VAGINAS IN THE COURT ROOM

Considering the law and ethics of presenting vaginal tissue in open court

RE: *R v Barton*, 2015 ABQB 159

INTRODUCTION

On March 10, 2015, an Alberta Court made the decision to allow a deceased Indigenous woman's vaginal tissue into open court. One of the most recognizable victims in modern history, Ms. Cindy Gladue, was reduced to a piece of tissue in a truth-seeking process that did not include the truths of Indigenous groups, in hopes of providing justice. Members of the media, the victim's family, the jury, bailiff, and every other average Joe that came into the courtroom that day watched Ms. Gladue's dignity stripped away her most private area handled like an object in open court. Objectified, dehumanized, and raped as an aid to explanation for the jury, the image was projected onto a large screen at the front of the court room for all to see.

In the pursuit of justice, The Honourable Mr. Justice Robert A. Graesser granted the Crown's request to admit this vaginal tissue into evidence. Set with the task of upholding ethics of the profession, the integrity of the court and with the pretext of Canada's pursuit of reconciliation, Justice Grasser permitted the preserved tissue from Ms. Gladue's vaginal wall to be used to demonstrate the wound that violently ended her short life.

Indigenous people living in what is now Canada are not strangers to having their legal interests, dignity, children, and way of life taken away from them and reshaped by State actors. Indigenous women are even more accustomed to the violence perpetrated against them going unacknowledged and left without available resources to learn about spiritual healing. Often with disregard for the laws of Indigenous Nations, decisions have historically been and continue being made about Indigenous peoples, by non Indigenous peoples, without any consultation or consideration.

The ethical decisions made by the Crown and the judge in *R v Barton*[1] have resulted in more damage to reconciliation that it has good, in terms of seeking satisfaction for the victim and family. As was aptly said by The Globe and Mail: "this is a case that has critical implications for women's rights to bodily autonomy and also the rights of Indigenous women."[2] The 2017 Court of Appeal did not review the admission of this piece of evidence, and the issue has not been submitted by the parties for review at the October 11, 2018 hearing at of the Supreme Court of Canada.

This review of the trial court decision considers the ethical choices that were made by the Crown attorneys and the judge in the application to and ultimate admission of the vaginal tissue into evidence. The concept of consent and the *Victims Bill of Rights* will be reviewed before considering alternative options that were available to the court. Finally, the paramountcy of including Indigenous voices in decisions about Indigenous people will be discussed, and the need for more indigenous voices in the justice system will be set out.

THE DECISION TO ADMIT

The preservation of human dignity seems to have come to rely on the aspirational ethics of the prosecution. Lawyers and judges have responsibilities under national and provincial Codes of ethics "to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honorably and with integrity."[3] A lawyer must also

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[1] *R v Barton*, 2015 ABQB 159, para 65 [*Barton QB*].

[2] Topher Seguin, *Supreme Court to Hear Appeal of New-Trial Decision on Cindy Gladue Case*, online: The Globe and Mail <https://www.theglobeandmail.com/news/national/supreme-court-to-hear-appeal-of-new-trial-decision-in-cindy-gladue-case/article38247550/>.

[3] *Model Code of Professional Conduct*, 2014, Federation of Law Societies of Canada, para 2.1-1 [*Model Code*].

"encourage public respect for and try to improve the administration of justice".[4] Ethical decisions were made by the Crown who brought this matter before the court, and by the judge who ultimately admitted the tissue. Those ethical decisions were explored over the course of what is called *voir dire*.

A *voir dire* is defined, in Alberta[5], as "a 'trial within a trial'" held for the purpose of determining the admissibility of evidence".[6] A *voir dire* provides lawyers an opportunity present arguments as to why a certain piece of evidence should or should not be admitted into the truth-seeking process of the court. The judge is the final decision maker. In the context of a *voir dire*, there are several ethical decisions that are made. The first arises when a lawyer decides to proceed into a *voir dire* with hopes to admit a certain piece of evidence. The final decision is made when the judge accepts or rejects the admissibility of that evidence.

