell asleep twice, for which, she struck him. He also described another incident during recess when the doors were locked. He was unable to go to the bathroom, he soiled himself, she smelled him when he came in and slapped him to the face and called him names, including a "bastard", he was then sent to bed.

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Under cross-examination he stated that Sainte-Anne's School's rules and timetables were strict, but that the best of his recollection, he never broke any. Also, under cross-examination he stated that after being forced to eat his vomit he kept it down even though he was sick.

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He admitted not having held a job for ten years. And to all of the details of his criminal record, which started a few hours after leaving Sainte-Anne's. The criminal record is lengthy; you have it as an exhibit. You will note, his longest sentence was nine months, and that was at first. And that a great number of sentences imposed were of the lightest than can be imposed.

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You may only use this evidence to judge the credibility of Luke Mack as a witness. It is simply one factor you should consider when you decide how much weight you will place on his

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evidence. You are free to decide that the evidence of Luke Mack should be believed despite his criminal record. Consider the nature of the offences, when the offences were committed, the penalties levied, as well as the number. You should also consider this evidence in light of the expert evidence we received, as to what can happen to people allegedly treated as he was.

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The next witness was Tony Tourville; count number 7; assault causing bodily harm. He was born in 1950, was a ward of the Children's Aid Society, he was sent to Sainte-Anne's when he was four, he also was supervised by Anna Wesley, except for two weeks in the summer when she was on holidays.
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Ironically, she is now his tenant.

He stated he was terrified of Anne Wesley. That she subjected him to a lot of beatings and
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punishments. He stated in fact, he tried to remain invisible. He related an incident when he was coughing at night in the dorm. He stated that she came out of her room in a rage, pulled his blanket from his head and beat his face with her fists to the extent that his blanket was soaked with blood.
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He felt worthless, unwanted and scared. He further stated that she struck him in the diningroom when he was about seven, with a ladle and gave him a fat lip and bruises. He was again punched and slapped often...or rather punched and
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slapped after she saw him speaking with a priest who was consoling him. After which she threw him

in a room full of shoes and hit him with a shoe.

5 He also testified to an incident when she allegedly made him jump a ditch when he was about seven or eight, despite the fact that he had an apparent sprained ankle, after which he spent five days in the hospital.

10 He also testified that when he was six years old he was standing in the corner of the rec room when she struck him from behind with both hands which were covered with dirt. She struck him over his ears. He stated he staggered, was blinded and dazed.

15 There were discrepancies between his evidence at the preliminary hearing and the trial. You must decide what weight you may wish to attach to these discrepancies. In this context, I remind you that events testified about, occurred 35 to 45 years ago. It may be that you would expect
20 discrepancies. It may be that you would indeed find it incredible if there were no discrepancies. That is for you to assess and decide. These comments apply to all of the witnesses who were vigorously cross-examined either on the transcript
25 of the preliminary inquiry or the police statements.

30 There were also suggestions made during cross-examination that the alleged victims were testifying in order to assist them or enhance their chances in a civil class action. The evidence is

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not clear if a civil class action has even started. There was talk of it. In any event, to my recollection, none of the alleged victims, maybe other than the Wheesk brothers, especially George Wheesk, stated that this was their motive. However, it is their legal right to sue if they have suffered harm. The Crown brings the criminal proceedings, the individuals have a right and bring their lawsuits. It is up to you to decide. I can only comment that the evidence in this respect, in my view, is rather thin.

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Tourville, in fairness, also testified Anna Wesley had a large responsibility for one person. That she had to be tough.

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I can only state that the mere fact, one in care of others, was a job as easy or moderate or onerous, never is the job an excuse in itself to break the law.

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Question on why he kept her as a tenant, he simply stated that he was not a vengeful person.

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I now turn it to Daniel Wheesk; counts 8 and 9; a count of simple assault and noxious substance. He was raised in Fort Albany, spent his early years at Sainte-Anne's as a boarder, and in grades seven and eight lived at home after his father stopped trapping. He was a good student and even won a

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public speaking award. He spent from September of 1958, when he was six, to June of 1963, under the supervision of Anna Wesley, and then two years under the supervision of brother Lauzon, with whom he got along. He was afraid of Anna Wesley, who he said had a nasty temper. He related an incident when he was six or seven, in the dormitory after his shower while dressing. He was pretending to be a cowboy drawing his gun using his belt buckle, she saw him, went to him and slapped his face and head.

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He further stated he had problems with his food which he called "processed food". He could not stand the taste, it was not what he was accustomed to at home. Once when he was six or seven he threw up back into his bowl so he would not make a mess on the floor, to avoid trouble. He stated she told him to eat the vomit, and he did so while she was screaming at him.

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On a second occasion he had to eat his vomit twice before being able to keep it down.

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On a third occasion he vomited but could not eat it. The bowl of vomit was placed before him twice at other meals without other food and he was told to eat it.

He testified that on another occasion he vomited in bed...did not tell her. When he striped his bed the next morning, she found out and he was punched

and slapped by Anna Wesley.

He felt Anna Wesley was out of control compared to the other teachers and caregivers.

In cross-examination he agreed that she had a big job, that she had to be tough.

Discrepancies between what was contained in the statement he gave to the police six years before were pointed out. Again, it is up to you to decide whether these discrepancies were designed to mislead anyone or were they due to lack of exact recall of details which arose 35 to 40 years ago. Do these discrepancies in your view affect his credibility? That is up to you to decide.

In my view, to which you are definitely not bound, I would find it incredible if he remembered all surrounding details. He did not waiver as to what happened to him in relation to the counts.

He also stated in cross-examination that he heard that there may be financial compensation. He called it "a vague rumour". When challenged, he stated that this did not affect his truthfulness even though it was one of the motivations for coming forth. He stated that if he qualified for compensation then he would accept it. It is as I have stated, his legal right to such regress if he qualifies. The police approached him. He did not approach the police. When asked he told his story.

He personally has done nothing to seek compensation.

5 I now turn to count 10; involving George Wheesk; a charge of simple assault. He was born in 1948, and his Daniel's half-brother. He entered Sainte-Anne at six years old and stayed until he completed grade six. He stated that when he was approximately eight years old, during the lunch period, he saw the river break-up and he yelled out. He stated Sister Anne struck him with both hands on each side of his ears, then dragged him to the corner, hitting him with her hands and kicked him three or four times.

10 He further testified that he injured his knee while ice skating, causing it to swell. A few days after he had a painful limp which affected his walk. As a result of this, he stated Anna Wesley struck him for lagging behind the other students.

15 He did admit on cross-examination that she had a big job. He confirmed that there were strict rules. He confirmed that in the police statement he did not mention the episode of limping. He was crossed on financial compensation as being his motive, and he confirmed that he was thinking of suing because he wanted to fight back. He also stated what I told you initially to correct my mistake of yesterday..."In fact, can we agree that the healing conference took place just before Chief Edmond Metatawabin asked the police to investigate?

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Answer: That's how it uh looks like.

Question: That's how it happened, right?

Answer: Yes.

Question: And at the healing conference, Mr.

5 Wheesk, was the question of restitution discussed, money, that if capable to get the police to investigate, and to get convictions in court, then maybe we can go after the church for money?

10 Answer: Yes, that is what uh I can't say, yeah, that is what uh I said."

Now you can draw the inference as suggested by Mr. Charlebois in relation to this evidence or not.

That is up to you. Does it affect his credibility?

15 I now go to the count involving Edmond Mudd. He was born in 1947, went to Sainte-Anne's when he was six for three years, he thought, then after attending Fort George School he came back when he was 15 or 16. He was at Sainte-Anne's for the fire
20 of 1954. He stated in his statement to the police that he first attended Sainte-Anne's in the early 1960's, but that was incorrect and he repeated that in cross-examination. His evidence, I think you can accept that he did go to Sainte-Anne's in the
25 fifties.

30 He testified that one morning after being told not to touch the snow, he threw a snowball at a snowman. He was seen by Anna Wesley and told "Wait, I will get you in the diningroom." There she made him kneel by the wall. He heard her

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footsteps approaching behind him, he recognized the footsteps as she was the only one with hard shoes. He stated he felt a kick to the back of his head, causing his head to hit an old fashion cast iron radiator. He stated that she was the only one near him. A lot of blood began to run down his face. She took him to the dorm instead of the medical clinic where she told him, "That's what happens when you don't listen." He did not see her kick him, but there is no doubt in his mind, in all the circumstances that it was her. No stitches were applied, he has a scar, it is now faint and agreed to be approximately an inch and half long.

In cross-examination, Mudd testified his memory in general is vague. The events had happened so long ago. Regardless of his statement, he was adamant that he went to Sainte-Anne's in the fifties. In his statement he stated the assault took place at lunch, now he is adamant that it took place at breakfast. He did remain adamant that she struck him, no one else. He was not prepared to accept his answers at the preliminary inquiry, that someone else could have struck him. He stated he made a mistake because he was nervous and did not quite understand the question. He admitted not telling the police about her statement in the dorm. However, you will recall the passage of time between the events and the statement, as well as the time it took to obtain the statement, the manner in which they were taken, that they were partly question and answer, and partly simply

statements coming from the witnesses.

5 He did state that Anna Wesley was fair when one behaved. He agreed that he did not tell his mother about the incident either because he forgot or because it might have done something to her.

10 Counts 5 and 6 involve Eli Tookate. He was born in 1944. He was in Sainte-Anne's in 1952, when he was eight years old for four months. He was diagnosed with tuberculosis and had to leave.

15 He testified in-chief that one night he wet his bed. He stated in that context that they were not allowed to go to the washroom after bedtime. He stated Anna Wesley pulled him out of bed, hit him in the back of the neck, threw him to the floor, kicked him to the back more than once. He stated he was hit more than once. About three times to the back of the neck and about two kicks.

20 He then testified to an incident which occurred in the diningroom. He stated he was not accustomed to the food. He stated he was fed cod liver oil and after a few gulps of food he vomited in his plate...or bowl, almost filling it up. Anna Wesley told him to eat what was in his plate. He did not, so she used a spoon and forced the vomit in his mouth and he vomited again in the same plate. He was sent to bed. As a result, he felt quite badly, felt he was nothing.

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5 He was vigorously cross-examined on a statement he
gave to the police in 1993; six years ago. Which
confirmed the two occurrences, the bed wetting and
slaps, as well as the vomit incident. In an attack
on his credibility he was confronted with the fact
that certain details in the statement and the
present testimony were different. At the
preliminary he stated he was hit with an open hand
in the dorm. During his testimony here, he said he
could not remember if it was a hand or a fist. He
knew that he was struck though. He stated his
memory was not clear on this. He did not tell the
10 police he was slapped or that he was thrown to the
floor. He told the police that when Anna Wesley
found out he had wet the bed and that she kicked
him allover for five minutes. At the trial you
will recall that he stated he was hit three times
at the back at the neck and kicked twice. He
admitted the five minutes was an exaggeration, but
felt at the time that that was the time it took.
20 "I made a mistake" he stated. He was confronted
with his testimony that he vomited in the
diningroom and that after he was fed the vomit by
spoon. In his statement to the police he related
three separate incidents of vomiting. He agrees
that he exaggerated. Also in his statement to the
25 police he related that after the vomit was forced
in his mouth he was sent to bed. He did not
mention that he vomited after being forced to eat
his vomit.

30 Eli Tookate maintained that he did in fact vomit,

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regardless of what was in the statement. He did not also tell the police about the cod liver oil. He never told his parents because he felt there was nothing they could do.

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There were several discrepancies in this witness' testimony in what he told or did not tell the police officers. It is up to you to assess his credibility in this respect. In doing so, you may also wish to consider the following: This man will be 55 years old in July, his statements and testimony relate to events which occurred when he was eight...47 years ago. He was simply brought to the police station with no warning or opportunity to gather his thoughts or prepare in relation to events which occurred 47 years before, and asked to give a statement. The statement is relatively short, and in part the result of questions and answers, and in part narrative, as I believe all other statements were.

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Some details of the events vary between his testimony and his previous statements, but he remained constant on the fact that the events in relation to the assault and the noxious thing did indeed occur.

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As I stated, you are the judges of the facts. You are the judges of the credibility of the witnesses. In arriving at your conclusions, looking at the discrepancies, I ask you to look at all the evidence and all the surrounding circumstances in

relation to all of the events.

5 The next witness was Oliver Wesley, who
corroborated the evidence of Daniel Wheesk...or
offered as corroboration to the evidence of Daniel
Wheesk. He was born in 1950, he went to Sainte-
Anne's at the beginning of grade three for five
years. He testified that cod liver oil was given
by spoonful to all residents, with the morning
10 meal, by sister Wesley. He stated he saw Daniel
Wheesk vomit, spit it out in his bowl which
contained food. Anna Wesley was beside him, she
slapped him to the side of the head and told him to
eat the food. He did not. For the next meal he
was given back the same food and contents, and
15 again for two or three other times.

In cross-examination he stated he attended the
healing conference. He was cross-examined on the
fact that he did not include the slap in his
20 statement he gave to the police in 1993. He
stated, "everyone got slapped" so it did not stand
out in his mind. He was questioned as to whether
Daniel spit the cod liver oil out or vomited. In
cross-examination he was adamant that it was
vomited. Then he stated that he saw cod liver come
25 out, but then he stated that Anna Wesley tried to
make Daniel Wheesk eat it.

30 Gerald Kioke was also presented as a corroborative
witness. He was born in Attawapiskat in 1940.
Testified as follows: He attended Sainte-

5 Anne's...1951-1952...related those dates to the death of King George. He confirmed that Eli Tookate, four years his junior, attended the school in 1952.

