The Dehumanization of Cindy Gladue

by

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Foreword

This study presents an analysis of the language and actions surrounding a jury trial in Alberta in 2015. The findings include many examples of prejudicial or in some cases what may be considered inappropriate or ethically compromised actions or words. I wish to state for the record that I do not believe any of the members of the Crown or Defense teams, nor the Court were in any way motivated by conscious bias, racist beliefs or any improper intent. For the most part their words and actions reflected the mainstream discourse as it is commonly used. I may question their judgement in some instances but not their intentions to do anything other than honourably.

discharge their obligations.

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Introduction

Canada passed a law to shield victims of sexual violence from having to reveal details about their sexual history in 1992 (Criminal Code, CC 1992, 2011, 2018, s 276(2)). It was a recognition that legal proceedings can and have been unfair, onerous and in some cases traumatic to victims of crime, especially to women who have been sexually assaulted. Since that time, the Canadian Parliament and the judiciary have attempted to remedy some other traditional court practices (R v Seaboyer, 2 S.C.R, 1991). These have included protections of the identity of an attacked person, and creating new language and specifications around the meaning of consent (*Criminal Code* in s. 273.1(1)). The balancing of the rights of the accused and the alleged victim continue to be a work in progress and are recognized as a contentious area within the court system. (R v Seaboyer, 2 S.C.R, 1991; R v Darrach, SCC 46, 2000; R v Barton SCC, 2019). A quarter century after Parliament passed the so-called rape-shield law, attempts to remove misguided stereotypes and biases have not been widely adopted or understood by the majority of trial judges in Canada (R v Barton, SCC, 2019). In fact, the discourse and sexism apparent in some trials have recently been the subject of media attention and legal appeals (R v Wagar, 2014). The most notable cases have focused on the treatment of female victims of sexualized violence. Some of these cases received international attention (Kassam, 2016) and have resulted in sanctions against the presiding judges (Crawford, 2017).

More recently, Canada has directed the courts to adjust some of the usual practices when dealing with Indigenous people in the legal system. These include recognition of the deprivation and abuse many Indigenous offenders suffered as children, as a mitigating factor in sentencing

(s. 718.2(e) of RSC 1985, c C-46). The need for such an extraordinary measure is in itself a startling acknowledgement for a progressive, first world nation to make. It formally recognizes that a group, within Canada, identified by ethnicity, is demonstrably disadvantaged and at greater risk of violence, poverty, social ostracism and indignity than other Canadians. This is not to say there have not been attempts to remedy these disparities, which are in fact a stain on Canada's national and international reputation. Some of these measures have been massive undertakings; Royal Commissions into Truth and Reconciliation, Murdered and Missing Women, apologies, land claims, First Ministers' meeting and more. Millions and millions of dollars have been spent (the inquiry into missing and murdered women was estimated to cost $92 million (Forrest, 2018)), yet to an outside viewer, the needle has barely budged.

This is all the more remarkable when one views the Indigenous peoples not as an amorphous whole, but as separate and distinct peoples. There is a remarkable diversity of languages, beliefs, histories and cultural traditions. Yet a reserve in Quebec looks very much like a reserve in British Columbia; and both look very much like a village in the third world (James, 2013). The single and unique thing they have in common is the Indian Act, or similar instruments of administration. These government institutions, laws and bureaucratic practices have jurisdiction over a specific and identifiable ethnic population, who are defined in law by a word many consider pejorative. These authorities have their roots in a colonial system; one that sought to exterminate Indigenous peoples either culturally (through removing their children and other means) or in fact physically, by killing them, infecting them, or reducing their circumstances such that they would die out (Woolford, 2009).

Genocide.

It is one of the most provocative, incendiary and emotional words in any vocabulary. It conjures up images of the greatest atrocities, both recent and historical, in mankind's collective experience. When the National Inquiry into Missing and Murdered Indigenous Women (MMIW, 2019) used the word in its final report, it did so deliberately and with the intention of highlighting the depth and breadth of the multiple societal injustices that affect Indigenous people in Canada, and how deeply ingrained they are in our public discourse and institutions (p. 608). Canada's Indigenous people are affected on multiple fronts by the continuing legacy of colonialism. They are sadly accustomed to having their dignity, children, legal rights and land taken from them by various state-sanctioned processes. Their interactions with criminal activity and the legal system reflects the differential and disadvantaged position that they have within the broader society.

Indigenous people, including women, are vastly over-represented in Canadian prisons (Statistics Canada, 2013.) Indigenous women are twelve times more likely to be murdered or missing than the general Canadian population (RCMP, 2014.) They are more likely to be assaulted, raped and incarcerated than other Canadians (Statistics Canada, 2013), and make up the majority of trafficked persons (Public Safety Canada, [PSC] 2019).

Advocates also claim that police are less likely to thoroughly investigate complaints made by Indigenous people (MMIW, 2019, p.609) and that the perpetrators of violence against them are not punished to the same extent, or in some cases go free as a result of systemic discrimination. The MMIW reported on thousands of cases where missing women received little or no attention from authorities. Several recent criminal prosecutions (R v Stanley, 2018) (R v Cormier, 2017) have added further to the assertion that when people who commit crimes against

Indigenous people are prosecuted, they receive a higher rate of acquittal or leniency in sentencing.

The deck, some say, is stacked against them (Quan, 2018), for a number of reasons. These include the systemic, and frequently deliberate, under-representation or complete lack of Indigenous people on juries; media reportage that re-enforces stereotypical portrayals; and victims being blamed for provoking or instigating the crime (Quan, 2018). Indigenous women and girls are coerced into the sex trade through violence, intimidation and poverty (PSC, 2019), where they are victimized by the buyers and the sellers of their bodies. Ancil (2018) calls it a "crisis of violence."

MMIW Commissioner Qajaq Robinson calls it "genocide," (MMIW, Final Report, Preface). She states it is the result of colonialism; of years and years of stripping from Indigenous peoples their humanity, dignity and ultimately, their lives.

The final report was released on June 3rd, 2019 and the backlash was immediate and entirely predictable.

A Globe and Mail editorial, headlined *"Is Canada committing genocide? That doesn't add up,"* (June 6th, 2019) reflected the broad mainstream consensus that the atrocities of colonialism were in the past (Tides, 2016). The newspaper castigated the Commission for wasting an opportunity to make a case for the reforms it advocated, through its reckless use of such an inflammatory description (Globe & Mail, 2019).

With the tangible issues affecting Indigenous peoples, why would the authors of the MMIW report, and other First Nations' leaders and activists, risk derailing the potential dialogue by including the incendiary word "genocide?"

The Globe and Mail editorial may have, inadvertently, provided the answer; “words matter, especially when spoken by a judge”(June 6th, 2019).

What then, does the word genocide bring to the discussion?

Firstly, it brings attention to the enormity of the issue. As above, there is no word that carries greater emotional resonance and no crime that can be said to exceed its impact. It may spark angry refutation, emotional accusations and denial – but it is not a label that can be ignored. This is precisely why the MMIW used it, and it was not ignored.

The word genocide also has the power to shame the dominant culture like no other; it removes the historical cover and rhetorical misrepresentation of monstrous deeds committed in conquest. Nations are loathe to admit to genocide, and scholars say that denial of its existence is the last victim of the crime *(*Stanton,2009).

The word further carries a definitive recognition of the extent and nature of the injury to the people who suffered the attempted extermination. When something is named, and attested to, it becomes real in the world. The Truth and Reconciliation Commission in South Africa put it thusly:

“Those whose lives were shattered are entitled to have their suffering acknowledged and their dignity affirmed, to know that their pain is real. We have an obligation to tell them, in the words your injury is real and worthy of attention, this was done to you and it was wrong!” (Rajeev, as cited in Rotberg & Thompson,2000).

It is far beyond the scope of this study to determine whether genocide is an appropriate designation for Canada’s treatment of Indigenous people. That debate may rage forever. However, one of the defining elements in virtually all definitions of genocide include the

"dehumanization" of the targeted population (Stanton, 2004) (Brown, 2018). Furthermore it is an indicator or a warning sign used to assess the possibility of impending genocide, according to the United Nations Framework for Atrocity Crimes, and is formally classified as a crime on its own, "incitement to genocide" (United Nations, 2014; Stanton, 2004).

This study hopes to contribute to the body of research on Indigenous people and the discourse used in court proceedings that involve them; in particular whether victim blaming does at times meet the threshold of dehumanization that the United Nations recognizes as an element of genocide.

This is significant because if the words and actions of a government sanctioned process, at the heart of its legitimacy as a society of laws, can be shown to have dehumanized a victim because of their membership in a segregated and oppressed population, what are the implications for Canada and its relationship with Indigenous people?

If Canada's laws and the language therein are infused with context that perpetuates a pillar of genocide, can there be forward progress without a true reckoning with the legacy of the past?

R v Barton, 2015, provides an instructional case for analysis.

Bradley Barton was acquitted of the murder of Cindy Gladue, a Cree woman who he had brought to his motel room and paid to have sex with him. She was there for two nights, and bled to death from an internal wound to her vagina. The defendant left her bleeding or dead in the bathtub. He claimed at trial the wound was the result of consensual rough sex. Gladue's blood alcohol level was four times the legal driving limit at the time of her death.

I was researching the use of language, specifically as it related to the arguments around genocide and Indigenous people when I came across this case. After reading several news reports, I became curious about how the facts had been presented to reach an acquittal verdict on all possible charges. I also felt that the discursive operations (Coates & Wade, 2007) would be an effective way to unpack it. After doing further research, I felt that approach would tell part of the story, but there was something deeper going on.

The victim was repeatedly referred to as a "prostitute", "a native woman" and sometimes a "native girl" during the court proceedings. Her sexual history was admitted without a voir dire, as required by law. The jury contained no Indigenous people. In what was an unprecedented action in Canadian legal history, the Crown produced in court, the victim's preserved vagina and pelvic region as an exhibit.

An appeal court and finally the Supreme Court of Canada over-turned the verdict and as of this writing Barton will be retried on the charge of manslaughter.

Literature Review

The Literature on courtroom language, Indigenous prejudice, dehumanization and genocide would fill many libraries and my intention is not to try and capture the depth and breadth of these weighty subjects. I have instead attempted to reference scholarly articles and research on victim- blaming and courtroom language that reflect current thinking in areas related to this study. This review will also include studies on Aboriginal stereotypes and attitudes in Canadian society; and delve into social and methodological research on dehumanization, and how it is created and fostered through the use of language. It will extend into the definition of

genocide and the characteristics of dehumanization that contribute to the commission of atrocities.

Courtroom discourse, analysis and victim perceptions

Powerful messages are embedded in all dominant institutions, including the judicial system and are defined by Frank & Goldstein (2011) as "unaccountable language." They argue that passive sentence construction has become a default means of expression in our society, and its constant use has the effect of failing to place responsibility in any given situation. They contend that unaccountable language is systemic and is rooted in maintaining the status quo and protecting the powerful and the privileged. They cite numerous examples to support their argument. They suggest politicians obfuscate their responsibility by using unaccountable language, such as things went wrong, or mistakes were made. Police and media reports are often framed in language that is deliberately neutral, such as an assault occurred, or a murder is under investigation. When a spouse is battered, it may well be described as a domestic dispute, rather than a man assaulting a woman.

Frank & Goldstein (2011) posit that the systemic use of unaccountable language has profound social consequences, including perpetuating a culture of male privilege that protects abusers and shames or blames the victims of violent crimes. Within the legal system, unaccountable language serves to make the offender invisible, or frames the responsibility for acts of violence as mutual. The authors suggest the failure to properly describe violence and place responsibility on the perpetrator skews decisions: an example they give is judges misinterpreting abuse as a communication issue, which ought to be dealt with through counselling rather than legal sanctions. The advantage to perpetrators and the assumption of mutuality, or shared responsibility for violence is very much in evidence in courtrooms,

according to Coyle (2007). He suggests there is a difference in media and courtroom discourse between the concepts of “victim” and “innocent victim.” Coyle writes that some victims are seen and presented as being almost pristine, while others are by implication more deserving of being harmed; through their actions, dress or other presumed defects of character or behaviour. Much of this is implicit, conveyed through passive language that distorts and minimizes violence and resistance, suggesting a degree of collusion or culpability in their victimization. His analysis of media coverage shows a majority of rape victims, and those who have suffered from racially motivated crimes, are not described as innocent victims. At the same time, he reports an overwhelming majority of people described in media reports as “not an innocent victim” are women. He uses the example of a police spokesman stating that only about twelve of 221 people murdered in Atlanta in 2002 were “innocent victims”, the others, he said, were involved in “high risk lifestyles” (Cieslak &Konig, 2005, cited by Coyle,2007, p.171).

