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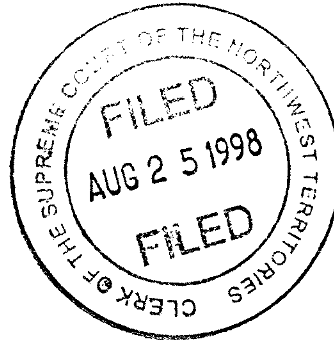
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PAUL LEROUX



Transcript of Reasons for Judgment delivered by the Honourable Justice J. Vertes, sitting at Inuvik, in the Northwest Territories, on the 14th day of August, A.D. 1998.

APPEARANCES:

Mr. S. Couper Ms. D. Sylvain	For the Crown
Mr. J. Brydon	For the Defence

1 THE COURT: The accused, Paul Leroux, was
2 originally charged with 44 counts in one
3 indictment. At the opening of the trial, he
4 pleaded guilty to 9 counts. He pleaded not guilty
5 to 25 counts. He entered special pleas of
6 autrefois convict to 4 counts, and the Crown stayed
7 a further 6 counts. By the end of the Crown's
8 case, 16 counts were dismissed at the invitation of
9 the Crown due to either no evidence or because
10 those counts overlapped with others. I accepted
11 the special plea of autrefois convict on 1 count
12 and dismissed that charge. Not guilty pleas were
13 entered to the 3 counts on which I did not accept
14 the special pleas.
15 So at the end of the trial, I am left to deal
16 with 12 counts on which not guilty pleas are in
17 place. The issue on those is guilt or innocence.
18 I am also left to deal with the 9 counts on which
19 guilty pleas were entered, since there is a dispute
20 as to the facts on some of those offences.
21 I want to start by making some general
22 comments:
23 The totality of the evidence revealed a
24 pattern of conduct by the accused over many years.
25 Between 1967 and 1979, the accused was the senior
26 boys' supervisor at the Grollier Hall student
27 hostel here in Inuvik. The hall was run by the

1 Catholic Church and provided accommodation for both
2 boys and girls who were sent to Inuvik to attend
3 school. Senior boys would be generally between the
4 ages of 14 and 18 or 19. The accused's duties
5 included supervision of the boys' daily activities,
6 providing guidance and counselling, and maintaining
7 discipline. He had living quarters adjacent to the
8 senior boys' dorm rooms.
9 All of the complainants were young men, mainly
10 teenagers at the time when these offences occurred.
11 With two exceptions, they were residents of
12 Grollier Hall who were under the accused's
13 supervision. He was clearly in a position of trust
14 and authority to them. He systematically, over
15 many years, abused that trust by engaging in
16 various kinds of sexual activity with these
17 youngsters. He provided alcohol to them, showed
18 them books and movies with explicit sexual content,
19 and then enticed them into sexual activity. He
20 readily admitted this conduct during this trial.
21 He readily admitted that he had an unhealthy sexual
22 attraction to young men. He called it a disorder.
23 He accepted responsibility for his conduct and says
24 he now understands how harmful it was.
25 The 12 not guilty pleas relate to 8 charges of
26 indecent assault, 3 charges of gross indecency, and
27 1 charge of inciting the complainant to an act of

1 buggery. The 9 guilty pleas relate to 8 charges of
2 gross indecency and 1 charge of indecent assault.
3 All of the offences occurred between 1968 and 1979,
4 so it is necessary to say a few words about the
5 laws that existed in those years.
6 The crime of indecent assault consisted of any
7 deliberate application of force that by its nature
8 or in the circumstances had the quality of
9 indecency. It would be the equivalent of various
10 forms of what we now refer to as sexual assault,
11 sexual touching, and sexual interference. But, as
12 with these current offences, if the complainant is
13 14 years or older and consents to the activity,
14 then it is not criminal. Sexual touching by a
15 person in a position of trust or authority to the
16 victim is now the crime of sexual exploitation,
17 first introduced into the Criminal Code in 1985.
18 It does not matter if the victim consents if the
19 victim is under 18 years of age.
20 The crime of gross indecency has no equivalent
21 in our law today. Historically, it was an offence
22 whereby all homosexual acts, even between
23 consenting adults, were made illegal. To amount to
24 gross indecency, an act must have constituted a
25 marked departure from decent conduct. It was a
26 crime of public morality. The act itself was the
27 crime irrespective of the consent of the

