

SUPREME COURT OF YUKON

Citation: *R v J.R.*, 2021 YKSC 27

Date: 20210423
S.C. No. 19-01503
Registry: Whitehorse

BETWEEN

HER MAJESTY THE QUEEN

AND

J.R. AND F.N.

Before Justice E.M. Campbell

Appearances:

Amy Porteous

André Roothman

Counsel for the Public Prosecution Service of Canada

Counsel for the accused J.R. and F.N.

REASONS FOR DECISION¹

THE COURT: This decision was delivered in the form of Oral Reasons.² The Reasons have since been edited for publication without changing the substance.

INTRODUCTION

[1] CAMPBELL J. (Oral): J.R. and F.N. stand charged that:

J.R. stands charged that he:

Count #1: On or between January 1st, 2005 and December 31st, 2008 at or near [redacted], in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a knife contrary to Section 267(a) of the Criminal Code.

¹ These Reasons for Decision have been redacted and initialized in light of an Order made by the Territorial Court of Yukon, pursuant to s. 111(1) of the *Youth Criminal Justice Act*, S.C. 2002, c. 1, in a related criminal matter.

² With the agreement of Defence counsel and Crown counsel, part of this decision entitled "Testimony of the Witnesses" was not read into the record when these Reasons for Decision were delivered orally.

- Count #2: On or between January 1st, 2009 and December 31st, 2011 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a pitch fork contrary to Section 267(a) of the Criminal Code.
- Count #3: On or between January 1st, 2004 and December 31st, 2008 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit an extension cord contrary to Section 267(a) of the Criminal Code.
- Count #4: On or between January 1st, 2004 and December 31st, 2008 at or near [redacted] in the Yukon Territory, did commit an assault on I.N. contrary to Section 266 of the Criminal Code.

F.N. stands charged that she:

- Count #1: On or between January 1st, 2006 and December 31st, 2009 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a wooden stick contrary to Section 267(a) of the Criminal Code.
- Count #2: On or between January 1st, 2003 and December 31st, 2006 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a wooden spoon contrary to Section 267(a) of the Criminal Code.

[2] On December 10, 2020, at the end of the Crown's case, I dismissed Count #5 against J.R. and acquitted him, as the Crown had called no evidence on that count.

[3] Identity and jurisdiction were admitted by both accused at the beginning of the trial on December 7, 2020.

[4] The complainant, I.N., as well as his sisters O.N. and A.N. were called to testify by the Crown at trial. Both J.R. and F.N. testified in their defence. The defence also called D.R. [the complainant's grandmother] and D.S. [the complainant's uncle] to testify at trial.

LEGAL PRINCIPLES

[5] A criminal trial is not a credibility contest between the Crown witnesses and the defence witnesses. The purpose of a criminal trial is to determine whether the Crown has proven the guilt of the accused beyond a reasonable doubt on each of the specific charges before the Court. As such, it would be wrong to decide a criminal case by choosing between conflicting versions presented at trial. In addition, J.R. and F.N. are presumed to be innocent with respect to each of the charges against them, unless or until the Crown has proven each of the essential elements of each offence appearing on the Indictment beyond a reasonable doubt. This burden does not shift to the defence.

[6] In addition, a decision must be based on all of the admissible evidence.

[7] As stated, J.R. and F.N. testified at trial. The defence also presented other evidence, which they contend is exculpatory. As conflicting evidence from the Crown and the defence was presented at trial, the framework set out in *R. v. W.(D.)*, [1991]

1 S.C.R. 742 ("*W.(D.)*"), applies. This framework may be summarized as follows:

1. If I believe the evidence of the accused or, in a broader sense — evidence that cannot coexist with a finding that the accused is guilty, I must acquit.
2. If I do not believe the testimony of the accused or evidence favourable to the accused, but I am left in a reasonable doubt by it, or if I am left unsure

whether the evidence that cannot coexist with a finding of guilt is accurate, I must acquit.

3. Even if I am not left in reasonable doubt by the accused's evidence or by the evidence inconsistent with the accused's guilt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of their guilt (*Doubt about Doubt: Coping with R. v. W.(D.) and Credibility Assessment*, (2017) 22 Can. Crim. L.R. 31).

[8] I note that the *W.(D.)* framework does not direct the trier of fact to analyze the evidence in a certain order.

[9] In addition, I must consider both credibility and reliability when assessing the evidence of the witnesses. In *R. v. Nyznik*, 2017 ONSC 4392 at para. 15, the court explained the difference between the two concepts:

... Reliability has to do with the accuracy of a witness' evidence -- whether she has a good memory; whether she is able to recount the details of the event; and whether she is an accurate historian. Credibility has to do with whether the witness is telling the truth. A witness who is not telling the truth is by definition not providing reliable evidence. However, the reverse is not the case. Sometimes an honest witness will be trying her best to tell the truth and will fervently believe the truth of what she is relating, but nevertheless be mistaken in her recollection. Such witnesses will appear to be telling the truth and will be convinced they are right, but may still be proven wrong by incontrovertible extrinsic evidence. Although honest, their evidence is not reliable. Only evidence that is both reliable and credible can support a finding of guilt beyond a reasonable doubt. [my emphasis]

[10] Also, the trier of fact is "entitled to believe all, some, or none of the witness's evidence" (*R. v. S.H.*, 2011 ONCA 215, at para. 8).

[11] The three Crown witnesses are young adults who testified about events that occurred when they were children. In *R v W.(R)*, [1992] 2 S.C.R. 122, the Supreme Court of Canada provided guidance in the way to approach the evidence of children.

The court stated, at pp. 133 and 134:

The second change in attitude of the law toward the evidence of children in recent years is a new appreciation that it may be wrong to apply adult tests for credibility to the evidence of children. One finds emerging a new sensitivity to the peculiar perspectives of children. Since children may experience the world differently from adults, it is hardly surprising that details important to adult, like time and place, may be missing from their recollection. ...

...

As Wilson J. emphasized in *B.(G.)*, these changes in the way the courts look at the evidence of children do not mean that the evidence of children should not be subject to the same standard of proof as the evidence of adult witnesses in criminal cases. Protecting the liberty of the accused and guarding against the injustice of the conviction of an innocent person require a solid foundation for a verdict of guilt, whether the complainant be an adult or a child. What the changes do mean is that we approach the evidence of children not from the perspective of rigid stereotypes, but on what Wilson J. called a “common sense” basis, taking into account the strengths and weaknesses which characterize the evidence offered in the particular case.

[12] The court went on to state the following regarding the assessment of the credibility of adult witnesses testifying about events that occurred in their childhood, at p. 134:

... In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the

age of the witness at the time of the events to which she is testifying.

[13] Keeping these principles in mind, I now turn to the evidence adduced at trial.

TESTIMONY OF THE WITNESSES

I.N.

[14] I.N. was born on [redacted]. He is 23 years old. He works [redacted].

[15] He is the eldest child of F.N. and T.N. His maternal grandfather is J.R.

[16] I.N. recalled moving to [redacted] with his parents and siblings when he was six or seven years old. [redacted].

[17] He stated that he was mostly homeschooled during his childhood, and that he left his parents' home at 16 years old. He confirmed that he always lived in the same house when he resided at [redacted] with his family.

[18] He stated that his grandparents lived in a motorhome in front of their [redacted] house for a period of eight months to a year. He believes he was approximately eight years old at the time. His grandparents then moved into the [redacted]'s office close by for two to three years. After that, they moved to the cabin of one of his uncles, a few miles away from [redacted] for a winter before moving to the house they built up on the hill, a mile away from his parents' house.

[19] I.N. stated that his grandfather, J.R., was involved in their family's life, and that he spent a lot of time with I.N. and his siblings. While he acknowledged that his grandfather cared for him and his siblings, and that he did have some good times with his grandfather, I.N. stated that he did not have a good relationship with him while growing up. He also testified that his grandfather used derogative language about him and his father in front of his employees. He gave, as an example, that his grandfather

told him a number of times, from the age of 11 years old until he left home, that his father was a “piece of shit” and that he was just like him.

[20] I.N. described his grandfather generally as being very abusive, both verbally and physically, and very controlling. He testified that his grandfather “beat him quite a few times”. However, I.N. stated that he only reported the incidents that he recalled clearly.

Count #1 against J.R.: Assault with a knife (s. 267(a) of the *Criminal Code*)

[21] I.N. testified that when he was approximately 9 to 11 years old, his grandmother, who was at their house, indicated that she wanted to pray for him because he had done something wrong. She put her hand on his shoulder. As he did not want to be prayed for, he pushed her hand off and told her not to pray for him. She then left.

[22] His grandfather J.R. arrived shortly thereafter with his uncle, D.S. I.N. testified that his grandfather threw him onto his bed, and told him that when his grandmother wants to pray for him, he let her pray for him. His grandfather then proceeded to slam him against the wall. He also slapped him. I.N. recalled screaming and crying to the point where his mother left to calm down his sisters who were crying in the living room and/or kitchen area, which were located near his bedroom. He did not see his sisters, who were never in the room during the incident, but he could hear them crying. His mother closed his bedroom door when she attended to his sisters. He described that, at some point during the incident, his grandfather had him down on the bed. He recalled that his uncle D. was also in the room at the time, and that he was laughing. I.N. recalled getting so mad that he kicked his grandfather in the testicles. The complainant was laying on his back on the bed when he kicked his grandfather, who was bending

over him. He stated that he was fighting to get up but was unable to as his grandfather was holding him down by the chest.

[23] He stated that his grandfather reacted by throwing him up against the wall and the bed again. He heard his grandfather say: “if you ever”, but did not recall what he said after that. He stated that his grandfather then pulled out an exacto knife, pulled down his shirt and slit him in the chest. He stated that his grandfather then put the shirt back up, smiled and patted him down. He recalled that the exacto knife was yellow. He knew what it was [redacted]. His uncle was still in the room when his grandfather cut him. I.N. recalled telling his grandfather, after he cut him, that his father was going to kill his grandfather if he found out about what he had done to him. I.N. added that his grandfather started to laugh and replied that his father would not do anything.

[24] I.N. described the cut as being approximately one-eighth of an inch deep. He stated that it bled somewhat down his chest, but not heavily, as he only needed a few pieces of paper towel to soak up the blood. I.N. stated that he stayed in his room after the incident. I.N. also stated that he did not tell anybody about the cut, and simply let it heal. I.N. testified that the cut left a mark on his chest that is still visible. I.N. then proceeded to lift up his shirt during his testimony revealing a mark on his chest, which can be described as a faint vertical white line approximately two inches long in the middle of his chest, starting below the collarbone. I.N. stated that he was certain the scar came from that incident, as he was not involved in any other incident this scar could come from.

[25] He stated that his bedroom door was already closed when his grandfather cut him, but that his grandfather had thrown him on the bed and wall once before the door was closed.

[26] He did not recall what time of the year this incident took place.

[27] I.N. testified that his father was not home at the time of the incident, as he recalled that, while he was in his room that evening, his mother told him that his father recently had a motor vehicle accident with [redacted] on his way back from Haines, Alaska.

[28] I.N. did not recall anybody asking him about his scar. He stated that he did not tell anybody about it, as his mother and his uncle knew what had happened but would not help him. I.N. did not see or hear anyone tell his father about the incident.

[29] The first time I.N. told someone about this incident was when he was 17 or 18 years old. He stated that he told a number of people close to him at the time. He also told a youth probation officer or youth worker who was supervising him, and writing a report regarding his criminal charges. He was 18 years old when he gave his first statement to the RCMP.

Count #2 against J.R.: Assault with a pitchfork (s. 267(a) of the *Criminal Code*)

[30] I.N. testified about another incident that took place around 2010, when he was approximately 13 to 14 years old. His grandfather had started to build his new house up on the hill at the time. I.N. went up on a four-wheeler to talk to his grandfather. I.N. stated that his grandfather was growing potatoes in stacks of tires at the time, and that when I.N. arrived, his grandfather was using a pitchfork to separate the potatoes from

the soil. I.N. did not recall what he wanted to discuss with his grandfather, but he stated that he was trying to explain something to his grandfather when his grandfather started talking back to him. I.N. stated that he became frustrated. He took a couple of steps back before turning around to walk back to the four-wheeler when he heard his grandfather yell “don’t you walk away from me”. I.N. stated that he had just started to run when his grandfather hit him on the back with the pitchfork end. He added that his grandfather hit him hard with the pitchfork to a point where he lost his breath. However, his grandfather did not poke him with the fork. I.N. stated that his grandfather left him out on the ground. He added that his grandfather smirked, turned around, and went back to his potatoes. I.N. got up, went back to the four-wheeler, drove half way down to his house and stopped. He stated that he sat there crying for a little while, and then drove the rest of the way home.

[31] I.N. stated that his grandfather started building his house in 2010, approximately. He added that his grandfather built his greenhouse in, approximately, 2012-2013, after he had started to build his house.

[32] I.N. stated that there was no greenhouse nor shop at his grandfather’s new house when this incident happened. He added that his grandfather had approximately four or five stacks of tires in which he grew potatoes at the time, and that the stacks of tires were located where his grandfather later built his shop. He denied that his grandfather only started growing potatoes in tires in 2014, as he helped his grandfather build his shop during a period of approximately a month and a half in 2014.

[33] I.N. acknowledged that he did not mention the following things when he described this incident in his first statement to the police: (1) that his grandfather was

digging potatoes; (2) that he went up on a four-wheeler, and (3) that he started crying while sitting on the four-wheeler. I.N. also acknowledged that he did not mention this incident to his youth probation officer.

Count #3 against J.R.: Assault with an extension cord (s. 267(a) of the Criminal Code)

[34] I.N. recalled being approximately eight or nine years old when his grandfather hit him over an extension cord. He stated that his grandfather was staying in his motorhome at the time, and that the incident took place in the summer. I.N. stated that there was an extension cord running to his grandfather's recreational vehicle "RV". He recalled picking up the extension cord, and was either moving it or playing with it when his grandfather told him to put it down. He did not recall whether he listened to his grandfather, but acknowledged that he probably did not. He described that his grandfather came running over, slammed him over his legs and started hitting him "pretty hard" with his hand on his bottom. He stated that his grandfather hit him four or five times. His grandfather then went back to the motorhome. He stated that it appeared his grandfather enjoyed hitting him. I.N. stated that he was sore for approximately a day or two after the incident, but that it did not leave any marks on his body. I.N. testified that, after his grandfather let him go, he ran inside the house to tell his mother hoping that she would talk to his grandfather. He found her in her bedroom having a nap. The only thing she told him after he described the incident to her was that he should have listened to his grandfather. I.N. added that two of his sisters were outside the motorhome visiting their grandparents at the time of the incident.

[35] I.N. stated that there were a few chairs, a picnic table and a roll up roof outside the motorhome. He stated that there was also a fire pit near the motorhome.

[36] I.N. did not recall any other time when his grandfather would have done something to him in front of the motorhome.

[37] I.N. acknowledged giving two statements to the RCMP: the first statement on November 13, 2015, and the second on March 27, 2018. He stated that he always remembered this incident, but acknowledged that he did not say anything about it in his first statement to the police. I.N. pointed out that his first statement was short.

[38] I.N. also agreed that he did not tell his youth probation officer about this incident.

[39] I.N. acknowledged that his sister, O.N., told him that she had witnessed his grandfather hitting him with an extension cord. However, he does not have any memory of being hit with the extension cord. He only recalls his grandfather using his hand to “slap” him.

Count #4 against J.R.: Assault (s. 266 of the *Criminal Code*) – The wooden blocks incident

[40] I.N. testified that this incident took place when he was approximately eight or nine years old. He stated that his mother had sent him to his bedroom, and that he was in his bedroom when he heard the wooden spoon coming out of the tin can in which his mother kept all the cooking implements. He described feeling very angry upon hearing this. He stated that he grabbed all his wooden blocks, sat on his bed, and, as soon as his mother opened the door, he started throwing blocks at her. He stated that he hit her two or three times with his blocks, before she slammed the door. Some time after she left, his grandfather entered his bedroom. His grandfather then proceeded to strike him

hard on the bottom, approximately four or five times, before grabbing him, and throwing him hard on the floor. I.N. did not recall his grandfather saying anything as this was happening. He did not recall if anyone else was around when this incident happened. He stated that F.N. was not in the bedroom when his grandfather hit him.