Studies also indicate that assumptions about the behaviour and character of victims affect how people place blame (Grubb & Harrower, 2009). This is backed up by a number of studies including a study demonstratings that people are more inclined to place blame on victims of sexualized violence when they are intoxicated (Sperry, 2009.)

Dawtry, (et al, 2019) report that the acceptance of myths about sexualized violence allows for a mental reconstruction that justifies victim blaming. Some of the most common myths include that rape is sex and that most rape victims have in some way contributed or even caused the assault.

Bandura (2016) writes that juries are drawn to people like themselves and jurors judgement can be strongly influenced by empathy for defendants or their victims (p.292). Defense lawyers look for commonalities and try to get jurors with similar ethnicity, race, gender

and socio-economic status as their client. “Perceived similarity heightens empathic reactions to the plight of similar others” (p. 292).

Much of the foregoing has been captured by Coates and Wade (2007), who state that

> an account that conceals a victim’s resistance also conceals the nature and full extent of the violence and mitigates the perpetrator’s responsibility. They stress the importance of language, and that the words used to explain and understand a victim and perpetrator’s actions in a violent situation is critical to understanding ways people might restore dignity. Conversely, failure to challenge the misuse of language only serves to perpetuate and replicate the problem (p. 511). The authors made distinctions between different linguistic operations that minimize violence and a perpetrator’s responsibility and those that shift responsibility onto the victim. The four discursive operations they identified, and have applied in research, will be discussed in more detail in the methodology section, as they form the basis of the content analysis of the first part of this paper.

Canadians’ Perception of Indigenous People

Scholarly research, transcripts from legal proceedings, media reports and anecdotal evidence from Indigenous people themselves paint an exceptionally bleak picture of the stigma that Indigenous people routinely endure as a part of their lives and identity. The majority of Canadians do not share this perspective, they believe Indigenous peoples are largely the authors of their own misfortune (Tides, 2016).

The Environics Institute for Survey Research conducted a national public opinion survey in 2016, funded by Indigenous organizations and their partners.

They found that most Canadians have some awareness of the challenges Indigenous people face including that there are significant social and economic inequalities between Indigenous peoples and other Canadians.

The study found that most Canadians believe Indigenous people are stigmatized and experience ongoing discrimination, both systemic and interpersonal. However, this awareness does not necessarily translate into support for actions to address these issues.

The reports says most Canadians do not believe that mainstream society continues to benefit from the ongoing discrimination. Most also see Indigenous peoples having a sense of entitlement and receiving special treatment from governments and taxpayers.

Canadians living in the Prairie provinces are even less sympathetic overall than others to the challenges Indigenous peoples face. They are more likely to believe Indigenous people are themselves the main obstacle to achieving social and economic equality with other Canadians. They also are also more likely to feel Indigenous peoples have a sense of entitlement to government support (Tides, 2016).

The Native American Journalists Association (2016, cited in Quant 2018) describes negative themes, such as “alcohol,” “poverty,” and “addiction” as overused and pervasive in media coverage of Indigenous people. Quant (2018) states that racist stereotypes continue to inform many Canadians’ opinions, which is reflected in the attitudes many Canadians hold.

The labels applied to Indigenous peoples, even within formal and accepted discourse are frequently demeaning. The recent international dialogue and protests sparked by the killing of a black man in the United States have had ripples into Canada. The Edmonton Eskimos are following American franchises who have decided to rebrand the racist team nicknames (only after intense public opprobrium).

Is Indian a derogatory word? Was the headline for an article in the *Star's* online edition (English, 2009). The piece described how the paper's own editorial staff and its style committee had grappled with changing sensibilities and commonplace language usage. The Indigenous people interviewed were shocked that the word Indian continued to be used. They not only found the word offensive, but asserted that their peoples' right to self-identify is a serious matter at this point in time. While the *Star* and most of Canadian society has dispensed with the word, and the people so described have rejected it, the word Indian continues to be used by the government of Canada. It is embedded within an Act of Parliament, defining not only laws and conditions but also the people who fall under the act's authority.

The stigmatization of Indigenous peoples is so thoroughly ingrained in the public discourse of Canada that it has been recognized as a fact by the highest authority in the land. Justice Michael Moldaver, writing for the majority in a Supreme Court ruling (R v Barton, SCC, 2017) acknowledged that racism is endemic within Canada and within its courtrooms:

> "There is no denying that Indigenous people — in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence. Furthermore, the Court has acknowledged on several occasions the detrimental effects of widespread racism against Indigenous people within our criminal justice system."

There appears to be broad consensus that being an Indigenous person carries with it a lifetime stigma and an accompanying group of negative assumptions.

The stereotypes that define Indigenous people were first used to justify the various forms of oppression that occurred under colonial rule. The perception of inferiority and defects of character have been their constant companions, walking alongside poverty, dispossession and the other enduring gifts from those times. That Indigenous people are stigmatized and carry negative stereotypes into virtually all of their interactions outside of their group is not in dispute. Racial prejudice has had a defining role in creating the abysmal circumstances of their collective lives. Even the near destruction of their culture, however, may be outweighed by the damage to the individual. Bandura (2016) offers this description of the effects of living inside a cloud of shame:

> "Destroyed structures can be rebuilt and physical wounds heal, but destroying people's self-worth and social reputation results in psychic wounds that endure. To the extent that a falsely tainted reputation colours how others treat the victim, it can create self-confirming social reality" (p. 69).

The last word on this section is from an eloquent personal essay that appeared in the Huffington Post online edition (James, 2013):

> "I admit it. I have deep-rooted and ugly prejudices about native people in Canada. When I think of native people, I immediately think of alcoholic, jobless and homeless people who abuse themselves and others in every imaginable way. For all of my life I have seen these images and I continue to see native people this way.
>
> Here's the catch: I'm native."

Dehumanization

"The Holocaust did not start with the gas chambers and the Rwandan genocide did not start with the slayings. It started with the dehumanization of a specific group of persons." Adama Dieng, speaking at a U.N. Conference, 2019 (U.N.G.P. 2019),

Dehumanization is not one of the legally acknowledged criteria for genocide. It is punishable, however, under international law as *Incitement to Genocide* (U.N. 2020), which labels it criminal participation (Thomas, 2009). It is embedded in both international policies and enforcement mechanisms of the International Court of Justice and the U.N.'s analysis and intervention protocols (Gregory, 2017). It is considered to be an essential element in the commission of the crime, however as its use is generalized in mainstream discourse, so too is it defined largely by context in international legal instruments as well (Stanton, 2009). The Rome Statute (U.N. 1998) contains the most recent iteration of the Incitement article (Hardy, 2009), using broad terms including "extreme hate speech" and "propaganda."

We therefore must look to definitions that might reasonably be used to develop criteria in a theoretical prosecution of genocide against Canada's Indigenous peoples. Dehumanization is a word, but is probably better understood as a concept; it is used in multiple ways and its meaning is entirely dependent on context. A cursory review of references find "dehumanization" used to describe a minor brush with officialdom, and also the process through which a sniper sees a target and not a human being inside his rifle scope (NPR, 2015). The word is versatile and employed along a broad spectrum of gravitas.

As this study is concerned with genocide, the research of interest comes from the high end of the spectrum. We are therefore searching for specific descriptions of language and

possibly other means that would create a mindset capable of committing or condoning acts of atrocity. To restate our question: did the indignities visited upon Cindy Gladue in fact rise to this level of inhumanity?

Brene Brown (2018) states that dehumanization always starts with language. Throughout history the vilification of a targeted population has always preceded crimes against humanity: Jews were portrayed as subhuman, and as disease-carrying rodents by the Nazis; Tutsis were deemed to be "Cockroaches" in the lead up to the Rwandan genocide. Slave owners salved their consciences by accepting a hierarchical view of humans in which their victims were ranked as animals. Indigenous people have continued to wear the centuries-old label "savages" (Brown, 2018).

Scholars of genocide have long held the view that the primary goal of dehumanization is not to humiliate and demoralize the victims, but to inoculate the soldiers, other perpetrators, and general populance to overcome their moral and psychic qualms about the actions they perform, or acquiesce to (Stanton, 2009; Bandura, 2016).

Stanton's (2009*) ten stages of genocide* classifies dehumanization as the fourth step, after the population has been separated symbolically and discriminatory practices have been brought into play. He defines it in the progression as one group denying the humanity of another group and equating its members with vermin, animals or diseases (Genocide Watch, 1996). He further writes that dehumanization is a necessary condition for genocide, and that the commission of mass atrocities cannot occur without the target population being stripped of their membership within the human family. They are instead equated with filth, immorality and impurity (Genocide Watch, 1996). This high level of dehumanization is needed because to participate in

atrocity requires one to overcome natural instincts, which he describes as the revulsion that killing a human would create. To accomplish this, the target population must be identified as sufficiently different as to overcome the empathy that occurs naturally between humans.

Harris and Fiske (2014) describe dehumanization as a psychological mechanism that can facilitate inhumane actions through the failure to consider the mind of another person. They state that social cognition, the act of recognizing another person's humanity, triggers an empathic response that promotes the treatment of them in a moral way. This is a neural process, which requires an identification with the other person, ascribing them with thoughts and feelings in some way congruent with our own and our group (Fiske, 2009). Conversely, the mechanism that begins the neural process does not engage when one encounters persons who are not perceived as being equals. People project emotional profiles on to different groups (Harris & Fiske, 2014) and do not connect emotionally with those they believe are lacking in warmth and competence. Fiske (2012) reports that poor people and welfare recipients, the homeless, immigrants and drug addicts are all generally stigmatized as being low in both competence and warmth.

Outgroups who are perceived as low in warmth and competence stimulate a different neural reaction; brain regions associated with the feeling of disgust are activated (Fiske, 2009; Harris & Fiske, 2016). Neural processes that promote social cognition are at the same time deactivated, suggesting outgroups are regarded as less than human (Fiske, 2009; Harris & Fiske, 2006).

Labelling people by their membership in a group is an essential part of dehumanization. The individual's characteristics are replaced by the uniform profile the group is held to have in common. When people are nameless and faceless they do not evoke an emotional response

(Slovik, 2007). When described only as part of a group, with pre-existing associations, our triggers for empathic connection are not activated. Slovic (2007) wrote that the story of an individual grabs attention while statistics leave us blank. When a person's name is used and their humanity is affirmed, it elicits a connection; while members of a category become "human beings with the tears dried off" (Slovic, 2007).

Bandura (2016) says to commit atrocities, the moral compass that prevents one from harming another person must be disengaged. He posits that as individuals develop and socialize, they adopt standards of right and wrong, which when adhered to provide satisfaction and allow for self-respect. When one acts against their principles or conscience, a process of self-sanctioning cognitions are brought into play. These include guilt, remorse, self-criticism and a loss of self-efficacy (p.4). This core belief in self is at the foundation of motivation, aspirations and perseverance. When efficacy is harmed it becomes self-debilitating and may lead to a person becoming incapacitated, unmotivated, or otherwise unable to function at a high level (p. 5). Bandura writes that if an action would normally be considered wrong (i.e. killing a person), it is necessary to reframe the context into one that takes away the moral offence (i.e. removing vermin) to protect the perpetrator's self-respect. He posits four loci of moral disengagement: behavioral, agency, effects and victim. In a previous work (1986), he reports that moral self-regulation is dis-engaged through a series of mechanisms that begin with moral justification and euphemistic labelling. The process continues through minimizing or misconstruing the potential harm or consequences of actions. The progression culminates in dehumanization of the victim(s) and either blaming them for an action or presenting them as a threat to the in-group; either physically or in some meaningful cultural context.

The scholar David Livingstone Smith agrees that dehumanization requires more than erasing the humanity of the targeted person or group, but in fact must include a negative rather than a neutral connotation. During a radio broadcast (NPR, 2015) he said depersonalization occurs when the human being becomes an object, such as a target. Dehumanization is a step beyond, requiring vilification, such as describing the targeted people as vermin, devils, or a disease (NPR, 2015). This view would set an animus against the targets as a condition of true dehumanization.

Gordon (2017) includes "verminization, pathologization, and demonization" (p.286) among the most serious forms of dehumanization, those that can be considered incitement to genocide. He writes that labelling people as rats or insects makes their extermination a normal and useful activity.

Stanton describes the key element of dehumanization is that it overcomes the innate disgust people have against committing murder. He notes that negative labelling is not confined to animals and demons, but pseudo-medical terminology is sometimes used as metaphor, describing targeted groups as viruses or other risks to health. (Stanton, 2009).