1 participants. It was the same for the crime of
2 buggery. It was only in 1968 that the law was
3 changed so as to provide a defence to acts
4 conducted in private by consenting adults. But to
5 be an adult, one had to be at least 21 years old.
6 Therefore the consent of someone under 21 was no
7 defence.
8 This is significant because here all of the
9 complainants were under 21 years of age. The
10 evidence also revealed that many of them were 14 or
11 older.
12 Throughout the trial, the question of consent
13 was referred to. It was said that the complainants
14 willingly participated in some of these
15 activities. That may be true in some respects but
16 not in all.
17 It is fair to say that, with one exception,
18 there was no evidence to show that the accused used
19 force or threats to compel people into sexual
20 activities. Rather he used enticement,
21 encouragement, and what he called affection. But
22 it is not wholly accurate to say that the
23 complainants consented to these activities. There
24 is a distinction in the law between consent and
25 submission. Every consent involves a submission,
26 but that does not mean that mere submission
27 involves consent. The common law historically held

1 that an agreement to engage in sexual activity by
2 reason of the exercise of authority may constitute
3 not consent but mere submission. The relationship
4 of authority is a relevant factor to determine
5 whether a complainant does in fact consent.
6 It certainly cannot be said conclusively that
7 the mere submission of a child to the influence of
8 an authority figure amounts to consent. Even
9 without the use of overt force or coercion, the
10 accused must have known that the students under his
11 supervision would view him as a figure of
12 authority, one who could dispense or withhold
13 favours, even if he never did resort to such
14 explicit tactics. Therefore, even though many of
15 the complainants acquiesced to these activities, it
16 is not fully accurate to describe it as
17 knowledgeable consent on their part. This issue of
18 mere submission versus consent, however, will have
19 to be addressed, if pertinent, within the context
20 of each specific charge.
21 I also want to make a general comment on the
22 use of similar fact evidence in this trial. By an
23 earlier decision, I allowed the use of evidence as
24 between the counts to be used as similar fact
25 evidence.
26 There is some controversy in the case law as to
27 the standard of proof to be applied to similar fact

1 evidence. Some cases suggest that each count must
2 be considered separately, and it is only if the
3 accused's guilt has been determined on the basis of
4 proof beyond a reasonable doubt in one of them,
5 that the count may be used as similar fact evidence
6 on the others. There are other cases that suggest
7 that it is enough if the similar facts are linked
8 to the accused by merely a preponderance of
9 evidence. This is said to be consistent with the
10 rule that proof beyond a reasonable doubt applies
11 only to the ultimate issue.
12 I do not need to rule on this dispute in the
13 case law. For this case, I am going to lean in
14 favour of the stricter standard. Therefore, it is
15 only the evidence on those counts that have been
16 proven beyond a reasonable doubt that I have relied
17 on as similar fact evidence to support other
18 counts.
19 I would say now that I have disregarded the
20 evidence of Andy Andre in it's entirety. This was
21 similar fact evidence not relating to any count. I
22 found it too unreliable to support any conclusion
23 with respect to it.
24 I will also say now that I have considered the
25 question of collusion or collaboration among the
26 witnesses. While no doubt many of the witnesses
27 had opportunity, indeed, felt the necessity to

1 discuss things among themselves, there is no
2 evidence to suggest collusion or collaboration so
3 as to undermine the reliability of any particular
4 witness's testimony.
5 This leads me to a brief comment on what we
6 term as the credibility or the reliability of
7 testimony.
8 In this case, all of the witnesses, including
9 the accused, were testifying to events that
10 allegedly occurred 20 to 30 years ago. Common
11 sense tells us that in such circumstances people
12 are prone to make mistakes in their recollection of
13 events, especially where, as in this case, many of
14 the witnesses were testifying about single specific
15 incidents. Sometimes it is very difficult for even
16 the most honest witness to sort out what it is that
17 they actually remember as fact, and what is in
18 reality memory that may have been influenced by
19 subsequent events or information. We all suffer
20 from that to greater or lesser degrees.
21 We may have a witness who is honestly trying
22 to tell the truth, but is, in fact, honestly
23 mistaken about some things. We may have
24 witnesses who have, in hindsight, convinced
25 themselves of past events, but in reality are
26 trying to fill in information to explain gaps in
27 their memory. These are all human traits, and we

