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NUNAVUT COURT OF JUSTICE
La Cour de justice du Nunavut

Citation: **R. v. DeJaeger, 2014 NUCJ 21**
Date: 20140812
Docket: 07-02-27; 07-11-6; 07-11-8; 07-11-9; 07-11-34; 07-11-36;
07-11-37; 07-11-40; 07-11-41; 07-11-44; 07-11-54; 07-11-76;
07-11-77; 07-11-106; 07-12-1; 07-12-2; 07-12-28; 14-11-83;
15-11-52; 24-12-20; 07-13-85; 07-13-95.

Registry: Iqaluit

Crown: **Her Majesty the Queen**
-and-

Accused: **Erik Jose De Jaeger**

Before: The Honourable Mr. Justice Kilpatrick

Counsel (Crown): Doug Curliss Q.C., Barry Nordin, Scott Hughes
Counsel (Accused): Malcolm Kempt

Location Heard: Iqaluit, Nunavut
Date Heard: November 18 - 22nd; November 25 - 29th 2013;
December 2 - 4th; December 6th; December 9-12th 2013;
January 20-23rd 2014; March 17-20th 2014; May 26-28th 2014

Matters: *Criminal Code* s. 156 x23; s. 149 x 22; s.247(2) x 2; s.155 x 12;
s.331(1)(a) x 1; s.144 x 6; s.381(1)(a) x 1; s.157 x 2; s.245(1) x 1;
s.246.1 x 1.

REASONS FOR JUDGMENT

(NOTE: This document may have been edited for publication)

Readers are cautioned that this judgment contains graphic descriptions of sexual activity that some may find disturbing and offensive.

Restriction on Publication: By court order made under section 486.4 of the *Criminal Code*, any information that could identify the complainants shall not be published in any document or broadcast or transmitted in any way.

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Appendix A. COUNT BY COUNT SUMMARY OF FINDINGS

Overview of the allegations

- [1] This citizen stands accused of eighty offences alleged to have been perpetrated against children, adolescent pre-teens, teenagers, and young adults. The complainants range between four and twenty years of age. All are Inuit. The allegations cover a wide variety of offences including indecent assault, unlawful confinement, rape, sexual assault, assault, acts of gross indecency, threatening, buggery and bestiality. There are some forty complainants of both sexes, male and female. There are three counts alleging bestiality with a dog.
- [2] The majority of allegations are said to have been committed by this Defendant while he was a priest posted to the community of Igloolik, in what is now Nunavut. The bulk of the allegations are said to have been committed at various locations inside, or in a shed adjacent to, the Roman Catholic mission in this community. There is one allegation originating in Baker Lake. There is another allegation from Pelly Bay. There are four allegations that are said to have occurred at isolated hunting camps at some distance from Igloolik.
- [3] All criminal allegations are historic in nature and cover a span of six years between 1976 and 1982.

I. HUMAN MEMORY AND THE PROSECUTION OF HISTORIC OFFENCES

A. The effect of delay upon the prosecution and defence of criminal allegations

- [4] As months turn into years, as years turn into decades, the Court's ability to distill historical fact from fiction becomes increasingly difficult. In the case of *R v Horne* 2008 NUCJ 06, 2008 NUCJ 6 (CanLII) [*Horne*], this Court had occasion to review some of the perils associated with fact-finding in relation to historic events. Much of what this Court said in *Horne* is repeated here for completeness.

- [5] Delayed reporting and the passage of time can interfere with the collection of credible evidence. Forensic science cannot assist where the physical evidence related to a crime or a crime scene has disappeared or ceased to exist. Witnesses may die or disappear. Witnesses who are found may choose not to cooperate.
- [6] The passage of time thus often results in there being no independent evidence of a crime. Yet the effectiveness of the fact-finding process may often depend upon there being just such evidence. Confirmatory or corroborating evidence may well be needed to verify the accuracy and completeness of a witness's present memory of an historical event. This is particularly important where there is a clash of opinion about what happened.
- [7] The passage of time may also affect a witness's memory. Details once remembered may be forgotten. The greater the time, the more pronounced this phenomenon is likely to become. This process is more rapid with children (See Cory J. in *R v F (CC)*, [1997] 3 SCR 1183, 120 CCC (3d) 225 at paragraph 19).
- [8] Memories that are recovered later in life may be influenced by a wide variety of factors related to how and why the memory was recovered. Human memory is frail. It is not immutable. Memories of events can shift over time as a result of subtle influences caused by a witness's changing life experiences. Honest mistake and error can result. Delay thus affects not only the quantity of evidence available to the Crown, but also its quality.
- [9] It is against this background that the Crown must assemble its evidence. Instead of alleging a specific date or dates when the alleged offence or offences occurred, the Crown is left to indicate only a range of time, a range which may extend over months or even years. Instead of physical evidence, the Crown is left only with the testimony of an alleged participant in the events being described.

[10] The Defence inherits many of these same problems. Exculpatory evidence will often disappear or become degraded with the passage of time. Like the Crown's witnesses, a Defendant's memory will also deteriorate. After the passing of so many years, it is not realistic to expect Defence or Crown witnesses to be able to recount details with any real accuracy.

B. Delay and its impact upon the fact finding process

[11] Crown and Defence may well have formidable challenges presenting their respective cases, but there is an even greater problem faced by a Court tasked with assessing the credibility and reliability of historical allegations. In the absence of any independent evidence, the Court must rely entirely upon cross-examination and the adversarial process to test the strength and ultimate reliability of the Crown's evidence.

[12] Effective cross-examination is an attack upon detail; it is there to expose contradictions and unreliability. This right of cross-examination is fundamental to any Defendant's right to a fair trial. Cross-examination is also fundamental to the fact-finding process itself. In the absence of any independent evidence, the exploration of the contextual details associated with the event through cross-examination is critical to the Court's ability to adequately assess the credibility and reliability of a witnesses' evidence in a trial environment.

[13] Where there is great delay between the date of the alleged incident and the date of trial, testimony will likely be vague. It is unlikely that such testimony will have the details necessary to expose unreliability or falsehood. This absence of detail and any contradictions that may be uncovered in cross-examination can also be readily explained away by a witness's fading memory. There is a natural tendency for a Judge or jury to be more forgiving to a flawed memory under these circumstances. This tendency is doubly enhanced where the events being described by a witness are not only historical, but are alleged to have been witnessed by a child.

- [14] In relation to very dated events, there are very real limits as to what can be achieved by cross-examination. Repeated responses such as “I can’t remember,” or, “It was too long ago,” can effectively shut down the testing process. The fewer the details and the larger the memory gaps, the more difficult and dangerous the fact-finding process becomes.
- [15] Where the passage of time prevents substantial recall of details, there remains only a bald assertion of fact. Where such an assertion is met by an equally adamant denial, there is no safe basis to separate fact from fiction.
- [16] Cross-examination is best applied at a point where the witness’s memories are reasonably intact. As events become more and more remote in time to the application of this testing process, as memories become degraded and details are forgotten, the testing process itself becomes less effective, and progressively more and more impaired.
- [17] Criminal trials are best fought with forensic weapons. A timely cross examination is one of the best and most effective means of discovering the truth. To the extent that cross-examination is impaired, the truth-finding process dependent upon this is adversely affected. Certainty becomes harder to achieve.

C. Cross-examination, fact-finding and the evidential value of inconsistencies

- [18] The Court’s fact-finding process is made further complicated by prevailing jurisprudence that directs a fact finder to assess the evidential value of inconsistencies and contradictions in a young witness’s recollection of events against their age and mental capacity when the event was observed or experienced by them.

[19] The prevailing jurisprudence suggests that a child's capacity to remember is not appropriately assessed using standards appropriate to a reasonable adult. Case law in this area suggests that the omission of peripheral details is not usually a basis for rejecting the testimony of a child witness (See *R v D (GN)* (1993), 81 CCC (3d) 65, 62 OAC 122 (Ont CA) at 78). For reasons related to the child's cognitive development and memory capacity, an inability to remember time, date or location; confusion about sequences, frequency or separation of days, may not necessarily be as damaging to a child witness as it would be to an adult (See *R v B (G)*, [1990] 2 SCR 30, 56 CCC (3d) 200 (SCC)).

[20] The deficits common to children and adolescents apply at the point the memory is first imprinted. It is not likely that a childhood memory will improve with the passage of time to recover details not recorded in childhood. While the complainants in this case were all adults at the point they testified, most of these witnesses were children or adolescents when the alleged events occurred. The memories carried forward from infancy into adulthood suffer from the memory deficits associated with childhood.

[21] There are three possible inferences that can be drawn from the absence of contextual detail and the existence of significant gaps in a witness's memory. These deficits can certainly be explained as the product of the age and life circumstances of a witness when this experience was first memorized. Memories can be expected to degrade over time. These deficits may exist because the events themselves have been deliberately contrived. Finally these same deficits may be present where a false memory has been inadvertently created during the process of memory recovery later in life.

D. The false memory and the potential for a wrongful conviction

[22] In the 1990's, one Herman Kaglik of Inuvik, Northwest Territories was convicted by two successive juries of a number of sexual offences involving a female relative. This complainant had recovered a memory of her victimization while undergoing therapy for other forms of trauma and addiction. This complainant was both convinced and convincing. The identity of the alleged perpetrator was not an issue in either trial.

- [23] Herman Kaglick continued to protest his innocence over the many years of custody that followed his sentencing. Advances in DNA science technology ultimately made possible the examination of exhibits seized during the investigation of the second sexual assault.
- [24] The DNA test results exonerated Mr. Kaglik.
- [25] There is much that we do not know about the human mind and its cognitive processes. Even today, cognitive science remains in its infancy. The workings of the mind are akin to a deep sea. Medical scientists and forensic psychiatrists have skipped rocks across its surface, and have only achieved a limited understanding of its more visible processes. What lurks in the deepest depths of the mind remains largely unmapped and unknown.
- [26] In the process of attempting to recover a memory that has been “lost”, it is possible to inadvertently create a false memory. The false memory of an historic event for some becomes a means of rationalizing pain and dysfunctional behavior in a life and lifestyle that is otherwise disordered and chaotic.
- [27] As in the case of an honest but mistaken identification witness, the witness with a false memory will typically present as a very convinced and convincing witness. They sincerely believe that the incident being described by them is true. Their demeanor on the witness stand may be entirely consistent with one who has been victimized. There may well be an unconscious transference of the emotions associated with real trauma to a false memory. There may well be signs of anger and indignation, disgust and embarrassment. The emotions behind the words may ring true, but this is no guarantee that the events being described by the witness occurred as described or at all.
- [28] Some of the Crown’s witnesses in this case say that they have had a continuous memory of the alleged abuse suffered at the hands of the Defendant. However, a significant number of the witnesses claim to have recovered a memory of the abuse at some point later in their lives.

[29] Many of these witnesses have experienced other forms of trauma. Some have experienced multiple incidents of physical and sexual abuse at the hands of others. Many of these witnesses have discussed with others or have heard others discussing allegations of sexual abuse by the Defendant. Some complainants claim to have recovered a memory of the abuse as a result of hearing others speak of their experiences or through a recovery process involving repetitive flashbacks. Some witnesses' claim to have experienced some form of blackout during these alleged events and are consequently unable to relate any details of what may have happened following this.

[30] The very dated allegations in this case require the Court to focus on the memory retrieval process as part of its assessment of evidence reliability. This makes the Court's task significantly more difficult. The Court's ability to adequately assess the reliability of a witness's memory is in large part dependent upon a thorough examination of how and when the memory was recovered and what may have influenced the memory retrieval process.

E. The jurisprudence on recovered memories

[31] It has only been in the last two decades that the Courts have come to recognize the potential danger associated with the recovered memory and the value associated with expert evidence on the issue of memory recovery.

[32] In the early cases of *R v Norman* (1993), 87 CCC (3d) 153 at 165, 26 C.R. (4th) 256, and *R v BM*, [1998] OJ No 4359 at 73, 130 CCC (3d) 353, the Ontario Court of Appeal held that the following three aspects of the science of memory are the proper subject of expert testimony in cases involving recovered memory:

- a. the role that therapy can play in the retrieval of memory;
- b. "flashback" memories and the means of evaluating the reliability of these memories;
- c. the nature of memory that is repressed by reason of post-traumatic stress disorder (PTSD).

- [33] In the case of *R v Francois*, [1994] 2 SCR 827, 31 CR (4th) 201 [*Francois*], the complainant at trial testified to having blocked, and later recovered, a memory of abuse. This complainant's memory was recovered after discussions with the Children's Aid Society and the police. There were no experts called to assist the jury in understanding the process of memory blocking and memory recovery.
- [34] The Supreme Court of Canada ruled that the jury did not err in convicting the appellant. It was open to the jury to accept the explanation provided by the complainant for her recovered memory. With the knowledge of human nature that the jury was presumed to possess, and with the benefit of a thorough examination of the complainant about her recovered memory, the Supreme Court of Canada was confident that jurors were collectively capable of applying their experience and common sense to determine the issue of reliability.
- [35] In *R v Kliman* (1996), 71 BCCA 241, 47 CR (4th) 137, one of the complainants had testified to seeing a psychologist for the purpose of bringing back memories of childhood sexual abuse. She testified to having recovered her memory of abuse through a number of flashbacks. This complainant had struggled to remember who had sexually abused her. The trial judge had ultimately accepted the memory of this complainant as genuine.
- [36] The Court of Appeal at paragraph 88 noted that there was a developing trend in Canadian jurisprudence to admit evidence of recovered memories with the safeguard of a strong caution regarding its reliability. The Court of Appeal notes that the trier of fact's assessment of reliability can be assisted by the use of expert witnesses and other scientific evidence related to the inherent reliability or lack of reliability of this type of memory.

[37] In the case of *R v H (RJ)*, 2000 BCSC 891 at paragraphs 100-118 and 153, 2000 CarswellBC 1515 [*H(RJ)*], the BC Supreme Court, with the assistance of an expert forensic psychologist, identified five criteria that are usually present in recovered memories related to child sexual abuse. It was determined that the allegations: should be of coherent events; should be described in a spontaneous fashion; should have both the quantity and quality of detail that one would expect for this particular child; should have both spatial and temporal context and should include descriptions of interactions between the child and the perpetrator (para.108). Age appropriate descriptions of the physical sensations, thoughts and emotions being experienced at the time of the alleged events are important indicators of accuracy. The expert evidence led in this case suggested that “created” or false memories tend to be more vague, less detailed and less spontaneous than real memories.

[38] In *H(RJ)* a father was convicted of an historic sexual assaults upon his daughters. The recovered memories were accepted as accurate in this case because the memories:

- a. contained child-like recollection of the details concerning the discomfort experienced by the speakers;
- b. the details of the events being described were coherent and spontaneous;
- c. minor inconsistencies in the speakers evidence were reasonably explained and reflected the spontaneous nature of the recovered memory;
- d. the memories were not tainted by outside influences.

[39] In this case, the Court is being asked by the Crown to simply apply “common sense” to its assessment of the reliability of the memories claimed by the complainants in this case. For all of the reasons advanced in the preceding paragraphs, the Court’s application of “common sense” to the assessment of recovered memories can be problematic without a thorough review of the memory retrieval process.

II. THE GUILTY PLEAS

[40] At the outset of this trial, the Defendant entered guilty pleas to eight counts of indecent assault on males contrary to section 156 of the *Criminal Code* (Counts 12, 24, 26, 33, 37, 51, 75 and 76). The facts related to these offences are in dispute however. By agreement, the Court heard the evidence from these eight complainants during the trial of those counts still set for trial.

[41] Where the facts alleged by the Crown as the basis of a criminal charge are in dispute, the Crown is obligated to prove these facts beyond a reasonable doubt.

[42] If the Court accepts the Defendant's evidence about what happened, the sentencing must proceed on the basis of the Defendant's facts and those facts only. If the Defendant's evidence about what happened is not believed, but the Defendant's testimony raises a reasonable doubt about the Crown's version of events, the Court must give the Defendant the benefit of that doubt.

[43] If at the end of the day, the Court does not know who or what to believe, the law demands that the Defendant's version of events be accepted. Once again, it is the Crown who must establish the facts upon which it relies. The Defendant does not have to prove that his version of the facts is true.

[44] A criminal trial is not a credibility contest between crown and defence witnesses. The Defendant is entitled to the benefit of any reasonable doubt on an issue of credibility arising from the testimony of witnesses heard in a trial. It is not a matter of simply choosing one witness's version of events over another.

A. Review of the Crown's evidence related to the guilty pleas

Count 12 (indecent assault on CA – s.156CCC)

[45] CA relates that he was between 12 and 16 when the alleged abuse occurred. CA dropped out of school after achieving a Grade 7 education.

[46] This complainant says that he was in a room adjacent to the kitchen of the Roman Catholic Mission in Igloolik with two other young friends. He was assisting the others to make a metal cross out of empty bullet casings. Some sort of blowtorch was being used to weld the empty casings together. CA says that he went to the kitchen to get some water and found the Defendant seated at the kitchen table.

[47] CA says that he was suddenly grabbed by the Defendant. The Defendant sat him upon his knee. While there, the Defendant momentarily fondled his penis on top of his clothing. This caused CA to become slightly erect. CA says that he squirmed and got off the Defendant's leg. He left the room immediately to rejoin his friends. As CA moved back to the workroom from the kitchen, he heard the Defendant call out his name a few times.

[48] CA says that at the time of the incident he thought the Defendant was trying to make him laugh by tickling him. CA did not understand this touching at the time to be a form of sexual abuse. CA says he did not think again of the incident again for many years. It was forgotten. He had occasion to recall the event when he later heard about what the Defendant had been doing to others and learned through the media that the Defendant had returned from Belgium to Canada.

[49] CA says that he first disclosed this incident to his sister LA (also a complainant) who then encouraged him to report it to Social Services. It was the Department of Social Services who contacted the police. The police investigation followed in 2011.

[50] This witness indicates he never applied for nor received compensation from the Church.

[51] The evidence given by this complainant is coherent and complete. There are no obvious gaps in the sequencing of events being described by him.

[52] CA speaks to a memory cue embedded in the event that he has described. CA thus links his memory of the incident to the building of a cross out of spent bullet casings. This was a memorable event for this young boy. Even today he speaks with pride of the cross built by him on this occasion. CA says that he did not keep the cross because it reminded him of what had happened to him on this occasion. It is difficult to conceive under these circumstances how this witness could confuse abuse associated with this cross building event downstairs in the Mission with an innocuous and very brief groping upstairs in the priest's bedroom as described by the Defendant.

Count 24 (indecent assault on JI – s.156CCC)

[53] A guilty plea has only been entered to the count alleging an indecent assault. Count 23, a count alleging buggery of this same complainant, remains set for trial and will be dealt with later in these reasons.

[54] JI passed away in November 2013 following a long struggle with cancer. JI first gave a formal written statement to the RCMP in 1994. The details of this earlier statement were reviewed by the Defendant in February 2012. The accuracy of this earlier statement was videotaped and verified under oath at this time and expanded upon. In view of JI's deteriorating medical condition, JI's evidence was preserved in a form that could be later presented to the Court. This videotaped statement is Exhibit T-11 in this proceeding. JI has not been available for cross-examination by defence.

[55] This complainant says that he was between eight and ten years of age when the sexual touching by the Defendant occurred. JI claims that there were numerous incidents. He is unable to say how many incidents in total occurred. JI suggests that the touching would happen "almost" every night and sometimes during the day.

[56] It is alleged that on numerous occasions JI, together with a number of other named children, were invited to sleep over at the Roman Catholic Mission by the Defendant. The sleep-overs would take place upstairs in the Defendant's bedroom. The children would sleep on the floor of the bedroom with bedding provided by the Defendant. Food was provided to the children who attended.

[57] JI says that at some point during the sleepover he would be taken to the Defendant's bed by the Defendant. While there he would be invited to look at a book. The Defendant would then pull down JI's pants to his knees, fondle JI's genitals, and attempt to masturbate him. While doing this the Defendant would be seated on the bed in front of JI. He was usually wearing gray underwear. On a few occasions JI claims the Defendant placed JI's hands on the Defendant's erect penis and tried to get JI to masturbate him. JI says that he would pull away when this happened.

[58] No other witnesses were called by the Crown to confirm the evidence given by this complainant.

[59] JI says that he once tried to disclose this abuse to his parents. They did not believe him, and he consequently did not raise this subject again with his family. At some undisclosed time he says that he did talk to his girlfriend about his experiences. The named girlfriend has not been called as a witness to confirm when this disclosure took place.

[60] At some point in the 90's this complainant applied for and received compensation from the Church as a consequence of civil litigation initiated by him in relation to this claim of sexual abuse. After paying the law firm their fee, JI says he received the sum of \$58,000. The details of the allegations made by JI in support of this claim are not in evidence.

[61] JI says that he was also active in soliciting the involvement of others to join him in this litigation against the church. Defence is unable to cross-examine JI to determine who JI talked to, when these discussions took place and what information about the alleged abuse was exchanged during these discussions.

[62] Both JI and LI allege multiple incidents of abuse. These witnesses are not sure of the number of incidents, nor are they able to distinguish the different incidents from each other. There are no particular memory cues or contextual details provided by either complainant about these many alleged instances of sexual abuse. Both complainants are related to each other. Both complainants had occasion to speak to each other about their experiences. Both complainants had occasion to file claims against the Church as a result of their experiences with JI taking the leading role in organizing this. There has been no evidence led about what factual allegations were made by either JI or LI in support of their claim for compensation. Both claimants would have had an incentive to inflate their allegations in order to secure a larger settlement from the Church.

Count 26 (indecent assault on LI – s.156CCC)

[63] The guilty plea was recorded to only one of the two counts involving this complainant. Count 25 alleging an act of buggery in relation to this same complainant remains set for trial. It will be dealt with later in these reasons.

[64] LI dropped out of school in Grade 9. He was between nine to twelve years of age when this incident took place. He attended the Roman Catholic Mission for religion classes during the week after school with other children his age.

[65] The alleged touching is said to have occurred on an unspecified number of occasions. The complainant says that he would often be colouring with the other children in the downstairs kitchen area of the Mission. LI says that he would be picked up by the Defendant and placed on the Defendant's knee. While there, the Defendant would put his hand inside LI's pants and fondle LI's penis. The duration of the fondling activity is unknown. After getting off the Defendant's lap, LI says that the Defendant would sometimes pinch LI's buttocks. This upset LI.

[66] LI says that a number of other children were present in the room colouring when this fondling activity took place. LI gives the names of a number of other children he was with on some of these occasions. None of these children have testified to seeing this fondling activity. LI says that the children were directed by the Defendant not to look around when they were colouring.

[67] LI says that he did not realize the touching was bad until he was a teenager and learned about sex in school. LI disclosed to his older brother JI (also a complainant) who “forced” him to go to the police in 1993.

[68] JI is no longer available to confirm the timing of this disclosure.

[69] In 1993, LI was 25 years of age. The 1993 statement to the police disclosed some, but not all, of the alleged abuse. LI claimed to be not strong enough to tell his full story to the RCMP in 1993. LI says that in 1993 he feared the authorities. LI also says that he had been told by the Defendant when he was a child that he would be taken away from his parents if he told anyone about what the Defendant was doing. LI claims that this admonition still preyed on his mind in 1993 and was a factor in his not disclosing the full extent of the abuse.

[70] LI’s reason for not fully disclosing the full extent of the Defendant’s abuse in 1993 to the police is suspect. Even if he feared the police, he still provided the police in 1993 with some details of the alleged abuse. It is difficult to understand why he would fear removal from his parents as a reason to keep silent. LI was then 25 years of age. He was well into adulthood.

[71] At some point LI applied for and received compensation from the Church for alleged abuse by the Defendant. The evidence does not disclose what factual allegations were advanced by LI to substantiate this claim for compensation. LI received the sum of \$62,000 as a result of making this claim. It is unknown when this money was received.

[72] A subsequent statement was given by LI to the police in February 2012. This was the first time that LI disclosed the full extent of the abuse he had suffered.

Count 33 (indecent assault on PI – s.156CCC)

[73] There are two counts involving this complainant. A guilty plea has only been entered to one count of indecent assault. The remaining count (Count 34) remains set for trial and will be dealt with later in these reasons for judgment.

[74] PI is a high school graduate. He was between eight and eleven years of age when the incidents involving the Defendant occurred. PI describes two incidents of fondling.

[75] PI says that he, along with a number of other children, often stayed in the Mission after Sunday services were completed to play. On one occasion he was invited upstairs into the Mission living quarters by the Defendant along with the others. PI says that he was treated to some dried meat described as elephant jerky by the Defendant. The provision of “elephant jerky” to a hungry child was an unusual occurrence in the life of a child living in Igloolik. PI had reason to remember this event.

[76] The Defendant then asked PI to sit on his lap and PI did so. While on the Defendant’s lap, PI says that the Defendant fondled his genitals over his clothing.

[77] PI is not sure how long this touching continued, but estimates that it may have lasted at least five minutes. The Defendant was wearing civilian clothes at the time and was sitting on a chair by a table. In addition to blue jeans, the Defendant was wearing a plaid shirt and slippers trimmed with brown fur with a flower decoration near the top.

[78] There were other children in the room when this fondling activity took place. They were engaged in other activities.

[79] No other witnesses have been called by the Crown to confirm or corroborate PI’s allegations.

[80] PI references the first alleged abuse with a memorable event – the provision of “elephant jerky” to a hungry boy. The giving of the food/treat combined with the unusual nature of the food itself assisted this complainant in recalling the details of the first described incident. The Defendant himself acknowledges in cross-examination that he might have on occasion given jerky or “biltong” to some of the children. He concedes that he had a relative in South Africa who sent him foodstuffs from time to time. He concedes that there might have been some discussion about “elephant” jerky.

Count 37 (indecent assault on RI – s.156CCC)

[81] There are two counts involving this complainant. A guilty plea has only been recorded in relation to a count of indecent assault. The remaining count (Count 38) alleging an act of gross indecency remains for trial.

[82] RI has a Grade 8 education. RI also has a significant hearing impairment and testified throughout with the assistance of an interpreter.

[83] RI was between ten and thirteen years of age when the incidents with the Defendant occurred. RI was camping on the land at a spot known as Uttuksivik or Maud Bay. It was summertime. RI was with his family. At some point the Defendant joined the family and set up his own tent at some distance from the others.

[84] RI speaks of three incidents of sexual touching. Two of these touchings are the subject of Count 38 and will be discussed later in these reasons.

[85] With respect to the indecent assault, RI relates that he was invited by the Defendant into the Defendant’s tent. While there the Defendant pulled down RI’s pants and while fondling his genitals attempted to masturbate him. When this touching occurred, the Defendant is described by RI as having very cold hands. RI says that this incident ended when RI pushed the Defendant away and left the tent.

[86] RI says that he was told by the Defendant that if he told anyone about what he (the Defendant) was doing no one would believe him because he was God’s helper.

[87] RI says that he attempted to speak to RCMP in 1984 or 1985 about this abuse, but he was not believed. It is unknown who RI spoke to on this occasion.

[88] RI later applied for and received monetary compensation from the church as a consequence of this abuse. RI received the sum of \$17,600 as compensation at some undisclosed point in time. The evidence does not reveal what allegations were made by RI in support of this claim for compensation.

[89] In cross-examination RI confirms that his first formal statement about the abuse to the RCMP took place in February 2012. In this statement, RI describes an incident of sexual touching that occurred down by the water and away from the tent. RI insists that this was a different incident than the one referenced in the tent. RI had made no mention of this other incident in his examination in chief.

[90] With respect to RI's evidence, it is inconceivable that RI's description of a skin-to-skin masturbation in a tent on the land could be confused with a momentary groping by the Defendant at the Mission over his clothing. RI's memory of this event includes an age appropriate child-like reference to the Defendant's hands being very cold at the time.

[91] The Court would have to conclude that RI either deliberately fabricated the details of this incident on the land or that the incident was innocently and inadvertently created by him through the process of memory reconstruction.

[92] There is nothing developed in cross-examination that would allow this Court to conclude that this witness was deliberately falsifying the events he was describing. There is nothing in this witness's evidence to suggest that this witness memory of this incident on the land was recovered by him later in life or that he reconstructed this memory through flashbacks over a period of time.

Count 51 (indecent assault on CN – s.156CCC)

[93] CN has a Grade 6 education. This complainant was between eight and twelve years of age when the incident with the Defendant occurred.

[94] CN alleges that the sexual touching occurred on at least five occasions or more. He says that it may have occurred as many as five times or more.

[95] On many occasions the complainant says that he was upstairs in the Roman Catholic Mission inside the Defendant's bedroom. CN would be playing. On some occasions he was by himself, and on others, there might have been two or more other children with him inside the bedroom. CN is able to describe in some detail the layout of the Defendant's bedroom for this reason.

[96] CN is unable to name the other children who were present with him in the Defendant's room.

[97] CN says that on a number of occasions while he was colouring or playing by himself on the floor of the bedroom, the Defendant would seat himself on an office chair. CN says that he was then made to sit on the Defendant's lap. On some occasions, the Defendant would remove the complainant's belt and pull down the zipper of his pants. The Defendant would fondle CN's penis. On those occasions when CN was not wearing a belt, the Defendant would simply undo the snap on his pants, pull down the zipper and fondle his genitals.

[98] The fondling activity always occurred when there were no other children in the room with CN. The complainant is unable to say with any certainty how long this fondling activity would last. He estimates the duration of these incidents to be as long as half an hour long.

[99] CN says that he was cautioned by the Defendant to never talk to anyone about what he (the Defendant) was doing. The incidents would often end with the Defendant saying that he would see CN next day.

[100] CN says that he made no disclosure to anyone until the police became involved in 1994.

[101] CN readily acknowledges that he has heard others in his community speak of their history of alleged abuse by the Defendant.

[102] At some unknown time, the Defendant applied for, and received compensation from the Church for the alleged abuse by the Defendant. CN believes that he received between fifteen and twenty thousand dollars as compensation for this abuse. This compensation was received approximately 10 years ago. The evidence does not disclose what factual allegations were advanced by CN to support this claim for compensation.

[103] CN is unable to give particular details about the individual instances of abuse. There are no memory cues to differentiate one incident from another. All instances tend to blend together in one generic description of the type of abuse suffered at the hands of the Defendant.

Count 75 (indecent assault on MT – s.156CCC)

[104] MT is now 34 years of age and has a grade 7 education. He was between eight and twelve years of age when this incident occurred.

[105] MT says that he was in a small office on the main floor of the Mission. The Defendant was seated in a chair and reading a children's book to a number of children who were present. MT and two named friends were standing close to the Defendant as he read from the book. At some point the Defendant reached over and put his hand on MT's right buttock and tried to pull MT closer to where the Defendant was seated. MT tried to pull back because he was uncomfortable. He was held fast by the Defendant and was unable to do so. The Defendant is said to have maintained his hold on MT's bum for an estimated three minutes.

[106] After three minutes the Defendant releases MT and MT and his friends left the office area to play games in a larger room with his friends.

[107] MT never said anything to anyone else about this event. He has never applied for any form of compensation from the Church.

[108] The two named friends of this complainant have not been called as witnesses to confirm any part of this alleged event.

[109] Defence counsel chose not to cross-examine this Complainant.

[110] MT maintained that the only incident of fondling occurred in a small office on the main floor of the Mission. The accuracy of this memory was not challenged by any cross-examination. The Court has been given no cogent reason to doubt its accuracy.

[111] This witness indicated he did not apply for or receive compensation from the Church.

Count 76 (indecent assault on TU – s.156CCC)

[112] TU is now 50 years of age and has a Grade 9 education. TU was between fourteen and eighteen when the incident with the Defendant occurred.

[113] TU says that he was in the Mission with a named younger brother and one other named individual. All three youth were in the kitchen on the main floor of the Mission. The Defendant was wearing brown corduroy pants with a striped shirt. He had sealskin *kamiks* on his feet.

[114] The Defendant was serving the boys tea when he proposed to teach TU some self-defence moves. TU was asked to lunge at the Defendant. TU did so twice and the Defendant blocked these moves. As TU moved against the Defendant a third time, the Defendant suddenly grabbed TU and turned the move into a dance. This involved the Defendant grabbing one of TU hands with one hand while the Defendant's other hand rubbed TU's bum. This touching went on for an estimated 15 seconds.

[115] TU broke off this contact and returned to the table where his brother was seated. TU was upset. He told his brother what had just happened and indicated that he wanted to leave. The three youth then left the Mission. On returning home TU told his grandmother what happened. He was told that he should never return to the Mission again without adult supervision.

[116] TU's brother was not called by the Crown to verify this disclosure by TU. TU's grandmother died in 1983.

[117] Cross-examination of this witness was very short and only involved questions directed to the physical location of the kitchen in the Mission. No attempt was made to dislodge this Defendant from his stated version of events. There is much contextual information that is included in TU's account of what happened.

B. The Defendant's Credibility Assessment

[118] The Crown argues that a citizen who is awaiting sentence will be motivated to minimize the seriousness of the facts underlying the crimes for which they are to be sentenced. They will do so in the hope of securing a reduced sentence. The Court has been urged to discount the Defendant's credibility as a witness because he has a motive to lie.

[119] While it is true that the presumption of innocence has been displaced by the entry of guilty pleas, this Court would fall into error if it started an assessment of the Defendant's evidence with the assumption that he will not tell the truth about what happened. The Crown's submission with respect to possible motive is only entitled to consideration if there is credible evidence to support such a finding. Such a finding can only be made following an objective review of all the evidence given in the course of the Gardner hearing. The evidence of all witnesses must be given equal consideration unless or until there is a sound evidential basis to question the reliability or sincerity of a witness's testimony.

C. Review of the Defendant's evidence in relation to the guilty pleas

[120] The Defendant says that all eight indecent assaults occurred in his bedroom upstairs in the Mission. They occurred nowhere else. In particular, the Defendant insists that no offences were ever committed in the kitchen area as claimed by CA, the office area as claimed by MT, or on the land as claimed by RI.

[121] The Defendant readily admits that the children were not supposed to be upstairs in the priests living quarters in the Mission. He says that all eight boys arrived in his room uninvited and alone. Their presence was neither desired nor solicited by him.

[122] The Defendant says that in every case he was busy working at his desk when the child arrived in his bedroom. The child complainants would then start to talk and disturb the Defendant in his work. The child complainants would play with items on the Defendant's desk. At this point the child would be standing next to the Defendant who would be seated on a chair in front of the desk.

[123] The Defendant says that in all eight instances he wanted the boys to leave. He concedes that he never asked any of the children to leave. At no time does he ever remind these unwelcome visitors that they are not allowed upstairs. Instead, as a way of shooing the boys out, the Defendant claims to suddenly touch seven of the complainants' in the area of their crotch. He does so by gently squeezing their pants above their genitals. This activity is described as being of brief duration – less than a minute. On one occasion he admits to squeezing TU's buttocks over his clothing. His purpose in doing so was the same – to shoo TU out of the bedroom. All eight offences were opportunistic. They were committed without any planning or forethought.

[124] The Defendant says that all eight offences occurred during the day. He denies that he ever touched any of the complainant's on their skin. The Defendant says that there was only one sleep over during the Defendant's tenure in Igloolik. Nothing happened on that occasion. The Defendant says that he was never on his bed with JI as alleged or at all. The Defendant claims that no other children were ever present when these eight offences were committed.

[125] The Defendant insists that he did not do what he did for the purpose of sexual gratification. He says that at the time he committed these offences, he considered the touching to be a way of showing affection like ruffling a child's hair. He did not understand his behavior to be morally inappropriate or criminal.

[126] All eight events described by the Defendant are remarkably similar. The sequence of events is the same. The type of fondling is the same with one exception (the fondling of TU's buttocks). The duration of all eight events is approximately the same. All incidents occur at the same location – the Defendant's bedroom. There is very little contextual detail to distinguish one incident from another.

[127] The Defendant's claim that he only did what he did because he wanted the boys to leave his room is suspect. Common sense would suggest that if wanted the boys to leave he would have said so on at least some of these occasions. By his own admission he did not do so at any time. This is telling. To purportedly shoo the boys out by groping their crotches or buttocks is bizarre. This happened on the Defendant's evidence not once, not twice, but on eight different occasions.

[128] There is a clear pattern of behavior evident on the Defendant's own description of these events. The Court rejects any suggestion that such behavior was done without thinking and for an innocent purpose. The Defendant's suggestion that he was not motivated for reason of sexual gratification is simply not believable.

[129] The Defendant's claim that he did not realize that the act of groping a crotch to be morally inappropriate and criminal is also suspect. In cross-examination, the Defendant conceded in cross-examination that during this period of his life he never touched children in this way in the presence of other adults. He conceded that he has never and would never touch an adult in this same way. The fact that the Defendant behaved differently in public and with adults suggests that he was well aware of prevailing social conventions with respect to the bodily integrity of others, particularly children.