Genocide

The term “genocide” was first used in 1944 to describe the Nazi’s systematic campaign to exterminate European Jews and other groups. It was coined by Polish lawyer Raphael Lemkin, who described genocide as a coordinated plan to destroy the foundations of life for a group, as a means to annihilating the group itself (Trial International, 2020).

The crime of genocide is an attack upon human diversity, intending to destroy specific groups of human beings. It is considered the highest breach of both the physical and moral integrity of a society or individuals (Trial International, 2020).

The *Convention on the Prevention and Punishment of the Crime of Genocide*, was unanimously accepted by the United Nations General Assembly in 1948, in the shadow of the Holocaust and Nuremburg trials (U.N. 2020). The convention is recognized under international law and has been ratified by 152 countries to date (U.N., 2020). As one would expect in matters of international diplomacy, genocide is defined using narrow and extremely precise criteria. The U.N. makes careful distinctions between Crimes Against Humanity, Ethnic Cleansing and War Crimes, each identified by their own unique checklist of barbarities. Genocide sits at the top of this mountain of skulls, its branding defined as follows:

> “Any of the following acts committed with the intention of destroying, in whole in part, one of four groups: national, ethnical, racial or religious groups:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group." (UN, 2020)

The convention establishes genocide as an international crime, and also criminalizes actions that lead to or support the commission of genocide. These include conspiracy and incitement to commit genocide, and also the attempt or complicity in the act of it. Unlike other human rights violations, war crimes assign individual criminal responsibility. This means that perpetrators can be held accountable for their actions and found personally responsible for their crimes.

Despite there being a legal definition, researchers continue to look for a deeper or more fulsome conceptualization of genocide. There are ongoing debates over different aspects of the crime and also how the definition created by the United Nations convention's five criteria ought to be interpreted. The inclusion of individual culpability has brought legal teams to debate the precise meaning and application of the conditions (Galindo, 2019). Those seeking to understand why genocide occurs, what conditions allow it to foment are working to add to the pool of knowledge about this greatest of crime. Others are seeking a reliable guide to assist in preventing future genocides (Genocide Watch, 2020). The most widely used and studied model is the *Ten Stages of Genocide.* It was developed by George Stanton, a genocide scholar with long and deep ties to the United Nations, including informing policy development and organizational structures within the agencies designated to oppose genocide (Hardy, 2009). Stanton originally wrote "The Eight Stages of Genocide" in 1996. By 2012, he had added two more stages to his paper (Genocide Watch, 2020). The ten stages are:

1. **Classification:** People are divided into "them and us".

2. **Symbolization:** “When combined with hatred, symbols may be forced upon unwilling members of pariah groups…”
3. **Discrimination:** “Law or cultural power excludes groups from full civil rights: segregation or apartheid laws, denial of voting rights”.
4. **Dehumanization:** “One group denies the humanity of the other group. Members of it are equated with animals, vermin, insects, or diseases.”
5. **Organization:** “Genocide is always organized… Special army units or militias are often trained and armed…”
6. **Polarization:** “Hate groups broadcast polarizing propaganda…”
7. **Preparation:** “Mass killing is planned. Victims are identified and separated out because of their ethnic or religious identity…”
8. **Persecution:** “Expropriation, forced displacement, ghettos, concentration camps”.
9. **Extermination:** “It is ‘extermination’ to the killers because they do not believe their victims to be fully human”.
10. **Denial:** “The perpetrators… deny that they committed any crimes…”

Much has been written and debates continue on many issues around genocide, including whether a linear understanding such as the ten stages captures all that might be properly deemed the crime (Gregory, 2017). Indigenous groups throughout North America have argued, through a special UN non-governmental organization (NAIPC), that forms of genocide are currently active in North America and are not recognized or acted upon as such (NAIPC, 2014). The discussions around genocide, what constitutes it and where it applies are highly nuanced, both at home and at the international level. Prime Minister Harper’s apology for the abuses of residential schools (Canada, 2008) described and apologized for many crimes aimed at destroying the foundations

of Indigenous societies but did not use the word genocide. Prime Minister Trudeau did not use it in his official response to the MMIW, although he did use it later, when pressured, at another event (Ferreras, 2019). When and in what context the word genocide is used is a careful and strategic decision. Canada is vulnerable to accusations of failing to meet its obligations on a number of international commitments as they pertain to Indigenous peoples. These include articles contained in The United Nations Declaration on Indigenous Rights (U.N. 2007) which includes the following articles:

Article 7.2 Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected *to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.* (Italics mine).

Article 8 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 22 1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. 2. States shall take measures, in conjunction with indigenous peoples, *to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.* (Italics mine)

Perhaps the most highly charged debates are around which particular historical massacres can properly be labelled genocide. Of particular interest to this study are discussions relating to colonialism and the killing of Indigenous people. Some researchers claim the conception of genocide and the resulting United Nations Convention are themselves ethno-centric and fail to recognize the perspective of non-Europeans (Woolford, 2009). “Cultural genocide” and “ethnocide” have been used to describe the effect of colonization on Canada’s Indigenous people, which Woolford (2009) claims are meant to distance Canada’s experience from the U. N. definition. He writes these qualifiers are meant to portray the events as different and less-severe than genocide proper (p. 81). He makes the case that a key component of Indigenous lives has been the communal integration with the land. Their stories and traditions, rites of passage, food source and even the way their language has developed are interwoven with the unique territory they occupied. He argues that in fact their societies cannot be separated from the environment, and removing them from the land destroys a key foundation necessary for them to continue as a people (p.82). Woolford also challenges the UN convention for restricting its scope to include only people, when cultures with an animist belief systems include the local wildlife and geography as part of their group (p. 88).

The MMIW had obviously foreseen the impact their use of the incendiary term “genocide” would generate. The Final Report (2019) includes a legal appendix which lays out their position on Canada’s responsibility for genocide.

The report first states that the debate around what constitutes genocide remains very much alive, and they take issue especially with the failure of the United Nations to include cultural genocide within its definition (MMIW, supplementary report,2019 p.3). They also note

that Canada was a staunch opponent of including cultural genocide, claiming it would delay the ratification of the convention (p.8). The MMIW takes the position that Canada was knowingly practicing cultural genocide in 1944, while planning to sign the convention (p.8).

The report takes Canada to task for past actions as well as failing to act to halt actions set in motion by colonial policies that continue to harm their people today (p.26). It also places the blame for the violent deaths of so many Indigenous women and girls on the continuity of oppressive state actions and the widespread racial prejudice that accompanies them.

> "The unique nature of colonial genocide, perpetrated by a state through the establishment and maintenance of policies over lengthy periods of times, implies a pattern of "domination and dehumanization" which enable a myriad of genocidal acts to take place" (p.17).

Methodology

The method for this study was content analysis of the specific language used in the courtroom and the voir dire hearing into the admissibility of the preserved vagina. The analysis was framed using the lens provided by four discursive operations as defined by Coates & Wade (2007).

Content analysis provides a tool for researchers to examine the specific uses of language, and make inferences about the underlying assumptions being made (Elo & Kyngas, 2008). Through analysis of single words and entire paragraphs, a researcher is able to show how public discourse is reflected through a synthesis of ideas, actions and concepts (Phillips & Jorgensen, 2002).

This study focused on the words and context used during specific parts of the trial. The Interactional and Discursive View of Violence and Resistance (Coates & Wade, 2007) describes specific techniques that serve to distort the perception of severity, responsibility and amount of force that was used in a violent assault. These linguistic operations are described as: (a) concealing the extent/nature of the violence; (b) obfuscating the perpetrator's responsibility; (c) concealing the victim's resistance; and (d) blaming and pathologizing the victim.

Context is vital to understanding violence (Renoux & Wade, 2008) and accounts of violence cannot be considered accurate unless they convey the unilateral nature of the perpetrator's actions and describe the victim's resistance (p2). One of the most prevalent and prejudicial aspects of the dominant discourse is the omission of any description of resistance. The portrayal, or omission, of Cindy Gladue's resistance was an important piece of the analysis.

The specific elements of the trial reviewed were the opening statements by the Crown and the defence; the voir dire transcript on the admissibility of Cindy Gladue's physical genital region; the final summations of the defence and the Crown and, finally; the Judge's charge to the jury before the beginning of deliberations. These elements were chosen because, in the case of the opening statement, it set the context for the proceedings and frames the overall assumptions that informed both positions. The summations and charge to the jury provides a synthesis of the testimony the jurors heard and instructions on how they should interpret this. The voir dire factors into the second part of the analysis, and will be discussed below.

As the study did find that victim blaming was a prevalent and integral part of the courtroom discourse, a second level of analysis was performed. There were two questions to be answered; firstly did the cumulative descriptions and presentation about the victim qualify it as

dehumanization? And if so, would it meet the international standard that could be linked to genocide, or even the crime *incitement to genocide*?

. There is no recognized empirical/quotidian measurement instrument that could be applied to assess the degree of dehumanization. Dlasklev and Kuntz (2015) did create a system which they tested and declared was validated for the Norwegian population. The measure relied on self-reports of sixteen emotions, before and after certain articles were read, and would not translate as a viable instrument for this study.

The portrayal of the victim was measured against criteria derived from commonalities in respected and widely-referenced research into dehumanization. The scholastic literature reviewed was selected because they focused on what I have termed the high end of the spectrum; that is dehumanization that would be a factor in facilitating murder or mass murder. There were several common themes in what was required to meet this level of removing the humanity from the human, if you will.

Harris and Fiske (2009) report that the neural process that triggers empathetic feelings fail to engage when people dehumanized by stereotypes, such as drug addicts or the homeless are encountered (Harris & Fiske, 2009).

Slovic (2007) made the point that individuals provoke sympathy while people presented as statistics or generic failed to elicit an emotional bond. Describing people with a label for a group removes the element of personality from the subject. It is replaced, unconsciously with the stereotypical traits associated with that group.

Bandura (2016) says to commit atrocities, the moral compass must be disengaged, and the perpetrator must feel justified in their actions. This means there must be a social benefit

in removing the offensive group. They must therefore be a drain on, or threat to, the common good as the perpetrators understand it (p.29)

Smith (NPR, 2015) also includes negative metaphors as part of the dehumanization process. Erasing a person's identity only results in a neutral subject, whereas attributing demonic or animalistic traits creates an identifiable subhuman archetype, one that is threatening or evil. Smith also explained during the call-in appearance that there is already an existing hierarchy created during the slave trade and the colonization of the Americas (NPR, 2015). It was developed by the white European conquerors, which placed them at the top and effectively lowered the other "races" to little more than animals.

A synthesis of the research above found strong correlations which were distilled into three conditions that must be present to conclude the level of dehumanization is sufficient to become an element of a genocide.

The first strong correlation is that the targeted person's identity must be erased, to an extent that it is subsumed by the characteristics representative of an identifiable group. The person must cease to be a human to the extent that they do not resonate as a sentient and equal being who would trigger an empathic response.

The second correlation is the group must carry stigma; it is not sufficient remove identity, it must in fact have negative associations. The group must evoke a powerful enough negative response to overcome or displace feelings of disgust or strong discomfort if they were to come to harm. It is not enough to remove empathy, the pathologizing must be powerful enough to create indifference to their suffering.

The third correlation is the portrayal must include an element of the target population harming or in some way having negative affect upon the in-group in some way. This theme runs through most of the research cited although it was not explored in any great detail. The characteristics ascribed must not only evoke a negative reaction but in fact carry the insinuation that their existence is in some way a detriment or a threat. I extrapolate that this is a necessary condition to create the animus required to condone or join in the genocide when the actual killing begins.

I struggled with whether intent was a necessary element. Under Canada's Criminal Code, and international law, a crime is committed only when the intention to act wrongly is present; there are some exceptions, such as extreme negligence but generally a crime requires the intention to do wrong (U.N. 2020). The Convention on Genocide is also explicit; genocide is only committed if the intention to destroy the population is present (U.N. 2020). For this study and following the U.N.'s categorization, dehumanization is a crime of inciting violence, which means it precedes the active genocide (U.N. 2019). Further the ten stages model locates it at the fourth stage (Stanton, 2009), again as a precursor, rather than an operational part of the genocide. In the end, the decision was intention was not required, because dehumanization can and does occur and only becomes criminal when it translates into action. The other consideration is not only may dehumanization be present with criminality, but it may also be a factor extant that is one of the elements in creating the intention for genocide. My determination was that intent was not necessary to prove dehumanization as an incitement to genocide, although it remains a necessary component in the crime of actually committing genocide (U.N. 2019).