1 have to be aware of them.
2 In a trial, such as this, we have to probe
3 what people say for signs of reliability. Is the
4 evidence consistent both internally and externally
5 with other known facts? Is it rationally
6 supportable? This is important in every case,
7 because we do not decide criminal cases on the
8 basis of guesswork, assumptions, and
9 generalizations. We decide criminal cases on the
10 basis of proven facts. We do not convict people
11 because of their general bad or immoral conduct.
12 We convict them of specific crimes supported by
13 specific facts.
14 Many judges have said that the law does not
15 clothe a trial judge with a divine insight into the
16 hearts and minds of witnesses. We cannot profess
17 to be able to determine absolute truth. All we can
18 do is apply the rules of evidence to determine
19 whether an allegation has been proven to the one
20 standard accepted by society, that being proof
21 beyond a reasonable doubt.
22 Where, as in so many cases, including this
23 one, one is confronted by differing versions as to
24 what happened, one does not have to decide
25 necessarily which version is true. The issue is
26 whether the evidence as a whole proves the guilt of
27 the accused beyond a reasonable doubt. For that

1 reason, when a judge says that a certain witness's
2 evidence is unreliable, that does not necessarily
3 mean that the judge thinks the witness is lying.
4 All it means is that the evidence is insufficient
5 to meet that level of certainty required for proof
6 beyond a reasonable doubt.
7 Finally, I remind myself that neither the
8 similar fact evidence nor the fact of the guilty
9 pleas, nor, indeed, the mere fact that there are so
10 many charges, should be used by me to simply infer
11 that the accused is more likely to have committed
12 the offences to which he has pleaded not guilty.
13 Those must be assessed on the basis of the totality
14 of the evidence, and the application to each count
15 of the basic principle of proof beyond a reasonable
16 doubt.
17 I will now address each of the specific
18 counts:
19 Counts 1 through 4 were offences relating to
20 Phillip Ross. These were the four counts for which
21 the accused originally entered special pleas of
22 "autrefois convict". After hearing evidence and
23 submissions on these pleas, I ruled that the plea
24 should be accepted with respect to Count 1 only.
25 That count, involving a charge of gross indecency
26 specifying fellatio, was dismissed. The underlying
27 facts on which that charge was based are the same

1 as a 1979 conviction of the accused for
2 contributing to the juvenile delinquency of Phillip
3 Ross. He was imprisoned at the time for it. You
4 can only prosecute and sentence a person once for
5 the same acts. Hence the dismissal of that
6 charge.
7 Count 2 is a charge of gross indecency,
8 specifically taking photographs of Phillip Ross
9 while nude. The accused admitted to taking such
10 photographs, but said that he destroyed them many
11 years ago. No such photographs were entered at the
12 trial. Without the actual photographs, there is no
13 evidence to determine if they meet the legal
14 standard of gross indecency. The mere fact of
15 taking such photographs is insufficient. The Crown
16 more or less conceded this point during their
17 submissions. Count 2 is therefore dismissed.
18 Counts 3 and 4 are charges of inciting Phillip
19 Ross to commit buggery and indecent assault on
20 Phillip Ross.
21 Phillip Ross was born in May of
22 1963 and resided at Grollier Hall between 1972 and
23 1979. Both he and the accused testified as to how
24 they had a sexual relationship during Ross' last
25 two years. The accused said the sexual
26 relationship was only during the time when Ross was
27 a senior boy. Ross said it overlapped his last

1 year as a junior boy since he did not go to senior
2 section until he was 15. That would be 1978.
3 I accept Ross' evidence. This is also
4 supported to some degree by a diary entry made by
5 the accused expressing concern that the junior
6 boys' supervisor would find out about him and
7 Ross. During the two-year relationship, however,
8 Ross was between 14 and 16.
9 Ross and the accused agreed that the sexual
10 relationship involved sexual touching and
11 fellatio. Ross testified at trial how he was
12 scared of the accused because the accused
13 threatened him with a knife. But this evidence has
14 to be compared with the evidence from 1979 when the
15 sentencing judge specifically referred to their
16 relationship as consensual. I am not bound by that
17 finding, but I cannot ignore it. It must have been
18 based on some evidence before that judge.
19 Furthermore, in the 1979 statement, Ross never
20 mentioned any threats. These inconsistencies cause
21 me to have a serious doubt.
22 The evidence also revealed that the
23 relationship between Ross and the accused (the
24 nonsexual relationship) had grown through several
25 years while Ross was a junior boy. He was hanging
26 around the accused all the time. He said the
27 accused gave him money. The accused denied any

1 threats.