D. Conclusion - Findings of fact in relation to the offences involving guilty pleas

[130] There is a sound basis on the evidence to question the sincerity and accuracy of the Defendant's evidence. For all the reasons set out in paragraphs 127 to 129, the Court does not believe the Defendant's version of events. The Court finds that the Defendant's evidence does not raise a reasonable doubt about what happened.

[131] In particular, the Court finds that the Crown's evidence in relation to Counts 12 (CA), 33 (PI), 37 (RI), 75 (MT) and 76 (TU) to be both credible and reliable. In relation to these five counts the Court finds the Defendant guilty on the basis of the facts outlined by these five complainants.

[132] In relation to Counts 24 (JI), 26 (LI) and 51 (CN) the Court finds that while the Crown's evidence is sufficient to prove at least one allegation of misconduct beyond a reasonable doubt, the evidence falls short of proving to the requisite criminal standard that the multiple incidents alleged within these three counts occurred as claimed.

[133] Multiple instances may have occurred, but this court cannot make findings of fact based on intuition or guesswork. It needs evidence. The Court has an obligation to assess the reliability of a witness's statement that an event occurred on multiple occasions. This assessment of reliability can only be done by looking at the factual underpinnings of the statement in question. In the absence of any details, the Court is not in a position to assess the reliability of the complainant's evidence with respect to the other alleged incidents. A bare allegation without facts and no contextual details does not lend itself to such an assessment.

[134] The three complainants JI, LI and CN all received substantial monetary compensation as a result of pursuing civil claims against the Church for the Defendant's sexual abuse. There was a potential motive to inflate the number of allegations in order to secure a larger monetary settlement. The absence of any real details to distinguish these multiple events is troubling. This raises a reasonable doubt in the Court's mind about the frequency of the abuse alleged by these three complainants.

II. REVIEW OF THE CROWN'S EVIDENCE ON THE TRIAL PROPER

A. The timing of a complaint

[135] The fact that a complainant may delay reporting or fail to report an alleged sexual assault at the earliest possible opportunity does not necessarily mean that the allegations they now make are false.

[136] There is no one rule to tell us how human beings will behave in the aftermath of an unexpected or frightening situation. Some may immediately report an incident to a loved one or run to the police. Others will remain silent. They may feel overwhelmed by the events that have overtaken them, events that are beyond their control. They may consequently delay reporting for days, for weeks, or even years. Some may never make a complaint at all. They will suffer in silence.

[137] The reasons for this are many. Some are driven by fear to be silent. Some fear the court process itself and the public humiliation that this brings. Some may even feel guilty because they believe that they contributed to their own victimization. Many, particularly young children, do not know what to do, so they do nothing.

[138] For this reason, this Court cannot rely upon a complainant's failure to make a timely complaint alone as a reason to disbelieve their evidence. The timing of the complaint is simply one of a number of factors to be considered in assessing a witness's credibility.

[139] In making this assessment of credibility, the Court must consider not only the relationship of the parties, but the embarrassing nature of the allegations, and the personality, age and life circumstances of the individual complainant. The reasons given by a complainant for the delay in reporting must also be considered.

B. Summary of Allegations

Count 1 (Indecent assault of JA – s.156CCC)

[140] This complainant would have been between ten and twelve years of age on the date set out in the indictment.

[141] In his examination in chief this witness claimed to have experienced numerous incidents of both physical and sexual abuse at the hands of the Defendant. These incidents included common assaults, assaults with a weapon, attempted rape, and attempted murder.

[142] JA claims that the Defendant explicitly directed him to recruit other children so that the priest could satisfy his sexual urges. JA says that if he refused to do so, the Defendant would put his hand over the young complainant's nose and mouth and choke or "suffocate" him. This choking is said to have occurred on numerous occasions. Before applying this punishment, the Defendant would usually play with JA's penis. These acts of fondling and suffocation were allegedly perpetrated at various locations inside the Mission and on the land.

[143] The "suffocation" inflicted by the Defendant would often cause JA to black out. JA also claims to have been forced on occasion to watch the Defendant suffocate other unnamed children. No specific details are given with respect to the names of the children involved, frequency, or date.

[144] JA also says that the Defendant forced him and other unnamed children to eat horsemeat that was drugged. No details are given with respect to the names of the other children involved, their ages or the frequency of this type of event. This drugged meat paralyzed the complainant and left him unable to move for an undisclosed duration. While paralyzed, he was forced to watch the Defendant sexually abuse other paralyzed children. No details are given by this complainant as to who he saw victimized.

[145] JA claimed that the Defendant would encourage him to hate and kill people who worked for the RCMP. On one occasion, it is said that the Defendant actively recruited JA to look for a gun to kill white people.

[146] This complainant alleges that the Defendant tried to kill him at his parents' outpost camp. JA says that he and his brother MA were sleeping in the Defendant's tent at an unnamed location when the Defendant attempted to rape both the complainant and his brother. When JA resisted, the Defendant struck this complainant on the head with a metal tent pole causing some undisclosed type of injury.

[147] None of JA's criminal allegations related to his brother MA were confirmed by MA when MA testified in this trial.

[148] At some unknown time JA applied for and received compensation from the Church for the alleged abuse by the Defendant. It is unknown what facts were alleged by him to support his claim for compensation. JA says that he received the sum of \$28,000.00 in settlement of this claim for compensation.

Count 2 (indecent assault of CA – s. 149CCC)

[149] CA has a grade 7 education. She was between eight and twelve years of age when the alleged incident with the Defendant occurred.

[150] CA alleges multiple incidents of fondling by the Defendant. The number of incidents is unknown. She indicates that the incidents all occurred at the Mission downstairs in the office.

[151] CA says that she would be sitting on the Defendant's lap either colouring or playing with the typewriter. There would usually be other children present and also engaged in activities like colouring. CA would be told not to be shy or nervous. As she coloured or typed the Defendant would start out by fondling her breast or vagina on top of her clothing. This progressed on some occasions to fondling of her breast and genitals under her clothing. There is a fleeting reference to the Defendant licking her ear but no details of any kind are provided to link this allegation to a specific incident of abuse.

[152] CA applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by C in support of this claim. CA says that she believes that she received \$5,000.00 in settlement of this claim.

Count 3 (Indecent assault on DA – s.156CCC)

[153] This complainant was between eight and twelve years of age when the alleged incident with the Defendant occurred. DA has completed the equivalent of a grade 12 education.

[154] DA says that on occasion he and a number of other children would be upstairs in the Mission playing in the upstairs kitchen and living room area. The children would be looking at Bible-related comic books or playing chess and other board games. The Defendant would be present.

[155] On one occasion when DA was seated on the Defendant's lap, the Defendant is alleged to have fondled DA's genitals over his clothing for a very short period of time. At some point it is alleged that the Defendant's hand strayed under DA's pants to momentarily touch and rub DA's penis. The fondling was long enough to cause DA to experience an erection.

[156] This incident was very brief and ended with the Defendant putting DA down on the floor with the suggestion that he join the other children on the floor with their games.

[157] DA claims to have seen his cousin DN being fondled by the Defendant (transcript page 620 lines 12 – 16). DA says that he witnessed the Defendant putting his hand inside DN's shirt and fondling her breasts. He says this incident lasted approximately five to ten minutes.

[158] DA received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by DA in support of this claim. DA says that he believes that he received approximately \$30,000.00 in settlement of this claim.

Count 4 (indecent assault on MA – s.156CCC)

[159] MA is the brother of the complainant JA named in Count 1. This witness has completed a grade 3 education. He would have been between four and eight years during the period alleged in the indictment. MA testified through an interpreter.

- [160] MA alleges multiple events. MA says that the Defendant joined his family at a spring hunting camp in the area of the Heckless Strait known as Cape Griffith. The Defendant stayed in a small red and blue one man tent that was triangular in shape and approximately one metre in height. This tent was pitched some distance away from the family tents.
- [161] The first incident is alleged to have occurred near the shoreline. MA was with a young male cousin KK (also known as JK). The Defendant was sitting on a *qamatiq*. He is alleged to have put MA on his lap and pulled up MA's t-shirt to rub his stomach. The Defendant was wearing a sweater and an Inuit-made parka. MA says that the Defendant smelled bad.
- [162] Some days later, there is another touching. This time, the Defendant is alleged to put his hand inside MA's pants to fondle MA's genitals.
- [163] It is also alleged that the Defendant would lure the children into his tent with the promise of cookies and candies. On one occasion it is alleged that there were four or five children together with the Defendant inside the Defendant's tent. The Defendant was sitting on a wooden box. MA says he sees the Defendant sexually abusing a girl. He is not able to describe in any detail what he sees the Defendant doing, and he is not able to name the girl being abused. MA says that he was too frightened by the incident to remember this.
- [164] MA claims that while the children were inside the tent, the Defendant showed them some pornographic magazines and then systematically, one by one, abused each child in turn. MA says that he was the first child to be seated on the Defendant's lap. While there the Defendant put his hand inside MA's pants and fondled his penis and attempted to put his finger in MA's anus.
- [165] On a third occasion when MA was down by the shore, it is alleged that the Defendant pulls down MA's pants to his knees and fondles MA's buttocks.
- [166] There is no evidence available to the Court to determine whether this witness applied for or received compensation from the Church.

Count 5 (unlawful confinement of JA – s.247(2)CCC)

Count 6 (buggery of JA – s.155CCC)

Count 8 (indecent assault of JA – 149CCC)

Count 9 (bestiality on a dog – s.155CCC)

[167] JA never completed her education. It is unknown what grade in school was completed. JA presented as a very unsophisticated witness. She would have been between eight and twelve during the period of time set out in the indictment.

[168] JA says that on at least one occasion when she was downstairs in the Mission's kitchen with other children, the Defendant put her on his knee. The other children were engaged in colouring and other activities on the floor. JA is able to name at least four of the other children that were with her in the Mission kitchen when this alleged event occurred.

[169] The Defendant is alleged to have fondled JA's breast and vagina on top of her clothing while she was seated in the Defendant's lap. The duration of this event is unknown. JA suggests that the Defendant used two fingers to rub her vagina.

[170] JA alleges a second incident some time later. There is no indication on the evidence how much time separated this second incident from the first. JA says that she was downstairs in the Mission with the Defendant. She was asked by the Defendant to go upstairs to the priest's bedroom to retrieve something. She is unable to recall what it was she was asked to get. It is unknown what JA was doing in the Mission when this request was made or whether any other persons including children were present at that time.

[171] While upstairs in the Mission, JA says that the Defendant suddenly joined her in the bedroom. This bedroom was dimly lit. It had a bed with a metal frame and some kind of metal headboard and tailboard with metal slats on it. The bed had a bedspread that had a star-like pattern on it.

[172] JA says that the Defendant sat on this bed and patted the mattress. He urged JA to sit beside him on the bed. When JA did so, she alleges that the Defendant started to fondle her. The touching is not described in any detail. It was some sort of rubbing against her skin. JA then says that the Defendant put her face down on the bed and taped her right hand securely to the bedframe.

[173] The Court infers from JA's description of events that she had become uncomfortable with the touching and had tried to move away. It is at this time that the Defendant used tape to restrain JA's right hand. After her hand was taped to the headboard, JA started to move her legs. The Defendant then taped her legs securely to the tailboard to prevent further movement. The Defendant then moves to a position on JA's back. JA's feels her pants being pulled down to her knees. She experiences great pain in her rectum.

[174] After the Defendant releases JA from her bonds, JA claims to notice some sort of fluid on her face and ear. At the time of this incident JA did not know what this was or how it came to be on her face. JA now assumes this fluid to be sperm.

[175] At the conclusion of this incident JA says that she is told by the Defendant not to say anything to anybody about what had happened. JA says that she is then forcefully slapped on the side of her head by the Defendant and the incident ends. JA leaves and for many years speaks to no one about this event.

[176] JA also testified about an incident that she witnessed at some point involving the Defendant and one of his pet dogs. JA alleges that she and a number of other named children were lined up in a shed outside the Mission to watch the Defendant having sex with a big dog. She suggests that the Defendant wanted the children to watch what he was doing. JA suggests that WI, JM, LA, CP, JA, JQ and VQ were all present to see what the Defendant was doing in the shed.

[177] JA applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by JA in support of this claim. JA says that she believes that she received \$16,000.00 in settlement of this claim.

Count 10 (indecent assault of MA – s.156CCC)

Count 11 (indecent assault of MA – s.156CCC)

[178] This witness has a grade 8 education. MA would have been between eight and twelve years of age when these alleged incidents occurred.

[179] This witness says that he and a number of other children used to attend the Mission for religion classes. Following the class, many children would remain at the Mission to play games. The children would play on the main floor of the Mission.

[180] With respect to Count 10, MA says that while he was playing with others in the Mission, the Defendant approached him and asked MA to accompany him upstairs. The Defendant said that he wanted to show MA something.

[181] Once upstairs it is alleged that the Defendant sat on a couch in what appeared to be a living room area. He asked MA to sit on his lap.

[182] Once MA was sitting on his lap, the Defendant started to fondle MA's penis and anus underneath his pants. MA is not sure how long this incident lasted. It may have been as long as half an hour.

[183] When the Defendant finished fondling MA, the Defendant tells MA not to tell anyone what had just happened. MA is told that if he does tell, his father would be taken away from him. MA was then promised some juice, and he was able to rejoin the others downstairs.

[184] Sometime later, MA is again visiting the Mission with TA and LA. All three boys were in the kitchen area on the main floor of the Mission. MA is washing dishes in the sink. The Defendant is also present. It is alleged that as MA is washing the dishes he is approached by the Defendant. The Defendant then touches him on his back, his shoulder and bum area while telling MA that he was doing a good job washing the dishes. This touching was on top of the clothing.

Count 13 (unlawful sexual intercourse with LA – s. 144CCC)

Count 16 (bestiality with a dog – s. 155CCC)

Count 17 (indecent assault of LA – s.149CCC)

[185] LA has completed a grade 5 education. She was between the ages of six and ten years of age during the period of time covered by the indictment.

[186] LA says that her family was impoverished. She often had to go without food. LA was raised by her biological grandmother whom she refers to as her mother. LA says that her mother would sometimes encourage LA to go to the Mission to try to get something to eat. Food would be provided from time to time by the Defendant. This would be made available to LA upstairs in the Mission's kitchen/living room area. LA estimates that a meal was provided by the Defendant to her on at least six occasions.

[187] On one occasion after eating supper at the Mission, the Defendant took LA to a bedroom. There were no other adults or children around at this time. The Defendant asked LA to get undressed and sit on a bed and she did so. LA said she was scared because the Defendant had said "he was going to do something bad to her". LA says that the Defendant never did anything bad to her because she let him try to have sex with her.

[188] After disrobing the Defendant played with his penis for a while. The penis got hard. The Defendant then had LA touch his penis. She was put on her back on the bed by the Defendant. The Defendant then penetrated LA's vagina with his penis while maintaining a grip on LA's legs. LA cried out when this happened. She says that she then blacked out for a period of time.

- [189] When LA recovers her memory she is bleeding heavily from her vagina. She is very scared and she is crying. She is picked up by the Defendant. She is taken to a toilet so she could bleed into the toilet. LA stays there for some time. She then goes to sit on the couch in the living room. The Defendant puts a plastic garbage bag on the couch where LA is seated to ensure that the couch is not bloodied. There was a lot of blood according to LA.
- [190] This incident ends when a Mr. Kunnuk arrives upstairs. She gets dressed quickly and leaves. She recalls hearing some shouting between Kunnuk and the Defendant as she does so. LA is not able to say what was being said or by whom.
- [191] Upon her return home, LA tells her mother what the Defendant had done. Her mother refuses to believe her. LA's mother accuses says her of lying about what happened. LA says she was then beaten for lying.
- [192] Mr. Kunnuk has not been called as a witness. LA's mother passed away approximately eight years ago and is no longer available to testify.
- [193] LA relates that on a different occasion, she and a number of other children were forced to watch the Defendant having sex with a dog in the back-porch of the Mission. The dog is described as being very large and grey in colour. This was a breed of dog that was not common to the north. The children were lined up in the hallway to watch. The Defendant's pants were down to his knees. He is described as standing behind the dog and "moving to it". LA is able to name two of the three children who were present with her to witness this event. She remembers JA and JN both being there.
- [194] LA says that after some time, the Defendant shifted his attention to JA. He started to do something to JA. LA does not say what she sees the Defendant doing at this point. LA becomes scared and flees the Mission. She runs home to tell her mother what was happening. Once again her mother refuses to believe her.

[195] LA references a third incident involving the Defendant and her cousin DN. There are no other adults or children around. Both LA and DN are upstairs in the Mission. Both are required to undress. The Defendant is lying on the floor with his penis exposed. LA was on one of the Defendant's legs. DN was on the other. Both children are required to play with the Defendant's penis.

[196] LA applied for and received compensation from the Church as a result of the alleged abuse by this Defendant. It is unknown what factual allegations were made in support of this claim. LA says that she received the sum of \$66,000 in settlement of this claim.

Count 18 (indecent assault of LKC – s.149CCC)

Count 19 (indecent assault of LKC – s.149CCC)

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Count 1 (unlawful sexual intercourse with LKC – s.144CCC)

Count 2 (unlawful sexual intercourse with LKC – s.144CCC)

Count 3 (unlawful sexual intercourse with LKC – s.144CCC)

[197] This witness would have been between fourteen and eighteen during the period of time alleged in the charging documents. LKC has completed a grade 8 education.

[198] LKC says that a number of youth volunteered to do clean-up at the Mission following mass and other church-related activities. LKC was one of these helpers. LKC was encouraged to do this by her mother who was a devout Roman Catholic and avid church-goer. Clean-up was done after school and in the evening following the evening mass.

[199] Following clean-up, the youth would occasionally become involved in a game of hide and seek. The Defendant would join in. LKC is intimately familiar with the layout of the Mission and is able to give a detailed description of both floors.

[200] LKC gives the names of some of the other children and youth who participated with her in the games of hide and seek. She was joined from time to time by her younger sister RK, MH, CN, GN and NK among others.

- [201] During one of these games the Defendant discovered LKC's whereabouts. The other children were still in hiding. LKC alleges that the Defendant briefly fondled her genitals and breast over her clothing before running off in search of the others. LKC remembers the Defendant panting or breathing heavily as he did this. LKC found the experience "scary" but said nothing to the Defendant at the time.
- [202] None of the other participants in these games of hide and seek have been called as witnesses to verify that this type of game was being played at the Mission with the Defendant.
- [203] From time to time, this clean-up crew of youth would be asked by the Defendant to go and clean the upstairs portion of the Mission. The size of this crew varied. Sometimes there would only be two youth in attendance. On other occasions there would be many more. LKC is able to name a number of those who participated in the upstairs clean-up. She names LK, JI, SK, SU, MH and her younger sister RK as having joined her upstairs from time to time.
- [204] LKC says that on one occasion the Defendant asked her to go into the attic area of the Mission to retrieve some Christmas ornaments for communion. The other children remained downstairs. The Defendant followed LKC into the attic. He led LKC to the left side. In this area of the attic, hidden by stacked-up boxes, LKC discovered a bed made of multiple blankets and one white pillow.
- [205] The Defendant had LKC lie down on this bed. She was told to lie on her side facing the boxes. The Defendant is alleged to have then pulled down her pants. LKC's vagina was penetrated from behind by the Defendant. The act of sexual intercourse continued for some minutes or seconds. When it was over LKC was cautioned not to speak about what had happened. The Defendant is alleged to have said that no one would believe her.
- [206] LKC says that once she got downstairs in the Mission she experienced a wet discharge from her vagina. This caused her pants to get wet. Shortly after getting home, LKC says that she started to bleed.

[207] LKC says that she told her mother about what had happened. Her mother became very angry. Her mother told her that priests are gods. They were healers. They wouldn't do things like that. LKC relates that she was beaten for telling a lie. LKC says that she grew to hate her mother for not believing her.

[208] LKC's mother has not been called as a witness to verify this disclosure. It is unknown whether she is still living.

[209] On yet another occasion it is alleged that LKC and her younger sister RK were both invited upstairs by the Defendant. They were both led to a couch in the living room area of the Mission. Once there, it is alleged that the Defendant invited the two girls to touch each other's breasts and vagina on top of their clothing. They did as requested. The Defendant watched. After some time the Defendant asked the girls to touch each other under their clothing. The children complied and the Defendant again watched. The girls were ultimately asked by the Defendant to get on top of each other and rub their bodies together. They did as requested and the Defendant watched.

[210] LKC then says she was led by the Defendant into the attic and taken to the hidden bed a second time. This time LKC is lying on her side and facing the Defendant. Her pants are pulled down and the Defendant again has sexual intercourse with her. He does not finish however. He tells LKC to leave. LKC sees the Defendant leading her younger sister into the attic. LKC waits downstairs in the Mission for her younger sister to join her. They then leave together.

[211] There was a third incident involving the Defendant. LKC was downstairs in the Mission. There were a number of other children present. It is alleged that the Defendant again invites LKC to accompany him upstairs. LKC does what she is told. Once upstairs the Defendant takes LKC to the couch in the living room. He unzips his pants and asks LKC to play with his penis. LKC does as she is told. The Defendant's penis gets hard. There is a terrible odour. As LKC masturbates the Defendant, a small child is heard coming up the stairs and the incident ends.

[212] LKC cannot remember the name of this child. She is not sure of the sequencing of these various events. She is not able to say with how long they lasted.

[213] LKC's younger sister RK died four years ago in a tragic accident and is no longer available to testify.

[214] LKC relates a further incident of fondling at her family's spring camp. The location of this particular camp is not disclosed.

[215] The Defendant joined the family for the spring hunt. He pitched his own tent some distance from the family tents. LKC was then pregnant with her first child. She was 15 years of age. Prayers had been said inside her mother's tent. It was daytime. Following the prayers the others had gone outside the tent to eat. LKC is left alone momentarily with the Defendant. The Defendant is said to have approached LKC and touched her briefly in the area of her groin. His hand then travels upwards to her stomach and then continues on to her breast. This touching occurred on top of the clothing. LKC gives no particular details about how this incident ends.

[216] LKC also indicates that her brothers JK and JK together with nephews MA, JA, AA and BA all seemed attracted to the Defendant's tent during this spring hunt and seemed to spend much time inside it.

[217] There is no evidence before this Court to indicated whether this witness applied for or received compensation from the Church in this matter.

Count 20 (indecent assault of WI – s.149CCC)

Count 21 (indecent assault of WI – s.149CCC)

Count 22 (indecent assault of WI – s.149CCC)

[218] This witness was between five and nine years of age when the alleged offences occurred. It is unknown what level of education this witness has.

[219] The first incident described by this witness occurred during one of many play times at the Mission. The complainant was with a number of other young children who were playing or colouring on the floor of a large room on the main floor. This was where mass was usually performed. The Defendant was present and was seated on a chair at the front of the room. WI was placed in the Defendant's lap. Her legs were astride the Defendant's legs. WI claims to remember that she was wearing sweatpants and a blue shirt at the time.

[220] WI says that the Defendant moved his legs apart causing her legs to also move further apart. He then moved his right hand slowly inside WI's sweat pants. After digitally fondling WI's vagina with his fingers, it is alleged that he digitally penetrated the complainant's vagina. WI says that she squirmed and tried to get away but couldn't. WI recalls the Defendant speaking to her when this was happening and smiling. She was told that she was a "good girl".

[221] WI claims to remember the names of other children who were present. She mentions the names of GN, CK, LA, LQ, SQ, DI, VI, EQ and RU.

[222] The second alleged incident involves the complainant being grabbed by the Defendant and taken upstairs. It is unknown what WI was doing immediately before this happens. WI was taken to a bedroom and put on a small bed. She says that the Defendant pulled down her pants and was trying to put his penis in her vagina.

[223] The complainant says that she was crying and trying to push the Defendant away. The Defendant was too strong to resist, so WI says she defecated. This caused the Defendant to stop what he was doing. This caused WI's pants to become soiled. The Defendant blurts out "disgusting". WI is told not to say anything. She is told by the Defendant that she would be taken away from her parents if she disclosed anything about what had just happened.

[224] The Defendant then pulled up WI's pants and dragged her down to the river and made her sit in the slush. It was spring time. While the river was starting to melt, it had not yet opened.

- [225] While WI was there one Marie Airut, an adult, arrived at the river. It is not clear on WI's evidence whether the Defendant was still at the river when Marie Airut arrived. WI's pants were soiled, and she lied to Marie Airut about what had happened to her. WI claims to have told Marie that she had a bad stomach ache. No mention was made of the Defendant because WI was scared that she might not see her parents again.
- [226] WI relates to witnessing a third incident involving the Defendant. It is alleged that WI was playing with RU on the main floor of the Mission. The Defendant approached RU and leads her upstairs. WI says that she feared what might happen to RU and tried to stop RU from going with the Defendant. WI was also grabbed and taken upstairs by the Defendant.
- [227] Once upstairs, the Defendant took the children to a bedroom. He then pulled down his pants and forced RU to take his penis in her mouth. He did so by grabbing her hair and forcing her face towards his groin. RU starts to cry and is then struck by the Defendant. WI does not indicate how or where RU was struck.
- [228] At some point the Defendant is heard to make a growling sound. WI sees RU drooling with some white stuff on her face.
- [229] WI then intervenes to try and stop the Defendant. She is struck in the left shoulder by the Defendant. During this distraction RU manages to escape the Defendant's grasp. Together, the children manage to walk downstairs. Before leaving the Defendant cautions the children against telling any lies and tells them that if they talked they would be taken away from their family. WI relates that she did not tell her family about the abuse because she was afraid that she would be taken away (transcript p. 49 lines 9 – 20).
- [230] WI applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by WI in support of this claim. WI says that she ultimately received approximately \$56,000.00 in settlement of this claim.

Count 23 (buggery of JI – s.155CCC)

[231] JI alleges that on many occasions he and a number of other boys would be allowed to sleep over at the Mission. JI believes that he would have been nine or ten years old when this alleged event happened. Sleeping materials were put on the floor of the priest's bedroom to accommodate the children.

[232] JI says that during one of these sleep-overs, he was woken up in the middle of the night by the Defendant. He was led to the Defendant's bed. Once on the bed, the Defendant pulled down his pants and tried to penetrate JI's anus with his penis. The Defendant's penis was big and hard. It was extremely painful. JI was squirming. JI says that the Defendant was unable to penetrate and he eventually gives up. JI was then allowed to return to his own bed on the floor.

Count 25 (buggery on LI – s.155CCC)

[233] This witness would have been between nine and ten when this alleged event occurred. LI was sleeping over at the Mission with a number of other children. These sleep-overs were not regular occurrences at the Mission. They happened occasionally. LI is not really able to say how frequent these sleep-overs occurred.

[234] The sleep-overs would take place in the priest's bedroom. Bedding was placed on the floor for the children. The Defendant slept in his own bed. There were usually four or five young children invited over. All slept on the floor within a short distance from each other and the Defendant.

[235] On one occasion, LI relates that he was woken from his sleep by the Defendant. He was asked to sit on the Defendant's bed, and he did. He was asked to remove his clothing by the Defendant, and so he did. He was told to be quiet because the other children were sleeping. The Defendant gets on the bed. He is behind LI. LI then says that the Defendant starts to play with him from behind. He does not describe, and is not asked to describe, what the Defendant is actually doing at this point. LI is not able to say what, if any clothing the Defendant was wearing.

[236] Suddenly LI experiences great pain inside his anus. LI says that he tries to move but is pulled back by the Defendant. At this point, LI's memory fails him. He concedes that there are parts that he does not remember. LI thinks that he must have blacked out at this point. LI's next memory is waking up on the floor of the bedroom the next morning. He is not able to say how he got there.

[237] LI applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by LI in support of this claim. LI says that he believes he was awarded \$150,000.00 and received some of it but the amount received is not in evidence.

Count 27 (unlawful sexual intercourse with TI – s.144CCC)

Count 28 (indecent assault of TI – s. 149CCC)

Count 29 (indecent assault of TI – s. 149CCC)

[238] This witness completed a grade 7 education in school. She subsequently took some sort of upgrading and ultimately graduated with a diploma in office administration. TI was between seven and eleven years of the age during the period of time covered by the indictment.

[239] The first alleged incident involved a pre-arranged sleep-over at the Mission with two other children, LA and MA. LA's mother had arranged the sleep-over. She was good friends with the priest. When LA says that she did not want to sleep over at the Mission, LA's mum arranged through TI's mum to have TI keep LA company.

[240] TI says that the three children are put in three separate bedrooms by the Defendant. TI is tucked into bed by the Defendant. After tucking her in, TI watches the Defendant leave. The door to the bedroom is left open. It is dark in the room. At some later point in the night TI hears LI crying. TI is not yet asleep when the Defendant arrives in TI's bedroom. She pretends to sleep. She is lying on her side. The Defendant gets TI to roll over on her back and starts to rub TI's stomach. The touching starts out on top of TI's nighty. He then moves his hand down slowly to TI's vagina and starts to fondle TI's genitals under her panties. TI also "thinks" the Defendant touched her vagina with his tongue. She is not sure if her panties are off or on at this point.

[241] TI is scared and begins to cry. Her eyes are shut. The Defendant tells TI not to be scared. TI "thinks" that the Defendant then positions himself on top of her. TI suddenly experiences great pain. It feels like her vagina is being ripped open. TI blacks out. She remembers nothing else until her mother comes to the Mission the next day to pick her up.

[242] TI does not disclose this incident to her mother. She says that the priest had told her that if she talked about what happened Jesus would not love her anymore and she would go to hell.

[243] There was a second incident the witness remembers involving the Defendant touching DI. TI says that she was on the main floor of the Mission colouring on the floor with VI and DI. The Defendant approached the children and rubbed their heads. The Defendant started touching DI more than the other two. The Defendant began to touch DI everywhere. At this point he said it would be better if the children coloured upstairs. The priest led the children up the stairs into the kitchen/living room area. While VI and TI coloured the Defendant disappeared for a while with DI. After some time the Defendant reappeared and said it was time for the children to go. TI and VI then left.

[244] The third incident alleged by TI occurs downstairs in the Mission. There are a number of children present. They are occupied with colouring pictures from the Bible. The Defendant is seated on a chair. TI is asked to get on his lap and read from the Bible out loud. She does so. While on the Defendant's lap, it is alleged that the Defendant starts to rub TI's vagina with his left hand on top of her clothing. TI claims to remember that the Defendant recited the first verse and TI had to read verses two through 60 slowly in English.

[245] This witness indicated she never applied for or received compensation from the Church.

Count 34 (indecent assault on PI – s.156CCC)

[246] This count is one of two allegations of indecent assault alleged by PI. The first was the subject of a guilty plea to count 33. PI says that after leaving the Defendant and the Mission after the first incident, he disclosed what happened to an older named brother. After some debate, it was decided that PI should tell his mother about what happened. When PI did so, he was disbelieved by his mother and scolded for accusing the priest of this kind of behaviour.

[247] The mother and older brother are not available to the Court to confirm this disclosure.

[248] Some weeks later the fondling happened again. This is the subject of the second charge. PI was again at the Mission playing with a friend LT (also a complainant). LT went upstairs to see if he could get some treats from the Defendant. PI tagged along hoping to get some juice or cookies. There were an unspecified number of children sitting on a couch playing board games on the coffee table. The identities of these children are not disclosed in evidence.

[249] PI says that he observed cookies and juice on the kitchen table. The Defendant was seated on a chair close to this table. PI was invited to sit on the Defendant's lap by the Defendant who referred to PI by the name "Peacha". This name was unknown to PI. He thought this to be very unusual.

[250] After getting on the Defendant's lap PI was again fondled by the Defendant. This time however, the Defendant is alleged to put his hands inside PI's pants to fondle PI's genitals. The Defendant is described to be breathing heavily as this act of fondling continues.

[251] After some time, the fondling ended. The Defendant then invited PI to have cookies and juice and PI did so.

[252] The Defendant is again described as wearing civilian clothes and slippers with brown fur. The fondling activity is estimated to last approximately five minutes.

[253] PI says that he makes no mention of this second incident to his older brother or his mother for fear of being disbelieved and punished a second time.

[254] This witness indicated he had not applied for or received compensation from the Church.

Count 35 (indecent assault on DI – s.149CCC)

[255] DI has completed a grade 10 education. She was between the ages of ten and twelve when the alleged offence was committed.

[256] DI says that on one occasion she was in the Mission kitchen with a number of other children. The Defendant was seated on a kitchen chair. DI sits on the Defendant's lap. DI says that the Defendant fondled her vagina with his left hand over her clothing. DI claims to have felt awkward for some minutes. She is eventually returned to the floor by the Defendant. It is unknown whether anything was said while this touching occurred.

[257] This witness indicates she never received compensation from the Church.

Count 36 (indecent assault on MI – s.149CCC)

[258] This witness would have been between six and ten years old when the alleged offence occurred. The education of this witness is unknown. MI's command of English is limited.

[259] The alleged incident occurs at a summer fishing camp on the land. The location is unknown. MI's grandparents were at the camp together with a number of children including MI and her older brother RI (also a complainant).

[260] MI was playing outside the family tent when she was invited over to the Defendant's tent for hot chocolate. The Defendant was seated inside his tent. He invites MI to sit in his lap while she has her hot chocolate. While there, he fondles MI's genitals under her pants. He digitally penetrates her vagina with his finger three times. MI estimates that this went on for approximately 10 to 15 minutes. MI was hurt by this and she was scared.

[261] MI heard her older brother RI outside the tent. The incident ends abruptly with the Defendant cautioning MI not to say a word about what happened to anyone or he would hit her. MI is told to leave by the Defendant and she does. She is crying as she leaves.

[262] MI later discovers blood in her panties. At some point, while doing laundry, MI's mother discovers the blood inside MI's panties. She questions MI about this. MI tells her mother what happened. Her mother accuses MI of starting it by teasing the priest. Her mother accuses her of trying to have sex with the Defendant. She does not believe her daughter. MI's mother gets angry and strikes MI for lying. After being punished by her mother, MI speaks to no one else about the incident for some years. When she is 14 or 15 years of age she finally confides in a relative RK whom she learned to trust. MI's mother was not called as a witness and the Court was not told why.

[263] MI applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by MI in support of this claim. MI says that she ultimately received the sum of \$10,000 in settlement of this claim.

Count 38 (act of gross indecency with RI – s.157CCC)

[264] RI has a Grade 8 education. RI was between 10 and 13 years of age when the incidents with the Defendant occurred. RI testified with the assistance of an interpreter.

[265] RI was camping on the land at a spot known as Uttuksivik or Maud Bay. It was summertime. RI was with his family. At some point the Defendant joined the family and set up his own tent at some distance from the others.

[266] From time to time RI says that he was invited inside the Defendant's tent. On two occasions, while inside the tent, the Defendant would pull down RI's pants. The Defendant would first examine RI's rectum. Then he would wet his fingers and attempt to digitally penetrate RI's anus. This was a painful experience. RI remembers the Defendant's hands being cold.

[267] RI claims to have stopped the digital penetration of his anus on both occasions by having a bowel movement.

[268] RI applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by RI in support of this claim. RI says that received \$17,000.00 in settlement of this claim.

Count 39 (indecent assault on EK – s.149CCC)

Count 40 (common assault on EK – s. 245(1)CCC)

[269] EK was between the ages of four and eight when these alleged offences occurred. EK has been to elementary school. It is unknown what grade she completed.

[270] During EK's early years, she spoke no English, only Inuktitut. EK says that she was taught by her mother to speak English in 1984.

[271] EK used to attend religious classes at the Mission after school with other children. On one occasion she was late arriving. The Defendant was there, along with a number of other children who are unknown. The children were busy colouring things. The Defendant was sitting on a chair near a table. EK had to sit on his lap. The Defendant put his hand inside EK's pants. She squirmed to get away, but he held her fast to his lap. EK says that she tried to stop him by grabbing at his hand. The Defendant held EK's wrist with one hand and then digitally penetrated EK's vagina with his other hand. EK says that after some time she was able to escape by going under the table. She crawled the length of the table and ran out the end. She went to the porch area of the Mission. The Defendant followed and told her that she would go to hell if she talked about what happened.

[272] Once she got home, EK says she went to the washroom because her vagina hurt. She discovered blood on her panties. She threw her panties in the garbage. EK's mother discovered the panties at some point and asked EK what had happened to cause the bleeding. EK was scared. EK told her mother that nothing had happened.

[273] For many years EK said nothing to anyone about her experience. In her early teens, EK started to sniff gasoline. At around age fourteen, EK's mother caught her sniffing. Her mum had heard people talking about the Defendant on the local radio. She asked EK if she was sniffing because the priest had touched her. This is when EK first disclosed to her mother what the Defendant had done.