[41] I.N. stated that what his grandfather did to him did not leave a mark on his body, but that he could feel it afterwards. He testified that this incident stood up in his mind because he had never thrown wooden blocks at his mother before.

[42] I.N. testified that this particular incident took place before the incident with the exacto knife, as he recalled being in his first bedroom at the [redacted] house. He stated that, when he was younger, he was in a bedroom closer to his parents' bedroom. He added that he was approximately eight or nine years old when he was moved to a bedroom further away from his parents.

Count #1 against F.N.: Assault with a wooden stick (s. 267(a) of the Criminal Code)

[43] I.N. recalled an incident when he got in trouble for something he cannot remember. He stated that his mother phoned his grandfather to ask him to come over to help her discipline him. I.N. stated that his mother would call his grandfather during the day when she could not or did not want to handle something. He stated that, as he knew what happened when his grandfather came over, he positioned himself where he could get away. He stated that he was in between the island and the kitchen so he could leave both ways. When his grandfather arrived, he told I.N. to come see him, but I.N. refused to comply. He repeated his demand, but I.N. again refused to comply. At that point, his grandfather tried to come around the island one way and his mother came

the other way. I.N. ran as hard as he could towards his mother. He pushed her to the side with his body, and ran out the back door. I.N. stated that his grandfather was right behind him. I.N. stated that he slammed the back door, jumped off the back porch, ran down to the backyard and into the poplar trees. He recalled his grandfather standing on the back porch saying that he would get him. His grandfather left approximately 20-30 minutes later. Approximately 40-45 minutes later, his mother came out of the house with a couple of his sisters. They went to work in one of their big greenhouses. I.N. stated that he went to talk to his mother. He tried to talk to her while she was working in the garden boxes, but she kept on telling him to go back to his room. I.N. stated that, at some point, she started chasing him. I.N. ran out the front of the greenhouse, and then ran around the property for about 300 yards, before his mother hit him on the head with a stick or a root. [redacted].

[44] I.N. stated that his mother probably picked up the root or the stick from a pile of brush he passed while running. He added that she almost knocked him out when she hit him over the head. She then grabbed him and dragged him back to the house. I.N. stated that, as he started walking again, his mother grabbed the back of his neck as well as the side of his shoulder, and walked him back to his room. He stated that he had a “goose egg” for a few days after the incident.

[45] I.N. stated that there was nobody else around when his mother hit him, and that he did not tell anyone about the incident. He stated that he did not see his sisters after running out of the greenhouse. He added that he did not remember other times when his mother would have chased him through the house and the yard.

[46] I.N. testified that he was approximately 10 or 11 years old when this incident happened, which would have been in 2007-2008. He stated that he was certain there was a back deck when this incident happened, but acknowledged that at some point his parents took the back deck down, and replaced it with a new one.

[47] I.N. was shown photographs that reveal that the back deck was taken down in 2005, and a new deck built in the summer of 2009 (See Exhibits 11 and 12). I.N. indicated that the new back deck would have been completed later in the summer of 2009. However, after further considering the photograph, he indicated, without any prompting, that the incident could not have taken place in 2009 because there was no plastic on the greenhouse shown in the 2009 photograph. He added that the incident would have taken place a year later, in 2010. I.N. stated that there was plastic on the greenhouse, at the time of this incident, as they were growing vegetables in the greenhouse at the time. He also stated that there were one or two summers when they did not have plastic on the greenhouses and did not grow a garden.

[48] I.N. testified that he could not recall whether his grandfather was standing on the old deck or the new deck when this incident happened.

[49] I.N. stated that he would have been 13 in 2010. He did not recall if he were bigger than his mother when he was 13 years old, as he stated that he did not have his growth spurt until he was 14.

Count #2 against F.N.: Assault with a wooden spoon (s. 267(a) of the Criminal Code)

[50] I.N. testified that both his parents disciplined him during his childhood, but he indicated that his mother was the disciplinarian. He stated that he sometimes saw his siblings being disciplined, but sometimes he did not.

[51] He testified that when he would hear the wooden spoon come out of the tin can, this usually meant that his mother was going to use it to hit him. He testified that his mother used to discipline him with the wooden spoon almost on a daily basis from the age of eight years old to the age of 12 to 13 years old. She would hit him from two-to-three times, to five-to-six times at once depending on the circumstances. His mother typically hit him on his hands or on his bottom. He added that she also hit him on the head with the wooden spoon a few times.

[52] I.N. testified about one particular incident when his mother hit him on the head with the wooden spoon. He stated that he was sitting in his bedroom, the room further away from his parents, when his mother came in the room with the wooden spoon. He stated that he was sitting on his hands because his mother would hit him on his hands all the time to discipline him. He testified that his mother told him to show her his hands. He said no. She repeated "I. show me your hands". He again said no. I.N. stated that his mother then slapped him over his head with the wooden spoon while yelling "show me your hands". However, he just kept his hands under him. I.N. stated that his mother hit him again on the head two or three times. He said that the last hit almost sent him in a daze. He stated that he grabbed the skin around his mother's stomach, and squeezed it as hard as he could. His mother screamed, and then hit him on the back with the

wooden spoon. He recalled glancing through the window of his room looking out the front porch while the events were unfolding. He saw that his father was walking up to the house, and he started screaming loudly. I.N. testified that as soon as his father came in the house his mother's attitude changed completely. His father asked what was happening. His mother responded in a way that made it look like he was having a temper tantrum, and that she was just trying to calm him down. He did not recall what his father said after that.

[53] I.N. stated that he was approximately 17 or 18 years old when he first started to talk about the physical abuse he endured during his childhood, as he was away from home and free by then. He explained that he did not have to worry about "them" anymore.

[54] I.N. explained that he did not report the assaults by his mother when he spoke to the RCMP in 2015 because he respects his father, and his parents were still married at the time. I.N. added that "he did not want to slander his father's wife".

[55] I.N. stated that he mentioned the incidents with his mother to the RCMP in 2018, as his parents were separated at that point. He stated that the RCMP contacted him in 2018 to provide more details about the incidents he had disclosed in 2015. He added that it was not his goal to tell the police about all the incidents of violence he suffered in his youth because there were too many.

[56] I.N. did not recall whether he told his youth probation officer about the incidents involving his mother. He stated that it was not his goal to tell her about every single bad thing that had happened to him. He stated that he never told his youth probation officer

that the incident he did report constituted a complete list of events that had happened to him.

[57] I.N. stated that his parents' separation was not a shock for him. He stated that he does not blame anybody for the break up.

[58] I.N. acknowledged that his mother had a hard time managing him when he was young.

[59] He also acknowledged that there was one incident when his father had to sit on him for an hour to calm him down because he was out of control. He also acknowledged an incident of violence involving fighting with his father when he was 14 years old. He also acknowledged that he threatened to kill his mother during that incident. He specified that the threat was against his mother not his father.

[60] He agreed that he was big and strong at 14 years old, and that he would fight back at that age.

[61] I.N. agreed that he has a good relationship with his father who lives in British Columbia. He travels to visit him three or four times a year, and they talk in between visits. He stated that he is not afraid of his father. I.N. also sees his sister, O.N., once or twice a month.

[62] I.N. explained that he did not mention to the RCMP that his father was abusive to him because his father did not hurt him, and he does not consider spanking to be abuse. I.N. stated that his father spanked him three or four times during his childhood, but was otherwise really good to him. He denied that his father ever used a belt to hit him. He stated that his father was a hard worker, and that he was hardly ever home, as he worked seven days a week. He recalled that his father would leave at four or five in

the morning, and would rarely come home before late at night. He acknowledged that his mother would send them to their room when they were naughty, and would tell them that their father would discipline them when he came back home.

[63] I.N. agreed that he dislikes his mother, and that, as far as he can remember, he never liked her. He stated that she would show care and affection for him when people were around, but not as much when no one was around. He stated that he went along with it, but that he became more distant from her as he got older.

[64] I.N. indicated that hate is not the right word to describe the feelings he has towards his mother. However, when pressed by defence counsel, he agreed with him that he “pretty much hates” his mother. I.N. denied that he hates his mother because she alerted the police regarding the sexual assaults with which he was charged. I.N. added that he still cares about his mother.

[65] I.N. acknowledged that he is aware that his parents are fighting for custody of his youngest siblings. He is also aware that their family matter will only resume after this matter is completed. He acknowledged that he would like his father to have custody of all of his underage siblings, and that, if he could help him get custody, he would. However, I.N. denied being told by anybody that the outcome of this criminal matter would have an impact on the issue of custody of his younger siblings.

[66] I.N. stated that he has not had any contact with his mother since he was charged with sexually assaulting two of his younger sisters. He is also aware that his mother and grandfather are under a condition not to have contact with him.

[67] I.N. agreed that when he testified at his criminal trial, and when he spoke to his youth probation officer for the preparation of his pre-sentence report, he denied

committing the sexual assaults on his sisters. He also acknowledged that he denied committing the sexual assaults on his sisters during his testimony at the preliminary inquiry in this matter that took place on [redacted].

[68] However, when asked if he still maintained his innocence, I.N. readily admitted to committing the sexual assaults on his sisters, and admitted that for a long time he did not tell the truth. He then stated that he decided to tell the truth and own up to his actions.

[69] I.N. acknowledged that he told his youth probation officer that his sisters were lying when they accused him of sexually assaulting them in order to protect their grandfather, J.R., and that he said that he thought his grandfather was responsible for the sexual assaults. I.N. agreed that by saying that his grandfather may have been the one sexually assaulting his sisters, he would have put him in serious jeopardy. He also agreed that he did not care whether what he said could get his grandfather in trouble. He stated that he picked his grandfather because he did not like him as a result of the abuse he endured as a child.

[70] I.N. further stated that he denied committing the sexual assaults because he was trying to get out of trouble, and that he continued to deny even after his trial.

[71] I.N. acknowledged that he was convicted of theft in [redacted].

O.N.

[72] O.N. is 22 years old. She was born on [redacted]. She lives in Whitehorse. She is the second eldest of six children born to F.N. and T.N. I.N., the complainant, is her older brother. She is also the granddaughter of the accused, J.R.

[73] O.N. grew up [redacted], which is located [redacted], where her family [redacted]. She lived in a house located right beside the [redacted] property, with her parents and her siblings, from the age of approximately three to four years old to the age to 16 years old. The family relocated to British Columbia when she was 15 or 16 and returned to the Yukon for the summer in July 2016. She moved out of the family home a month and a half after they came back to the Yukon. I.N. did not move down to British Columbia with the rest of the family, as he was no longer residing with them at the time.

[74] O.N. stated that she left home for the first time when she was approximately 15 or 16 years old because she wanted more freedom. She acknowledged that she started experimenting with alcohol and drugs at that time.

[75] O.N. stated that her parents are separated, and her father lives in British Columbia. She believes her mother resides at the new [redacted] home. However, she cannot be certain of that, as she has not had any contact with her mother for some time.

[76] O.N. testified that it has been difficult for her to be involved in this case due to its impact on her relationship with her mother and her maternal grandparents. She stated that she was last in contact with them by text around July 2018. She has not had contact with them since then, due to the no contact order in place in this matter. She stated that she loves her mother as well as her grandparents, and hopes that, at the end of this process, she can rebuild her relationship with them.

[77] O.N. testified that religion played an important role in her upbringing. She stated that her parents and maternal grandparents are Christians, and that she and her siblings were raised Christians. She stated that they were raised to follow the Bible, read the Bible and believe what it says. She also indicated that they would regularly go

to their maternal grandparents' house for Bible studies, which were led by her grandfather, J.R.

[78] O.N. stated that she and her siblings were homeschooled by their mother. However, she attended school in [redacted] for grades six and seven. She also attended a private Christian school in grade 12 in British Columbia.

[79] O.N. testified that she had a "pretty good childhood", and that both her grandparents were very involved in their lives, as they lived very close to them for most of that time. She added that her perception of her grandfather was that he was a very loving and caring person.

[80] O.N. testified that her parents bought their old [redacted] house from her maternal grandparents. At some point after that, her grandparents lived in an RV at the edge of the property for approximately a year. Her grandparents then moved out of the RV and lived in the office building [redacted] for a number of years, while they were building a house a few kilometers [redacted]. Her grandparents then moved into that house.

[81] O.N. testified that discipline was common in their household while she was growing up. She stated that often they were sent to their rooms or outside for time outs. However, she also stated that they were often disciplined physically as well, normally by their parents. She testified that their parents would usually discipline them in their rooms, and used their hands to discipline them. However, their mother also commonly used a wooden spoon. She added that, at times, her father used a belt. She stated that they were usually spanked right across their bottom and, some times, on their hands. She stated that the wooden spoon was stored in a tin canister on the counter with other

kitchen utensils. She added that they knew they were getting a spanking or a sibling was getting a spanking when they would hear the tin can starting to rattle when their mother would pull the wooden spoon from it.

[82] O.N. testified that I.N. was disciplined frequently, as he got in trouble, and was sent to his room often when he was a child. O.N. added that before her mother would go into I.N.'s room to discipline him, she would take the wooden spoon with her. She added that she would then hear the same thing she heard when her mother would discipline her. She described the noise as being a "sort of a clap of the wooden spoon on his body". She presumed that the complainant was being spanked on his bottom or his hands, as it is how her mother would discipline her. O.N. stated that, as they were usually disciplined in their rooms, she only witnessed her mother discipline her siblings, including I.N., with the wooden spoon on a few occasions. However, she testified that it seems like she heard one of her siblings, including I.N., being spanked with the wooden spoon on a weekly basis, at least.

[83] She testified that I.N. was definitely in trouble more and disciplined more than the rest of them.

[84] She also stated that being disciplined with the wooden spoon was something that was very common in their household; that she experienced it from a young age; and that she continued to experience it throughout her childhood. She testified that it was something very normal to her, and she thought, at the time, that it was something that happens when you do something bad. She testified that she stopped receiving spankings at the age of 12 or 13 years old. She stated that the spankings were very common when she was younger, but decreased progressively as she became older.

She testified that she does not remember a time when the use of the wooden spoon was not common in their household, except, maybe when she was quite young. She stated that she is unsure when the spanking stopped for I.N., and she does not specifically remember how old he would have been the last time she remembers hearing him being spanked. She added that she associates the wooden spoon with the first [redacted] house.

[85] O.N. testified that her father was at work all day, and would come home in the evening. She stated that, often, when one of them had misbehaved, their mother would ask them to wait in their room until their father came back to discipline them. She acknowledged that her father disciplined I.N. with his belt sometimes.

[86] O.N. described her brother, I.N., as being very energetic, very loud, maybe even uncontrollable when he was young. She testified that he could get carried away when playing with his siblings, and that sometimes he would be shoving others. She testified that it was the sort of behaviour for which he would be disciplined. She agreed that I.N. could be obstructive, rebellious and aggressive at times. She remembered him being that way when he was approximately between the ages of four to seven years old.

[87] O.N. described her mother as being upset, agitated or irritated with her brother when she would get the wooden spoon to spank him.

[88] O.N. testified that the relationship between I.N. and their mother was tense, and that it seemed strained. She stated that it seemed that I.N. was always in trouble, and as a result, their mother was always angry or frustrated with him.

[89] O.N. testified that, when I.N. was younger, he was afraid of their mother and scared of the punishment he would usually receive from her. O.N. described a specific

instance when she went into her brother's bedroom, and observed him sitting against the wall with a little round bucket of wooden blocks [redacted]. She asked him what he was doing, to which he replied that he intended to throw the pieces of wood at the door when their mother came in, in the hope that she would not spank him or leave the room without spanking him. She testified that, at the time, her brother just seemed scared of their mother; scared that she was going to come and hurt him again. O.N. does not clearly remember how old she was when this event took place. She thought she was under 10 years old, maybe closer to eight years old, but was uncertain. She stated that they were living in the old [redacted] home at the time.