2 Ross was the only witness to suggest at the
3 trial that the accused resorted to threats. All
4 the other evidence was quite opposite. The accused
5 would resort to "seduction techniques", as his
6 counsel put it, not violence. I therefore have a
7 doubt and cannot accept the evidence of these threats.

8 Having said that, the charge of indecent
9 assault comes down to determining whether a lack of
10 consent has been proven by the Crown beyond a
11 reasonable doubt. Ross was, on the evidence, over
12 14 when the sexual contact took place. Considering
13 the long-term nature of that relationship and
14 notwithstanding the fact that the accused was in a
15 position of trust, I am not satisfied beyond a
16 reasonable doubt as to proof of non-consent. I
17 therefore find the accused not guilty of Count 4
18 and dismiss that charge.

19 Count 3, however, is a charge of inciting Ross
20 to commit buggery. Ross testified that a few times
21 the accused would try to have anal sex with him.
22 Each time Ross told him not to, and he desisted.
23 The accused denied having anal sex with Ross. He
24 relied primarily on his stated disinclination for
25 anal sex.

26 This is somewhat curious. The accused
27 admitted to engaging in anal sex with the

1 complainant Grandjambe. He referred specifically
2 to his relationships with Grandjambe and Ross as
3 being somewhat special, more in the nature of
4 two-way relationships as opposed to casual sexual
5 encounters. The evidence of Grandjambe supports
6 this interpretation (at least of his relationship
7 with the accused). If the accused readily engaged
8 in anal sex in one of his special relationships, it
9 seems to me to make sense that he would engage in
10 it in another one of his special relationships.
11 I reject the accused's evidence. Ross's
12 evidence on this point was straightforward and
13 unshaken. I note as well that Ross testified to
14 how once he refused to do anal sex, the accused
15 would put his penis between Ross's legs. This is
16 similar to an act described by the complainant
17 Manuel, evidence that has been admitted by the
18 defence.
19 I accept Ross's evidence on Count 3. The
20 issue, however, is whether Count 3 is properly
21 framed. The offence of buggery is not one to which
22 consent is a defence, so that is not pertinent.
23 The act of "incitement" means to urge someone on to
24 do something. Here nothing was done by Ross. At
25 most, all that can be said is that the accused
26 attempted to commit buggery.
27 Can I amend the count to conform to the

1 evidence? In my opinion, I can. The accused is
2 not prejudiced for two reasons: First, his defence
3 was a denial that the offence occurred at all
4 (hence his defence is unaffected whether the
5 indictment said incited or attempted); second, the
6 penalties for inciting and attempting are the
7 same.
8 Count 3 of the indictment will be amended to
9 read:
10 "Did attempt to commit the offence
11 of buggery contrary to Sections 147 and 406(b) of the Criminal Code."
12
13 Having made that amendment, I convict the
14 accused of Count 3.
15 Count 7 is a charge of gross indecency
16 with Alvin Yallee. The accused has pleaded guilty
17 to this charge. This count involves one incident
18 that occurred while Yallee was a senior boy, about
19 14 or 15 years old. The accused admits that he
20 invited Yallee and another resident, now deceased,
21 to his room. He gave them wine and dinner. He
22 provided them with pornographic magazines. Yallee
23 and the accused then engaged in mutual genital
24 fondling.
25 Yallee went further in his testimony and said
26 that the accused encouraged he and his cousin to
27 engage in anal sex. They did, and the accused took