[274] EK's mother has not testified in this proceeding.

[275] There is no evidence before the Court as to whether this witness ever applied for or received compensation.

Count 41 (buggery of RK – s.155CCC)

Count 42 (buggery of RK – s.155CCC)

[276] RK has completed a grade 8 education. He was between nine and thirteen years of age during the period of time alleged in the indictment.

[277] RK says that he used to sleep over at the Mission. With respect to the first allegation, RK says that is sleeping on a couch in the upstairs living room area. There are many other children sleeping in the living room with him. The other children are sleeping on the floor.

[278] RK wakes to find the Defendant standing in front of him. RK's pants had been pulled down. The Defendant is touching RK. When asked to describe how he was being touched RK claims that the Defendant's penis was in his anus. This was painful. RK says that he then blacks out because he was scared. He remembers nothing else for a period of time. The Defendant is said to be wearing a long black coat when this event occurs.

[279] When RK recovers his memory he is still on the couch. It is not clear where the Defendant is. RK is scared so he runs out of the church and goes home.

[280] There is no evidence before the Court as to whether this witness ever applied for or received compensation.

Count 43 (indecent assault of LK – s.149CCC)

[281] LK has completed a grade 11 education in school. She has also obtained a diploma in office administration and management studies. LK was between four and eight years of age during the period of time covered by the indictment.

[282] LK says that the alleged incident occurred when this witness was between the ages of five and seven years of age. LK was at the Mission with a number of other young children. Some of the kids were upstairs. The door leading upstairs was open. LK wanted to get the other children downstairs so she could play with them. LK decided to go and get them. LK says that she hesitated at the foot of the stairs because she was afraid that something bad might happen.

[283] LK says this about her decision to go upstairs (*Transcript page 982 lines 9 – 18*):

But this one time, the door to the upstairs was open. And it was anybody going up and down. And there were three of us waiting at the door going upstairs and we were afraid to go up because we knew that there was -- somehow we knew that there were things going on if any of the children go up there might be something wrong, done to them. So we were afraid to go up. But our friends were upstairs and we wanted them to go down so we can go out with them.

[284] There is no explanation for how LK “knew” that something bad would happen to children who went upstairs in the Mission. This witness appears to be attributing knowledge of events to an earlier time based on what she now understands to have happened in the Mission.

[285] LK goes upstairs by herself. She goes to a bedroom. The Defendant is there along with three or four children. LK does not say what the other children are doing when she first enters the bedroom.

[286] LK is asked to go and look out the window by the Defendant. LK is too little to see out, so she has to stand up on a chair. There is a good view from the window. It is a bright day. LK can see right down to the ocean. She sees people going about their business outside.

[287] The Defendant approaches LK from behind. He sits on a chair that is put immediately behind the chair on which LK is standing. The Defendant puts an arm around LK’s waist and then slips his other hand inside LK’s pants to fondle her vagina with his fingers. At some point he digitally penetrates LK’s vagina. This touching goes on for an estimated five minutes. LK is very scared. LK cannot move away because she is being held securely by the Defendant.

[288] During this incident a younger child is seen jumping on a bed. She is happy and excited. Two other children are seen standing in a corner of the room. It is unknown what they were doing. LK remembers one of these children to be JA. The incident ends with the Defendant standing up and approaching another child. LK then leaves the room and heads downstairs.

[289] LK does not tell anybody in her family about what had happened. LK did not know how to respond to this situation, so she says that she did nothing. This type of reaction is not uncommon for a child.

[290] This witness indicates she never applied for or received compensation from the Church.

Count 44 (indecent assault of JM - s.156CCC)

[291] This witness was between two and six years of age during the period covered by the indictment. It is unknown what grade JM completed in school.

[292] JM says that he was playing in the Mission. He was invited inside a bedroom by a white guy with a beard. JM understands this person now to be the Defendant. The bedroom in question faced the beach. There was a bed and a desk at the end of the bed.

[293] JM was running around inside the bedroom when the Defendant takes off his pants. The pants are folded. The Defendant is now naked from the waist down. He is sitting on the bed. JM remains standing. At some point JM ends up moving to the bed and standing between the Defendant's knees facing the Defendant. JM is a very young and curious child. The Defendant is stroking his own thighs and has an erection. JM is allowed to play with the Defendant's thighs. The Defendant attempts to prevent any contact by JM with his penis. JM's hands are pushed away by the Defendant when he gets close to touching the Defendant's genitals. At some point JM is able to lick the tip of the Defendant's penis and "tastes it". He is slapped by the Defendant for doing so and the incident abruptly ends.

[294] In cross-examination, the witness says that he was "entertained" by the incident up until he was slapped. JM felt rejected when he was hit.

[295] JM estimates the entire incident to have taken approximately seven minutes from beginning to end. JM is not able to recall any conversation with the Defendant during this time.

[296] JM testifies about a second incident. This incident occurs at some other time before the bedroom incident. JM is again playing at the Mission. He says that he is put on a dinner table by the Defendant. He is doing a dance on the table. At some point he is doing a lap dance and says that by occasionally bumping against the Defendant's lap he feels a warm hard penis.

[297] There is no evidence before the Court as to whether this witness ever applied for or received compensation.

Count 45 (sexual assault of ZN – s.246.1CCC)

[298] ZN completed a grade 5 education. Later in life she took upgrading in management studies and Adult Basic Education and ultimately got a certificate in Adult Basic Education. She is currently employed as a finance administration clerk. ZN was thirty-three or thirty-four years of age during the period covered by this count.

[299] ZN became a catechist for the Roman Catholic Church in 1973. She was moved to Gjoa Haven to serve the Church and lived there for thirteen years. She eventually married and had nine children. ZN had met the Defendant on a previous occasion at a catechists meeting in either Ottawa or Montreal with a number of other priests. They had limited contact at this meeting other than both being present. She also recollects that on one occasion he pulled her hair. In 1987 or 1988, ZN returned to her home community of Pelly Bay to be nearer her father who was then living alone. ZN's husband remained in Gjoa Haven to continue his employment. ZN's nine children moved with her to Pelly Bay.

[300] Pelly Bay in 1987 and 1988 had no regular priest. The needs of the Catholic community were then being serviced by catechists. ZN's older sister and her husband were serving as the catechists for Pelly Bay.

[301] On the day of the incident ZN learned through her sister that a priest was coming to Pelly Bay for a visit. ZN went over to the Manse to meet the priest. When she got to the priest's residence she found the door unlocked. She opened the door and walked inside. The Defendant was there.

[302] The Defendant approaches ZN by the door and shakes her hand. He gives her a hug. Without a word, he then leads ZN to a different part of the residence. ZN thinks they are going to the kitchen for a friendly chat. Instead the Defendant leads her to a bedroom and pushes her down on the bed. ZN tries to get up. She is pushed back down. The Defendant removes ZN's pants and then gets on top of her. He penetrates ZN with his penis and engages in full sexual intercourse without her consent.

[303] ZN is not able to say how long she is on the bed with the Defendant. The Defendant has said nothing to ZN during this incident. When the Defendant finishes, ZN tells him that she wants to go. She gets dressed. Before leaving she is grabbed by the Defendant. She is told to tell no one about what has happened.

[304] ZN believes that the Defendant's visit to Pelly Bay was short. It was a matter of two or three days. ZN believes that she saw the priest again before he left at the Church doing the mass. ZN thinks she might have seen the Defendant a year or so later in Yellowknife, but had no real contact with him at that time.

[305] ZN keeps her silence for years. She feels dirty. She believes no one will trust her if she speaks of what happened. This feeling is commonly experienced by victims of sexual offences and the resulting silence is understandable in these terms.

[306] There is no evidence before the Court as to whether this witness applied for or received compensation from the Church.

Count 46 (indecent assault of MN – s.149CCC)

Count 47 (indecent assault of MN – s.149CCC)

Count 48 (unlawful sexual intercourse with MN – s. 144CCC)

[307] This witness's education is unknown. MN would have been between the ages of nine and twelve years of age during the period covered by the indictment.

[308] The first alleged incident of touching occurs in a small office located on the first floor of the Mission. The Defendant is seated in a chair. MN is seated on his lap. MN says that the Defendant “made her” sit there. While in the Defendant’s lap, MN alleges that the Defendant slips his right hand inside MN’s pants and fondles her vagina. He ultimately penetrates MN’s vagina with a finger.

[309] There are a number of other children present when this incident occurs. This includes DI, JS, JA, CN and JI. MN suggests that this touching might have continued for ten or fifteen minutes.

[310] The second alleged incident also occurs in the office. The Defendant was there. He asks MN to touch his penis above the clothing and she does so.

[311] MN relates a third set of incidents. MN ends up in what is described as a “dark area” somewhere on the main floor of the Mission. She does not remember what was in this dark area. MN says it was so dark that she could not see a thing (transcript page 257 lines 14 – 19). MN says that she is grabbed by the Defendant who turns her around so that she is facing away from the Defendant. Her pants and panties are then pulled down. He then has sexual intercourse with the complainant. This is alleged to have happened on four or five occasions.

[312] MN applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by MN in support of this claim. MN says that she ultimately received the sum of \$28,000.00 in settlement of this claim.

Count 49 (indecent assault of VN – s.149CCC)

Count 50 (assault of VN – s.245(1)CCC)

[313] VN completed grade 7 in school. She was between the ages of eleven and 15 years of age during the period covered by the indictment. VN testified with the assistance of an interpreter.

[314] VN believes that she was between the ages of nine and eleven when the first incident involving the Defendant occurred. VN was at the Mission with her friend KI. The children were colouring somewhere on the first floor. The Defendant asks VN to come upstairs with him. VN does so thinking that she was to be given a chore of some kind to do. VN is taken to a bedroom.

[315] Once in the bedroom the Defendant fondles VN's vagina. He then removes the belt on his pants and drops his pants to his knees. VN had never seen a penis before. The Defendant asks VN to play with his penis. He takes VN's hand and puts it on his penis and shows VN what to do. Every time VN stopped playing with his penis, the Defendant would pull hard on VN's ear. VN is forced to continue. The Defendant's penis gets big and hard. The Defendant ultimately grabs one of VN's hands and puts it near his penis. Some warm white stuff comes out of his penis. The Defendant tells VN to lick his penis. She refuses to do so. Each time she refuses the Defendant pulls her ear harder. She eventually does what he asks.

[316] This incident ends with the Defendant telling VN to go and wash her hands. VN indicates that her hands were "stinky". VN was told not to talk to anybody about what happened. This was to be a secret between them. VN leaves the bedroom and goes downstairs.

[317] When VN gets home she tries to tell her mother what had happened to her. VN did not know that what had happened was sexual abuse, but she did not like what the priest had done to her by pulling her ears. VN's mother gets angry. She says that VN is trying to make trouble. VN is then beaten by her mum for lying about the priest.

[318] VN's mum is not available to testify about this disclosure. She passed away in 2006.

[319] The second incident occurs one or two years later. VN is now 10 or 11 years old.

- [320] VN is on the first floor of the Mission with her cousin JQ (Count 66). VN is colouring on the floor when she notices that her young cousin has disappeared. She looks around on the first floor and cannot find him. VN goes upstairs and discovers JQ in a bedroom with the Defendant. JQ is crying. He is kneeling in front of the Defendant. The Defendant's pants are down exposing his penis and JQ is playing with it.
- [321] VN enters the bedroom and tells JQ to leave. As she does so the Defendant pulls up his pants and advances towards VN. The Defendant grabs VN by the neck and says "Don't ever come to this room. You were supposed to stay downstairs." As JQ flees out the door, the Defendant pushes her against a wall and then lifts her into the air by the throat with one hand. Things seem to get dark momentarily. VN believes she blacks out. She is then returned to the floor and cautioned by the Defendant not to speak to anybody about what she has seen. VN is unable to give any real estimate as to how long she was suspended in the air by the throat.
- [322] VN leaves the room and rejoins her cousin downstairs. They immediately put on their winter clothing and leave the Mission.
- [323] VN does not tell her mother about this second incident. VN was scared of the Defendant. She did not want to ever go back to the Mission. Her mother insisted that she go to Church and they fought about this. VN lost these fights and was forced to go to Church or be beaten by her mum. VN never told her mother why she did not want to go.
- [324] Years pass. In 1999, VN's mother hears about the abuse suffered by her brothers in the residential school system for the first time. This appeared to shock her. Her mother believed what her brothers were saying about their experiences. VN takes this opportunity to again revisit what had happened to her at the Mission. This time her mother's reaction is different. VN is finally believed. VN's mother hugs her and cries. She said that she would believe VN from then on. An apology is given to VN.

[325] The witness applied for and received compensation from the Church. She received a total payment that she estimates to be \$28,000. What facts were alleged by VN in support of this claim are unknown.

Count 52 (indecent assault of DN – s.149CCC)

Count 54 (bestiality with a dog – s.155CCC)

[326] DN completed a grade 9 education in school. She went on to take some upgrading. It is unknown what level of education she ultimately completed.

[327] This witness was between the ages of eight and twelve years of age during the period of time covered by the indictment.

[328] DN is in an upstairs bedroom of the Mission with a number of other children. The Defendant is teaching the children about God. DN is sitting in the Defendant's lap. The Defendant slips his right hand into DN's pants and fondles her vagina. In response to a leading question posed by the Crown, DN says that the Defendant then digitally penetrates DN's vagina with a finger (transcript page 908 lines 25 – 26).

[329] DN claims to remember that this touching went on for half an hour to an hour. She claims to remember what she was wearing this day, namely a rainbow shirt, red pants and *kamiks*. DN is unable to say how this incident ends. She claims to black out. Before doing so, DN "thinks" that she was trying to whisper to her friends about what was happening. The Defendant tells her to be quiet, and so she is silent. The digital penetration of the vagina was not painful according to DN. DN suggests that this touching caused her to become sexually aroused and wet.

[330] DN references a second incident. It is unknown when this second incident occurs in relation to the first event.

[331] DN is again upstairs in the Mission and is on a bed in a bedroom. She is with JI. The Defendant is also present. DN is told to lie down on the bed. JI is told to get on top of the complainant by the Defendant and he does so. It is unknown whether JI has his clothes on or off. DN is only able to remember JI's face. She does not know if they were having sex. DN again experiences a blackout. She does not know how this incident ends.

[332] At some unknown time DN claims to have seen the Defendant "fucking a dog". DN claims that she and her sister had gone to the Mission because they had been invited to do so by the Defendant. She thinks that this incident occurs somewhere outside the Mission. She is unable to say how this incident ends. DN again experiences a mysterious blackout.

[333] The witness applied for and received compensation from the Church. She received one payment of \$16,000. What facts were alleged by what facts were alleged by DN in support of this claim are unknown.

Count 53 (indecent assault of GN – s.149CCC)
Count 54 (bestiality with a dog – s.155CCC)

[334] This witness's level of education is not stated. GN says that she was seven or eight when the incident with the Defendant occurred.

[335] GN attended the Mission after school for religion classes taught by the Church. A number of children would be present for these classes.

[336] On one occasion after school, GN is sitting on the Defendant's lap. He is showing GN a National Geographic magazine that featured a bare breasted little girl from Africa. The Defendant wraps his arms around GN's waist. He references the picture and says to GN that she should "be like that". While doing so he reaches up to fondle GN's breast with a hand. This touching was on top of GN's clothing. The other children are colouring pictures on a coffee table when this happens.

[337] On another occasion GN says she was upstairs in the Mission with other children when she hears a dog barking downstairs. GN goes down to investigate. She claims to see the Defendant fucking a dog in the back porch area of the Mission. She does not say anything and does not let the Defendant know that she is watching. GN says she immediately goes upstairs to get the other children and they leave the Mission together. GN claims the animal was a big black and white husky dog called Nanook. The other children do not see what was going on in the back porch. The other children did not witness any part of this event according to GN.

[338] GN applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by GN in support of this claim. It is not in evidence how much compensation she received.

Count 55 (buggery of CP – s.155CCC)

Count 56 (buggery of CP – s.155CCC)

Count 57 (bestiality on a dog – s.155CCC)

Count 58 (indecent assault on CP – s.156CCC)

[339] This witness was assisted in his testimony by an interpreter. His education level is not in evidence.

[340] CP says that he was between six and eight when this first incident occurred. It was around Eastertime in April. CP and his friends are playing out on the ice. They get cold and decide to go inside the Mission to warm up. The Defendant is there. He leads CP upstairs to a windowless room that was cold. The other children remain downstairs.

[341] The room is dark. It has no furniture. It seems to be used for storage of some kind.

[342] The Defendant shows CP his penis. He then takes off CP's pants and underwear. He puts Vaseline on CP's rectum. CP is turned away from the Defendant and is forced to bend over. The Defendant is gripping CP around the waist with both hands. CP then feels terrible pain in his rectum and he starts to cry. CP feels the Defendant's penis penetrate his anus.

- [343] After he is finished, the Defendant forces CP to perform an act of fellatio. The Defendant's hands are gripping CP's head and hair. The Defendant is forcing CP's head to move back and forth on his penis. CP cannot breathe. The Defendant ultimately ejaculates in CP's mouth. CP describes this as being "yuk". The Defendant then dresses CP and leads him downstairs to rejoin the other children. Before doing so, however, the Defendant warns CP not to talk to anybody about what happened. The Defendant tells CP that if he says anything, he would be lying. CP rejoins the others and pretends to colour. At his first opportunity he leaves the Mission.
- [344] CP relates a second incident. CP and his friend JU have been asked by the Defendant to come over to the Mission from time to time to feed the Defendant's dog. JU and CP go over to the Mission together to do this. They enter the furnace room on the main floor of the Mission. The furnace room door is open. The Defendant is inside with the dog. CP sees the Defendant naked from the waist down. The dog is tied up. The Defendant is standing behind the male dog gripping the animal's hind-quarters. The Defendant is having anal intercourse with the animal and the dog is making noises.
- [345] CP and JU try to leave but it is too late. The Defendant withdraws from the animal. CP sees the Defendant's erect penis.
- [346] The Defendant closes the door to the furnace room and locks it. The lock is on the upper portion of the door and the boys cannot reach it. There is no other way out.
- [347] The Defendant grabs CP. CP resists but he is too little and the Defendant is too strong. JU is trying to help by pushing against the Defendant. CP is picked up and bent over a table. His pants are pulled down, and the Defendant then penetrates his rectum with his penis. There is a small nail sticking out of the table. This digs into CP's chest causing an injury that would eventually leave a scar. This scar is still visible on CP's chest.

- [348] The Defendant finishes with CP and then turns his attention to JU. JU is put on the table. His pants are taken down. He too, is anally raped by the Defendant while CP watches helplessly. BY the time the Defendant is finished with JU, CP sees blood coming from JU's anus.
- [349] The boys are told not to talk to their parents about what happened. CP is then struck hard in the ear by the Defendant. The door is opened and the two boys leave. CP says that he could not sit down comfortably for two or three days after this event.
- [350] There is no medical evidence to substantiate any injury to CP's rectum.
- [351] CP keeps his silence for years. CP says that he could never again hear properly out of the ear that had been struck by the Defendant.
- [352] CP relates a third incident. A year passes. It is now May and CP hears that Father Lechat had returned to Igloolik. Father Lechat was liked and respected by everyone. CP goes down to the Mission looking for Lechat and runs into the Defendant. There is no sign of the other priest. CP is taken to the CB radio room under the stairs on the main floor by the Defendant. The Defendant pulls his penis out of his pants and starts to play with it. CP tries to leave but is pushed back away from the door. He is ultimately forced to perform fellatio upon the Defendant. CP thinks that the Defendant ejaculated again.
- [353] CP never returns to the Mission again.
- [354] JU is not available to testify in this proceeding. CP relates that JU hung himself on CP's birthday thirteen years ago. CP blames this death on the alleged abuse perpetrated by the Defendant.
- [355] CP applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by CP in support of this claim. CP says that he ultimately received the sum of \$66,500 in settlement of this claim.

Count 59 (indecent assault of LAP – s.149CCC)

Count 60 (indecent assault of LAP – s.149CCC)

[356] This complainant was between the ages of four and eight during the period of time covered by the indictment. The evidence does not indicate what level of education has been completed.

[357] This witness would attend the Mission after school to play and escape the cold. Other children would also be present. The children were allowed to colour. Cookies were sometimes provided by the Defendant.

[358] LAP says that when she was colouring she would sometimes be picked up by the Defendant and put in his lap. She would be sitting on one of his legs. He would move his leg up and down and then fondle her vagina over top of her clothing. At the time LAP was too little to understand that this was wrong. There were other children present when this happened. These children would also be busy colouring. The Defendant would be breathing into LAP's ear. He would tell her to relax. He would tell her that it's okay and not to be scared. LAP is not able to recall any conversation with the Defendant when these events occurred apart from this.

[359] LAP applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown when this claim was made or what facts were alleged by LAP in support of this claim. LAP says that she ultimately received the sum of \$6,000 in settlement of this claim.

Count 61 (indecent assault of JQ – s.149CCC)

Count 62 (indecent assault of JQ – s.149CCC)

Count 63 (indecent assault of JQ – s.149CCC)

[360] This witness was between five and nine during the period of time covered by the indictment. JQ's education is unknown. JQ spoke through an interpreter.

- [361] JQ was six years old when she moved to Igloolik. JQ along with a number of other children would stay behind at the Mission following the evening mass. The children would play games and colour in the front porch area. They would be supervised by a priest.
- [362] With respect to the first incident, JQ relates that she remembers the Defendant sitting or crouching beside her as she coloured. She cannot remember exactly where she was in relation to the priest. She thinks that she was sitting on a chair beside a table. The Defendant has a beard. JQ is sitting close enough to him to feel this on her cheek. The hair of his beard is described as being “stiff and needly” (needle-like). JQ says that at some point the Defendant fondled JQ’s vagina on top of her pants and touched her breast under her shirt. JQ is unable to say how long this touching continued. JQ claims to have tried to push the Defendant away when he fondled her. She says that she cannot remember anything else after doing this.
- [363] JQ remembers the Defendant at some point telling her not to tell anyone. The priest says that if she does tell she will go to the fire in hell. It is unknown when the Defendant is alleged to have said this or what language he was using when this was said.
- [364] JQ insists that there were multiple instances of this touching behavior. She is unable to relate any facts to distinguish these different touching events.
- [365] JQ says that the Defendant would often go from child to child talking to them or sitting or crouching near them. From time to time he would disappear from the room with a child. JQ sees the Defendant from time to time quickly kissing children on their nose, their cheek and on their lips. No details are given. The identities of these children are unknown.
- [366] JQ says that on two or three occasions she did confessions with the Defendant. She did not like to do confessions because she was scared of the Defendant. On some occasions JQ says that “we” would be standing and sometimes kneeling in front of the priest. JQ says that sometimes he would let “us” touch and rub his penis to get it hard.

[367] The witness applied for and received compensation from the Church. She received one payment of \$16,000. She also indicated she received two additional payments but cannot recall the amounts but that they were “a lot less.” What facts were alleged by what facts were alleged by JQ in support of this claim are unknown.

Count 64 (indecent assault of MUO – s.149CCC)

[368] This witness has completed a grade 7 education. MUO was between the ages of eighteen and twenty-two during the period of time alleged in the indictment.

[369] It is a Saturday during the winter of 1978. MUO walks over to the Mission to take confession. There are children playing outside. The doors to the Mission are locked but the Defendant, dressed in civilian clothes, lets MUO in. Together they go to a small room. MUO kneels and starts to pray. The Defendant is sitting in a chair close to MUO. The priest asks MUO to speak up so he can hear her.

[370] The Defendant then says that he wants to feel her heart beat. He suddenly puts a hand inside MUO’s shirt. MUO stops praying. She is in shock. While fondling her breasts, the Defendant tells MUO that she smells nice. He asks MUO if she has a boyfriend. He says that he is better than MUO’s boyfriend. He starts to kiss MUO’s neck. MUO quickly stands up. The Defendant then starts to fondle MUO’s crotch area on top of her clothing. MUO pushes the Defendant away and then runs out of the Mission by the back door.

[371] MUO confirms that she and the Defendant were speaking English throughout this incident.

[372] This witness indicates that she never applied for or received compensation from the Church.

Count 65 (indecent assault of SQ – s. 156CCC)

[373] This witness has a grade 12 equivalent education achieved through upgrading. He was between the ages of ten and thirteen during the period of time alleged in the indictment.

[374] This offence is said to have occurred in Baker Lake. The Defendant was posted to this community as a Roman Catholic priest during this time.

[375] It is sometime in the late fall. SQ follows a bunch of kids over to the Mission after school. SQ ends up in the priest's living quarters along with a friend JU and one other youth who is unknown. The Defendant is there. There are no other adults. The Defendant produces a small hand-held video game and encourages the children to play it.

[376] JU and the other boy are soon engrossed in this game. The Defendant produces a blanket. He tells the boys that they can see the screen much better if they play the game under the blanket. The two boys follow this suggestion. This leaves SQ the only boy "uncovered" on the couch. The Defendant is standing in front of SQ. He suddenly reaches down and undoes the button and zipper on SQ's pants. He lowers the pants and underwear to expose SQ's penis. He then attempts to masturbate SQ. SQ tries to pull up his pants, but the Defendant keeps them down with his other hand. At one point the boys try to get out from under the blanket. The Defendant is momentarily distracted by this. This gives SQ the opportunity to pull up his pants and the incident is over.

[377] SQ says that this incident was of very short duration and estimates it to have lasted anywhere between 2 to 5 minutes.

[378] It appears from the evidence that this witness never applied for or received compensation from the Church.

Count 66 (indecent assault of JQ – s.156CCC)

[379] JQ has completed a grade 9 education. This witness was between the ages of eleven and fourteen during the period covered by the indictment.

[380] JQ and other children would go upstairs in the Mission from time to time after the evening church service. The Defendant would be there.

[381] JQ is asked by the priest to sit on his lap in the living room and does so. The Defendant is seated on a small chair. The other children are busy playing or colouring. The Defendant pulls down the zipper on JQ's pants. He pulls JQ's penis out of his pants and plays with his penis.

[382] JQ claims that there were a total of three fondling events by the Defendant.

Count 67 (indecent assault of VQ – s.149CCC)

Count 68 (indecent assault of VQ – s. 149CCC)

[383] VQ was between one and five years of age during the period of time covered by the indictment. It is unknown what level of education she has completed.

[384] VQ's parents were lay helpers of the Roman Catholic Church. They attended the Mission daily to help the priest. VQ was often taken along by her parents. She would play at the Mission while her parents were busy. There were usually other children there to play with. VQ mentions LU, LA and JA in particular. These children were older than VQ.

[385] The first incident of touching occurs in the summer. VQ's parents go the Mission to meet with Father Lechat. While they are in the meeting VQ is in the kitchen. The Defendant is also there. There are no other adults or children present. The Defendant picks up VQ and lets VQ pick some food out of one of the kitchen cupboards. He then sits down at the kitchen table and places VQ on his lap. VQ is wearing a summer dress with tights. She begins to eat the food. The Defendant moves his hand down to VQ's crotch and fondles her genitals over her clothing. It is unknown how long this touching continues. It is unknown how this incident ends.

[386] VQ references a second incident that occurs in the summer or the spring. The only stated difference between VQ's description of the first and second incident is that the second time the Defendant moves his hand under her clothing to directly fondle her vagina.

[387] VQ applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by VQ in support of this claim. VQ says that she ultimately received the sum of \$16,000 in settlement of this claim.

Count 69 (indecent assault of JQ – s.156CCC)

Count 70 (indecent assault of JQ – s. 156CCC)

Count 71 (indecent assault of JQ – s.156CCC)

Count 72 (act of gross indecency with JQ – s.156CCC)

[388] JQ has completed a grade 8 education. He was between the ages of fifteen and nineteen years of age during the period of time covered by the indictment.

[389] The first alleged incident occurs during confession. JQ is at the Mission. He is in a small room where the priests store their robes. JQ is standing up. He is saying a prayer when he feels the Defendant start to touch him around his crotch. The touching starts over his clothes. It becomes increasingly more and more intrusive. JQ's pants are eased down by the priest. The Defendant's hand eventually finds its way to JQ's penis. JQ says nothing. He feels helpless. He had grown up to fear white people and the power of the priests. JQ has very limited command of English. The Defendant has very little command of Inuktitut.

[390] JQ says that this type of fondling occurred on at least five separate occasions. It did not always happen during confession. It happened occasionally in the kitchen.

[391] One time JQ says that he is led by the Defendant from the kitchen to the furnace room on the main floor of the Mission. Once inside the furnace room, JQ attempts to leave because he did not want to be sexually fondled. The Defendant closes the furnace room door on JQ's hand. This cuts JQ's hand. This injury would eventually heal but it would leave a scar. JQ pointed this scar out to the Court while giving his testimony. When his father later sees this cut, JQ lies about what happened. He says that he cut himself playing.

[392] JQ references a third type of incident involving a dog. JQ says that this type of incident occurred at least five times. JQ alleges that he was asked by the Defendant to penetrate the dog's rectum with his fingers. He was shown how to do this by the Defendant. JQ and the Defendant also engaged in mutual masturbation on these five occasions. After ejaculating, JQ says that the Defendant would have the dog lick up his sperm and then have the dog lick JQ's penis.

[393] The last incident referred to by this complainant is said to take place in the kitchen. JQ says that this last time "it" happened he gets really mad because he is tired of being fondled. JQ resists and is pushed violently against a wall by the Defendant.

[394] The witness applied for and received compensation from the Church. He indicated he received a total payment of \$68,000. What facts were alleged by what facts were alleged by JQ in support of this claim are unknown.

Count 73 (indecent assault on LT – s.156CCC)

Count 74 (buggery of LT – s.155CCC)

[395] LT has completed a grade 12 education. He was between seven and eleven years of age during the period of time covered by the indictment.

[396] LT says that the first incident takes place in the kitchen area of the Mission. LT is seated on the Defendant's lap at the kitchen table. He is eating cream corn. LT remembers the Defendant saying to him that eating this cream corn was like eating "baby poop". While eating, the Defendant reaches down and fondles LT's penis and buttocks over his clothing for a few minutes. This makes LT feel "weird". LT is very young. He thinks that all white people are strange. He thinks that maybe this was a normal thing for white people to do. LT also recalls the Defendant talking about body hair.

[397] LT says this (Transcript page 591, lines 18 – 23):

A: Well, he said something to me that he made me notice that every part of our body has hair follicles all around and saying that all of that feels like a baby's bum because all of it has hair follicles. He would show me what kind of hair he was talking about.

[398] LT does not remember whether there were any other children in the kitchen when this event occurred. The witness was focussed primarily on the strange feeling he had as a child when this first happened to him. LT is not asked how this incident ends.

[399] The second incident occurs in the furnace or boiler room. LT was playing with other children in the main part of the Mission. He gets thirsty, so he goes to the furnace room to get a drink of water. There is a sink in the furnace room with a shelf containing glasses. LT gets a glass to drink from. The lights are dim. There is a musty smell.

[400] The Defendant suddenly appears in the room. He locks the door behind him. He takes off LT's pants and fondles his penis. LT is eventually turned around and bent over a table. Something wet is applied to his rectum like a cream. LT then experiences a lot of pain in his anus. It feels like "a warm balloon was suddenly inflated inside his ass". LT is unable to say how long this event takes. He was trying to think of other things like a stream or running water to get through the experience. At the time LT did not know what was happening to him. He now thinks that this pain was caused by the Defendant penetrating his anus with his penis.

[401] LT has no memory of how this incident ends. He only remembers the pain. There is no evidence from LT to say that he observes the Defendant pulling up his pants or zipper. There is no evidence to suggest that LT ever sees the Defendant's penis.

[402] However, LT does say that when he gets home he is still in pain. He goes to the toilet. LT discharges some blood and a milk-like fluid with his bowel movement. LT now believes that this was seminal fluid from an act of unprotected anal intercourse.

[403] LT then tries to tell his grandfather what happened at the Mission. His grandfather gets angry at him. LT is slapped hard on his right ear. His grandfather does not believe him. LT is told that a man of God does not do this to people. LT would keep his silence for many years to come as a result of this treatment. LT's two other grandparents were priest helpers. LT did not tell them for fear of similar treatment.

[404] LT's grandfather is not able to testify in this proceeding. He passed away many years ago.

[405] LT applied for and received compensation from the Church as a result of the alleged abuse by the Defendant. It is unknown what facts were alleged by LT in support of this claim. It is not in evidence how much compensation LT received.

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Count 1 (indecent assault of TA – s.156CCC)

[406] TA has completed a grade 10 education. He has also taken three years of college to obtain a diploma in Inuit Studies. TA was between ten and fourteen years of age during the period of time covered by the indictment.

[407] TA says that he was playing outside the Mission with some friends when he sees the Defendant's dog. He was fascinated by this animal and he went inside the Mission to get a better look. The Defendant was there. There was a piano or organ inside. The children took turns playing on this. The Defendant was sitting at the organ when he asked TA if he would like to learn. TA says yes and gets on the Defendant's lap. As he is starting to play with the keys the Defendant starts to fondle TA's crotch area over top of his clothing. This makes TA very uncomfortable and he starts to squirm. The Defendant starts to move his leg and so bounce TA up and down. TA starts to get an erection. He is asked by the Defendant what is wrong. The Defendant then tries to move his hand inside TA's pants. TA starts to struggle. TA then blacks out. His next memory is being on the floor playing with marbles. He has no memory of getting off the Defendant's lap. He has no memory of starting to play with the marbles. TA attributes this black out to fear.

[408] This witness indicates he never applied for or received compensation from the Church.

C. Evidence given by the Crown's collateral witnesses

(i). The evidence of SI

[409] SI is the mother of the complainants MI and RI named in Counts 36 through 38. She confirms that the Defendant had joined her family at a summer camp on the land at Maud Bay in the summer of 1980.

[410] She confirms that several years later, when RI and MI were older they started to have recurrent nightmares. They would often wet their beds at night. SI thought this behaviour to be unusual given the age of the children at the time. She asked the children whether anything was wrong. For some time, the children said nothing. The oldest child RI ultimately disclosed what had happened to him. MI followed suit some time later. It is not clear how much time separated these two disclosures.

[411] SI is not certain how old the children were when these disclosures were made. She estimates their age to be between seven and twelve when this happened.

[412] SI says that she was initially reluctant to believe her children. Some time passed before she accepted what RI and MI said as being true. She confirms that her own experience of abuse in a Residential School helped her to overcome her disbelief and ultimately accept what they said as being true.

[413] SI says that she told her husband what the children had disclosed. She was angry and wanted to confront the priest. Her husband dissuaded her from doing so. She was told not to speak to the police. This would only start something that would be very unpleasant. She heeded her husband's advice.

(ii). The evidence of JU

[414] The Crown tendered a statement made by JU for the truth of its contents. This was admitted by the Defence. JU confirms that he was with SQ (count 65) in the Defendant's living room in Baker Lake. JU indicates that the Defendant had toys available at his residence. JU is not asked and does not say what type of toys were available. There was a TV and children were permitted to watch it. JU makes no mention of a video game. JU makes no mention of going under a blanket to play with this type of toy.

[415] JU says that he remembers SQ being called to the kitchen by the Defendant. SQ disappears from sight for some time. JU then sees SQ exit the kitchen quickly as though something was wrong.

[416] JU does not say that he saw any inappropriate touching of SQ by the Defendant.

(iii). The evidence of Father Robert Lechat

[417] This witness was the priest in charge of Igloolik during the time the Defendant was posted to Igloolik. He provides a wealth of non-controversial evidence about the layout of the Roman Catholic Mission in Igloolik at the relevant time.

[418] He confirms that the Defendant had a very large Irish wolfhound that was usually quartered in the back porch area during the cold winter months. The dog did not have the fur needed to protect it from the cold.

[419] He confirms that the Defendant was sent out on the land from time to time with Inuit families so he could better learn Inuktitut. In particular, Father Lechat confirms that the Defendant joined MA's family for a period of some weeks at a spring camp in 1979. A further extended camping trip also took place the following year in 1980. In addition to these trips, the Defendant would frequently go out hunting or fishing for a few days at a time.

[420] Father Lechat confirms that the Defendant could not speak Inuktitut and appeared to have some difficulty learning the language.

[421] The Defendant also occasionally travelled to other communities. He went to Nanisivik at Christmas to provide for this community's spiritual needs. He went to Pelly Bay on his holidays. He frequently visited with Father Vandervelde in Hall Beach, who was also of Flemish origin.

[422] Father Lechat gives evidence about the routines of the Mission when he was present. He confirms that he was responsible for a number of communities and travelled frequently. He would often be away for months at a time. On one occasion, he was away from Igloolik for a period of eight months.