[90] O.N. also testified about an occasion when she saw I.N. running away from their mother. O.N. assumed it was to get away from being spanked. She stated that she was inside the house when she saw I.N. running out the back door, and towards the back of the property. She then saw her mother chasing after him. O.N. observed them until they were out of her sight. O.N. did not remember how old she was at the time. She believed she may have been between the ages of six and 10 years old, when she witnessed that incident.

[91] O.N. testified that she saw less of the relationship between I.N. and her maternal grandfather, J.R. She added that it appeared as though her brother never really liked their grandfather, even though he did not say anything in particular to that effect. She noticed that her grandfather became more distant from the complainant, as I.N. got older, and that their relationship was not very good when I.N. became a teenager.

[92] O.N. testified to witnessing a couple of incidents of violence between her grandfather, J.R. and I.N.

[93] She testified that one of the incidents occurred while they were living at the old [redacted] home, and their grandparents were living in their RV at the edge of the property. She stated that she, I.N., and some of their younger siblings were over visiting their grandparents, as they often did. Their grandparents had a seating area out in front of their RV where they would go and eat quite often. She added that there was a blue tarp set up over the chairs. She recalled that I.N. was doing something that was bothering her grandfather. It seemed to her that her brother was jumping on the chairs causing a raucous. She testified that her grandfather told I.N. to stop a couple times, but I.N. did not listen. She added that their grandfather threatened that he would spank I.N. with an extension cord that was laid out in front of the RV if he did not stop. She stated that her grandfather eventually grabbed I.N. and the extension cord, folded it and struck I.N. across the bottom with it. She stated that her grandfather hit I.N. once with the extension cord. She described what she saw as “a good spanking”, and that it appeared to be hard. She assumed I.N. was wearing pants at the time. She believed I.N. was standing while being spanked. She added that I.N. was “screaming around” when their grandfather grabbed him and spanked him. She stated that her grandfather appeared angry at her brother because he was not listening to or obeying him. She believed the incident took place in the summer. She also believed that she was nine years old at the time of the incident because of the way her brother looked in her memory. However, she conceded that she could have been as young as five years old at the time.

[94] O.N. stated that she did not recall discussing the electrical cord incident with I.N. She also indicated that she did not recall approaching I.N., and volunteering information

or asking him about that incident. She did not recall I.N. approaching her or questioning her about the incident.

[95] O.N. also testified about another incident that occurred in their old home at [redacted]. She stated that I.N. had gotten into trouble, she did not recall why, and had been sent to his room. She thought her mother had called her grandfather, J.R., over to help discipline I.N. O.N. stated that, as she wanted to know what was happening, she walked by I.N.'s bedroom and saw, in passing by the doorway as she did not want to get in trouble, that her grandfather had I.N. pinned to his bed. She described that her grandfather was sitting on I.N., "leaning his weight" on I.N., and holding him down. It appeared to her that her grandfather was using more of his side to hold I.N. down. O.N. did not remember how I.N. was positioned under their grandfather at the time. She added that she could hear I.N. struggling, hollering and screaming while this incident was happening. She did not remember exactly how old she was at the time but estimated that she was between the ages of seven years old and 10 years old when this occurred. She did not see a weapon in I.N.'s room at the time.

[96] O.N. testified that, a few weeks after the incident, she saw I.N. walking in the living room without a shirt on, and noticed that he had a large scar on his chest. She stated that the scar stood out to her because, when they were young, they were always running around outside playing in the woods, and getting scratches and scars. As such, her and her siblings had a competition as to who had the coolest looking scar. She added that when she asked I.N. about the scar, she expected that he would be excited to talk about it. Instead, I.N. pushed her aside, and refused to talk about it. O.N. testified

that she had not noticed that particular scar before that date. She stated that it was not uncommon for them to walk around without a shirt, especially when they were younger.

[97] O.N. acknowledged that, in her statement to the police of March 2018, she had described the scar as a scab. She also acknowledged that she had not specified to the police that it was a large scab. O.N. confirmed, later in her testimony, that what she saw was a scab and not a scar. However, she acknowledged that I.N. could have had a mark on his chest prior to the incident with their grandfather. O.N. stated that she did not recall whether her grandmother was or had been at the house around the time of the incident. She did recall that, at some point, her father had an accident with [redacted], but she did not recall when that accident occurred in relation to the incident between her grandfather and I.N.

[98] O.N. testified that she did not recall any other incident or instance when her grandfather would have disciplined I.N.

[99] O.N. stated that I.N. left home before she did. She stated that he started working as a [redacted] around the age of 14 or 15 years old. She added that he was away from home often from then on. She stated that, while I.N. was away for work, the information came out that he had done inappropriate things to two of their younger sisters. Criminal charges were laid against him and he moved out of the house.

[100] O.N. stated that she did not have any contact with I.N. from that point on until she came back from British Columbia in July or August 2016. She stated that they have been seeing each other on average once a month or every two months since then.

[101] However, she also recalled that I.N. phoned her approximately one month after the sexual allegations against him came out. O.N. had moved out of her parents' house

for a few months at that point. I.N. said to her that he hoped she did not believe what their sisters were saying about him. She replied that there was no way she could not believe her sisters, but that she loved him anyway. She stated that she was aware that he was found guilty after trial of some of the sexual assault charges against him, and that, eventually, he was sentenced by the court. O.N. stated that I.N. never admitted to sexually assaulting their younger sisters. O.N. further stated that she likes her brother, and trust that he would never do something like that again.

[102] O.N. acknowledged that she and I.N. have talked about the court process in this matter. However, she stated that they have not discussed the content of the allegations.

[103] O.N. also acknowledged that she is in contact with her father. She stated that they talk on the phone quite often. She added that she usually visits him in British Columbia once a year, and that her father comes up to the Yukon once in a while to visit. She stated that I.N. has visited their father in British Columbia a couple of times at least since their parents separated.

[104] O.N. agreed that her parents' separation came as a shock to her, and that it was heartbreaking. She believed her mother is the one who terminated the marriage. However, O.N. stated that she does not hold it against her mother, as it is simply what happened. She agreed that her parents' separation could be characterized as a high conflict family matter. She added that she would like her father to have contact with her younger siblings as much as her mother has contact with them. She acknowledged that her father is allowed to see them, but only on what appears to be an irregular monthly basis. She stated that, currently, one of her younger sisters, who is one of I.N.'s victims

and is 18 years old, lives with her father, and that the three youngest live with her mother.

[105] O.N. acknowledged to swearing an affidavit in support of her father's application for custody of her three youngest siblings. She also acknowledged that, at the time she sworn the affidavit she wanted her youngest siblings to live with her father. It was admitted that O.N.'s affidavit was filed on April 12, 2019, in the family matter.

[106] O.N. recalled an incident when I.N. threatened to kill their father. She thought that I.N. would have been approximately 13 to 14 years old at the time. O.N. did not know how that incident started. However, she recalled that her father had to go to I.N.'s bedroom, and hold him down because he was threatening to kill him. O.N. described the situation has very alarming. She further stated that she did not recall I.N. making threats against her mother during that incident.

[107] Finally, O.N. acknowledged that she can remember some things clearly and some things not. She stated the things she remembers very vividly are usually connected to an emotion. While O.N. recognized that her childhood was very busy with many siblings, she stated that she does recall certain things as far back as when she was approximately five years old.

A.N.

[108] A.N. is the third eldest child of F.N. and T.N. She is two years younger than O.N. She grew up at [redacted] with her parents and siblings in the house [redacted]. Her family moved to the new house located a few miles from their first house when she was 14 years old. I.N. did not live with them when they moved to the new house.

[109] She recalled that her family moved to British Columbia at some point and that she attended school when they were there. She stated that all the family, except for I.N., moved to British Columbia.

[110] A.N. came back to the Yukon at the beginning of the summer 2020. She now lives in Whitehorse.

[111] A.N. believed her mother moved back to the Yukon two years ago.

[112] She stated that, as a child, she and her siblings were taught not to disobey or question people in authority.

[113] She testified that her mother and her father would discipline them. She added that her father would come home late from work, and her mother would often ask him to carry out the punishment.

[114] A.N. stated that they would receive spankings, or would not get dinner when they disobeyed. She added that they were also under biblical pressures, such as that they would go to hell if they disobeyed. She stated that they grew up in fear; fear of God, fear of dying.

[115] A.N. testified that their mother would spank them with a wooden spoon. She added that sometimes they would have to go outside to get a willow, but that was reserved for when they did something very bad.

[116] A.N. described the spoon their mother used to spank them as a regular cooking wooden spoon. A.N. stated that their mother would hit them on their bottom, sometimes with their pants down. She would also hit them with the wooden spoon on their hands. A.N. stated that she could not recall any specific time when she saw I.N. being spanked by their mother with the wooden spoon.

[117] A.N. stated that she and I.N. were the ones who seemed to get in trouble the most when they were young. A.N. agreed that she and I.N. did not get along when they were younger.

[118] A.N. stated that her mother homeschooled them. A.N. added that she struggles with reading, as she was never taught properly.

[119] A.N. stated that she recalled an incident that took place in the old house at [redacted]. She stated that she witnessed her grandfather, J.R., sitting on top of I.N. and “praying the demons out of him”. She stated that the incident occurred in I.N.’s bedroom. A.N. stated that she heard what was happening. She also stated that her mother was in the doorway and that she made her watch what was happening. She added that she recalls her mother saying something to the effect that what was happening was okay, and that it is “what you get when you do something bad”. A.N. stated that her mother used what happened to her brother as a learning moment for her. She stated that her grandfather was sitting on top of I.N.’s back, and that he had I.N., who was on his stomach, pinned down on the bed. She stated that I.N.’s head was facing her, and that he was screaming at their grandfather and their mother. However, she did not recall him saying anything in particular. She did not remember how long she watched what was happening. She stated that I.N. was probably around 11 or 12 years old when this incident occurred.

[120] A.N. did not see any type of tool or weapon at the time. She did not think her uncle, D.S., was there at the time nor did she recall whether her grandmother, D.R., was there.

[121] A.N. described another incident, which occurred while she was on the back porch of their old house. She stated that she saw her mother yelling and chasing I.N. around the yard with a stick in her hand. A.N. stated that I.N. and her mother were coming from around the house, that they went around the small greenhouses, and then behind the big greenhouses. She stated that she did not see what happened after that. She did not recall whether there was anyone else with her at the time. A.N. stated that she was young, but could not specifically recall how old she was at the time.

[122] A.N. stated that it seems like her mother was always sick and napped a lot when A.N. was young. She added that her mother was pregnant often. A.N. also stated that her father worked long hours, seven days a week.

[123] A.N. did not recall seeing a scar on I.N.'s chest.

[124] A.N. recalled an incident when I.N. threatened to kill their father. She agreed that it was a traumatic event.

[125] A.N. stated that her grandfather was very involved with their family while she was growing up. She acknowledged that he was always there for them.

[126] A.N. stated that she did not blame her mother when her parents separated. Instead, she stated that she feels responsible for her parents' separation, as it appeared to her that their relationship fell apart after she stood up to her mother while they were living in British Columbia. A.N. stated that she did not want her mother to spank her little sister because she was not reading. As a result, A.N. went into the bedroom and put her sister behind her back. Her mother threatened to leave them at that time, and told her that she could be the mother. A.N. stated that her mother sent her back to the Yukon after that incident.

[127] A.N. stated that her mother's love is conditional. A.N. also stated that her relationship with her mother changed after she started thinking for herself and having her own opinion of right and wrong, and, as a result standing up for herself and for her siblings.

[128] A.N. stated that when she was 16 years old, her mother kicked her out of the house. A.N. had to live in the motorhome near the house. Her mother did not speak to her during that time, she was not allowed to speak to her siblings, she had to cook for herself, and take her showers in the motorhome. A.N. stated that the only reason her mother broke her silence was because she was exhausted of living in the motorhome, and she told her father she was going to go to social services.

[129] A.N. stated that she has a very good relationship with her father. Also, she is aware of the family case regarding access to the younger children. She stated that this is an issue for her parents to work through and resolve.

[130] A.N. also stated that she would like to see all her younger siblings, and this is something she has to work through with her mother.

[131] Finally, A.N. confirmed that she was the one who found out about the sexual assaults that I.N. committed on their sisters and told her parents.

J.R.

[132] J.R. was 71 years old at the time he testified. F.N. is his daughter and, T.N., her husband. F.N. and T.N. separated, but are not yet divorced. The complainant, I.N., is his grandson.

[133] He lives at [redacted] and works part-time at [redacted].

[134] He was the original owner of the [redacted]. He had to declare bankruptcy [redacted]. He and his wife lost almost everything in the bankruptcy, including their house [redacted]. As a result, they packed everything they had in their vehicle and travel around for a few years.

[135] T.N., who he hired as an employee in 1995, and his son D.S. managed to purchase the [redacted]. Three and a half years later, they asked him to come back to help and take over the running of the [redacted], which he did.

[136] At some point, an acquaintance gave them an RV, in which they lived and travelled for approximately a year and a half. They would come and visit F.N. and her family when they were passing through the Yukon. In 2004, they parked the RV in the shop for the winter and lived there for a few months. In 2005, they made the decision to stay in the Yukon, and he and his wife moved into the office [redacted]. They then started to build a house nearby. They moved into their new house in the spring of 2011. They have been in that house since then.

[137] The children were always back and forth between the office and F.N.'s and T.N.'s house. He and his wife attended birthday parties, and dinners at F.N.'s and T.N.'s house. They visited them often even if it was not as often as he would have liked, as they wanted to be involved in the children's lives and their Christian upbringing. He stated that his faith is important to him, and he wanted his grandchildren to grow up and live in that faith, if they so desire. He stated that he and his wife supported the whole family, and that their desire was to see a healthy family. J.R. stated that he and his wife were committed to being a positive influence in the lives of their children and grandchildren.

[138] J.R. testified that he and his wife made two commitments that govern their relationship with their grandchildren. First, when I.N., who is their first grandchild, was born, they decided that it was not their responsibility to discipline their grandchildren. J.R. added that he and his wife held to that commitment completely. Second, they decided that they would never degrade the parents in front of their children, and *vice versa*.

[139] J.R. stated that he wanted his grandchildren to see him as their grandfather not as an authority figure.

[140] J.R. stated that their house is located less than a mile away from the house F.N. and T.N. used to live in [redacted]. Five or six years ago, F.N. and T.N. moved into their new house, which is located about five miles from his house. However, four or five years ago, T.N. and F.N. moved to British Columbia in search of better education for their children, as it was getting difficult for F.N.. F.N.'s family resided in British Columbia during the school year, and came back to the Yukon during the summer and school breaks. F.N. came back to the Yukon two years ago, and has been living in the Yukon since then. T.N. lives in British Columbia.

[141] J.R. is aware that there is a pending family matter between F.N. and T.N. J.R. submitted an affidavit in support of F.N. in that matter. He agreed that he and his daughter are close.

Count #1: The Knife Incident

[142] J.R. testified that, in 2008, T.N. had a motor vehicle accident [redacted]. T.N. got a ride home with someone else, but the scene of the accident required an extensive

clean up. J.R. stated that there was an incident involving I.N. the same day. However, he testified that the events did not unfold as I.N. described in his testimony.

[143] J.R. stated that he was in the office [redacted] with his son D.S. when his wife came in crying. She was extremely distraught. She told them that I.N. had attacked her, and punched her in the chest and breast. He was really concerned for his wife. He comforted her, and then, his son and he went over to F.N.'s house. He cannot remember saying anything to his wife before going over to see I.N.

[144] J.R. stated that he did not go over to discipline I.N. J.R. wanted to speak to him to let him know that he was not allowed to hit his grandmother, and to find out why I.N. had acted that way.

[145] J.R. stated that I.N. was the first person they saw when he and his son walked in the house. I.N. was standing at the corner of his bedroom door and the kitchen counter. J.R. stated that the door was not locked, and they did not knock before coming in. He added that it was common for them to come in without knocking on the door if F.N. and the children were home.

