THE CANADIAN CRIMINAL (IN)JUSTICE SYSTEM: A CASE STUDY OF SYSTEMIC RACISM AND SEXISM IN A CRIMINAL TRIAL FOR THE DEATH OF AN INDIGENOUS WOMAN

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ABSTRACT

The social positions and living conditions of Indigenous peoples, particularly Indigenous women living in what is currently known as Canada, are now a significant concern among communities, academics, politicians, policymakers, and the public, after having long been personal and political concerns for Indigenous peoples. Indigenous women's social and living conditions, especially the disproportionate rates at which many are Survivors[1] of violence and victims of violence, have become a significant focus of public attention following the *National Inquiry into Missing and Murdered Indigenous Women and Girls* (NIMMIWG), officially launched in 2016 (official launch) and with the final report published in June 2019 (NIMMIWG, 2019). The final report documents how the failure of the state to investigate the murder and disappearances of Indigenous women and girls constitutes genocide (NIMMIWG, 2019, p. 6). The Prime Minister of Canada finally acknowledged in a speech in 2019 that "we accept the finding that this was genocide, and we will move forward to end this ongoing national tragedy" (The Globe and Mail, 2019).

Despite this recent state recognition of the magnitude of the violence against Indigenous women and girls and prior mobilization by these women's families and nations, additional international, national, and local attention is needed to understand the way that the criminal courts treat Indigenous women who engage in sex work and who are victims of fatal violence. Through the lens of Indigenous feminisms, this research is guided by the following research question: Do systemic racism and sexism exist and operate in a criminal trial involving an Indigenous woman

[1] I capitalize "Survivor" to acknowledge the agency, lived experience, resilience, and strength of individuals who have experienced trauma and violence. I take a person-centred approach and recognize that the term is more than a descriptive label.

who engaged in sex work and a White[2] man alleged to have committed the violent act (her murder)? To approach this question, this research explores the words used in court actors' oral arguments to refer to the Indigenous victim, which may reproduce deep-seated systemic racism and sexism. This study investigates whether the failure of court actors to challenge racism and sexism contributes to a history of victim-blaming and reinforces the idea that Indigenous women are sexually available and deserving of violence. This study also explores whether the criminal courts ignore, partially recognize, or fully recognize histories of residential schools and intergenerational trauma, poverty and homelessness, and the connection between sex work and victimization. Relying on both content and thematic analysis, this study explicitly analyzes the court transcripts of the oral arguments for the 2015 case *R. v. Barton,* involving an Indigenous woman engaged in sex work and who died as a result of violence (Cindy Gladue) and a White man alleged to have committed the act of violence that led to her death (Bradley Barton). This research concludes with recommendations to address the inaccurate representations of Indigenous women, specifically those engaged in sex work, in the criminal courts so that the criminal justice system may address the systemic genocidal violence against Indigenous women and communities.

Keywords: colonialism; decolonization; genocide; Indigenous; racism; systemic racism; reconciliation; sexism; systemic sexism; violence

[2] I capitalize the term "White" as I believe it is "important to call attention to White as a race to understand and give voice to how Whiteness functions in our social and political institutions and our communities. The "detachment of "White" as a proper noun allows White people to sit out of conversations about race and removes accountability from White people's and White institutions' involvement in racism" (Nguyễn & Pendleton, 2020). I intentionally capitalize "White" to invite all to reflect on Whiteness and how its survival is supported in implicit and explicit ways.

DEDICATION

To my mom, dad, and brother —

and to all those who supported me throughout this journey.

Thank you for your unwavering love, belief, and encouragement,

especially during the moments when I needed it the most.

Your strength continues to ground me, and your support carries me.

I am forever grateful.

ACKNOWLEDGEMENTS

I want to begin by acknowledging and honouring the lands I reside, play, and study on, as they are the traditional territories of many Indigenous nations. More specifically, I recognize:

> Many Indigenous Nations have longstanding relationships with the territories upon which York University campuses are located that precede the establishment of York University. York University acknowledges its presence on the traditional territory of many Indigenous Nations. The area known as Tkaronto has been care taken by the Anishinabek Nation, the Haudenosaunee Confederacy, and the Huron-Wendat. It is now home to many First Nation, Inuit and Métis communities. We acknowledge the current treaty holders, the Mississaugas of the Credit First Nation. This territory is subject of the Dish with One Spoon Wampum Belt Covenant, an agreement to peaceably share and care for the Great Lakes region. (York University, 2024)

I include this acknowledgement out of respect to the Indigenous peoples who have been and continue to be the Guardians of this land. I honour the essential contributions of Indigenous peoples to the past, the present, and the collective future. This recognition must extend beyond a simple statement, and my doctoral dissertation advances the important work of reconciliation and acknowledging historical and ongoing colonial harms.