[423] During the week, younger children would attend the Mission after school for half an hour of religious instruction. These children would be between the ages of six and twelve. They would often stay after class to play. This class was often taught in Inuktitut by Inuit Catechists, though occasionally English was used. All children had to go home for dinner. There were no snacks or meals provided to children when this witness was at the Mission. On special occasions, candy would sometimes be provided.

[424] Some children would return to the Mission for the evening service. All children were required to leave the Mission by nine in the evening. Children were not allowed upstairs into the priest's living quarters.

[425] Movies were sometimes shown to the children on weekends. There was no television available at any time. There was no ping pong table, but this game could be played on a regular table.

[426] The doors of the Mission were never locked. There was no phone, and if a priest was needed urgently in the night, there was no other way of reaching him than attending the Mission to get him.

[427] Community feasts were held at the Mission on special feast days when country food would be provided to children and adults alike.

[428] Father Lechat was not certain if there was ever an organ or piano at the Mission. When first asked whether there was a piano there, the witness responds by saying "probably".

(iv). The evidence of Nicole Arnatsiaq

- [429] This witness was living at the Mission from September 1981 until April or May 1982. She was a nun and assisted Father Lechat in providing religious instruction to older students at a portable classroom over at the school. Ms. Arnatsiaq had been a teacher in Montreal for some eight years before arriving in Igloolik.
- [430] This witness provided non-controversial evidence about the layout of the Roman Catholic Mission and its daily routines during Father Lechat's tenure as priest. She also speaks of changes in this routine when Father Lechat was absent and the Defendant left in nominal charge of the Mission.
- [431] She confirms that during Father Lechat's absence, the Defendant would sometimes lock the doors of the Mission at night. They were always left open during the day.
- [432] This witness says that the rule requiring children to leave the Mission was not strictly enforced by the Defendant in Father Lechat's absence. Nor was the rule prohibiting children from attending upstairs respected. She does not remember children sleeping over at the Mission while she was there, but on one occasion she recalls seeing a number of sleeping bags on the floor of the Defendant's bedroom. When she asked the Defendant about this, the Defendant replied that the children had been camping out in the room. Ms. Arnatsiaq says that in Father Lechat's absence she was occasionally visited in her bedroom by children who were upstairs in the Mission. She also from time to time observed children inside the Defendant's bedroom. Ms. Arnatsiaq confirms that many children attended the Mission after school to receive lessons on the Bible and to play games and colour.
- [433] Meals were not provided to children in her presence, but cookies were sometimes handed out and children would sometimes watch the adults eat.

IV. REVIEW OF DEFENCE EVIDENCE ON THE TRIAL

A. Crown arguments with respect to the Defendant's general credibility as a witness

(i). The Defendant's motivation to lie

[434] In arriving at a decision on the credibility and reliability of the evidence of the Defendant, the Crown urges the Court to take into consideration the Defendant's motivation to lie. The Crown argues that the Defendant will be inclined to hide from the truth in order to escape the personal consequences that would flow from a conviction and or sentencing.

[435] This same argument might be made of any citizen who is charged with a criminal offence. The Crown would have this Court automatically discount a Defendant's testimony because he or she is charged and is therefore presumed to be seeking to avoid punishment for a crime or crimes that he or she has committed.

[436] This Court emphatically repudiates this argument. Such an approach, if accepted, would undermine the presumption of innocence that has been the philosophical cornerstone of the criminal justice system for hundreds of years. The presumption of innocence must be the starting point of the Court's deliberations. Nothing less will suffice.

(ii) The Defendant's criminal record

[437] The Crown also argues that this Defendant's criminal record should weigh heavily against this Defendant's credibility as a witness. The Defendant's criminal record is Exhibit T-14 in this proceeding. The Crown asks this Court to make adverse inferences against the character of the Defendant from the entries for sexual offences committed in Baker Lake. The Crown argues that these entries for sexual crimes speak to the Defendant's morality and general character. The Crown argues that this Defendant's demonstrated willingness to violate his oath as a priest in the past can give the Court no confidence in his promise to tell the truth in this Courtroom.

[438] The Crown says this (transcript p. 2175 at line 21 - 2176 at line 4):

The accused has testified that he was a priest at the time when he committed these offences. So we have a priest who commits offences which result in ten sexual assault convictions. I'm going to suggest to the Court that that is about as high as you can get in speaking to someone's character as a priest. It speaks to his morality; it speaks to his character; it speaks to his oath; it speaks to his breach of trust. He violated virtually every oath and undertaking he took from celibacy down to protecting those under his charge.

[439] This Defendant has no criminal record for crimes of dishonesty. There are no convictions for any form of theft, fraud, or false pretences. There is no conviction for perjury or swearing a false affidavit. The entries on the criminal record referenced by the Crown do not speak directly to the issue of the Defendant's honesty.

[440] There is no evidence before this court as to what oath or undertaking the Defendant may have sworn prior to taking up his position as priest in Baker Lake. There is no evidence before this court as to the factual circumstances underlying these previous convictions.

[441] Had this Defendant elected to have a trial by jury, the entries on this record for prior sexual offences might well have been the subject of a "Corbett" application and excluded from consideration by the trier of fact. The Crown's submission on the Defendant's character comes perilously close to urging this Court to engage in forbidden propensity reasoning.

[442] While this Court is bound to give some consideration to the Defendant's criminal record by virtue of the provisions of the Canada Evidence Act, it does so with caution. In the circumstances of this case and this Defendant, the Court finds that it can attach only very limited weight to the record on the issue of general credibility.

(iii). The inference flowing from the Defendant's flight from the law

[443] On February 19, 1995, the Defendant was charged with three counts of indecent assault and three counts of buggery related to his time in Igloolik. After the Defendant served his sentence of imprisonment on charges arising from Baker Lake, he was released. The Defendant was subsequently served with court process in relation to the new charges. On June 13, 1995, the Defendant failed to appear in Court in Nunavut to answer the new allegations. A warrant was then issued for his arrest.

[444] The Defendant has testified in this trial that he had been aware of his obligation to attend Court. He took advice from counsel and decided to flee Canada for Belgium. He did so in order to avoid a further term of imprisonment.

[445] The Crown urges this Court to infer "consciousness of guilt" from the Defendant's flight. The Crown argues that this consciousness of guilt reflects adversely upon the Defendant's credibility on all matters for which he now maintains his innocence.

[446] The bulk of the charges now faced by the Defendant did not exist when this Defendant fled Canada. The evidence does not establish that the Defendant was aware of all of the offences now faced by him when he took flight from the law. This flight is consistent with a desire to avoid sentence for some lesser charges that are now the subject of guilty pleas. At least three of the six charges laid in 1994 were indecent assaults. At the outset of this trial, the Defendant entered guilty pleas to eight indecent assaults on males.

[447] Flight from the law can only indicate a consciousness of guilt if it relates to a particular charge. The Supreme Court of Canada in the case of *R v Arcangioli*, [1994] 1 SCR 129, (1994), 87 CCC(3d) 289 at 301, says this:

...where an accused's conduct may be equally explained by reference to consciousness of guilt of two or more offences, and where the accused has admitted culpability in respect of one or more of these offences, a trial judge should instruct a jury that such evidence has no probative value with respect to any particular offence.

[448] This Court declines to draw an adverse inference against the Defendant's credibility on all matters now set for trial based upon a "consciousness of guilt" arising from this flight. The evidence relating to the Defendant's flight in 1994 has no probative value in relation to the many charges laid in the decade following his departure from Canada.

B. Review of the Defendant's testimony

[449] The Defendant denies that any of the sexual offences set for trial occurred as described or at all.

[450] While there is a general denial of all the matters set for trial, there is no alternative narrative provided by the Defendant about what had happened at the time and place being described by the Crown's various complainants. The Defendant maintains that the events being described by these complainants are completely fictitious. There is no middle ground. This is not a case where the witnesses can be said to have misinterpreted a real event.

[451] Much of the Defendant's testimony focused on operational routines within the Mission, and the Defendant's general involvement in the spiritual life of the community.

[452] The Defendant denies that food, or the promise of food was ever used by him as a means of luring children to the Mission. The Defendant insists that he did not have cookies or candy, either at the Mission or at the camps. The Defendant says that he has yet to bake his first set of cookies. The Defendant denies providing any meals or meat, drugged or otherwise, to any children at the Mission. He says that the Mission lacked the financial or physical resources to be providing meals to community members. The only item not provided by the community members themselves during feasts, was tea that was provided by the Mission.

[453] The Defendant denies that he participated in any games with the children including the game of hide and seek. While he admits from time to time having children sit on his lap, he denies anything untoward happening during these events. Movies were sometimes shown on Sunday night, but there was no TV and no piano or organ. The Defendant says that he has never learned how to play either instrument. He denies ever fondling children while they are seated in his lap playing the piano. This never happened and the piano never existed.

[454] The Defendant adamantly denies any sexual involvement with his dogs. He denies that he encouraged children to become involved sexually with these animals in any way and at any time. The Defendant denies that there was any attempt by him to encourage JA or anyone else to recruit other children to facilitate his alleged sexual activities at the Mission.

[455] The Defendant suggests that the younger children usually left the Mission after their religious instruction during the week. They did not stay to play games after school. The Defendant insists that the Mission did not provide any organized games or activities for the children. The children had access to a community center and a gymnasium at their school. They did not need to use the Mission for this purpose.

[456] A few children usually accompanied their parents to evening mass, but these children would usually leave with their parents.

[457] The Defendant says that he continued the rule set by Father Lechat that required all children to leave the Mission by nine o'clock at night. He says that he also heeded an unwritten rule that said children were not permitted to be upstairs in the Mission's living quarters. Father Lechat was the assigned priest for the community of Igloolik. The Defendant says that it was not his place to change the way Father Lechat ran the Mission.

[458] There was only one occasion during his stay in Igloolik that the Defendant allowed children to stay beyond 2100 hours and visit upstairs. This involved a visit by a female guitarist. She provided entertainment during the weekend masses. She also performed at a special sing along concert for the children. Some of these children were allowed to sleep over at the Mission following this evening concert.

[459] The Defendant says that he could not or would not fulfill all of the duties of the priest during Father Lechat's extended absences from his community.

[460] The Defendant says that his inability to speak Inuktitut limited what he could practically do as a priest.

[461] The Defendant says that while he did occasionally perform a few wedding and baptismal ceremonies, he never performed the sacrament of confession in all of his years in Igloolik. He lacked sufficient command of Inuktitut to do this. To perform this sacrament required an ability to speak and understand Inuktitut. The Defendant did, after some time, do the mass in Inuktitut. This involved him reciting words in Inuktitut, but he had very limited understanding of what these words actually meant.

[462] The Defendant says that he did not provide religious instruction to the younger children for this same reason. He was not able to communicate in Inuktitut. The little ones had very little command of English. This is why religious instruction for the young children was provided by Father Lechat or by Inuit catechists. The Defendant was assigned to teach the older students at the school (Grade 6 and up). These students had sufficient command of English to be able to benefit from the religious instruction offered by the Defendant in English.

[463] From time to time the Defendant served as priest at Nanisivik, particularly during Christmas. He says that he was able to do this because the language spoken at the mine and in this community was primarily English.

- [464] In the early 80's, the Defendant did go to the community of Pelly Bay to bless the new church in that community. He did regularly go out hunting with other males. There would be no women or children taken on these trips. He did go fishing by himself from time to time. The Defendant did go out on the land with two named families for two successive summers in 1979 and 1980. These trips would be for two or three months at a time. The Defendant adamantly denies ever sexually touching a child during any of these on the land activities.
- [465] The Defendant denies that there ever was a video game available at priest's residence in Baker Lake as alleged by SQ. The Defendant has no memory of SQ ever coming to the Mission.
- [466] The Defendant denies any form of sexual contact with ZN at the priest's residence in Pelly Bay or at any other place or time. He denies seeing or meeting ZN at this residence at any time.
- [467] The Defendant denies any form of sexual contact with children while performing the sacrament of confession. He insists that he was not able to perform this sacrament because of the language barrier. There was no confession and there was no sexual touching of any kind.
- [468] There was no youth group ever formed at the Mission. There was no group of youth volunteers that performed cleaning services or did chores at the Mission. He indicates that a prayer group of five or six ladies came daily to the Mission in the mornings and would clean the Church. The remainder of the cleaning he did on his own. The Defendant denies ever sexually assaulting children while they were engaged in doing chores at the Mission.
- [469] The Defendant denies that he ever threatened hell or damnation to children if they told on him. Nor did he ever threaten a child with removal from their parents. Nothing had happened and there was nothing to tell about. The Defendant insists that he never taught children about heaven and hell. This was a teaching that may be found in the Bible, but contemporary priestly intervention no longer focuses on the spiritual consequences of sin.

[470] If Defence cross-examination in this case was ineffective because of the inherent limitations of the complainant's distant memories, the Crown's cross-examination was equally handicapped. There was no factual narrative of events portrayed by the Defendant in relation to the counts at issue in this trial to be tested in cross-examination.

[471] The Crown was thus reduced to examining the Defendant on the subject of historical routines at the Mission and general religious dogma. Crown cross-examined the Defendant extensively upon the importance of the sacrament of confession to the spiritual well-being of a believer, and the place of heaven and hell in contemporary teaching of the Roman Catholic faith. Very little was achieved by this. This was not a debate that the Crown was equipped to win.

[472] Without any real narrative related to factual events, a cross-examination is likely to be ineffective. Where a Defendant does give a narrative in relation to factual events, a skillful cross-examination is predictably much more effective in unraveling dissimulation.

[473] The only detailed testimony with respect to actual offences involved a narrative given by the Defendant on the eight matters for which guilty pleas had been entered. The Court's fact finding process was greatly assisted by the examination and cross-examination in this area. The Crown's cross-examination on the narrative given by the Defendant on these charges was damaging to the Defendant's credibility as a whole.

[474] The Defendant's assertion that children were not ordinarily upstairs in the Mission conflicts not only with the evidence of many of the complainants in this trial, but also with the evidence given by the independent witness Nicole Arnatsiaq.

[475] Ms. Arnatsiaq recalls children being upstairs in the Mission during Father Lechat's absence. She recalls children attending her bedroom. She recalls seeing children inside the Defendant's bedroom. She recalls seeing sleeping bags in or near the Defendant's bedroom. These sleeping bags were ordinarily stored in the Attic area according to both Father Lechat and the Defendant. The Court has been given no reason to disbelieve Ms. Arnatsiaq when she says that children were frequently seen in the bedrooms and upstairs area of the Mission during Lechat's absence.

[476] Many of the complainant's seemed to have a detailed knowledge of the layout of the upstairs portion of the Mission including the attic area. Such knowledge is not readily explainable unless these witnesses had visited this area with some frequency to become familiar with what was upstairs. The Defendant's insistence that children were not allowed upstairs is also curiously at odds with the proposition advanced by the Defendant that has eight children supposedly arriving uninvited upstairs inside his bedroom.

[477] The Defendant's claim that he did not allow children to be upstairs in the Mission is suspect.

[478] The Defendant's suggestion that children were not ordinarily playing at the Mission after school and at night is inconsistent with the evidence given by both Father Lechat and Ms. Arnatsiaq, as well as numerous complainants. On the whole of the evidence, this too, is unbelievable.

[479] If there was regular playtime by children and youth at the Mission, it would make sense for some youth to be assigned chores to do cleanup in the aftermath of this play. There would be crayons to pick up from the floor and tables. There would be papers to put away along with children's books. There would board games to be placed back in their boxes. Items like chairs and tables that were moved or displaced to facilitate this play would have to be put back in proper order. The Defendant's insistence that there were no youth assigned to do this clean-up at the Mission is suspect. It is probable that some of the older children would have been enlisted by the priest to help in this clean-up effort.

[480] The Defendant insists that his lack of command of Inuktitut was a barrier to his ability to hear a confession. This was no doubt true, or at least partially true, in relation to some unilingual parishioners, particularly the elders. However, it was also true that some parishioners had a reasonably good command of English. The older elementary school students had sufficient command of English to be taught religious studies by the Defendant at the local school. The Defendant could certainly hear a confession in English. The Defendant's insistence that he never took confession in the fifty weeks he was alone at the Mission in Igloolik does not ring true.

[481] Igloolik was a community that was fairly conservative in its religious beliefs according to Father Lechat. The Defendant did not disagree with this proposition. The taking of confessions was a duty that fell upon the priest. The Defendant did not disagree with this proposition. Attendance for confession was commonplace according to Father Lechat. This was particularly true in the days leading up to the great religious festivals of Easter and Christmas. There were occasionally line-ups for confession according to both Father Lechat and Ms. Arnatsiaq.

[482] It strains credulity to believe that nobody would ever attend the Mission for confession in the entire time that the Defendant was left in charge. It strains credulity to believe that the Defendant was never asked to take a confession during his tenure by those parishioners who could speak English.

[483] The Defendant says that he did perform religious services in Inuktitut while not really understanding the words being said by him. As strange as this seems, it is no stranger to think that some younger parishioners might want to participate in the sacrament of confession while struggling with English as a second language.

V. THE SIMILAR FACT APPLICATION

[484] At the conclusion of its case, the Crown brought an application for the Court to consider as “similar facts” all of the evidence tendered by the Crown in relation to all other counts set for trial and sentence. The Crown invited the Court to rule on this application before the Defence presented its case. The Court declined to do so (see *R v DeJaeger (No 4,)* 2014 NUCJ 14, 113 WCB (2d) 191).

A. The danger associated with the use of propensity reasoning and similar fact evidence

[485] Propensity reasoning involves the inference that a citizen who has a propensity or disposition to do a particular crime must have done the actual crime that is alleged. If used improperly, this type of reasoning can seriously erode any presumption of innocence. If used indiscriminately, it can poison the mind of a trier of fact and make adjudicative objectivity much more difficult to achieve.

[486] Two forms of prejudice are caused by the improper use of propensity evidence. Reasoning prejudice results where a trier of fact places undue weight upon evidence related to other acts of alleged misconduct. Moral prejudice results where a judge or jury is tempted to infer guilt from knowledge of the bad character of an accused citizen.

[487] The experience of the law has demonstrated that such inferences are all too easily made. Such inferences can be made in the absence of any real evidence linking an accused to the commission of a crime. This is particularly so where the similar fact crime under consideration is highly reprehensible or morally abhorrent. A wrongful conviction may result. For this reason, the common law ordinarily prohibits the admission of evidence related to other acts of misconduct by a Defendant.

[488] There are exceptions to this general rule however. Evidence of other acts of misconduct may become sufficiently relevant and cogent in relation to a specific trial issue to outweigh any potential for misuse. Propensity evidence thus becomes exceptionally admissible, but not for the purpose of demonstrating that an accused is simply a person of bad character or that he or she has a general disposition or propensity to commit crime.

[489] The common law does permit the use of propensity reasoning where its use can be logically justified. It is only the improper use of propensity reasoning that is prohibited.

[490] Before the Court can address the merits of the Crown's application, the issues of collusion and tainting raised by Defence in opposition to this application must be addressed.

B. Collusion and Tainting

[491] Where a number of complainants independently describe the commission of criminal acts that are very similar in design or execution, the similarity may make it more probable that the criminal acts complained of were committed as alleged, and by the same perpetrator. The case of *Makin v AG of New South Wales*, [1894] AC 57; All E.R. 24, illustrates an application of this principle. Evidence that a number of babies found buried on three properties linked to the Defendant was admitted to establish that the alleged murder victim, the baby HM, had been intentionally killed. The prospect that HM had died of natural causes was significantly reduced by evidence of the death and secret burial of twelve other babies who could also be linked to the Defendant.

[492] The value of similar fact evidence to resolve a live trial issue turns on an improbability of coincidence arising from the facts. If there is an alternative explanation for why the offence description from different complainants is similar, then no inference can be safely drawn from the similarity itself.

[493] Evidence showing that the different complainants have worked together to concoct or fabricate an account of what happened would explain why their various accounts are so similar. The presence of collusion thus destroys the probative value of similar fact evidence based upon any improbability of coincidence.

[494] The same result is achieved where witnesses have talked to each other about their respective experiences before speaking to police or before testifying. This can have the effect of colouring the witness's description of an alleged event. Different witnesses' accounts may appear to be similar because their memory of an event has been unconsciously influenced or "tainted" by what others have said. This danger is particularly acute in circumstances where witnesses have communicated over time in an effort to reconstruct their memory of a distant event that they cannot really remember. The Ontario Court of Appeal in the case of *R v JF*, 2003 177 CCC 1 at paragraph 77, 16 CR (6th) 31, thus found that a trial judge errs when he or she:

“...fails to take into account that collusion and discussion among witnesses can have the effect of tainting a witness's evidence and perception of events innocently or accidentally and unknowingly, as well as deliberately and intentionally. The reliability of a witness's account can be undermined not only by deliberate collusion for the purpose of concocting evidence, but also by the influence of hearing other people's stories, which can tend to colour one's interpretation of personal events or reinforce a perception about which one had doubts or concerns.”

[495] Before similar fact evidence becomes admissible this Court must be satisfied by the Crown on a balance of probabilities that it is safe to draw an inference based on similarity. The issue is whether there is some evidence of collaboration or concoction. Evidence of contact, or mere opportunity for contact, is insufficient to raise any serious question about the reliability of the tendered evidence.

[496] Where there is an air of reality to collusion raised by the evidence, or where the evidence discloses a real risk of "tainting" or innocent contamination by communication between witnesses, the Crown has an obligation to prove that the collusion or tainting did not occur in order to have the evidence declared admissible.

[497] In argument, Crown counsel seemed to focus exclusively on rebutting any suggestion of actual collusion by the many complainants in this trial. Little time was spent assessing the dangers associated with tainting posed by ongoing communication between witnesses.

C. Review of the Crown evidence on the issue of Collusion and Tainting

WI (counts 20, 21 and 22)

[498] WI testified that she had told others including LA (counts 13, 14, 15, 16 and 17) that she was going to charge the Defendant. RK (counts 41 and 42) and EK (counts 39 and 40) testified that they had both spoken to WI about their allegations. LI (counts 25 and 26) testified that WI may have told him about the compensation process. JA (count 1) says that he was in Iqaluit with WI and they spoke together about their allegations. TI (counts 27, 28 and 29) testified that WI had discussed her allegations with her and tried to convince TI that she (TI) had been sexually abused by the Defendant. JQ (counts 61, 62 and 63) said that she had spoken to WI and others about the Defendant molesting people. MI (count 36) testified that she had spoken to WI and others about their allegations against the Defendant during a trip to Iqaluit.

LA (counts 13, 14, 15, 16 and 17)

[499] LA admits discussing her allegations “a bit” with DN (count 52) and GN (counts 53 and 54). LA tells the police that WI (counts 20, 21, and 22) and JA (count 1) tried to remind her of this abuse on at least eight occasions but she did not want to talk about it. LA says she has heard rumours in town about what the Defendant was doing and also heard people talking about the Defendant on the local radio. JQ (counts 61, 62, and 63) testified to speaking with LA about the Defendant molesting people. DA (count 3) said that he spoke to LA and others about their abuse. LA’s brother CA (count 12) said that LA had discussed charging the Defendant with him and that he had discussed with LA his own allegations against the Defendant. DN (count 52) testified that in 2006 she had discussed with LA an alleged incident of bestiality by the Defendant. LA is said to have reminded DN to make sure that she tells the police about this incident.

VQ (counts 67 and 68)

[500] VQ says that JI (counts 23, 24, and 25) told her to open up and go and talk to the lawyer about compensation. VQ testified that she had heard about her brother JQ’s abuse (count 66) and a friend’s abuse and that this abuse was worse than hers. VQ has heard of other’s experiences of abuse through rumours in town, and on the news and television. TI (counts 27, 28 and 29) testified that VQ had discussed her allegations with TI and that VQ had tried to convince TI that she too was a victim of the Defendant.

MN (counts 46, 47 and 48) and JQ (counts 69, 70, 71, and 72)

[501] MN and JQ are spouses. JQ testified that they had talked with each other about their respective allegations over the years. MN, in her testimony confirms this. Both MN and JQ were involved in the compensation claim. JQ says that he had heard others talking about the Defendant when he went to see the lawyer about his claim. JQ also says that he had heard stories about the Defendant on the news. DI (count 35) testified that she and MN had talked about charging the Defendant together and applying for compensation. JQ (counts 61, 62, and 63) testified that she had spoken to MN about being molested by the Defendant.

RK (counts 41 and 42)

[502] RK says that he had discussed his allegations with his sister CK and with WI (counts 21, 22, and 23). CK had spoken of her own abuse at the hands of the Defendant. RK confirms that these discussions all occurred prior to giving a statement to the police.

EK (counts 39 and 40)

[503] EK says that she spoke with LP (counts 59 and 60) WI (counts 21, 22 and 23) and other victims about their allegations. She has seen pieces done on the Defendant in newspapers and on the television. She applied for and received compensation. She went on the trip to Iqaluit but denies speaking to others about her own allegations at this time.

LI (counts 25 and 26)

[504] LI says that his brother JI (counts 23 and 24) forced him to speak to the police in 1993. LI says that he had spoken to JI and his mother about his abuse. LI says that he may have spoken to WI about the compensation process. LT (counts 73 and 74) testified that he had spoken with LI about being drugged by the Defendant, and that LI had told him that the Defendant had forced LI to lure other children to the Mission with the promise of food.

JA (count 1)

[505] JA testified that he had flown to Iqaluit with WI (counts 21, 22, and 23) LT (counts 73 and 74) and others and that during this four day stay they were all talking about the Defendant. JA says that many in Igloolik have blamed him for luring other children to the Mission. JA has heard others talking on the community radio about their abuse by the Defendant and wanting revenge. LT (counts 73 and 74) testified that he has spoken to JA about the Defendant drugging other children, about JA's camping trip with the Defendant, and about the Defendant forcing him to lure other children to the Mission. LK (Court file #07-13 – 95 counts 1, 2, and 3) confirmed that JA had discusses the allegations against the Defendant with her.

MA (counts 10 and 11)

[506] MA testified that CA (count 2) had told him that she had been molested by the Defendant and that she had showed him her compensation paperwork in 2005. CA denied doing this in her testimony. MI (count 36) says that she had spoken to MA and others on the trip to Iqaluit about their allegations against the Defendant.

TI (counts 27, 28, and 29)

[507] TI says that she had been told by others that she was a witness. Other people wanted to know what the Defendant had done to her. TI heard her aunt MA talking on the local radio about the Defendant's abuse of her children. TI heard this two weeks before giving her statement to the police. TI said that she felt sorry for her brothers and cousins, and that this is what caused her to remember that she too was a victim and a witness. TI told the police that she had discussed her allegations with R., DN (count 35) WI (counts 20, 21, and 22) and VN (count 50) and that these girls had tried to convince her that she was a victim of the Defendant's abuse. DI (count 35) testified that she had talked to TI about seeing the Defendant touching TI, but at the time TI was not able to remember this event.

JQ (counts 61, 62 and 63)

[508] JQ says that she came to the realization that she had been molested by the Defendant by speaking with WI (counts 20, 21, and 22), JA (counts 6, 7, 8, and 9) LA (counts 13, 14, 15, 16, and 17), and MN (counts 46, 47, and 48). It was JA who told JQ to speak to the lawyer about a compensation claim. JQ's sister CA (count 2) testified that she had spoken to her sister JQ about her own allegations against the Defendant.

LT (counts 73 and 74)

[509] LT testified that others had told him that the Defendant had fed him horse meat, not caribou meat. LT had spoken with a group of other complainants including LI (counts 25 and 26), JA (count 1), and JI (counts 23 and 24) about being drugged by the Defendant. LT says that he was aware of rumours about the Defendant and had seen pieces in the newspaper about him. LI and JA also told him that they had both been forced by the Defendant to lure kids to the church with food. LT said that once in a while others would tell their story of abuse by the Defendant with him, but this did not happen frequently. During the trip to Iqaluit, JA (count 1) told him about his trip out on the land with his brother MA (count 4) when the Defendant tried to kill him. MN (counts 46, 47, and 48) also testified that she had spoken to LT and others about her allegations during the trip to Iqaluit.

GN (counts 53 and 54)

[510] GN testified that she had heard about the Defendant molesting others and having sex with young girls in Igloolik. DN (count 52) had spoken to her about being molested by the Defendant. DA (count 3) testified that he had spoken to GN and others in 2006 about alleged incidents of abuse by the Defendant.

DA (count 3)

[511] DA says that he spoke to the lawyer about a compensation claim after he had spoken to others. DA says that he came to the realization that he had been abused by the Defendant after speaking to many others about what he had experienced. It was only then that he realized that the touching was sexual in nature. DN (count 52) had given his name to the police and had said that he was a witness. DA testified that he had not remembered that he had seen the Defendant touching DN until after DN had talked to him about it. DA says that his memories of his abuse came back to him after he had talked to DN (count 52), MA (counts 10 and 11), GN (counts 53 and 54) and other victims about their abuse. LA (counts 13, 14, 15, 16, and 17) had tried to speak to him about her abuse, but DA did not want to hear about it. MI (count 36) testified that she spoke to DA and others about her abuse during the trip to Iqaluit.

DI (count 35)

[512] DI says that she spoke to MN (counts 46, 47 and 48) about going to the police, and MN had mentioned that she was also charging the Defendant and applying for compensation. MN told the police that she had witnessed the Defendant touching TI (counts 27, 28 and 29) and that she had talked to TI about this. TI had told DI at the time that she did not remember this event.

CA (count 12)

[513] CA testified that he had spoken to his wife and his sister LA (counts 13, 14, 15, 16, and 17) of his abuse. LA told him to go the police. CA knew that LA had charged the Defendant. CA says that he also learned from LA during “this court season” that LA had been beaten by her mother when she had first disclosed her abuse. CA testified that he started to question his memory of abuse when he heard about the Defendant on the news.

MI (count 36)

[514] MI says that she spoke to a lawyer about making a compensation claim after feeling sorry for others. She wanted to join the others in charging the Defendant. MI says that she discussed her abuse by the Defendant with WI (counts 20, 21, and 22), MA (counts 10 and 11), CN (count 51), JI (counts 23 and 24), LT (counts 73 and 74) and EK (counts 39 and 40) on the trip to Iqaluit. MI testified that she knew that other people were laying charges and she “just went along with it”. It was after this trip to Iqaluit that MI disclosed her own abuse to her spouse for the first time. It was after this trip and these discussions with others that MI went to the Igloolik detachment to charge the Defendant.

DN (count 52)

[515] DN says that she spoke to LA (counts 13, 14, 15, 16, and 17) in 2006 about seeing the Defendant having sex with the dog. LA told her to remember to tell the police about seeing this incident. DN has also spoken to GN (counts 53 and 54) about this same incident. DA (count 3) testified that he had also discussed his allegation against the Defendant with DN.

MA (count 4)

[516] MA says that he first remembered his history of abuse by the Defendant after hearing a report about the Defendant on the radio. MA was aware that his brother JA was going to Iqaluit with others to see the Defendant. MA gives his statement to the police a week after JA returns from his trip to Iqaluit and shortly after his mother goes on the local radio to talk about what the defendant had done. MA had listened to media reports on the radio, in the newspaper and the TV about the Defendant. MA says that he was aware that his sister LKC (counts 18 and 19) had laid charges against the Defendant. LKC confirmed in her testimony that MA and LKC had spoken to each other about their allegations. MA says that he spoke to JK (Kayak) about what he says he saw the Defendant doing to him and tried to get JK to remember what had happened. MA was aware that his sister had been allegedly assaulted by the Defendant. MA was aware of the stories circulating in Igloolik about what the Defendant had been doing to others in the community.

CN (count 51)

[517] CN testified that he had heard of other incidents of sexual abuse involving the Defendant. CN was on the trip to Iqaluit, but denied speaking to anyone about the allegations. MN testified that she did speak to CN and others on this trip about her allegations against the Defendant.

CA (count 2)

[518] CA confirms that she did speak to her sisters RA and JQ (counts 61, 62, and 63) about her allegations of abuse. She says that her sisters did not speak to her about their own experiences. CA denies speaking with her brother MA about her allegations and denies that she ever showed him her compensation papers. TA (court file 07-13-85) testified that he had spoken to CA about her allegations and that he, together with MA, had questioned CA about these.

SQ (count 65)

[519] SQ testified that he was aware of the 1990's court cases against the Defendant that originated in Baker Lake. SQ says that on two occasions he had been told by JU that JU had been molested by the Defendant. SQ had tried to talk to JU about this, but JU was reluctant to discuss it.

LKC (counts 18 and 19)

[520] LKC confirms that she had listened to news broadcasts involving the Defendant. She also says that her brothers and nephews GU, MA (count 4), JA (count 1) and A? had all discussed their own histories of abuse by the Defendant with her.

TA (court file# 07-13-85)

[521] TA confirms that he has discussed with CA (count 2) and MA (counts 10 and 11) their allegations against the Defendant.

ZN (count 45)

[522] ZN testified that she made her report of abuse to the police in an effort to help others who had been victimized by the Defendant. ZN had spoken to her nephew about his history of abuse by the Defendant. She tried unsuccessfully to convince her nephew to go to the police.

JI (counts 23 and 24)

[523] In his statement to the police JI said that he had spoken to Marco about the allegations, but that Marco was denying them. He had also spoken to RN. He stated that he had tried to encourage others who he knew were witnesses to report as well. VN (counts 49 and 50) testified that she had heard JI on the local radio encouraging others to come forward for compensation. MN (counts 46, 47 and 48) testified that she had been speaking to JI and others about their allegations on a trip to Iqaluit. This trip occurred after JI gave the original statement to the police but before the KGB statement was taken in 2012. LT (counts 73 and 74) says that he had spoken to both JI and LI about the Defendant trying to drug them with horsemeat. VQ (counts 67 and 68) LI (counts 25 and 26) and JA (count 1) all confirm that they had spoken to JI about their allegations, and both LI and VQ confirm that JI encouraged them to make a complaint to the police and seek compensation.

JA (counts 5, 6, 7, 8, and 9); JM (count 44); JQ (count 66); LAP (counts 59 and 60); CP (counts 55, 56, 57, and 58); MT (count 75); PI (counts 33 and 34); RI (counts 37 and 38); TU (count 76); VN (counts 49 and 50); MUO (count 64); LK (count 43);

[524] There is no evidence to suggest that these complainants either discussed their allegations with others or participated in discussions with other complainants about their history of abuse by the Defendant.

D. Findings on the issue of collusion and tainting

[525] There is no air of reality to a claim that these Crown witnesses conspired together to manufacture evidence against the Defendant that they knew to be false. The absence of evidence related to collusion does not end the Court's inquiry however.

[526] There is some evidence to raise the spectre of tainting or innocent contamination in relation to the following counts:

- Count 1 – JA
- Count 2 – CA

Count 3 – DA
Count 4 – MA
Counts 10 and 11 – MA
Count 12 – CA
Counts 13 through to 17 – LA
Counts 18 and 19 – LKC
Counts 20, 21, and 22 – WI
Count 23 – JI
Count 25 – LI
Counts 27, 28, and 29 – TI
Count 35 – DI
Count 36 – MI
Counts 39 and 40 – EK
Counts 41 and 42 – RK
Count 45 – ZN
Counts 46, 47 and 48 – MN
Count 52 – DN
Counts 53 and 54 – GN
Counts 59 and 60 – LAP
Counts 61, 62, and 63 – JQ
Counts 67 and 68 – VQ
Counts 69 through to 72 – JQ
Counts 73 and 74 – LT
Court file # 07-13-85 – TA
Court file # 07-13 – 95: counts 1, 2, and 3 – LKC

[527] The evidence in relation to these counts indicates that there have been discussions between witnesses about the substance of their allegations before speaking to police and testifying in this trial.

[528] These discussions have potentially contaminated these witnesses' memory of the incidents bringing them to court. This concern is particularly acute in circumstances where witnesses have had discussions with other complainants in an effort to remember details and events that were not otherwise remembered. The prospect of a memory being influenced by such discussion is very real. Such collaboration can potentially explain any similarity in the complainants' description of the alleged offences and so destroy the improbability of coincidence that is necessary to give life to a similar fact application.

[529] The onus falls upon the Crown to prove that these witnesses' accounts were not contaminated or otherwise influenced by these discussions. The Crown has failed to discharge this onus.

[530] The Court is not satisfied on the strength of the meagre evidence before it that the similar fact evidence tendered on these counts is therefore reliable.