Thus this study's three criteria for the level of dehumanization necessary to support a claim of genocide are:

1. Erasure of individuality and identifying subjects as part of a group

2. The group must carry negative connotations sufficient to override the neural responses that trigger empathy and aversion to committing violence

3. The group must be categorized as being harmful, a threat, or in some way having a negative effect on the dominant society, strong enough to be held in general contempt or disrepute

Data Analysis

The initial intention of this study was to quantify the specific usages of the four discursive operations. Once quantified, the intent was to analyze what underlying assumptions might have generated their use, how these distortions may have affected the jury's reasoning and what these specific episodes may reveal about mainstream attitudes and opinions about Indigenous people. It was further intended to investigate to what degree claims of systemic bias in the court system could be validated, based on a critical analysis of the language used in an actual case.

These analyses were meant to discover if victim-blaming and inherent biases were prevalent and integral characteristics of the courtroom discourse; and if so, would the effect on the victim's personae meet the standard of dehumanization? If those criteria were satisfied, the final step was to assess whether the level of dehumanization would meet the criteria as a component of genocide under the United Nation's Convention.

This first part of this process was short-circuited to a large degree by the time the Crown had completed its opening statement. Not only had the victim been stigmatized and the violence described as mutual, but her basic human and legal rights were violated and her sexual reputation and inferences about her sexual history were brought into the open. The victim blaming and stigmatizing were woven into the tapestry of the trial from the outset; in fact almost all of the testimony could be said to carry assumptions that were prejudicial to the victim and informed by stereotypical thinking.

The following review analyzes the content and context of the key parts of the trial, and uses examples to support or illustrate the discussion. A quantitative evaluation of specific terms used to refer to both victim and accused throughout the trial is included. To quantify the incidences of Coates and Wade's discursive operations line by line would serve no purpose, as the entire trial was tainted to a degree that would qualify all of the discourse to some extent. (This view is supported by the Alberta Court of Appeal, as referenced below).

The trial of Bradley Barton (R v Barton, 2015) commenced on February 17 and the initial verdict was delivered by the Jury on March 16. The trial transcript runs 1,798 pages and provides the data for this study. The excerpts presented in this section are of necessity selective and were chosen as representative of the context or illustrative of key points within the body of the transcript.

The specific elements reviewed include the Crown's opening statement, an illustrative excerpt of a witness cross-examination, the defense and crown's final summations and the Judge's charge to the jury. The Crown's opening sets out the case against Mr. Barton and sets the context for the proceedings. The cross-examination excerpt provides a concise example of a

recurring motif. The summations and charge to the jury reflect the conclusions of the parties and provide insight into the final messages the jury received before retiring to consider the verdict.

The second part of the analysis includes three other documents, which were not heard by the jury but provide important evidence and context in evaluating the extent of the dehumanization that occurred and the significance we can derive from it. The first of these is an excerpt from the voir dire hearing, where the lawyers and judge debated admitting the preserved pelvic tissue of Cindy Gladue's vagina as an exhibit. This was an unprecedented event in a Canadian courtroom and the decision making process provides some insight into the thinking that led to it. The other sections used in Part Two of this study are taken from the Alberta Court of Appeal and the Supreme Court of Canada's rulings on appeals, which eventually overturned the verdict and have resulted in a new trial, although on the reduced charge of manslaughter. These rulings were confined to assessing errors in law; however they both included pertinent observations on bias and racism in the courts and the general population. They further, in many parts of their rulings, support the findings of this study and are thus included for reference and information.

Data Analysis Part One

Crown's Opening Statement

Criminal Trials in Canada begin with an opening statement from the Crown, wherein the Crown Counsel lays out the evidence they intend to call and the framework of the crime according to their theory of what happened. The Crown Counsel was C. A. Downey. After a few preliminary remarks, she began her case thusly:

> **[1] "**Now, this is what I think you will hear over the next number of weeks. Around June 19 or 20, 2011, Cindy Gladue met Mr. Bradley Barton. Mr. Barton was staying at the Yellowhead Inn in Edmonton, Alberta. He was a trucker. Ms. Gladue was a prostitute at the time, and the two of them struck a working relationship. Video surveillance will show that the two met and spent some time together on June 20th at the Yellowhead Inn "(R v Barton, 2015, p14).

For whatever reason, the Crown chose to use an extremely pejorative word to first describe Cindy Gladue, and continued to do so throughout the trial. The Judge and the Defense followed suit and in fact the victim was referred to as a prostitute more times than she was called "Cindy." Prostitute is a demeaning word, and caused me to wonder whether it was specifically chosen, as it has largely been replaced by sex trade worker or other, more neutral words, in most social discourse.

A greater transgression was to bring this information into the case and the public record, without first establishing its relevance, as required by law. The Criminal Code was specifically amended (Section 276(2) (a)), to prohibit bringing the victim's sexual history or reputation into evidence, except in specific circumstances. If a party wishes to bring such evidence forward, it requires a voir dire hearing to prove relevance and to determine what specific information will be exempted from the ban. No such hearing was held, which in itself constituted grounds to overturn the verdict.

The Alberta Court of Appeal said in its ruling (ABCA, 2017, p. 30) that by using the word prostitute the Crown had effectively brought Ms. Gladue's sexual history, real and imagined into the proceedings. It furthermore stated this label conjures up unfair stereotypes about the consent and agency of the person (p.31).

The Crown's opening statement also introduces the accused and the victim through a sexist lens that illustrates how differently they are ranked in the social hierarchy:

"He was a trucker, she was a prostitute…" (R v Barton, 2015, p.14).

He was also a "John" and cheating on his partner; she was also a mother, and likely many other things that could have been used to describe her. Only one of them is defined by their participation in the sex trade.

The opening statement further implied a scenario of mutuality from the outset; "Around June 19 or 20, 2011, Cindy Gladue met Mr. Bradley Barton," (p.14). The sentence structure presents Ms. Gladue as the active person in the scenario, creating the impression that she initiated their encounter, possibly while trolling for clients. At best, it suggests they chanced upon one another, a mutual occurrence. In fact, Mr. Barton was actively seeking someone he could pay for sex; he approached a man in the parking lot and Cindy Gladue was brought to him.

The Crown continues the narrative, stating "It was on the evening of June 21st or in the early morning hours of June 22nd that things started to go wrong" (p.14).

The passive use of language does not reflect that the events are violent or assign any responsibility for what was occurring. It reinforces a mutuality and a shared ownership of "things," which for some unstated reason "started to go wrong." In this use of language, these "things," presumably some form of neutral circumstances, detached from human actions and motivations, created a situation which affected both parties that caused them to react.

It was an action, not a "thing" that caused Ms. Gladue's death. It was Mr. Barton either stabbing, or forcefully thrusting his fingers inside of her that killed Cindy Gladue. The passive description used by the Crown conceals and mitigates the attack, or action, and the amount of

force used. It makes no mention of a possible struggle, which minimizes or in fact discounts the victim's resistance, at the time of penetration.

The Crown's narrative continues, with a minimal acknowledgement to the clear evidence of resistance that follows the wounding:

> **[2]** "Ms. Gladue was not dead when she first entered that bathtub. She struggled, which is evident by her repeated movements visible in blood. Constable Allen is also likely to tell you that there is evidence of clean-up activity after the fact" (p.15).

A passive use of language and an unusual one. We seldom hear that someone is "not dead." The active phrase would be "she was alive when she entered the bathtub," which changes the context considerably. She was in fact, alive enough that she struggled for some period of time while bleeding to death. Still in the same sentence, we are told "she entered the bathtub," (p.15) information provided only in Mr. Barton's account. There are reasons to doubt his version, one of them being a witness who reported hearing a "thunk" in the late hours. An alternate scenario would be that she did no "enter" the bathtub, but was in fact, dropped inside. The Crown's acceptance of Mr. Barton's version of events, and also the Judge's, despite evidence to the contrary was noted in several places in the Appeal Court's Judgement (ACA, 2017).

Without speculating on the Crown's intent, a content analysis focusing on the four discursive operations of the opening statement finds clear evidence for each of them: concealing or minimizing the extent of the violence, diffusing responsibility, minimizing the victim's resistance and pathologizing the victim with a stigmatizing and negative description. Not only are the four operations in evidence, they are continuous in their application and an essential component of the narrative that follows.

Pathologizing Language Throughout the Trial

It would be fair to categorize the pathologization of Cindy Gladue as a recurring element of the trial. Derogatory references were used so consistently, and were never challenged or remarked upon, that they became an accepted, organic part of the courtroom discourse. The various characterizations of her as an intoxicated native prostitute were "drum-like" in their repetition (ABCA, 2017, p.32). The assumptions attached to each of these descriptions could only exacerbate the commonly held myths about such persons; that they would be more likely to consent to sexual acts, and they are less deserving of society's protection (p.33).

A recurring scenario in the trial was the referencing of the accused by the familiar term "Brad" juxtaposed with the "othering" labelling of the victim as "native" and/or "prostitute."

The continued references to the victim's ethnicity and the pejorative word for a person in the sex trade both serve to denigrate and depersonalize Cindy Gladue. Given the stereotypes around "native" people in Western Canada (Tides, 2016) and the loaded word "prostitute" this continuing discourse pathologizes the victim, but also carries an implication she is at least partly responsible for the crime and is less deserving of the law's protection (ABCA, 2017, p.33); all of which mitigates the perpetrator's responsibility. The labels were irrelevant and unnecessary, but even if the sexual transaction was relevant, it is noteworthy that the Indigenous person was called a prostitute but Mr. Barton was never referred to as a "John."

The use of the familial "Brad" promotes an empathetic connection, as he is unconsciously accepted as part of the in-group through familiarization (Harris & Fiske, 2009). Cindy Gladue however is consistently portrayed as part of a group or segment of the population that has

negative associations. Slovic (2007) writes that using a person's name creates a connection, while being described as part of a group, especially one that has associated stigma, fails to activate the empathic responses. The choice to use a generic, negative description rather than a person's name affects how people process their understanding of a situation. A name conveys a recognition of individuality, an acknowledgement that fundamentality the person is a member of the human community (Kaufmann, et al, 2011).

The section below has been taken from the Defense counsel, Mr. Bottos' questioning of Ms. Tanya Dunster, a witness in the trial. It provides a concise example of how the accused and victim are referenced:

> "Mr. Bottos: Okay. All right. And take us forward from there. Does anything else happen?
>
> Ms. Dunster: They were talking. At one point towards the end of the night, Brad had gotten up and left for approximately five minutes and came back with a Native lady.
>
> Mr. Bottos: Okay. And could you please -- and when -- when he came back with the Native lady, what did he and the Native lady do?
>
> Ms. Dunster: Sat down at the table.
>
> Mr. Bottos: From which entrance did they come in when he came with the Native lady?
>
> Ms. Dunster: The front entrance" (R v Barton, 2015, p.1302).

The forms of address and descriptors used during the trial are as below:

The Accused:

Brad: 70 times

Bradley Barton: 53 times

The Victim:

Cindy Gladue: 103 times

Prostitute: 45 times

Cindy: 44 times

Native woman, girl or female: 26 times

Cindy Ivy Gladue: 3 times

Defense Final Statement

Mr. Bottos' opened his summation with an acknowledgement of Cindy Gladue's humanity and stated she was deserving of dignity, and that her life had value:

> "Cindy Gladue lost her life, and nothing I'm going to say should take away from the dignity of her life. We understand the sanctity of life. We understand that she was loved and would have loved and that her death was tragic. It would have been an awful final hour of her life…. Ms. Gladue was a human being, and there is inherent value in every human being's life. And I don't wish to be misunderstood as saying anything contrary to that in what follows. (R v Barton, 2015, p.1619)."

It should be noted that this is by far the longest reference to Ms. Gladue in terms that reflect or reinforce her identity as a distinct human being, and the single acknowledgement that she in fact suffered and that her death must have been agonizing.

The defense then proceeds to restate the narrative that Ms. Gladue was a willing participant in the actions that caused her death. Mr. Bottos used the term "fisting" to frame what had occurred.

"Fisting is a sexual activity and fisting causes tears sometimes…Tearing can occur, even without intending a person to cause that harm to another person, to the woman" (p.1621)

This description was first introduced by the defense in cross-examination, and was not challenged but adopted by the Crown and the Judge thereafter. It too became an accepted part of the trial's discourse, thereby framing the fatal contact as consensual, and normalizing the thrusting that Mr. Barton claimed Ms. Gladue enjoyed,which led to an accidental wounding. The Judge in fact used the term when instructing the jury. This suggestion, that they were engaged in a mutual sexual practice when Ms. Gladue was injured, was accepted as given. This, despite once again Mr. Barton being the only source for the information.