1 photos of them. The accused denied this part.
2 Having seen and heard the complainant Yallee,
3 I find his evidence to be highly persuasive. He
4 was unshaken on cross-examination. I accept his
5 evidence as to the facts in support of Count 7. A
6 conviction to that count will be formally entered.
7 Count 9 is a charge of attempted indecent
8 assault on Andy Masazumi. This relates to one
9 incident when Masazumi was 15 years old. He said
10 that the accused came to his bed in the dorm room
11 and rubbed his chest and groin area underneath his
12 clothing. He said his hand briefly touched his
13 penis. Masazumi testified that he pushed the
14 accused's hand away. The accused denied this
15 incident.
16 Defence counsel submitted that Masazumi was
17 influenced by talking with others. Masazumi said
18 he talked about this with Norman McDonald and
19 Antoine Grandjambe before talking to the police. I
20 fail to see why this would influence him. McDonald
21 and Grandjambe had completely different experiences
22 with the accused. Furthermore, there is evidence
23 of similar conduct by the accused to others,
24 evidence that I accept that supports Masazumi's
25 story. I accept it. I find the accused guilty of
26 Count 9 and a conviction will be entered.
27 Count 10 is a charge of gross indecency with

1 Lawrence Norbert. The accused pleaded guilty. The
2 admitted facts revealed one incident when Norbert
3 was a senior boy between 17 and 18 years old.
4 Norbert was in the accused's room. The accused
5 gave him liquor and showed him some pornographic
6 magazines. The two of them removed their clothes,
7 and the accused briefly fondled the complainant's
8 genitals. A formal conviction will be entered on
9 Count 10.
10 Count 12 is a charge of gross indecency with
11 George Cleary. The accused admits performing
12 fellatio once in his (the accused's) room. Cleary
13 testified that the accused performed fellatio on
14 him several times both in the accused's room and in
15 Cleary's dorm room. He was 15 years old at the
16 time. I found Cleary to be a very impressive
17 witness. I accept his version of the facts. A
18 formal conviction will be entered on Count 12.
19 Count 15 is a charge of gross indecency with
20 Wayne Cockney. The accused pleaded guilty to this
21 charge. The admitted facts are that one time when
22 Cockney was 17 years old, the accused performed
23 fellatio on him after an incident of genital
24 fondling. I accept those as the facts for Count
25 15. Cockney described some other incidents of
26 fondling and one of attempted digital penetration,
27 but I am not convinced as to the reliability of

1 that further evidence. A formal conviction will
2 now be entered on Count 15.
3 Count 22 is a charge of gross indecency with
4 Antoine Grandjambe. The accused pleaded guilty to
5 this charge. The admitted facts are that the
6 accused and Grandjambe were intimate for a period
7 of time from when Grandjambe was 14 years old and
8 continuing until after Grandjambe left Grollier
9 Hall. The sexual intimacy involved mutual
10 masturbation, fellatio, and anal sex. The Crown
11 and defence agree that the sexual contact was
12 consensual. Consent, of course, is immaterial to
13 this charge. Grandjambe himself testified that he
14 was in love with the accused, and that he felt no
15 pressure from him. I accept these facts. A formal
16 conviction will be entered to Count 22.
17 Count 25 is a charge of attempted indecent
18 assault on Walter Bayha. The accused pleads not
19 guilty. Bayha described two incidents.
20 The first occurred when Bayha was a junior boy
21 at age nine. He said that the accused sat beside
22 him on a couch, put his hand on his back, and moved
23 his hand down until it was on top of his buttock
24 area. Bayha was in pajamas, and they were sitting
25 in the supervisor's room with a group of other
26 boys. The accused acknowledged putting his arm
27 around Bayha but said it was simply an affectionate

1 gesture. I am not convinced as to the indecent
2 quality of this act in support of the charge.
3 The second incident described by Bayha
4 occurred when he was 17. He testified that the
5 accused came to his dorm room one night, sat on his
6 bed and touched his thigh area over the blanket.
7 The accused left. Bayha also said that he had
8 forgotten about these incidents until he heard
9 about other charges against the accused. The
10 defence counsel suggested that perhaps Bayha has
11 blown these incidents out of proportion in
12 hindsight.
13 I cannot say that, but I must say I have
14 reservations about the reliability of this evidence
15 as well as doubt as to proof of their indecent
16 quality. I find the accused not guilty and dismiss
17 Count 25.
18 Count 27 involves a plea of guilty by the
19 accused to a charge of gross indecency with Robert
20 Firth. The accused admits that on one occasion
21 when Firth was 15 years old, he gave Firth a beer
22 and briefly fondled his genitals. Firth testified
23 to two other incidents when the accused would come
24 to Firth's dorm room and tried to fondle him as he
25 lay in bed. The accused denied doing this. I
26 reject his denial and accept Firth's evidence as to
27 the facts. A conviction will be entered to Count

1 27.