In this case, a *voir dire* was conducted to determine if the preserved pelvic region (vaginal tissue) of Ms. Cindy Gladue, who had at that point been deceased for nearly four years[7], should be admissible as a piece of evidence; meaning that as a piece of evidence that tissue would be permitted inside an open court room as an exhibit, and shown to the jury.[8] Incidentally, everyone else in the court room would also have the opportunity to see the show. The Crown attorneys, those prosecuting Mr. Barton, made the decision to submit Ms. Gladue's vagina into the *voir dire.* The Crown, in theory, made this decision to seek justice for the victim. The Crown had to make a decision to pursue that justice through retribution, or through justice with dignity. In this case, the Crown chose the former.

The most compelling argument of the Crown was that vaginal tissue "is not subject to any exclusionary rule of evidence, and its probative value exceeds any prejudicial effect".[9] The defence, those acting on behalf of Mr. Barton, opposed presenting the vagina to the jury, noting that photographs were adequate for the jury to understand the Crown's evidence, and brought forth issues of tissue preservation and continuity of the tissue.[10]

Dr. Dowling, the Doctor who performed Ms. Gladue's autopsy, gave evidence during the *voir dire* to the effect that the jury's ability to view the vagina was important to the understanding of his evidence.[11] Dr. Dowling indicated that "some of the photos were not as bright as he would like and the tissue itself showed certain aspects of the injury important to his evidence".[12]

In terms of Ms. Gladue's vaginal tissue, the judge made several observations, including that the photographs were of good quality, yet two dimensional; "the photos are graphic and unpleasant to view"; the physical vaginal tissue is less unpleasant to view than the photos; and that "the initial shock or revulsion subsided very quickly".[13]

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[4] *Ibid*, para 5.6-1.
[5] This case took place in Alberta, therefore the Alberta regulations reflect the relevant law.
[6] *R v Mason*, 2015 NLTD(G) 93.
[7] Ms. Gladue's vagina was preserved on 23 June 2011, while the *voir dire* took place on 25 February 2015: see *supra, Barton QB*, note 1*,* para 2.
[8] *Barton QB, supra,* note 1, para 1;3.
[9] *Ibid*, para 5.
[10] *Ibid*, para 7-9.
[11] *Ibid*, para 17.
[12] *Ibid*, para 17.
[13] *Ibid*, para 19.

In regards to Dr. Dowling, the judge observed that although "it was somewhat difficult to follow Dr. Dowling's descriptions and orientations of the photographs at times", he was essentially able to understand Dr. Dowling's observations and opinions.[14] Ultimately, Justice Graesser determined that "viewing the tissue and the manner in which it was used by Dr. Dowling… was easier to follow than his evidence using the autopsy photos".[15]

Although the judge observed, and Dr. Dowling acknowledged that evidence regarding the vaginal tissue could be delivered without the actual vaginal tissue, and based on photographs alone, Justice Graesser decided that he would allow the vaginal tissue to be presented into evidence at trial. The use of Ms. Gladue's vaginal tissue was done with a projector, to ensure Dr. Dowling's handling of the vagina was viewable throughout the courtroom[16] both during the *voir dire* and during the presentation of the tissue as permissible evidence.

EVIDENCE

In the *voir dire* written decision, the judge indicated that there is no Canadian case law applicable to admitting human tissues into court,[17] which led him to the finding that "there is no general exclusionary rule relating to the use of tissue at trial".[18] The judge made several findings of law during the *voir dire*. Some quotes of note include: "triers of fact should have access to as much relevant information as possible to assist them in determining the truth"[19]; "no minimum probative vale is required for evidence to be deemed relevant, and relevance does not involve considerations of probative value"[20]; and lastly that a 'haunting depiction' "can impair the ability of the jury to focus objectively on the issues in the case."[21] No reference was made to the interests of the bodily integrity of the victim, Ms. Gladue, her spirituality, how her community would respond to this display, or how the "haunting depiction" might affect or traumatize her family, or onlookers in the court room. Interests of the victim never seem to be discussed as a legitimate concern in the court process until after the decision has been made. The fair trial rights of victims, especially those of female victims, are rarely a concern.

Many of the references made when determining if the evidence should be admitted were concerning. Firstly, Justice Graesser indicated that "the absence of a precedent does not mean that it should not be done"[22]. He indicated that there is a discomfort in bringing a body part into the court room[23], but ultimately decided that compassion, privacy, and dignity were not outweighed by the marginal, if any, gains that would flow from the presentation of this tissue. Justice Graesser's inclination to feel discomfort likely developed from the knowledge that dignity of Ms.