Thus a second of the discursive operations, mutuality and diminished responsibility, were woven into the trial's narrative without challenge.

The defense statement continued, finding a reason to restate an unsupported comment, which reiterated the slur of Ms. Gladue being a prostitute, and expanded it to now include assumptions about her lifestyle and to further her "otherness" from mainstream society and therefore the jury:

> **[7] Mr. Bottos: "**He could not say whether -- sorry -- he did say that Ms. Gladue as a prostitute would be living a high-risk lifestyle and drugs, alcohol, and greater incidents of violence would befall her" (p.1626).

The reference to prostitutes living a "high-risk lifestyle" stigmatized Ms. Gladue in several ways including erasing further her identity as anything other than a stereotype. When people are presented as part of a group, especially one that carries social stigma, they lose their individuality and become anonymous statistics (Slovic, 2007). This one reference activates the unstated assumptions inherent in the stereotypes associated with Indigenous people and sex trade workers. These would include assumptions about substance abuse, willingness to take risks, contributions to society and worthiness of the law's protection. This, despite there being no evidence entered about her individual lifestyle, or how her lifestyle had any bearing on Mr. Barton slicing open her vagina.

What it also does, is reinforce in a subtle but powerful way, that Ms. Gladue is from a different "group" than the jury or Mr. Bottos. To process the comment in context, one must proceed from the unspoken premises of the mainstream discourse: that prostitutes are a group (different from us); prostitutes live a certain kind of lifestyle; Cindy Gladue is a prostitute and therefore lives a high risk lifestyle; that we collectively know is a bad lifestyle and it is not *our* lifestyle.

It is a mechanism of social isolation to describe people by the characteristics of a group, especially when the group carries negative associations. The person's individuality is replaced with the general characteristics associated with the group, which labels that person as both different and inferior (Herrmann, 2011).

The lifestyle comment has further pathologized Ms. Gladue, adding another layer to the negative connotations associated with her and furthering the erasure of her individuality. This objectification is then taken another step in the following analogy. Mr. Bottos was claiming that one Crown witnesses had not properly examined Ms. Gladue's preserved vagina, and therefore could not make a valid assessment:

> **[10] Mr. Bottos:"** Or when an archaeologist discovers a new dinosaur, if he's going to send it to the curator of the museum to build this dinosaur, you hope that he got all the bones, right? A couple of missing bones, a few missing bones, could change the nature of what this dinosaur looks like in the museum" (p.1630).

The conflation of Ms. Gladue's post-mortem with a scientist trying to recreate a dinosaur may bring multiple associations that further objectify her: as a curiosity, a relic or something prehistoric. Indigenous people have long been portrayed as being primitive, savage and belonging in the past (Couchi, 2017)**.** As part of her has already become a "specimen," the inclination to see her as an object of study or an exhibit is reinforced.

As Mr. Bottos prepares to close, he restates in somewhat more colourful language a crucial piece of the defense narrative.

> **[12] "**She goes into the bathroom, comes out naked. Now, call me crazy, but if a prostitute walks out of a bathroom naked, sex is going to happen now, within the next minute or two. She's not going to be getting in there to have a nap. She's not going to be getting in there to play cards, okay? She's getting in there, coming out of that bathroom, for one thing and one thing only, and that's to engage in sexual activity now. Okay?" (p.1648)

The somewhat humourous tone and the description of a prostitute, not Cindy Gladue but a prostitute, walking out naked, primed for sex again reinforces a narrative that contains multiple ways in which the victim is pathologized and the violence minimized and portrayed as mutual. The story told by the defence throughout the trial, largely by implication, is of a flawed but human man, accidentally causing the death of a somewhat anonymous woman, who is both ethnically and morally tainted.

This anecdote, and its delivery, reinforces that Cindy Gladue is not "one of us", and was in fact, literally, asking for it. It is the defense's final portrayal of the stark difference between Brad the trucker and the native lady prostitute.

The Crown's Address to the Jury

The Crown's final remarks to the jury began with a somewhat cursory acknowledgement of Ms. Gladue's humanity, stating that Mr. Barton knew "she was a prostitute, her name was Cindy and she had children" (R v Barton, 2015, p.1658).

The rest of the address emphasized, in fact belabored, her status as a prostitute. The questions put to the jury suggests Mr. Barton's story is unbelievable, because someone who is a sex trade worker would not possibly act in the way he described.

> **[14]** He says Ms. Gladue -- the prostitute, remember, the woman who's there to make money, remember, the same prostitute he's just spent at least 10 minutes with, remember, to engage in sexual contact -- just shrugged it off. His evidence in examination of chief was just she just kind of gave me look. And then he washes up and they chitchat? They sit on the bed and they chitchat. And then he dozes off. Does that make any sense to you?

> He's got a prostitute in his room. He had just -- she had just wasted her evening on this transaction. He's hidden his wallet to keep it safe. He doesn't pay her. She shrugs it off. And then he just dozes off. Does that defy your common sense and logic? (p.1667)".

The address carried multiple assumptions of shared values and knowledge that the jury members would hold. Once again, the generalizations inherent in this discourse suggest "we" know how prostitutes behave. We not only know what to expect of them, we also know what motivates them. And inherent in all of it, is "they" all act and think the way we expect. Ms. Gladue was generalized as a member of this group, which was further generalized into an amorphous collection of beings, who had no individual characteristics that might distinguish them from the others. And if we all have the same understanding of how this group behaves, the only source for this shared understanding would be the stereotype of a native prostitute that exists within the dominant culture.

The Charge to the Jury

Justice Graesser's final instructions to the jury were found by the Court of Appeal to contain multiple errors in law. These included accepting as "given" Mr. Barton's version of events, and offering confusing and incomplete instructions on motive. These support the analysis of this study, however, most germane was the criticism about how the court handled the issues of prejudicial and pejorative language that manifested throughout the trial.

> **[15] "**When examining the evidence, you must do so without sympathy or prejudice for or against anyone involved in these proceedings. That means you

> must now make good on your promise to put aside whatever biases or prejudices you may hold or feel. It also means that sympathy can have no place in your deliberations" (R v Barton, 2015, p. 1754).

These generic instructions are the only guidelines given with regards to possible discriminatory opinions the jurors may have held or formed during the trial. They in no way address or could be seen as a counterbalance to the continuous negative portrayals of Ms. Gladue throughout the weeks of testimony.

The remainder of the charge repeated many of the discursive operations noted above. Ms. Gladue was again referred to as a prostitute, the fatal activity was described as sex (fisting) and the jury were told to consider parts of Mr. Barton's version of events as if they were an accurate reconstruction of what had occurred.

Conclusion on Part One

It was obvious early in the analysis that the language and context used in the trial repeatedly met the criteria (Coates & Wade, 2007) of minimizing the victim's resistance and blaming or pathologizing the victim. As above, there was a constant stream of demeaning references to Ms. Gladue, starting in the Crown's opening statement and continuing throughout the trial and into the judge's final charge to the jury. Cindy Gladue's struggle for life as she lay dying in a bathtub was briefly described in unaccountable language at the beginning of the trial and only referenced in passing afterwards. Other procedural issues create questions about whether this Indigenous woman was accorded the dignity that all Canadians are expected to

receive from the legal system. The failure to protect her sexual history and reputation went unchallenged and in fact unremarked on despite being a critical piece of the defense.

The other two criteria within the analytic framework require a more nuanced evaluation, as they involve the issues at the heart of the case. Did the language and context minimize and conceal the extent and nature of the violence? The defense contended that the injury was an accident that resulted from consensual sex, which the victim in fact enjoyed. The Crown's initial position was that Mr. Barton had used a knife or a box-cutter to slice Ms. Gladue. The Crown later claimed that, even if the wound was caused by Mr. Barton's fingers, he should have known the force used would cause injury, and that Ms. Gladue was unable to consent to the action in any case. The jury found Mr. Barton not guilty, which does not mean they necessarily accepted the defense argument, only that the Crown had not convinced them beyond reasonable doubt. However, a new trial has been ordered because of many missteps that could have affected the decision. Despite multiple uses of passive language, and a reliance on the accused' version of events, one cannot say, with certainty, the nature and extent of the violence was concealed. As of this writing, the facts of the encounter remain in dispute.

The last criteria, the question of whether the perpetrator's responsibility was obscured or mitigated must be viewed through a similar lens. The use of passive language and the continuous use of degrading terms for the victim certainly served to obfuscate or mitigate Mr. Barton's responsibility, if indeed he was negligent or acted from a place of malice. Whether this was, in fact, a valid outcome remains unresolved.

To summarize, two of the discursive operations reflecting the ways in which the dominant discourse distorts violence in favour of the perpetrators (almost always men) were clearly met. Ms. Gladue was pathologized and portrayed as actively contributing to her own

demise. Her personhood, her individuality was repeatedly stripped from her as she was defined by the stereotypical assumptions that are carried by "native prostitutes." Her resistance was minimized, downplayed and at the end of trial remained unexplored.

The two other criteria, downplaying violence and failing to ascribe responsibility, meet the linguistic and contextual benchmarks of the model. However, a final determination of the facts remain in limbo and therefore a definitive conclusion would be premature.

It can be stated, however, that the elements that are demonstrably present are so egregious as to delegitimize the verdict and call into question some or all of the conclusions reached. This was in fact a point of contention among the most senior legal authorities in the nation. The Supreme Court (2017), majority ordered a retrial only on the charge of manslaughter, accepting the jury's findings regarding the expert testimony. Three dissenting wrote the proceedings were so tainted by racial bias and inherently prejudicial discourse that even the jury's finding of factual evidence was in doubt (R v Barton, SCC, 2017).

Part Two Analysis: Dehumanization and Implication:

1. Erasure of individuality and identifying subjects as part of a group;

When people are described by group membership their individual personality is removed and they assume the stereotypical traits associated with that group (Slovic, 2007). It is only when a person makes a connection with another, by recognizing their capacity to feel and understand, that the neural processes that allow for empathy and compassion are initiated (Harris & Fiske, 2009).

At the beginning of the trial, the jury, and the public are introduced to the accused and the victim by being told that: “He was a trucker. Ms. Gladue was a prostitute…” (R v Barton, 2015 p 13). The first impression of both of them is an identification with a group. This sets the initial context from which the courtroom audience will formulate their impressions about the main players in the story they are about to hear. Each is put into a category and to some extent described, even stereotyped by their occupations; there is a rough common idea of what both of these labels bring to mind. An important distinction is that one of these labels does not carry stigma; truck driver is an accepted occupation within society, is legal, and evokes a blue collar/working man association. As noted earlier, prostitute is a word that carries negative inferences; although it was technically legal to sell sex when Cindy Gladue died, the sex trade continues to be associated with drugs, violence and crime (p.1619).

As the trial progresses, Mr. Barton’s personality and expression as a unique human take shape. This is partly because he is sitting in the courtroom and his physical appearance, his facial expressions, and during testimony, his way of speaking and presenting himself all contribute to developing a sense of an individual. His work history, marital status, and interactions with different people on the job, and during the two days under review, all served to further flesh out the personality, and the use of his name, shortened to the familial “Brad” in many instances, all serve to humanize him, and move him away from being a generic “trucker.” He is no longer the collection of characteristics assumed by the group label of his introduction.

Ms. Gladue, in contrast, is never differentiated from the group label and the stereotypes that accompany it. Her identity as a prostitute is in fact continuously reinforced, and augmented with another group label, that of being a native. Unlike Mr. Barton she is not physically present (except her disembodied reproductive organs, which are labelled a specimen). There is also no

testimony about her home life, family or any characteristics that differentiate her as a unique human being. The only contexts she is placed in are drinking at a bar and performing sex in a motel room. If one were asked to introduce her, based only on the information that was heard at trial, “native prostitute” would be the sole description available. Based on the testimony, it would be impossible to create a picture of Cindy Gladue as an individual, a human being who was unique and in any way “mattered.

The “otherness” of Ms. Gladue was also reinforced through comparisons that objectifed her. The conflation of Ms. Gladue with a dinosaur carries an implication of her being a curiosity, and further implies bestial characteristics among others. This reference is also loaded with multiple myths about Indigenous people in general; that they are relics or that they or their culture are things that lived in the past. They belong in a museum; they are prehistoric. The images of barbarians who go on the warpath is ingrained in the consciousness of Canadians (Couchi, 2017).