[531] The Court finds that there is no air of reality to either collusion or tainting of the evidence given by the following witnesses:

Counts 5 through 9 – JA
Count 12 (guilty plea) - CA
Counts 33 (guilty plea) and count 34 – PI
Counts 37 (guilty plea) and 38 – RI
Count 43 – LK
Count 44 – JM
Counts 49 and 50 – VN
Counts 55 through to 58 – CP
Counts 59 and 60 – LAP
Count 64 – MUO
Count 65 – SQ
Count 66 – JQ
Count 75 (guilty plea) – MT
Count 76 (guilty plea) – TU

[532] These counts are therefore available for consideration on the similar fact application.

E. Tainting and the guilty pleas

[533] While the Defendant did enter guilty pleas to counts 24 (JI), 26(LI), and 51(CN) the factual basis for these pleas was in dispute. It is the facts underlying the guilty plea and their alleged similarity that forms the basis for the Crown's similar fact application.

[534] The entry of guilty pleas to eight offences involving indecent assaults on pre-adolescent males shows a specific behavioural propensity to sexually abuse children of a particular age through fondling type activities. There is no dispute that JI, LI and CN were children or adolescents when these offences occurred. There is no dispute that some form of indecent fondling activity occurred in all eight cases including the three counts impacted by potential tainting.

[535] For this reason Count 24 (JI) count 26 (LI) and count 51 (CN) can be considered on the Crown's application notwithstanding the presence of some evidence of potential tainting.

F. The live trial issues

[536] The Crown has the burden of establishing, on the balance of probabilities, that the tendered propensity evidence is relevant to a specific issue before the Court and that the probative value of this evidence exceeds its anticipated prejudicial effect. It is only in this way, and only under these limited circumstances, that the admission of propensity evidence can be justified.

[537] In this case the Crown argues that the evidence of similar facts:

- a. is admissible to prove the actus reus of the offences charged by establishing that this Defendant has a specific propensity to sexually abuse adolescent children;
- b. is admissible to rebut any argument raised by the Defendant to suggest that the complainants may have fabricated these allegations;
- c. is admissible to rebut any argument that the Defendant's contact with these complainants amounted to "innocent association" for reasons other than that alleged by the Crown;
- d. is incidentally admissible to support the credibility of the complainants.

[539] Proof of the actus reus is very much a live trial issue in this case. The factual underpinnings of the Crown's many allegations are in dispute. To the extent that similar fact evidence is relevant to and probative of the actus reus, it is admissible for this purpose.

[540] The Defendant says that the alleged offences did not happen. This leads to an inference that the complainant's allegations are false and have been fabricated. Similar fact evidence may be admissible to rebut this suggestion.

[541] The Defence in this case challenges the reliability of the complainant's evidence and in some cases, the credibility of the complainants themselves. There is some support in the jurisprudence for the proposition that similar fact evidence may be used to incidentally support the credibility of a complainant or the reliability of a witness's account, but only in circumstances where similar fact evidence is admissible for some other purpose. Similar fact evidence is not admissible for the sole purpose of supporting a witness whose credibility is being challenged.

[542] Identity was admitted at the outset of this trial.

G. The assessment of similarity

[543] Evidence of the Defendant's misconduct on other occasions is not admissible as "similar fact" unless there is a cluster of features so distinctive and so similar that it becomes unlikely or improbable that this similarity arises by coincidence. It is this similarity that gives this type of evidence probative value.

[544] Where there is evidence showing distinctive behavioural characteristics resulting in a specific type of conduct, an inference may be drawn that a Defendant acted in a similar manner in relation to the criminal allegations before the Court. The degree of similarity need not reach the level of demonstrating a system or pattern, but it must be sufficiently distinctive to lend probative value to the inference upon which the admissibility of this evidence is based.

[545] Dissimilarities between the similar facts themselves and the crime charged do not render the similar fact evidence inadmissible as long as the probative value of the common features between the similar facts outweighs their prejudicial effect.

[546] This Court must assess the following criteria to determine whether sufficient similarity exists to defy coincidence and thus create probative value:

- a. the proximity in time of the similar facts;
- b. the extent to which the other acts are similar in detail;
- c. the number of occurrences of similar facts;
- d. the circumstances surrounding or relating to the similar facts;
- e. any distinctive features tending to unify the incidents;
- f. any other factor that tends to support or rebut the underlying unity of the similar acts.

[547] All eight counts for which guilty pleas were entered relate to indecent assaults on male children or adolescents. The breakdown of the estimated age of these victims is as follows:

- Count 12 – CA was between the ages of 8 and 12;
- Count 24 – JI was between the ages of 9 and 10;
- Count 26 – LI was between the ages of 9 and 12;
- Count 33 – PI was between the ages of 8 and 11;
- Count 37 – RI was between the ages of 10 and 13;
- Count 51 – CN was between the ages of 8 and 12;
- Count 75 – MT was between the ages of 8 and 12;
- Count 76 – TU was between the ages of 14 and 18.

[548] All indecent assaults admitted by the Defendant consisted of fondling of the complainants genitals or buttocks.

[549] A review of the remaining counts available for this similar fact application reveals the following:

Counts 5 through 9 – JA (female) was between the ages of 8 and 12 when the alleged offences occurred. The allegations include one count of indecent assault, one count of buggery, one count of unlawful confinement, one count of utter threats, one count of bestiality;

Count 43 – LK (female) was between the ages of 5 and 7 when the alleged offence occurred. LK alleges an indecent assault that consisted of fondling of her genitals both under and over her clothing;

Count 49 through to 50 – VN (female) was between the ages of 9 and 11 when these alleged offences occur. The allegations include one count of indecent assault consisting of forced masturbation of the Defendant and one count of assault;

Counts 55 through to 58 – CP (male) was between the ages of 6 and 8 when the first of these alleged offences occur. The allegations include two counts of buggery, one count of bestiality and one count of indecent assault consisting of forced masturbation of the Defendant;

Count 64 – MUO (female) was between the ages of 18 and 22 when this alleged offence occurred. The allegation involves an indecent assault consisting of fondling of the complainant's breast under the clothing and fondling of the genitals over top of the clothing;

Count 65 – SQ (male) was between the ages 10 and 13 when this alleged offence occurs. The allegation consists of an indecent assault by way of fondling of the complainant's genitals under the clothing;

Count 66 – JQ (male) was between 10 and 13 when this alleged offence occurs. JQ alleges an indecent assault that consisted of fondling of the complainant's genitals under the clothing;

[550] With the exception of count 55 and 64, all allegations involve adolescents between eight and fourteen years of age. The bulk of the allegations consist of various forms of sexual assault. Both sexes are involved. The preponderance of the activity described by these many complainants consists of the fondling of genitals both above and below the clothing. There are a number of instances of forced fellatio involving both male and female children. There are multiple allegations of buggery involving both sexes. In all instances the allegations suggest that the Defendant was exploiting his position of trust and authority as a priest to gain access to the alleged victims;

[551] A distinct pattern of predatory sexual activity emerges from this evidence. The young age of the complainants and the exploitive use of the authority of the priest as a means of accessing and isolating alleged victims are features shared in common by all allegations except count 64 which involves an adult and count 55 that involves a six to eight year old child.

[552] While there is some variation in the type of sexual activity being alleged, this does not detract from the strength of the Crown's argument that there is some evidence of a distinct disposition propensity that culminates in various forms of sexual misconduct involving young people. The number of complainants is an important connecting factor particularly where the surrounding circumstances and conduct is similar in detail.

[553] The two counts of alleged bestiality and the counts alleging common assault, unlawful confinement and uttering threats do not share the unifying features associated with the other allegations referenced above. These acts are arguably quite different. One of the two allegations of bestiality (Count 57) involves the child witness coming suddenly upon the priest in a furnace room. The priest was allegedly engaged in an act of bestiality with no children being present when the act started. There is no suggestion on the evidence that the priest had planned to expose the child to this perversion or had in any way foreseen the arrival of the child witness. The Crown argument that the counts involving bestiality should be included because they formed part of the alleged exploitive sexual activity of the Defendant with children is not supported by the facts associated with this particular allegation.

[554] The allegations of bestiality, unlawful confinement, uttering threats and common assault are not sufficiently similar to the other alleged acts of sexual misconduct involving children and adolescents to be included in the specific dispositional propensity that the Crown argues is probative of the actus reus. They do not qualify for admission as similar fact evidence for this reason.

[555] This Court is satisfied that there is sufficient similarity with respect to the other enumerated offences to potentially justify the admission of disposition propensity evidence to both prove the actus reus and to indirectly support the credibility and reliability of the individual complainants' evidence. Proof of the actus reus and the reliability of the complainants' evidence are live trial issues to be determined by this Court. To the extent that the Defence alleges fabrication of the complainant's accounts, the similar fact evidence is also potentially relevant to rebut such a suggestion.

[556] This does not end the Court's inquiry however. The Court moves now to consider the probative value of the tendered evidence in relation to these specific trial issues.

H. The assessment of probative value

[557] Probative value is derived from a number of factors. These factors include:

- a. the strength of the evidence that the similar facts actually occurred;
- b. the extent to which the proposed evidence supports the inferences sought to be made and;
- c. the extent to which the matters that it tends to prove are at issue in the trial.

[558] The similar facts tendered in this case have not been proven. They are mere allegations. There is no independent confirmatory evidence to support the veracity and the reliability of these witness's accounts. There is no forensic evidence available. There are no medical reports.

[559] The Court's fact finding process depends entirely upon the effectiveness of the process of cross-examination to uncover unreliability and dissimulation. For all of the reasons advanced earlier, the effectiveness of cross-examination has been impaired by the passage of time. Proof of all of the counts including those tendered as similar facts suffer from the same deficits. There is for all witnesses an inherent limitation in their ability to remember details of historic events. This is caused not only by the passage of time but also by the inherent limitations associated with these witnesses' tender age and cognitive immaturity.

[560] While these inherent weaknesses make proof of the historic similar fact much more difficult, it is arguable that the need for this type of evidence becomes greater where there is no other form of independent evidence to otherwise prove the alleged offences. Proof of the actus reus remains as critical to the prosecution of historic events as it does to more contemporary criminal allegations.

[561] The credibility of a complainant and the reliability of a complainant's account of an historic event is as much of an issue in this trial as it is in any other. To the extent that the reliability of a witness's memory becomes a central issue in prosecutions related to historic events, any evidence that can lend support to the reliability assessment is arguably of greater, not lesser importance to the fact-finding process.

[562] Does evidence related to a unique disposition propensity of the Defendant in this case make it more probable than not that the offences were committed as alleged by these complainants? Arguably it does. To the extent that this evidence can support the credibility and reliability of the individual complainants and provide some corroboration between complainants, it is of some assistance to the trier of fact.

[563] In the end result, the overall probative value is ultimately proportionate to the strength of proof of the similar facts upon which this inference is based. To the extent that proof of the similar facts is weak, the overall probative value of the similar fact evidence is also weakened.

I. The assessment of prejudicial effect

[564] Moral prejudice refers to the risk that the trier of fact will infer guilt from evidence related to a Defendant's bad character and general disposition to commit crimes. This type of risk is enhanced where the evidence relates to other alleged acts that are morally reprehensible or perverse. Where serious criminality or immorality is revealed by the evidence, a higher degree of probative value should ordinarily be required before admission is appropriate.

[565] Reasoning prejudice can take different forms. This kind of prejudice can cause the trier of fact to lose focus on the real issues in the trial. Distraction can occur where a trier of fact's ability to engage in a dispassionate and rational assessment of the evidence is undermined by sentiments of revulsion or condemnation. A loss of focus can also be caused by problems related to proof of the other acts. Conflicts in evidence related to proof of these other acts can result in a trier of fact spending much more time and energy in the resolution of these other conflicts than on the real issues of fact in the trial.

[566] The Crown has suggested that in this case the risk of moral and reasoning prejudice is reduced by a judge alone trial. The judge's legal training, intellectual discipline and knowledge of the law renders it less likely for the judge to be distracted by sentiments of revulsion or by side issues related to proof of the similar acts.

[567] The Alberta Court of Appeal in the case of *R v Villeda*, 2011 ABCA 85 at para18, 269 CCC (3d) 394, had this to say about the reasoning prejudice associated with the use of similar fact evidence in a judge alone trial:

The trial judge seems to have proceeded on the basis that the absence of a jury minimized the risk of forbidden reasoning and resulting prejudice to the Appellant. While it is true that judges, by virtue of their training and experience, are better able to instruct themselves regarding the dangers of similar fact evidence, the ability to self-instruct is not a panacea. Human nature and its attendant weaknesses and vulnerabilities may, on occasion, intrude upon the most rigorous and conscientious fact-finding. The spectre of moral or reasoning prejudice is always a concern regardless of who is sitting in judgment of the guilt or innocence of an accused.

[568] In this case no evidence has been presented that is extrinsic to the evidence already heard in the course of the trial. This is not a case where this judge is being exposed to any additional evidence other than that related to the outstanding trial matters and the matters for which guilty pleas have been entered.

[569] Reasoning prejudice is not necessarily reduced by the fact that this is a judge alone trial. It is the evidence used in support of the similar fact evidence that impacts reasoning prejudice. Where additional evidence external to the evidence of the trial is necessary to support the application, the risk of moral and reasoning prejudice is certainly present. This risk is enhanced even in a judge alone trial. Where the evidence related to similar facts forms part of the contested issues of fact in the trial proper, the risk of distraction is less significant. This risk can be effectively managed by a trial judge who self-instructs on the dangers associated with its use. The use of a lay jury may well bring a different assessment on this same issue.

J. The balancing of probative value and prejudicial effect

[570] The probative value of the similar fact evidence tendered in this case is of marginal usefulness, and is “borderline”. This was the description used by McLachlin C.J. in the case of *R v B (CR)*, [1990]1 SCR 717, 55 CCC (3d) 1, to describe the probative value of the similar fact evidence in that case which was nonetheless found to be admissible.

[571] The overall probative value of the tendered similar fact evidence is reduced by the weakness of proof of the many individual counts constituting the “other” similar facts. It survives this application only because the timing, frequency and similarity of the complaints lends sufficient probative value to surpass the moral prejudice associated with the other allegations. The other facts relied on by the Crown allege sexual misconduct by a priest against vulnerable parishioners. This type of conduct carries with it great moral stigma. The Court finds that the probative value of this evidence surpasses its prejudicial effect by only the narrowest of margins.

[572] When determining the ultimate question of guilt and innocence, great care will be taken to ensure that this similar fact evidence is given no more weight than it properly deserves.

VI. ANALYSIS

A. The burden of proof and the criminal standard

[573] Mr. DeJaeger is presumed by the law to be innocent of these charges. He does not have to establish his innocence. The burden of proof remains on the Crown throughout this trial. This burden never shifts to this Defendant. The standard of proof required to establish guilt is a high one. It is only proof beyond a reasonable doubt that can displace the presumption of innocence. Suspicion alone is not enough.

[574] Mr. DeJaeger has given up his right to silence. He has testified in his own defence at his trial on these allegations. If this Court believes the Defendant's evidence, he must be found not guilty. If the Court does not believe his testimony, but finds that his evidence raises a reasonable doubt about any essential element required to be proved by the Crown, Mr. DeJaeger must be given the benefit of that doubt. If, at the end of the day, this Court does not know who or what to believe, the law demands that the Defendant be acquitted. Once again, it is the Crown who must establish guilt. The Defendant does not have to prove his innocence.

[575] Finally, even if this Court rejects the Defendant's evidence, even if it finds that this evidence does not raise a reasonable doubt, Mr. DeJaeger can only be convicted if on all of the evidence his guilt has in fact been proved by the Crown to the requisite criminal standard.

[576] A criminal trial is not a credibility contest between Crown and Defence witnesses. The Defendant is entitled to the benefit of any reasonable doubt on an issue of credibility arising from the testimony of witnesses heard in this trial. It is not a matter of simply choosing one witness's version of events over another. Such an approach would suggest that the Defendant has some burden to persuade the trier of fact that his version of the truth is more accurate and reliable. This is never the case where innocence is at stake.

B. Count by count analysis

Count 1 (JA) – indecent assault on a male s.156 CCC

(For a summary of allegations see paras [140] – [148])

[577] There is very little detail provided by the witness to support the allegation of multiple indecent assaults. There are no memory cues that allow this witness to distinguish one event from another. There are no age appropriate descriptions given by this witness of his interaction with the Defendant when these offences were allegedly being committed. There is no description of how these events start. There is no description of how these many events end. There is very little description of the indecent assault beyond JA's assertion that he was fondled by the Defendant under his clothing many times. JA says that after he was fondled, he was often choked or strangled by the Defendant to the point of blackout. This is a bizarre allegation.

[578] This complainant did not disclose any of this alleged abuse to the police until 1993. His explanation for this delay was that he was afraid that the Defendant would suffocate him. It is unknown why this complainant would continue to fear suffocation by the Defendant after the Defendant left the community of Igloodik in 1982 never to return. This witness was 25 years old when he first gave his statement to the police.

[579] When JA provided Constable Lou Philips of the RCMP with a statement about the alleged abuse in 1993, he claimed that the abuse had occurred when he was between the ages of seven and nine. The 1993 statement was given when JA was in trouble for trying to harm a member of the RCMP.

[580] In JA's own words:

I was trying to harm RCMP. I was trying to harm other people and that's what Erik (the Defendant) want me to do...He (the police Constable) started questioning me so I got flashback and Erik was doing this, I'm doing this to Erik, so I started speaking.

Q: (Mr Kempt) So you had flashbacks at that time and that was the first time you told anyone about what happened with Erik?

A: Yes.

[581] At a different point in his testimony, JA had claimed that he first recovered a memory of his abuse when he was undergoing therapy for an addiction to alcohol in Yellowknife at the Northern Addictions treatment Center. JA was receiving treatment for a drug addiction. He says that he started to experience flashbacks related to this alleged abuse. This complainant then blamed his drug addiction on the Defendant who had allegedly given him paralyzing horsemeat when he was young. Even today, JA continues to believe that the Defendant is responsible for his addiction. The evidence does not disclose when he attended this treatment center or how long he was in therapy.

[582] There is no real evidence about this witness's memory retrieval process. Details of how the memory was recovered, when it was recovered, what triggered the recovery, the sequencing involved in the recovery of the memory, and the involvement of therapy in this reconstruction, is either unknown or covered superficially.

[583] A second statement was provided to the RCMP in 2011 by this complainant.

[584] This witness has made many claims of criminal activity by this Defendant that are unsupported by either charge or hard evidence of any kind.

[585] The only charge involving this complainant is a single count of indecent assault. There is no criminal charge laid against the Defendant involving choking, assault with a weapon, attempted murder, attempted rape, or the use of a noxious substance to facilitate the commission of an indictable offence. The Crown has led evidence through this witness of many other criminal allegations that are unrelated to the matter before the Court.

[586] The introduction of this evidence of bad character was without proper legal foundation and amounted to an attempt by the Crown to blacken the character of the Defendant.

- [587] It is readily apparent from the circumstances giving rise to these multiple accusations that this witness was motivated to use the Defendant as a scapegoat to escape censure for his own dysfunctional lifestyle. JA's many outlandish allegations against the Defendant were being used by him to explain and minimize his own responsibility for criminal acts that he may have committed in the past.
- [588] This Defendant at some undisclosed point in time applied for and received compensation from the Church for this alleged abuse. In November 2006, JA says he received the sum of \$28,000 for this claim. The evidence does not disclose what factual allegations were made by this complainant in support of this claim. When this claim was first advanced, there was clearly potential for this claimant to have consciously or unconsciously embellished the extent of physical and emotional abuse to secure a larger award.
- [589] Crown argues that since JA's compensation was paid out years ago, JA's statement to the police in 2012, and his present testimony in Court cannot be said to have been influenced by this desire for profit. While this may be so, it is also possible that a claimant who has committed himself or herself to a certain version of events in the past, may feel bound to continue to present that version of events in the future for fear of possible legal repercussions.
- [590] The Crown may have established evidence to suggest that this Defendant had the opportunity to commit the alleged offence. The similar fact evidence may lead to an inference of "inclination" on the part of the Defendant to sexually abuse adolescents by reason of a unique disposition propensity. More is required however.
- [591] A statement made by a witness that something happened must have sufficient detail to allow the Court to assess the statement's reliability. There is no magic in this. Such a statement is only as strong as the facts underpinning it.

[592] In assessing the reliability of this witness's evidence, the Court must take into account any evidence that suggests this witness's memory may have been tainted by pre-trial discussions with others about their experiences of abuse by the Defendant (see para 506). This potential for contamination undermines this Court's confidence in the accuracy of this witness's account.

[593] The quality and quantity of evidence led by JA falls well short of that required to prove the allegation beyond a reasonable doubt. Something may have happened to JA in the distant past, but this is not the standard of proof required by a criminal prosecution. The Crown has failed to prove this criminal allegation beyond a reasonable doubt.

[594] The Defendant is consequently acquitted of this charge.

Count 2 (CA) – indecent assault of a female s.149CCC

(For a summary of this allegation see paras [149] – [152])

[595] It is not entirely clear on the evidence what type of memory CA retains of the incidents involving the Defendant. The examination of the witness in this area was superficial. Memories of the alleged abuse appear to surface during conversations with others.

[596] Like JA, CA also alleges multiple incidents of abuse by the Defendant. There is, like JA, a lack of contextual detail to distinguish between events. CA describes the abuse in very general terms and without clothing individual incidents with any specific detail. There are no specific memory cues embedded in CA's description of events other than the reference to a typewriter being used by her on an undisclosed number of occasions.

[597] The alleged abuse was perpetrated by the Defendant in the presence of other children who are not named. There are no other witnesses supporting CA's allegations.

[598] At some undisclosed point in time this complainant applied for and received compensation for this alleged abuse. The details of this compensation claim are vague, but CA says she received at some point the sum of \$5,000 as settlement of this claim. The factual allegations used by this complainant in support of this claim are not in evidence.

[599] There is a long delay in CA disclosing this history of abuse to others. A statement was not given to the RCMP until February 2012.

[600] No disclosure of any kind was made to her now estranged spouse MA who is also a complainant in this trial. According to CA, CA and MA separated two years ago in 2012. CA is not asked why she delayed for so long before speaking of this experience to other friends or family members. There may be a perfectly good explanation for this, but it is not in evidence.

[601] At one point in her testimony CA says that no mention was made to any family member until approximately 2011 or 2012 when this complainant told a sister about what happened. This appears to be inconsistent with earlier testimony that suggested she had recovered at least part of the memory through discussions with her sisters. At page 1107 of the transcript, lines 12 through 16, CA says this:

Q: Do you find that the more that you and your sisters talk about what happened, the more things you can remember, the more clear you can remember what happened?

A: Yeah.

[602] The evidence does not indicate how the particular memories were triggered in these discussions. The type of memory held by CA is not clear. Examination by counsel of this witness's memory retrieval process was superficial. What is clear is that CA must have retained some memory of the abuse when she first applied for compensation from the Church. This application was made before the disclosure to her sister in 2011 or 2012.

[603] CA confirms that at around the same time of these allegations involving the Defendant, this complainant experienced some form of traumatic sexual abuse at the hands of another individual. The following exchange with CA takes place in cross-examination (p.1107 ln. 2-5):

Q: (Defence Counsel) Is it possible that you are confusing the memories with Erik (the Defendant) with the memories of the other person who abused you?

A: Yeah.

[604] In re-examination by the Crown, CA confirmed that she knows the identity of her other abuser and that her memory of the incidents involving the Defendant in this trial are different because the type of abuse was different.

[605] Evidence of potential contamination of this witness's account is present in the form of discussions with others about the abuse. The potential for tainting of this witness's memory undermines the reliability of CA's account.

[606] Crown evidence confirms that there was at least an opportunity by the Defendant to commit the alleged offence. Evidence of inclination by the Defendant is also available through the similar fact evidence.

[607] A determination by this Court that some form of abuse may have occurred or probably occurred is not sufficient to meet the criminal standard however. The evidence given by CA casts a pall of suspicion over the Defendant. However, for all of the reasons advanced earlier, this Court finds that it continues to have a reasonable doubt about the reliability of the evidence provided by CA.

[608] The standard of proof in a criminal prosecution, proof beyond a reasonable doubt, is a high threshold to achieve. The Crown bears this burden of proof, and it must do so with a body of evidence that meets this standard. This is so for a reason. Any lesser standard risks the conviction of the innocent and a possible miscarriage of justice.

[609] The Crown has failed to prove Count 2 beyond a reasonable doubt. The Defendant must therefore be acquitted.

Count 3 (DA) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [153] – [158])

[610] DA describes a single incident of fondling of his genitals under his clothing while seated in the Defendant's lap. The incident is said to have been very brief.

[611] DA applied for and received compensation from the Church for this abuse at some undisclosed time. He received the sum of \$30,000 as a consequence of doing so. It is unknown when DA received this award. It is unknown what factual allegations were used to support this claim for compensation. The award of \$30,000 seems very high compared to what others received for analogous incidents of abuse.

[612] DA says that when this incident happened he had no real understanding of sexuality and did not appreciate that the touching was wrong. He says that he thought nothing of it, and did not dwell on the matter until much later in his life when he came to understand about sexuality, homosexuality and sexual abuse.

[613] DA claims to have recovered or revived his memory of this abuse later in life through discussions with others. DA confirms that he did speak to others about their experiences with the Defendant when he was older. DA says that his memory of this incident started to gradually return and sharpen. It is unknown who he spoke to and when these discussions took place.

[614] The following exchange occurs with defence counsel during cross-examination (Transcript p.639 lines 18 - 27 and p.640 lines 1 – 12):

Q: So it wasn't until your late twenties that you first started trying to remember what had happened with Erik back then?

A: Yes.

Q: And had --

A: But everything came back to me when I tried to remember and when I was talking to my friends, all of the stuff came back to me like it was yesterday some of it. And some of it I just tried to ignore and back away from it.

Q: So when you started talking to your friends about what had happened with Erik, it all started coming back to you?

A: Yes.

Q: And who were those friends you talked to?

A: D, M, G, and some other victims that were on the same boat with me. I mean, I'm saying same boat, some of the people that were on the same situation with me. We were talking about it for a bit.

Q: So you knew they'd been abused as well?

A: Yes.

[615] This witness concedes that his memory of some of the details of the event is fuzzy, or "on and off".

[616] In later testimony DA blames the Defendant for influencing his sexual orientation as a bisexual or homosexual. DA acknowledges that some years ago he had been charged and convicted of sexual crimes against other youth. He claims that his own abuse by the Defendant caused him to think that fondling of others was normal and socially acceptable. DA says that it was not until he was charged at age 25 that he started to think back to the incident involving the priest.

[617] The timing of this memory recovery is suspicious. DA, like JA (Count 1) seems to use the alleged abuse by the Defendant as a convenient means of deflecting blame to someone else for his own actions.

[618] There was very limited examination and cross-examination of this complainant on his memory revival or retrieval process. The Court's ability to adequately assess the extent to which DA's memory was influenced by DA's discussions with other complainants is compromised by this. It is unknown what was said in these discussions to trigger the memory recall that is the subject of this complaint. This evidence of potential contamination of DA's evidence directly impacts the Court's assessment of the reliability of DA's account of what happened.

[619] At the end of the day, the evidence of opportunity by the Defendant to commit this crime and evidence of inclination provided by the similar fact evidence is not sufficient to establish the Defendant's culpability beyond a reasonable doubt. Suspicious circumstances do not elevate the Crown's proof to the level needed to meet the criminal standard.

[620] The Court has been left with insufficient evidence about the circumstances in which this memory retrieval took place. The Court is left with suspicious circumstances about the memory itself. It seems that this memory may have been recovered contemporaneously with criminal prosecution of this witness for a similar type of offence.

[621] The Crown has failed to prove this offence beyond a reasonable doubt. The Defendant is therefore acquitted of this count.

Count 4 (MA) – indecent assault of a male s.156CCC

(For a summary of this allegation see paras [159] – [166])

[622] A review of this witness's evidence reveals multiple problems. This witness's account of the alleged incidents with the Defendant is disjointed. There are gaps in the memory. The sequencing of events is not clear.

[623] This witness's evidence lacks coherence. It is scattered, confusing and incomplete. There are significant gaps in the memory attributed to blackouts.

[624] With respect to the first alleged incident involving fondling of genitals, it is not clear how long this incident lasted or where it occurred. It is unknown how this incident started. It is unknown how this incident ends. There is really nothing more than a generic description of the act itself, a touching of MA's genitals inside his pants.

[625] MA describes a second incident that allegedly occurs inside the Defendant's tent. MA is unable to say how this incident ends. He is asked to describe what he sees the Defendant doing to each of the other children inside the tent and to identify each victim. He is unable to do so.

[626] With respect to the 3rd incident alleging a fondling of MA's buttocks, MA says this (Transcript p.948 lines 7 to 25):

Q: You mentioned earlier that there was a time where he pulled your pants down to your thighs. Can you tell us about that time?

THE INTERPRETER: A: We were down by the shore as usual. We spend a lot of time down by the shore that time. We were on Qamitiq when I became aware that I was sitting on Erik's lap. He took my pants down and he was fondling my bum.

Q: Was there anyone else around when this happened?

THE INTERPRETER: A: No

Q: And did he say or do anything?

THE INTERPRETER: A: He was speaking in English, but I could not understand what he said.

Q: Did he have anything in either hand?

THE INTERPRETER: A: He had one candy and one cookie in his hands.

A. And telling me not to spread the word.

[627] This witness is unable to say how this incident begins or how it ends.

[628] This witness is quick to attribute words to the Defendant when on his own admission the witness could understand no English. There is no suggestion on MA's evidence that the Defendant could speak Inuktitut (Transcript page 941 lines 5 – 10):

Q: Did Erik Dejaeger say anything when he put you on his lap?

THE INTERPRETER: A: Even though I spoke no English at the time, but I would understand what he was saying to me. He would say that he did not like us and he said that we were little devils.

[629] This witness says that he witnessed the Defendant perpetrating some form of abuse upon his young cousin KK at the qamatiq, but he does not say at any time what he sees the Defendant doing despite repeated attempts by Crown to get him to do so.

[630] MA never discloses this abuse to anyone within his own family until 2011. MA claims to have told his mother about the abuse the week before he spoke to the RCMP. This witness was not asked and does not explain why he delayed reporting of the complaint for so long. It is not clear on the evidence what motivated this complainant to do so in 2011.

[631] MA first provided the RCMP with a statement on February 11, 2011. MA was re-interviewed by the RCMP in 2012 and provided additional details of what he had seen to the police at that time. The night before he testified in this trial MA was interviewed by Crown. He again provided additional details not previously disclosed to the RCMP.

[632] While testifying, MA was quick to allege that he had seen others being abused, including other children within his family and extended family but he remained very reluctant to say what he saw. Without any details, the confirmatory value of this witness's evidence is negligible. The Court has no real basis to assess the accuracy of these observations and so gauge their reliability.

[633] MA readily admits that he experienced difficulty in recalling the alleged incidents involving the Defendant. MA experienced blackouts. These blackouts clearly interfered with his memory of what he had seen. MA attributes these blackouts to the fear he experienced as a young child. The many gaps in this witness's memory makes it impossible to properly assess the accuracy of the memory that this witness says he does recall.

[634] MA describes his memory in his own words in this way (Transcript page 940 lines 4 – 7):

THE INTERPRETER: A: Before Erik came, everything was bright, the gravel was white. But after Erik came into the camp, it seemed everything was dark, even the gravel turned dark.

[635] There is a potential for contamination of this witness's account by reason of discussions with other complainants. The Court does not have sufficient information before it to properly assess whether, or to what extent, MA's memory has been contaminated by these discussions. It is not clear from the examination and cross-examination of this witness what parts of MA's memory are continuous and what parts may have been recovered by this witness at some later date following his discussions with others.

[636] The Court is left with a reasonable doubt by the poor quality and meagre quantity of evidence related to this indecent assault. The Court's doubt is magnified by reason of its inability to properly or adequately assess the reliability of the information being provided by this witness.

[637] The evidence falls well below that necessary for a conviction on proof beyond a reasonable doubt. The Defendant must consequently be acquitted of this count.

Count 5 (JA) – unlawful confinement of JA s. 247(2)CCC

Count 6 (JA) – buggery of JA s.155CCC

(For a summary of these allegations see paras [167] – [177])

[638] JA testified in Inuktitut through an interpreter. There were dialectal differences between this witness's use of Inuktitut and that of the interpreter. JA suffers from a significant hearing impairment. This interfered with her ability to be immediately responsive to questions put to her in chief and in cross. These three factors, lack of education, language and hearing all combined to make examination of this witness a significant challenge for counsel, the interpreter and the Court.

[639] JA at all times appeared to be making an honest and sincere effort to respond to the questions put to her on the stand. Much of what was being communicated by this witness was done demonstrably by the witness using her hands and body. In many instances counsel did not ensure that there was a verbal record made of what the witness was demonstrating. A record of this evidence has consequently been lost.

[640] There are some small gaps in JA's memory of the incident, but these are not significant. JA does not recall what she was sent to get by the Defendant upstairs in the Mission. Nothing turns on this. She would have had no particular reason to remember this detail. She did have a reason to focus on what happened in the bedroom however. JA gives a detailed account of what takes place in a bedroom and on a bed with the Defendant.

[641] After her right hand and her feet are secured to a bedframe with tape, JA experiences great pain in her rectum. JA describes this event as follows:

“...I was in a lot of pain. The experience I went through was very painful, and it felt like a needle going through.”

[642] There is no description of the act beyond this. The duration of this pain is unknown. There is nothing said by JA to suggest any rhythmic movement or thrusting of the Defendant's body behind her in association with this pain. There is no indication that JA experienced any skin to skin contact when this painful event occurred. At no time does JA say that she sees the Defendant naked or partially naked either before or after this event. The Defendant is not observed to be pulling up his pants or otherwise rearranging his clothes after the event ends.

[643] The sequencing of events being described by JA is logical and coherent. There are contextual age-appropriate references to feelings being experienced by her during this event. JA does not embellish her account. Having been tied to the bed she is unable to describe what the Defendant was doing behind her or how he did it and does not attempt to do so.

[644] JA does say that she later discovers fluid on the side of her face and on her ear. She now assumes that this was the Defendant's seminal fluid, but there is nothing said by her to confirm how this could be so. There is no suggestion by JA that she ever observed the Defendant's exposed penis at any time. There is nothing about JA's description of the fluid to explain what this in fact was. JA to this day attributes her hearing loss to the Defendant's sperm coming into contact with her right ear.

[645] JA also showed the Court some scarring below her right thumb on her wrist. She says that she sustained this injury trying to get free of the tape. The wound subsequently became infected. It ultimately healed leaving a scar.

[646] JA indicates that in the years following this incident she never said anything to anyone about the abuse because she was scared to do so. The Defendant left the community of Igloolik in 1982. This witness is not asked to explain why this fear continued so long after the Defendant left the community never to return.

[647] At some unknown point in time JA applied for and received compensation from the Church for the Defendant's sexual abuse. She ultimately received \$16,000 as settlement for this claim. It is unknown what factual allegations were made in support of this claim. It is unknown when this money was received. It is unknown what caused this complainant to overcome her fear of the Defendant at this time to cause her to come forward with this disclosure.

[648] The evidence does not disclose when JA first gave a statement to the police about this abuse. Once again, there is no evidence to explain what prompted JA to overcome her fear and so enable her to talk about what happened. There may be a rational explanation for this but it is not in evidence. JA was not asked by counsel to explain what prompted her to finally complain about the abuse.

[649] Identity is not at issue in this trial.

[650] There is no evidence to suggest that this witness's memory of these events was recovered at some later point in time. There is no evidence to suggest that this witness's evidence may have been contaminated through earlier discussions with others about their experiences. JA's description of this event includes many graphic details. JA's description of this incident has both a beginning and an end. There are no real gaps in her memory of what happened in between.

[651] This incident either happened as alleged or it did not. There can be no middle ground. This is not a case where there is some possibility of JA making an honest mistake about what happened. JA's account is either real, or it has been deliberately fabricated. There is nothing developed in cross-examination to lead this Court to suspect JA of fabrication.

[652] The Defendant has taken the stand and denied any involvement in the commission of these two offences. He insists that the incident did not happen as alleged by JA or at all. The Defendant's denial rings hollow. His claim that children were not usually upstairs in the Mission in bedrooms is contradicted by what Nicole Arnatsiaq says she observed during her stay at the Mission. By the Defendant's own admission at least some of the offences for which guilty pleas were entered occurred in the priest's bedroom. JA appears to have a specific knowledge of the layout of the Defendant's bedroom that she would not otherwise have unless she had been upstairs in the Mission. The Court rejects the Defendant's evidence as it relates to this incident , and finds that it does not give rise to a reasonable doubt about what happened.

[653] The Court is satisfied beyond a reasonable doubt that JA's account of what happened in the bedroom is both credible and reliable.