[146] J.R. testified that he said to I.N. quite forcefully that he must never hit his grandmother. His son reinforced his message by saying to I.N. that he could not hit his grandmother. However, I.N. started swinging and kicking at J.R. J.R. wrapped his arms around I.N., and restrained him. He stated that they were approximately four or five steps away from his bed at that point, so he put I.N. on the bed. J.R. stated that he very simply picked I.N. up, and put him on the bed as I.N. swung his legs. He stated that it was not a struggle, and that it was not a difficult thing to do. J.R. added that I.N. had a low single bed at the time, which consisted of a home-made box with a mattress. J.R.

held I.N.'s arms by his side. J.R. stated that his legs were on each side of I.N.'s upper hip/thigh area. He stated that his knees were resting on the edge of the bed and that his feet were on the floor. J.R. recalled that he repeated to I.N. a number of times quite sternly and forcefully that he must never hit his grandmother again, and that he was not going to punish him, but that his father would when he came home. J.R. stated that he did most of the talking, and that there was no real shouting or screaming or anything of that sort. He acknowledged that they were speaking loudly to each other. I.N. wanted to be let go, but he was not really yelling. J.R. stated that he was speaking to I.N. very firmly and very clearly. J.R. stated that he was not angry. However, he was determined to ensure that this would not happen again, and, if I.N. knew that, it would not happen again. J.R. stated that I.N. tried to kick him in between the legs at some point, but he was unsuccessful. He added that nothing connected so it was not an issue. J.R. stated that, at some point, I.N. stopped struggling and relaxed. When I.N. stopped struggling, he let him go. J.R. stated that I.N. then told him that his father was not going to do anything. He told I.N. to stay in his room, walked out of I.N.'s room and closed the door. J.R. then left the house to go check on his wife.

[147] J.R. denied putting I.N. on the floor or against the wall at any point during the incident. However, J.R. acknowledged that it would have looked like he was crouching over I.N. on the bed while he was restraining him.

[148] J.R. acknowledged that he never had the conversation he stated he wanted to have with I.N. to find out why I.N. had hit his grandmother.

[149] J.R. stated that his son, D.S., was present with him from the beginning of this incident until the end. F.N. was in the house. However, J.R. is unsure as to her

whereabouts while he was interacting with I.N. J.R. could not recall seeing the other children while he was there.

[150] J.R. added that the whole incident lasted for about a minute and a half. He denied ever praying the demons out of I.N. J.R. added that he would say that he was not in a praying mood at that particular moment.

[151] J.R. stated that he never pulled out a knife during the events. He added that an exacto knife was not and is not a tool he commonly uses, and that he never carried one in his pocket. [redacted].

Count #2: The Pitchfork Incident

[152] J.R. denied that the incident with the pitchfork, that I.N. described, ever occurred. J.R. testified that he never hit I.N. with a fork of any kind.

[153] J.R. testified that he completed the construction of his house up on the hill overseeing the [redacted] in 2011. He stated that they built garden boxes when they moved into the house in 2011. He added that 2011 was the first year they had a garden there. He stated that they grew vegetables in garden boxes in 2011, but no potatoes. J.R. stated that they built a greenhouse in 2012. He did not recall whether they grew potatoes in 2012. He stated that it is possible, but he suspected they did not. He added that they planted potatoes in the ground in 2013. J.R. stated that he only planted potatoes in tires in 2014. He added that it was a failed experiment, and did not grow potatoes that way ever again. J.R. stated that he did not grow potatoes prior to moving to his house up on the hill, and would not have grown potatoes in 2010.

[154] J.R. stated that I.N. would come to visit them at their house, and drive up on his four-wheeler or ride up his horse later on. J.R. denied that anything of significance, an

argument or an altercation, ever occurred between him and I.N. up the hill near the stacks of tires in which he grew potatoes. He added that nothing significant at all ever happened between him and I.N. during the period he described in close proximity to their house at the top of the hill. J.R. stated that there were discussions, but no arguments.

Count #3: The Extension Cord Incident

[155] J.R. stated that he has never beaten or hit I.N. with an extension cord. In addition, he stated that he has never slapped or hit I.N. on his bottom because he was playing with an extension cord.

[156] J.R. testified that he and his wife only lived in their parked RV outside of F.N.'s house in 2004. He added that he and his wife only had a blue tarp set up the way described by his grandchildren in 2004, and that the way the surroundings of their RV was described only fit the early spring/summer of 2004. J.R. stated that he and his wife moved into the office at the beginning of 2005, and that the description provided does not fit 2005.

Count #4: The Wooden Blocks Incident

[157] J.R. denied hitting I.N., as I.N. described in his testimony. J.R. testified that he did not recall any event that could remotely fit the description given by I.N., and that he never did that to I.N.

[158] J.R. stated that he did not recall any discussions about I.N. throwing wooden blocks.

Family interactions

[159] J.R. testified that he was a little less involved in I.N.'s life than he was with his granddaughter's lives. However, he stated that there were lots of interactions between them. They went on family camping trips and spent time around the campfire at the house. J.R. stated that the children were constantly coming and going at and from his and his wife's residence.

[160] J.R. stated that I.N. came to their house for many of the Bible studies he taught, but stop coming later on.

[161] J.R. stated that he thought I.N. was a challenge, and could be boisterous, and naughty some times.

[162] J.R. also stated that by the age of 13 or 14 years old, I.N. would have been as tall as F.N. He described I.N. as very wiry and strong.

[163] J.R. stated that he had a good relationship with I.N. during much of I.N.'s childhood and early teen years. However, J.R. stated that the relationship changed when I.N. was charged with committing sexual offences on his younger sisters. J.R. stated that there was a separation when I.N. was charged and arrested for those offences.

[164] J.R. testified that I.N. called him when he was first arrested asking him not to believe what his sisters were saying against him. However, he told I.N. that he believed his granddaughters. J.R. nonetheless tried to visit I.N. while he was in custody, but stated that it did not work out.

[165] J.R. testified that his relationship with T.N. was never easy, but that their relationship was better before he married F.N. J.R. stated that the relationship became

more difficult after the marriage, as T.N. seemed to resent their contacts with F.N. J.R. added that, after the grandchildren were born, he and his wife no longer felt welcome in T.N.'s and F.N.'s home. They felt that T.N. was putting walls between them and their daughter as well as the grandchildren as they came along. He stated that T.N. was difficult to deal with at times, and that there was a continual degradation of their relationship with him over time. J.R. added that the separation between F.N. and T.N. was acrimonious.

[166] J.R. recalled only one occasion when he would have made what could be qualified as a somewhat derogative comment about T.N.'s actions in front of I.N. He stated that I.N. must have been 17 years old at the time.

[167] J.R. testified that he did not witness F.N. and T.N. discipline the children in the way that his grandchildren described when they testified. The only thing he can recall is that F.N. would count a lot. She would rattle the tin can on the counter, start to count and then "everything was taken care of". J.R. stated that the children never complained to them about the discipline they received at home. However, he later stated that he has no specific memory of F.N. rattling the jar in the kitchen. He only recalled her doing so once at a party when she was trying to get the children's attention, and it worked.

[168] J.R. testified that F.N. never called him to come to her house to discipline the children, including I.N. He stated that she would have never been able to do that.

[169] J.R. stated that he saw a lot of love between the children and F.N. J.R. added that he did not see as much interaction between T.N. and the children, as T.N. was working. However, it appeared to him that T.N. and the children got along well.

[170] J.R. stated that F.N. suffers from a condition called non-anemic iron depletion. He stated that symptoms of that condition include extreme fatigue. He added that his daughter's condition manifested itself through severe exhaustion she sometimes experienced months after months. He stated that he does not know when F.N. started receiving treatment for her condition.

[171] J.R. stated that he has never seen F.N. run the way it was described in court during I.N.'s testimony. He stated that F.N. would not be able to run for 300 yards, catch up to I.N., and then drag him back home. He added that F.N. had several children, and was pregnant during most of I.N.'s childhood. Therefore, she would not have been able to do what I.N. described.

[172] J.R. stated that F.N. was sick often, and that his wife would go check on her several times a day when she was sick whenever she had access to F.N. He stated that his wife told him that sometimes she could not see F.N. because T.N. would not let her come in the house. J.R. stated that T.N. saw his home as his castle over which he had total control and access. J.R. added that F.N. and T.N. did not have a lot of visitors over at their house because T.N. preferred it that way.

F.N.

[173] F.N. is 44 years old. She currently lives near [redacted] in what has been referred to by the other witnesses as the new house. She grew up [redacted].

[174] She married T.N. in 1996. They had seven children together. She left the relationship for the first time in 2016, but they fully separated in February 2017. She commenced divorce proceedings the same year.

[175] F.N. stated that she and T.N. lived [redacted] for most of their married life.

However, in 2015, they moved to British Columbia so their children could attend private school. I.N. is the only child who did not move down with them, as he had already been charged with sexual assault at the time. F.N. stated that they lived in British Columbia during the school year, but came back to the Yukon every summer.

[176] F.N. has been back living full time in the Yukon since 2018. The three youngest children live with her. She stated that she currently has interim custody of the three youngest children. She believes that the three oldest children, who testified in this matter, live on their own. T.N. lives in British Columbia, and their middle child lives with him.

[177] F.N. stated that there is an ongoing custody battle between her and T.N. regarding the three youngest children. T.N. filed an application for custody of the three youngest. The court ordered, in the family matter, that a custody and access report be completed at the end of this criminal matter.

[178] F.N. described herself as a stay at home mother, and as the main caregiver for the children. She homeschooled the children. She stated that it was T.N.'s decision that the children be homeschooled.

[179] F.N. acknowledged that she was the one disciplining the children when they did something wrong, as she was the one at home with them.

[180] F.N. testified that the type of discipline she used depended on how old the children were. She stated that she gave time outs or sent them to do chores, but, sometimes, they just needed a distraction. She stated that she used distraction more than anything else.

[181] F.N. acknowledged that she used spanking to discipline her children as a last resort, when there was a persisting problem, and other methods of discipline had not worked. She used spanking when her children were between the ages of three years old and seven or, maybe, eight years old. She used her hand to spank them, and spanked them on their bottom.

[182] She admitted to also using a wooden spoon to discipline her children. She would spank them on their bottom with the wooden spoon. F.N. testified that she used the wooden spoon only when the children were around the ages of seven or eight years old. She stated that her children did not need to be spanked as they got older. She testified that she probably spanked I.N., three or four times in total.

[183] F.N. acknowledged that the wooden spoon was stored in a canister on the kitchen counter. She also agreed that the children knew they could be spanked with the wooden spoon if they misbehaved.

[184] F.N. stated she only remembered rattling the canister once or twice to remind the children to behave. She believed it had to do with the children's bedtime. She recalled rattling the canister to get them to go to bed. She then went around to each of the bedrooms. She saw that they were all happily in their beds, and tucked them in.

[185] F.N. denied ever using willow branches to spank her children.

[186] F.N. stated that discipline should not be done in anger, and that it has to be done correctively. F.N. stated that her parents are probably the ones who taught her that principle. She denied reading anything on the issue of corporal punishment in preparation for this trial. F.N. stated that she did not enjoy giving corporal punishment.

[187] F.N. acknowledged that she told I.N. on a couple of occasions to wait until his father came home to be disciplined. She also acknowledged that the children were usually disciplined in their respective bedrooms, and, sometimes, their door was closed.

[188] F.N. denied ever passing off corporal punishment to her father, J.R.

[189] F.N. stated that she did not recall talking to her father about I.N. throwing wooden blocks at her. In addition, she stated that she did not recall I.N. throwing wooden blocks at her. However, she added that I.N. threw many things when he was young, and that it was not unusual for I.N. to throw things at her and his sisters when he was angry or having a temper tantrum, particularly when his behaviour escalated around his eighth birthday. She agreed that it is possible that I.N. threw wooden blocks at her at some point during his childhood.

[190] F.N. stated that she did not recall telling T.N. about the incident that took place between her father, J.R., and I.N. in I.N.'s bedroom, even though she conceded that this seems like the sort of things she would have reported to T.N. when he got home. She stated that the incident between I.N. and her father occurred on the same day T.N. had an accident with [redacted]. She also stated that she never heard anyone else discussing the incident between her father and I.N. with T.N.

[191] F.N. testified that T.N. was physically abusive towards the children. She stated that he would hit the children and call it discipline. She stated that T.N. did this mostly to I.N. She added that T.N. would grab I.N., throw him against the wall, grab him by the ears, or take him outside and drag him off the deck. F.N. stated that she witnessed T.N. beat I.N. with a log. She also saw T.N. chase I.N. around the yard.

[192] F.N. testified that she was terrified of her husband, and there is no way she could have stopped him. She stated that he was a very intimidating man, and that she could only make suggestions. She stated that she explained to him that what he was doing was wrong, that a parent should never spank a child when they are angry, that they have to give warnings in order to give the child an opportunity to correct their behaviour, and that a child should know why they are being disciplined for.

[193] F.N. stated that the physical altercations between T.N. and I.N. were at their worst when I.N. was between the ages of seven and eight years old, and then again at the age of 14 years old. F.N. stated that those were the years where there was the most conflict between I.N. and his father. She stated that when I.N. was a teenager, him and his father would always fight or argue. She also stated that when I.N. was 16 and 17 years old, he and his father would get into fights, and their arguments would get physical. She added that T.N. would overpower I.N. when he chose to do so.

[194] F.N. stated that her husband used her religion against her to control and dominate her, and that he controlled every aspect of her life. F.N. stated that T.N. was manipulative and treated the children the same way, in particular I.N.

[195] F.N. stated that when T.N. would leave the house, I.N. would unwind and act out. T.N. would blame her saying that I.N. did not misbehave when he was home. F.N. stated that T.N. told her that she was responsible for I.N.'s behaviour. F.N. added that T.N. would tell her that she should spank I.N. more. F.N. stated that she did what her husband told her, and she spanked I.N. with a wooden spoon. F.N. added that, of course, I.N.'s behaviour did not improve, and that it escalated further. F.N. stated that a few months later, she walked into I.N.'s room, after she had sent him there for a time

out, as she often did during that time period. She saw that I.N. was pacing back and forth and grinding his teeth. F.N. stated that she was alarmed, and called T.N. to explain what she had seen. F.N. stated that T.N. responded that he would pray for her, but that he was not coming home.

[196] F.N. stated that, in hindsight, the fact that T.N. withdrew from I.N. was the best thing for her son. She stated that she was able to work with I.N. over the next few months, and that she “recovered” him. F.N. stated that I.N. became a fine boy, and that she was very proud of him. She stated that I.N. was approximately eight years old when she took a completely hands off approach with I.N., and that his attitude changed completely. F.N. stated that the image of that little boy who was so angry just made her realize that I.N. was not a bad boy like T.N. was saying, and that she was not a bad mother as T.N. was saying. F.N. stated that she thought that there must have been something else that made I.N. misbehave. She stated that during this period of time she would remind I.N. to listen, she would send him outside to burn off his energy, and she used distractions. She stated that she tried to keep her children busy and happy.

[197] F.N. stated that, after five or six months, she realized that T.N., with his control and manipulation, was responsible for I.N. misbehaving. She stated that she stood up to T.N., and told him that she was not going to allow him to control and manipulate her anymore. She stated that T.N. responded by becoming physically abusive to I.N. again. F.N. stated that T.N. did this to I.N. to make her pay. She added that T.N. turned I.N. into his pet, and that T.N. would tell I.N. that he only had to listen to his father. F.N. stated that, as a result, when I.N. was misbehaving, he would tell her that he did not have to listen to her. F.N. stated that T.N. undermined her as a parent.

[198] F.N. stated that T.N. withdrew again when I.N. was approximately eight and one-half to nine years old, as he seemed to be in a depression. She stated that she was then able to work with I.N. again, and to “recover” him. F.N. stated that, as a result, I.N.’s behaviour improved drastically. She stated that I.N.’s behaviour continued to improve when he was between the ages of nine and one-half and 12 years old. She added that those were really good years. F.N. stated that she did a lot of activities with her children during that time. She added that T.N. left her and I.N. alone during that period of time.

[199] F.N. stated that I.N. was enrolled in school [redacted] in grades seven and eight, when he was 12 and 13 years old. She stated that I.N.’s behaviour really started to deteriorate again in his second year of school. I.N. would come home bragging about getting into fights. F.N. stated that she was afraid that his behaviour had something to do with the school, and she did not send him back to school after that.