I would like to thank all those who have supported me throughout this research and writing process. Although this process took much longer than I had initially intended, I am grateful for the time it has allowed me to grow as an individual and foster meaningful relationships along the way. While completing this research, I have had the opportunity to work alongside incredible organizations, colleagues, and communities that continuously contribute to meaningful reconciliation efforts. I would like to acknowledge the support and great love of my family and

friends, who have been by my side throughout life's joys and challenges. I am fortunate to have individuals who have continued to encourage me, and my work would not have been possible without their support.

I would also like to express my utmost gratitude to Cindy Gladue's family for allowing me to share their stories and Cindy Gladue's story. I am exceptionally grateful for the permission I received to disclose Cindy Gladue's identity in this dissertation.[3] I would like to thank all those who continue to fight for justice for Indigenous peoples and those we have lost.

[3] A copy of the letter sent to Cindy Gladue's family is included in Appendix A.

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LIST OF KEY CONCEPTS

This list of key concepts is designed to help readers understand the terms used frequently throughout this dissertation. I include this list at the beginning to provide definitions for concepts that inform this work.

Colonialism: Colonialism is "the attempted or actual imposition of policies, laws, mores, economies, cultures, or systems and institutions put in place by settler governments" (NIMMIWG, 2019, p. 77). Rooted in both racism and sexism, colonialism thus has political, legal, normative, economic, and cultural dimensions rooted in the ongoing assertion of colonial authority over Indigenous relationships with the land. At the same time, colonialism has an epistemological dimension related to ways of knowing that legitimate colonial occupation.

Decolonization: A political or social process designed to resist and undo colonization's multifaceted effects. The process of decolonizing aims to re-establish strong, modern Indigenous peoples, nations, and institutions grounded in traditional philosophies, knowledge systems, and values (NIMMIWG, 2019).

Genocide: Following MacDonald (2019), I use the term genocide "as an analytical tool to better make sense of Canada's past and aspects of its ongoing actions into the present" (p. 22). The Genocide Convention (1948) provides international criteria to define genocide, which includes any of the following acts committed to destroying (in part or whole) racial, religious, ethical, or national 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

The abuse that the NIMMIWG (2019) documents amounts to the race-based genocide of Indigenous peoples, including the targeted murder of Indigenous women, girls, and Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual (2SLGBTQQIA+) peoples (NIMMIWG, 2019). The NIMMIWG (2019) documents how systemic violence, combined with the failure to investigate these women's and girls' disappearances, constitutes genocide.

Indigenous: The term Indigenous includes all descendants of the original inhabitants throughout what is often referred to as Canada. Such a classification system collapses ongoing, salient political and cultural distinctions among more than one hundred Indigenous polities in Canada (Andersen & Walter, 2013). I use distinctions among First Nations, Métis, and Inuit, as well as the contemporary colonial classification system, when applicable for legal purposes in criminal courts.

Justice: A relational, layered approach to the term is taken throughout this work. While it engages with the Canadian criminal justice system, it also includes broader dimensions that are political, environmental, social, economic, and gender justice. Instead of limiting the term to a framework that is legal and institutional, I recognize that justice is influenced by structural conditions (including racism, sexism, colonialism, and patriarchy). Using the term this way provides an opportunity to analyze how legal structures can contribute to systemic inequities while also framing the issue in terms of collective responsibility, balance, and accountability.

Racism: I adopt Paradies, Harris, and Anderson's (2008) broad definition of racism as "avoidable and unfair actions that further disadvantage the disadvantaged or further advantage the

advantaged," rooted in the (biologically false) idea that humanity is divided into different "races" (p. 4). Racism is a complex, historically changing social construction that operates to preserve uneven distributions of disadvantage and advantage; I am particularly interested in anti-Indigenous racism, the idea that Indigenous peoples are racially (or in other variants culturally) inferior.