[654] JA's description of what happens to her on the bed falls short of establishing a completed act of buggery however. At no time does she describe any act or actions consistent with anal intercourse. Her description of the painful event is equally consistent with the forced insertion of an inanimate object into her anus. There is inadequate evidence to substantiate an offence of attempted buggery.

[655] The Defendant is found not guilty of the crime of buggery (count 6), but guilty of the lesser included offence of committing an indecent assault on JA contrary to section 149 of the Criminal Code. He is also found guilty of the count of unlawful confinement (count 5) contrary to section 247(2). While there was an element of confinement that was integral to the commission of the indecent assault, the groping or fondling of the complainant preceded the application of the tape.

[656] The offence of indecent assault was thus complete before the confinement of the complainant occurred on the bed. For this reason, the Court declines to enter a conditional stay in relation to this count in accordance with the principles expressed by the Supreme Court of Canada in the case of *R v Kienapple*, [1975] 1 SCR 729, 1974 CarswellOnt 238F.

Count 7 (JA) – uttering a threat to cause death to JA s. 331(1)(a)CCC

[657] After the incident in the bedroom described in Counts 5 and 6, JA says that she was told by the Defendant not to tell anyone about what he had done. She then says that the Defendant slapped her hard in her ear. JA says that she feared the Defendant. However, at no point in JA's testimony does she JA say that this Defendant made a death threat against her. There is no credible evidence to support this charge on proof beyond a reasonable doubt. This charge is consequently dismissed.

Count 8 (JA) – indecent assault of a female s.149CCC

[658] JA has alleged that on one occasion while she was sitting on the Defendant's lap in the downstairs kitchen of the Mission she was fondled by the Defendant. JA says that she was colouring at the time. She was sitting astride the Defendant's knee. There were a number of other children present in the kitchen when this alleged incident occurred. It is alleged that JA was fondled in the area of her breast and vagina on top of her clothing by the Defendant.

[659] None of the other potential witnesses named by JA have confirmed what this witness told the Court happened on this occasion.

[660] JA is unable to give any specific details about how this event ended. The witness makes no reference to how she reacted to this touching. She was not asked by Counsel how this touching event made her feel. There are no childlike memory cues included within JA's description of this event.

[661] The complainant did not disclose this particular fondling event to anyone in or outside her family for many years. She was not asked why this was so.

[662] The Crown's evidence establishes that the Defendant had the opportunity to commit this offence. The similar fact evidence suggests that the Defendant had a dispositional propensity to do so. More is required however.

[663] The Court must be satisfied that the Crown's evidence is reliable. The absence of any corroborating evidence from any of the other named children who were present when this event took place is troubling. The scanty details given of this incident does not assist the Court in its determination of reliability. The Court cannot consequently find that the Crown has proved this offence beyond a reasonable doubt. The Defendant is consequently acquitted of Count 8.

Count 9 – bestiality with a dog s.155CCC

(For a summary of this allegation see para [176])

[664] It is not clear on JA's evidence how this alleged incident started. It is not clear how or why the children came to be in this shed. No evidence was given as to how the incident ended. No explanation was given for why the children were all holding each other or touching each other on the shoulder.

[665] There is no real description of what JA actually saw except for a fleeting reference to the Defendant having sex with the dog "through its rectum".

[666] This statement was not accompanied by any real details about what JA actually observed. JA does not say whether she saw the Defendant clothed, partially clothed or naked. She does not say and is not asked whether she saw the Defendant's penis. No description is given of any movement of the Defendant's body while this alleged sex act was being performed. There is no indication where this witness was in relation to the animal when she made this observation. There is no indication of her angle of observation or approximate distance to the Defendant. This witness was not asked how long she watched this event. The other children named by JA who were allegedly present have not provided any confirmatory evidence in relation to this allegation.

[667] The Crown asked this witness to give the Court more information about what it was she saw, but JA was unresponsive. JA had started her testimony about this incident by saying through the Interpreter "I think he was having sex with the dog" (transcript p.120 lines 7 and 8).

[668] Given the lack of detail associated with JA's testimony and her unwillingness or inability to respond to requests for additional information, this Court is unable to properly assess the accuracy or reliability of this witness's evidence in relation to these counts.

[669] Given the limited quality and quantity of this witness's evidence, the Court is not satisfied that the observations are reliable. The Crown has consequently failed to prove this allegation beyond a reasonable doubt.

[670] The Defendant therefore stands acquitted of Count 9.

Count 10 (MA) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [178] – [184])

[671] MA says that he was playing in the Mission with other children. He was downstairs when he was called upstairs by the Defendant. The Defendant said he wanted to show him something. MA cannot remember the names of the other children who were with him at the time. Nothing turns on this. He had no particular reason to remember who he was playing with. Given his tender age when this event occurred and, the lapse of time, it is not surprising that this detail has been forgotten.

[672] Once upstairs, MA says that he was summoned to a living room area and asked to sit on the Defendant's lap. The Defendant was sitting on a couch. MA alleges that the Defendant then put his hand inside his pants and fondled the witness's genitals and anus. MA is not sure of the duration of this event. It might have been as long as half an hour.

[673] In cross-examination, the Defence establishes that in a written statement provided to the RCMP in 2012, MA had claimed that the fondling in the upstairs living room occurred while the Defendant was standing beside the couch and not while seated in the Defendant's lap. MA is not asked by either Defence or Crown in re-examination to explain this discrepancy in his description of the first incident. There was very little examination of this witness about the nature of his memory of this alleged abuse. It is not clear what parts of MA's memory were repressed or recovered and what parts are continuous.

[674] MA was questioned by the police in 1994 about his possible involvement with the Defendant. MA claimed at that time that nothing had ever happened with the priest. MA now acknowledges that he had lied to the police. MA explains this by saying that he was feeling overwhelmed by events in 1994 and did not want to have the stress of dealing with the justice system at that time. He had lost his mother a few years before and his father was then terminally ill. MA also indicates that he did not think at that time that anyone would believe him if he disclosed the abuse. Given the life circumstances of this witness in 1994, the Court accepts these explanations. They have a ring of truth.

[675] MA did not tell anyone about this alleged abuse for many years. He claims to have discussed it with an elder Raigeelie Uyarasuk in 2005 or 2006. This elder passed away in 2009.

[676] MA says that he never discussed his victimization with his former spouse who, to his knowledge, was also an alleged victim of the Defendant. MA was aware that his spouse had applied for and received monetary compensation from the Church in the amount of \$7,500.

[677] MA has never applied for any form of compensation from the Church for this alleged abuse. There is no basis in evidence to suggest that this witness's eventual disclosure to the police in 2012 was motivated by a desire to profit from a claim of compensation.

[678] The Crown has established through independent evidence that the Defendant had the opportunity to commit this offence. The Defendant himself concedes that he has held children on his lap during his stay in Igloolik. The similar fact evidence suggests that this Defendant had a dispositional propensity to sexually abuse adolescents through this type of fondling activity. There is some evidence of inclination.

[679] The Defendant's denial of this event is not credible and does not raise a reasonable doubt for all the reasons set out in paragraphs 474 to 484. While there are clearly some deficits in MA's ability to recall contextual details, on the whole of the evidence the Court is satisfied that MA's recall of the core event is both credible and reliable. The Court is satisfied that the Crown has proved the offence charged beyond a reasonable doubt.

Count 11 (MA) – indecent assault on a male s. 156CCC

(For a summary of this allegation see para [184])

[680] MA was not asked to describe the touching involved in this incident. MA does not say whether there was any movement of the Defendant's hand over his body consistent with petting, fondling or stroking. The witness was not asked to describe the duration of this touching. The touching of the bum was also accompanied by a touching of the shoulder and back and a compliment allegedly given by the Defendant to MA about doing a good job of washing dishes. MA's account does not include any age-appropriate descriptions of his interaction with the Defendant when these events occurred. The lack of details given by this witness in relation to this alleged incident is troubling.

[681] Two children, TA and LA were alleged to be present during this second incident. TA and LA have not been called as witnesses to corroborate any part of MA's account of this incident. The absence of any confirmation by these potential witnesses is troubling. No explanation has been offered by the Crown to account for their failure to support MA's account.

[682] When first asked by Crown to describe this second incident MA says this (Transcript p. 481 lines 14 – 18):

Q: Now after that one was over, did Erik ever touch you again in a bad way?

THE INTERPRETER: A: Yeah, but it's not too clear how and what exactly happened because it wasn't as bad as some.

[683] MA does say that as a result of this touching he immediately pulled away from the Defendant and there was some sort of scuffle with the Defendant as a result.

[684] The absence of any real description of the touching alleged in this case does not allow this Court to conclude that the offence of indecent assault has been proved beyond a reasonable doubt.

Count 13 (LA) – unlawful sexual intercourse with LA s.144CCC

(For a summary of this allegation see paras [185] – [191])

[685] LA's account of the rape is coherent. It is without gaps except for the brief time when this witness is in black out. The blackout is directly linked to trauma and is understandable in these terms. This blackout is of brief duration. There is both a beginning and an end to this event. The description of the incident is full of contextual details. The sequencing of events is logical. The use of a garbage bag by the Defendant to protect the couch from being stained with blood in the aftermath of intercourse is an unusual and memorable detail.

[686] In cross-examination LA was challenged on her description of the bed being a bunk-bed and on her assertion that the Defendant was wearing a black cassock and priest's collar when these offences were committed. If indeed the descriptions of clothing worn and type of bed are in error, these mistakes are not necessarily critical to the assessment of LA's reliability as a witness. A young child would have had no particular reason to have taken note of these things and may be forgiven for this kind of mistake.

[687] An error made by this witness as to the nature of the toilet in the upstairs lavatory is similarly not significant. This young witness can be forgiven for not noting this detail. Ms. Arnatsiaq and Father Lechat both testified that the toilet looked like a regular toilet though it had only a honey-bucket underneath.

[688] Subsequent to this event LA says that she quits school and never returns to the Mission. Attendance at the Mission for religious instruction was mandatory for children enrolled in school. LA says that she quit school in order to avoid having to return to the Mission.

[689] Eight years ago this complainant applied for and received compensation from the church related to claims of sexual abuse by the Defendant. LA received the sum of \$66,000. It is unknown what factual allegations accompanied this claim. LA says that she decided to speak to a lawyer about her victimization because she had developed a problem with anger. She had started to hit her children. LA believed that this anger had something to do with her earlier victimization as a child.

[690] In cross-examination LA admits to discussing the Defendant with other named individuals like WI and JN. In these discussions others had tried to help LA remember the abuse by the Defendant. LA said that she did not want to talk about it because she had been beaten on at least ten occasions by her mother when she made these disclosures. Her mother's advice was always been the same. She is told to forget the Defendant and not talk about him to anyone. Talking about her history of abuse usually resulted in LA becoming angry. It is unknown what information passed between WI, JN and LA during these discussions.

[691] LA did attend the Health Center on three occasions for counselling related to this sexual abuse. It is unknown when this counselling took place. It is unknown who LA saw at the Health Center. LA says that she did not want to talk about the abuse because she did not trust the counsellor. The counsellor was there to supposedly help LA deal with her blocked or repressed memories of this abuse.

[692] A statement was not provided by LA to the RCMP by until April of 2011. It is unknown why LA waited so long after making her application for compensation to speak to the RCMP about her allegations.

[693] LA admits in cross-examination that she was aware of the rumors circulating in her community about what the Defendant had done. She says that she tried to ignore these stories. She blames the Defendant for scarring in her womb which is said to have resulted in seven miscarriages. LA has talked about her abuse by the Defendant a few times with her husband of 23 years. It is unknown when these discussions took place.

[694] LA's mother did not give any evidence in this trial. It is unknown whether LA's mother is still living. There is no evidence confirming any of the details alleged by LA with respect to her interaction with her mother.

[695] The Court rejects the Defendant's bare denial of Count 13 for all of the reasons outlined in paragraphs 474 through to 484. This denial does not raise a reasonable doubt.

[696] The evidence given by LA in relation to the rape has all the hallmarks of reliability. LA's memory of this incident is coherent. It is both detailed and age appropriate. There is nothing developed in cross-examination to suggest that this witness's account of the rape was deliberately contrived to enable LA to obtain compensation. There is nothing on the evidence to suggest that LA's memory of this event was recreated in therapy or through discussions with others. This witness's demeanor on the stand when she spoke of the rape was entirely consistent with what she was then describing.

[697] The Court is satisfied that the Crown has proved Count 13 beyond a reasonable doubt. A conviction is entered accordingly.

[698] While examining LA in chief, Crown counsel had this witness lead evidence to the effect that the Defendant gave LA and a number of other children a little green pill on one occasion that caused LA to get very sleepy and black out.

[699] This evidence was improperly elicited through a leading question (transcript page 163, lines 20 – 21). This evidence of alleged misconduct appears to be unrelated to any of the charges before the Court. The introduction of this evidence by Crown infringed the rule against bad character evidence. No legal foundation was established by the Crown to justify the admission of this type of evidence. In arriving at the ultimate decision on these charges, the Court has disregarded all of LA's evidence related to this pill.

Count 15 (LA) – uttering threats of violence to LA for the purpose of compelling LA to masturbate the Defendant s.381(1)(a)CCC

[700] With respect to the charge of uttering threats (count 15) a review of the transcripts of this witness’s testimony confirms that there is no direct evidence of any kind referencing threats of violence being made by the Defendant for the purpose outlined in this count. The complainant does say that she was told by the Defendant that she had to remove her clothes. This scared her. The complainant says this (Transcript page 156 lines 2 – 7):

Q: Did he say anything to you that caused you to be scared?

A: Yeah he said he was going to do something bad to me.

Q: And did he ever do anything bad to you?

A: No, because I let him try to have sex with me.

[701] While this was “some evidence” sufficient to defeat a no-evidence motion brought by defence at the end of the Crown’s evidence (See *R v DeJaeger (no. 1)*, 2014 NUCJ 4, 113 WCB (2d) 191), this evidence falls far short of that necessary to prove the offence charged and particularized in the indictment beyond a reasonable doubt.

[702] The Defendant must therefore be acquitted of count 15 (threatening).

Count 16 – bestiality with a dog s.155CCC

(For a summary of this allegation, see paras [193] – [194])

[703] With respect to the charge of bestiality with a dog (count 16) LA claims to have witnessed this event with JA (count 9) JN, and one other unnamed person. LA claims to have seen this event take place in the back-porch of the Mission. The children are lined up in the hallway to watch.

[704] There is no indication in LA’s description of the event how this incident starts. LA says that she flees the area after she sees the Defendant start to do something to JA. LA says that the involvement of JA scared her. LA is not able or willing to say what the Defendant was doing to JA that caused her this fright.

[705] LA says that she saw the Defendant standing behind the dog with his pants down. She says that she sees the Defendant “moving to the dog”. Crown counsel asks for no clarification of what this means. It is unknown how far away LA was from the Defendant when she makes this observation. It is unknown what angle of observation LA had relative to the Defendant. It is unknown what lighting conditions were available in this back-porch. It is unknown what time of day it was. No substantive details were elicited by Crown counsel in his examination of this witness.

[706] JA’s evidence (described in count 9), was very different. JA testified to an incident occurring outside in a shed where children were lined up by the Defendant to watch. It is unknown whether JA’s description of the events relates to what LA says she saw on this occasion. There are significant differences between these two accounts. JA makes no mention in her testimony of seeing the Defendant engaged in an act of bestiality with his dog in the back porch.

[707] The meagre and fragmentary details provided by LA in relation to count 16 raises a reasonable doubt about the reliability of this witness’s account of this incident. A concern about the reliability of this witness’s memory is heightened by potential contamination of this memory through ongoing discussions with others about abuse by the Defendant. The Crown has not proven count 16 to the necessary criminal standard.

[708] The Defendant must therefore be acquitted.

Count 17 (LA) – indecent assault on a female s.149CCC

(For a summary of this allegation, see para [195])

[709] With respect to the charge of indecent assault (count 17) LA’s description of this alleged offence is fragmentary. LA says that she and her cousin DN were required to undress by the Defendant. The Defendant was lying on the floor with his penis exposed. The children were directed to each sit astride one of the Defendant’s legs and masturbate him.

[710] It is not clear how this incident starts or where it occurs. There is no description of how the event ends. The duration of the event is unknown. The witness is asked what room the event occurred in and is not responsive to this question.

[711] DN (count 52) has testified in this proceeding. She does not give any evidence in relation to this incident.

[712] The meagre and fragmentary details provided by LA in relation to count 17 raises a reasonable doubt about the reliability of this witness's account of this incident. The Crown has not proven count 17 to the necessary criminal standard.

[713] The Defendant is therefore acquitted of this count.

Count 18 (LKC) indecent assault of a female s.149CCC

Count 19 (LKC) indecent assault of a female s.149CCC

Court file# 07-13-95

Count 1 (LKC) unlawful sexual intercourse with LKC – s.144CCC

Count 2 (LKC) unlawful sexual intercourse with LKC – s.144CCC

Count 3 (LKC) unlawful sexual intercourse with LKC – s.144CCC

(For a summary of these allegations see paras [197] – [217])

[714] LKC's evidence as a whole was coherent and complete. Many age appropriate details were given of LKC's interactions with the Defendant when these alleged events transpired. The details provided are graphic.

[715] This witness is able to describe the upstairs layout of the Mission with some degree of accuracy. In particular, LKC is able to describe the inside of the attic which was the alleged location of the two rapes described by this witness. If children were not permitted upstairs in the Mission as alleged by the Defendant, it is remarkable that this witness would be able to describe what was upstairs in such detail.

[716] LKC did not give a statement to the RCMP until 2012. She readily admits that in this 2012 statement she failed to mention anything of the incidents involving the attic despite being asked specifically by the police about it. She claimed to have a memory crawling in the attic after the priest but remembered nothing after that. LKC told the police that she was then having many problems with blocked or repressed memories. The revelations involving what happened in the attic (court file # 07-13-95) were made by this complainant hours before she was scheduled to testify in the trial proper.

[717] LKC explains in both her examination in chief and her cross examination why she kept silent. Following the incident involving her younger sister RK, LKC says that both girls made a solemn promise to each other that they would never tell a soul about what had happened. Their sexual involvement together would have been very embarrassing were it to become known. Their mother would not believe them anyway and they likely would be punished again. LKC says that her younger sister had taken the secret to her grave, and in 2012, LKC says that she was extremely reluctant to break the promise made to her sister.

[718] In 2012, LKC says she deliberately minimized the number and seriousness of allegations against the Defendant. She was an unwilling participant in the interview by the RCMP. LKC now says that her claim to the police in 2012 that she had blocked memories of the abuse was not true, and that her memory of what happened has been a continuous one.

[719] The Court accepts this explanation. The amount of detail accompanying LKC's description of the alleged offences is significant, and suggests that LKC has had a continuous memory of the events that she now describes in Court. The inconsistency between what LKC said in her statement to the police in 2012 and what she now tells the Court has been adequately explained. This explanation has the ring of truth.

[720] LKC says that in the months following the giving of her statement to the police in 2012, she decided that she could not continue to remain silent. LKC says that the abuse had been poisoning her relationships with others, particularly males. She explained that she now wants to continue her healing journey and put the past behind her. Her younger sister was dead and could no longer be harmed by the disclosure.

[721] LKC concedes that she has heard allegations of abuse by the Defendant from her siblings and her nephews.

[722] LKC also admits that she was sexually victimized by a number of other persons around the same time that these alleged incidents with the Defendant occurred. She claims to have no confusion in her mind about what the Defendant did to her over those years. She is certain that she has accurately described the events in Court.

[723] The Defendant has denied involvement in any of these offences. Identity is not in issue and has been admitted. The Defendant has suggested that there never was any youth involved in chores or clean-up at the Mission. For the reasons given in paragraph 480, the Court finds this statement to be unbelievable and self-serving. The Court finds that it is more likely that LKC and other youth were enlisted to clean-up after children's play time at the Mission. It is unlikely that the priest would have taken it upon himself to do this type of clean-up by himself without enlisting the help of youth that had been involved. LKC's detailed knowledge of the layout of the upstairs and the attic area is more consistent with someone who has been a visitor to these areas than someone who has not. Once again, the Defendant's assertion that children were not permitted by him to be upstairs is not believable.

[724] The Court rejects the Defendant's general denial and finds that this does not raise a reasonable doubt. LKC's evidence is reliable. There is nothing developed in cross-examination that is not explained and explainable. This is not a case of a recovered memory. There is nothing to suggest that this evidence has been fabricated.

[725] The Defendant is convicted of Count 18 and 19. He is also convicted of counts 1 and 2 on Court file #07-13-95. The Crown has failed to prove Count 3 of this information as charged, however. The evidence does establish the lesser offence of committing an indecent assault on LKC contrary to section 149 of the Criminal Code as it then was. The Defendant is therefore found not guilty of the offence as charged but guilty of an offence contrary to section 149.

Count 20 (WI) – indecent assault on a female s.149CCC

Count 21 (WI) – indecent assault on a female s.149CCC

Count 22 (WI) – indecent assault on a female s.149CCC

(For a summary of these allegations see paras [218] – [230])

[726] There were many other children present in the room when WI says she was first fondled by the Defendant. None of these other potential witnesses have confirmed seeing the incident described by WI.

[727] With respect to the second incident, WI does not give any real description of what was happening beyond saying the Defendant was trying to put his penis in her vagina. It is unknown whether WI saw the Defendant's penis exposed. She gives no evidence about the state of the Defendant's clothes when he was making this attempt. This incident ends when WI defecates. The Defendant is alleged to have dragged WI down to the river to clean out her soiled pants in the half frozen slush of the river. This is said to have happened during the day.

[728] WI says that one Marie Airut came upon her by the river side. WI says that she lied to Marie about how her pants had become soiled. Marie Airut has not been called by the Crown to verify any part of WI's evidence in this trial. There is no explanation in evidence for why the Crown has failed to produce this important confirmatory witness to support WI's account to the incident.

[729] At some point after this incident WI tells GN, DN and TI about what had happened upstairs with the Defendant. WI claims to have told the others that the priest can be stopped by defecating. It is not clear why WI summoned up the courage to speak to others about this incident when she feared removal from her parents if she spoke about the incident.

[730] There is no evidence given by WI in relation to the third incident involving RU that relates to an alleged indecent assault on WI herself. Taken at its best, WI's evidence suggests that while an indecent assault may have been perpetrated on RU, there was only a common assault committed in relation to WI.

[731] RU is now deceased and is unable to provide any confirmatory evidence related to this alleged third incident.

[732] WI concedes that in later years she spoke of her own experiences to others. In particular she discussed what happened with JN. It was JN who later encouraged WI to see a lawyer.

[733] At some undisclosed point in time WI applied for and received compensation from the church for the abuse. WI received the sum of \$56,000 approximately ten years ago. It is unknown what factual allegations were made by her in support of this claim.

[734] While this witness claims to be confident in the sequencing of these three events, she cannot say how much time passed between each one.

[735] In cross-examination WI concedes that she had blocked out some, but not all of her memories of abuse by the Defendant until she started talking to JN. She then started to get flashbacks and over time was able to piece together what happened in those early years. WI says that she continues to this day to get flashbacks from time to time. She does not appear at this point to be recovering any new memories of the alleged abuse by the Defendant.

[736] There are very few details elicited by counsel of this witness's memory recovery process. Details of how and when this memory was recovered, the sequencing involved in the recovery of the memory of these various incidents, and the involvement of others in its reconstruction is either unknown or covered superficially. It is unknown what specifically triggered WI's flashbacks. It is unknown whether the flashbacks were always the same or whether they changed over time. It is unknown what part of WI's memory was continuous, and what part or parts were retrieved later.

[737] The Crown has established that there was opportunity for the Defendant to have committed these offences. The Crown has established through evidence of similar facts that the Defendant has a disposition propensity to fondle adolescents. To prove these offences, the Crown relies on the evidence of a single witness. The Court must be satisfied that the complainant's account is reliable.

[738] The recovery or retrieval of WI's memory has involved discussions with others. In the absence of any independent confirming evidence, the Court cannot be satisfied that WI's memory of these events is sufficiently reliable to prove the offences alleged beyond a reasonable doubt.

[739] The incidents remembered by WI may have happened, but the Court cannot rely on WI's memory in the absence of any real examination of her complex memory retrieval process. The Crown has consequently failed to prove these three counts beyond a reasonable doubt. The Defendant must therefore be acquitted of these three counts.

[740] The Crown encouraged this witness to give evidence related to a fourth incident. WI claimed that she was struck on the shoulder by the Defendant during a confession. It is said that the priest struck her to stop her from crying. WI says that she did not want to make a confession. There is no charge associated with this complaint. The fourth incident is unrelated to the other alleged incidents. This is yet another example of Crown leading evidence of other acts of misconduct by the Defendant without any legal foundation to do so. This Court will consequently disregard all evidence related to this alleged fourth incident.

Count 23 (JI) – buggery of JI s.155CCC

(For a summary of this allegation see paras [231] –[232])

[741] JI was not available for cross-examination. The Crown's case consists of JI's evidence alone as recorded in a sworn and videotaped statement. This statement was taken in 2012 approximately a year before JI's untimely death by cancer in November 2013.

[742] The Court's process of fact-finding in this case is hampered by the absence of any examination or cross-examination of this complainant. Gaps in this complainant's statement cannot be filled in in his absence. There is much that this witness was not asked and does not say in his two statements to the police.

[743] There are very few contextual details given about the circumstances immediately preceding the attempted penetration except for a description of the act itself. It is unknown what if any lighting conditions were available in the room when the alleged event occurred. It is unknown whether the Defendant removed any of his own clothing. If JI saw the Defendant's penis exposed, it is unknown when this occurred.

[744] It is unknown what if any touching preceded the alleged act of attempted penetration. There are no child-like descriptions of this complainant's interaction with the Defendant immediately before or after the event in question. If there was anything said by either of the participants, this is not in evidence.

[745] It is unknown what if any injuries were sustained by JI as a consequence of this attempted anal rape. JI attributed great pain and discomfort to this act. It is unknown whether JI cried out in pain. There were a number of other children allegedly lying in close proximity to the Defendant's bed. It is unknown who these children were. JI was not asked by the investigator to provide the names of the other children who were in the room when this alleged event occurred. It is unknown whether JI noticed any discharge of fluid from his anus in the hours following this event.

[746] The Court is left only with a general description of the act itself which is of limited assistance in assessing the credibility and reliability of JI's allegations. Had JI lived to testify at this trial many of these gaps might have been filled in. The Court cannot speculate about what JI might have said had he testified.

[747] There are no other witnesses available to confirm any of the collateral information specific to this incident beyond witnesses who say that from time to time the Defendant permitted children to sleep-over at the Mission. There is no medical report. There is no forensic evidence.

[748] There has been much evidence given from other witnesses to suggest that JI had many discussions with other complainants about their allegations of abuse (see paragraph 524). JI was instrumental in organizing the civil action against the Church to secure redress for the alleged victims of the Defendant. It is unknown what factual allegations were made by JI in support of his own claim for compensation.

[749] The Defendant was charged with the offence of buggery. To sustain a conviction, there must be some evidence of successful penetration of JI's rectum by the Defendant's penis. At best, JI's evidence only establishes an attempt, and not a completed act.

[750] At the end of the day, the Court finds that it is unable to adequately assess the reliability of JI's assertions. There are too many unknowns; there are too many questions with no answers. Without an assurance of reliability, the Court is unable to find that the Crown has proven this alleged offence beyond a reasonable doubt.

[751] The Defendant must therefore be found not guilty of this offence.

[752] Crown also leads evidence through JI that on one occasion when JI was nine or ten years of age, the Defendant had JI and JA (then 7 years old) on a bed together. It is alleged by JI that his pants are down and that the Defendant is attempting to teach JI and JA how to have sexual intercourse together. JI says that he does not penetrate JA on this occasion.

[753] This evidence does not appear to relate to the charge of either indecent assault or buggery involving this complainant. The facts here are distinct and do not relate to the incident involving the fondling of the complainant's genitals by the Defendant. There is nothing said by JI to suggest that he had been indecently assaulted by the Defendant during this instruction on how to have sexual intercourse. There is nothing to indicate that the Defendant had pulled down JI's pants.

[754] The Crown is not entitled to lead evidence related to other non-charged acts of misconduct by a Defendant unless the Defendant has first put his character in issue. This was not the case here. The introduction of this evidence of bad character by Crown was without proper legal foundation. The Court will consequently disregard all references in the evidence to this alleged incident.

Count 25 (LI) – buggery of LI s.155CCC

(For a summary of this allegation see paras [233] – [237])

[755] The absence of any real detail makes the Court's assessment of this witness's evidence extremely difficult. LI's description of the event closely parallels the description given by his brother JI involving a similar type of allegation. Both brothers spoke to each other about their respective allegations. Both JI and LI filed claims against the Church and received substantial compensation as a result of doing so. Both JI and LI's evidence with respect to these events suffers from many of the same deficits.

[756] LI says that he was asked to remove his own clothes and get on the Defendant's bed. There is no indication that the Defendant removed any of his own clothes. The Defendant then gets behind LI and starts to play with him. It was not clear what LI meant by this. The Crown sought no clarification of this answer and so none was given by LI. Suddenly LI says he experiences a sharp pain inside his anus. LI is asked by the Crown whether he knew where the pain was coming from. LI says (Transcript page 425 lines 16 – 17), "A: It was either from a finger or his penis. I didn't know until I grew up."

[757] It is apparent from this response that LI is not able to say with any certainty what was causing his pain.

[758] Shortly after experiencing this pain LI says that he blacks out. LI claims that when he emerges from this blackout, it is morning and he is back on the floor and on his own makeshift bed. If this blackout was in some way related to the alleged trauma, it is not clear why the blackout was as long as it was. The Court has not had the benefit of any expert evidence to explain how trauma can affect human memory.

[759] It is unknown whether LI noticed any injury to his rectum later the next day. No inquiries were made of this witness regarding the presence of any pain or discomfort in the days that followed this event. It is unknown if there was any fluid discharge from the rectum. There is no medical evidence.

[760] LI gave two statements to the police about his involvement with the Defendant. The first statement was given in 1993. No details of the buggery were disclosed on this occasion. LI claims that he was scared of the police. LI claims that he had been forced to go to the police by his brother JI. He did not want to go. He says that he was not ready to open up and talk about the experience at that time.

[761] LI says that he had been told years earlier by the Defendant that he would be taken away from his parents if he talked about what the Defendant was doing. LI claims that this continued to be on his mind in 1993. LI was 25 years of age when he gave this first statement to the police. The suggestion that he remained silent in 1993 because he still feared removal from parents strains credulity.

[762] LI provided a second statement to the police in 2012. Full disclosure was made in this second statement. LI claims to have talked to his mother at some point about this abuse, but LI's evidence about when he does this is vague and uncertain.

[763] LI did apply for compensation from the Church. He received \$62,000 in settlement for this claim. It is unknown what factual allegations were made in support of this claim.

[764] LI's evidence falls short of establishing beyond a reasonable doubt that an act of buggery occurred as alleged. There is no evidence given by LI related to the movement of any object inside LI's anus. There is even insufficient evidence to conclude on proof beyond a reasonable doubt that an act of attempted buggery took place. The description given by LI is equally consistent with the forced insertion of an inanimate object other than a penis into his anus. The Court cannot convict the Defendant of an indecent assault on this evidence unless it is satisfied that LI's evidence is reliable.

[765] LI's failure to disclose this allegation to the police in 1993 is suspicious and not adequately explained. The Court finds that it has lingering doubts about the accuracy and overall reliability of LI's evidence. There may well be adequate proof on a balance of probabilities to justify LI's compensation. The criminal standard of proof requires more than suspicious circumstances however.

[766] The Defendant is consequently acquitted of this offence.

Count 27 (TI) – unlawful sexual intercourse with TI s. 144CCC

(For a summary of this allegation see paras [238] – [242])

[767] TI claims to have had no memory of her victimization until February 2011. She started to recover a memory after she was approached by others who said she was a victim or a witness in matters involving the Defendant. When first approached by the RCMP in February 2011 she claimed to have no memory of any sexual abuse by the Defendant.

[768] In early February 2011 TI recalls listening to her aunt, the mother of LA and MA, on the local community radio. The aunt said that she was a bad mother because her children had been sexually abused by the Defendant. The Aunt said that she forgave the Defendant for what he had done. TI claims that at this time she felt very bad for her cousins. She hated her aunt for publically forgiving the Defendant. It was around this same time that TI says that she started to remember things through a number of flashbacks.

[769] TI concedes that she told the police in her February statement that others had talked to her, specifically VI, DI and WI, and they had tried to convince TI that she too was a victim of the Defendant's sexual abuse.

[770] In her February 2011 statement TI says that she too is a bad mother and a bad wife. TI blames the Defendant for her addiction to drugs and her infidelity.

[771] TI has never applied for any form of compensation from the Church for this alleged abuse.

[772] It is unknown what parts of TI's memory were recovered first or in what order these memories appeared. It is unknown how many flashbacks TI had or over what period of time she recovered these memories. It is very difficult to assess the reliability of this witness's memory without having a better understanding of how these memories were reconstructed. Counsel's examination of this witness's memory recovery process was superficial.

[773] It is readily apparent from TI's testimony that she was familiar with the stories of abuse circulating in Igloolik about what the Defendant had allegedly done. It is unknown to what extent this information may have coloured the memories ultimately recovered by TI.

[774] The Court is also left with a long and critical gap in a memory during an alleged traumatic event. Common sense does not tell this Court why the blackout described by TI was as long as it was, or why this blackout occurred when it did.

[775] Common sense does not convey any real understanding of how a memory has been retrieved, and what may have influenced this process. Demeanor alone can be deceiving. Without a thorough examination of the specific mechanics of the memory retrieval by individual witnesses claiming to have recovered their memories of abuse, the Court's ability to assess the reliability of this type of evidence is compromised. A wrongful conviction could result.

[776] TI appears to be motivated to use her recovered memory of the alleged abuse by the Defendant to explain or rationalize aspects of her own dysfunctional behavior and chaotic lifestyle.

[777] The application of the law is a dangerous business. Mistakes can be made. Caution is necessary. The Defendant may well have committed this offence, but suspicion alone is not sufficient to merit a conviction.

[778] The Crown has failed to prove this offence beyond a reasonable doubt. The Defendant is consequently acquitted of count 27.

Count 28 (TI) – indecent assault of a female s.149CCC

(For a summary of this allegation see para [243])

[779] With respect to the second incident described by TI, there is no sexual touching of any kind attributed to the Defendant. The children are taken upstairs in the Mission by the Defendant. TI sees the Defendant leading DI away to another room in suspicious circumstances. The Crown's evidence does not go any further than this.

[780] The Crown has failed to prove this offence beyond a reasonable doubt. The Defendant must therefore be acquitted of this offence.

Count 29 (TI) – indecent assault of a female s.149CCC

(For a summary of this allegation see para [244])

[781] There were a number of children allegedly present when TI was fondled while reciting the Bible in the Defendant's lap. TI cannot remember the names of these children. TI says that she does remember that these children were colouring pictures of the Bible on the floor.

[782] TI says that the Defendant first recited a passage from the Bible. TI is then asked to get on the Defendant's lap and recite verse 2 through to 60 or 62 while seated in the Defendant's lap. This type of detailed memory is suspect. TI was between the ages of seven and eleven when this alleged event occurred. This detail comes from an event that is alleged to have taken place at least 38 years ago.

[783] DI says that she witnessed the Defendant holding TI in the porch area of the Mission in "the same way" that the Defendant had held her (transcript page 649 lines 19-26). TI was then six or seven years of age according to DI. It is not clear from this description what DI actually sees. No questions were put to this witness by Crown counsel to clarify what was meant by "in the same way". DI does not say that she observed the Defendant fondling TI. The Defendant admits that from time to time he did hold children on his lap.

[784] TI recovered this memory of abuse years after the event. Other complainants have tried to help her remember her alleged victimization. It is unknown what was said to help TI resurrect her memory. As late as February 2011, TI claimed to have no recollection of her past trauma. All of the concerns discussed by the Court with respect to Count 27 apply equally to this Count.

[785] The Court is unable to adequately assess the reliability of TI's memory of these events without a thorough examination of her memory recovery process. Counsel's examination of this was superficial.

[786] The Court is left with a doubt about the reliability of TI's memory. Crown evidence of opportunity and inclination is not sufficient to achieve the criminal standard of proof in the absence of reliable evidence from this complainant.

[787] The Crown has not proved this offence beyond a reasonable doubt. The Defendant must therefore be acquitted.

Count 34 (PI) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [246] – [254])

[788] There is a specific memory cue attributable to this second incident. There is much contextual detail including child-like descriptions of PI's interaction with the Defendant.

[789] It is highly unlikely that this witness would inadvertently conflate this second incident with the first indecent assault. The two events are separated in time. The disclosure to PI's mum following the first event results in punishment. This separates the two events.