10 He stated at one point he saw Eli who was seated next to him in the diningroom, vomit in his plate. He testified he saw Anna Wesley feed him his vomit with a spoon. He remembers because it was the first time he had ever seen anything like that. That is the reason he states that stands in his mind, and that is the reason he stated, he never went back to school after the 1952 school year, or any other school.

15 He stated that in 1993 someone came to get him and he gave a statement to the police. He stated he told his parents about the incident, that even though he and Eli were good friends they never discussed the incident, or the fact they both gave statements to the police. He stated Eli said he hoped to get money from the courts.

25 Leo Loon then testified in relation to the incident with George Wheesk. In relation to the incident where George Wheesk had an accident on the rink. He stated that he scraped his knee and it infected and that he could hardly walk. He dragged his leg. He stated that when George could not keep up, Anna Wesley would get mad at him and slap him around the head area. He stated he remembered this as it was yesterday, it was so cruel. He felt sorry for

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George. He felt this happened around 1963 though he was unsure when Anna Wesley left. He was sure however that he saw her slap George Wheesk sometime around 1963.

He also agreed that Anna Wesley had a big job.

The accused, Anna Wesley, then testified, and she testified as follows: She was born in 1926 in Attawapiskat, where she grew up. She also attended Sainte-Anne's from 1944 (sic) to 1941, completing grade seven. She went back home, worked, and in 1948 at the age of 22 she decided to join the Sisters of Charity. In 1951 she finished her training and was sent to Sainte-Anne's school where she was the supervisor of the boys until 1962. She left the order in 1972.

She described in detail the nun's habit she wore. There were two layers of heavy material, one layer coming one inch from the ground and a third lighter, shorter layer. You have seen a photo of the habit, and I believe it is an exhibit for you to look at.

When she began her duties in 1951, she had about 40 boys to supervise. By 1962, the numbers had swelled to 106. The boys' ages ranged from six to 16 years. She alone was in charge of all supervision except for the classroom. She started her work at six a.m., until bedtime at nine p.m. Her bedroom was beside the dorm. All boys except

for six or seven went home for the summer. She had two weeks vacation in the summer.

5 In April of 1954, the building housing the dorms, classroom and rec room was destroyed by fire. The dining rooms were in a separate building. The pre-fire building had no water, pails behind curtains were used as toilets. She stated no one had to ask permission to go to the toilet.

10 In the pre-1954 building, two oil barrels were used as a furnace, heat was dispensed by pipes, there were no radiators. The new building which opened in 1957 and 1958 had modern toilet facilities and showers and radiators.

15 She stated the rules of conduct for the students were set by Mother Superior, type written and framed on the wall by the rec. room.; they were in English. She explained them to the students every year.

20 Students were not allowed to go to the dorm during the day, nor were they allowed to talk in the dorm. They could talk in the diningroom only at lunch and sometimes at supper. Students were assigned a place at long tables and benches, food was served in pails and pots, cod liver oil was admitted to all in liquid form by order of the doctor...mostly at lunch. Most boys took it, but a few had trouble and spit it out. Once in a while one would throw up. She testified she would then offer them

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5 something else to eat. She stated, "I never forced any boy to eat vomit and food. If they spit it out, I would do nothing." Once one boy, Eli Tookate, spit the cod liver oil in his plate. She stated she asked him to eat that part of the food he had not spit on.

10 "When the boys played outside the doors were locked. If they needed to go to the washroom, I opened the door. I would never refuse permission to use the toilet."

15 As to coughing she stated, "When it got cold most would cough." It disturbed the others, but she had cough drops...and I believe she stated, "camphor oil". She stated she never punished anyone for coughing. If anyone had an accident in bed she stated she would help clean it up.

20 Dealing with individual complaints of the alleged victims, I summarize her testimony as follows: As to Luke Mack she stated, "I saw him vomit in his plate. I asked him if he wanted something else to eat. I never hit him, I never called him a "bastard", or a "wild dog". The boys from Winisk called him that." She denied striking Luke Mack while he was on his knees for coughing. Luke Mack and Leo Loon both stated the opposite. She stated she never had boys kneel all night or at all. Rather, she would maybe have them stand in the corner. She never punched Luke Mack for coughing. She recalled the incident where he soiled himself.

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She stated that she provided him with towels, as they had regular toilets and water then, sent him to clean himself.

5 Tony Tourville, born in 1950, was described by Anna as a troublemaker, constantly fighting, stealing or teasing. He had been taken by the Children's Aid Society from a family marked by violence. He was a year round resident. She denies beating him with her fists for coughing in the dorm, causing the bloody nose. She admits only to slapping him at times. On this occasion she states his nose was already bleeding when she saw him. She had gone to his bed to give him cough medicine. She wiped his face, she did not discipline him.

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20 On another occasion she stated she saw him playing with his food...meatballs in the diningroom. She asked him to stop, he did not, and she hit him once on the side of the head with a lite aluminum ladle. She denied disciplining him in the room which she stated in the shoe room which she stated was on the girl's side. In fact, she stated there was no shoe room for the boys. She denied striking him with shoes. She denied striking Tourville when he had a sprained knee--a sprained ankle, nor did she make him jump a ditch, as he related. On the contrary, she offered to take him to the hospital and later put a towel around it.

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30 In the recreation room Tourville had been fighting, and she sent them to stand in the corner. She

denied vehemently striking him with two hands. She stated she simply slapped in on the cheek. She slapped him more often than once, as he was a troublemaker.

As for Daniel Wheesk's allegations surrounding the drawing of the imaginary pistol, she does not recall it, but states it was not something she would discipline someone for.

As to Daniel's evidence that he was slapped when he threw up in his food, and that she forced him to eat his vomit, she stated she never forced any boy to eat food and vomit. She did recall Daniel vomiting, but remembers speaking to his mother who worked in the laundry, about it. She denied yelling and screaming at him. She denied his plate was left on the table for several meals. She stated she could not recall the incident when he vomited in bed. In any event, she states that she would have cleaned it up.

George Wheesk, she states, testified he was hit over the ears when he yelled out...when he saw the break-up. She denies ever hitting George Wheesk or anyone else with her both hands. She would simply slap them on the cheek. She further stated that George Wheesk made this story up, as students were allowed to speak at lunch.

She stated she recalled when George Wheesk hurt his knee. She stated she took George to the hospital

and insisted they keep him for a few days. She denies hitting him.

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As for Edmond Mudd, she stated she would never discipline a boy for throwing a snowball. She denied having kicked him or hit his head into a radiator. There were no rads in the building she stated. She cannot remember ever having to discipline Edmond. She never kicked as a form of discipline.

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She does not recall Eli Tookate as a bed wetter. She denies ever striking a boy for wetting the bed. As to Eli Tookate's evidence that he vomited in his plate and that Anne forced some of the vomit in his mouth, Anna Wesley testified that he spit the cod liver oil in the plate and she asked him to eat that part of the contents of the plate that was not contaminated.

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She testified she only yelled in order to be heard in a big room. She stated she never kicked or strapped anyone, but did slap with her open hand to the face. She did at times get frustrated and lose her temper when she was too tired and the boys would not listen. She was alone, she had no help, and despite asking for help, never got any help. Even after she left, the boys were broken up in two groups. She further stated that in 11 years she never reprimanded or mistreated any of the boys-- that she was never reprimanded for mistreating the boys.

5 Anna Wesley was cross-examined by Miss Fuller. It was pointed out that there was an enormous difference between the alleged victim's version of events and her version of events. She agreed she spoke French.

10 Asked about kicking the boys; she said it could not be done because of her cumbersome habit which went down to an inch from the floor. Pressed, she said it was impossible. It was put to her that the other nuns could run, skate, canoe, and hike in their habits. Anna Wesley agreed with this, but she said she could not.

15 At a previous point in her testimony, Anna Wesley stated that Mother Superior hardly ever came to the diningroom or the dorm. Upon being cross-examined on the rules, she stated that she had to make sure they were complied with because Mother Superior was watching them all the time, and she would come after them.

20 Children could not be punished unless they broke a rule. She stated sometimes she would get frustrated when a boy wet the bed, and she would slap him just a little bit, which is contrary to some of her previous testimony that she never struck anyone for wetting the bed.

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30 Cod liver oil was served at lunch. When asked, she denied boys vomited often. It was suggested to her that it was not normal to offer food to someone who

5 had just vomited. It was not normal to force food on someone who just vomited. She in effect disagreed. Asked if she slapped someone for vomiting, she answered, "Not really a slap, just a little slap." She was asked why the boys were careful to vomit in their bowls and not on the floor.

10 She stated she did not force feed Eli Tookate after he vomited in his bowl, but only that part of the food that was contaminated.

15 Your life experiences may tell you that vomit does not generally come out in a neat little package fitting nicely in one part of a bowl or a plate, but as I say, that is up to you.

20 The Crown put it to Anna Wesley that usually ordinary events that occurred 40 to 50 years ago would not normally be remembered. However, the vomiting episodes would hardly be forgotten by the boys. Anna Wesley was asked whether or not it was odd a boy would prefer to sleep in his vomit rather than ask for assistance. She said, no, it was not odd.

25 She was asked why she would remember after all these years Tony Tourville being slapped lightly with a lite ladle, or why she would recall Luke Mack being sick. It was put to her, she remembered the Luke Mack incident because she slapped him and made him eat his vomit. It was put to her that
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5 otherwise it would have been too inconsequential to remember. Anna Wesley answered, "No". She denied drawing attention to Luke Mack's illegitimacy. She denied ever having one of the boys kneel because, as a student border herself she had been made to kneel often by the nuns.

10 The Crown also put it to Anna Wesley that it was surprising she recalled the coughing episode if it was as innocuous as she said it was.

15 Anna Wesley stated that the ladle incident was the only time she ever hit anyone over the head with an object. She could not help herself she stated.

20 She denied hitting Tourville with soil on her hands. She stated Tourville was making his evidence up to embarrass her. I asked why, as she's still his tenant, and they seemed to be still friendly. Why would he want to embarrass her?

25 She denied slapping and making Daniel Wheesk eat his vomit or putting his plate before him several times.

30 She stated George Wheesk made up the river break-up story and his being struck for limping.

She denied or does not recall Edmond Mudd's snowball story.

She stated that maybe she slapped Eli Tookate for

wetting the bed because she slapped others for wetting the bed.

5 She admitted that she was not treated kindly at Sainte-Anne's as a student, and as a supervisor the job they gave her was too big.

10 We had the reply evidence from the Crown, Leo Loon....He stated basically the children were not allowed to use toilets in the school, that they had to go to the toilet before they went out, that a number of kids had problems, he related the sugar bush party...details of which you will recall; the diarrhea, the reluctance to flush the toilet.

15 And that is, I believe, pretty well a summary of the evidence that you have heard. So the next part is for me to relate this evidence to the law of assault, the law of assault causing bodily harm, and the law of a noxious thing and general principles of law.

20 I think we should take a break now for 15 minutes and clear our heads for the final part.

....JURY RETIRES

25 MS. FULLER: Two things I'd like to address, Your Honour, with respect to the facts. First is at the beginning of your review of Edward Metatawabin's evidence, you indicated, and I will refer to his reply evidence when I deal with reply, and I believe unless I missed it, it was just an oversight, you referred to Leo Loon's reply

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evidence and you said nothing about Edward Metatawabin, which is very important to the Crown's case in view of a direct contradiction.

5 THE COURT: Why is it very important, Crown, I do not even understand it?

MS. FULLER: Well...

THE COURT: It does not jive...

MS. FULLER: ...Anna Wesley...

10 THE COURT: ...with the rest of the evidence. No, I left it out purposely and I will leave it out.

They have it. I do not have to give them all the evidence. They have the evidence.

15 MS. FULLER: The secondary, Your Honour, is with respect to the evidence of Eli Tookate. Your summary of the evidence was that he was eating and he almost threw up and then he was forced to eat his vomit, and there was some confusion in cross-examination about that. That there was an incident involving eating cod liver oil in which he almost threw up, but it was a separate and distinct incident from when he threw up and was forced to eat his vomit. And the evidence in-chief was that he was forced to eat. He was not feeling well because the food...

20 THE COURT: What...

MS. FULLER: ...he threw up.

25 THE COURT: ...what difference will it make to the end result of this trial? That is what I asked myself about the details about the evidence. What difference will it make? If I go back to them on every detail that either you or defence counsel bring up and start changing those things, I will

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confuse them more than anything else. I will not readdress on details on things like Mr. Charlebois mentioned last night, fine, that was black and white, that had to be straightened out, but not on the details.

MS. FULLER: But, Your Honour, this isn't a detail, the gravamen of the offence was that he threw up, and Mr. Charlebois in cross attempted to adduce that he didn't throw up the cod liver oil which he admitted he almost threw up...

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THE COURT: Anyways, whatever I tell them is not evidence, what evidence is what they heard from the witnesses. I never go into details on evidence unless it is right on point, pertinent, as yours was pertinent last night. I am not going to go back on that, they are going to be wondering what I am talking about.

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MS. FULLER: Alright, Your Honour.

R E C E S S

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

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....JURY ENTERS

THE COURT: Well if you are familiar with racetracks at all, I can tell you that we have rounded the last corner and we are well on our way in the stretch now.

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I will now deal with the specific law applicable in relation to the counts. I will first deal with the counts in the indictment dealing with assault, and assault causing bodily harm.