2 Count 28 is a charge of gross indecency with

3 Leroy Omilgoituk. Omilgoituk related two incidents

4 from when he was a junior boy. He said that one

5 time he was going past the senior boys' section and

6 the accused invited him to sit on his knee and play

7 "horsey." Nothing else happened.

8 The second incident was when the accused

9 allegedly took him and three other boys in the

10 senior boys' shower area and touched them around

11 the groin area over their pajamas and told them

12 that it was important to wash there. On cross-

13 examination, Omilgoituk acknowledged making some

14 prior inconsistent statements about the second

15 incident. The accused denies both incidents.

16 Even if I accept Omilgoituk's version of

17 events, I have a reasonable doubt that they are

18 evidence of a crime. The first incident is no

19 offence in criminal law. The second incident,

20 while highly implausible, also fails to convince me

21 that there was any grossly indecent conduct. There

22 are standards of proof within criminal law that

23 have to be met, and no matter what my suspicion may

24 be about the accused's intentions, that standard

25 has not been met with respect to this offence. I

26 find the accused therefore not guilty and dismiss

27 Count 28.

1 Count 30 is a charge of indecent assault on
2 Norman McDonald. McDonald testified to two
3 incidents from the early 1970's when he was 14 and
4 15 years old. The first incident occurred when
5 McDonald was drying off after a shower. He was
6 dressed in shorts and a T-shirt. The accused
7 started rubbing his shoulders and back. McDonald
8 told him not to do it, and he walked way.
9 The second incident involved the accused
10 coming up to McDonald in the gym, putting his hand
11 on McDonald's chest and back, and then trying to
12 put a hand down the back of McDonald's pants.
13 McDonald again told him to stop it, and the accused
14 did. As he did so, he said to McDonald, something
15 to the effect of, "I can make things easier for you
16 or harder." The accused denied both incidents.
17 McDonald, in my opinion, notwithstanding some
18 inconsistencies and despite acknowledging a lack of
19 memory in the past, gave his evidence in quite a
20 credible manner. He was not shaken on cross-
21 examination, and, over all, I thought he was quite
22 fair to the accused. He did not give any
23 indication that he was overstating what he
24 remembered. I accept his evidence. I find that
25 with respect to both incidents there was an assault
26 of an indecent nature, and there was clear
27 non-consent on the part of McDonald. A conviction

1 will be entered on Count 30.

2 Count 32 is a charge of gross indecency with
3 Isadore Manuel. The accused pleaded guilty. The
4 agreed facts are that on one occasion when Manuel
5 was 19 years old, the accused and Manuel removed
6 their clothes, the accused touched Manuel sexually,
7 and then placed his penis between Manuel's legs. A
8 conviction will be entered on Count 32.

9 Count 34 is a charge of indecent assault on
10 Lawrence Ruben. The complainant testified to one
11 incident when he was in the senior boys' section.
12 He said the accused came into his dorm room one
13 night, sat on his bed, and then put his hands
14 inside his pants and tried to fondle Ruben's
15 genitals. This lasted very briefly. The accused
16 denied the incident.

17 Defence counsel made a strong argument as to
18 the implausibility of the story told by Ruben as to
19 the surrounding circumstances of this incident. It
20 does not, however, persuade me that Ruben's story
21 is not true. He was a credible witness. I accept
22 his evidence. I find the accused guilty on
23 Count 34. A conviction will be entered.

24 Count 35 is a charge of gross indecency on
25 Tom Kakfwi. The accused pleaded guilty. The
26 agreed facts are that he, the accused and a third
27 person participated in some sexual activity as part

1 of a card game. The activity consisted of a brief
2 exchange of fellatio. Kakfwi would have been 17 or
3 18 years old at the time. This was the only
4 incident alleged. A conviction will be entered.
5 Count 39 is a charge of indecent assault on
6 Bruce McPherson. This complainant described two
7 incidents when he was 16 years old. Both times he
8 came back to the hostel drunk, and the accused,
9 instead of sending him to his own dorm room, told
10 him to go into the accused's room. In both
11 instances the accused attempted to fondle his
12 genital area. The complainant left on both
13 occasions. The complainant also gave some
14 generalized evidence about how the accused was
15 always grabbing at him. This evidence is
16 immaterial to me, and I will concentrate on the two
17 incidents described by McPherson.
18 The accused denied these incidents. He
19 basically said, "Why would I put a drunk in my own
20 room if he gets sick?" The answer may be to take
21 advantage of that drunk. I accept McPherson's
22 evidence. He was credible. I convict the accused
23 on Count 39.
24 Count 40 is a charge of indecent assault on
25 Brian Jerome. Jerome testified that he was sent to
26 Grollier Hall at the age of five; from that early
27 age he said he was the one requested by the junior