Systemic Racism: Also referred to as "institutional" or "structural" racism, systemic racism is preserved through Canada's institutions, structures, and societal systems in the "requirements, conditions, practices, policies or processes that maintain and reproduce avoidable and unfair inequalities across ethnic/racial groups" (Paradies et al., 2008, p. 4). Systemic racism exists through intentional efforts that maintain racialized inequality and the lack of action or responses to rectify such imbalances (Reading, 2013). Systemic racism is often produced and maintained through the isolation and social exclusion that restrict or reject economic, social, and political participation (Reading, 2013). Systemic racism is ingrained in the practices and policies of Canada's institutions, leading to the segregation or promotion of select groups in society based on race. Systemic racism also insinuates that "ideas of White superiority are captured in everyday thinking at a systems-level: taking in the big picture of how society operates, rather than looking at one-on-one interactions. These systems can include laws, regulations, and unquestioned social systems" (O'Dowd, 2020, p. 1).

Reconciliation: I adopt the Truth and Reconciliation Commission's (TRC) (2015) definition of reconciliation as the process of "establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country" (p. 6). Reconciliation is creating and preserving an equally respectful connection between Indigenous and non-Indigenous peoples in a reconfigured Canada. Truth and reconciliation are not merely concepts or a checklist. It is a living process that requires care, honesty, and responsibility. Truth must come

first, through acknowledging the ongoing impacts of colonization, residential schools, child welfare systems, land dispossession, and systemic violence. These are not distant histories; they continue to shape the lives of Indigenous peoples, families, and communities today.

It is important to understand reconciliation critically, as many Indigenous scholars argue that it does not signify the end of colonialism. When reconciliation emphasizes symbolic recognition without dismantling colonial structures, redistributing power, or supporting the return of Indigenous lands, it can function as a continuation of settler colonialism (Coulthard, 2014; Tuck & Yang, 2012). Through the language of inclusion, recognition, and repair, reconciliation may reinforce rather than transform colonial relations, reproducing the very systems it seeks to address. Reconciliation cannot happen without listening to Indigenous truths, including pain, anger, grief, resilience, and survival. It is relational work, rooted in how people show up every day. I see reconciliation in how institutions make decisions, how policies are shaped, how resources are distributed, and whether Indigenous knowledges are truly valued or sidelined. It asks non-Indigenous people to move beyond guilt and toward accountability, to recognize their place within systems that benefit them, and to stay committed to learning and unlearning over time. In this dissertation, reconciliation is not understood as something that can be completed or claimed; it must be practiced and sustained. Ultimately, truth and reconciliation mean creating conditions where Indigenous peoples can live with dignity, self-determination, and cultural continuity. It means honouring Indigenous ways of knowing, being, and doing, while recognizing that healing looks different for each person, family, and community. Accordingly, this work is about responsibility and humility, and about repairing relationships in ways that are led by Indigenous voices and grounded in care.

Sexism: Sexism encompasses "sexist attitudes or ideology, including beliefs, theories, and ideas that hold one group (typically men) to be deservedly superior to the other (typically women), and that justify oppressing members of the other group based on their sex or gender" (Napikoski, 2019, p. 1). Māori scholar Linda Tuhiwai Smith notes that, like colonialism and racism, sexism operates to represent, objectify, and describe Indigenous women through what is recognized as the process of "othering" (Bourassa, McKay-McNabb & Hampton, 2005, p. 24).

Systemic Sexism: I accept Feagin and Ducey's (2017) definition of systemic sexism as perpetuating discrimination and oppression based on the existing disparities between women and men. Whether or not this process occurs with conscious intent, the differences between women and men are reinforced by policies, rules, practices, and laws that may appear neutral on the surface but function to keep women at a disadvantage (Feagin & Ducey, 2017). This systemic sexism operates in Canadian criminal courts to "keep elite White men in power and thus, [is a part of the] subsystems of the elite-White-male-dominance system" (Feagin & Ducey, 2017, p. 13).

Violence: As described in the final report of the NIMMIWG (2019), violence includes the following forms of abuse: sexual (fondling, rape, unwelcome sexual comments); physical (hitting, murder, choking); psychological (social isolation, stalking, threats); emotional (humiliation, jealousy, name-calling); cultural (violence in the name of tradition, religion, or culture); spiritual (demeaning one's spirituality or religion, prohibiting religious practices); verbal (lying, degrading, yelling); neglect (failing to meet basic needs); and financial (destroying personal property, denying access to money) (NIMMIWG, 2019, p. 77).

“The woman is the foundation on which Nations are built. She is the heart of her Nation.”

- Art Solomon, 1990

PREFACE

This research aims to contribute to the reconciliation process by creating awareness of Canada's colonial past and ways in which violent systemic racism and sexism continue to impact Indigenous women through the criminal justice system, namely the courts. I hope that my scholarship acts as a meaningful contribution to this path to reconciliation through my close examination of the ways that the defence and crown counsel, the accused, the judge, and witnesses in criminal courts participate in the ongoing dehumanization and victim-blaming of Indigenous women. I hope that spaces continue to exist not only for Indigenous women's resistance but also for their self-determining futures.