1.(a) Vagina in the courtroom

The display of Ms. Gladue’s vagina was allowed after a voir dire hearing, which took place while the trial was on, because the Crown had not been aware previously that the tissue had been preserved. The Crown then brought forward an application to use the actual body part because it showed the wound more clearly than photographs. The request to allow her physical sexual organs into the courtroom, and the decision to do so were explained by the specimen being the best evidence available in an unusual case.

In contrast to the outrage the decision would provoke, the discussion would best be described as banal. It focused on whether the probative value would outweigh the prejudicial

effect, whether the specimen had followed the proper chain of evidence channels and whether the specimen having aged would affect its usefulness. That is, after being preserved four years would the "specimen" retain the elasticity required to demonstrate the experts' theories on how the wound was caused. Ms. Gladue's name was used once, the rest of the time her preserved vagina was referred to as a specimen, tissue or it. The two defense lawyers were clearly not comfortable with the proposal but aside from making their opposition known, they argued along the narrow legal lines around admissibility that might be applied to any object that might cause a jury discomfort.

Ms. Godfrey for the Crown argued for bringing it in because it would help the jurors understand what they were seeing, and that Ms. Gladue's vagina was not revolting or hard to look at:

> "The experts can say here's what I'm talking about, here's what I'm talking about. Both parties can view it, and the jurors can view it. And it's not simply a situation, as I said, Sir, where this would be a -- this is a horrible thing. In fact, quite frankly, it was like walking into a Biology 30 classroom and seeing a specimen in a container." (R v Barton, 2015 p 501).

Defense lawyer Mr. Bottos did not explain his personal objection, but made it known he was not willingly involved. "Well, Sir, from what follows in my submissions, I don't wish to be understood to be being a party to this endeavour (p.510).

His partner in the case, Mr. McIntyre also put his opinion succinctly: "This Court must take seriously the potential for prejudice with having this type of evidence before a jury. I would

suggest, Sir, that there is a dearth or perhaps a complete absence of case law on point, for a reason" (p. 718).

The lengthy discussion did not stray into consideration of social, ethical or emotional impacts this precedent-setting decision might have. The rules of evidence and what little case law might have had relevance were worked through. Mr. Justice Graesser agreed with the Crown that the preserved vagina was the best evidence available, and noted there was no direction that specifically prohibited making human tissue an exhibit:

> "I recognize that there is a natural discomfort to the presence of a body part in court. It is perhaps unprecedented to present this type of evidence to a jury or a judge, at least in Canada, but the absence of precedent does not mean that it should not be done" (p.748).

The introduction of Ms. Gladue's vagina as an exhibit is viewed by some (Cunliffe, 2018; Big Canoe, 2015) as possibly the most egregious act of dehumanization inflicted on her during the trial. It was seen as a desecration of her body, but also an indignity felt by all Indigenous people, a reminder of how little respect they hold within the dominant society (Cunliffe, 2018).

There was an outpouring of criticism against the destruction of dignity, which had not factored in any way in the court's decision making. Christa Big Canoe, a lawyer and activist, wrote for CBC that Cindy Gladue was effectively raped again, in public, by the experts using her vagina to demonstrate how they thought she was injured.

> "Her body is not whole in its resting place. In any other context this could be seen as desecration of her remains, but in this judicial process it is called preservation of evidence. It is simply horrific. It appears that the court did not contemplate Cindy's

dignity, death rites, or any indigenous perspective on caring for the dead" (Big Canoe, 2015).

Among the many articles and protests, Cindy Gladue came to be seen as an embodiment of what Indigenous people can expect from the larger society.

> "Ms. Gladue had turned to sex work to support herself and her addictions. She was repeatedly victimized as a sex worker, and her vagina was brutalized repeatedly by people who purchased sex from her, ending with the final brutal encounter with Mr. Barton. Even in death, Ms. Gladue's vagina continued to be objectified and victimized, used in the court as an object of seemingly no worth, only preserved as an object of evidentiary value… (Cunliffe, 2018).

This use of human tissue had never before occurred in a Canadian courtroom, and possibly in any courtroom, ever. The fact that the first, and only, such exhibit was an Indigenous woman's vagina raises ethical and moral questions that go beyond the legal system. There is no indication that any consent from her family was obtained. There was no consideration as to whether her religious beliefs would have allowed this display to take place.

There was no discussion on what kind of message the court was sending to the outside world: how would this affect the mainstream's already tainted view of Indigenous peoples? And what would be the effect on Indigenous peoples' feelings about their place in society? Would it stir echoes of the past, where Indigenous people were considered sub-human and their bodies, dead and alive were displayed as curiosities?

The higher courts (Alberta Court of Appeal and The Supreme Court) were not obligated to address the issue, as it was not one of the grounds for appeal that either the Crown or Defense

used in their filings. Neither of them chose to weigh in, leaving the decision to stand as a precedent.

Whatever the intention, and whether the decision was sound in law and ethically defensible is beyond the scope of this analysis; but it certainly resonates socially in an ugly and disturbing way. The combination of presenting nothing but a stereotype for a personae, and then cutting her apart to illustrate a point in trial, treating that part as a specimen, to be manipulated in front of an audience, must have removed any possibility of a social connection or an empathetic link. The obvious conclusion is that displaying her dismembered body parts further objectified and dehumanized her, to the people in the courtroom, and to the country as well. Her humanity was entirely erased through objectification and a lack of respect or acknowledgement of her actual physical body or her individuality as a person. She was reduced to a body part.

2. The group must carry negative connotations sufficient to override the neural responses that trigger empathy.

Scholar**s** make a distinction between depersonalization and dehumanization. To remove a person's uniqueness and identity only creates a neutral object; destroying their humanity requires a negative perception such as disgust (NPR 2015; Stanton, 2009). In the context of this study, the negative connotations would be necessary to motivate people to act violently, or condone such actions against a targeted group. A depersonalized group, which invoked no feelings, would not inspire the kind of hatred or contempt necessary for committing atrocities (Stanton, 2009).

The negative connotations attached to Indigenous people are older than Canada. In 1879, Canada's first Prime Minister, Sir John A. Macdonald said *Indian* children should be taken away

from their parents, who were *savages*, and removed from their communities. Schooling them on reserves would only result in *savages* who could read and write, because they would continue to think and act like *Indians* (Nica, 2017) (Italics used to indicate actual language).

The characterization of them as savages has continued to be linked to the oppression of Indigenous peoples throughout the country's history. Les Couchi (2017), a member of the Nipissing First Nation, reviewed the archives of the *Toronto Star* since it began publishing in 1892. He concluded that stereotypes that endure today, were born in media reports from the 1930's and 1940's,that depicted the Indigenous community as "savage, unruly, drunk and lazy" (Couchi, 2017).

The Alberta Court of Appeal stated in its ruling "the potential for racial prejudice against visible minorities in the justice system is a notorious social fact not capable of reasonable dispute" (ACA, 2017, p31). The court said the repeated references to Ms. Gladue as a "prostitute", "Native girl" and "Native woman" invited the jury to bring biases about the sexual availability of Indigenous women, especially sex trade workers, into their deliberations (p. 32). It furthermore said Ms. Gladue was positioned at the "intersection of assumptions based on gender (woman), race (Aboriginal) and class (sex trade worker)" (p. 32).

The Supreme Court of Canada has also explicitly take the position that Indigenous people face widespread racial prejudice within and without the legal system (R. v. Gladue, SCC,1999; R. v. Ipeelee,, SCC 13, 2012; Ewert v. Canada, SCC 30, 2018; R v Barton, SCC, 2017), and in this case used the opportunity to reaffirm the extent of the societal issue; and provide the guidance to lower courts to give more detailed and specific instructions in future:

> "There is no denying that Indigenous people — in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence. Furthermore, the Court has acknowledged on several occasions the detrimental effects of widespread racism against Indigenous people within our criminal justice system… As an additional safeguard going forward, in sexual assault cases where the complainant is an Indigenous woman or girl, trial judges would be well advised to provide an express instruction aimed at countering prejudice against Indigenous women and girls" (R v Barton, 2017, p. 116).

There appears little room to argue against the fact that Indigenous people, whatever they are called, are tarred with negative stereotypical assumptions. These biased perceptions of Indigenous peoples as a group have been with us since the colonization began and have been maintained for several hundred years (MMIWG, supplementary report, 2019). The Supreme Court admitted that Canada had, in fact, failed to protect Cindy Gladue's humanity

> "Our criminal justice system holds out a promise to all Canadians: everyone is equally entitled to the law's full protection and to be treated with dignity, humanity, and respect. Ms. Gladue was no exception. She was a mother, a daughter, a friend, and a member of her community. Her life mattered. She was valued. She was important. She was loved. Her status as an Indigenous woman who performed sex work

> did not change any of that in the slightest. But as these reasons show, the criminal justice system did not deliver on its promise to afford her the law's full protection, and as a result, it let her down — indeed, it let us all down "(R v Barton, 2017, p.121).

Although Indigenous people have not been labelled as demonic or vermin, the fact that they carry stigma and are regarded and portrayed in a negative light is clearly, as the judges said, "a notorious social fact not capable of reasonable dispute" (ACA, 2017, p31).

3. The target group must be perceived to pose a threat or have a negative impact on the larger society.

The last criteria is one that speaks to whether the dehumanization could in fact be actionable; that is whether the negative characteristics, attributes or actions that have been projected upon the group could be used to motivate their fellow citizens to begin killing them, or otherwise promoting or accepting the destruction of their culture and means of survival.

Cindy Gladue was obviously no threat to anyone during the trial, as she was dead. The "native prostitute" she was labelled as, the group she was assigned to within the trial discourse, however carries some potentially significant assumptions. She was deemed to be associated with drugs, violence and crime (p.1619). This association is not confined to sex-trade workers, but is in fact a prevalent stereotype for all Indigenous people (James, 2013; Quan, 2018). Racist stereotypes form most of the associations Canadians have about indigenous people; these include welfare dependence, paying no taxes, drunk, violent and a drain on society (Quan, 2018).

She was presented as less than human, through becoming a collection of body parts, one of which was of some brief use to the state. It would not be a stretch to say that she was significantly othered and demeaned, enough to override the neural process for empathy and trigger the disgust circuit, as described by Harris and Fiske (2009).

Although the dehumanization of Cindy Gladue doesn't include the element of her being a threat to society, except possibly to public morals, the inferences both implicit and explicit about sex work, crime and violence would surely qualify as presenting her as an undesirable person who would negatively impact the community.

The wider determination, if Indigenous people in Canada are, in fact, regarded as being a detriment which society would benefit from removing, is subjective and disturbing in the extreme. Recent events have reminded us that history is never predictable, that the embers of extremism and racism smolder in every corner of humanity and seemingly ignite without warning. Weighing all of the foregoing and attempting only to apply objective and defensible rationale, it would be prudent to classify the Indigenous population in Canada as "vulnerable".

Discussion

This study demonstrates that Cindy Gladue was depicted as having been culpable in her own death and the fatal encounter was presented as resulting from consensual sexual relations. Her resistance was given no relevance and her struggle for life received barely a mention. She was portrayed not as the person she was, but as a generic "native prostitute" whose motivations and actions were defined by a bundle of demeaning stereotypes. The level of dehumanization

would meet any standard, because the trial never imparted upon her the honour of humanity in the first place.

The author was surprised and disturbed by the ubiquity of ingrained bias that permeated the trial. Going in I thought I would find that the jury was a group of white Albertans, who identified with the truck driver and still held values and prejudices that are no longer accepted in the "woke" mainstream. I had honestly expected to find some nuanced language meant to play to the jurors' biases, some insinuations and perhaps the defense would slip in a reminder about the victim's ethnicity. What I found was all of the players, the highly educated lawyers, the judge, medical witnesses, everybody that presented, spoke in language that you hear every day, the common discourse. Until I began dissecting the words and the implications they held, I was unaware of the extent of assumptions and "othering" that is so deeply entrenched in our culture that it is almost undetectable unless we literally parse each word.

I was also surprised and again disturbed by how snug a fit Canada was for my criteria for a level of dehumanization that ranked at the highest levels. I questioned the validity of my method and whether my criteria were too broad or ill-defined. My conclusions about Canada did not resonate with the Canada I believed in.

When I reviewed my criteria and reviewed my beliefs about Canada and Indigenous people I came to an uncomfortable conclusion. Canada is home to a group of people who have been subjected to unspeakable atrocities and continue to live in desperation, poverty and violence. Segregated from the mainstream they are scapegoated, stigmatized and subject to ongoing indignities and acts of oppression. All of their land was stolen, their children kidnapped and their social customs and languages destroyed.