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The applicable provisions of the Criminal Code read

5 as follows: "A person commits an assault when without the consent of another person, he applies force intentionally to that other person, directly or indirectly." So you commit an assault when without the consent of another person, force is applied intentionally, directly or indirectly.

10 In two of the counts Anna Wesley is charged with assault causing bodily harm. So first, the applicable provisions of assault apply, then when someone is charged with assault causing bodily harm, you go to the bodily harm part. 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." Secondly, that the bodily harm suffered by the alleged victims, there are two, was caused by Anna Wesley.

20 It is up to you to decide whether or not the evidence proves beyond a reasonable doubt that the alleged victim was actually assaulted and suffered bodily harm. I suggest to you that you give the words "hurt or injury that interferes with the health or comfort of a person" their ordinary meanings. Consider the evidence.

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30 So coming back with the offence of assault itself, by itself, I will now go over the essential elements of this offence that the Crown must prove beyond a reasonable doubt.

5 The Crown must prove beyond a reasonable doubt the following essential elements of the offence: First, the identity of the accused as the offender. The identity of Anna Wesley is not in dispute. The evidence is also clear on this point and you should have no problem arriving at a conclusion for this first essential element of identity.

10 Second, the second essential element is the time and place of the offence. That also is not in dispute, and I do not think on the evidence, you should have any problem with this element that has to be proved beyond a reasonable doubt.

15 The third element the Crown must prove beyond a reasonable doubt is that Anna Wesley applied force to the alleged victims in the separate counts. Also, that she intended to apply force to the alleged victims. So, on this essential element, obviously intention is a state of mind. We cannot read people's minds. However, common sense will tell you that people normally intend the natural consequences of their acts. On the evidence, if you find beyond a reasonable doubt that Anna Wesley intended the natural consequences of her acts, then this essential element has been proved beyond a reasonable doubt.

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30 The next essential element is that the alleged victim in the separate counts did not consent to the application of the offence. There you use your common sense on all the evidence.

And secondly, that Anna Wesley knew that the victim did not consent to the application of that force.

To arrive at your conclusion, you will have to look at all of the evidence in each and every count, and arrive at your conclusion as to whether that element has been proven beyond a reasonable doubt.

Now I have just gone over the essential elements that have to be proven beyond a reasonable doubt before you can arrive at a conviction in any of the counts. All of these essential elements also apply for the counts alleging assault causing bodily harm. First you deal with assault, then you deal with the causing bodily harm part of it, which I described to you a few minutes ago.

So I have just gone over the essential elements of an assault and I have given you the elements in relation to the bodily harm aspect for those two counts of assault causing bodily harm. So it is up to you on all of the evidence to examine that evidence to see if the Crown has proven all of the elements of assault in those charges of assault, and those additional elements related to bodily harm in those two charges of assault causing bodily harm.

One more thing in relation to the assaults. As the offence of assault is included in the offence of causing bodily harm, the offence of assault is included in the offence of assault causing bodily

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harm. It is possible for you to bring a verdict of not guilty for assault causing bodily, but guilty of assault simple, if you feel the Crown proved the assault, but not the bodily harm part of it.

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You only have to concern yourself of course with assault causing bodily harm in relation to the counts of Tony Tourville and Edmond Mudd. The rest of the assault charges are that of simple assault and do not allege bodily harm.

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So simply to help you better remember the evidence surrounding the assaults, simply to help you better remember, I will go over part of the indictment and add some part of the evidence that may help you as a key to remember all of the evidence.

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Luke Mack; count 1; simple assault; he stated she struck him after he vomited in his bowl. He stated she struck him in the dorm after being made to kneel on the floor. He stated he was slapped for soiling himself.

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Count 3; Edmond Mudd; this is assault causing bodily harm. This is the count which alleges he threw a snowball, was made to kneel, felt the kick, his head hit a rad and caused him to bleed, and left him with a slight scar.

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Count 5; Eli Tookate; simple assault. He wet his bed and he was struck.

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Count 7; Tony Tourville; states he was beaten for coughing. States he was struck with a ladle. States he was punched and slapped for talking to a priest. He states he was struck with a shoe. He states he was made to jump a ditch with a sprained ankle. I believe there was another incident in the gym when the accused allegedly had soil on her hands and struck him.

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Count 8; Daniel Wheesk; simple assault. He was pretending to be a cowboy and was slapped for that. He also stated he was struck for vomiting.

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Count 10; George Wheesk; simple assault. This was the ice break-up episode where he yelled in the diningroom.

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So the only reason I gave you this brief resume is to help your memory relate to all of the evidence including the evidence of Anna Wesley, whose evidence differs greatly with that of the alleged victims.

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That deals with the counts of assault and I now wish to deal with counts 2, 6 and 9, involving Luke Mack, Eli Tookate and Daniel Wheesk.

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Count 2, in connection with Luke Mack reads as follows: That she between September 1st, 1958, June 30th, 1962, in Fort Albany, in the District of Cochrane, did cause Luke Mack to eat his vomit, a noxious thing, with intent to aggrieve or annoy

Luke Mack.

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Count 6, between September 1st, 1951 and June 1st, 1953, she unlawfully caused Eli Tookate to eat his vomit, a noxious thing, with intent to aggrieve or annoy.

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Count 9 - That between September 1st, 1958 and June 30th, 1962, did cause Daniel Wheesk to eat his vomit, a noxious thing, with intent to aggrieve or annoy.

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The Criminal Code which as been amended since the early '50s, when some of these matters allegedly occurs, has not been amended to any extent that it affects these proceedings. This is agreed upon by counsel, and I agree with them. And reads as follows: "Anyone who administers or causes to be administered to any person a noxious thing is guilty of an offence, if he intends thereby to aggrieve or annoy that person." That is the section of the Criminal Code that allegedly has been breached.

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For the Crown to succeed on counts 2, 6 and 9, it must prove beyond a reasonable doubt the following essential elements: Number one, the identity of Anna Wesley. This is admitted, and on the evidence you should have no trouble. Number two, the time and place of the offence, as set out in the amended indictment. This is also admitted. And as well, on the evidence you should have no trouble here.

Three, it must be proven that the offender administered or caused to be administered, the noxious thing, in this case vomit.

5 I must instruct you in law that "administering" not only includes spooning or other forcible administration, it does not only include spooning the vomit in someone's mouth or physically forcing it in, it also includes a person in authority ordering someone to eat it, with the intent that that person eat it. A person who has power over someone and orders someone to eat against this person's will, without his consent, is included in the meaning of the word "administer". This element of the offence must be proven beyond a reasonable doubt by the Crown.

10 The Crown must also prove that the thing administered is noxious. Again, the defence concedes that vomit is noxious. The ultimate responsibility lies with you to find that it is a noxious substance. Of course an admission by the defence should bear a lot of weight in your decision there. But noxious is defined by the shorter Oxford Dictionary as: "Injurious, hurtful, harmful, unwholesome"...."Unwholesome" supports the conclusion that a substance may be noxious if it is not beneficial to the morals.

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30 So I urge you in your consideration of whether vomit is noxious, that you take into account the admission of the defence, the definition I have

5 just given you and I also ask you to consider the evidence of the expert doctors. You may well have no trouble concluding that vomit is noxious or that it is physically and psychologically harmful, but that is up to you. You are the judges of the facts.

10 The last part of the offence as described by the Criminal Code, is as follows: "A party is guilty "if he intends to aggrieve or annoy that person."

15 This "intends to aggrieve or annoy that person", this must also be proved beyond a reasonable doubt by the Crown. We cannot of course look into Anna Wesley's head as to what was her intent, whether she intended to aggrieve or annoy the victims. As I stated in the case of the essential elements of assault, we cannot read peoples' minds, however, commonsense will tell you that people normally intend the natural consequences of their acts.

20 On the evidence before you, if you decide that Anna Wesley intended the natural consequences of her acts by administering vomit beyond a reasonable doubt, then that essential element is satisfied.

25 If you decide that Anna Wesley intended the natural consequences of her acts by administering vomit, would naturally have the effect of aggrieving Luke Mack or Eli Tookate or Daniel Wheesk, you are entitled to conclude that she intended to do so. You are not required to make this conclusion.

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Before relying on this commonsense inference of people intending the natural consequences of their acts, you must consider all of the circumstances.

5 If you are left with a reasonable doubt on this point, of course, you must acquit, because every essential element has to be proved beyond a reasonable doubt.

10 Again, simply as a memory aid, you will recall the following brief excerpts of the following testimony: Luke Mack stated he vomited in his bowl, was stuck and she made him eat the vomit.

15 Eli Tookate stated he vomited in his plate, she forced vomit in his mouth with a spoon, and he vomited again.

20 Daniel Wheesk stated he had problems with processed food, he vomited in his bowl, she told him to eat it, and he did while she was screaming at him. On a second occasion he had to eat it twice. The third time he could not eat it and that bowl was placed before him.

25 But this is only to help your memory now because I remind you again, that you must consider the evidence of Anna Wesley, and Anna Wesley denies any allegation related to making anyone eat their vomit.

30 Okay, I now go into another area of law which we

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call "similar fact evidence". On a multiple count like this one, application can be made by counsel to have the evidence of one count apply to proving another count. Normally that is not allowed and...it is allowed after an application is made, argument is heard and I have to make a ruling. In this case, in relation to the evidence adduced on the counts alleging assault and the counts alleging assault causing bodily harm, I instruct you that as a matter of law, the evidence on these counts stands alone. You must not use the evidence on one count as evidence supporting guilt on another count. The evidence on one count applies to that count alone and is not to be considered as evidence on the other counts, as it is not admissible in assessing guilt. This is as a matter of law...and it applies to all of the evidence in relation to the different counts relating with assault and assault causing bodily harm.

Now, you might think this strange, but there was a lot of argument over it and a lot of thought put into it, and I held in the end that the converse would hold true for a raft of reasons in relation to the noxious thing counts.

So, in some instances the law allows you to use the evidence from a proven count to help prove an issue in another count. For certain legal reasons, I have decided this cannot and must not be done in the counts alleging assault. In those counts the evidence on those counts stand alone.

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For other legal reasons, I have decided that you are allowed to use the evidence from a proven count of administering a noxious thing in another count of administering a noxious thing.

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In this trial the accused is charged with three counts of administering a noxious thing. We just went over them. These offences allegedly occurred while the victims were residential students at Sainte-Anne's. All of the alleged offences occurred in the diningroom. All of the alleged offences were committed in front of the other students. Medical evidence described the alleged offence as a gross injustice on the individual, and extremely harmful. In this case, the law allows you to use the evidence from a proven count...I have said "proven count" quite a few times now..."a proven count"...to rebut the evidence of the defence that is open to the accused on the unproven counts or count.

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When examining the evidence, you should not conclude that Anne Wesley is a person whose character or disposition is such that she likely or probably committed the offence described in the unproven count. The Crown must prove beyond a reasonable doubt that the accused did in fact commit the offences on all three counts. All I am describing to you now is the use you may put some evidence to. You may be satisfied the Crown proved the offence on all three counts beyond a reasonable doubt by the evidence with respect to each count.

5 So, if you reach that conclusion you do not even have to consider this issue that I just put before of similar fact evidence. If you consider on the evidence that you received on each count is sufficient for a verdict of guilty. But on the other hand, you may find the Crown proved the guilt of the accused on one count or two counts, then you are entitled to use the evidence of the proven count or counts to help you prove an issue on the other count or counts.

10 Once the Crown has proved beyond a reasonable doubt one count, you may use the evidence if you wish, on that count to help you arrive at a conclusion on the other unproven counts or count.

15 So to be clear, you can only use the evidence of one count on another count if you first find the accused guilty on that first proven count.

20 In this case there are three complainants relative to noxious thing allegation, an issue as whether they should be believed, that there is no evidence of collusion between them...or between the complainants and any other supporting witnesses. The testimony of one complainant can support the credibility of other complainants only if that first complainant...only if the charge is not proven on that first complainant.

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30 If you find guilt against one complainant that does not automatically prove that Anna Wesley committed

5 the other offences. If you are not satisfied that the evidence demonstrates a pattern of similar behaviour, then the evidence with respect to each count must be considered on its own. I say that again, if you are not satisfied that the evidence demonstrates a pattern of similar behaviour, then the evidence with respect to each count must be considered on its own without regard to the other complainants.

10 Keep in mind that the Crown must prove guilt beyond a reasonable doubt.

15 You may find Anna Wesley guilty on all counts, guilty on either one or two counts, or not guilty on all counts; two, six, and nine.

20 Now you have heard much through this trial, the expression of "proof beyond a reasonable doubt", the concept of reasonable doubt is inextricably intertwined with that fundamental principle of all criminal trials; presumption of innocence. The burden of proof rests on the prosecution throughout the trial... it never shifts to the accused. A reasonable doubt is not a doubt based upon sympathy or prejudice. A reasonable doubt is based upon reason and common sense. It is logically connected to the evidence or absence on evidence. It does not involve proof to any absolute certainty. It is not proof beyond any doubt, nor is it an imaginary or frivolous doubt.

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Again I reiterate that proof beyond a reasonable doubt does not apply to each individual piece of evidence, but on the evidence as whole in relation to every count. You do not have to test each piece of evidence to see if it was proven beyond a reasonable doubt, rather you look at the whole body of the evidence.

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Now, let me take another approach. First, if you believe the evidence of the accused on any count, you must acquit. Two, if you do not believe the evidence of the accused on any count, but are left with a reasonable doubt, then you must acquit. Thirdly, if you do not believe the evidence of the accused, you should ask yourselves whether based on the evidence you accept you are convinced beyond a reasonable doubt of the guilt of the accused. But I wish to convey to you is that you are not simply to pick between the two versions of the truth offered. You must look at all of the evidence.