[790] There is nothing developed in the cross-examination to suggest that PI was deliberately falsifying this second allegation. PI presented as a sincere and honest witness.

[791] In cross-examination this witness revealed that while he has been through counselling over the years to address issues related to anger and addiction he at no time disclosed these incidents to his counsellors or was treated for issues related to this abuse.

[792] Attempts to shake this witness's recollection of the events failed to move the witness from his stated recital of events. There is nothing on the evidence to suggest that this complainant had a repressed or recovered memory of these events. There is no basis to conclude that PI was in some way honestly mistaken about what he says happened.

[793] The account given by PI is coherent and contains no substantial or unexplained memory gaps. The sequencing of events is logical. There is no reason to believe that PI's recollection is anything other than a continuous memory. There is no basis to conclude that the account given by PI is unreliable by reason of contamination of his memory through exposure to other complainant's reports of their experiences.

[794] The Defendant has denied any involvement in this second offence. This general denial is not credible for all the reasons outlined in paragraph 474 to paragraph 484. The Defendant's evidence does not raise a reasonable doubt.

[795] The Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a dispositional propensity to fondle adolescents' genitals. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[796] The second incident of abuse described by PI is qualitatively different than the first. This second incident consists of touching on the skin that was much more intrusive than the first event. The first incident is also separated in time from the second event by a disclosure to family that results in PI getting into trouble.

[797] The second incident described by PI also includes a significant memory cue. It is during this second incident that PI recalls the Defendant referring to him as "Peacha". In cross-examination the Defendant concedes that he might at some point have used this name which was a reference to Pete in the Flemish language. PI's description of this second incident includes a child-like reference to the Defendant's heavy breathing.

[798] The Court is satisfied that this alleged offence has been proven beyond a reasonable doubt. The Defendant is convicted of this count.

Count 35 (DI) – indecent assault on a female s.149CCC

(For a summary of this allegation see paras [255] – [257])

[799] DI gives evidence about a single incident of fondling that occurred when she was between the age of ten and twelve years of age. There were other children in the room when this event allegedly occurred. DI is unable to say who the other children were or what they were doing. DI does not recall what she was doing when sitting in the Defendant's lap. The duration of the fondling is unknown. DI has no memory of the Defendant saying anything to her at any time about talking to others about what happened.

[800] DI says that she felt awkward when she was touched. DI did not tell anyone about what happened to her when this first happened. There is no explanation offered for why she did not report this to a trusted friend or member of her family. DI was not asked for an explanation by either Crown or Defence.

[801] Many years later, when she was in high school, DI claims to have told a friend LE about the touching. This evidence suggests that DI retained a memory of the touching years after the event. LE has not been called as a witness to confirm the timing of this disclosure.

[802] DI claims to have had experienced a long personal struggle with alcohol. She received counselling for her addiction, and in 2011 she felt that she was strong enough to finally tell the police what happened. DI says that she was not well enough to deal with the personal issues surrounding the abuse until she had started her healing journey. The Court accepts this explanation. It has the ring of truth.

[803] DI says that she was assisted in making the decision to go to the police by one MN who was a cousin and personal friend of DI. They talked about DI's situation together. It was MN who told DI to speak to a lawyer about possible compensation. MN was another complainant (counts 46, 47 and 48), and had already applied for compensation at the point she spoke to DI.

[804] At some unknown point in time DI did talk to a lawyer about a compensation claim against the Church. She never followed through with this, and has never received any form of compensation for the alleged abuse.

[805] In the 2011 statement to police DI had claimed that the Defendant fondled her with his right hand, not his left. In her testimony DI had claimed that she was ten or eleven when this touching occurred. In 2011 she had told the police that she did not know how old she was when this event happened. These errors are inconsequential given DI's tender age when this alleged event occurred.

[806] There is nothing in evidence to suggest that DI's memory of this touching anything other than a continuous one. There is nothing developed in cross-examination to suggest that this witness was deliberately fabricating her account. There was no application for compensation pursued by DI. There is some evidence of DI speaking to another complainant about the alleged abuse by the Defendant, but these discussions seemed to focus more on the process for making a civil claim. The potential for tainting in this case seems to be low.

[807] The Defendant has denied his involvement in this offence. This was a general denial. There is no alternate narrative presented. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[808] The Crown's evidence demonstrates that the Defendant had the opportunity to commit this offence. The Defendant admits that from time to time he held children in his lap. There is some independent confirmatory evidence to suggest that the Defendant was holding this particular complainant on his lap (see evidence given by DA).

[809] The evidence of similar fact suggests that this Defendant had a dispositional propensity to fondle the genitals of adolescents, both male and female. The behavior outlined by DI in relation to this alleged offence appears to be consistent with this propensity.

[810] There are some deficits associated with DI's memory. Some gaps are to be expected particularly where they relate to everyday activities that were inconsequential to the child at the time.

[811] The Court is satisfied that this witness's description of the core event is reliable. The Court is satisfied that the Crown has proven this offence beyond a reasonable doubt. A conviction will be entered accordingly.

Count 36 (MI) – indecent assault on a female s.149CCC

(For a summary of this allegation see paras [258] – [263])

[812] MI testified that she was confronted by her mother when blood from the alleged assault was found by her mother on her panties. It is not clear on the evidence when this incident with her mother occurs. MI has told the police that this happened an hour after the incident with the Defendant happened. In a subsequent statement MI suggests that this confrontation with her mother might have happened two or three days later. Nothing of significance turns on this. This witness was very young when this event occurred. A child's sense of time may not be the same as an adult's. Memories also grow dim with the passage of time. This explains the difference in time estimates.

[813] RK has not been called as a witness to confirm the timing of this disclosure.

[814] MI's mother has not been made available to confirm any part of MI's reported interaction with her in relation to this disclosure. It is unknown whether MI's mother is still living.

[815] At some unknown time MI applied for and received compensation from the Church for the alleged abuse by the Defendant. It is unknown what factual allegations were made by MI in support of this claim. MI received the sum of \$10,000 in settlement of this claim.

[816] There is no basis on the evidence to conclude that MI deliberately fabricated this allegation in an effort to get money out of the Church. While there were some minor differences between what MI told the police in 2011 and what she now tells the Court these inconsistencies related only to inconsequential details and not to the core event being described.

[817] In January 2011, MI travelled to Iqaluit with eight or nine other complainants. Everyone wanted to see the Defendant who was supposed to be appearing in Court. It is unknown who organized this trip or who paid for it. MI had an opportunity to speak to the others about their experiences with the Defendant.

[818] MI says that she discussed her abuse by the Defendant with WI (counts 20, 21, and 22), MA (counts 10 and 11), CN (count 51), JI (counts 23 and 24), LT (counts 73 and 74) and EK (counts 39 and 40) on this trip. MI testified that she knew that other people were laying charges and she "just went along with it". It was after this trip to Iqaluit that MI disclosed her own abuse to her spouse for the first time. It was after this trip and these discussions with others that MI went to the Igloolik detachment to charge the Defendant. This happened in February 2011.

[819] When asked why she decided to talk about the incident and speak to the police, MI says this (Transcript page 791 at line 18 - 792 at line 2):

THE INTERPRETER: A: The anger inside me was just growing and growing and I want, I do not want to be angry any more. Then I've been so angry all these years, and I've been angry towards my brother, RI, and that's when we were younger. I used to be angry at him all the time. But I want to -- I do not want to be angry at any one any more.

Q: Why were you angry at RI, MI?

THE INTERPRETER: A: Because he reminded me, reminded me of him a lot, of the priest with the way he was treating me when he used to make me cry.

[820] In cross-examination MI also relates that she was being sexually abused by someone else during this same period.

[821] There are many contextual details given in the account of this incident. This memory appears to be continuous. The sequencing of described events is logical and coherent. The reluctance to disclose what happened is explained. This witness's late decision to come clean about this abuse is understandable in the context of this witness's later life experiences. This complainant's demeanor in Court was consistent with the traumatic event that she was describing.

[822] The risk of tainting through exposure to other complainant's experiences is reduced where the witness retains a continuous memory of the event being described. Such is the case here. This is not a case where a witness has had to recover a memory and is assisted in doing so by others.

[823] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[824] The Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a disposition propensity to fondle adolescents' genitals. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[825] The Court is satisfied that this offense has been proven beyond a reasonable doubt. The Defendant is consequently convicted of count 37.

Count 38 (RI) – act of gross indecency s.157CCC

(For a summary of this allegation see paras [264] – [268])

[826] RI says that he attempted to speak to the RCMP in 1984 or 1985 about this abuse, but he was not believed. It is unknown who RI spoke to on this occasion. There is evidence to suggest that RI recovered at least part of his memory of this abuse at a point subsequent to February 2012. When RI gave a statement to the RCMP on February 12, 2012, he did not mention that he stopped the digital penetration of his anus by defecating. RI says in cross-examination that he remembered this detail at some point after providing his statement to the RCMP. It is not clear on the evidence how much of this incident was remembered continuously. There was no real examination of this witness's memory retrieval process by either counsel. There is no explanation in evidence for what triggered RI's retrieval of this memory.

[827] There is no evidence to suggest that this complainant either discussed his allegations with others or participated in discussions with other complainants about their history of abuse by the Defendant. On RI's evidence, there is no suggestion of any potential contamination of this witness's evidence through discussion with others.

[828] The only reference made by RI to conversation with the Defendant is in reference to the first incident of digital penetration. RI says this (Transcript page 831 lines 13 – 17):

THE INTERPRETER: A: When he touched my anus that time, he told me that because he's a priest and that he is God's helper, if I told anyone, teachers or parents or any adult, they would not believe me because he's God's helper.

[829] This conversation, if true, might explain why RI remained silent about this abuse for so many years.

[830] RI later applied for and received monetary compensation from the Church as a consequence of this abuse. RI received the sum of \$17,000 as compensation at some undisclosed point in time. The evidence does not reveal what allegations were made by RI in support of this claim for compensation. Nor does the evidence reveal what had changed in RI's life to give him the courage to open up and disclose these allegations.

[831] It is apparent from RI's testimony that there are no memory cues of any kind to help distinguish the first act of digital penetration from the second alleged event. The Defendant describes both events in generic terms. There are no unique facts separating the two events. It is unknown how these incidents began. It is unknown how they ended. There is no estimate given as to the duration of either event. Nor are there any injuries attributed to either incident. There is no age-appropriate description of how these alleged events were interpreted by RI or how they made him feel.

[832] There is insufficient detail to allow this Court to adequately assess the reliability of RI's evidence.

[833] The Crown has not proved this offence beyond a reasonable doubt. The Defendant must therefore be found not guilty.

Count 39 (EK) – indecent assault on a female s.149CCC

Count 40 (EK) – common assault s.245CCC

(For a summary of these allegations see para [269] –[275])

[834] EK says that she has occasionally experienced flashbacks related to her abuse. It is unknown when these flashbacks started and what triggered them. It is unknown whether any new memories have surfaced during these flashbacks or whether the intensity of the flashbacks has changed over time.

[835] EK blames the Defendant for ongoing problems in her marriage.

[836] EK concedes in cross examination that she has talked about her problems with two other named complainants LP and WI. All three girls have shared the same counsellor in Igloolik. From time to time they have talked about their shared experiences of abuse. It is unknown when these discussions took place. It is unknown what was discussed. It is unknown whether these discussions assisted EK in remembering the details of what happened.

[837] It is unknown when EK took counselling or how long she received therapy. It is unknown whether any of her memories surfaced for the first time during her counselling.

[838] It is not clear on the evidence whether any of EK's memory was continuous or whether it was repressed and later recovered in the course of receiving psychotherapy. It is not clear to what extent EK's memory may have been influenced or otherwise contaminated by her discussions with other complainants. Counsel's examination of this witness did not explore the subject of memory or memory reconstruction in any detail. The Court is consequently left with a lingering doubt about the reliability of this witness's memory of this incident.

[839] The Crown has consequently failed to prove the indecent assault beyond a reasonable doubt and the Defendant must therefore be acquitted.

[840] Beyond the force allegedly applied by the Defendant to EK to commit the indecent assault, there are no other instances alleged by EK where force was applied to EK without her consent to substantiate a charge of common assault. The force used to hold EK on the lap was intricately associated with the alleged commission of the indecent assault. There is no evidential basis to prove that a separate common assault was committed. The Defendant is consequently acquitted of this charge.

Count 41 (RK) – buggery of RK s.155CCC
Count 42 (RK) – buggery of RK s.155CCC

(For a summary of these allegations see paras [276] – [280])

[841] RK is not able to say what if anything is being said by the Defendant before or after the first alleged incident. There is no real description of the touching beyond the bald statement that the Defendant's penis was inside RK's anus. This witness does not say and is not asked whether he sees the Defendant's penis at any time. He gives no evidence about seeing the Defendant pulling down or pulling up or otherwise rearranging his own clothing before or after the alleged act. RK describes no movement of the Defendant's body during the touching event.

[842] RK is not asked to give the names of the other children at this particular sleep-over. The only reference to this witness naming other children is in relation to children watching TV and movies together at the Mission. There is no indication in the evidence that this is what the children were doing on the night of this particular sleep-over.

[843] It is unknown what this witness was doing or saying when this alleged event first started. It is unknown whether this witness cried out from the pain that he says he experienced.

[844] The sequencing of events described by RK is problematic. There is no indication of how the Defendant was able to insert his penis in the Defendant's anus. RK claimed to be lying on a couch. The Defendant is said to be standing in front of the witness. An act of anal intercourse could not have occurred at this point given the location of the parties bodies relative to one another. There would have to have been some movement by the Defendant and RK before the alleged penetration occurred. No description of such movement is given by this witness. There is no indication of any form of sexual touching by the Defendant before the alleged penetration of RK's anus.

[845] There is no indication of any injuries being sustained to RK's rectum as a result of this act. There is no indication of blood or any other form of discharge from RK's anus following this event.

[846] Beyond a bald assertion by RK that this act of buggery occurred on two or three different occasions, there are absolutely no facts given in relation to any other incident. Nor are there any age appropriate memory cues cited by this witness to allow him to distinguish between these different events.

[847] RK first disclosed these allegations to the RCMP in February 2012. In this statement, RK claimed to have disclosed this abuse to WI (another complainant) and to his sister CK (also a complainant) at some earlier time. It is unknown when RK first spoke to these individuals. At trial RK claimed not to have discussed the abuse with WI. Both WI and CK appear to have discussed their alleged abuse by the Defendant with RK before RK went to the police.

[848] RK was not asked by Crown why he waited so many years to talk about what happened. It is unknown why he did not immediately report what had happened to his parents. There is no suggestion on RK's own evidence that he had in any way been threatened by the Defendant.

[849] RK claims that when the incident with the Defendant started he tried to wake up the other children who were sleeping in the room and could not do so. This startling assertion is made by RK for the first time in cross-examination. RK does not say how he tried to wake up the others. He could not have done so if he was in some sort of black-out.

[850] RK concedes that his memory of the incident is hazy but suggests in cross-examination that this may be because the Defendant had given him a little pill earlier that night that had made him very groggy. RK thinks that this might have been some sort of sleeping pill. In his examination in chief, RK had referenced seeing other children being given the little pill but did not link the giving of the pills to the night of the sleep-over when he alleges that he was sexually assaulted. This explanation for his hazy memory is given for the first time in cross-examination.

[851] There are too many gaps in this witness's recollection of the first event for this Court to find that it is reliable. The Crown has consequently failed to prove this offence beyond a reasonable doubt. The Defendant must therefore be acquitted of Count 41.

[852] No specific facts are alleged with respect to the second incident. The Court cannot be expected to assess the reliability of RK's assertion that it happened a second time without any facts being alleged to describe what happened. The Crown has failed to prove Count 42 beyond a reasonable doubt. The Defendant is therefore acquitted of this count.

Count 43 (LK) – indecent assault on a female s.149CCC

(For a summary of this allegation see paras [281] – [291])

[853] LK was first approached by the RCMP about the Defendant on February 27, 2012. She was asked to provide a statement and did so.

[854] LK reports being sexually abused at age 14 by someone else. The circumstances of this sexual assault were very similar to the alleged incident with the Defendant. She concedes in cross-examination that the memory of this later abuse might have affected her memory of what happened with the Defendant. In re-examination by the Crown, LK confirms that she retains two very separate and distinct memories of what happened on both occasions.

[855] LK has not applied for any compensation from the Church.

[856] There is nothing in either LK's examination or cross-examination to suggest that LK's memory of the alleged incident with the Defendant is anything other than a continuous memory.

[857] There is no basis to conclude that LK's account may have been fabricated to support a claim for compensation. There is no evidence to suggest that LK's memory of this incident may have been contaminated through discussions with others about this incident or others like it.

[858] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[859] The Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a disposition propensity to fondle adolescents. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[860] LK's evidence is rich in contextual age-appropriate detail. The Court finds that it is reliable. The Crown has proved this offence beyond a reasonable doubt and convicts the Defendant accordingly.

Count 44 (JM) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [292] – [298])

[861] JM describes two incidents.

[862] There is no real description of how the first incident in time involving the table dancing and lap dancing starts or ends. JM's testimony is disjointed. When asked by Crown if he ever told anyone about this event, the following exchange takes place (Transcript page 89, Lines 4 – 16):

Q: Okay. Did you ever tell anyone about this; I mean, other than the police, who brought the matter to our attention, but ...

A: My peers sort of knew.

Q: Now, how do you know that your peers sort of knew?

A: When they smell me, they know something happened.

Q: You mean on the day that it occurred?

A: Yeah.

Q: Now, why would you smell differently to them?

A: His penis is salty and sticky.

Q: Okay. Where would that smell be on you?

A: On my mouth, in -- in it.

[863] The witness had given no evidence with respect to the table dancing/lap dancing incident to indicate that he had the Defendant's penis in his mouth. JM only speaks of a lap dance, nothing else. JM does not say who these peers are, when he meets them and how he believes that they suspect sexual contact with the Defendant. There is no explanation for how these peers would get close enough to the witness's mouth to detect any odour. There is no follow up of any kind by Crown counsel.

[864] In cross-examination the Defendant says that "his testimony took almost 30 years to remember". JM says that he only started to remember "in the past few years". This witness has experienced some sort of flashbacks. He is vague on details. It is unknown when these flashbacks started. It is unknown how frequently they occurred. It is unknown what triggered the flashbacks. It is unknown whether or how JM's memory has changed over this period of memory recovery. JM says that he has flashbacks "only when it hurts". When asked to explain this answer JM will only say that it hurts when he hears that other people are "stressed" over the Defendant's actions.

[865] JM admits in cross-examination that he has been abused by others, but insists that he only has flashbacks "from the ones that hit me".

[866] JM has made no application for compensation from the Church.

[867] Given the evidence of this witness's chaotic memory reconstruction, the Court is unable to properly assess the reliability of this witness's testimony. The Crown has failed to prove this offence beyond a reasonable doubt. The Defendant is therefore acquitted.

Count 45 (ZN) – sexual assault of ZN s. 246.1CCC

(For a summary of this allegation see paras [299] – [307])

[868] Around 12 years ago ZN discovered that a nephew had been allegedly abused by the Defendant. The nephew had shared his story with ZN. He did not want to go the police. ZN says that she decided to tell him her own story in the hope of convincing him to report the abuse. Having made this disclosure to the nephew, ZN felt that she had to tell her husband what had happened. She screws up her courage and does so. ZN's nephew did not go the police. Some years later, he takes his own life.

[869] ZN gave a detailed statement to the RCMP in September 2010. She gave a further statement to the police in January 2011. ZN says that she decided to make her own report to the police to help others like her nephew who had been allegedly abused by the Defendant.

[870] In her examination in chief, ZN testified that she had first met the Defendant some years before at a meeting of northern catechists in either Winnipeg or Montreal. The northern catechists were joined by the northern priests for part of this meeting. At one point during this week of meetings ZN says that she felt her long hair being pulled from behind. When she turned around she saw the Defendant. In cross-examination, ZN reveals that she has some uncertainty about where she first met the Defendant. This meeting took place many years ago. In the 2010 statement ZN says that she really doesn't remember where she first met the Defendant. She indicates that this meeting could have taken place in either Edmonton or Fort Smith.

[871] Nothing much turns on ZN's confusion about the location of the meeting. Apart from remembering the unusual hair pulling incident, ZN would have had no real reason to remember the date or place of this first meeting of the Defendant. She clearly did not know the Defendant very well.

[872] In the 2010 statement ZN had told the police that she never saw the Defendant again after he left Pelly Bay. She makes no mention of seeing the Defendant in Yellowknife.

[873] ZN says that she recalled further details of her involvement with the Defendant after giving the first statement to the RCMP in 2010. She says that she has forgotten some contextual details over the years but maintains that the core event described by her is both accurate and true. ZN says that the memory of the alleged rape has stayed with her. Her decision not to speak to others was a conscious one and for the reasons advanced by her earlier. Her failure to disclose was not because she had no real memory of what had happened to her years ago.

[874] The Defence in this instance is not able to allege that this complainant is simply mistaken about what happened. ZN was an adult, not a child when this alleged event occurred. Her memory of the core event appears to be continuous. There is no suggestion that the memory was recovered through flashbacks or falsely induced through speaking to others and reconstructing what may have happened. There is no suggestion on the evidence that this witness's memory have been adversely influenced by any form of intoxication through alcohol or drugs. The sequencing of events is logical. There is both a beginning and end to the event being described. There is no alleged black out to interfere with the witness's ability to remember what happened. There is no basis to conclude that ZN's account of what happened is unreliable.

[875] This event either happened as alleged by ZN or did not. This witness is either telling the truth about what happened, or she is not. There is no room for an innocent mistake. Identification of the alleged perpetrator is not in dispute. There is no suggestion on the evidence that ZN might have been induced to make a false complaint in order to secure an award of compensation from the Church.

[876] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[877] The Court finds that the Crown has proven this offence beyond a reasonable doubt. The Defendant is convicted accordingly.

Count 46 (MN) – indecent assault on a female s.149CCC
Count 47 (MN) – indecent assault on a female s.149CCC
Count 48 (MN) – unlawful sexual intercourse with MN s. 144CCC

(For a summary of these allegations see paras [308] – [313])

[878] The first incident of touching is said to have occurred in the office area in the presence of a number of other children. This was the only time MN was touched by the Defendant according to MN and the only time she had to sit in his lap. None of the other potential witnesses to this event have given testimony confirming MN's allegations.

[879] There is no indication what, if anything the other children were doing when this incident occurred. MN says that the Defendant might have been talking. She cannot remember anything about what he was talking about. It is unknown what, if any activities, MN was engaged in while sitting on the Defendant's lap. There are no age appropriate descriptions given by MN to describe what is happening to her and how she feels about this.

[880] When asked when the second incident occurred in relation to the first fondling event MN says "maybe after". When asked how long after she says "Well, it depends. A little time after or a long time after." When asked how many related incidents of this kind occurred, MN says "once, twice, three times."

[881] MN says that in relation to the second incident, the Defendant grabs MN's hand and "brings it under". In an attempt to clarify this response, the Crown leads the witness and appears to confuse this second incident with the first fondling incident (Transcript page 245 lines 19 – 25):

Q: Okay. Is that the only -- and when did that happen? I think you said it was after you sat in his lap. Is that right?

A: Yes.

Q: Did he ever try and do that again besides the time you just described?

A: No.

[882] There was no evidence in relation to this second incident that suggested that MN had been sitting in the Defendant's lap. In fact this witness had been very clear that she had only sat in the Defendant's lap on one occasion only (Transcript page 242, lines 25-27). This witness had earlier suggested that the Defendant had attempted to get her to touch him as many as three times. She appeared to be now contradicting herself by suggesting that there was only one such attempt.

[883] When asked whether the Defendant was talking to her when he tried to have her touch him "down there", the witness replies: "Sometimes silent, sometimes maybe talking".

[884] The Crown again leads this witness and confuses the evidence. The following exchange then takes place (Transcript page 246, lines 2 – 17):

Q: When you say, "Sometimes silent, sometimes maybe talking," that suggests to me there may have been more than one time?

A: Yes.

Q: Was there more than one time?

A: Maybe twice, three times.

Q: Were the other times like the time you just described? Were they similar? Were they the same?

A: Yes.

Q: Were there any differences? Anything that stands out in your memory for any of the times?

A: After.

Q: Okay. But is there anything that made you really remember what happened on any of those times?

A: Scares me.

[885] With respect to the count alleging sexual intercourse in the dark room, MN says that after turning her around and pulling down her pants and panties the Defendant "... either played with me or something happened".

[886] Crown again attempts to clarify what is meant by this. MN speaks at this point through an interpreter and says this (Transcript page 249, lines 7 – 12):

THE INTERPRETER: A: Sometimes, he let me touch his penis with my hands, and he would feel me --he would feel me there.

Q: You say sometimes, he did this. Do you know how many times he did this?

A: Four, five times, six times.

[887] Clarification was again required. The witness confirms that her touching of the Defendant's penis in this dark area was under his clothing and that the Defendant's touching "down there" involved a fondling of MN's vagina.

[888] The Crown through leading questions gets the witness to say that the Defendant's penis was erect (Transcript page 250 lines 8 – 20).

[889] MN goes on to say that on four or five occasions in the dark area the Defendant had sexual intercourse with her. There are no specific memory cues referenced by this witness to distinguish these four or five alleged events. There are no factual descriptions of these four or five incidents other than the bald statement that they happened. There is no real description of any beginning of these events.

[890] The witness is not able to reference any conversations specific to these four or five incidents. MN does say that she was at some point told by the Defendant not to talk about what had happened. She is not able to say when this caution was given to her in reference to any of the events being described by her. When asked whether this was said by the Defendant in English or Inuktitut MN responds "maybe both".

[891] The witness is unable to say how these four or five incidents end beyond saying that the Defendant would finish by ejaculating. MN would then leave and go and rejoin the group of other children who were somewhere else in the Mission.

[892] MN says that she did not talk about her abuse to anyone until 2005. She did not trust anyone.

[893] In 2005, MN talked to a lawyer. She applied for and received compensation from the Church in the amount of \$28,000. It is unknown what factual allegations were made by her in support of this claim. It is unknown why MN did not trust any member of her immediate or extended family with this secret. It is unknown why MN in 2005 was able to trust a non-family member with this dark secret when she had not trusted anyone for many years. Crown counsel did not elicit any information from this witness about this sudden change of heart.

[894] This witness's evidence is disjointed. The sequencing of events is hard to understand. There are numerous points at which this witness appears to contradict herself. Reliance upon this evidence is questionable under these circumstances. Evidence elicited by the Crown through leading questions can be given little weight.

[895] The Crown has consequently failed to prove counts 46, 47 and 48 beyond a reasonable doubt. Something with the Defendant might have happened, but the Crown is unable to muster sufficient reliable evidence to the standard required by a criminal prosecution. The Defendant is entitled to the benefit of any reasonable doubt arising from the evidence. He must therefore be acquitted of all three counts.

Count 49 (VN) – indecent assault of VN s.149CCC

Count 50 (VN) – common assault of VN s.245(1)CCC

(For a summary of these allegations see paras [314] – [326])

[896] In 2008 or 2009 VN speaks to a lawyer and applies for compensation from the Church for the abuse suffered at the hands of the Defendant. She eventually receives the sum of \$28,000. VN was told about this opportunity by JI who had gone on the local radio to encourage those who had been victimized to come forward and speak to a lawyer about their experiences.

[897] In 2009, and again in 2011, VN attended the Mamisarvik Healing Center in Ottawa for residential drug and alcohol treatment. VN also speaks of her anger problem and how this was affecting her relationship with her boyfriend. VN attributes much of the anger in her intimate relationships and her problems with sexual intimacy, to her earlier victimization by the Defendant.

[898] At some later point, VN sees a CBC story on TV about the Defendant. She decides to go the RCMP and make a complaint, and does so in January 2012.

[899] In cross-examination VN suggests that she did not connect her involvement with the Defendant to sexual abuse until she was a teenager and became involved in relationships. When VN started dating, she began to have flashbacks and her anger surfaced. Her mind then turned back to her childhood experiences with the Defendant and she realized then that she had been abused.

[900] VN also acknowledges that she was sexually abused by a dentist when she was a teen at age 14. The following exchange takes place in cross-examination (Transcript page 893, lines 2 – 7):

Q: Do you ever think about whether some of these incidents and some of the incidents with that dentist may be mixing together?

A: I think so, yeah.

Q: In your mind?

A: Yes.

[901] In re-examination by the Crown it becomes clear that this complainant remembers the incidents involving the priest and the dentist as being very different and distinct events (see Transcript pages 893 and 94).

[902] It is not clear what memory of the abuse VN retained, and what details of memory were later recovered. If parts of the memory were recovered later it is not clear what if anything triggered the recall. VN claimed to remember what she and the priest were wearing during the first alleged incident. Given her age at the time, such recall seems to be extraordinary.

[903] VN does say however that she had many fights with her mother over the years following these incidents because she did not want to return to the Mission. She feared the priest. This evidence suggests that VN was able to retain some memory of the core events underlying this fear.

[904] The sequencing of events as portrayed by this witness in relation to count 49 is both logical and complete. The narrative has no real gaps. There is both a beginning and an end. VN's account has many age-appropriate references to what this witness was seeing and feeling when the events with the priest unfolded.

[905] VN's demeanor on the stand was also consistent with her alleged victimization. This witness needed many breaks to regain her composure while she was testifying. When describing the forced act of fellatio, this witness appeared to be on the verge of vomiting and a further adjournment was required.

[906] The reference to the common assault involves the Defendant allegedly raising VN into the air for some time by the neck. This is done by the Defendant allegedly using one hand on VN's throat. When VN first speaks to the RCMP about this incident she does not describe the sexual contact that she allegedly witnesses occurring between JQ and the Defendant. She claims to have subsequently remembered the act of forced fellatio involving JQ as a result of having an unknown number of flashbacks at some later point in time. This complaint's memory of this event is suspect. The Court is unable to find that VN's memory of this second event (Count 50) is sufficiently reliable to establish guilt. The common assault alleged appears to be implausible and is suspect for this reason.

[907] The Defendant has denied his involvement in the 149 offence (count 49. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[908] The Court is satisfied that this witness's description of the core event associated with count 49 is reliable. There is no evidence to suggest that this complainant either discussed her allegation with others or participated in discussions with other complainants about their history of abuse by the Defendant. There is nothing from which to conclude that VN's memory of this alleged indecent assault has been contaminated.

[909] The Court is satisfied that the Crown has proven count 49 beyond a reasonable doubt. A conviction will be entered accordingly for Count 49 alone.

Count 52 (DN) – indecent assault on a female s.149CCC

Count 54 (DN) – bestiality on a dog s.155CCC

(For a summary of these allegations see paras [327] – [334])

[910] The first alleged incident of fondling occurs in the presence of other children inside a bedroom of the Mission. It is unknown how many children are present. It is unknown who these children are. No other potential witnesses of this incident are available to confirm any part of DN's evidence. DN is not able to say how she ends up on the Defendant's lap.

[911] DN is unable to say how this incident ends. She claims to have blacked out. It is unknown what causes this to happen. DN claims that the event did not cause her pain or discomfort. She suggests that she became sexually aroused and wet as a result of this fondling activity. It is unknown when DN recovers from the blackout and regains her memory.

[912] DN is not able to say how the second incident ends because she again blacks out. There is no explanation on the evidence for why DN again experiences a memory loss. There is no evidence of any physical trauma being experienced by her. It is unknown when DN recovers her memory or where she was when this occurred. There is no allegation of the Defendant having touched DN at any time during this alleged incident.

[913] There is no criminal allegation matching the description of this second alleged event. It is unknown what relevance this event has to the two charges before the Court. This evidence of misconduct by the Defendant was tendered without any legal foundation being first established by the Crown. This evidence will consequently be disregarded by the Court.

[914] There is no explanation given by DN in her examination in chief for her blackouts on these two occasions. There is no suggestion on the evidence that this witness suffers from any medical condition that renders her susceptible to blackouts.

[915] However, when pressed in cross-examination, DN announces that from time to time before entering a blackout she had been given some funny tasting water by the Defendant. This funny water caused the Defendant to appear to be talking very slowly to her. DN then suggests that her various blackouts may have been caused by the Defendant hypnotizing her. This was the first time that DN had referenced this claim of hypnotism. She had not mentioned this in her examination in chief when describing the incidents of abuse. It is not clear when or how this hypnotism could have occurred in relation to the incident of fondling, the incident involving JI, or the incident of alleged bestiality.

[916] Crown leads evidence through DN to the effect that the Defendant on another occasion had given DN and her sister LA drinks of water in the kitchen of the Mission. This water was supposedly laced with some sort of drug. This caused DN to black out for a period of time. When DN recovers consciousness, she and her sister are taken to a dark room under the stairs of the Mission by the Defendant. They are locked into this dark room. Much time passes. Eventually the children start banging on the walls until they are finally released from confinement by the Priest Father Lechat.

[917] This last series of events described by DN is evidence that is unrelated to any charge currently faced by the Defendant. This was evidence calculated to blacken the character of the Defendant through allegations of other acts of criminal misconduct. There was no legal foundation for this evidence. The Defendant had not put his character into issue. The Court consequently disregards all reference to this incident in the evidence.

[918] At some unknown point in time this witness applies for and receives compensation from the Church for this alleged abuse. DN receives the sum of \$16,000. It is unknown what factual allegations were made by DN in support of this claim.

[919] DN never disclosed any of these incidents to family members or friends before speaking to the lawyer about compensation. There is no explanation in evidence for why DN did not confide in others about what she experienced or what she had witnessed. This complainant was asked no questions by Crown or Defence about why she maintained her silence for so many years.

[920] DN first provides a statement to the police in 2011. In this statement DN confirms that she had been talking to LA two weeks before seeing the police. LA had told her to make sure she tells the police about seeing the Defendant "fucking a dog".

[921] DN admits to having conversations with both GN and LA about what they could remember about the abuse by the Defendant. This had happened as early as 2006.

[922] This witness's evidence is not reliable. There are many suspicious gaps in DN's evidence. The explanations given by DN for her blackouts are far-fetched and do not have the ring of truth.

[923] There is evidence about this witness and others talking about what to say to the police. There is a substantial claim made for compensation from the Church. There is no explanation for why disclosure of these events was not made earlier.

[924] The Crown has not proven these two counts beyond a reasonable doubt. The Defendant is consequently acquitted of both counts.

Count 53 (GN) – indecent assault on a female s.149CCC

(For a summary of this allegation see paras [335] – [337])

[925] With respect to the incident involving fondling of her breast, GN says that her sister DN was there along with LA and TA. The duration of this event is not stated. It is unknown how it ends. It is unknown how GN reacts to this event. She does not say and is not asked how this made her feel.

[926] None of the other children who were present at the time have testified in support of this allegation by GN.

[927] This witness was aware from discussions with others from Igloolik that the Defendant was being charged for molesting others. GN was aware through discussions with her sister DN that DN was also a complainant.

[928] This aside, there are some contextual details given in the account of this incident. This memory appears to be continuous. This is not a case where a witness has had to recover a memory and is assisted in doing so by others. The sequencing of described events is logical and coherent. The account given by GN includes a reference to a specific memory cue involving a picture seen in a National Geographic magazine.

[929] There is nothing specific to GN's cross-examination that leads this Court to conclude that this account was either deliberately fabricated or tainted through discussions with others about this and other similar allegations of abuse.

[930] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 446 to 456 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[931] The Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a disposition propensity to fondle adolescents. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[932] The Court is satisfied that this alleged offence has been proven beyond a reasonable doubt. The Defendant is convicted of this count.

Count 54 (DN) and (GN) – bestiality on a dog s.155CCC

(For a summary of this allegation see (DN) para [333] and (GN) para [338])

[933] With respect to the alleged act of bestiality, GN does not know how long she watches the Defendant. There is no indication how far away GN was from the Defendant when she made this observation. She does not indicate whether the Defendant was dressed or undressed. There is nothing on the evidence to say that she saw the Defendant's penis. GN is not asked to describe the movements of the Defendant relative to the animal when this act was being performed. It is not said where the Defendant was standing in relation to the animal. Nor is there any description of how he was handling the dog. The witness is asked no questions about the lighting conditions inside the back porch area when this event occurred. All the Court is left with is the witness's bald assertion that the Defendant was "fucking the dog".

[934] GN is asked specifically by Crown whether she ever told anybody about what she had seen. GN insists that she remained silent. When asked why she did not say anything to anybody, GN does not know why.

[935] The following exchange then occurs between Crown and this witness (Transcript page 575, lines 18 – 23):

Q: Did Erik ever say anything to you about that?