But this is normal. This is Canada, and there's a problem in some of the backwaters but it's taking some time to work it out. That too is baked-in. We cannot accept the term genocide, because we are good people and besides it happened in the past. I did not so much believe this vision of Canada as I had absorbed it in my bones. There can't be genocide here. We just haven't quite solved the problem yet. And there's other problems that also need solving. Priorities.

Canada continues to benefits from policies of extermination and assimilation. Through laws and language, it conceals and mitigates its responsibility for the ongoing death and suffering unleashed by these policies; and has failed to quell the stigmatization and victim blaming that accompanied them.

Voltaire said "Those who can make you believe absurdities, can make you commit atrocities."

My overall assessment, today, using Stanton's (2009) model, is that Canada has been hovering very close to the fourth stage of genocide for roughly three hundred years.

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APPENDIX I

Raw Data

The trial of Bradley Barton (R v Barton, 2015) commenced on February 17 and the initial verdict was delivered by the Jury on March 16. The trial transcript runs 1,798 pages and provides the data for this study. The excerpts presented in this section are of necessity selective and were chosen as representative of the context or illustrative of key points within the body of the transcript.

The specific elements reviewed include the Crown's opening statement, an illustrative excerpt of a witness cross-examination, the defense and crown's final summations and the Judge's charge to the jury. The Crown's opening sets out the case against Barton and sets the context for the proceedings. The cross-examination excerpt provides a concise example of a recurring motif. The summations and charge to the jury reflect the conclusions of the parties and provide insight into the final messages the jury received before retiring to consider the verdict.

Three other portions of text are included, which were not heard by the jury but provide important evidence and context for this study. One of these is an excerpt from the voire-dire (in camera hearing) where the lawyers and judge debated admitting the preserved pelvic tissue of Cindy Gladue's vagina as an exhibit. This was an unprecedented event in a Canadian courtroom and the decision making process provides some insight into the thinking that led to it.

Also included are sections taken from the Alberta Court of Appeal and the Supreme Court of Canada's rulings on appeals which eventually overturned the verdict and have resulted in a new trial, although on the reduced charge of manslaughter. These rulings were confined to

assessing errors in law; however they both include observations on the legal perspective on bias and racism in the courts and the general population. They further, in many parts of their rulings, support the findings of this study and are thus included for reference and information.

Crown's Opening Statement

Criminal Trials in Canada begin with an opening statement from the Crown, wherein the Crown Counsel lays out the evidence they intend to call and the framework of the crime according to their theory of what happened. The Crown Counsel was C. A. Downey. After a few preliminary remarks, she began her case thusly:

> **[1]** Now, this is what I think you will hear over the next number of weeks. Around June 19 or 20, 2011, Cindy Gladue met Mr. Bradley Barton. Mr. Barton was staying at the Yellowhed Inn in Edmonton, Alberta. He was a trucker. Ms. Gladue was a prostitute at the time, and the two of them struck a working relationship. Video surveillance will show that the two met and spent some time together on June 20th at the Yellowhead Inn (R v Barton, 2015, p14).

The Crown's continues its case:

> **[2]** It was on the evening of June 21st in the early morning hours of June 22nd that things started to go wrong. You will hear surveillance video and hear from civilian witnesses which will show Mr. Barton and Ms. Gladue drinking in the Lady Luck Lounge, that's 23 the lounge in the Yellowhead Inn, on the late evening of June 21st. They will leave that 24 lounge, and sometime just before 1 a.m. on June 2they are seen

> alone heading toward 25 Room 139. That was Mr. Barton's room. Neither is seen again until 7:40 a.m., June 26 22nd, some seven plus hours later. At that time, Mr. Barton emerges from his room. 27 Ms. Gladue is not with him. He is alone. He exits the east door of the hotel carrying a 28 bag. He appears to be dressed in his work uniform. Within approximately three minutes, 29 Mr. Barton is now seen at the front lobby of the hotel. I expect you will hear he checked 30 out at that time. He had a coffee in his hand, but he has no bag (p14).

The Crown's statement then recounts Mr. Barton's movements after the fact, before returning attention to the crime scene.

> **[3]** Now, the Crown anticipates calling a number of expert witnesses. Constable Nancy Allen is a blood splatter expert. I expect she will tell you there's evidence Ms. Gladue was not dead when she first entered that bathtub. She struggled, which is evident by her repeated movements visible in blood. Constable Allen is also likely to tell you that there is evidence of clean-up activity after the fact. Investigators also located a bloody towel in a garbage bin very near to the commercial parking lot at the hotel. Samples from that towel confirmed that the blood matched that of Ms. Gladue. You will hear that blood found on the bed linens and in the bathroom and suite of 139, they also matched Ms. Gladue (15).

Excerpt from Cross Examination

This section has been taken from the Defense counsel, Mr. Bottos questioning of Ms. Tanya Dunster, a witness in the trial, , who was tending the bar in the hotel where Mr. Barton and Ms. Gladue had some drinks the evening she was killed.

[4] Mr. Bottos: All right. Okay. So there's Brad and a skinny gentleman.

Ms. Dunster: Mm-hmm.

Mr. Bottos: Okay. All right. And take us forward throughout the night. What are they doing? Does anyone join them? Do they go anywhere?

Ms. Dunster: They are drinking beers. They had gone out for cigarettes periodically.

Mr. Bottos Okay.

Ms. Dunster: And they were talking.

Mr. Bottos Okay. All right. And take us forward from there. Does anything else happen?

Ms. Dunster: They were talking. At one point towards the end of the night, Brad had gotten up and left for approximately five minutes and came back with a Native lady.

Mr. Bottos Okay. And could you please -- and when -- when he came back with the Native lady, what did he and the Native lady do?

Ms. Dunster: Sat down at the table.

Mr. Bottos: From which entrance did they come in when he came with the Native lady?

Ms. Dunster: The front entrance (R v Barton, 2015, p.1302).

Final Statement Defense

Mr. Bottos made time at the beginning of his summary to acknowledge that the victim, Cindy Gladue was a human being who deserved dignity and that her life had value.

> **[5]** Before I do, I want to make something very clear. Cindy Gladue lost her life, and nothing I'm going to say should take away from the dignity of her life. We understand the sanctity of life. We understand that she was loved and would have loved and that her death was tragic. It would have been an awful final hour of her life. The photos were graphic. The scene was graphic. The Crown brought in the vaginal tissue in this case. It can be an emotional -- it can take an emotional toll on people. And all I'm asking you is not to let that poison you against Mr. Barton. You have got a job to do. We all do. But you can't let the graphics of this case disturb you or poison you. That's all I'm asking. Ms. Gladue was a human being, and there is inherent value in every human being's life. And I don't wish to be misunderstood as saying anything contrary to that in what follows. (R v Barton, 2015, p.1619).

Mr. Bottos reinforced the defense narrative that the penetration that caused Ms. Gladue's death had resulted from a consensual sexual act.

> **[6]** Fisting is a sexual activity and fisting causes tears sometimes, and Dr. Carter-Snell said that fisting in the literature causes tears. So we have to understand that. Tearing can occur, even without intending a person to cause that harm to another person, to the woman (p.1621)

The defense found a reason to restate an unsupported comment from one of the witnesses.

[7] He could not say whether -- sorry -- he did say that Ms. Gladue as a prostitute would be living a high-risk lifestyle and drugs, alcohol, and greater incidents of violence would befall her (p.1626)

The following sentence was part of a description of Ms. Gladue's pelvic tissue.

[8] He's opening the wound more and more. It's as if you're looking into a big clamshell, and the mouth is the wound (p.1629).

Mr. Bottos continues with a detailed review of the physical evidence,

[9] She said, that is, Dr. Carter-Snell, in response to my friend's question, this dark opening here, she was asked, "Just so . . . I'm clear, the cervix is on the right here?" And she says, "Yes." And "Okay. The dark hole in the middle you're saying is the entrance to the vagina?" And she says, "Possibly, yeah." Ladies and gentlemen, that's not the entry to the vagina, right? This is the deepest part of the wound. The wound goes here to here. That's 11 centimeters. The opening of the vagina is the bottom. That's over here. You see the pigmentation leading to the outside skin. That's not possibly, yeah, the entrance to the vagina. (p.1629).

The following analogy was one of several used to question the credibility of one of the Crown's expert witnesses:

[10] Or when an archaeologist discovers a new dinosaur, if he's going to send it to the curator of the museum to build this dinosaur, you hope that he got all the bones, right? A couple of missing bones, a few missing bones, could change the nature of what this dinosaur looks like in the museum. (p.1630)

Mr. Bottos here dismisses the proposition that his client had any intent to harm the victim and suggests Mr. Barton would have no motive to do so.

[11] So that male friend knows she's down there. Of course, if anything happened to this woman, people would know she's down there and looking for her. So what's in it for him? What's the incentive? Some thrill kill? (p.1642)

As Mr. Bottos prepares to close, he restates in somewhat more colourful language a crucial piece of the defense narrative.

[12] She goes into the bathroom, comes out naked. Now, call me crazy, but if a prostitute walks out of a bathroom naked, sex is going to happen now, within the next minute or two. She's not going to be getting in there to have a nap. She's not going to be getting in there to play cards, okay? She's getting in there, coming out of that bathroom, for one thing and one thing only, and that's to engage in sexual activity now. Okay? So if she' able to take off her clothes and discard them in the bathroom, which is where we see them -- they're not torn off of her (p.1648)

Crown Closing

Near the beginning of her final address to the jury, Ms. Downey made reference to Cindy Gladue as a person, as part of her attempt to discredit Mr. Barton

[13] What's the truth? The truth is he knew a lot about Ms. Gladue. She was a prostitute. Her name was Cindy. She had children. She came 23 the hotel with a man friend (R v Barton, 2015, p.1658).

Continuing with this line of reasoning, Ms. Downey suggests Mr. Barton's story is unbelievable, because someone who is a sex trade worker could not possibly act in the way he described.

> **[14]** He says Ms. Gladue -- the prostitute, remember, the woman who's there to make money, remember, the same prostitute he's just spent at least 10 minutes with, remember, to engage in sexual contact -- just shrugged it off. His evidence in examination of chief was just she just kind of gave me look. And then he washes up and they chitchat? They sit on the bed and they chitchat. And then he dozes off. Does that make any sense to you? He's got a prostitute in his room. He had just -- she had just wasted her evening on this transaction. He's hidden his wallet to keep it safe. He doesn't pay her. She shrugs it off. And then he just dozes off. Does that defy your common sense and logic? (p.1667)

Charge to the Jury

> **[15]** When examining the evidence, you must do so without sympathy or prejudice for or against anyone involved in these proceedings. That means you must now make good on your promise to put aside whatever biases or prejudices you may hold or feel. It also means that sympathy can have no place in your deliberations (R v Barton, 2015, p.)
>
> **[16]** You have heard that -- you have heard evidence that Cindy Gladue was a prostitute and that she and Mr. Barton entered into a commercial transaction for sexual relations on June 20th, 2011. She returned voluntarily to the Yellowhead Inn on June 21st and met Mr. Barton at approximately 11:30 that night... You should also consider Mr. Barton's evidence that similar sexual activities occurred on both nights and that Ms. Gladue appeared to him to be enjoying herself (p.1754).

Raw Data, part two

The raw data included below is information that was not heard by the jury, but is germane to both the discussions of discursive operations within the trial and to the second part, which evaluates whether the characterization of Ms. Cindy Gladue can accurately be described as dehumanization, and if so, would it meet the international standard that would qualify a component of genocide.

The excerpts from the voir dire hearing are meant to illustrate the thinking and attitudes around the discussion about whether to allow the human tissue from Cindy Gladue's pelvic region to be entered as an exhibit at trail. The transcript of that hearing provides insight into the motivation and considerations that led to an unprecedented use of evidence in a Canadian courtroom. It also provides some context around the emotional or moral considerations of some of the participants. The admission of this "specimen" received wide-spread media attention and condemnation from many quarters, including but not exclusively, Aboriginal organizations and Women's rights advocates.

The appeal court rulings, although they are concerned only with issues of law, include the analysis of language and context as an inherent part of their process. Their determinations provide perspective and another layer of scrutiny, which in many cases support and reflect this study's observations and conclusions. Some of this content will be referenced in the data analysis in chapter five. What I have excerpted here was mainly chosen for highest courts' opinions on the state of racial discrimination and bias both within the courts and society at large. The insight provided is germane in that it extends into the overall stigma that affects Indigenous peoples, the specific issues within the legal system and the effectiveness and limitations of the remedies that have been applied to date.