Self-Reflection and Positionality

I recognize and appreciate the complexity of my identity and positionality on this topic, as I am of maternal and paternal Mi'kmaq and mixed European ancestry. I am honoured to be a member of the Newfoundland People's Alliance (NIPA), an affiliate of the Congress of Aboriginal Peoples. I am grateful for this dissertation as an opportunity to acknowledge my heritage on both sides of my family. Rejecting the colonial erasure of Indigenous kinship, I would like to recognize all my ancestors. I learned more about my family's history through the stories of Mattie Mitchell (June 1846–1921). Born in Halls Bay, Newfoundland, Mattie Mitchell is recognized as a Mi'kmaq chieftain, explorer, prospector, guide, and contributor to establishing Newfoundland's economy. I acknowledge my connection to all my ancestors, as I feel your presence daily. While I have always known of my paternal Mi'kmaq roots, I have recently learned of my maternal Mi'kmaq roots (Newfoundland). I am on a path of learning more about my maternal ancestors and their stories. When speaking with my maternal grandfather, he told me his father hid their Mi'kmaq identity out of shame and guilt. As a child, my grandfather was raised to ignore this part of his being and to

entirely forget that he was Indigenous so that he might have a "better life." This story is like far too many and is an example of the desire to erase Indigenous identity and the complexities surrounding it. When I was young, a teacher learned of my Indigenous ancestry and told my classmates that I was more likely to become addicted to alcohol. At the time, I could not understand why someone would make such a statement. That experience prompted me to question how stereotypes about Indigenous peoples become normalized and ultimately inspired my commitment to better understanding the relationship between Indigenous peoples and the Canadian state. I refuse to ignore my family's histories, stories, identities, and connections. I embrace all that I am, all that we are, and all our relations. My analytical lens is informed by the collective contributions of Indigenous feminist scholars, including Emma LaRocque, Kim Anderson, Bonita Lawrence, Joyce Green, Sarah Hunt, Lee Maracle, and Cheryl Suzack. While each offers distinct perspectives, their collective scholarship has shaped my understanding of how colonialism, racism, sexism, representation, and Indigenous resurgence intersect within Canadian institutions and informed the analysis presented throughout this dissertation.

Stories of Indigenous Women

This dissertation focuses on two interrelated themes: systemic racism and systemic sexism. It explores how they are intertwined within Canada's criminal courts, drawing upon transcripts from a single case involving an Indigenous woman, Cindy Gladue, who died as a result of violence inflicted by a White settler man. As Strega and Brown (2015) suggest, telling this story means asking what will be shared, with whom, for what reason, and with what intentions. Except briefly where necessary, this dissertation is not primarily the story of Cindy Gladue; rather, it is the story of how racist and sexist colonial criminal courts produce legal meaning. I share this story of the colonial courts with the scholarly world, hoping to raise awareness of the ongoing injustices it

perpetuates. I intend to shed light on how racism and sexism are produced and reproduced within Canadian criminal trials in ways consistent with the genocide documented by the NIMMIWG in Canada. I use a single court case to describe and analyze how Indigenous women who are victims of violence are portrayed in the colonial criminal justice system.

Finally, I would like to emphasize that Indigenous peoples have always resisted colonial violence and injustices. Bridget Tolley, who is Algonquin from Kitigan Zibi Anishinabeg in Quebec, observes that "it has been more than 519 years that our women are still resisting colonial violence against us, our people, our nation, and our land. It is the longest social movement in North America" (Indian Country Today Media Network, 2012). Such resistance must be taken seriously and supported if reconciliation and the development of new, sustainable ways to coexist compassionately on this planet are to become a reality.

Bringing Together Personal and State Stories

The inspiration for this research initially stemmed from my determination to inform non-Indigenous peoples about the unjust relationships between the Canadian state and Indigenous populations across Turtle Island. Alongside recognizing my privileges as descended from Europeans whose ancestors were settlers and as someone continuing to live on Indigenous lands, learning more about my Mi'kmaq ancestry has strengthened my commitment to expose the truths of Canada's discriminatory criminal justice system, with a particular focus on the criminal courts. I view this as contributing to reconciliation by establishing and discussing this truth about the Canadian justice system.