[200] F.N. stated that, by the time I.N. was 14 years old, T.N. started getting down hard on him again. She stated that, at the time, I.N. said that he did not want to be homeschooled anymore, and wanted to go to work. She stated that I.N. was being very aggressive with his sisters, and causing a lot of trouble. She stated that I.N. decided to go to work with T.N., and I.N.’s behaviour got worse.

[201] F.N. stated that I.N. had a confrontation with T.N. just before he turned 14 years old, and that during that confrontation I.N. threatened to kill her.

[202] F.N. stated that her relationship with I.N. got better again when I.N. came back from a two-month stay with a friend of the family in Ukraine. Upon I.N.’s return, he started to work as a [redacted], and that he was away from home for work in the spring

and the fall, during that time. F.N. stated that her relationship with I.N. was good at that time.

[203] F.N. stated that I.N. was a difficult child at times, and she acknowledged that her relationship with him has been complicated.

[204] F.N. stated that it is in 2014, while I.N. was at work, that A.N. told her that I.N. was sexually assaulting two of his younger sisters. She stated that it was like a bomb had exploded. She stated that she did not confront I.N. at the time because he was at camp. She added that she had no idea what to do. F.N. stated that she did not have any discussion with I.N. nor have any contact with him after he was charged with the sexual assaults.

[205] F.N. stated that she had a good relationship with O.N. She described O.N. as a sweet, smart girl, always smiling and very helpful with the younger children. F.N. stated that her relationship with O.N. changed after I.N.'s arrest. She stated that each member of the family handled the situation differently. She stated that O.N. ran away from home for a few months, but that she then moved back home, and moved to British Columbia with the rest of the family, except I.N.

[206] F.N. stated that due to the impact of the sexual assaults on her two daughters, and the importance of O.N. graduating from high school, she convinced T.N. to move south, and they settled on a school in British Columbia. F.N. stated that they moved in 2015.

[207] F.N. stated that she had a good relationship with A.N. until the sexual assaults were disclosed. She stated that A.N.'s behaviour worsened after that. F.N. stated that the family came back to the Yukon from British Columbia during the summer of 2015.

[208] F.N. stated that she returned to British Columbia in the fall of 2016 with the three youngest children. She stated that T.N. did not want to return to British Columbia for a second year. She stated that she told him to stay in the Yukon, and to look after A.N. F.N. stated that she did not want A.N. to come down with her, as A.N. was being used by T.N. to make accusations against her. F.N. stated that T.N. sent A.N. down to live with her in any event. F.N. stated that A.N. had only been down with them for a week when she started accusing her of a lot of things, including of hitting the children. F.N. stated that she remembered the incident A.N. testified about. F.N. denied that A.N. took a wooden spoon away from her during the incident, and denied that she had spanked or hit anybody. F.N. stated that, as a result of the incident, she sent A.N. back to the Yukon. F.N. stated that T.N. and A.N. came down a few weeks later, and lived in the motorhome in the yard even though she had told T.N. to get a house for himself. F.N. stated that T.N. tried to make amends, that she fell for it, and that she let him in the house. F.N. acknowledged that A.N. stayed in the motorhome. F.N. acknowledged that A.N. was only allowed to come in the house to eat, and have a shower because she was afraid of A.N.'s outburst and of A.N. accusing her of false things again.

[209] F.N. stated that it came to a point where she had to leave, and she came back to the Yukon. F.N. acknowledged that A.N. has not lived with her, and that she has not had much contact with A.N. since then.

[210] F.N. stated that she was raised in a Christian home, that she is a Christian, and that she has faith. She stated that faith is important to her. She stated that she learned her faith from her parents. She added that she was raised in a traditional home, a home that applied the Bible. She acknowledged that the Bible permits corporal punishment.

[211] F.N. stated that she suffers from iron deficiency due to undiagnosed celiac disease for many years. She stated that her iron level was depleted, and, at times, she was extremely fatigued. She stated that her condition was at its worst when she was pregnant with her second last child, in 2007-2008, which is when she was diagnosed with low iron. F.N. stated that she had five young children at the time, and that she was tired all the time. F.N. stated that she had to nap every day just to being able to function, and do the very minimum. She stated that she did much of her parenting from laying on the couch. She stated that T.N. did not help with the house chores or the homeschooling as he was working. F.N. stated that her mother would check on her when T.N. allowed her in the door.

[212] F.N. stated that she is currently being treated for iron deficiency, but that she continues to being fatigued.

[213] F.N. testified that she did not participate in any strenuous physical activities during the period of time it is alleged that she hit I.N. with a root or a stick.

[214] She stated that T.N. hit I.N. with a belt at least a couple of times when I.N. was young. She stated that T.N. mostly used his hand to discipline the children, but he also used the wooden spoon.

[215] F.N. stated that T.N. abused her psychologically and physically throughout their marriage. She stated that the physical abuse started after they were married, and that it had, at least, started by the time I. was very young. She added that the physical abuse lasted throughout their marriage. She stated that the physical abuse consisted of threatening her; motions to strike her; grabbing her by the arm; and forcefully taking her

where T.N. wanted her to go. She acknowledged that it was not very healthy for her children to witness the domestic abuse.

[216] She acknowledged that she never reported T.N.'s abuse against her and/or I.N. to the police even after she separated from T.N.

[217] She acknowledged that she did not say anything about T.N. being abusive to her and I.N. when she reported the sexual assaults on her daughters to the police.

However, she explained that the statement she gave to the police at the time was specifically to talk about her daughters and the sexual assaults.

[218] F.N. acknowledged that she was interviewed by I.N.'s youth probation officer about I.N.'s childhood. F.N. stated that she did not recall saying anything to that person about the abuse from T.N. F.N. explained that she was still scared and very distraught during that time. F.N. further explained that she would have still been protecting T.N. at the time as he had threatened her. F.N. stated that it was possible she told the youth probation officer that I.N. was a bully, and that he was prone to tantrums.

[219] F.N. acknowledged that the investigation regarding I.N.'s allegations against her father, J.R., started in 2015. She acknowledged giving a statement to the police, while she was in British Columbia. She stated that she was not under investigation at the time. F.N. acknowledged telling the police at the time that they were the ones being abused by I.N. She stated that she was referring to the sexual assaults on her daughters at that point. F.N. stated that she did not say anything about T.N. abusing I.N. during that statement because she was asked specifically about the incident involving her father.

[220] F.N. stated that she did not talk about T.N.'s abuse until she got away from him. She acknowledged that the first time she disclosed T.N.'s abuse was in the affidavit she filed in 2017 in support of her divorce proceeding.

[221] The defence admitted that F.N. filed for divorce on August 8, 2017, and that she filed her first affidavit in that matter on August 22, 2017, in support of her application for custody of the three youngest children. It is in that affidavit that she publicly asserted for the first time that T.N. had been physically abusive towards I.N.

[222] F.N. denied making up a story regarding T.N. being physically abusive towards I.N. in order to get custody of the three youngest children.

[223] F.N. disagreed with Crown counsel's assertion that she did not disclose T.N.'s abuse towards her in her first affidavit in the family law matter or before because it is a story she fabricated more recently to assist in her defence in this criminal case as well as opposing T.N.'s application for custody of the three youngest children.

[224] F.N. stated that she chose not to disclose T.N.'s abuse towards her in her 2017 affidavit, as she had just gotten away from T.N., and she did not know how to express the abuse she had suffered.

D.R.

[225] D.R. is the spouse of J.R. and the mother of F.N. She is the grandmother of the complainant.

[226] She is 68 years old and lives [redacted]. She has four children and 12 grandchildren.

[227] D.R. testified that, for a number of years, she and J.R. lived [redacted] fairly close to T.N., F.N. and their grandchildren.

[228] She stated that when they lived in the office [redacted] their respective residences were the distance of a double driveway apart.

[229] D.R. stated that she remembers the date of [redacted], 2008, as T.N. had an accident with [redacted] on [redacted], 2008, and that there was another incident that occurred on that date.

[230] D.R. stated that she left the office building where they were living at the time to visit F.N. and the children. She stated that when she entered the house, she heard and saw I.N. creating a disturbance. She stated that I.N. was shouting verbal insults at his sisters who were trying to do their schoolwork at the dinner table. She also stated that F.N. was trying to get I.N. to go back to his bedroom where he was supposed to do his schoolwork. However, I.N. was not listening to his mother.

[231] D.R. stated that she put her hand on I.N.'s shoulder, and nudged him gently towards his bedroom door. She stated that I.N. turned on her and started hitting her in the chest. She stated that she backed away immediately. D.R. stated that she looked at F.N. in complete shock and fled. She stated that she went back to the office [redacted]. Her husband, J.R., and her son, D.S. were there when she arrived. She stated that she was upset and crying, and that they asked her what had happened. She described to them what had happened. They then left and she stayed in the office.

[232] D.R. denied praying for I.N. or anything of that sort while she was at the house that day.

[233] She stated that she and her husband were never involved in the physical discipline of their grandchildren.

[234] D.R. stated that she visited F.N. at her house everyday. She stated that she tried to avoid being at the house at the same time as T.N. However, she acknowledged that he was sometimes there. She stated that she did not trust T.N., and that she felt uncomfortable in his presence. She added that she did not like how he treated her daughter. In cross-examination, she acknowledged that she was a welcome visitor at F.N.'s house, and that she would come and go to her daughter's house.

[235] D.R. stated that F.N. was constantly run down when the children were small. F.N. had some health issues that had not been diagnosed or treated at the time. F.N. was constantly very low in energy, and unable to function normally. D.R. stated that, most of the times, when she visited her daughter, F.N. would be in bed or on the couch, or in the kitchen making meals, barely able to get through the day and cope with everything. She added that F.N.'s health has improved somewhat since then, but that her daughter still struggles to this day with low energy.

[236] D.R. stated that she and her husband acquired their RV in the summer of 2003. They lived and traveled in that RV, which was their home, for about two years. When they moved in the office, they parked the RV beside the office building. The RV stayed there for a number of years before they sold it.

[237] D.R. stated that she and her husband moved into their new house in May 2011, and that it was unfinished at the time.

[238] D.R. stated that she has never seen F.N. physically discipline the children. She also stated that she does not remember ever witnessing T.N. physically discipline the children.

D.S.

[239] D.S. is 48 years old. He is the son of J.R. and the brother of F.N.

[240] He stated that he remembers an incident involving his nephew, I.N., and his mother, D.S.

[241] He stated that he was informed that I.N. had hit his mother. He did not recall who exactly told him about the incident, but remembers going to F.N.'s house with his father. He stated that he was working at the [redacted] when he found out about what had happened. He and his father told I.N. that his behaviour was unacceptable, and that they were not happy with him. He stated that they scolded him for hitting his grandmother, and told him that his father would have to discipline him for that incident.

[242] D.S. stated that I.N. was either in his room or in the entry way when they arrived at the house. He stated that I.N.'s bedroom was close to the entry way, and I.N. was in that area of the house when they arrived.

[243] D.S. stated that he did not physically restrain I.N. or help physically restrain I.N. He stated that he did not recall seeing his father restrain I.N. at that time.

[244] D.S. acknowledged that there was a lot of noise during the incident. He acknowledged that he and his father were upset. He also acknowledged that they raised their voices, as they were scolding I.N. for his behaviour. D.S. stated that most of the noise came from him and his father. He stated that I.N. raised his voice too, but did not try to get away from them.

[245] D.S. stated that it was just a verbal argument. He stated that he did not recall seeing I.N. on the floor or on the bed, and did not recall his father holding I.N. down on his bed.

[246] D.S. stated that F.N. was at the house at the time of the incident.

[247] D.S. stated that it is possible that the other children were there as well, but he did not recall them being there.

[248] D.S. did not remember where I.N. was when he and his father left the house, but stated that he must have been in his room.

[249] D.S. stated that things had settled down when they left, and they expected that I.N.'s father, T.N., would deal with the issue when he got home.

[250] D.S. stated that one of them would have informed T.N. about the incident. However, he stated that he did not tell T.N. what happened.

ANALYSIS

General assessment of the witnesses' credibility.

I.N.

[251] I.N. admitted during his testimony to lying under oath or solemn affirmation twice in previous court proceedings. Both occasions relate to him denying sexually assaulting two of his younger sisters when he was a youth. I.N. admitted to lying to pursue his own interests. I.N. was found guilty of sexually assaulting two of his younger sisters after trial.

[252] However, during his testimony, I.N. also, for the first time, admitted to being the perpetrator of the sexual assaults against two of his younger sisters.

[253] In addition, I.N. acknowledged, while testifying in this matter, to having knowingly lied to his youth probation officer when he told her that his grandfather, who is one of the accused in this matter, could have been the one who committed the sexual assaults against his sisters.

[254] During closing submissions, I asked Crown counsel and defence counsel about the weight I should give to the fact that the complainant admitted to lying under oath twice in assessing his credibility.

[255] While counsel did not have case law to direct me to on this specific issue, both Crown counsel and defence counsel agreed that, when considering I.N.'s credibility, I should specifically consider the effect of the witness' lies under oath.

[256] Defence counsel emphasized that lying under oath is considered more serious than lying in other circumstances. In addition, he pointed out that the complainant also admitted during his testimony to falsely accusing his grandfather, J.R., of having perpetrated the sexual assaults against his sisters while knowing all along that he was responsible for those assaults. Defence counsel submitted that I cannot rely on the complainant's testimony and should not give it any weight. Defence counsel submitted that this demonstrates not only that the complainant is willing to lie to protect himself from criminal responsibility, but also that he did not hesitate to lie against his grandfather.

[257] Crown counsel, on the other hand, pointed out that the complainant is a young adult, who was still a youth when he committed the offences against his sisters, and that he was still quite young when he denied committing the assaults when he testified at his trial. Crown counsel submits that the complainant's admissions in this proceeding demonstrate that he has matured, that he is prepared to take responsibility for his actions, and that he understands the importance of telling the truth, which are factors that should also weigh in my assessment of his credibility.

[258] I reviewed a number of cases after trial on this particular issue (*R. v. Khela*, 2009 SCC 4; *R. v. Palermo* (2006), 70 W.C.B. (2d) 359 (O.O.N.C.); *R. v. Keeping*, 2011 NLCA 52; *R. v. T.L.*, 2003 NSCA 44; *R. v. Alexander*, 2012 ONSC 7117; *R. v. S.B.* 2014 NLTD(G) 84). These cases lead me to the following conclusions.

[259] A deliberate lie under oath or solemn affirmation is always a factor that brings the credibility of a witness' evidence into question, and therefore attracts special scrutiny of the witness' testimony (*Khela*, at para. 34). In such a case, the evidence of the witness should be approached with caution, and, depending on the circumstances, the deliberate lie may well taint the entire testimony of the witness. This is of particular importance in a situation where the case against the accused rests essentially on the credibility of the complainant (*R. v. Crosby*, 130 O.N.R. (2d) 61 (NSCA), at paras. 35, 40 to 44).

[260] However, in *Keeping*, the Court of Appeal of Newfoundland and Labrador determined that:

[17] ... The effect of a lack of truthfulness must be assessed in light of the relevant circumstances, particularly where the witness' motivation for lying may be a relevant consideration. In this case, the complainant admitted that she had been untruthful in the prior case when she testified that she did not recall, thereby failing to provide the Court with information which she, in fact, had regarding the charge against Mr. Keeping. This negatively affected the Crown's ability to prove its case. Despite this evidence of untruthfulness, taking into account the circumstances and considering the question of motivation, the trial judge did not err in proceeding on the basis that the complainant's prior untruthfulness when she was under oath was not such as to warrant characterizing her as an unsavoury witness. Rather, the issue of her credibility was adequately addressed by means of the standard instructions alerting the jury to assess the witness' testimony with the appropriate degree of caution.

[261] I.N. lied twice under oath or solemn affirmation in previous court proceedings regarding his involvement in offences that are separate and apart from the alleged events that gave rise to the charges before the Court. Clearly, his lie at his criminal trial was, at least in part, motivated by a desire to avoid criminal responsibility. However, considering the fact that both O.N. and J.R. testified that, after I.N. was arrested, he contacted them hoping that they would not believe the complaint made against him, I am prepared to consider that his lie was also motivated by his fear of losing his relationship with his family.