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[14] *Ibid*, para 19.
[15] *Ibid*, para 19.
[16] *Ibid*, para 18.
[17] *Ibid*, para 20.
[18] *Ibid*, para 23.
[19] *Ibid*, para 25(29), citing: *R v Seaboyer*, 1991 CanLII 76 (SCC), as quoted in *R v Violette*, 2009 BCSC 421 (CanLII).
[20] *Ibid*, para 25(30), citing: *Re Truscott* 2006 CanLII 60337 (ONCA), as quoted in *R v Violette*, 2009 BCSC 421 (CanLII).
[21] *Ibid*, para 26(35), citing *R v Violette*, 2009 BCSC 421 (CanLII).
[22] *Ibid*, 52.
[23] *Ibid*, para 52.

Gladue would be violated, that respect for the dead would be violated, and that this kind of objectification would ultimately turn his court room into a side show.

It was not considered by Justice Graesser, in his written reasons, that body parts have never been allowed into the court room before could be because it is wholly unnecessary. This is a question of the true probative value of the tissue. A consideration not just if it gets admitted, but how. Pictures do the job just fine, and it is not necessary to desecrate a persons' remains in court.

The reasoning from the *voir dire* that the medical examiner was better able to describe what he was talking about when using the tissue is a poor argument and not worthy of in-depth analysis. Because the medical examiner is a poor presenter should not result in a waste of court resources,[24] the perpetuation of violence against women, and engagement in behaviour that ultimately acts as a disincentive for women wanting to come forward about violence in the future. If deceased tissue is allowed to be submitted into the court, then what is stopping the court from finding the probative value of mandating a living woman to display her scars on her body to the judge and jury while she is still alive? Where does this kind of thinking stop? This line of reasoning only leads to victimized women being brought into court to display their scars in real-d. If a medical examiner cannot do their job without the real tissue in their hands because of their poor skill as a presenter or photographer, it is the medical examiner that should be replaced, not the photographic evidence with real tissue.

Because the observations made by a medically trained individual were made from original tissue, does not mean that a jury requires that actual tissue to understand the case. The jury is not comprised of medical practitioners, and they do not require the same level of detail and hands on opportunity as a medical examiner to understand. A photograph is sufficient for a person with proper medical training to describe that photo to a jury, and for that jury to satisfactorily understand the evidence. There were other, less invasive and volatile ways of presenting the tissue evidence available to the court.

Justice Graesser identified that the tissue was "preserved in a way that allow[ed] it to be viewed in substantially the same manner as the tissue was during the autopsy"[25], however noted that it had been changed in colour and texture. There is no record in Justice Graesser's written reasons of his considering having the medical examiner retake photos of the preserved tissue to make observing the photos more bearable.

The presentation of evidence in the court room was done with the medical examiner and tissue behind a curtain[26] so that the jury would not unnecessarily see the physical tissue. Justice Graesser was obviously aware that the jury did not need to see the actual tissue, and placing the medical examiner behind a curtain so as to shield the jury from its view, in itself, indicated something shameful. The cover around the examiner did not cover the screen, which portrayed everything the examiner was doing at an amplified 3-meter pixilation to the entire court room. Ms. Gladue had no voice in that court room, but the medical examiner, the Crown and the judge spoke volumes by denying an Indigenous woman her dignity.

CONSENT AND ETHICS

[24] Including administration time and operational costs of logistics of having the tissue presented in court, such as the projector, screen, and curtains required in the court room.
[25] *Barton QB, supra,* note 1, para 1;3.
[26] *R v Barton,* 2017 ABCA 216, transcript at p. 1388.

R v Dyment[27] identified that "the concept of 'security of the person' surely extends to the protection of one's bodily substances and embraces an expectation of privacy about a bodily specimen taken for medical purposes".[28] That case considered blood taken from an unconscious male. The court found that the man had ownership over his blood. While ownership resonates as an inherently colonial concept, the decision to admit Ms. Gladue's vaginal tissue without consideration to the ownership rights of that tissue, specifically those of the deceased, the family, and the community, is unfortunate. The use of a deceased Indigenous woman's genitalia without consent or reasonable consideration juxtaposed next to a male whose blood was found to evoke privacy rights sends a strong social message about the use of Indigenous women's bodies, and the dignity of Indigenous women victims.