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Now, we have prepared for you a verdict sheet which - have they seen it yet?

COURT CLERK: No, Your HOnour.

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THE COURT: Okay. Which will be given to your foreperson when you advise us who has been chosen. It contains the names, the counts and the possible verdicts. There will only be one sheet given to you. I recommend that you fill it at the end when it is time to render your verdict. If there is any problem with it, you will let me know, I am sure.

So this is the end of my charge to you. I would like to conclude by dealing with your duties as jurors in the jury room.

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When you go to the jury room it is your duty to consult with one another and to deliberate with a view of reaching a just verdict or just verdicts based on the evidence that you have heard and seen. Your verdicts will be based as I have stated earlier, on the facts as you find them and on the law as I have explained it to you. You will be given the exhibits to take with you to the jury room, so that you may consider them there. Do not take a dogmatic position when you enter to deliberate. When you enter the jury room commence your deliberations. I would ask you to make no emphatic expressions of opinion, or express a determination to stand for a particular verdict. To proceed that way, it will make it difficult for you and others to consider the wisdom of your fellow jurors; you are twelve. Keep an open mind, listen in a calm and impartial manner to what is said by your fellow jurors, and put your own views forward in a reasonable way. Your function is not that of an advocate whose duty is to argue one side or the other. You are judges of the Superior Court of Ontario. And if you approach your deliberations calmly, putting forward your own view, and listening attentively to the views of others, you will be able to arrive at just and proper verdicts.

I suggest that your first step and duty upon

5 retiring to your jury room will be to select the foreperson. The foreperson will preside over your discussions. The foreperson should give every juror an opportunity to state his or her view, but should also try to keep the discussion from wandering far a field, or from being repetitive on any point. When you have arrived at a verdict, you will so advise the attendant, and then someone will announce it to the court.

10 Coming back to the roll of the chairman, sort of in a friendly way, to keep things in order, and encourage a fuller(ph) discussion.

15 Since this is a criminal trial, in order to return an effective verdict, it is necessary that twelve of you be agreed upon your decision. A verdict is by definition the expression of the unanimous opinion of the whole jury. It is necessary that each and all of you agree on each of the verdicts that you see fit to return. It is the right of a jury to disagree, but I know that you will do your best to come to an agreement.

20 This trial has involved a fair amount of time. A lot of time for us when you were not present also. And you know, and disruption to your lives, and those of the witnesses. I am certain that no other jury could deal with this matter better than you.

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30 If despite your very best efforts you are unable to agree on a verdict, you will report that

disagreement to me.

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10
After you retire I will be discussing my charge with counsel. They may have some matters they wish corrected or some matters in which they wish me to give you further instructions. This is perfectly proper and it happens at the conclusion of every jury trial. It is quite possible I may have made an error in law or overlooked something. If I call you back on these matters, please do not give any special emphasis on what I say on that occasion, just regard it as an additional instruction that I would have given you originally.

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In considering your verdict, you must not concern yourselves with the consequences of it. That is completely irrelevant to your deliberations and your responsibilities. In determining the guilt or innocence of the accused, the subject of penalty or punishment should not even be discussed or considered by you.

25
If there is any thing on which you are not clear, I will be available to answer your questions. If you have any questions, will you have your foreperson put them in writing, and give them to the court services officers.

30
You have taken an oath to well and truly try this charge and render a true verdict according to the evidence. If you honour your oath, you will have done all that is expected of you. Please swear-in

the constables.

COURT CONSTABLES: SWORN

5 JURY RETIRES

THE COURT: Tell them they can start deliberating right away.

MS. FULLER: Your Honour, there are several areas that I would ask you to recharge the jury on.

10 THE COURT: Okay.

MS. FULLER: The first is with respect to the law with respect to similar fact evidence; what use they can make of the similar fact evidence. The Supreme Court of Canada in Arp last year, clarified the law and decided quite definitively that similar fact evidence once it was determined to be similar fact and was adduced and allowed before the court for consideration, it was no different than any other evidence. It was no different whether it was on the indictment...a count on the indictment or whether it was external evidence. It was evidence that did not have to be proved beyond a reasonable doubt; it is like every other evidence. And that some evidence of one similar fact whether on an indictment or external, could be used with respect to a count on the indictment to persuade beyond a reasonable doubt with respect to both. It was a fundamental clarification of the law before Arp, decisions had gone both ways as to whether or not you - a jury or a judge had to be convinced beyond a reasonable doubt of either the similar fact evidence or the count, and this decision made it

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5 abundantly clear that that was no longer the law - that it is - that similar fact evidence is like every other evidence, and it is evidence to be considered in determining guilt, both with respect to the count it applies to, and if it is a count, to the count that it represents. So with respect...

THE COURT: Are you saying that the count does not have to be proven?

10 MS. FULLER: No, it does not have to be proven, and I'm sure that my...

THE COURT: Is that the point?

MS. FULLER: That is the point...

THE COURT: Okay.

15 MS. FULLER: ...yes. Secondly, Your Honour, my submission is that the intention or the mens rhea with respect to assault causing bodily harm is the intention to inflict some kind of force without consent. That the mens rhea for assault causing bodily harm does not require the intention to cause
20 bodily harm, that that is a consequence of an intention to apply force, and that Your Honour's instruction left the impression that an accused must intend to cause bodily harm, that that is the intention necessary, and my understanding of the
25 law is that that is not the case.

30 Thirdly, Your Honour, with respect to your review of the evidence of count seven. The incident with respect to bodily harm on Tony Tourville, Your Honour, referred to three or four different incidents of assault. My quarrel with that is that

5 the reference to being punched for coughing is a reference to an assault no different than the striking or the - but it is the only count that the Crown wishes the jury to consider with respect to bodily harm, and it should be referred to not only with respect to the assault which was the punching, but the actual bodily harm which is punched and did cause a bloody nose.

10 And fourthly, Your Honour, with respect to count eight. The incident that the Crown is relying on with respect to the assault was not mentioned by Your Honour, and that is when Daniel Wheesk was hit and punched, and I'm not sure whether kicked at this point, for throwing up beside his bed. Your Honour, overlooked that incident which is the incident the Crown is relying on.

15 THE COURT: Your turn.

20 MR. CHARLEBOIS: Insofar as what the Crown had to say on Arp, I haven't got it handy in front of me. What I do remember in Arp however, is that Justice Cory summarized...

THE COURT: Do you agree with her...

25 MR. CHARLEBOIS: I don't know. I have to reread Arp.

THE COURT: Okay, well let's all reread Arp because that is a very fundamentally important point. As soon as I can see it, I will get them in and recharge it, but I do not want to do this at four o'clock this afternoon.

30 MR. CHARLEBOIS: I may concede it after I reread those seven paragraphs in Arp.

THE COURT: Okay. What are your...just give me a list of whatever your other...I would like to clear Arp up before they get too far into their discussions.

5 MR. CHARLEBOIS: Okay. I have a couple of factual matters...a couple of legal matters.

THE COURT: Okay.

MR. CHARLEBOIS: Factual matters, Your Honour may decide have no value, but I want to raise them anyway.

10 THE COURT: Oh, well, do not waste my time now, waste my time later. What are the legal matters? I'm concerned with the jury spending a lot of time discussing something that they have a basic law...in the law.

15 MR. CHARLEBOIS: Well, do you want to deal with Arp first and then my points?

THE COURT: Well...

MR. CHARLEBOIS: Do you feel that would be better?

20 THE COURT: ...there is some of your points that are as cogent or as black and white as Arp, maybe I should deal with both of them at the same time.

MR. CHARLEBOIS: Okay.

THE COURT: But as far for the matters of evidence, I can deal with that later.

25 MR. CHARLEBOIS: Okay. On the law, two things: First of all, on section 43, by not mentioning it all...Now, I didn't mention it in my submissions, Crown alluded to it briefly in her address to the jury yesterday, now, in defining "assault", basically, if I was a layperson sitting on that jury, I'm left with the idea that if I find that

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5 Anne Wesley slapped any boy at any time she's guilty of assault. Now, it's clear that - I submit that section 43 should have been brought to their attention in that context. A, they got to figure out whether the assaults occurred. If they don't, they don't consider 43. If they find that assault bodily harm occurred, 43 doesn't apply. I concede that. If they find that a common assault occurred beyond a reasonable doubt, then they have to deal with whether...

10 THE COURT: Is there any reason why you didn't bring...up? I wondered why you didn't bring up section 43.

15 MR. CHARLEBOIS: Because pursuant to certain discussions that all of us had, I was under the impression that it was not going to be brought in this trial at all, neither by the Crown, nor by myself.

THE COURT: Okay. Did I bring it up?

MR. CHARLEBOIS: Uh, you mean in your charge?

20 THE COURT: Yeah.

MR. CHARLEBOIS: No, you didn't bring it up in your charge because the Crown alluded to it in her jury address. I assume that...

25 THE COURT: The Crown alluded to it or...I mean...laid it out?

30 MR. CHARLEBOIS: I don't want this jury to be left with the impression that if they find that Anne Wesley slapped children...not commonly, but slapped children in a common assault type of scenario, if they're satisfied beyond a reasonable doubt of that...

THE COURT: Listen, if you are not going to put a defence forth, why should I put it forth for you?

MR. CHARLEBOIS: Do we need to get on the record in discussions that took place in chambers?

THE COURT: I cannot recall.

MR. CHARLEBOIS: Well I sure can. I would be satisfied because the Crown touched briefly in her address to the jury on the issue of section 43 without referring to it as section 43. I would urge the court to let the jury know. First you find out if the common assault occurred. No application to A.B.H....first that the common assault occurred. If you've got a reasonable doubt, that's the end of the matter. If you find beyond a reasonable doubt that a common assault occurred, then you need to determine, is it excused by section 43 ie: was it in a discipline setting or a non-discipline setting?

THE COURT: What did you have to say about it, exactly?

MS. FULLER: Before any jury address was made I indicated that I would be saying that in our country you can assault--you cannot slap a person...an adult cannot slap another person; that's an assault. And an adult cannot slap a child unless he has misbehaved, and then it has to be reasonable. And I advised...

THE COURT: That's what you said?

MS. FULLER:...that's all I said, and I advised Mr. Charlebois in this court that I would be making that allusion. And then...

THE COURT: Well that's exactly what 43 says.

MS. FULLER: Yeah.

5 MR. CHARLEBOIS: In the interests of fairness, and whether I raised it in my jury address or not, and I didn't, and I concede that I didn't because I obviously misapprehended comments made by the Crown in chambers, and that's my fault, not the Crown's fault, in the interest of fairness, I would urge the court to put section 43 to the jury, otherwise they're left with the impression that if they find that a common assault occurred beyond a reasonable doubt it's the end of the matter, and I submit that it isn't the end of the matter. They have to...

10 THE COURT: Well they have...If Miss Fuller gave those statements, that is exactly what section 43 has to say; it has to be reasonable if you are a teacher. And...

15 MR. CHARLEBOIS: Doesn't it have more...

THE COURT: ...I do not know how much I am going to start reminding a jury of law that was not relied on by the defence.

20 MS. FULLER: Your Honour...

THE COURT: That comment is very reasonable, and certainly not prejudicial.

25 MS. FULLER: If anything, Your Honour, because of the defence, section 43, unless Your Honour concluded that the evidence demonstrated that the children were doing things that constituted misbehaviour, it would not be appropriate to put section 43 to them. In other words, we don't even get to consider the defence unless there's misbehaviour. And on all of the counts the allegations are for actions that do not constitute

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misbehaviour.

THE COURT: I am not putting section 43 before them.

MR. CHARLEBOIS: Okay. I've made my objection...

5 you've ruled. Well, no, I want to protect the record, Your Honour, I don't think it should be a matter of laughter for by the court, I'm protecting the record, and that's my duty at this stage, is it not?

10 THE COURT: There is not anything that is said in this court that is not down on the record. You do not have to talk to me of protection.

15 MR. CHARLEBOIS: I would urge Your Honour as well to touch on the inferences that can be made of the absence of recent complaint in your charge, because it directly affects credibility, which is the only central issue in this trial. And...the other point dealing with the law is on the appreciation of credibility, and I recognize that Your Honour charged them properly on the principles in D.W., but in the comments that Your Honour made, and it's certainly your domain and your duty to comment on the evidence, I was left with the impression that the jury could be left with the impression rather, that the discrepancies can be attributed to the passage of time, which they may well decide, but also, I would have liked the fact to be put to them that the discrepancies can if they so find, affect reliability and credibility. Not that the discrepancies are not important. Because I feel that the discrepancies are important and should not...not each one of them brought to their attention, obviously. In fact, I have very few

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comments on how you summarized the evidence of all of the witnesses at trial. Just that discrepancies...because *Normand* and *Stewart*, cases we've alluded to before, make it clear that a jury can draw an adverse inference on credibility if there are discrepancies in the evidence that they deem important. And I wouldn't want them to think that the discrepancies are not important.

10
Insofar as what the law is concerned, those are the points that I wanted to bring to the attention of the court. I'd have a couple of comments on the facts, but maybe you'd prefer to deal with those later.

15
THE COURT: Well, can you give them...

MR. CHARLEBOIS: Very quickly?

THE COURT: ...to me fairly...

MR. CHARLEBOIS: Yes.

THE COURT: ...quickly?

MR. CHARLEBOIS: Yes.