1 boys' supervisor to fetch the evening snack tray;
2 and frequently when he would do so the accused
3 would intercept him (since he passed close by to
4 the senior boys' section) and as Jerome said, would
5 grab him, tickle and pinch him, and generally touch
6 him. He said it stopped when he was nine or ten
7 years old. The accused denied doing these things.
8 I have a number of problems with Jerome's
9 evidence, some of which came out during discussion
10 in final submissions. First of all, the witness
11 was quite adamant that he started at Grollier Hall
12 at age five. The Crown led this evidence from
13 him. Yet the Crown agreed in a joint statement of
14 facts that Jerome did not start at Grollier Hall
15 until he was eight years old.
16 Second, I find it implausible that such a
17 young boy would be going on those errands
18 regularly.
19 Third, even if I accept Jerome's evidence, I
20 am not convinced it amounts to indecent assault. I
21 am sure that a great deal of horseplay goes on in
22 any children's group residence. The impressions
23 of the intent behind such horseplay formed by
24 someone looking back over 25 years ago are too
25 unreliable to support a criminal conviction.
26 Something may have gone on, but I have a doubt as
27 to exactly what or when, and as I said before, mere

1 suspicion is insufficient to convict someone of a
2 criminal offence. Count 40 is therefore
3 dismissed.
4 Counts 41 and 42 are respectively, charges of
5 indecent assault and gross indecency with Kevin
6 Coady. Coady resided in Inuvik between 1968 and
7 1987. His father was the Superintendent of
8 Education in Inuvik. The accused knew the Coady
9 family, and they knew him. Coady was living in
10 Grollier Hall for only about six weeks in 1973
11 while his parents were on vacation. He was 11
12 years old at the time (although he testified he was
13 12).
14 These are the two counts, I must admit, that
15 have caused me the greatest difficulty.
16 Coady presented a very sympathetic witness.
17 Coady testified that even though he stayed in the
18 junior boys' section, he would often go to the
19 senior boys' section to see his brother and to use
20 the gym.
21 He said he was in the accused's room a few
22 times. He recalled numerous incidents of the
23 accused rubbing his legs and fondling his
24 genitals. This eventually progressed to
25 masturbation and to Coady performing fellatio on
26 the accused. He said this lasted from the time he
27 stayed in Grollier Hall to the spring of the

1 following year.
2 The position of the accused is simple: He
3 says these things never happened. He says,
4 basically, why would he do such a thing? He knew
5 the family; the family knew him. Coady's father
6 was an important man in town. It would be too easy
7 to be caught is what he basically said. There is
8 no external evidence or physical evidence
9 connecting Coady to the accused in any intimate
10 manner.
11 Defence counsel cross-examined Coady at length
12 about his recollections. Coady acknowledged that
13 he developed a very bad drinking problem after he
14 left school. He acknowledged that he does not
15 recollect a lot of things until 1995. He had
16 flashes and images over time and tried to put them
17 into some kind of context, but there are still
18 gaps. He said, however, that his memories of this
19 period are quite clear (even though there are some
20 blank spaces).
21 There are difficulties with Coady's evidence.
22 One was a reference to a Martin Houston.
23 Mr. Houston apparently was a teacher in Inuvik
24 until 1962 when he was designated as a dangerous
25 sexual offender. He remained in prison until 1971,
26 and then was in a psychiatric facility. Coady
27 seems to remember seeing Houston at Grollier Hall.