In this, I agree with Māori scholar Linda Tuhiwai Smith (2008), in her book *Decolonizing Methodologies*, when she writes that "research is not an innocent or distant academic exercise, but an activity that has something at stake and that occurs in a set of political and social conditions"

(p. 5). I am determined to use my research to shed light on the unjust conditions that continue to persist. To those ends, this dissertation has allowed me to make sense of (some of) the sources of economic, ideological, and political oppression and social disparities experienced by Indigenous women compared to White women in Canada.

CHAPTER ONE: INTRODUCTION

Indigenous peoples' social positions and living conditions, specifically Indigenous women, have received increasing attention as an area of interest among academics, politicians, policymakers, and the public. It is increasingly understood that Indigenous women's unique experiences are influenced by the systemic racism and sexism that pervade Canadian society and its institutions (Acoose, 1992; Audette et al., 2019; Green, 2007; Monture-Angus, 1995; Razack, 2000). However, there are conflicting perceptions of the root causes, degrees, and scope of systemic racism and sexism that impact Indigenous women today. There is a need to explore how systemic racism and sexism within Canadian criminal courts are connected to the continued denial of justice for Indigenous women who have died from violence.

While this research is not a critique or analysis of the NIMMIWG (2019) itself, I reference it in this chapter to acknowledge the existing national attention to the significance of systemic racism and sexism in the disappearance of Indigenous women and girls in Canada, paying particular attention to how systemic colonial racism and sexism operate in criminal courts. The dissertation examines how systemic racism and sexism operate in a case involving an Indigenous woman by specifically analyzing how words used in court actors' oral arguments throughout the entire trial reproduce deep-seated systemic racism and sexism against Indigenous women and girls.

Background to the Study

In 2019, the final report of the NIMMIWG (2019) was released, exposing the ongoing genocidal violence against some of the most vulnerable populations in Canada, demanding immediate attention and remedies (Audette et al., 2019). The urgency of this issue is profound. Indigenous women, girls, and 2SLGBTQQIA+ peoples in Canada have been documenting and resisting violence for decades (Beads & Kuokkanen, 2005; Interim Report of NIMMIWG, 2017;

LaRocque, 1994). However, some have only recently gained broader public attention (Anderson, Campbell, & Belcourt, 2018).

On a provincial level, instances of violence have been documented in testimonies like the *Aboriginal Justice Implementation Commission's Aboriginal Justice Inquiry* (1991). Testimonies from government organizations have also revealed violence, including Amnesty International's *Stolen Sisters* (2004) and the Native Women's Association of Canada's *Voices of Our Sisters in Spirit* (education, research, and policy initiatives) from 2009 (Audette et al., 2019). What has long been clear to Indigenous women and those who care for them is now apparent to a broader, attentive public: the scope of violence against Indigenous women and girls is extremely high.

As the NIMMIWG (2019) observes, "there are no national data sources regarding the number of missing person reports filed each year, the number of cases resolved or the percentage that remain outstanding" and consequently, "[t]his makes it virtually impossible to compare figures for Indigenous and non-Indigenous women" (NWAC, 2010, p. 4). The lack of a comprehensive national data source is a significant obstacle in understanding the full extent of the issue. Over the last decade and a half, estimates of the numbers of Missing and Murdered Indigenous Women and Girls (MMIWG) have been revised upward. In 2010, there were 582 confirmed MMIWG cases in Canada over a 20-year period (Audette et al., 2019; NWAC, 2010). Three years later, doctoral student Maryanne Pearce drew on various sources to show that 824 Indigenous women and girls were missing or murdered. Pearce's estimates pushed the Royal Canadian Mounted Police (RCMP) to conduct their review of homicides and disappearances of Indigenous women and girls, which found an alarming 1,181 cases between 1980 and 2012 (Audette et al., 2019, p. 54). The RCMP's review also showed that despite comprising only 4% of the population of women

throughout the country, Indigenous women made up approximately 16% of homicides of women between 1980 and 2012 (Audette et al., 2019; RCMP, 2013).