20
THE COURT: I want to look at Arp before we get along too far here.

25
MR. CHARLEBOIS: On the facts, Your Honour in summarizing the evidence, summarized what the evidence of a corroborating witnesses were on various counts, which is fine, but, I would have liked for the court also to indicate on the kneeling incident with Luke Mack, that Leo Loone did not corroborate Mack on that point. In other words, that we heard no evidence from Leo Loone on that point, pro or con. And in connection with the washrooms; because Your Honour indicated in reply
30

5 that Leo Loone had mentioned the fear of using the washrooms...they're not allowed to use the washrooms at night, that he's directly contradicted on that point by Luke Mack who said in his evidence that the washrooms could be used without getting permission, in the dorm at night.

On the facts, those are the points I wanted to bring to your attention.

10 THE COURT: Okay. (Unclear) facts on law now? Oh.

MR. CHARLEBOIS: Yes.

15 THE COURT: Thank you. I am going to recharge the jury in connection with the law in Arp as soon as I get a chance to look at it. I am not going to recharge the jury on any other point brought up by counsel. I do not believe it is necessary. So, what - I guess I have a copy of that in my office?

MS. FULLER: You probably have two.

20 THE COURT: Do you want to give me your--do you have a summary of it right now?

MS. FULLER: I don't, Your Honour, I didn't bring it with me.

THE COURT: Okay, I'll look.

R E C E S S

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

30 MR. CHARLEBOIS: Just before the jury comes back, Your Honour, there was one point I'd written in my notes on the law, and I felt rushed to get it all out, there's one point that I forgot to read in my notes. It's on the law...I'd like to bring it to your attention now, if I may.

THE COURT: Sure.

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MR. CHARLEBOIS: When Your Honour indicated the terms of the civil law...or money, etcetera, used, civil action, etcetera, and what Your Honour had to say about it didn't take...I don't take quarrel or objection of what you said, however, I would have liked, and I would now urge Your Honour as well per B.M., which is one of the cases we had brought to your attention last week, to also let the jury know so that they don't think that this...insofar as money or lawsuit in connection with motive, that in B.M., pages 16 and 17, I think it's Justice Rosenberg, "An Ontario criminal conviction is admissible in subsequent civil proceedings *prima facie* proved the party against whom the conviction was rendered committed the offence. While it is true an acquittal would not have fatal to the daughter's civil claim, the judge should have explained that a conviction would constitute a substantial advantage in the civil proceedings."

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20
This was a jury trial, by the way. "The civil action is capable (inaudible) some evidence of a motive on the part of the appellant's daughters and could be relevant to their credibility."

25
MS. FULLER: There's no evidence of a civil action, Your Honour.

30
THE COURT: I intend to recharge the jury on the point brought up by Miss Fuller on Arp, period. How do you propose that I go about it? I had a look at the Arp decision, there is no question about it, that they have done away with the proven

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count. I would simply go back over what I told them...and tell them that every time I say "proven count" that is not correct because of the latest decision stating that "Given the probative value of similar fact evidence as circumstantial evidence lies in the unlikelihood of coincidence. It does not make sense to require one of the allegations to be proved beyond a reasonable doubt as a prerequisite to the trier of facts consideration of it, although the similar fact evidence standing alone may fall short of proof beyond a reasonable doubt. It can be relied on to assist proving another allegation beyond a reasonable doubt."

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MS. FULLER: That's fine, Your Honour.

20
MR. CHARLEBOIS: I would prefer that the court simply, as you did in putting D.W. to them, Your Honour read exactly what the Supreme Court had spelled out as a suggested jury instruction, could I urge the court instead to simply read to the jury the seven steps that are outlined as a...by Justice Cory in Arp...

THE COURT: The seven steps are....

MR. CHARLEBOIS: It's all spelled out.

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THE COURT: It is all spelled dealing with identity. I do not think there is anything wrong in the way that I propose to proceed. Bring the jury in, please.

....JURY ENTERS

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THE COURT: It has been brought to my attention, and quite correctly so, that I was not correct in one part of my charge in relating to similar fact

5 evidence, and this is when I mentioned to you that
- I went along something like this: In some
instances though the law allows you to use the
evidence from a proven count to help prove an issue
in another count." Now very recently the Supreme
Court of Canada pronounced itself and stated that
this is not correct law, that the law should be
otherwise. That it should read, "In some instances
though the law allows you to use the evidence from
10 a count to help prove an issue in another count."
So, you are not limited to using the evidence of a
count that is proven beyond a reasonable doubt for
another count. The Supreme Court of Canada had
this to say...very briefly: "Given that the
probative value of similar fact evidence as
15 circumstantial evidence, lies in the unlikelihood
of coincidence. It does not make sense to require
one of the allegations to be proved beyond a
reasonable doubt as a prerequisite to the trier of
facts consideration of it." It makes a lot of
20 sense. It simply states that you can rely on the
evidence of a count as similar fact evidence in
arriving at a decision on another count. And I
think I told you that more than one time. I did it
at the beginning. In some instances though the law
allows you to use the evidence of a proven count to
25 help prove an issue in another count...in this
concept(ph) text of similar facts. That is not
correct, it should read simply: The evidence from
'a count' to help prove. Later on I said: "For
other legal reasons, I have decided that you are
30 allowed to use the evidence from a proven count of

5 administering a noxious substance in as proof in another count." Well, it is not the evidence of a proven count, it is just the evidence of a count. I think I used it three times. In this case the law allows you to use the evidence from a proven count to help prove an issue in an unproven count. Not correct. Correct in this case, the law allows you to use the evidence from a count to help you prove an issue in an unproven count or a count to rebut the evidence of the defence that is open to the accused. So, you can rely on the evidence of any of the three counts as it applies to the other counts according to your interpretation of the evidence. Is that sufficient or...

MS. FULLER: Yes, thank you, Your Honour.

15 MR. CHARLEBOIS: And I take it that by that, it may be self-evident to the lawyers, but that that applies only to a consideration of the three noxious counts and not to any other evidence?

20 THE COURT: I think that would be self-evident. Similar fact evidence is not to be considered in the assault counts, only in the three noxious counts, and the evidence of one count can be used as evidence in the other counts because of the degree of similarity. Okay?

MS. FULLER: Thank you, Your Honour.

25 THE COURT: Thank you very much.

....JURY RETIRES

30 MR. CHARLEBOIS: Because we don't know how long the jury will be and considering Miss Wesley's age, I was wondering whether Your Honour wanted her to remain at the courthouse throughout, or whether she

5 could be allowed--she's staying with friends here, which is about five minutes away by taxi, do you want her to stay in the courthouse or could she be allowed to go back to this residence, and if they've got a question I can always pick her up, my car is here?

THE COURT: Do I not have...

MR. CHARLEBOIS: I'm in Your Honour's hands.

10 THE COURT: Do I not have--listen I am all with you in not imposing any undue hardship on anybody, but do I have jurisdiction while the jury is deliberating, to tell the accused to...they can leave the building? I would like to, but...in my experience...my experience...I have never had this request. It has always been once the jury starts

15 deliberating the accused stays in the courthouse.

MR. CHARLEBOIS: Except for mea...

THE COURT: She has been in the courthouse for the last five weeks. If it is a matter of illness or anything like that, fine.

20 MR. CHARLEBOIS: Okay.

THE COURT: If it is not a matter of illness, I would say that...

MR. CHARLEBOIS: That's fine.

THE COURT: ...she will have to wait for the jury to come up with a verdict.

25 MR. CHARLEBOIS: Does Your Honour have any idea when you'll be freeing us for the luncheon break? Not so much for me as for Miss Wesley.

THE COURT: Yeah, I think that we have lunch coming in at one o'clock, so I would say the luncheon break would be between one and two.

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MR. CHARLEBOIS: Okay, now again, it's because I'm not familiar with the practices in Northern Ontario, when a jury is out in Ottawa, and if the accused is not in custody, they're entitled to then leave the building to go and eat and then come back at the appropriate time. So are counsel, by the way. Is the practice here that food is brought in for the accused as well? Like I don't know what the practice is here.

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THE COURT: The practice is to let counsel from Ottawa do what they think is best and what they think is reasonable, and will not interfere with the trial.

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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THE COURT: We have a request from the jury, it reads as follows: "Re: Tony Tourville. Could you advise us regarding the incident when he was coughing at night and ended up with a nosebleed? Thank you."

I would like the question to be entered as an exhibit.

25
COURT CLERK: Exhibit Number Six, Your Honour.

EXHIBIT NUMBER 6 - Question from the jury, re: Tony Tourville - Produced and Marked

THE COURT: I perused the transcript. I intend to read the evidence in relation to that incident.

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MR. CHARLEBOIS: Uh, you're paraphrasing of it in your charge, Your Honour, or the...

THE COURT: I am reading the actual evidence from the transcript.

MR. CHARLEBOIS: I see.

THE COURT: Thank you. Bring the jury in, please.

....JURY ENTERS

THE COURT: I have your question, thank you. I will simply reread for the record. "Re: Tony Tourville. Could you advise us regarding the incident when he was coughing at night and ended up with a nosebleed? Thank you." And we placed these questions in as an exhibit. What I intend to do is read to you the evidence from the actual transcript of the trial covering this event. It starts something like this in examination in-chief, Miss Fuller states as follows:

"I'd like to move to an area where we would be describing an incident that you told the police about. I understand that while you were growing up, from time to time the boys would get colds or coughs or flues, and often a lot of the boys would get sick?

Answer: Yes.

Question: Were you one of them?

Answer: Yes, I was.

Question: And do you recall an occasion when you had a cold and you were in the dorm and you were coughing?

Answer: Yes, I do.

Question: And everybody else it seemed that was coughing?

Answer: Yes.

Question: And were there so many boys coughing in

the dorm?

Answer: Well because one boy would get a cold or the flu or whatever, being in a closed environment everybody would get it.

Question: Did someone get angry about this?

Answer: Yes, Anne did.

Question: And do you know that(sic) she was angry about? And how do you know that she was angry about it?

Answer: Because her residence was right next to the dormitory where we all slept.

Question: This would be a room where she slept?

Answer: She had a little room there off to the side.

Question: Yes.

Answer: And she came storming out of her room, yelling at the next person...yelling that the next person that would cough would get it.

Question: And in terms of her tone of voice, again?

Answer: Well you could tell she was in a rage because all this incisive coughing was disturbing her sleep.

Question: So the next boy who coughed was going to get it?

Answer: Yes.

Question: Who was the next boy to cough?

Answer: It was me, of course.

Question: Could you help it?

Answer: No, no.

Question: What happened when you coughed?

Answer: Well, the way we slept in the dorm is, we had to sleep with the blankets over our head, and I

had coughed, and I was just hoping that she hadn't heard me, but all of a sudden the blankets were yanked over off my head, off my face, and then she proceeded to beat me up with her fist.

5 Question: And where...in what area of your body was she beating you?

Answer: My face.

Question: And did you suffer any physical injuries as a result of that?

10 Answer: Well, just the usual bruises and bloody nose.

Question: And was there any evidence of a bloody nose?

Answer: Yes, when I woke up in the morning my blankets were soaked with blood.

15 Question: And because at night it would be dark?

Answer: It would be dark, yes, in the dorm.

Question: Was there any doubt that the person who was beating you was Anne Wesley?

Answer: No, there is no doubt whatsoever."

20 We then go to the cross-examination, and it went as follows: Mr. Charlebois:

Question: I'd like to start with the first event that you spoke of yesterday, Mr. Tourville. That's the one where the boys were coughing in the dorm.

25 We will take them sequentially. And you indicated to us that Anna Wesley had stormed out of her room, given a warning, and then you were the next person to cough and that as a result of that you were disciplined or hit. Now roughly, how many boys were in the dorm at the time this happened?

30 Answer: Roughly, about 100.

Question: And I gather that you weren't the only person coughing at the time...a number of boys had colds?

Answer: Yes, that's true.

Question: You also mention that you were sleeping with the blankets over your head, is that just a personal choice?

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

Question: Any reason for that?

Answer: That's one of Anne's rules.

Question: So it wasn't a question of personal choice?

Answer: No.

Question: All the boys had to sleep with a blanket or a pillow?

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

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

Answer: To the best of my recollection, yes.

Question: And that was a rule?

Answer: That was what we did, yes.

Question: I just want to be clear in front of the jury. That's what you did because that's what you were told to do, as opposed to that's what you did

because that's how you preferred to sleep?

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

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10
Question: Bear with me, Your Honour, we'll come back to that in a few minutes, Your Honour. I can't conveniently find it, so I'll move on to something else. So the picture I have is: the dorm is dark, all these boys, according to your evidence, have got blankets or pillows over their head. There's some coughing going on and then what you hear is Anne Wesley's voice warning...warning the group to stop coughing, is that it?

15
Answer: Yes, but it wasn't a big dorm, we were staying in the older section of the residential school at the time, and it was...there was one large room and us smaller kids were set off from there and maybe slept...maybe 20 of us in that one. It was more like a hallway, and Anne's room was just off to the side.

20
Question: I mean, how I've described it, is that accurate?

Answer: Well, what I'm saying is that it wasn't one big dorm, it was separated.

25
Question: Okay, so you hear her voice, you don't actually see her, you hear this warning, you recognize the voice, and...

Answer: Yes, I did.

30
Question: Now, to your knowledge at that point, did she go back into her room? Do you know?

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

Question: How long after the warning did you cough?

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

Question: Were other boys coughing at the time?

Answer: Probably. Like I said, it was in two sections. Maybe in the other sections, I don't know.

Question: How about in your section?

Answer: Probably.

Question: Do you agree with me that it would have been difficult then for Anne or anybody else to determine you were the one coughing?