Consent was severely lacking in the taking and use of Ms. Gladue's vaginal tissue. Although Ms. Gladue, being deceased, would not be able to grant the consent for the use of her vaginal tissue, there are people that would have been able to provide consent for this invasion. Her estate, her mother, her next of kin, an elder, and her community should have been consulted and asked to provide insight and discuss consent in relation to Ms. Gladue's physical and spiritual self.

At no point during the *voir dire* was Ms. Gladue's family or spirituality considered. Your status as deceased should not release you from physical integrity and security. Because you are deceased, your body does not become the property of the State to objectify as seen fit, at the whim of a court. Consent should have been obtained from Ms. Gladie's next of kin and/or community.

R v Dyment elaborates that "the 'principles of fundamental justice' would require a third party to have consent or lawful authority before having access to an individual's bodily substances and medical records".[29] Why do we not have those same standards for dealing with our dead? While the medical examiner may have had lawful authority to remove, examine, and store Ms. Gladue's vaginal tissue, that authority surely should not extend to proprietary rights, or to granting consent on her behalf.

The decision to admit has produced an outcry against the justice system. Objectifying an Indigenous woman's body, calling her tissue a "specimen" and an "exhibit", further violating the body of a sex worker, and fostering the idea of "the cheapness of an aboriginal woman's life" are all factors, working, as a result of this case, to bring the justice system into disrepute.[30] The reality is that it just wasn't necessary to bring the tissue into court. Alternative options were available.

The *Model Code of Professional Conduct*[31] of the Federation of Law Societies requires that a "lawyer should never waive or abandon the client's legal rights… without the client's informed consent."[32] Ms. Gladue's rights, in this case, are akin to the public interest. Crown attorneys are required to represent the public interest. When the Crown decided to pursue admitting Ms. Gladue's vaginal tissue as evidence, they did not receive consent from any type of substitute decision maker on behalf of Ms. Gladue. The crown should never have considered this an

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[27] *R v Dyment*, 1984 CarswellPEI 2, para 10.
[28] *Ibid.*
[29] *Ibid*.
[30] Rosie Dimanno, *A Final Indignity for Cindy Gladue*, online: The Star <https://www.thestar.com/news/gta/2015/04/02/a-final-indignity-for-cindy-gladue-dimanno.html>.
[31] *Model Code*, *supra* note 3.
[32] *Ibid,* para 5.1-1[7]

acceptable avenue to seek justice. This decision violates the integrity of the *Code of Professional Conduct*.

The Truth and Reconciliation Commission[33] issued several Calls to Action, several pertaining to lawyers.[34] While the calls to action were published in the same year as Justice Graesser made this decision, the fundamental concepts had been discussed for years before its publication. One of those Calls to Action[35] calls for equity for Aboriginal people in the legal system. Maybe the laws of Indigenous nations and the ethics of reconciliation as a whole should be interwoven into the professional codes of conduct, and integrated into the truth-seeking process as a whole. Including a review of a decision to admit vaginal tissue into court, by a group of Indigenous legal professionals would include Indigenous laws and people in the conversation, and lead to better results.

VICTIMS BILL OF RIGHTS

Cindy Gladue was a victim from the beginning of her life until the end, and even in death her victimization was continued. Birthed into a colonial society, her victimization began when she was born indigenous into a society that, at its core[36], oppresses and racializes Indigenous women. A society that determines which women are Indian enough to be Indian[37]. Her victimization continued though the structures and systems[38] in place in Canada that systemically suppress Indigenous women and girls and ensure their socioeconomic status remains so low that there are few options to remove themselves from systematic oppression.

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 for a mortician with poor presentation skills.

The preamble of the *Victims Bill of Rights*[39] identifies that "victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity". In front of legal officers, a jury, observers she did not know, and most importantly her family, a slice of Ms. Gladue's vagina was brought into the court room and used to demonstrate

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[33] The Truth and Reconciliation Commission was a task force to research the Indian Residential Schools and systems in place in Canada and the impacts that those schools and systems had on the broad and Indigenous communities.