[262] I also consider the fact that the complainant was a young adult when he testified at his own criminal trial, and still a young adult when the preliminary inquiry proceeded in this matter. I am not saying that youthfulness on its own constitutes a blanket excuse for the complainant's untruthfulness. However, I cannot discount the fact that the complainant is now slightly older, and appears to have matured somewhat since then.

[263] I also cannot discount the fact that the complainant's admission of guilt in this trial demonstrates a willingness to finally take responsibility for the wrongful acts he committed against his sisters; and that, in that respect, his admission constitutes a positive step towards his rehabilitation, and a factor that sheds a positive light on his credibility.

[264] On the other hand, I also note that the complainant's lies under oath were coupled with deliberately falsely accusing his grandfather of having committed the sexual assaults. This lie appears to have been motivated not only by his desire to avoid the consequences of his actions, but also by the negative feelings he had towards his grandfather, despite the serious consequences this may have had for his grandfather. In

addition, it cannot be assumed that the complainant's negative feelings towards his grandfather are necessarily rooted in wrongdoings on the part of his grandfather.

[265] I am also mindful of the fact that I.N. has a prior conviction for theft in [redacted], which is an offence of dishonesty.

[266] Having weighed the circumstances surrounding the two instances when I.N. lied under oath, as well as the other instance of dishonesty while engaged in a court related process with his youth probation officer, coupled with his prior conviction for theft, I find that there is a clear risk in adopting his testimony when there does not otherwise exist, at least, some confirmatory evidence.

[267] I also find that I.N. tended to minimize his father's actions as compared to his mother's and grandfather's actions during his testimony. For example, he denied that his father ever used a belt to discipline him, whereas his sister O.N. stated that their father used his belt on occasions to spank them. In addition, I.N. indicated that he, not his father, was the one to blame for the physical altercation, that his sisters described as alarming, and that occurred between him and his father around his 14th birthday, and during which he threatened one of his parents.

[268] However, I do not put much weight on the fact that I.N. did not disclose all of the alleged incidents of violence that are before me in this matter either in his first statement to the police in 2015, or to his youth probation officer in the context of the preparation of a pre-sentence report in his criminal matter. I accept I.N.'s explanation that it was not his goal to disclose all of the incidents of violence he suffered in the context of the preparation of the pre sentence report. Also, I.N. stated that he did not mention anything about his mother assaulting him when he spoke to the police in 2015 because his

parents were still together at that time. He also indicated that his first statement was short. He added that the RCMP contacted him in 2018 to provide more details about the incidents he disclosed in 2015.

O.N.

[269] I am of the view that O.N. was a credible and reliable witness despite her inability to recall with precision the timing of certain events that occurred in her childhood.

[270] O.N. answered questions fully and thoughtfully during her examination in chief and cross-examination. She was a balanced witness in that she did not hesitate to recognize both the positive and negative aspects of her upbringing. For example, she qualified her childhood as being “pretty good”, and described J.R. as a caring and loving grandfather. Also, while she acknowledged having a good relationship with her father, she also testified to events that did not always picture him in a positive light, such as her statement that he used a belt at times to discipline her and her siblings. She testified in the same manner with respect to I.N. For example, she stated that he threatened to kill their father; and that she did not believe I.N. when he phoned her, asking her not to believe the complaint of sexual assault that their younger sisters had made against him. In addition, it became clear throughout her testimony that she cares for all the members of her family, including the two accused. As such, I do not find that her providing an affidavit in support of her father’s application for custody of her youngest siblings in 2019 demonstrates that she is prejudiced against the two accused, and that she has a motivation to lie in this proceeding.

[271] In addition, O.N. acknowledged that she does not have a perfect memory, and provided a reasonable explanation as to why she remembers some events that

occurred when she was a young child when she indicated that she recalls events that have left an emotional imprint on her. In addition, based on the principles enunciated in *R. v. G.(B.)*, I do not find that her inability to recall exactly how old she was, or what year it was when certain events allegedly occurred during her childhood, detracts from her overall credibility and reliability as a witness.

A.N.

[272] A.N. came across as a very sincere witness. She answered questions in cross-examination on issues that arose with respect to her relationship with her mother and grandfather straight-fully, and with thoughtfulness, I might add. However, her recollection of certain specific events she described, particularly of the incident involving her grandfather and I.N., was limited, not only with respect to the date and time of the year of the incident, but also with respect to the people present at the time, and key moments of the incident. For example, she testified to what she assumed her mother would have said to her, presumably to calm her down, while she was observing what was happening between I.N. and her grandfather, as opposed to simply relaying what she remembered.

[273] As such, I find that the reliability of A.N.'s testimony is somewhat impacted when it comes to some specific incidents. I will address this issue more specifically when considering her evidence in relation to each count to which her testimony is relevant.

[274] A.N. clearly has a conflictual relationship with her mother, F.N. However, A.N. is also the one who disclosed to her parents the sexual assaults that I.N. committed on their younger sisters, which is a situation that complicated her family relationship. She also acknowledged remembering an incident during which I.N. had threatened their

father, and which she had found alarming. As such, I do not find that her emotionally conflicted relationship with the accused negatively affects her credibility.

D.R.

[275] D.R. answered questions put to her in a balanced and straightforward manner. She did not try to evade answering questions in cross-examination nor did her answers call into question the reliability of her recollection of events.

D.S.

[276] D.S. also answered questions put to him in a balanced and straightforward manner. However, I find that his recollection of the incident that occurred between him, his father and I.N. was tentative and limited. There were a number of important details regarding the incident that he could not remember. For example, he could not recall that it was his mother who told him and his father about the incident between her and I.N. Also, he could not recall where I.N. was when he and his father left the house right after they finished dealing with him. This raises questions regarding the reliability of his testimony.

J.R.

[277] Generally, I find that J.R. answered questions in a straightforward manner in examination in chief. However, he became defensive and argumentative when pressed further in cross-examination. For example, he started questioning Crown counsel as to whether she had any children instead of answering her question. Also, he unnecessarily corrected Crown counsel when she used the term ground instead of floor in one of her questions.

[278] Also, J.R.'s broad assertions that he and his wife did not feel welcome in F.N.'s and T.N.'s home after the children were born; that T.N. was putting walls between them and their daughter and their grandchildren; and that T.N. restricted their access to their daughter, are not borne out by his own testimony, and raise concerns about his overall credibility. J.R. testified that he and his wife would attend birthday parties and dinners at F.N.'s and T.N.'s home. He also testified that the grandchildren were always coming and going between their house and "grandpa's and grandma's", and that the grandchildren came to their house for Bible studies. Also, he stated that it was common for them to walk in F.N.'s and T.N.'s house without knocking when F.N. and the children were there.

F.N.

[279] Generally, F.N. responded fully, and did not try to avoid answering questions put to her during her testimony.

[280] However, I find that her evidence regarding her relationship with her son, I.N., during his upbringing, questionable. F.N.'s description of the way she was able to work with I.N., and to "recover" him (to use her words) on two occasions, the first time at the age of eight years old, and again at the age of eight and one-half to nine years old until the age of 12 years old; and that he became a "fine boy" while T.N. allowed her to work with him, defies common sense, and, I find, affects her overall credibility.

[281] F.N. testified at length about the alleged abusive nature of her relationship with her husband, T.N. However, I am of the view that it is not necessary for me to determine whether T.N. was abusive towards F.N. in order to make a determination in this matter. T.N. is not a part of this proceeding, and he did not testify. In addition, the alleged abuse

towards F.N. was not put to the Crown witnesses during the trial. In any event, even if I were to believe F.N.'s version of events, her interactions with her husband could not be used as a defence with respect to the charges of assault she faces.

[282] In that context, I am not prepared to consider that F.N.'s failure to disclose the alleged abuse she suffered at the hands of T.N. in the affidavit she filed in 2017 for the custody of her younger children in the family matter, negatively impacts her credibility, or that she recently fabricated this story, as there is simply not sufficient evidence before me to assess the circumstances surrounding the making of that affidavit, and of F.N.'s and T.N.'s separation.

CHARGES BEFORE THE COURT

[283] I will now turn to the specific charges before the Court.

Charges against F.N.

Count #1: On or between January 1st, 2006 and December 31st, 2009 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a wooden stick contrary to s. 267(a) of the *Criminal Code*.

[284] I.N.'s evidence under this charge is to the effect that, when he was around 10 or 11 years old (which would have been in 2007 or 2008), his grandfather arrived at the house to help his mother discipline him. I.N. ran out through the back door. He jumped off the back porch, ran down to the backyard, and into the poplar trees. I.N. recalled seeing his grandfather standing on the back porch yelling that he would get him. After his grandfather left, I.N. went to talk to his mother, F.N., who was working in one of the greenhouses with some of his sisters. His mother asked him to go to his room but he refused. At some point, his mother stopped what she was doing, and started chasing him. He ran out of the greenhouse, and around the property for a distance of

approximately 300 yards. While F.N. was chasing him, she picked up a stick or a root, caught up to him, knocked him out by hitting him on the head with the stick, before dragging him back to his room. I.N. added that the assault occurred in the summer, and resulted in him having a “goose egg” on his head for a few days. I.N. stated that no one else was present or saw the assault, and that he did not talk to anyone about the incident at the time.

[285] In addition, I.N.’s evidence is to the effect that his mother would call his grandfather during the day when she could not handle something, or when she did not want to handle something.

[286] I.N.’s evidence is partly corroborated by O.N.’s evidence, which I have found generally credible and reliable. Her evidence is that on one occasion, while she was between six and 10 years old, she saw her mother chasing after I.N. through the kitchen, then out the back door, down the back porch, and then towards the back of the property before losing sight of them. However, the incident described by O.N. does not bear enough resemblance to the events described by I.N. to constitute the same incident. Nonetheless, it corroborates I.N.’s evidence that their mother was sufficiently well at times to being capable of chasing him over a relatively long distance.

[287] I.N.’s testimony is also corroborated by A.N.’s evidence that, while she was standing on the back deck of their house, she observed her mother chasing I.N. with a stick in her hand on the property. A.N. provided a detailed drawing of where and in which direction she saw her mother chasing I.N. The drawing was filed as Exhibit 6 at trial. A.N. stated that she was young at the time, but could not say how old she was. However, the incident described by A.N. does not bear enough resemblance to the

events described by I.N. to constitute the same incident. Nonetheless, it corroborates I.N.'s evidence that their mother was sufficiently well at times to being capable of chasing him on a relatively long distance with a stick.

[288] F.N.'s evidence is to the effect that this incident never happened. She denied chasing I.N. around the property, hitting him with a stick, and then dragging him back to the house. She acknowledged telling I.N. on a few occasions to wait until his father came home to be disciplined, but that she never passed off corporal punishment to her father.

[289] Both A.N. and O.N. testified that their mother would sometimes ask them to wait in their room until their father came home to discipline them when they had misbehaved.

[290] J.R. stated that his daughter never called him to come to her house to discipline her children, including I.N.

[291] Also, F.N.'s evidence is to the effect that she suffers from iron depletion, and that she was extremely fatigued and barely able to function when the children were young. She stated that her condition was at its worst when she was pregnant with her second to last child in 2007-2008, which is when she was diagnosed with low iron. She had five young children around that time, and was tired all the time. She had to nap everyday just to function, and was doing the very minimum. She did much of her parenting from laying on the couch. In addition, she did not participate in any strenuous activities during that period of time. She continues to experience fatigue even though she is being treated for her condition.

[292] J.R. and D.R. confirmed that their daughter has been suffering for years from a health condition that results in exhaustion and fatigue. D.R. stated that she would go to her daughter's home to check on her on a regular basis when the children were young.

[293] A.N.'s evidence is also to the effect that her mother, F.N., was always very sick when A.N. was young, and that she often had naps during the day. She also noted that her mother was pregnant often when they were young.

[294] Photographs filed at trial (Exhibits #11 and #12) reveal that the house's old back porch had already been taken down by the fall of 2005 (when I.N. would have been eight years old), and that it was not replaced before the summer of 2009 (when I.N. would have been 12 years old). There was much debate between Crown and defence at trial regarding the dates appearing on the print outs of photographs the defence wanted to file at trial. Considering F.N.'s testimony that the date was set up properly on the camera when she took the photographs, I find that the dates appearing on the print outs of the two photographs are the dates when they were taken.

[295] In addition, while looking at the 2009 photographs during his testimony, I.N. stated that the assault could not have taken place during the summer of 2009, as there was no plastic covering on the greenhouse depicted on that photograph, and, as a result, they would not have grown vegetables in the greenhouse that year. As such, he stated that the assault he described would have occurred in 2010.

[296] However, I.N. also testified that he did not remember whether his grandfather was standing on the old deck or the new deck when he yelled at him during the incident.

[297] Therefore, on the basis of I.N.'s evidence the assault would have had to take place in the summer of 2005 or before; or in the summer of 2010 or after. I note that I.N. was eight years old in 2005 and 13 years old in 2010.

[298] J.R. stated that I.N. was as tall as his mother by the age of 13 or 14 years old. I.N. stated that he did not recall if he were as tall as his mother when he was 13 years old, but that he did not have his growth spurt until he was 14 years old.

[299] Considering the evidence of A.N. and O.N., which I accept, that they saw their mother running after I.N. at different times during their childhood, I do not believe F.N.'s evidence that she would not have been able to run after I.N. around the property because of her medical condition, and that, as a result, the events described by I.N. could not have happened.

[300] However, if the assault had taken place in 2010 or after, I.N. would have reached an age where it would have been difficult for his mother to drag him towards the house as alleged. If the assault had taken place in 2005, then F.N. would have had five children under the age of eight years old to care for during the day.

[301] In addition, the evidence before me leads me to the conclusion that if F.N. wanted help to discipline her children, she would usually tell them to wait in their room until their father, T.N., arrived. In addition, J.R. would also have been working during the day overseeing the operations of the [redacted] starting around 2005. I realize that the [redacted] was just a few hundred feet away from the house, but this calls into question whether he would have even been available to help his daughter discipline the children during the day while he was working. I acknowledge that J.R. was also around in the summer of 2004. However, he and his wife were travelling around before that time.

[302] I am also mindful of the fact that while there is some evidence of I.N.'s sisters witnessing their mother chasing him on separate occasions, there is no evidence that corroborates I.N.'s evidence regarding this specific assault, i.e. that his mother was able to catch up to him, hit him, and drag him back to the house.

[303] As such, I am of the view that the combined effect of the evidence favourable to the accused is such that it leaves me with a reasonable doubt as to the guilt of F.N. on this Count.

[304] In addition, even if the evidence favourable to the accused had not left me with a reasonable doubt, I am of the view that it would be unsafe to convict F.N. based on the evidence adduced at trial with respect to this charge.

[305] Therefore, I find F.N. not guilty of Count #1.

Count #2: On or between January 1st, 2003 and December 31st 2006 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a wooden spoon contrary to s. 267(a) of the *Criminal Code*.

[306] This allegation against F.N. is twofold. First, it is alleged that she spanked I.N. on his hands and/or his bottom with a wooden spoon almost daily while he was between the ages of eight years old and 12 or 13 years old. Second, it is alleged that she hit I.N. on the head with a wooden spoon on two or three occasions, but, more specifically, on one occasion described by I.N. in his testimony.

[307] All three oldest children of F.N. (I.N., O.N. and A.N.) gave evidence that they were disciplined physically by their parents while growing up. All three children recalled being spanked by their mother with a wooden spoon she kept in the kitchen. All three

children recalled their mother disciplining them by hitting them on their bottom and/or their hands with the wooden spoon during their childhood.

[308] Both O.N. and I.N. testified to being sent to their room when their parents would discipline them. Both O.N. and I.N. recalled that their mother kept the wooden spoon with other kitchen implements in a canister, and that they knew their mother was coming to spank them with the wooden spoon when they would hear the canister rattle, as she was taking the spoon out of it.