Excerpts from the Voir Dire

This is clearly the best evidence, and, frankly, our position 3 on this is that this is going to come down to perhaps duelling experts to some -- in some 4 respect in terms of what one expert says versus another expert. Pictures can show you so 5 much. We have the actual real evidence here. And I can advise this was not a -- 6 uncomfortable in the sense that -- probably less egregious, actually, than looking at the 7 pictures, Sir. You didn't see a lot of -- there certainly wasn't the graphic nature of the 8 specimen as you see in pictures. But you see the injury. And when you see the injury, 9 which is quite frankly what the jurors are being -- going to be asked to make a decision 10 on, is this injury a cut or a tear based on what the experts say, they can actually see it 11 themselves. In our view, it is utterly probative.(501)

MR. BOTTOS: And, again, I take issue with the late notice. 36 Sure. We know that -- we knew that the tissue existed, but that -- nobody's ever brought 37 this kind of evidence into court to my knowledge before. And so this is a -- this is notice 38 of demonstrative evidence. And how does the Crown plan on presenting this evidence? 39 Is it just going to show up under glass, and do we all look at it as if it's just like that? 40 Or is this -- is there going to be an overhead projector where the experts are going to 41 manipulate it with their own hands in front of the jury? Or are they going to all crowd 507 1 around -- are we all going to crowd around this small specimen and try to decipher 2 exactly what was going on here? These things are logistical problems also that I suggest 3 are prejudicial to the defence and not -- do not assist in the slightest.(506)

MR. BOTTOS: Well, Sir, from what follows in my 39 submissions, I don't wish to be understood to be being a party to this endeavour. But if 40 you are going to rule for the Crown on this at the end of the day, I would suggest that, 41 instead of live streaming, that's logistically difficult because I don't know where my two 511 1 doctors may be. But a video preservation of the same testimony is just as good (510)

Mr. McIntyre So it adds some probative value, but, in our submission, 34 this Court must take seriously the potential for prejudice with having this type of evidence 35 before a jury. I would suggest, Sir, that there is a dearth or perhaps a complete absence 36 of case law on point for a reason.(718).

MR. MCINTYRE: -- more prejudicial than having a human body 19 part sitting 5 feet away from the jury. I mean, where does it stop? If the corpse is 20 preserved, do we bring that into the courtroom? 21 22 THE COURT: Well, but the whole corpse is not relevant. 23 Here we have one wound that is relevant, and the wound -- the wound has been 24 preserved. It is rather unique circumstances that Dr. Dowling has testified to as well. So 25 we have a rather unique opportunity. I agree, if the whole body was brought in, what 26 would the point of that be? 27 28 MR. MCINTYRE: I didn't -- 29 30 THE COURT: We have seen -- but we have seen pictures -- 31 32 MR. MCINTYRE: I didn't mean it in the context of this case. 33 34 THE COURT: We have -- 35 36 MR. MCINTYRE: Excuse me. 37 38 THE COURT: Yes. Mm-hmm. 39 40 MR. MCINTYRE: What I meant is in other cases, for example, 41 perhaps the condition of the entire body -- 721 1 2 THE COURT: But, you know, I think you decide each case on 3 its merits, rather than wondering -- the Court of Appeal can figure out what floodgates 4 arguments are, but it seems to me that I have to decide things on the basis of the evidence 5 that is argued in front of

me and the principles argued in front of me. So, you know, I 6 am inviting -- you know -- 7 8 MR.

MCINTYRE: Well, I will -- 9 10 THE COURT: Cases talk about sort of the horrific response, 11 the -- you know, the -- and how that might certainly inflame the jury. And I guess maybe 12 that is just something that would be presumed from there being a body part instead of a 13 photograph of a body part.

Bottos:…well, I hate to be crass, but it's like looking at a piece of cooked 27 chicken versus raw chicken. They're going to have different toughnesses to them. And 28 that is prejudicial to the defence's theory. It is something different than the original state 29 of that tissue, and that should be brought home both to you in making this ruling, Sir, 30 and, if you rule against us, that should also be brought home to the jury(723)

Ms Godfrey My friend's suggestion it's never been done before, that may well be, Sir, but if that were 23 the case, our law would never evolve. We would never have video cameras in the 24 courtroom. We would never have much of what we have. The question is -- is, in law, is 25 it admissible, is the prejudicial value less than the probative value, and is it the nature of 26 the injury such as it's the actual issue that they need to deal with. And our position 27 would be all those are met, Sir. (727)

Court (748) I recognize that there is a natural 5 discomfort to the presence of a body part in court. It is perhaps unprecedented to present 6 this type of evidence to a jury or a judge, at least in Canada, but the absence of precedent 7 does not mean that it should not be done. 8 9 This is an unusual case, according to Dr. Dowling. He has been a forensic pathologist for 10 29 years and

has conducted some 2,000 autopsies. He testified on voir dire that this is 11 only the second case he has had involving pelvic injuries where he has actually removed 12 the pelvic region from the victim's body. He testified that he recognized at the outset 13 during the autopsy that his conclusions were likely controversial. He testified that he 14 viewed it as important that the tissue be preserved so that the defence experts and the 15 ultimate triers of fact might have the benefit of the tissue itself, which he described as 16 being more helpful than photographs, at least to him as a pathologist.

ALBERTA APPEAL COURT

Jury Instructions on Motive

> **[A]** In addition, the jury was not told how a more generalized purpose or attitude could qualify as motive. This could include an animus against a person or persons and could capture the desire to use a sex trade worker in an objectifying or dehumanizing manner for personal gratification. Directions on that form of animus might have been relevant to what inferences a jury could reasonably draw from it. Had it been appropriate to charge on motive – which, in our view, it was not – a balanced approach to this issue would have been required. The potential significance of the context here could not simply be ignored. That includes the high risk of physical violence for sex trade workers (R v Barton, ACA, 2017, pg. 20).

[B] Canadians would be shocked if a victim of crime could be stripped of his or her dignity after death… Indeed, it is all the more important to prevent irrelevant evidence about the victim's past sexual conduct from compromising the fair trial process when the victim has died at the hands of the accused – and the only one left to testify as to the circumstances is the accused (p.) (Basically say the case was blown in the opening statement)

Calling Gladue a "Prostitute" and "Native Woman"

This one word – prostitute – had the effect of ushering in Gladue's prior sexual conduct with all the others, real or imaginary, who may have paid her for sex. Gladue was referred to as a prostitute at least 25 times during the trial. Where a participant in sexual activity is a prostitute, a litany of unjust stereotypes about autonomy and consent persist in our society. That is so regardless of the label used to describe the person who sells sex for money. 51 At the top of the list is that a prostitute will consent to anything for money. Linked to this is another improper belief, namely that once a prostitute has agreed to sell sex for money, the prostitute has given "implied consent" to any and all sexual acts to which the prostitute is then subjected. And perhaps worse yet, labelling someone a prostitute signals to the jurors that the prostitute is "deserving" of harm sustained on the job because prostitutes "choose" to engage in a risky profession. (pp. 30 -33)

[ ]To compound this problem, the jurors were repeatedly told that Gladue was a "Native girl" or "Native woman". In particular, she was referred to as "Native" approximately 26 times throughout the trial by witnesses, defence counsel and Crown counsel. In one

instance, the witness was directly asked to describe Gladue's ethnicity. In other circumstances, witnesses introduced and used the term "Native" or "Native woman" as a descriptor of Gladue and defence counsel, and Crown counsel continued to use that descriptor while questioning the witness. [125] The defence argued there was no evidence before this Court to support the Interveners' submission that widespread racism against Aboriginal peoples was likely to negatively influence jurors.52 It suggested a commission of inquiry or parliamentary committee would be required to properly evaluate the Interveners' submission. We reject this argument. [126] Courts in this country have long recognized that the potential for racial prejudice against visible minorities in the justice system is a notorious social fact not capable of reasonable dispute:

[ ]But it was inadequate to counter the stigma and potential bias and prejudice that arose from the repeated references to Gladue as a "prostitute", "Native girl" and "Native woman". 55 Those references implicitly invited the jury to bring to the fact-finding process discriminatory beliefs or biases about the sexual availability of Indigenous women and especially those who engage in sexual activity for payment. What was at play here, given the way in which the evidence unfolded, was the intersection of assumptions based on gender (woman), race (Aboriginal) and class (sex trade worker).

[ ] Finally, even if it were determined that the commercial context of the sexual relationship between Barton and Gladue on the night she died was relevant for certain purposes, that would not require repeatedly labelling Gladue a prostitute, and still less a Native prostitute, any more than it would require labelling Barton a john.

SUPREME COURT OF CANADA

Dissenting Reasons: arguments for a complete retrial

> [1] The repeated instructions to the jury to consider Mr. Barton's testimony about the events as the basis for further findings of fact amplified the potential for the "twin myths" reasoning prohibited by s. 276(1). Indeed, the jury's portrait of Ms. Gladue was painted almost exclusively through Mr. Barton's testimony, which meant that there was a significant possibility that the jury's *entire* deliberations would have been based on fundamentally flawed — and prohibited — legal premises.

The potential for prejudicial reasoning was further exacerbated by the repeated description of Ms. Gladue as a "prostitute", and as a "Native", without any limiting instruction from the trial judge. Based on studies that found that "jurors were more likely to convict a defendant accused of raping a woman with a chaste reputation than an identical defendant charged with assaulting a prostitute", this Court in *Seaboyer* expressly warned against the use of the word "prostitute" because the use of this term is intrinsically linked to "twin myths" reasoning and can lead to substantial prejudice in the

> The undisputed biases against sex-trade workers and against Indigenous peoples can be "as invasive and elusive as they are corrosive"… because Ms. Gladue was in effect labelled a "Native prostitute", "the jury would believe she was even more likely to have consented to whatever Barton did and was even less worthy of the law's protection" These references introduced a risk that the jury's

reasoning might be tainted by conscious or unconscious racial prejudice or reliance on racist stereotypes.

[1] …that specific safeguards are required in jury trials to prevent systemic biases that can affect jury deliberations. As McLachlin J. observed in *Williams*, "the evidence of widespread bias against aboriginal people in the community raises a realistic potential of partiality" which creates the risk that the verdict "reflects not the evidence and the law, but juror preconceptions and prejudices"

[2] Acknowledging, as this Court has for the last two decades, that racial prejudice is "a social fact not capable of reasonable dispute" (*Spence*, at para. 5), is not an insult to the jury system, it is a wake-up call to trial judges to be acutely attentive to the undisputed reality of pervasive prejudice and to provide the jury instructions required by law. That means that in cases where this reality is relevant, especially in the context of sexual assault, juries need to be carefully instructed on how to approach the evidence with an open mind, and not allow their reasoning to be obstructed by subconscious stereotypes.

[3] Trial judges have an important role to play in instructing juries so that they can recognize and set aside racial and other biases, including those against Indigenous peoples and sex-trade workers. Not only did that not happen here, the *opposite* occurred: inflammatory terminology was frequent, and was gratuitously used without any corrective intervention by the trial judge.

[4] In summary, the trial judge's failure to apply the requirements in s. 276 created a significant risk that the evidence of Ms. Gladue's prior sexual conduct not only tainted the jury's perception of her character and conduct, but also fundamentally affected the factual foundation upon which their deliberations were based. This error permeated the entire trial and may have had a material bearing on the jury's deliberations, affecting their verdicts for both murder and manslaughter.

[5] When a trial with intimately connected issues, such as this one, is riddled with highly prejudicial testimony, it affects the very foundations of a jury's fact-finding function and decision making. The trial judge's error in permitting evidence of prior sexual activity to be admitted…was a fundamental error, warranting, on its own, a new trial on both murder and manslaughter.

APPENDIX II: Update

Manslaughter Verdict

On February 19, 2021, an Edmonton jury convicted Bradley Barton of manslaughter for causing the death of Cindy Ivy Gladue. This second trial ran for six weeks and the jury deliberated for eight hours in reaching their decision. The verdict was delivered, just four months shy of a decade after Cindy Gladue bled to death in a motel bathtub in 2011.

Restrictions Lifted

The verdict being delivered, all restrictions on publication and dissemination of this document are removed.

Conclusions Update

The verdict affects the conclusions on the first part of the study, which analyzed the language of the trial, using the framework developed by Coates and Wade (2007). As above, the criteria for minimizing the victim's resistance, and for pathologizing and blaming the victim were met, and were in fact an established pattern throughout. With the guilty verdict, the facts of the encounter are established and responsibility has been assigned. I can now state the language and context of the trial did in fact minimize and conceal the nature and extent of the violence. I can further state the perpetrator's responsibility was obscured and mitigated, and the victim was wrongly implicated as being culpable in her own demise.

Michael Linder, March 15, 2021