Police-reported statistics may not always be accurate, as some homicide cases involving Indigenous women and girls may be mistakenly labelled as accidental deaths. This lack of thorough and appropriate investigation has led to concerns about how often the deaths of Indigenous women and girls go uninvestigated. This is influenced by the events where Canadian police do not routinely record the identification of Indigenous crime victims. In 2021, the RCMP released a report titled *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQIA+ People*. This report represents the first national effort by Canadian authorities to count the number of First Nations, Inuit, and Métis women and girls who have been murdered or reported missing. However, it is not a substitute for a comprehensive *National Inquiry*, which is urgently needed. As Amnesty International (2021) states, "Unfortunately, in the hands of some government officials and media commentators, the new RCMP statistics have become, not a source of clarity and a resource for action, but an excuse for misrepresenting the reality of Indigenous women's lives and an excuse for continued inaction." The RCMP report does not provide all the information that is required to understand the violence against Indigenous women better and does not take the place of a *National Inquiry* (Amnesty International, 2021). In particular, the report does not represent the perspectives of impacted families and communities (Amnesty International, 2021). Furthermore, although the RCMP study provides a statistical overview of MMIWG, it contains significant omissions that warrant attention. The RCMP report only includes homicide cases when the first investigating police force has determined that a murder has occurred, and the report leaves out suspicious and unexplained deaths (Amnesty International, 2021).

According to Statistics Canada, 384 out of 610 homicides in 2009 did not include a police notation indicating whether the victims were Indigenous or non-Indigenous (Amnesty International, 2021). Because police have not received adequate training about the need for precise identification and how it is to be determined, some crime victims are mistakenly classified as non-Indigenous (Amnesty International, 2021). The RCMP (2021) report acknowledges that the process used by authorities to determine Indigenous identity is unreliable. Additionally, the RCMP (2021) report makes no distinction between women and girls of First Nations, Inuit, and Métis identity. As a result, it does not indicate whether the homicide rate varies or remains the same for distinct groups. Furthermore, information is not shared on how many women and girls had previously turned to the police or other service providers for assistance or protection, let alone what kind of support they received. Additionally, there is no specification for the proportion of Indigenous and non-Indigenous perpetrators involved in the crimes committed against Indigenous women and girls.

To combat these entrenched patterns of violence, Michèle Audette (from the Innu community of Uashat mak Mani-Utenam in Quebec and commissioner of the NIMMIWG) claims that "a risk of such magnitude requires us all to take responsibility, to identify the issue and to take strong measures to address this situation, which is rooted in Canada's historical and political context" (Audette et al., 2019, p. 7). This context includes the legacy of colonialism, the imposition of the *Indian Act*, and the residential school system (RSS), all of which have contributed to the marginalization and vulnerability of Indigenous women. Understanding this context is significant because only when there is universal acceptance and consideration of the realities of current and historical injustices, discrimination, systemic racism, systemic sexism, and "that not all people are allowed access to opportunities on equal measure, will we ever have a hope to correct historical,

long-standing, and ongoing injustice" (Audette et al., 2019, p. 560). James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, claims that the alarming rates of MMIWG present an "epidemic" in need of urgent attention (Audette et al., 2019, p. 55). This epidemic of violence is connected to the lack of affirmation or recognition by colonial systems and courts for Indigenous women and their meaningful place within society (Audette et al., 2019). The truths uncovered in the most recent *National Inquiry* foster a deeper understanding of the root causes of violence, its effects, and potential solutions to address this crisis. Furthermore, the national inquiry documents Indigenous and human rights violations that "amount to nothing less than the deliberate, often covert campaign of genocide against Indigenous women, girls, and 2SLGBTQQIA people" (Audette et al., 2019, p. 5).

Problem Statement

The pressing problem of systemic racism, sexism, and the denial of justice for Indigenous women has only recently entered the broader public consciousness as a consequence of hard-fought struggles and dialogue led by Indigenous women (e.g., Acoose, 1992; Anderson, 2001; Armstrong, 2007; Brant, 1989; Campbell, 1973; Cuthland, 1992; Green, 2007; Kuokkanen, 2012; LaRocque, 1994; Lawrence, 2008; Maracle, 1996; Slipperjack, 2015; St. Denis, 2007). This research also recognizes that the general population cared little about the violent relationship between Indigenous women and the colonial state until the MMIWG movement raised awareness of this issue following earlier struggles of Indigenous women (e.g., LaRocque, 1994). There is now a substantial body of research on the violence against Indigenous women across the country, including research by national and international policy groups (Amnesty International, 2004; Amnesty International, 2009; Canada, 2008; Canadian Council on Social Development and NWAC, 1991; NWAC, 2009; Pauktuutit Inuit Women of Canada, 2006). However, this is not the

end of the road. Further international, national, and local attention, as well as ongoing research, remain necessary for fully understanding and addressing the issue.