[309] I.N.'s evidence is in good part corroborated by O.N.'s evidence, which I have found to be both credible and reliable, to the effect that her brother I.N. was disciplined frequently, as he got in trouble, and sent to his room very often. Her evidence is echoed by A.N.'s evidence who stated that she and her brother I.N. were the ones who were disciplined the most.

[310] O.N.'s evidence also corroborates her brother's version of events as she stated that her mother commonly used a wooden spoon to discipline her and her siblings throughout her childhood, and that she experienced being spanked with a wooden spoon from a young age until the age of 12 or 13 years old.

[311] O.N.'s evidence that it seemed that her mother would spank one of her siblings, including I.N., at least once a week, during her childhood also corroborates I.N.'s evidence that the spankings occurred on a regular basis.

[312] With respect to the allegation that F.N. hit I.N. two or three times with a wooden spoon on his head.

[313] Both O.N. and A.N.'s evidence to the effect that their mother would spank them on their hands or their bottom with the wooden spoon corroborates I.N.'s evidence that

he sat on his hands to try to prevent his mother from carrying out the expected punishment.

[314] O.N.'s evidence that she witnessed I.N., at another time, sitting in his room with wooden blocks in fear of an anticipated spanking by his mother also corroborates to some extent I.N.'s evidence regarding the frequency of the spankings with the wooden spoon, and his evidence that he hid his hands under his bottom in order to prevent his mother from hitting him with the wooden spoon.

[315] O.N.'s evidence that her brother could be obstructive, rebellious and aggressive at times when he was a child, corroborates I.N.'s evidence that he refused to comply with his mother's demands to show her his hands so that she could carry out the punishment. It also corroborates I.N.'s evidence that he retaliated by squeezing his mother's belly after she hit him on the head with the wooden spoon.

[316] O.N.'s evidence that I.N. was always in trouble, and that, as a result, her mother was always angry and frustrated with I.N., also corroborates I.N.'s evidence that his mother hit him on the head with the wooden spoon in frustration.

[317] F.N. acknowledged that she was the one disciplining the children when they did something wrong, as she was the one at home with them while her husband was working.

[318] She also admitted to spanking her children, including I.N., with a wooden spoon, to discipline them. However, according to F.N.'s evidence, she used spanking as a last resort when there was a persistent problem, and other methods of discipline had failed. She stated that she spanked her children with her hand when they were between the ages of three to eight years old, and that she only used the wooden spoon to spank

them when they were seven or eight years old. She added that they did not need spankings when they were older. F.N. admitted to spanking her children on their bottom. However, her evidence is that she only spanked I.N. with the wooden spoon, three or four times in total. F.N. denied ever hitting I.N. on the head with the wooden spoon.

[319] However, F.N. also testified that she spanked I.N. with the wooden spoon because her husband blamed her for I.N.'s misbehaviour, and told her that she should spank him more to make him behave. According to that part of F.N.'s evidence, she did not spank I.N. because she was of the view that it was a last resort but appropriate method of disciplining I.N., but because her husband told her to do so. In that portion of her evidence on that issue, F.N. stated that the spankings with the wooden spoon had the expected negative effect of escalating I.N.'s behaviour further, and that, as a result, she took a completely hands off approach with I.N., and his attitude changed completely. This version of events is difficult to reconcile with her earlier admission that she spanked not only I.N. but, at least, some of her other children, when they were around the ages of seven and eight years old, with the wooden spoon when necessary.

[320] Also, I find that F.N. was being evasive when she provided a broad explanation that she only spanked her children with a wooden spoon around the ages of seven or eight years old because they no longer needed spankings when they were older.

[321] In addition, F.N.'s evidence that her children happily went to bed on the few occasions she rattled the canister for that purpose is in itself contradictory. One would wonder why children would happily comply with a direction to go to bed or sleep that is accompanied by a sound that is meant to instill fear or threat of corporal punishment and physical pain.

[322] J.R.'s and D.R.'s [the complainant's grandmother] evidence that they never saw F.N. physically discipline her children does corroborate F.N.'s evidence that she did not spank her children often. The evidence of J.R. that the children never complained to them about the discipline they received at home also tends to corroborate F.N.'s version of events. However, while the grandparents were around the family on a regular basis, they did not live in the same home.

[323] In my view, F.N.'s admission that she hit I.N. with a wooden spoon three or four times when he was around the ages of seven or eight years old is sufficient, on its own, to ground a finding of guilt on the charge of assault with a weapon in light of the decision of the Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada*, 2004 SCC 4, which I intend to review later in this decision.

[324] Also, I am of the view that the date of the offence is not an essential element of the offence of assault with a weapon in this case, and that a finding of guilt based on F.N.'s admission is not precluded by the fact that I.N. would have been older than seven or eight years old between the date range identified in Count #1 (he was born in 1997), as the accused was clearly aware of the extent of the Crown's allegations with respect to this charge and is not prejudiced by this.

[325] However, this conclusion does not address the full extent of the allegations against F.N. under this charge. As such, I must consider whether the Crown has proven beyond a reasonable doubt that F.N. spanked I.N. on his hands and on his bottom with a wooden spoon on a regular basis for a prolonged period of time; and whether she hit him on the head with a wooden spoon two or three times on the one occasion described by I.N. in his testimony.

[326] In light of my above-mentioned findings regarding the evidence favourable to the accused, and in light of the evidence adduced at trial, I do not believe F.N.'s evidence that she only spanked I.N. with the wooden spoon on his bottom only on three or four occasions in total, and only when I.N. was around the age of seven to eight years old. I do not believe I.N.'s blanket denial of ever hitting I.N. on the head with a wooden spoon either.

[327] In addition, I am not left with a reasonable doubt by the evidence favourable to the defence.

[328] I am of the view that I.N.'s evidence, which I accept, regarding the actions of his mother, is overwhelmingly corroborated by his sisters' evidence, which I find credible and reliable. A.N. and O.N.'s evidence were consistent throughout their testimony on this issue. They were not shaken in cross-examination. I also find their evidence reliable because they not only recalled events that concerned their brother, but events that impacted them personally.

[329] As such, I am convinced beyond a reasonable doubt that F.N. assaulted I.N. with a weapon, to wit a wooden spoon, on his hands and on his bottom regularly while he was between eight years old and 12 or 13 years old.

[330] I am also convinced beyond a reasonable doubt that F.N. assaulted I.N. with a weapon, to wit a wooden spoon, by hitting him on the head two or three times during one incident that occurred during that period of time.

[331] Turning to the decision of the Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada*, which was issued on January 30, 2004, when I.N. was seven years old.

[332] In that case, the Supreme Court of Canada had to determine the constitutionality of s. 43 of the *Criminal Code*, which provides that parents and teachers may, in certain circumstances, use corrective force on children under their care without facing criminal sanction.

[333] Section 43, which has not been amended since the decision of the Supreme Court of Canada, provides that:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

[334] The majority of the Supreme Court of Canada upheld the constitutionality of s. 43 of the *Criminal Code*. In doing so, the majority stated that s. 43 defines the protected conduct in two ways. First, it requires that the force be “by way of correction”, and, second, that the force be “reasonable under the circumstances”.

[335] In light of these two requirements, the majority summarized the interpretation of s. 43 as follows:

[40] When these considerations are taken together, a solid core of meaning emerges for "reasonable under the circumstances", sufficient to establish a zone in which discipline risks criminal sanction. Generally, s. 43 exempts from criminal sanction only minor corrective force of a transitory and trifling nature. On the basis of current expert consensus, it does not apply to corporal punishment of children under two or teenagers. Degrading, inhuman or harmful conduct is not protected. Discipline by the use of objects or blows or slaps to the head is unreasonable. Teachers may reasonably apply force to remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment. Coupled with the requirement that the conduct be corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality, a consistent picture emerges

of the area covered by s. 43. It is wrong for law enforcement officers or judges to apply their own subjective views of what is "reasonable under the circumstances"; the test is objective. The question must be considered in context and in light of all the circumstances of the case. The gravity of the precipitating event is not relevant.

[336] This passage leaves no doubt that disciplining a child with a wooden spoon is not a conduct protected by s. 43.

[337] In addition, this passage also indicates that F.N.'s subjective belief that it was appropriate for her to discipline her children, including I.N., with a wooden spoon, as long as it was done in a controlled manner and for a corrective purpose, based on her own upbringing, beliefs and personal research, is not determinative, as the reasonableness of the use of force must be assessed objectively. The majority of the Supreme Court of Canada stated clearly at paras. 36 and 37 of the decision, when they concluded that based on social consensus already in existence on January 30, 2004, corporal punishment using objects or that involves slaps or blows to the head is harmful and not reasonable:

[36] ... It is wrong for caregivers or judges to apply their own subjective notions of what is reasonable; s. 43 demands an objective appraisal based on current learning and consensus. Substantial consensus, particularly when supported by expert evidence, can provide guidance and reduce the danger of arbitrary, subjective decision making.

[37] Based on the evidence currently before the Court, there are significant areas of agreement among the experts on both sides of the issue (trial decision, at para. 17). Corporal punishment of children under two years is harmful to them, and has no corrective value given the cognitive limitations of children under two years of age. Corporal punishment of teenagers is harmful, because it can induce aggressive or antisocial behaviour. Corporal punishment using objects, such as rulers or belts, is physically and emotionally harmful. Corporal punishment which involves slaps or blows to the

head is harmful. These types of punishment, we may conclude, will not be reasonable. [my emphasis]

[338] As a result, I am of the view that the defence afforded to parents under s. 43 of the *Criminal Code* is not available to F.N. in the circumstances of this case.

[339] I find F.N. guilty of assaulting I.N. with a weapon, to wit a wooden spoon.

Charges against J.R.

Count #1: On or between January 1st 2005, and December 31st 2008, at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a knife contrary to s. 267(a) of the *Criminal Code*.

[340] I.N.'s evidence is that on the day of the incident he had done something wrong. His grandmother put her hand on his shoulder, and told him that she wanted to pray for him. He did not want to be prayed for, so he pushed her hand off, and told her not to pray for him. His grandmother left. His grandfather, J.R., and his uncle, D.S., arrived at the house shortly thereafter. When they arrived, his grandfather pushed him on the bed, and told him that if his grandmother wants to pray for him, he let her pray for him. His grandfather then slammed I.N. against the wall and slapped him. I.N. started to scream, and cry to a point where his sisters also started to cry as they were upset. At some point, I.N.'s mother, F.N., left to attend to his sisters. His grandfather held him down on the bed bending over him, and holding him by the chest. As I.N. was laying on his back, and trying to get up, he kicked his grandfather in the testicles. His grandfather reacted by throwing him against the wall and on the bed again. He heard his grandfather say: "if you ever", but did not recall what he said after that. I.N. stated that his grandfather pulled up an exacto knife, and slit him in the chest. He stated that his grandfather then put the shirt back up, smiled and patted him down. His uncle, D.S., was in the room

when this incident happened. I.N. told his grandfather, after he cut him, that I.N.'s father was going to kill J.R. His grandfather replied that his father would not do anything.

[341] I.N.'s evidence that his grandfather pushed him and pinned him on the bed is corroborated by O.N.'s evidence that she recalled an incident, when she was between the ages of seven and 10 years old, when I.N. had gotten into trouble, and sent to his room. As she wanted to know what was happening, she walked by I.N.'s bedroom and saw, in passing, that her grandfather had I.N. pinned to his bed. According to O.N.'s evidence her grandfather was leaning his weight on I.N., and holding him down. She stated that her grandfather was using more of his side to hold I.N. down. She added that she could hear I.N. struggling and screaming while this incident was happening. Also, a few weeks after the incident, she saw I.N. walking in the living room without a shirt on. She noticed that he had a large scab on his chest. She asked him where it came from, but he pushed her aside and refused to talk about it. However, she acknowledged that I.N. could have had a mark on his chest prior to the incident with his grandfather, as she did not know whether I.N. had a mark on his chest prior to the incident with their grandfather.

[342] In addition, I.N., showed to the Court during his testimony, a scar he has in the middle of his chest. The shape, size and location of that scar correspond, in some aspects, to the description of the scab that O.N. saw on I.N.'s chest a few weeks after the incident. A photograph of I.N.'s scar was filed as Exhibit #1 at trial. I.N. stated that he was certain the scar was from that incident.

[343] A.N. also testified to seeing her grandfather sitting on top of I.N. in his bedroom praying the demons out of him. According to A.N., her grandfather had I.N. pinned

down. He was sitting on I.N.'s back and I.N. was on his stomach. I.N.'s head was facing her, and he was screaming at their mother and grandfather. A.N. stated that her mother forced her to watch what was happening. She did not see any weapon in the room. She did not think her uncle, D.S., was there, and she did not remember if her grandmother was there.

[344] A.N.'s description of the respective positions of her grandfather and I.N., as well as her recollection that her grandfather was praying the demons out of I.N., do not correspond to any description provided by any of the other witnesses either for the Crown or the defence with respect to this incident. Also, A.N. was unable to provide many details about what her mother would have told her while she was forcing her to watch what was happening. This puts into question the reliability of her testimony regarding this particular incident. Therefore, I am unable to accord much weight to her testimony with respect to this incident.

[345] The evidence led at trial by both the Crown and the defence establishes that this incident occurred the same day T.N. had an accident with [redacted]. D.R. testified that she recalled that the accident occurred on [redacted], 2008. This means that I.N. would have been 11 years old at the time, which corresponds to the age I.N. testified he was at the time.

[346] J.R.'s evidence is to the effect that he was in the office [redacted] with his son D.S. when his wife came in. She was upset and crying because I.N. had hit her in the chest. J.R. was concerned for his wife. He and his son, D.S., went to the house to tell I.N. that he must not hit his grandmother, and to find out why he acted that way. When they arrived at the house, I.N., who was standing at the corner by his bedroom and the

kitchen counter, was the first person they saw. J.R. and his son, D.S., said quite forcefully to I.N. that he must never hit his grandmother again. I.N. started swinging and kicking at his grandfather. J.R. wrapped his arms around him in order to restrain him. He picked I.N. up and transported him to his bed, which was approximately four or five steps away. He put I.N. on his bed. J.R. stated that I.N. was swinging his legs at the time, but that it was not a struggle, and that it was not a difficult thing to do. J.R. held I.N.'s arms by his side, and put his legs on each side of I.N.'s upper/hip thigh area. J.R.'s knees were resting on the edge of the bed, and his feet were on the floor. He acknowledged that his position would have made it look like he was crouching over I.N. on his bed. J.R. stated that he did most of the talking, and repeated several times to I.N. sternly and forcefully that he must never hit his grandmother again, and that he was not going to punish him but that his father would. J.R. stated that I.N. wanted to be let go, and that they were speaking loudly, but that there was no real shouting or screaming. I.N. tried to kick him in between the legs at some point, however he did not make contact, so it was not an issue. J.R. stated that he was not angry, but he was determined that this would not happen again. He let I.N. go when he stopped struggling and relaxed. I.N. told him that his father was not going to do anything. J.R. then left the house to go check on his wife. His son, D.S., was with him in the room throughout the events. J.R. stated that he never pulled out an exacto knife. He added that this not a tool he commonly uses and he never carried one in his pocket. Also, he denied putting I.N. on the floor or on the wall at any point. J.R.'s evidence is to the effect that the incident was brief, and lasted at most a minute and a half.

[347] D.R.'s [the complainant's grandmother] evidence corroborates J.R.'s evidence that she was upset and crying when she went to see him after I.N. had hit her in the chest.

[348] D.S.'s [the complainant's uncle] evidence corroborates J.R.'s evidence in that he stated that they told I.N. that what he did was unacceptable, and that they were not happy with him. They also told him that his father would have to discipline him. D.S. added that they were upset, and that there was a lot of noise, but that it was mostly coming from them as they were scolding I.N. D.S.'s evidence is that he did not see I.N. on the floor or on the bed, and that he did not physically restrain I.N. or help physically restrain I.N.

[349] However, D.S. did not remember who told him that his mother had been hit by I.N., he did not remember where I.N. was when they left the house at the end of this incident, and he did not remember his father having to restrain I.N. and putting him on the bed. He stated that I.N. raised his voice as well but did not try to get away. D.S.'s recollection of what took place was that it was only a verbal argument, nothing else. As such, there are some real concerns regarding the overall reliability of D.S.'s evidence regarding this incident.