[34] Truth and Reconcilliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Winnipeg: Truth and Reconcilliation Commission of Canada, 2015) at Calls to Action 27, 28, 45(iv), 46(ii), 50, and 57.

[35] *Ibid* at 50.

[36] As enshrined in the Indian Act, a foundational document of the State of Canada's relationship with Indigenous peoples living in what is now Canada.

[37] Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur Général)*, 1st Sess, 42nd Parl, Statutes of Canada, 2017 (assented to 12 December 2017), RS, 2017, c I-5.

[38] Such as certain tax breaks only available on certain Indians living on reserves, high costs of goods on reserves, lack of social funding and programming, etc.

[39] *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2 [*Victims Bill*].

her rape on a three-meter screen.[40] Her actual, physical tissue was in the court room, displayed through a projector for an open court room to see, as a medical examiner explained and demonstrated her rape and what he determined to be the last moments of her life. Ms. Gladue's family sat in shock and watched a medical examiner rape their little girl in open court. No one warned them what was coming.

It seems unconscionable that the court justified this act. It was reported that the medical examiner "rolled up his sleeves, snapped on a pair of latex gloves and demonstrated his testimony"[41]. Nothing about that scenario demonstrated courtesy, compassion, respect, or dignity. That same article goes on to indicate that the museum at the Auschwitz former concentration camp in Poland does not allow body parts to be photographed to preserve the dignity of the victims.[42] If dignity can said to breached in Auschwitz by photographing the remains of the dead, what does that say about a justice system that allows a victims vaginal tissue to be raped and displayed on a three meter screen? It certainly doesn't say that it is a system that respects the dignity of Indigenous women and denounced violence against women.

The preamble the *Victims Bill of Rights* continues to indicate that "it is important that victims' rights be considered throughout the criminal justice system"[43]. The court is the main player of the criminal justice system. The court had the obligation to consider *Victims* rights, however there is no analysis of this foundational document contained in the *voir dire*. It appears that victim's rights were not considered. Perhaps Ms. Gladue was not considered a victim. Just another missing and murdered Indigenous woman.

The "consideration of the rights of victims of crime is in the interest of the proper administration of justice"[44]. By not considering the rights of a victim, the decision to allow such activity in court, has brought the administration of justice into disrepute. The *Victims Bill of Rights* requires that the court consider a victims security[45] and privacy[46], without acknowledgement to their status of alive or dead. These factors were blatantly ignored in the case of Ms. Gladue.

ALTERNATIVES

No matter how competent or serious a jury is[47], they should not be required to look vaginal tissue. Medical professionals, such as the coroner, are trained to observe human tissue, and draw conclusions based on their observations, experience, and years of medical training. The jury is not a group of highly skilled and trained individuals seeking to discover that which has not yet been determined. They are a group of lay people instructed on the nature of a piece of evidence, by experts, and are lead to possible conclusions based on the observations of trained professionals. It is wholly unnecessary for juries to be presented with physical evidence when there are photos available, or where photos could be made available.

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[40] Candace Ellitott, *'This was Demeaning': Body Part as Evidence in Cindy Gladue Murder Trial comes Under Fire*, online: National Post <http://nationalpost.com/news/canada/this-was-demeaning-body-part-as-evidence-in-cindy-gladue-murder-trial-comes-under-fire>.
[41] *Ibid.*
[42] *Ibid.*
[43] *Victims Bill, supra*, note 39 at preamble.
[44] *Ibid.*
[45] *Ibid,* s.9.
[46] *Ibid,* s.11.
[47] *Barton QB, supra,* note 1, para 46(18).

There were several alternatives to presenting the physical evidence to the court. The most obvious, which has already been touched on in the above analysis, is photographs. It was determined by Justice Graesser that the original photos were dark, and more disturbing to view than the tissue itself.[48] The *voir dire* did not consider the possibility of taking new photos of the preserved tissue. If the original photos were of poor quality this is really an issue of the medical examiners competence and ability to perform his job. The original photos were taken in 2011. The examiner had technology available to him to take adequate photos the first time, or to take new photos of the preserved tissue rather than using the tissue directly, in court.