A. Yeah, he told me not to tell anybody. He told me that if I tell anybody that he touched us or I guess he found out that I seen what he was doing to his dog, he told me that my grandmother and my mother will go to hell including me.

[936] GN is not able to say how long after the dog incident the Defendant tells her that her family would go to hell if she talked. Given GN's earlier insistence that she had never told anyone about witnessing the Defendant's act of bestiality, it is not clear how the Defendant could find out what she had seen and so make this comment. GN's testimony about this threat of consequences does not make sense.

[937] DN is not able to say with certainty where the act of alleged bestiality occurred. She thinks that it was outside the Mission. She is not able to say where outside the Mission this happens. No factual description is given by DN about what she was seeing. She claims not to have seen the Defendant's penis. No evidence was given to indicate where the Defendant was positioned in relation to the animal. It is unknown how far away DN was from the Defendant when she makes this observation. Nothing is allegedly said by the Defendant when this event is occurring. DN says that she is with her sister GN and LA when they make this discovery. There is no indication where the other children were standing in relation to DN when this event occurred.

[938] DN's evidence about the incident of alleged bestiality bears no real resemblance to the incident being described by GN except for the remarkable absence of any real detail in both accounts.

[939] DN cannot say where she had been before arriving at the Mission to witness this event or where she had gone after the incident ended. DN again claims to have experienced some form of blackout after seeing this alleged act of bestiality.

[940] GN was living in Toronto when she was contacted by a lawyer about making a claim against the Church for compensation related to this alleged abuse. GN ultimately received in settlement of this claim a return ticket from Toronto to Igloolik and \$500.00 a month for eight months. It is unknown what factual allegations were made by GN in support of this claim for compensation.

[941] This witness has a criminal record. This record contains no entries for crimes of dishonesty.

[942] The Court has a reasonable doubt about the reliability of the evidence given by both DN and GN in relation to this allegation. The Defendant is found not guilty of Count 54.

Count 55 (CP) – buggery of CP s.155CCC

Count 56 (CP) – buggery of CP s.155CCC

Count 57 (CP) – bestiality on a dog s.155CCC

Count 58 (CP) – indecent assault on a male s.156CCC

(For a summary of these allegations see paras [340] – [356])

[943] CP gives a statement to the RCMP about his involvement with the Defendant in April 2013. In this statement and his examination in chief CP says that he did not tell anyone of his abuse. In cross-examination he says that he did talk to JA about the Defendant. It is unknown when this was done. It is not clear what was said to JA by CP. The Court infers from CP's testimony that he did not discuss his own abuse in any detail. CP was warning JA to avoid contact with the Defendant. Nothing much turns on this.

[944] CP from time to time has nightmares about the Defendant. He is being assaulted by the Defendant. He sees JU being anally raped. He is being followed by the Defendant. In cross-examination CP says that he finally decided to go to the police because he wanted to get the Defendant out of his head. He was afraid that he might eventually be tempted to take his life, like his good friend JU. He wanted to get on with his own life and put the past behind him.

[945] At some unknown point time CP applied for and received compensation from the Church for the Defendant's alleged abuse. It is unknown what factual allegations were made by CP in support of this claim. CP received the sum of \$66,500 in settlement of this claim.

[946] In cross examination CP seemed to agree with a suggestion put to him by the Defence that he might be confusing his dreams with reality. This was the subject of re-examination by Crown. CP was adamant that what he said had happened to him was in fact a real experience, not just a nightmarish dream sequence.

[947] CP had to break frequently during his testimony to regain his composure. He frequently broke down in tears. His demeanor was consistent with someone who has been severely traumatized.

[948] The sequence of events described by CP is both logical and complete. The evidence is internally consistent. There are no obvious gaps in this memory, at least in so far as the traumatic events were concerned. CP's description of the events is very graphic in its detail. This testimony includes child-like, age-appropriate descriptions of CP's reaction to these events and his interactions with the Defendant.

[949] This witness was not shaken in his account in cross-examination. There is nothing in CP's evidence to suggest that CP's memory of these events was recovered either through discussion with others or with the assistance of psychotherapy. The memory appears to be continuous. This Court concludes that there is no rational basis to suspect that this memory of events was either concocted or confabulated.

[950] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt. CP's description of the dark unheated storage area where he was allegedly raped is consistent with what others have described to be the attic of the Mission. CP's knowledge of this area is not consistent with the Defendant's claim that children were not allowed upstairs in the Mission. CP would not likely have any knowledge of this room unless he had been there to see it.

[951] There is no basis to conclude that CP might have been mistaken about what he saw happening to the dog. CP's evidence is rich in detail. The incident with the dog leads directly to the alleged anal rape. There is nothing arising from CP's cross-examination from which to conclude that this incident was fabricated by CP.

[952] The Crown has proven these four counts beyond any reasonable doubt. The Defendant therefore stands convicted of Counts 55, 56, 57, and 58.

Count 59 (LAP) – indecent assault on a female s.149CCC
Count 60 (LAP) – indecent assault on a female s.149CCC

(For a summary of these allegations see paras [357]- [360])

[953] LAP alleges multiple fondling events. LAP claims that these incidents happened a few times over a three or four year period. LAP describes the incidents generically. She is unable to distinguish between particular events. When asked by Crown to describe the first alleged incident LAP says that she does not really remember (Transcript page 266 line 8). There are no specific memory cues indicated for either of the two offences charged.

[954] LAP says that other children were present in the same room when these alleged offences were committed. LAP is not able to say who the other children were. She believes that the fondling lasted a long time but concedes that she was too little to have any real sense of time. LAP says that each incident would end with the Defendant either releasing her on his own initiative so that she could return to the floor or LAP would jump down on her own.

[955] There is no suggestion of any threats made to dissuade LAP from talking to others about what was happening.

[956] Nothing was ever said to anyone about these fondling events. Years passed. LAP was never asked why she delayed reporting these events to her family. LAP says that she quickly forgot about these incidents.

[957] In the years that follow, LAP starts to play with herself. She is repeatedly caught masturbating by her parents, and they would spank her for doing this. LAP says that her sister VA talked to her when she was 12. When LAP tried to understand why she was masturbating, she started to remember what the Defendant had done to her many years earlier. LAP experienced flashbacks. Through these flashbacks LAP was able to gradually piece together a memory that had long been buried in her past. After coming to the realization that she had been abused by the Defendant, LAP says that she tried to tell her mother what had happened to her. Her mother refused to believe her.

[958] VA has not been called as a witness to verify any part of this disclosure. LAP's mother has not testified in this proceeding. It is unknown whether she is still living.

[959] As she recovered this memory, LAP came to the realization that she had been sexually abused by the Defendant. She says she was fascinated with masturbation in her childhood because she had been introduced to these feelings by the Defendant and missed them. LAP now struggles with sexual intimacy in her relationship with her husband and she blames the Defendant for this. She gets angry when her husband engages in sexual contact that reminds LAP of what the priest had done to her.

[960] At some unknown time LAP applied for compensation from the Church for this alleged abuse. It is unknown what factual allegations were made by LAP in support of this claim.

[961] LAP received the sum of \$6000 in settlement of this claim two or three years ago. After receiving this money LAP again approached her mother to talk about her abuse. This time her mother believed her.

[962] It is not until April 2012 that LAP disclosed to the police her involvement with the Defendant. LAP was not asked why she delayed going to the police after she filed her claim for compensation.

[963] In cross-examination LAP concedes that she used to hear many of the rumors and gossip about the Defendant's alleged activities from others in Igloolik. Igloolik was a small community. Gossip was commonplace. LAP insists that she no longer listens to this gossip about the Defendant.

[964] LAP's account of what happened on these two alleged occasions is fragmented. It is clear that she has no specific memories that allow her to distinguish one event from another. There are no specific memory cues associated with either alleged incident. It is unknown how long it took LAP to recover her memory of these events. It is unknown what triggered these flashbacks. It is unknown if these flashbacks changed over time. It is unknown what information or gossip about the Defendant was known by LAP at the point she started to experience this memory recall. It is unknown what effect, if any, this information had on LAP's ability to remember these events.

[965] It is clear that this recovered memory of abuse has been, and is now, being used by LAP to rationalize her own behavior as a teenager and as a spouse.

[966] The Court is unable to find that LAP's memory is reliable. The Crown has failed to prove these two counts beyond a reasonable doubt. The Defendant is therefore acquitted of Counts 59 and 60.

Count 61 (JQ) indecent assault on a female s.149CCC
Count 62 (JQ) indecent assault on a female s.149CCC
Count 63 (JQ) indecent assault on a female s.149CCC

(For a summary of these allegations see paras [361] – [368])

[967] JQ remembers other children being present during the first fondling event but cannot remember who or what they were doing when she was being fondled. JQ gives a generic description of the fondling events.

[968] Some detail with respect to the first alleged incident is elicited improperly through a leading question. The Crown asks the following question (Transcript page 547 from line 21 and 548 to line 3):

Q: When you were close to Erik, do you ever remember seeing or feeling an erection from Erik or that he had an erection?

THE INTERPRETER: A: First time when he did this to me when he was touching me and that's when he was too close to me and I wasn't comfortable, then I felt at the same time on my right-hand side I felt something, something hard. And I didn't know what it was, but looking back, it was an erection. He had an erection.

[969] The Court cannot assign any real weight to evidence elicited through leading questions.

[970] With respect to the alleged touching by the Defendant during the confessional, there is no evidence to indicate how this touching started or how it ended. JQ does not remember what language the priest was using during this confession.

[971] There is absolutely no explanation for why this witness uses the plural “we” and “us” when describing what was being done to her during confession. The Crown sought no clarification of this in its examination of JQ. There is no suggestion on the evidence that there was any child other than this witness present when confession was being taken.

[972] There are no details of any kind provided about the third incident of fondling referenced in the indictment. There are no memory cues specific to this incident referred to by MI to allow her to distinguish it from the other alleged events. It is unknown where the third incident took place. It is unknown how this event started or how it ended.

[973] JQ applied for compensation for this abuse in 2006 or 2007. It is unknown what factual allegations were made by her in support of this claim. JQ says that she received the sum of \$16,000 in settlement of this claim. JQ was told about how to apply by JA who is another complainant in this proceeding.

[974] JQ did not disclose her history of abuse to her mother until after she had applied for compensation. JQ claims to have disclosed her abuse to her husband and an unnamed aunt but is unable to say when she did this.

[975] It is unknown what motivated JQ to overcome her fear of damnation and build up enough courage to make the claim for compensation. It is unknown why or how she finally decided to tell her mother and her husband about what had happened.

[976] JQ disclosed first disclosed the alleged abuse to the RCMP in February 2012. In this statement she claimed to have blacked out in the confessional. She was consequently unable to give the police any details about what happened. In cross-examination JQ claims to have recovered the memory of the sexual abuse in the confessional since speaking to the RCMP. It is unknown when or how this memory was recovered. No details are provided.

[977] JQ indicates that when she was a youth, she spoke to her female friends on many occasions about their experiences of abuse by the Defendant. Everyone shared their stories. JQ mentions JA, EK, LA, WI, JA, and MN specifically as being part of this group.

[978] The Court is not satisfied that JQ's memory of these events is reliable. There is a potential for contamination of memory as details are being remembered following discussions with other complainants about their alleged abuse by the Defendant.

[979] The Crown has failed to prove these three counts beyond a reasonable doubt. The Defendant is therefore acquitted of counts 61, 62 and 63.

[980] Crown also led evidence through JQ that two unnamed children had demonstrated to her how they had been taught by the Defendant to move their tongues while kissing (transcript pages 551 from line 13 to 552 to line 1). These children allegedly demonstrate this technique to JQ while sitting on the floor of the Mission.

[981] This type of evidence was inadmissible hearsay. This type of evidence relates to the bad character of the Defendant. The Crown did not establish any legal foundation for introducing evidence of this kind. The Court has consequently disregarded all references in the evidence to this alleged activity.

Count 64 (MUO) – indecent assault on a female s.149CCC

(For a summary of this allegation see paras [369] – [373])

[982] MUO never applied for compensation from the Church. MUO says that she wanted to forgive the Defendant for what he had done. She decided to go to the police only after she heard that a number of others had done so. MUO had heard of these allegations through news reports on the radio.

[983] MUO's statement to the RCMP was given in March of 2011. In this statement MUO does not mention the Defendant kissing her or touching her in crotch area. She says in her statement that she stopped the Defendant from fondling her breast and then she immediately walked out.

[984] MUO says that there were some details about this incident that she did not remember at the time she gave the statement. Subsequent to providing this statement, MUO says that she started to experience flashbacks. Her memory improved over time and she started to remember things that she had once forgotten. She is convinced that what she now remembers happening, did happen. She intended to go back to the police with the additional information but never did and regrets this decision.

[985] Notwithstanding the detail missing in the 2011 statement, it appears on the evidence that MUO did retain some memory of the core event continuously. MUO was a young adult when this alleged event occurred. She clearly repressed some details related to the incident and has recovered these details on her own over time.

[986] Unlike some of the other complainants, there is no evidence to suggest that MUO has ever engaged in discussions with others about their alleged history of abuse by the Defendant. There is no evidence to suggest that MUO was assisted by others in remembering the details forgotten when she spoke to the police in 2011.

[987] The sequence of events described by MUO is both logical and complete. The evidence is internally consistent. There are no obvious gaps in this memory, at least in so far as the traumatic events were concerned. MUO's description of the events is graphic in its detail. She outlines statements allegedly made by the priest that shocked her. In all the circumstances the Court finds that MUO's memory to be reliable.

[988] There is no evidence to suggest that MUO might have been motivated by profit to manufacture a false complaint to assist her in making a claim against the Church for compensation.

[989] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt. In particular, the Court finds that the Defendant's claim to have never taken confession during his stay in Igloolik suspect. While he may have declined to take a confession from a unilingual Inuk who spoke no English, this language barrier would not have prevented this Defendant from performing the sacrament in English. Many of the young adults, and older teenagers in Igloolik would have had and did have sufficient command of English to give a confession. Many of these older students were already receiving religious instruction from the Defendant at the portable unit. MUO, then 18 years of age, says that she made her confession in English. This makes sense given the Defendant's inability to speak Inuktitut.

[990] The Court is satisfied that this alleged offence has been proven beyond a reasonable doubt. The Defendant is convicted of this count.

Count 65 (SQ) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [374] – [379])

[991] SQ told no one of this incident for many years. He says that he was too ashamed and embarrassed to talk about it. He says that he lost his trust in people. He had trusted the priest. The Court accepts this explanation. Given the age and life circumstances of this young complainant, it is not surprising that SQ kept his silence for as long as he did.

[992] At some point SQ says that he tried to talk to JU about what happened. JU was not interested in talking about it. JU was also a complainant in criminal proceedings brought against the Defendant in Baker Lake. Nothing much turns on this. There is no suggestion on SQ's evidence that he did not have a continuing memory of what he says the priest did to him. There is no suggestion that any part of SQ's memory was revived through this discussion with JU.

[993] SQ is not certain which hand the Defendant used to touch him. SQ recalls nothing being said by the priest while he was being touched. In cross-examination SQ concedes that many of the peripheral details of the events of this day are not remembered clearly or at all. However, SQ remained unshaken in his allegation about what the Defendant did to him and how he did it. There is no suggestion by Defence that he has deliberately fabricated the story. There is nothing in evidence to suggest that SQ might have been mistaken about what happened to him on the couch. There is nothing in evidence to suggest that SQ's memory of these events may be false.

[994] The Defendant has made a general denial of any involvement in this offence. He has no real memory of SQ ever attending the manse in Baker Lake as alleged. The Defendant says that there was no video game available at the residence for young adolescents to play with.

[995] The independent evidence given by JU confirms that SQ was at the manse on at least one occasion. There were toys to play with at the Defendant's residence. There is no specific mention of a video game. JU makes no mention of playing a game under a blanket in the living room. JU says that he recalls the Defendant and SQ leaving the living room for the kitchen. JU says that SQ suddenly left the kitchen. He seemed to be upset about something. JU followed SQ out of the residence. SQ did not say what had happened to make him upset.

[996] The absence of any real confirmation of the video game played by JU under the blanket is troubling. JU's account of the incident differs significantly from SQ's. Something may have happened to SQ but this is not the test to be applied. The Crown must prove this allegation beyond a reasonable doubt. Nothing less will suffice. A critical omission in the evidence of the independent witness JU leaves this Court with a lingering doubt. The Defendant is consequently acquitted of Count 65.

Count 66 (JQ) – indecent assault on a male s.156CCC

(For a summary of this allegation see paras [380] – [383])

[997] The Crown has elected to only lay one charge in relation to this complainant. JQ alleges that he was fondled by the Defendant on three separate occasions. This witness is unable to give any specific factual details related to the other two fondling events alleged by him. There are no child-like memory cues referenced to distinguish one event from another. All three events are described generically. It is unknown how these events end.

[998] Other children were alleged to be present for the first fondling event. Their identities are unknown. There are no independent witnesses.

[999] JQ says that he does not tell anyone about these events because he did not understand them to be wrong at the time. This clearly changed at some point. JQ makes a claim against the Church for compensation and receives \$30,000 in settlement of this claim. The factual basis used to support this claim for compensation is unknown. JQ waited until 2012 to speak to the RCMP about these allegations. There is no real explanation in evidence for why he waited so long. There is no explanation for why he never spoke of these allegations to his sister (VQ) who is also a complainant in these proceedings. There is no explanation for why he did not tell his parents once he understood that he had been fondled.

[1000] The Court has a lingering doubt about the reliability of this complainant's evidence. The details are few. This complainant would have been between eleven and fourteen when these events occurred.

[1001] The Crown has consequently not proven this offence beyond a reasonable doubt. The Defendant is acquitted of count 66.

Count 67 (VQ) – indecent assault on a female s.149CCC

Count 68 (VQ) – indecent assault on a female s.149CCC

(For a summary of these allegations see paras [384] – [388])

[1002] There are no other details of any kind provided in relation to the second alleged incident. It is unknown how long after the first incident this happened. There are no references to any conversation. There are no child-like memory cues that allow VQ to distinguish one event from the other. VQ goes on to say that there may have been as many as five or six touchings in total. She is not sure, but thinks that at least two of the touchings were underneath her clothing. On every one of these occasions VQ claims to remember the Defendant breathing heavily behind her as she was being fondled.

[1003] VQ says nothing to her parents when these touching events take place. VQ says she was too young to understand sexuality. She did not understand these touching to be bad. VQ would have been between one and four years of age when this alleged event occurred. Years passed.

[1004] As VQ matured she started to have dating relationships. As a teen VQ learned about sexuality and she eventually came to understand that the alleged touching was a form of abuse. VQ says that she then disclosed her history of abuse to an unnamed friend once she realized what had happened to her. VQ confirms in cross examination that she did speak to her brother JQ about what he had experienced. She has also spoken to a childhood friend about their abuse but refuses to identify who this friend is. There is no independent evidence to confirm when these conversations took place. It is unknown why VQ did not disclose this abuse to her parents once she understood what had happened to her.

[1005] In 2005 or 2006 VQ made a claim for compensation against the Church. She was ultimately awarded \$16,000 as a result of doing so. It is unknown what factual allegations were made by VQ in support of this claim.

[1006] It is July 2011 before VQ speaks to the RCMP about these events for the first time. VQ was not asked why she waited until 2011 to do so. She tells the police that she was lucky because she only got "the rub". Others had experienced worse. This suggests that VQ was aware of what others in the community had allegedly experienced. VQ has read newspaper articles about the Defendant. She says that Igloolik is a small town. She has heard much gossip from many others about the Defendant and what he has allegedly done.

[1007] VQ has struggled with an addiction to drugs. She has recently attended a rehab facility and undergone treatment for her addiction. She confirms that she discussed what happened to her in the Mission during her therapy sessions. It is unknown whether anything said or done during this therapy helped her to remember the events of her past.

[1008] In cross-examination, VQ indicated that she might have been as young as four years of age when the first incident of fondling took place (transcript p.219 line 1). VQ's memory of the first event includes references to things allegedly said by the Defendant. If as claimed, she did not understand the touching to be wrong, it is remarkable that she would be able to remember what was said thirty-eight years later. VQ has no real memory of the other alleged incidents. Yet she is able to say under oath that this fondling occurred on as many as five or six different occasions.

[1009] The Court is not convinced that VQ's memory of events is reliable. Something may have happened, but a possibility or even a probability is not sufficient to found proof beyond a reasonable doubt. The Crown has failed to prove these allegations beyond a reasonable doubt. The Defendant is consequently acquitted of counts 67 and 68.

Count 69 (JQ) – indecent assault on a male s.156CCC

Count 70 (JQ) – indecent assault on a male s.156CCC

Count 71 (JQ) – indecent assault on a male s.156CCC

Count 72 (JQ) – act of gross indecency s.157CCC

(For a summary of these allegations see paras [389] – [395])

[1010] JQ's description of the first fondling event is fragmented. JQ does not say how this incident ends. JQ's claim that this type of fondling occurred on at least five different occasions is unsupported by any facts describing these other events. There are no specific memory cues referenced by this witness to give him the ability to distinguish one event from another. The other events have no beginning or end. There is no specific description of the fondling events themselves. It is unknown whether the fondling is on top or underneath JQ's clothing. There is no indicated duration. With the exception of the second alleged incident, it is unknown where these other events take place.

[1011] With respect to this second incident, JQ does not say what the Defendant was doing inside the furnace room before JQ tried to leave. There is no evidence of any sexual touching by the Defendant.

[1012] With respect to the third series of events involving mutual masturbation and a dog, JQ describes all five alleged incidents in generic terms. Apart from the bare description of what he was asked to do and what he did, there are no specific facts alleged. The description of the dog on these five occasions is not given. The witness does not say where these incidents take place. The duration of these events is not stated. There is no beginning and there is no end. There are no specific memory cues referenced by this witness to distinguish one event from another.

[1013] As a result of a leading question from Crown (transcript page 339 lines 17 – 18) JQ is induced to speak of how he would be asked to touch the Defendant's penis. JQ says that this type of event happened at least five times. JQ says this (Transcript page 340 lines 20 – 23):

A: I was right in front of -- front of him, and I was kneeling down in front of him. He took my hand and let me touch his thigh, and then he let me touch his penis.

[1014] The following exchange between Crown and JQ then takes place on the subject of sperm (Transcript page 341 at line 16 – 342 at line 2):

Q: Can you tell the court the times that Erik was touching you whether or not any white stuff came out of your penis?

A: Yes.

Q: And the times that you were touching Erik, can you tell the court whether or not any white stuff came out of his penis?

A: When -- I don't specifically recall if he ejaculated, but I remember I would ejaculate because he would caress me very hard, and upon ejaculation, he would let the dog lick the -- the sperm.

Q: And did the dog ever lick anything else?

A: Yes. Also licked my penis.

[1015] This was not a case of an adult witness being allowed to simply recite a narrative of events from memory. The narrative of events given by JQ is moulded through leading questions.

[1016] There is no indication on the evidence as to how the Defendant gets the dog to lick JQ's penis. It is not clear whether this occurs on more than one occasion. There is no specific reference to the Defendant saying anything at any time.

[1017] The last incident referred to by this complainant is said to take place in the kitchen. JQ says that this last time "it" happened he gets really mad because he is tired of being fondled. JQ resists and is pushed violently against a wall by the Defendant. There is no follow up question by Crown to clarify what was meant by "it". The Court is once again left with no concrete details related to the alleged abuse. The same deficits that apply to JQ's description of earlier incidents apply as well to this last event.

[1018] At some unknown time JQ makes a claim for compensation against the Church for abuse by the Defendant. He received \$16,000 in settlement of this claim in 2006. It is unknown what factual allegations were made by JQ to support this claim.

[1019] JQ first brought these allegations of abuse by the Defendant to the police in April 2012. This witness is not asked to explain why he decided to open up and finally disclose these abuse allegations to the police.

[1020] JQ has talked extensively with his spouse MN (also a complainant) about his experiences with the Defendant. They have shared their pain with each other. It is not clear on the evidence when this disclosure was first made. The couple have been together since 1997. JQ says that it took some time before he had the courage to open up.

[1021] JQ says that over the years he has received extensive counselling. It is unknown when this started. It is unknown what this counselling was for or who has been providing this therapy. It is unknown what effect if any this therapy has had on JQ's ability to remember his past history of abuse.

[1022] In re-examination by the Crown, JQ says for the first time that the Defendant had told him not to tell anybody about what the Defendant was doing. No details are given as to when or where this was said. Up until this is said by JQ, there has been no apparent explanation for why JQ lied to his father about his cut hand and why he never spoke to anyone about the alleged abuse by the Defendant.

[1023] JQ admits that he is either friends with or related to many of the complainants in this prosecution and who have previously applied for compensation in claims brought against the Church. JQ mentions WA, RK, VQ, LI, and JA in particular. JQ claims to have not discussed the Defendant's alleged abuse of him with any of these people.

[1024] JQ's evidence is disjointed. It is scattered and confusing. This testimony contains few contextual details. The few details that are disclosed are elicited by the Crown through leading questions. There are no age-appropriate descriptions of JQ's interactions with the Defendant.

[1025] This Court is unable to adequately assess the veracity or reliability of this evidence. The Crown has failed to prove the alleged offences beyond a reasonable doubt. The Defendant is consequently acquitted of counts 69, 70, 71, and 72.

Count 73 (LT) – indecent assault on a male s.156CCC
Count 74 (LT) – buggery of LT s.155CCC

(For a summary of these allegations see paras [396]- [406])

[1026] LT applied for and received compensation from the Church in 2006 or 2007 for the alleged abuse by the Defendant. The amount of this compensation is unknown. LT refused to say what he received. It is also unknown what factual allegations were made by LT in support of this claim. Part of this compensation involved provision for a counsellor. LT had a therapist by the name of Bruce Hendley. It is not disclosed when this counselling started or when it ended. It is not known what was discussed. It is unknown whether anything said or done during this therapy helped LT to remember what the Defendant had done.

[1027] LT says that he developed a glue-sniffing habit that followed him for many years.

[1028] LT first provided a statement to the RCMP about this alleged abuse in February 2012. Initially LT did not want to talk to the police. It took three attempts before LT decided to open up.

[1029] LT blames the Defendant for a continuing problem with hemorrhoids. He blames the Defendant for social dysfunction in his life as an adult. He blames the Defendant for his substance abuse problem. He says that he resorted to glue-sniffing and alcohol abuse to dull the pain and the memories that he carried inside from his history of abuse. LT admits that the years of substance abuse have interfered with his ability to remember some details of these past events.

[1030] LT told that the police that he was going to sue the Vatican. He explained in Court his rationale for suing. This was all about accountability. He wanted the Vatican to be held accountable for hiding the Defendant in Belgium for 15 years.

[1031] LT admits that over the years he has heard much gossip from others about what the Defendant had allegedly done when he was a priest in Igloolik. LT has discussed the Defendant with JA and LI. For many years he blamed these two for recruiting him or encouraging him to go to the Mission. He had been told by these two that there was good food available to eat at the Mission. LT blamed them for his own victimization.

[1032] In later years LT says he has forgiven them because they had told him that they were recruited by the priest to do this and had no choice. He has since talked to JA many times and they have shared their pain together.

[1033] There is no basis developed in cross-examination to conclude that this witness has deliberately fabricated this account. Despite the years of substance abuse, this witness has maintained a consistent and continuous memory of what had happened to him. Indeed, the reason he resorted to substance abuse was said to be his attempt to dull these very painful memories. His account is internally consistent. It contains many child-like and age appropriate descriptions of what the child was experiencing and seeing at the time. There are specific memory cues related to unusual conversations with the Defendant. The Court finds that this complainant's evidence is reliable.

[1034] With respect to Count 73, the Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a disposition propensity to fondle adolescents. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[1035] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[1036] The Court is satisfied that the Crown has proved these two allegations beyond a reasonable doubt. The Defendant is therefore convicted of both Count 73 and 74.

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Count 1 – indecent assault of TA – s.156CCC

(For a summary of this allegation see paras [407] – [409])

[1037] TA is not able to say who the other children were in the room when this incident occurred. He would have had no reason to remember who was with him in the Mission when this incident occurred.

[1038] There are no independent witnesses to this event.

[1039] TA concedes that he spoke and understood very little English when he was young. He said nothing to the priest when it happened. He said nothing to anyone after the event because he was embarrassed by what had happened. TA says that it destroyed his trust of priests.

[1040] TA never applies for compensation from the Church, but in March 2013 TA gives a statement to the RCMP about this experience. He explains that he finally decided to disclose the abuse because others who tried to hide their secret got sick and eventually died. He did not want to get sick from hiding the abuse.

[1041] TA has a continuous memory of this incident. There is no suggestion on the evidence that he has had to reconstruct a memory of what happened. There is no basis to conclude that this allegation has been fabricated in order to support a claim for compensation against the church.

[1042] This witness's silence over the years has been adequately explained by the embarrassment and shame TA associates with this incident.

[1043] There is a very short gap in this witness's memory. TA claims to have entered a blackout shortly after he squirmed to prevent the Defendant's hand from entering his pants. TA claims to have no memory of getting off the Defendant's lap. His next recollection is sitting on the floor of the Mission playing with marbles.

[1044] TA attributes this blackout to fear. This blackout appears to be of very brief duration. The Court has no reason to doubt this witness's sincerity when he attributes his loss of memory to a fear of the Priest. This same fear was shared by many of the other complainants who viewed the priest as an authority figure.

[1045] The Crown's evidence shows that the Defendant had the opportunity to commit this offence. The evidence of similar facts suggests that the Defendant had a disposition propensity to fondle adolescents' genitals. The behavior alleged to have been exhibited by the Defendant on this occasion is consistent with the unique behavioral characteristics reported by other complainants on other occasions.

[1046] The Defendant has denied his involvement in this offence. This was a general denial. For all the reasons given in paragraphs 474 to 484 the Court does not believe the Defendant's denial and finds that this evidence does not raise a reasonable doubt.

[1047] The Court is satisfied that the Crown has proved this allegation beyond a reasonable doubt. The Defendant is therefore convicted of this count.

VI. CONCLUSION

[1048] The prosecution of historical events presents unique challenges to litigants, counsel and the court. The inherent limitations of human memory, the absence of any independent corroborating evidence, and the progressive impairment of cross-examination caused by failing memory, all combine to create a perfect legal storm; a storm that undermines the Court's ability to separate historical fact from fiction.

[1049] Some jurisdictions have attempted to address this problem by imposing arbitrary limits upon the prosecution's ability to pursue historic allegations of wrongdoing. This is typically done through the creation of statutory limitation periods. Canada has chosen not to do so.

[1050] Where the Crown's case depends entirely upon a witness's memory of an historic event that has been repressed or recovered, the reliability of such a memory must be scrutinized with particular care. Such an assessment requires an appreciation of the vulnerabilities associated with this type of memory.

[1051] The application of common sense to the evidence is certainly part of the assessment of evidence reliability. However, absent a thorough examination of the complex processes of memory retrieval by individual witnesses, common sense may not be sufficient to detect error and unreliability.

[1052] The decision rendered by Supreme Court of Canada in *Francois* referenced earlier in this judgment (see paragraphs 33 to 34) turned on its facts. The jury in *Francois* had been exposed to a thorough examination of how this particular complainant's memory had been recovered. It was under these circumstances that the Supreme Court found that common sense could be applied by the trier of fact without the assistance of expert evidence. It was under these circumstances, that the jury was able to arrive at a just result.

[1053] In this case, the Court has not had the benefit of any real examination of how some witnesses' recovered their memories years after the event. Nor has it had the benefit of any expert evidence to assist it in its task of assessing the reliability of these reclaimed memories.

[1054] Judges and juries do not possess divine insight into the soul of witnesses who testify in a legal proceeding. Decisions must be made on the basis of evidence alone, not intuition or guesswork. The criminal standard, proof beyond a reasonable doubt, is a high standard to achieve. The Crown must meet this standard with evidence that is both credible and reliable.

[1055] The quantity and quality of the evidence available to the Court in this case has been substantially weakened by the passage of time. The reliability of the Crown's evidence on many counts is suspect. This is reflected by the results of this trial.¹

Dated at the City of Iqaluit this 10th day of September, 2014.

Justice R. Kilpatrick
Nunavut Court of Justice

¹ For a count by count summary of findings, see Appendix A at the end of this decision.

**APPENDIX A
COUNT BY COUNT SUMMARY OF FINDINGS**

Count #	Complainant's Initials	Charge	Sex (M/F)	Result (Guilty/Not-Guilty/Lesser Included Offence)
1	JA	s.156CCC	M	Not Guilty
2	CA	s.149CCC	F	Not Guilty
3	DA	s.156CCC	M	Not Guilty
4	MA	s.156CCC	M	Not Guilty
5	JA	s.247(2)CCC	F	Guilty
6	JA	s.155CCC	F	Not Guilty as charged (But guilty to s.149CCC)
7	JA	s.331(1)(a)CCC	F	Not Guilty
8	JA	s.149CCC	F	Not Guilty
9	(Dog)	s.155CCC		Not Guilty
10	MA	s.156CCC	M	Guilty
11	MA	s.156CCC	M	Not Guilty
12	CA	s.156CCC	M	Guilty Plea
13	LA	s.144CCC	F	Guilty
14	LA	s.381(1)(a)CCC		Not Guilty (No evidence motion)
15	LA	s.381(1)(a)CCC	F	Not Guilty
16	(Dog)	s.155CCC		Not Guilty
17	LA	s.149CCC	F	Not Guilty
18	LKC	s.149CCC	F	Guilty
19	LKC	s.149CCC	F	Guilty
20	WI	s.149CCC	F	Not Guilty
21	WI	s.149CCC	F	Not Guilty
22	WI	s.149CCC	F	Not Guilty
23	JI	s.155CCC	M	Not Guilty
24	JI	s.156CCC	M	Guilty Plea
25	LI	s.155CCC	M	Not Guilty
26	LI	s.156CCC	M	Guilty Plea
27	TI	s.144CCC	F	Not Guilty
28	TI	s.149CCC	F	Not Guilty
29	TI	s.149CCC	F	Not Guilty
30	HI	s.156CCC	M	Not Guilty (No evidence motion)

31	HI	s.245(1)CCC	M	Not Guilty (No evidence motion)
32	HI	s.381(1)(a)CCC	M	Not Guilty (No evidence motion)
33	PI	s.156CCC	M	Guilty Plea
34	PI	s.156CCC	M	Guilty
35	DI	s.149CCC	F	Guilty
36	MI	s.149CCC	F	Guilty
37	RI	s.156CCC	M	Guilty Plea
38	RI	s.157CCC	M	Not Guilty
39	EK	s.149CCC	F	Not Guilty
40	EK	s.245(1)CCC	F	Not Guilty
41	RK	s.156CCC	M	Not Guilty
42	RK	s.155CCC	M	Not Guilty
43	LK	s.149CCC	F	Guilty
44	JM	s.156CCC	M	Not Guilty
45	ZN	s.246.1CCC	F	Guilty
46	MN	s.149CCC	F	Not Guilty
47	MN	s.149CCC	F	Not Guilty
48	MN	s.144CCC	F	Not Guilty
49	VN	s.149CCC	F	Guilty
50	VN	s.245(1)CCC	F	Not Guilty
51	CN	s.156CCC	M	Guilty Plea
52	DN	s.149CCC	F	Not Guilty
53	GN	s.149CCC	F	Guilty
54	(Dog)	s.155CCC		Not Guilty
55	CP	s.155CCC	M	Guilty
56	CP	s.155CCC	M	Guilty
57	(Dog)	s.155CCC		Guilty
58	CP	s.156CCC	M	Guilty
59	LAP	s.149CCC	F	Not Guilty
60	LAP	s.149CCC	F	Not Guilty
61	JQ	s.149CCC	F	Not Guilty
62	JQ	s.149CCC	F	Not Guilty
63	JQ	s.149CCC	F	Not Guilty
64	MUO	s.149CCC	F	Guilty
65	SQ	s.156CCC	M	Not Guilty
66	JQ	s.156CCC	M	Not Guilty
67	VQ	s.149CCC	F	Not Guilty

68	VQ	s.149CCC	F	Not Guilty
69	JQ	s.156CCC	M	Not Guilty
70	JQ	s.156CCC	M	Not Guilty
71	JQ	s.156CCC	M	Not Guilty
72	JQ	s.157CCC	M	Not Guilty
73	LT	s.156CCC	M	Guilty
74	LT	s.155CCC	M	Guilty
75	MT	s.156CCC	M	Guilty Plea
76	TU	s.156CCC	M	Guilty Plea
	TA	s.156CCC	M	Guilty
1	LKC	s.144CCC	F	Guilty
2	LKC	s.144CCC	F	Guilty
3	LKC	s.144CCC	F	Not Guilty of offence charged but guilty of s.149CCC