It is also important to recognize the oppressive historical and contemporary contexts in which many Indigenous women live, in which they are subject, even after their deaths, to dehumanizing discourses. Given the violence to which Indigenous women and Indigenous MMIWG are subjected, special care must be taken to ensure that all evidence and information shared within the courts is presented in a manner that promotes the human dignity of the victims. As Métis scholar Kim Anderson (2017) notes, Canadians must be "prepared to have open, transparent conversations about the harsh realities of Indigenous women and girls' lives" (p. 16). Despite this important, relatively new focus on addressing the violence against Indigenous women and girls, there remains a lack of information available on the unique cases of mistreatment within the Canadian criminal courts against Indigenous women who engage in sex work and are victims of fatal violence.

Purpose of the Study

This research contributes to scholarly and broader public conversations on this complex, sensitive, and urgent concern. The goal is to investigate how systemic racism and sexism exist in Canada's criminal courts when Indigenous women are victims of violence through an analysis of a single case. More specifically, this study examines the discourse used by defence and crown counsel, the accused, the judge, and witnesses when referring to an Indigenous woman who died as a result of violence and considers how that discourse may reproduce or challenge systemic racism and sexism. This study investigates the possibility that indifference or hostility by a range of court actors contributes to a history of victim-blaming and reinforces the idea that Indigenous women are sexually available and deserving of violence. This study investigates the degree to

which the criminal courts ignore, partially recognize, or fully recognize histories of residential schools and intergenerational trauma, poverty, and homelessness and the connection between sex work and sexual assault. I acknowledge that I cannot offer a comprehensive analysis of the phenomenon of MMIWG in Canada, primarily because I focus on a single case with its inherent specificities. While there are limitations of looking at a single case, there is also significant insight to be gained from the level of detail explored within this case.

This research does not claim that specific statements made by court actors directly lead to specific legal outcomes. Instead, it demonstrates that discourse shapes the interpretive conditions through which credibility is assessed, evidence is understood, and legal judgments become possible within the courtroom. Methodologically, this research combines content (quantitative) and thematic (qualitative) analyses of criminal trial transcripts. This mixed-methods approach enables simultaneous examination of patterns of frequency and meaning. The empirical contribution lies not merely in documenting the presence of racist and sexist representations, but in demonstrating how they operate through courtroom discourse. Indigenous feminists have argued that ongoing colonial violence must be considered when examining violence against Indigenous women. Theoretically, this dissertation builds on this understanding by analyzing what happens when violence enters the courtroom. I extend the application of Indigenous feminisms to the study of courtroom discourse by treating legal meaning itself as a site where systemic racism and sexism may operate.

To my knowledge, this is one of the most comprehensive transcript-based analyses of the *R. v. Barton* (2015) trial, employing a mixed-methods approach informed by Indigenous feminisms. This dissertation argues that colonial power operates not only through legal outcomes but also through the production of legal meaning. By examining how courtroom discourse

constructs credibility, victimhood, and recognition, this study demonstrates that legal meaning itself functions as a site through which systemic racism and sexism may be reproduced or challenged. This work belongs within the Department of Gender, Feminist, and Women's Studies because it analyzes how race, gender, colonialism, and power intersect to shape the representation, credibility, and treatment of Indigenous women in a criminal trial.

The Selected Case Study

Cindy Gladue died on June 22, 2011, "after being subjected to fatal sexual violence. Her cause of death was blood loss from an 11-cm vaginal laceration" (Chen, 2021). Cindy Gladue was found deceased in an Edmonton hotel room after being with Bradley Barton (CBC, 2022). The first trial for the death of Cindy Gladue began on February 17, 2015, and concluded on March 18, 2015, when a jury acquitted Bradley Barton of first-degree murder and manslaughter (CBC, 2022). More specifically, "the jury accepted the defence argument that Ms. Gladue had consented to 'rough sex'" (Women's Legal Education and Action Fund, 2021). Bradley Barton's acquittal was overturned, and the Alberta Court of Appeal ordered a new trial in June 2017 (CBC, 2022). A second trial took place with a 12-member jury in the Court of Queen's Bench, which led to the conviction of Bradley Barton for manslaughter in February 2021 (Stewart, 2021).

The court transcripts analyzed for this study were from the 2015 *R.v Barton* trial, presented in the Court of Queen's Bench of Alberta, Judicial Centre of Edmonton. I relied on court transcripts as the focus of analysis to examine the systemic racism and sexism present throughout the entire case (Balfour, 2012; Murdocca, 2013). These 2015 court transcripts comprised the hearings that took place in Edmonton, Alberta, on the following dates:

- February 17, 2015, to February 20, 2015
- February 23, 2015, to February 27, 2015

- March 2, 2015, to March 6, 2015
- March 9, 2015, to March 11, 2015
- March 13, 2015
- March 16, 2015, to March 18, 2015

Transcript Management Services prepared the transcripts in Edmonton, totalling 1,812 pages and constituting the official public record of the court proceedings.