There does not appear to have been anything prohibiting the court from ordering new photos of the preserved tissue to be taken and used in the court room. This would resolve the issue of unclear and dark photos, and allow the jury to observe the tissue without taking away the dignity of the victim.

In a similar vein, photo editing is also available to the court. One of the seemingly biggest issues with the original photographs was that they were too dark. Though photo editing of evidence is undesirable, there is a possibility for both parties to work together and come to an agreement whereby they photo could be digitally enhanced to provide greater light in the photograph, while still maintaining the overall integrity of the image, satisfying both the Crown and defence.

Presenting the tissue in court was not an ethical choice, and presenting that tissue in an open court was cause for even greater concern. Another alternative to open court is to conduct the review of evidence *in camera*[49]. Conducting an *in camera* review of the tissue evidence would have at least shown a thread of respect for Ms. Gladue, and not subject her family to witnessing her being raped again. The absolute least that the court could have done would have been to inform Ms. Gladue's family of the process to happen in the court room that day.

Punishing the individuals that commit crimes is a cornerstone of Canada's justice system to, and it is important to pursue the absolute truth of those crimes to ensure that an individual is adequately punished for the crime actually committed. Every avenue should be considered when engaging in the truth-seeking process, but that does not mean that every avenue considered should be engaged. One might consider that the need to punish the accused necessitates the indignity of the process, but ultimately, if there are avenues available to preserve one's dignity, pursuit of the less dignifying avenue should not be considered without the presence of extenuating circumstances.

Including Indigenous communities in the the conversation about how Indigenous bodies are treated is of utmost importance. The Court was aware that Ms. Gladue was an Indigenous woman. With this knowledge, the Court could have invited her family and elders from her home community to be consulted on presenting such delicate evidence. Should the community have been involved, they could have advised the court on spiritual protocols and the impact that entering such evidence would have on the community at large. Considering the opinion of the Indigenous community would have allowed the Court to have a sober second look at the issue before they permitted such evidence to be entered.

CONCLUSION

There were alternatives available to the court that would not have involved assaults to Ms. Gladue's dignity, and furtherance of the oppression of Indigenous women. The presentation of

[48] *Barton QB, supra,* note 1, para 46(18).
[49] *in camera* is a legal Latin term that describes proceeding in a private setting.

evidence could have been done in alternative ways that respected Ms. Gladue and ensured her dignity was upheld. It is disturbing that this needs to be indicated, but it was likely no accident that Ms. Cindy Gladue, an Indigenous woman, was the first individual to have her bodily tissues used as an exhibit in open court. The utter disrespect to her person and lack of consideration for her family reflects a much larger issue in Canadian society: that Indigenous women are objectified and dehumanized both in society, and in the operation of the colonizers justice system.

Cindy Gladue, another missing and murdered Indigenous woman, was violated under the care of the judge and the Crown counsel. Justice Graesser's opinion that "the initial shock or revulsion subsided very quickly"[50] further perpetuates the indignity that Indigenous women in Canada face, and sets a disgusting precedent. That precedent is part of the internalized racism ever present in Canada: that Indigenous women's bodies may initially be disturbing, but the feeling of discomfort is fleeting because no one really cares about their lives, their rights, or their dignity.

More Indigenous voices are needed in the justice system. Increasing Indigenous involvement could help aid justice system actors and players in difficult cases, such as this. Rethinking the operation of the justice system to include Indigenous voices will add a fresh new voice to reconciling the Truth and Reconciliation Commission's Calls to Action. Continuing to leave Indigenous voices out of the conversation ultimately does more damage to than good.

The Committee on the Elimination of All forms of Discrimination Against Women recently recommended that all member States "ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies".[51] The admission of this evidence into court is a display of gender based violence against women at work in Canada. With the issue of the presentation of Ms. Gladue's vagina in court not being raised in the Supreme Court appeal, this leaves us with the question: what are legal systems in Canada doing to protect Indigenous women and to ensure all forms of violence against women are eliminated?

[50] *Ibid*, para 19.

[51] *General Recommendation No. 35 on Gender Based Violence Against Women*, 2017 CEDAW/C/GC/35.