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

Question: But, Mr. Tourville, you wouldn't have seen her come out of your room would you? You would have heard her.

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

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

Answer: Yes.

Question: The other picture I have is that subsequent to the warning you're not the only person coughing, there are other boys in that room

coughing, isn't that what you've told us?

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

Question: Now, when you after the warning, coughed, did the other boys cough at the same time?

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

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

Answer: That's what I said, yes.

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

Answer: Uh-hum, yes, that's what I said.

30 Question: Now, were you hit with fists or were you slapped?

Answer: I was hit with fists.

Question: Are you sure about that?

Answer: Positive.

Question: And what about the bloody nose? I mean, did you bleed a lot?

Answer: Well, enough to soak my sheets and my pillows with...I didn't bleed all night, mind you, but enough to make a mess.

Question: Was there a lot of blood or just a little bit of blood?

Answer: Well to me it seemed like a lot of blood.

Question: The next morning were you able to go to class as usual?

Answer: Yes.

Question: No lasting injury?

Answer: Not physically, no.

Further on in the cross-examination.

Question: Do you recall being asked the following questions and giving the following answers in connection with the event when you were hit for coughing in the dorm, and for the record, I'm reading from page 172, line 14. Question by me: Now, the first occasion you told the Crown about Mr. Tourville, about the coughing incident and that the covers were pulled off and you were hit in the face, causing your nose to bleed. Do you recall specifically being hit with a fist or were you hit with an open hand and a hard slap?

Answer: Well, it was dark. The dormitories are dark and you don't...so...and it happened so suddenly, I don't remember. The next question in the examination or the preliminary inquiry: Okay, so when you told the Crown that she, meaning Sister Anne, "hit me with her fist on my face", we can

agree that you're not sure whether you were actually hit with a fist or whether you were slapped hard with an open palm?

Answer: Yeah, we could say that, yes.

5 Question: Now, do you recall my asking those questions in cross-examination and do you recall providing those answers?

Answer: I do.

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

Answer: Yes, I did. Yeah.

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

Answer: Could you repeat that question again?

20 Question: And from the passage that I read to you from the preliminary hearing, can we agree that at the preliminary hearing you were not sure whether you had been hit with a fist or whether you had been slapped hard with an open palm?

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

30 Question: Well, what was not forceful, sir, you

were under oath at the preliminary hearing, were you not?

Answer: Yes, I was.

Question: And you're under oath today?

Answer: Yes.

Question: Now you're telling us that some of the answers that you gave at the preliminary hearing were wrong?

Answer: No, they weren't wrong."

And that is all of the evidence covering the incident in the dorm leading up to the bloody nose, and the cross-examination resulting therefrom. I hope that answers the question. Thank you.

....JURY RETIRES

R E C E S S

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

THE COURT: We have another question from the jury. "Can we have the definition of "transient" and "trifling" as it occurs to bodily harm? Thank you."

Now, this will be made an exhibit.

EXHIBIT NUMBER 7 - Question from the jury -
Produced and Marked.

THE COURT: I intend to tell them, bodily harm is any hurt or injury that interferes with the health or comfort of a person in more than a merrily transient way, in more than a trifling nature. These words do not have special meanings in law, therefore you should give these words their

5 ordinary meanings when you decide whether bodily harm has been suffered or not. One judicial decision had this to say: "The words 'transient' or 'trifling in nature', import a very short period of time and an injury of a very minor degree which results in a very minor degree of distress." This is what I intend to tell them. Okay?

10 MS. FULLER: Your Honour, would you like to add that case law has...there is case law to the effect that any breaking of the skin is considered bodily harm, which is the common-law...was the common-law definition of bodily harm.

15 MR. CHARLEBOIS: I'm satisfied with the definition as Your Honour has read it, without adding what the Crown wants you to add.

THE COURT: Since I am asking them to attach the ordinary meanings, I will state that you can consider "breaking of the skin" as bodily harm. Bring the jury in.

....JURY ENTERS

20 THE COURT: Can I have the exhibit, please?
I have received your question. "Can we have the definition of "transient" and "trifling", as it occurs to bodily harm? Thank you." The exhibit number seven.

25 Bodily harm is any hurt or injury that interferes with the health or comfort of a person in more than a merely transient way, in more than a trifling nature. As to words "merely transient way" and "trifling in nature", these words do not have special meanings in law. Therefore, you should
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give these words their ordinary meanings when you decide whether bodily harm has been suffered or not.

5 One judicial decision had this to say about these words: "The words "transient" or "trifling in nature" import a very short period of time and an injury of very minor degree which results in a very minor degree of distress." You can consider the breaking of the skin as bodily harm. I hope that answers your question.

10JURY RETIRES

R E C E S S

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

THE COURT: Bring the jury in, please.

.....JURY ENTERS

20 THE COURT: Members of the jury, it is now a little past eight thirty, you had a fairly gruelling day yesterday, you had a lengthy, gruelling day today, it is my view that unless you are close to arriving at a unanimous verdict on all counts within the next half hour or so, then perhaps we should call it day and start again tomorrow when you are fresh, at nine thirty.

25
30 So, it is now my intention to ask the court personnel to take the necessary steps to secure your lodging for the night. If so, remember you are now sequestered. You are not to communicate with anyone outside your group, and of course the

5 court staff. So unless you are close to arriving at a verdict on all counts, this is what we shall do. If you have chosen a foreman, perhaps the foreman could indicate to me whether that is the case.

FOREMAN: Not in a half an hour, sir.

THE COURT: I am sorry?

FOREMAN: We won't have a verdict in half an hour.

THE COURT: I think then you should take a rest.

10 There is a lot of evidence, there is a lot of law, the trial has been fairly lengthy, and you have heard a lot from both counsel and myself in the last two days. You have also been together since noon, obviously deliberating the case. Eleven
15 hours in a day under these circumstances in my view is enough. So then the court staff will assist you in securing lodging and we will start tomorrow at nine thirty if...I say 'if' because that may not depend on you. They might not bring your eggs fast enough. So let us say, nine o'clock if you are all
20 ready, if not, nine thirty, but then you may have no control over that. So we will take it as it comes, okay? Thank you very much.

25 COURT CLERK: Members of the jury you are now sequestered, please attend to the jury room and the constables will advise you of what you need.

....JURY RETIRES

MR. CHARLEBOIS: You'd like counsel here at nine or nine thirty then, Your Honour?

30 THE COURT: Well, if they get their eggs in time, they will be here at nine, so I guess you had better be here at nine.

MR. CHARLEBOIS: Yes, sir.

COURT CLERK: Court stands adjourned to reconvene at nine a.m.

C O U R T A D J O U R N E D

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THURSDAY, MAY 20, 1998

.....JURY ENTERS

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THE COURT: Good morning, members of the jury. I hope you spent a restful night and had a satisfying breakfast. We stopped a little early last night, but the day was long, you are 12 people, you are dealing with difficult issues, it is inevitable...I do not know what went on in there, but it is inevitable that sometimes emotions may get a little high, I do not know, maybe they did, maybe they did not. Easy for me to say, they should not. You are starting afresh this morning.

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I will simply reiterate a few of the things I said yesterday. Try to avoid dogmatic positions, emphatic expressions of opinion or a determination to stand for particular verdicts. That will make it difficult for you to reconsider the wisdom of your fellow jurors, and there are 12 of you. Listen in a calm and impartial manner to what is said by others, and put your own views forward in a calm and reasonable way. You are not advocates, you are judges. And if you approach the deliberations calmly then your chances of arriving at a proper verdict are better. Of course, your foreman, I do not know who he is, or person, I do not know who he or she is...now I see, someone

5 raised their hand, should also in a calm manner
 preside over discussions, give everybody an
 opportunity to speak, and keep some semblance of
 order. You probably have a big day ahead of you.

10 So, thank you for everything so far. I will now
 ask you to return to the jury room to deliberate.
 Take regular breaks. You have to take them
 together, by the way, now. You probably have a
 smoker or two that gets itchy once in a while.
 Since I am a smoker, I will just ask you to have a
 bit of sympathy. So, I would ask you to continue
 with your deliberations.

15JURY RETIRES

THE COURT: Anything else?

R E C E S S

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

20 THE COURT: We have another question. "Could we
 please have a review of the evidence regarding the
 vomit incidents in the diningroom of Daniel Wheesk?
 Could we also have a review of the evidence
 regarding the vomit incidents in the diningroom for
 Eli Tookate and Luke Mack?" I will have to come
 back in a minute because....Just a minute...I
 haven't got the Luke Mack evidence. I will have to
 get it.

R E C E S S

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

THE COURT: "Could we please have a review of the
 evidence regarding the vomit incidents in the
 diningroom of Daniel Wheesk? Could we also have a

review of the evidence regarding the vomit incidents in the diningroom for Eli Tookate...or Toocat(ph) and Luke Mack?"

5 MS. FULLER: And...do I take it from that, Your Honour is proposing to read to them the evidence of those complainants, as well as the corroborating witnesses who witnessed it, because that of course...

THE COURT: Uh-hum.

10 MS. FULLER: ...is evidence of the vomiting incident?

THE COURT: The evidence...I haven't got the corroborating--who are they?

MS. FULLER: Well it would be Gerard Kioke and Oliver Wesley...

15 THE COURT: That is fair.

MS. FULLER: ...and their evidence.

THE COURT: Oliver Wesley and Kioke...

MS. FULLER: Kioke...are the two who witnessed.

R E C E S S

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

MR. CHARLEBOIS: At the risk of asking, Your Honour to go upstairs, yet one more time, while you were upstairs, it also dawned on me that the vomit evidence would also include the evidence given by Anne Wesley in connection with Tookate and Luke Mack.

25 THE COURT: I am going to ask the jury if they want that evidence. Right now they wanted the evidence of the incidents of these three. I'll say, "Do you want me to come back and tell you what she had to

30

say about it?" for a start.

....JURY ENTERS

5 THE COURT: Your question was this: "Could we please have a review of the evidence regarding the vomit incidents in the diningroom of Daniel Wheesk? Could we also have a review of the evidence regarding the vomit incidents in the diningroom for Eli Tookate and Luke Mack? Thank you." Your question is entered as Exhibit Eight.

10 EXHIBIT NUMBER 8 - Question from the jury -
Produced and Marked.

15 In relation to Luke Mack, in examination in-chief by Ms. Fuller, the following questions were asked, and he gave the following answers: "I understand that all the children of the school had to take cod liver oil?

Answer: Yes.

Question: And how was it given out? The cod liver oil, how did you take it?

Answer: It was taken by uh spoon.

20 Question: Who gave it?

Answer: Anna Wesley.

25 Question: And if you wouldn't or couldn't take it by spoon was there any other way that you got the castor oil?" But this was rectified later on to the cod liver oil.

Answer: Yes, she used to put in the porridge in a bowl inside a bowl of porridge.

30 Question: Do you remember an incident in which castor oil in the porridge made you sick?" And then I interjected and the...the word "cod liver oil" was substituted.

"So do you remember in which the cod liver oil on the porridge made you sick?

Answer: Yes, I got sick.

Question: And when you got sick where did this take place? Where did you have the porridge with the...

Answer: In the diningroom.

Question: Cod liver oil?

Answer: In the diningroom.

Question: In the diningroom. And when you got sick did you vomit?

Answer: Yes.

Question: And where did you vomit?

Answer: In my bowl.

Question: And why did you vomit in the bowl?

Answer: Because I had no...I didn't want the vomit on the floor.

Question: Why not?

Answer: I didn't want to eat it from the--in other words, I was scared."

I stated I didn't get the first part...Miss Fuller interjected. "I didn't want to it...from the...in other words, I was scared." Next question: You didn't want to eat from where?

Answer: I was scared.

Question: And what were you afraid of if you vomited on the floor of the diningroom?

Answer: I might get to get hit by the nun, Anna Wesley.

Question: And why did you think that if you vomited on the floor that you would get hit by the nun, Anna Wesley?

Answer: She...she used to do that all the time.

Question: When you vomited into the bowl what did Anna Wesley do?

Answer: Make me eat it.

Question: And how did she make you eat it? What did she do that made you eat it? What did she do or say?

Answer: She was yelling.

Question: What was she yelling?

Answer: Because I wasn't eating.

Question: Because you weren't eating what?

Answer: My vomit.

Question: What did she tell you to do?

Answer: Eat it.

Question: And other than telling you this did she do anything else to you?

Answer: She hit me.

Question: Where did she hit you?

Answer: My face.

Question: Was she saying anything else to you other than telling you to eat it?

Answer: Yes.

Question: What things was she saying?

Answer: You uh bastard, wild dog...some other names.

Question: Some other?

Answer: Uh-huh...some other names.

Question: And what type of names, good names, bad names?

Answer: Bad names, as usual.

Question: Had she called you a bastard before?

Answer: Yes.

Question: And can you tell me whether or not your

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mother and father were married?

Answer: No. Rephrase, uh...

Question: Were your father and mother married?

Answer: No. I can't hear sometimes, I'm sorry.

Question: Do you remember if you were...if you would have been older than five or six when this happened?

Answer: Yes.

Question: Alright. Older than five or six and younger than ten?

Answer: Younger.

Question: What did you do when she told you...when she hit you and told you to eat your vomit and called you names? What did you do?

Answer: I...I...I eat.

Question: You ate it. When she was speaking to you and calling you these names and telling you to eat it, what was her tone of voice?

Answer: Like screaming.

Question: Were your other schoolmates and other children in the diningroom when this happened?

Answer: Yes.

Question: How did this make you feel as a person forced to eat your vomit in front of the others in the diningroom?