1 This is highly improbable since Houston was
2 convicted the year Coady was born, and after
3 release from prison, Houston was prohibited from
4 returning to Inuvik. Coady did not say when he
5 supposedly saw Houston. There were some other
6 references to how Coady may have been abused by
7 others.
8 The other big difficulty is that sexually
9 abusing a boy as young as 11 seems to be not part
10 of this accused's method of criminality. It is
11 established that even with Phillip Ross, the real
12 sexual contact started when Ross was already 14.
13 The allegations involving children younger than 14
14 involve incidents of touching or stroking as
15 opposed to highly sexual acts such as masturbation
16 and fellatio.
17 For example, if we look at the convictions
18 recorded so far: Yallee was 15; Masazumi was 15;
19 Norbert was 17 or 18; Cleary was 15; Cockney was
20 17; Grandjambe was 14 when the relationship started
21 and lasted for several years; Firth was 15;
22 McDonald was 14 to 15; Manuel was 19; Ruben was 13;
23 Tom Kakfwi was 17 or 18, and McPherson was 16. The
24 pattern is quite clear, at least to me.
25 The accused became sexually involved with boys
26 who were under his supervision. He could control
27 things that way. He could control them. That is

1 what made his sexual activities possible. He took
2 advantage of it. He was not involved in a highly
3 sexual manner with boys he could not control, for
4 example, if they were living under someone else's
5 supervision in the junior boys' section, or worse,
6 if they were going home to the family of the
7 Superintendent of Education. It stretches reason
8 to think that even this accused would be so
9 reckless as to risk an involvement with the
10 11-year-old child of the man who controlled the
11 education system.
12 I am also concerned about Coady's admissions
13 about piecing together his recollections.
14 Influences could easily be at work (albeit
15 subconsciously). I do not think Coady is lying
16 consciously. I think he genuinely believes what he
17 is saying, but the totality of the circumstances
18 cause me to be extremely cautious with respect to
19 his evidence. I do not have that sense of
20 certainty that must come with the requirement for
21 proof beyond a reasonable doubt. I therefore
22 dismiss Counts 41 and 42.
23 Count 44 is a charge of gross indecency with
24 Wayne Reindeer. The accused pleaded guilty.
25 Reindeer was quite an impressive witness,
26 straightforward and credible. He was not a
27 resident of Grollier Hall but would come visit the

1 accused to drink alcohol. The accused would give
2 him and others alcohol to drink, showed them
3 pornographic books and movies and then encouraged
4 them to take their clothes off and masturbate
5 themselves. The visits started when Reindeer was
6 13 or 14 and ended when he was 17 or 18. The
7 accused also took nude photographs of Reindeer.
8 Reindeer acknowledged that he was an active
9 participant in these activities.
10 The accused admits these activities but says
11 they were not as frequent as Reindeer said they
12 were. That is not very significant. More
13 significant is Reindeer's allegation that later on
14 during the time of these visits, there were a few
15 occasions when the accused performed fellatio on
16 him. The accused denied this took place.
17 I accept Reindeer's evidence as to all the
18 facts that he related. A conviction will formally
19 be entered on Count 44.
20 In summary, 7 counts are dismissed.
21 Convictions are entered on 14 counts: 9 of gross
22 indecency, 3 of indecent assault, 1 of attempted
23 indecent assault, and 1 of attempted buggery.
24 Now, let me say one final thing: I recognize
25 that my findings may disappoint some and may please
26 some others, but I am sure everyone realizes, as
27 counsel realizes, that a criminal trial must deal

1 with specific facts on specific allegations. It is
2 not a broad-ranging inquiry into whatever abuses
3 may have occurred in the residential school
4 system. That must be done in some other forum, as
5 I am sure it will be done. A criminal trial is
6 certainly not a healing process. It is badly
7 equipped to heal the victims of crimes. Victims
8 can only be healed through their own efforts,
9 through the assistance of their family and friends,
10 and through the work of the entire community. A
11 criminal trial deals with specific offences, and
12 the only question in a criminal trial is whether
13 there are facts proven beyond a reasonable doubt to
14 support a conviction on those offences. The
15 findings I have made here in this verdict are my
16 findings as to those facts that have been proven
17 beyond a reasonable doubt.
18
19 Certified pursuant to Practice Direction #20
dated December 28, 1987.
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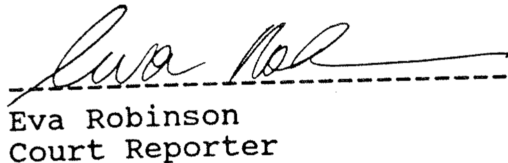
24 Eva Robinson
Court Reporter
25
26
27