[350] It is clear from the evidence of the Crown and the defence witnesses that everything started when I.N. did something that was upsetting to his grandmother. As such, I do not find it necessary to determine whether I.N. hit his grandmother in the chest, or if he pushed her arm away because he did not want her to pray for him.

[351] Also, the evidence adduced at trial regarding I.N.'s overall behaviour and attitude when he was young, clearly goes against J.R.'s version of events that I.N. did not

scream or yell while he was being restrained by him, and that he calmed down quickly. As such, I accept O.N.'s and I.N.'s evidence that I.N. was screaming and yelling while he was trying to free himself while he was under his grandfather on the bed.

[352] The defence filed an electronic version of a photograph of I.N. taken on July 14, 2005, when I.N. was eight years old (Exhibit #9). As I indicated earlier, there was a debate between Crown counsel and defence counsel regarding the accuracy of the date of the photograph. However, I am satisfied that F.N. did not tamper with the date, and that it is accurate. The defence contends that the photograph reveals that I.N. already had the scar on his chest that he attributes to what his grandfather did to him in 2008. I reviewed the digital photo, and zoomed in on I.N.'s chest. I agree that the photograph reveals a faint vertical white line just under I.N.'s collarbone, which could be the scar that I.N. revealed during his testimony in this matter.

[353] In addition, I am of the view that it would have been very difficult for J.R. to maintain control over I.N. on the bed while pulling his shirt down, retrieving his exacto knife, and cutting I.N. with it.

[354] J.R.'s evidence that he was not upset but determined when the incident with I.N. occurred is also somewhat contradicted by the evidence he provided later in his testimony when he stated that he was not in a "mood to pray at that time".

[355] In addition, J.R.'s evidence is to the effect that he and his son, D.S., went to the house not only to let I.N. know that he was not allowed to hit his grandmother and should never do that again, but also to find out why I.N. had acted that way. However, according to his own evidence, J.R. never made any effort to try to find out what had happened. He testified that the only two things he repeated many times to I.N. were that

he must not hit his grandmother, and that they would not discipline him, but that his father would. This raises legitimate questions with respect to J.R.'s true intentions when he left the shop to go to the house, and his actions towards I.N.

[356] In addition, there is no evidence before me that anybody spoke to T.N., after the incident with I.N., to ask him to discipline I.N. for what he had done to his grandmother. D.S. [the complainant's uncle] assumed someone had talked to T.N. about it, but stated he did not. F.N. testified that she did not speak to T.N. about it nor did she hear anyone talk to T.N. about it. Finally, there is no evidence that J.R. followed up with T.N. on this either.

[357] I acknowledge that T.N. was in a motor vehicle accident the very same day that the incident with I.N. occurred. However, if J.R. had not already disciplined I.N., as he testified, and, instead, truly expected that T.N. would be the one disciplining I.N., one would expect some evidence that either J.R., D.S. [the complainant's uncle] or someone else followed up with T.N. afterwards. However, there is no evidence to that effect before me.

[358] I find that these last two points not only seriously undermine the defence's version of events that J.R. and his son testified to, which is that they only went to the house to tell I.N. never to do this again, and that his father would be the one disciplining him for what he had done, but runs contrary to it.

[359] In addition, I find that the description of the scene provided by O.N., which I accept, does not correspond with J.R.'s version that he was simply maintaining control over I.N. waiting for him to calm down.

[360] Based on the foregoing, I do not believe the evidence favourable to the defence regarding this incident.

[361] However, based on the photograph filed and the inherent difficulties of maintaining physical control over I.N. while retrieving an exacto knife and cutting I.N. with it, which I have already identified, I am left in a reasonable doubt by the evidence favourable to the defence with respect to J.R. using an exacto knife to cut I.N. in the chest during this incident.

[362] On the other hand, I am not left in a reasonable doubt by the evidence favourable to the accused that J.R. committed a simple assault on I.N.

[363] Having regard to all of the evidence, and my foregoing assessment of the evidence, I am convinced beyond a reasonable doubt that J.R. did not simply restrain I.N. to prevent him from kicking and hitting him, but that J.R. was the aggressor, and that he committed the lesser and included offence of assault on I.N. by grabbing him, pushing him on the bed, and by pinning I.N. down and restraining him onto his bed by using the weight of his body to hold I.N. down.

[364] As I have found that there is a clear risk in adopting I.N.'s testimony when there is no evidence corroborating his version of events, and that, regarding this charge, there is no confirmatory evidence regarding J.R. pushing him on the wall twice, and slapping him, I find that it would be unsafe to conclude beyond a reasonable doubt that the assault encompasses J.R. pushing I.N. twice on the wall and slapping him.

[365] Therefore, I find J.R. not guilty of assault with a weapon, to wit a knife, but guilty of the lesser included offence of assault pursuant to s. 266 of the *Criminal Code*.

Count #2: On or between January 1st 2009 and December 31st 2011 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit a pitch fork contrary to s. 267(a) of the *Criminal Code*.

[366] I.N.'s evidence is that when he was approximately 13 or 14 years old (2010-2011) he took his four-wheeler to go up the hill where his grandfather had started to build his new house to talk to him. At the time, his grandfather was using a pitchfork to separate his potatoes from the soil, as he was growing potatoes in stacks of tires that year. I.N. testified that he did not recall the topic of the conversation. However, his evidence is to the effect that he was trying to explain something to his grandfather when his grandfather started talking back to him. I.N. became frustrated, and turned around to walk back to his four-wheeler. While doing so, he heard his grandfather yelling "don't you walk away from me". Soon after, his grandfather hit him on the back with the pitchfork's flat end. He stated that he was hit so hard that he was unable to breath. According to I.N.'s evidence, his grandfather left him out on the ground, smirked, turned around, and went back to his potatoes. I.N. got up, went back to his four-wheeler, drove half-way down to his house and stopped. He stated that he sat there crying for a while, and then drove the rest of the way home.

[367] I.N. believes the incident took place approximately in 2010, as there was no greenhouse nor shop at his grandfather's new house at the time of the incident. I.N.'s evidence is that the greenhouses were built in 2012-2013. In addition, his grandfather had four or five stacks of tires in which he grew potatoes at the time. The stacks of tires were set up where his grandfather's shop was built in 2014. I.N. recalled when the shop was built because he helped build it.

[368] I.N. acknowledged that the first time he reported this incident to the police he did not say that his grandfather was digging potatoes, that he went up the hill on a four-wheeler, and that he started to cry while sitting on his four-wheeler on his way back home.

[369] J.R. denied that this incident or something even close to what I.N. described ever occurred. J.R. stated that they had discussions but no arguments. He stated that he never hit I.N. with a fork of any kind.

[370] J.R.'s evidence is also that he only planted potatoes in tires in 2014; that it was a failed experiment; and he did not do it again. J.R. also stated that he completed the construction of his new house in 2011; that he built garden boxes the same year; and that they grew vegetables in those boxes. He added that, they did not grow potatoes in 2011. J.R. added that he and his wife did not grow potatoes prior to moving into their new house, so he would not have grown potatoes in 2010. J.R.'s evidence is that they built a greenhouse in 2012. He also stated that, while it is possible that they planted potatoes in 2012, he suspects they did not. Finally, J.R.'s evidence is that they grew potatoes in the ground in 2013, not in tires.

[371] D.R.'s [the complainant's grandmother] evidence corroborates J.R.'s evidence that they moved into their new house (in May) 2011.

[372] As J.R.'s evidence did not change or waver in cross-examination with respect to this incident, and as I have determined earlier in this decision that there is a clear risk in adopting I.N.'s testimony when there does not otherwise exist, at least some, confirmatory evidence, I am left with a reasonable doubt as to whether the alleged assault took place.

[373] As such, I find J.R. not guilty of the charge of assault with a weapon to wit a pitchfork.

Count #3: On or between January 1st, 2004 and December 31st, 2008 at or near [redacted] in the Yukon Territory, did in committing an assault on I.N. use a weapon to wit an extension cord contrary to s. 267(a) of the *Criminal Code*.

[374] This allegation is to the effect that, while I.N. and some of his younger siblings were visiting their grandparents at their RV, which was located at the edge of the property at the time, I.N. started doing something he was not supposed to do. His grandfather asked him to stop, but I.N. did not. At that point, his grandfather, J.R., grabbed I.N., and disciplined him outside the RV.

[375] I.N.'s evidence is that he was either moving or playing with an extension cord running to the RV when his grandfather told him to put it down. He did not recall whether he listened or not to his grandfather, but he acknowledged that he probably did not. As a result, his grandfather ran to him, slammed him over his legs, and hit him four or five times on his bottom with his hand. This occurred outside the RV. I.N. stated that his grandfather was not angry while hitting him. Instead, he stated that his grandfather appeared to enjoy it. I.N.'s evidence is that he was sore for a day or two after that. However, it did not leave a mark on his bottom. Also, I.N. stated that two of his sisters were outside the RV at the time visiting their grandparents.

[376] O.N. stated that when their grandparents were living in the RV at the edge of the property, she, I.N. and some of their younger siblings went to visit their grandparents, as they often did. It was summer, and their grandparents had a seating area out in the front of the RV where they would go and eat quite often. She recalled that I.N. was doing something that was bothering their grandfather. It seems to her that her brother was

jumping on the chairs, and causing a raucous. Their grandfather told him to stop a couple of times but he did not. Their grandfather grabbed I.N. He also grabbed an extension cord, and folded it into two before hitting I.N. once, hard, across the bottom with it. O.N. assumed I.N. was wearing his pants at the time.

[377] O.N. believed she was approximately nine years old at the time this incident occurred, but she conceded that she could have been as young as five years old at the time.

[378] O.N. acknowledged that she spoke to I.N. about the court process, but did not recall talking to I.N. about this incident.

[379] I.N. acknowledged that he did not mention this incident in his first statement to the RCMP in 2015. However, he pointed out that his first statement was pretty short, and that the RCMP contacted him in 2018 to obtain more details.

[380] In addition, I.N. acknowledged that, in his second statement to the police in 2018, he told the officer that he had always remembered about this incident, but had found out that his sister, O.N., had witnessed it when speaking to her about it. I.N. acknowledged that his sister told him she witnessed his grandfather hitting him with an extension cord. However, he stated that he has no memory of being hit with an extension cord, he only recalled his grandfather using his hand to slap him.

[381] Considering the somewhat differing version of events that O.N. and I.N. described, when they testified regarding this incident, and in light of I.N.'s straightforward answer regarding the lack of impact that that conversation had on his memory; I am of the view that their conversation did not influence their respective independent recollection of the events.

[382] J.R. denied ever beating I.N. or hitting I.N. with an extension cord. He also denied ever hitting I.N. or slapping him on his bottom because he was playing with an extension cord.

[383] However, he agreed that he and his wife lived in their RV on the property in the spring/summer of 2004. He further stated that they only had the RV set up the way I.N. and O.N. described in their testimony in 2004, as, prior to that, he and his wife were travelling around in the RV, and then moved into the shop [redacted] in the early months of 2005.

[384] O.N.'s evidence corroborates I.N.'s evidence that his grandfather hit him on his bottom because he was doing something wrong near the RV in which their grandparents lived at a certain point. Their testimonies differ regarding what I.N. was doing prior to being hit by his grandfather, and what their grandfather used to hit him.

[385] The fact that O.N. was five years old, almost six in the summer of 2004, instead of approximately nine years old, as she thought at first, is not of great significance. As stated by the Supreme Court of Canada in *R. v. W(R)* at p. 133: “[s]ince children may experience the world differently from adults, it is hardly surprising that details important to adult, like time and place, may be missing from their recollection.”

[386] I am also of the view that I cannot discount O.N.'s evidence simply because she would have been a fairly young child at the time. As I have stated earlier, I find that, generally, O.N. is a credible and reliable witness.

[387] Also, as I have just explained, I do not find that the fact that O.N. did not remember having a conversation with her brother before or in 2018 about the content of

this allegation affects the reliability of her testimony, nor am I of the view that it diminishes her credibility when assessed in light of her overall testimony.

[388] As such, I accept O.N.'s evidence that her grandfather hit I.N. once on the bottom with an extension cord.

[389] In light of the evidence I accept, I do not believe J.R.'s flat denial of ever hitting I.N. with an extension cord or hitting him because I.N. was playing with an extension cord.

[390] Also, I am not left in a reasonable doubt by that denial.

[391] Based on the evidence I accept, I am convinced beyond a reasonable doubt that J.R. committed an assault with a weapon on I.N., to wit an extension cord, and I find him guilty of that charge.

Count #4: On or between January 1st, 2004 and December 31st, 2008 at or near [redacted] in the Yukon Territory, did commit an assault on I.N. contrary to s. 266 of the *Criminal Code*.

[392] I.N.'s evidence in relation to this charge is that when he was approximately eight or nine years old, his mother sent him to his room. He heard the wooden spoon coming out of the can and became angry. He grabbed all his wooden blocks and sat on his bed. As soon as his mother opened the door, he started throwing his wooden blocks at her and hit her one or two times. His mother closed the door and left. Some time after, his grandfather entered the room. His grandfather slapped him hard four or five times on his bottom before grabbing him, and throwing him hard on the floor. He believed he was eight or nine years old at the time, as the incident took place in the first bedroom he had at their [redacted] house, closer to his parents' bedroom. He stated that he moved to a room further from them when he was older.

[393] I.N.'s evidence is partly corroborated by O.N.'s evidence that, when she was approximately eight years old, she went into her brother's bedroom, and saw him sitting against the wall with his wooden blocks. She asked him what he was doing, and he replied that he intended to throw the pieces of wood at the door when his mother came in. O.N. testified that I.N. appeared scared of their mother at the time.

[394] I note that F.N. testified that I.N. threw lots of things at her when he was younger, and that it is possible that he would have thrown wooden blocks at her.

[395] On the other hand, J.R. denied hitting I.N. in the manner described by I.N. in his testimony. He stated that he never did that to I.N. In addition, J.R.'s evidence is that his daughter never called him to request that he come to her house to discipline the children, including I.N.

[396] F.N. testified that she never asked her father to discipline her children for her. She acknowledged that she did ask T.N. to discipline I.N. on a few occasions.

[397] Both A.N. and O.N. testified that her mother would sometimes ask them to wait in their room until their father came home to discipline them when they had misbehaved.

[398] As stated earlier, the evidence adduced at trial, that I accept, leads me to conclude that if F.N. wanted help to discipline her children, she would usually tell them to wait in their room until their father, T.N., arrived after work. In addition, J.R. was overseeing the operations [redacted] at that time. I realize that the [redacted] was located close to the house, but this calls into question whether J.R. would have even been available to help his daughter discipline the children during the day while he was working.

[399] I am also mindful of the fact that there is no evidence that corroborates I.N.'s evidence regarding the presence of his grandfather in his bedroom, and the assault itself. As I have determined earlier in this decision that there is a clear risk in adopting I.N.'s testimony when there does not otherwise exist, at least, some confirmatory evidence, I am left with a reasonable doubt as to whether the alleged assault took place.

[400] As such, I find J.R. not guilty of this charge of assault.

CONCLUSION

[401] In summary, I find J.R.:

1. On Count #1: not guilty of the offence of assault with a weapon (a knife), but guilty of the lesser included offence of assault pursuant to s. 266 of the *Criminal Code*;
2. On Count #2: not guilty of the offence of assault with a weapon (a pitchfork) pursuant to s. 267(a) of the *Criminal Code*;
3. On Count #3: guilty of the offence of assault with a weapon (an extension cord) pursuant to s. 267(a) of the *Criminal Code*; and
4. On Count #4: not guilty of the offence of assault pursuant to s. 266 of the *Criminal Code*.

Also, I find F.N.:

1. On Count #1: not guilty of the offence of assault with a weapon (a wooden stick) pursuant to s. 267(a) of the *Criminal Code*; and

2. On Count #2: guilty of the offence of assault with a weapon (a wooden spoon) pursuant to s. 267(a) of the *Criminal Code*.

CAMPBELL J.