Answer: I was...I uh didn't like myself.

Question: How did it make your stomach feel when you were forced to eat your vomit after throwing up the first time?

Answer: I was sick.

Now the cross-examination by Mr. Charlebois went this way:

Question: This morning you told us about being sick in the diningroom and throwing up in your bowl of porridge after you had taken cod liver oil, okay?

Answer: Yeah.

Question: And that's what I want to talk about, that day, that incident, okay?

Answer: Yeah.

Question: On that day do you remember if you had swallowed the cod liver oil or if it had been put in your porridge before you got sick?

Answer: It happened so many times, but the one I wanted to talk about, and I know about it, and I...and I'm not really sure about it, but it happened.

Question: At the time you got sick and vomited inside your bowl, do you know where the nun was?

Answer: She was right there.

Question: Wasn't part of her job to look after all the boys in the diningroom?

Answer: Of course, because she was the one that was giving me the cod liver oil.

Question: But she was giving it to all the other boys also, is that right?

Answer: Yes.

Question: Where in the diningroom was the nun when you threw up in the bowl?

Answer: She was right there.

Question: Right there in the diningroom or right there next to you?

Answer: Beside me.

Question: Now there's something I'm not quite sure about. You told the Crown and the jury and I'm

sure Your Honour will correct me if I've made the wrong note here, "I was sick when I was forced to eat it." do you remember telling us that?

5
Answer: That's exactly what I said, but I can't remember everything because I...because there's been a lot of questions being asked...being asked to me.

10
Question: Now what were you told to eat, Mr. Mack...or were you told the following: To eat what was in your bowl and that the bowl consists of porridge and what you had vomited together?

Answer: Yes.

15
Question: So it was the mix of two substances, the food and the vomit?

Answer: Yes.

I interjected and said, "And I guess in fairness, the cod liver oil?"

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Mr. Charlebois - Question: Now when you told the members of the jury; "I was sick when I was forced to eat it." by "eat it" you mean, eat the combination of cod liver oil, food and vomit, right?

Answer: Yes.

25
Question: What...what do you mean, Mr. Mack, by "I was sick"?

Answer: Of course they were trying to force me to eat my vomit.

Question: Were you sick a second time?

30
Answer: Yes, but I...but I didn't vomit, as far as I remember.

Question: What do you mean then when you say, "I was sick"?

Answer: After eating my vomit, when I was told to eat it...

Question: What happened?

Answer: I...I forced myself to eat it.

Question: But is it fair to say that you did not throw up again?

Answer: No, that's what I'm trying to tell you, but uh but I couldn't express myself. But if I had...was able to express myself, I go...that's what I'm trying to ex...that's what I'm trying to tell you right now...but you don't seem to understand what I'm trying to differentiate between being sick vomiting after eating my vomit, I got sick but I did not vomit.

Question: What form did your sickness take at that point?

Answer: I was forcing it down...forcing to keep it in.

Question: And what did you do after the meal was finished?

Answer: Nothing. There was nothing I could do.

Question: Well after the meal was finished and all the boys left the diningroom did you follow the other boys?

Answer: Yes.

Question: Were you able to complete all of your regular activities after you finished eating the vomit...the other boys did that day?

Answer: Yes.

So that's the evidence regarding Luke Mack.

The evidence regarding Daniel Wheesk.

5
Alright...question in-chief: "Alright, did you have any problems with the food...the type of food at Ste. Anne's?"

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

Question: What was it about the food that was different?

Answer: I was use more to game food. Foods found in the wild, I mean.

Question: Yes.

Answer: Like rabbits, beavers, and moose...geese, that type of food.

Question: Yes.

Answer: I wasn't used to that food...those manufactured processed. I wasn't even used to cows milk then. I used to find beaver's tail very tasty when you roasted it.

Question: And was there an instance when you were eating this food that was served in the diningroom when you suddenly didn't feel well?

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

Question: I'm sorry?

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

Question: Why not?

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

Question: And how old would you have been?

Answer: I must have been about six or seven again.
It was my first few months at school, I think.

Question: Generally, I understand, you did get used
to the food?

Answer: Yes, I got used to the food later on.

Question: What happened when you threw up in the
bowl?

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

Question: You don't recall the words she used?

Answer: No. No. But words to that effect. Yes,
but I knew she had told me to eat it, otherwise I
wouldn't have tried to eat my own vomit then.

Question: How long after you threw up were you
slapped? What was the time gap from the time you
throw up in the bowl until you get the slap?

Answer: As soon as she reached me from the main
isle...immediately...almost immediately.

Question: Where did she slap you?

Answer: The back of the head. I didn't even know
she was going to slap me. I didn't know...I mean I
had just thrown up...I thought she would...I don't
know...I just didn't think that I was...that she
would...so, I wasn't braced for the blow.

Question: What language was she screaming at you in?

Answer: It couldn't have been in Cree because I didn't speak English back then.

5 Question: This happened again on two other occasions?

Answer: The second time I threw up into my bowl. I was careful not to miss the bowl again. She came over and made me eat it. I threw up again...the same food, I guess.

10 Question: Now when you say you threw up again, that you mean after being forced to eat your vomit, you then threw it back up?

Answer: Yes. Yeah, I threw it up again a second time. And the second time I ate it and this time I kept it down.

15 Question: Why did you eat it again?

Answer: I was forced to. I had to eat it.

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

Answer: When she learned of it she came over behind me again and she screamed at me to eat my vomit, which I did, then for the second time. On the second incident that I vomited she made me eat it again, a second time from...she yelled the instructions to me from behind me.

25 Question: So you ate it a second time?

Answer: I ate it a second time.

30 Question: You were able to keep it down?

Answer: I was able to keep it down the second time.

5
There was a third occasion when I had to eat my vomit. Well, this time I couldn't eat it. I absolutely know I didn't have it in me to eat it again, and I was left sitting there through quite a few meal times. I don't know how many mealtimes it was sitting there at my table, but I was supposed to eat it each time we came to the diningroom. You could see it from the hallway. My bowl was sitting there for me...sitting there waiting for me to eat it.

10
Question: Were you given any other food, other than that bowl with the vomit and the food in it?

Answer: No.

Question: Do you recall whether you were finally ultimately able to eat it?

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Answer: No, I don't know.

Question: And on that third occasion do you recall what it was that Anna Wesley said, or did that make you feel you were expected to eat it?

20
Answer: I think she told me to eat it. There was no confusion there. I mean that was...she told me to eat it.

Question: Alright. Do you recall when you couldn't eat this third occasion...you just couldn't do it?

Answer: Yeah.

25
Question: Do you recall having to face that bowl in the next meal? The next meal, do you recall if there were any immediate consequences to your refusal to eat it?

Answer: I decided that was it. There was nothing else, I mean.

30
Question: Okay, so there were no other immediate

consequences when you actually refused to eat it?

Answer: No, just eat it, that's it.

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

Answer: I didn't fear...I didn't want to get hit, and I was afraid of getting hit...slapped."

Cross-examination by Mr. Charlebois.

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

Answer: No, no, I was too busy retching.

Question: Okay, so it would be difficult, if not impossible for you to tell us if the nun would have seen you be sick or not?

Answer: Yes, it would be impossible.

Question: And when you were sick, Mr. Wheesk, you told us you were sick in your bowl?

Answer: Yes.

Question: At this point was there still food in your bowl?

Answer: No, it was empty."

Eli Tookate, which comes from my notes...I do not have a transcript of it, but in any event...."He then testified to an incident which occurred in the diningroom. He stated he was not accustomed to the food. He stated he was fed cod liver oil and after a few gulps of food he vomited in his plate or bowl...almost throwing it up. Anna Wesley told him to eat what was in his plate. He did not, so she used the spoon and forced the vomit in his mouth,

and he vomited again in the same plate. He was sent to bed. As a result, he felt he was nothing. That's how he looked at himself.

5 He was vigorously cross-examined on his statement he gave to the police in 1993, six years ago, which confirmed the vomit incident.

10 He was confronted with his testimony that he vomited in the diningroom and that after he was fed his vomit by spoon. In his statement to the police he related three separate incidents of vomiting. He agrees that he exaggerated. Also in his statement to the police, he related that after the vomit was forced in his mouth he was sent to bed. He did not mention that he vomited after being forced to eat his vomit. Eli Tookate maintained that he did in fact vomit regardless of what was in the statement. He did not tell the police about the cod liver oil and he never told his parents because he felt there was nothing they could do.

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30 In relation with those three incidences, two of them were supported by corroborating witnesses. Oliver Wesley testified that cod liver oil was given by spoonful to all residents with the morning meal by Sister Wesley. He stated he saw Daniel Wheesk vomit or spit it out in his bowl which contained food. Anna Wesley was behind him. She slapped him to the side of the head and told him to eat the food. He did not. For the next meal he was given back the same bowl and contents, and then

5 three times again. He was questioned as to whether Daniel spit the cod liver oil out or vomited it. He was adamant it was vomited. Then he stated he just saw cod liver oil come out...and that Anna Wesley tried to make him eat it.

10 Gerald Kioke testified in relation to Eli Tookate's evidence. At one point he saw Eli who was seated next to him in the diningroom vomit in his plate. He testified he saw Anne Wesley feed him his vomit with a spoon. He remembers because it was the first time he had ever seen anything like this. That is the reason he never went back to school after that...after the 1952 school year or any other school."

15 Now, I have read the evidence in-chief and cross-examination of the three people you mentioned. Is it your wish that I give you the evidence given by Anna Wesley? Or is it the evidence of these three witnesses that you wish to hear?

20 MALE VOICE FROM BODY OF THE JURY: Anna Wesley as well.

THE COURT: Pardon me?

25 MALE VOICE FROM BODY OF THE JURY: Anna Wesley as well.

THE COURT: Anna Wesley as well? I will ask you to go back to the jury room for a minute and I will fetch her evidence.

....JURY RETIRES

30 MR. CHARLEBOIS: We have a transcript of the

evidence of Mr. Tookate...the cross-examination,
Your Honour.

THE COURT: Well I have given it from my notes. I
think that is sufficient, unless...

MR. CHARLEBOIS: The difficulty I have...

THE COURT: ...you think they are inaccurate.

MR. CHARLEBOIS: Sorry.

THE COURT: Unless you think they are inaccurate.

MR. CHARLEBOIS: The inaccuracy as I saw it, Your
Honour, is where you indicated that Tookate had
confirmed the vomit evidence from his statement. I
believe that's what you said.

THE COURT: I am not going to go over it. If you
had a transcript of that evidence before now and
didn't tell me before now, I am not going to go
over that whole evidence again.

MR. CHARLEBOIS: In fairness, I understood that
whatever I ordered from the court reporter, that
Your Honour also would get a copy.

THE COURT: Do I have one?

COURT REPORTER: You're supposed to.

THE COURT: Which one?

MR. CHARLEBOIS: It's the smaller transcript, Your
Honour. I'll get it out of my car.

THE COURT: Do you want me to read it over again to
them? Okay, I will do that.

MS. FULLER: Your Honour, my problem was the
evidence summarized with respect to Eli Tookate, is
that my recollection of the evidence is
substantially different and that arose...

THE COURT: Well, bring me the transcript.

MS. FULLER: Unfortunately there is no transcript of

in-chief. It was not ordered.

THE COURT: Well I will use the transcript that I have...otherwise my notes stand.

5 MS. FULLER: And Your Honour, the reply evidence that was not mentioned was to bring that out. That when Eli Tookate said in cross "I almost threw up with respect to the cod liver oil" that was a separate incident from when he did throw up from eating the meat, and in reply...in re-examination I said, "Is the cod liver oil incident the same or different than the vomit incident?"

10 THE COURT: Okay, never mind reply...

MS. FULLER: And he said "different".

15 THE COURT: ...let us take it back one step now. You say that we have a transcript of the evidence of Eli Tookate's evidence?

MR. CHARLEBOIS: Cross-examination.

MS. FULLER: Cross.

20 THE COURT: Cross-examination only? I am not going to read your cross-examination only. I will if you feel that I made a mistake in a certain area, correct it, but I am not going over your cross-examination again.

MR. CHARLEBOIS: Is....Can I make a submission on that point or have you ruled?

25 THE COURT: I have ruled. I am not going to read the cross-examination again. You tell me where you feel, and if you agree, that...and with the transcript of course, where I have taken it down wrong. I will rectify that. I think that is the only thing I can do. And do we have a transcript of Anna Wesley's evidence?

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MR. CHARLEBOIS: No.

THE COURT: Okay, then we will go by my notes.

MS. FULLER: Yes. But my only concern, Your Honour, is that I believe your notes are inac...pretty fundamentally inaccurate with respect to Eli Tookate...the confusion of the two incidents. And it was...I mean it was reasonable for Mr. Charlebois to develop that confusion...

THE COURT: Well, listen...

MS. FULLER: ...but...

THE COURT: ...I summarized the evidence for the jury to the best of my ability...

MS. FULLER: Yes.

THE COURT: ...from the notes that I take. I will not substitute those notes for yours.

MS. FULLER: I wouldn't expect you to, Your Honour...

THE COURT: Okay, so let's...

MS. FULLER:...and I could be in error.

THE COURT: ...let's leave that then.

MS. FULLER: Then perhaps...

THE COURT: But if you have a typewritten cross-examination that shows me that I did misstate something in the cross-examination, get it ready, I will get Anna Wesley's evidence ready, and I will rectify whatever has to be rectified there.

MR. CHARLEBOIS: I could be wrong. I'll go to my car and get the transcript right away. Your Honour may be right and I might be wrong.

R E C E S S

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

THE COURT: Okay, you are asking me to read eight pages of your cross-examination. Which part specifically is it that I misquoted?

5 MR. CHARLEBOIS: I believe the part...Your Honour, said it somewhat fast, I didn't get it all down in what you told the jury...

THE COURT: Which part?

10 MR. CHARLEBOIS: Something about confirming the vomit incident in his statement to the police. I believe you said something like that.

THE COURT: Well where is the statement to the police? Well...wait a minute now...That was in cross?

15 MR. CHARLEBOIS: No, I'm making reference to Your Honour's comments from the notes that you read to the jury.

20 THE COURT: Oh, yeah, in cross. He was confronted with his testimony...and it goes to the police part? He did not tell the police about the cod liver oil...

MR. CHARLEBOIS: Uh-hum.

THE COURT: ...I said that. He did not tell his parents because he felt there was nothing he could do about it.

25 MR. CHARLEBOIS: But before that, I think Your Honour said something about some confirmation of the vomit incident. You said it a little bit fast and I didn't get it all down.

30 THE COURT: "Also in his statement to the police, he related that after the vomit was forced in his mouth, he was sent to bed. He did not mention that

he vomited after being forced to eat his vomit."
MR. CHARLEBOIS: Okay. I think it was before that,
Your Honour.

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THE COURT: Okay. Well, I will read what I read to
them. "He was confronted with his testimony...in
his testimony that he vomited in the diningroom and
that after he was fed the vomit by spoon. In his
statement to the police he related three separate
10 incidents of vomiting. He agrees that he
exaggerated. Also in his statement to the police,
he related that after the vomit was forced in his
mouth, he was sent to bed. He did not mention that
he vomited after being forced to eat his vomit.
Eli Tookate maintained that he did in fact vomit,
15 regardless of what was in his statement."

MR. CHARLEBOIS: Well, then, Your Honour...

THE COURT: Just a moment...

MR. CHARLEBOIS: ...I apologize, I was wrong.

THE COURT: Okay.

MR. CHARLEBOIS: Can I get my transcript back,
20 please?

THE COURT: Here it is.

MS. FULLER: Your Honour, while we had that little
break, I took the time to ask the court reporter if
she could find that...the examination in-chief of
Eli Tookate to confirm whether or not my
25 understanding is correct, and from the court
reporter's notes and listening to that area, I
believe I am correct that there is a fundamental...

THE COURT: What's the fundamental error in Eli
Tookate?

30 MS. FULLER: There is nothing in his examination in-

5 chief, Your Honour, about him almost being forced to eat...or almost vomiting the cod liver oil. The incident in examination in-chief is of him not being familiar with the food, of vomiting, of her taking the spoon and forcing it into his mouth, of him...

THE COURT: So what did I not say?

10 MS. FULLER: Well what you...you didn't say any of that, Your Honour. What you said was that; Eli Tookate indicated that he took cod liver oil and he almost vomited. It is true, there is an incident in which he took cod liver oil and he almost vomited, but it has nothing to do with the vomiting charges. But perhaps, Your Honour, may wish to...

15 THE COURT: "He then testified to an incident which occurred in the diningroom. He stated he was not accustomed to the food. He stated he was fed cod liver oil and after a few gulps of food he vomited in his plate."

MS. FULLER: Uh...

20 THE COURT: I mean as to the gravamen of the offence, I do not know what really...what to had to that.

MS. FULLER: Your Honour...

THE COURT: Is that incorrect?

25 MS. FULLER: Uh...

THE COURT: Or you want more...

MS. FULLER: No.

THE COURT: ...to it?

30 MS. FULLER: It's just that...it's quite a...his evidence was more than he vomited into his plate. His plate...

THE COURT: Oh...

MS. FULLER: ...he vomited in his plate and she took the spoon and she forced it into his mouth, and he...

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THE COURT: I said that she took the spoon and she forced it into his mouth, did I not?

MS. FULLER: I...I don't believe you did, Your Honour.

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THE COURT: "He vomited in his plate or bowl, almost filling it up. Anna Wesley told him to eat what was in is plate, he did not, so she used a spoon and forced him..."

MS. FULLER: My apology, Your Honour.

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THE COURT: "...forced the vomit in his mouth." My apologies to everybody too. Now, let us get that jury in.

....JURY ENTERS

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THE COURT: Okay, in her testimony...Anna Wesley's statements in relation to these incidents is as follows: "The students were assigned a place at the long tables and benches, food was served in pails and pots, cod liver oil was administered to all in liquid form by order of the doctor...mostly at lunch. Most boys took it, but a few had trouble and spit it out. Once in a while one would throw up. She would then offer them something else to eat. She stated "I never forced any boy to eat vomit and food. If they spit it out, I would do nothing. Once one boy, Eli Tookate, spit out the cod liver oil." She states she asked him to eat that part of the food that had not been spit on.

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As per Luke Mack, she stated, "I saw him vomit in his plate. I asked him if he wanted something else to eat. I never hit him. I never called him a "bastard" or a "wild dog". The boys from Winisk called him that."

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As to Daniel's evidence...Daniel Wheesk, that he was slapped when he threw up in his food and that Anna forced him to eat the vomit, she stated she never forced any boy to eat food and vomit. She did not recall Daniel vomiting but remembers speaking to his mother who worked in the laundry. She denied yelling or screaming at him. She denied his plate was left on the table for several meals.

15
As to Eli Tookate's...or Toocats(ph) evidence, that he vomited in his plate and that she forced some of the vomit in his mouth with a spoon; Anna Wesley testified that he spit the cod liver oil in the plate and she asked him to eat that part of the contents of the plate that was not contaminated.

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Cod liver oil was served at lunch. When asked, she denied boys vomited often. It was suggested to her that it was not normal to offer food to someone who had just vomited, and it was not normal to force food on someone who had just vomited. She in effect disagreed. Asked if she slapped someone for vomiting, she answered: "Not really a slap, just a little slap." She states she did force feed Eli Tookate. She stated upon being questioned in cross, that she did force feed Eli Tookate after he

vomited in his bowl, but only that part of the food that was not contaminated.

5 The Crown put it to Anna Wesley that usually ordinary events that occurred 40 to 50 years ago would not...remembered, however, vomiting episodes would hardly be forgotten by the boys.

10 It was put to her that she remembered the Luke Mack incident because she slapped him and made him eat his vomit. Otherwise, it would have been too inconsequential to remember. Anna Wesley answered, "No".

15 She denies slapping and making Daniel Wheesk eat his vomit or putting the plate before him for several meals.

20 That is the evidence I have in relation to all of those witnesses. Some of which was from my notes, and some of which were from transcripts that we have.

COURT CLERK: Members of the jury you may retire to consider your verdict.

....JURY RETIRES

25 MR. CHARLEBOIS: Until what time can we be excused, Your Honour? Until what time can counsel be excused?

THE COURT: Oh, until one thirty.

MS. FULLER: One thirty?

R E C E S S

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

COURT CLERK: Bring the jury in, please.

....JURY ENTERS

....MEMBERS OF THE JURY POLLED

5 COURT CLERK: Will the foreperson please stand?
Members of the jury have you agreed upon your
verdict?

FOREPERSON: Yes.

COURT CLERK: Please indicate your verdict on each
10 count as I call it?

Count number one, guilty or not guilty?

FOREPERSON: Guilty.

COURT CLERK: Count number two, guilty or not
guilty?

FOREPERSON: Guilty.

15 COURT CLERK: Count number three, guilty or not
guilty?

FOREPERSON: Not guilty.

COURT CLERK: Count number four is a directed
20 verdict of not guilty. Count number five, guilty
or not guilty?

FOREPERSON: Guilty.

COURT CLERK: Count number six, guilty or not
guilty?

FOREPERSON: Guilty.

25 COURT CLERK: Count number seven, guilty or not
guilty?

FOREPERSON: Not guilty of assault causing bodily,
guilty of common assault.

COURT CLERK: Count number eight, guilty or not
guilty?

30 FOREPERSON: Guilty.

COURT CLERK: Count number nine, guilty or not guilty?

FOREPERSON: Guilty.

COURT CLERK: Count number ten, guilty or not guilty?

FOREPERSON: Guilty.

COURT CLERK: Members of the jury, hearken to your verdict as the court has recorded it, you say the accused at the bar is guilty of count number one, guilty of count number two, not guilty on count number three, number four is a directed verdict of not guilty, guilty on count number five, guilty on count number six, not guilty of bodily harm on count number 7, but guilty of common assault, guilty on count number eight, guilty on count number nine, guilty on count number ten, so say you all?

FOREPERSON: Yes.

COURT CLERK: Thank you.

THE COURT: Members of the jury, you obviously attacked your task with a great degree of conscience. You had to sift through mountains of evidence, some of the law that I gave you was not easy. I am impressed in the manner in which you performed your duties. I appreciate the disruption of your lives that has been caused by your coming to this court for the past three of four weeks. You can have the satisfaction that you assisted in the orderly and democratic government of your country. Obviously you were attentive, when I looked at the results you arrived at, that indicates to me that you put a lot of work into

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5 every single count that you had to consider. I can safely say sincerely that the administration of justice is indebted to you for your services. I have been a judge for eleven years; you have been judges for four weeks or so. I think you were one of the best juries I have ever had. So while you were carrying out these obligations, obviously you represented Canada. On behalf of Canada, I thank you. I say again that judging one's fellow man is an awesome task, especially for people that are not trained to do so, who nonetheless accepted the assignment conscientiously. As I told you initially, I feel the jury system is one of the very best in the world. You are called upon to decide on commonsense matters. There is no doubt in my mind that any 12 persons in our communities are far, far smarter than any judge I know. Your presence in this courtroom helps to keep the law in touch with you, your attitudes and beliefs, at the same time it gives you a better idea as to the way the justice system functions from day to day. I do not think you will forget this experience as a juror. I can fully realize that debating over two days of such serious matters can get emotions up a bit, but I see that all of you are smiling at each other, so I will not worry about that too much.

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Anyways, please let me thank you again. Now I will let you return to your families and your normal life.

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I must warn you again that your deliberations are

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secret. As a matter of fact it is a crime to divulge what happened between those four doors, between you 12 people. Other jurisdictions have different rules in that respect. I think if we have watched t.v. over the last few years, we can see why we have that rule. Whatever happened in that room is your business, and it will remain your business.

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Again, thank you, and you are discharged.

COURT CLERK: Members of the jury, your duties in connection with this case are now finished, thank you, you're free to go.

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THE COURT: As to sentence, I will propose June 21st or June 22nd.

MS. FULLER: Either of those dates is fine with me, Your Honour. I'm gone the week of the 13th of June. Does that 13th...I'm back....The 22nd will be better because I'm coming from a long distance.

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THE COURT: Twenty second...how about you, Mr. Charlebois?

MR. CHARLEBOIS: (inaudible)

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THE COURT: We do not have very many good weeks when we get to the summer, sir. The week after that I am off for eight weeks.

MR. CHARLEBOIS: I gather that Your Honour would not want to deal with the matter either today or tomorrow?

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THE COURT: No, I would want more information on the offender. And I would want more information on the background of the offender, maybe relating to some of her testimony as to what she went through...I do

not know. I do not think we could gather enough information in a day or two. I would propose June 22nd.

MR. CHARLEBOIS: I am sorry, Your Honour, I am not available that day. Would the 24th be okay?

THE COURT: The 24th would have to be in Timmins.

MR. CHARLEBOIS: It would have to be...

MS. FULLER: I am...

THE COURT: In Timmins. Listen, it is easier for you to get to Timmins than it is to get to Cochrane.

MS. FULLER: Yeah.

THE COURT: So if you are available on the 24th, let's do it, and let's do it in Timmins.

MR. CHARLEBOIS: Can we do it in the afternoon?

THE COURT: Three o'clock. Okay?

MR. CHARLEBOIS: Three o'clock, Timmins.

MS. FULLER: Two o'clock, Your Honour? I am just thinking...

THE COURT: What trial do I have, Madam Clerk, in...

COURT CLERK: A three day trial, Your Honour. A civil trial.

THE COURT: Three day civil trial? Three o'clock, okay? Three o'clock on the 22nd (sic) of June.

COURT CLERK: Are you ordering a pre-sentence report?

THE COURT: Yes, we are.

MS. FULLER: Twenty fourth of June?

THE COURT: The 22nd of June...

MS. FULLER: 24th of June?

THE COURT: 24th of June.

MS. FULLER: Thanks, Your Honour.

COURT CLERK: These sittings are now concluded.
Long live the Queen.

C O U R T A D J O U R N E D

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I, Carole Brisson, certify that this document is a true and accurate transcript of the recording of HER MAJESTY THE QUEEN v. ANNA WESLEY in the Superior Court of Justice held at Cochrane, taken from Recording No. GEN-10-CB, GEN-11-CB, GEN-12-CB, GEN-13-CB, GEN-14-CB, GEN-15-CB, GEN-16-CB, GEN-17-CB, GEN-18-CB, GEN-19-CB.

10

October 8, 2003
Date

Carole Brisson
Carole Brisson

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I, Lynn Shier, certify that this document is a true and accurate transcript of the recording of HER MAJESTY THE QUEEN v. ANNA WESLEY in the Superior Court of Justice held at Cochrane, taken from Recording No. GEN-20-CB, GEN-21-CB, GEN-22-CB, GEN-23-CB, GEN-24-CB, GEN-25-CB, GEN-26-CB, GEN-27-CB.

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Oct 8, 2003
Date

Lynn Shier
Lynn Shier

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