A wide range of exhibits were presented before the court (e.g., Exhibit A: Chart Entitled Stages of Acute Alcohol Influence and Intoxication; Exhibit B: Expert Report of [the doctor]; Exhibit C: cellphone bill; Exhibit D: List of calls for a cellphone; and Exhibit E: Series of still photographs). Of the exhibits, I found the most disturbing to be the submission of Cindy Gladue's pelvic tissue and the argument made by the crown that this was "clearly the best evidence" (R. v. Barton, 2015, p. 501). The selection of this case is grounded in its historical and legal significance as the first case in Canadian legal history where preserved pelvic tissue was brought before the court as evidence. The case of Cindy Gladue is not an isolated occurrence; rather, it reflects a pattern of objectifying and exposing racialized women. An example of this is the case of Saartje (Sara) Baartman (which will be discussed in greater detail), which represents racial and colonial hierarchies that are reinforced through a woman's body being displayed and studied. The case of Cindy Gladue can be situated in a long history of colonial and racialized treatment of the bodies of Indigenous women, informing legal practices.

Significance of the Study

Pursuing this study is connected to recognizing the NIMMIWG's (2019) advocacy on behalf of Indigenous women and girls across Turtle Island. Although not without controversy, the NIMMIWG (2019) supported Indigenous women and girls in its analysis of the Supreme Court of

Canada case of *R. v. Barton* (2015). Some families were critical of the *National Inquiry*, arguing that inadequate support was available for families and women who recounted challenging events (CBC, 2017). Some suggest that "all the direction should be coming from families first… They should be putting families ahead of anyone and anything else" (CBC, 2017). A coalition of MMIWG families is calling for an overhaul of the *NIMMIWG*, arguing that the "colonial construct does not work" and will not work "until we develop and rebuild the structure to include ceremony, languages and medicine" (CBC, 2017). It is important to note that not all families of MMIWG across Turtle Island believe that resetting the NIMMIWG is necessary.

During its intervention in the trial process, the NIMMIWG (2019) argued that *R. v. Barton* (2015) is symbolic of how Indigenous women are perceived as "less believable and less worthy victims than non-Indigenous women and that justice does not serve Indigenous women" (Audette et al., 2019, p. 73). In its examination of the criminal court's failure to consider the high victimization rates of Indigenous women and girls, the NIMMIWG (2019) claims that pervasive discrimination against Indigenous women and girls thrives within criminal courts and that there is a need to take "judicial notice of such bias against Indigenous women complainants" (p. 73). Furthermore, the NIMMIWG (2019) claims that the "indifference by all actors in the court, who often referred to Cindy as a 'native prostitute' instead of by her name, may have led to the reinforcing discriminatory beliefs, [and] misconceptions… about the sexual availability of Indigenous women and specifically, Cindy Gladue" (p. 73). *R. v. Barton* (2015) represents the first instance that a public inquiry pursued "intervener status" at the Supreme Court of Canada and played a role in revealing the social crisis that continues to impact Indigenous women, girls, and 2SLGBTQQIA+ peoples (Audette et al., 2019). This case encapsulates the need to call attention

to issues that profoundly impact this population across Turtle Island (including Survivors and the families of victims of violence).

This dissertation investigates what can happen when Canadian criminal courts encounter Indigenous women who are victims by focusing on a single trial. I write with a similar understanding shared by the authors of the NIMMIWG (2019); that is, the judicial system reflects a "White Canada" unwilling to understand and commit seriously to ending this violence and securing legal justice for Indigenous women (Henderson, 2008). When specifically approaching systemic sexism, I consider the stereotypes and discrimination connected to gender and sex work (Acoose, 2016; LaRocque, 1994; Good, 2018, p. 96) and recognize that Indigenous women endure "negative ideological constructions of Indigenous girlhood and womanhood" (Coburn & LaRocque, 2020, p. 111). I seek to grasp the specifics of this individual case while gesturing to much broader processes of racist and sexist colonial violence to which many Indigenous women are subject.

Theoretical Framework

This theoretical framework begins with the question: What are Indigenous feminisms? It is important to note that there is no single answer to this question, as colonialism has resulted in complex relationships between Indigenous women and feminism. I first acknowledge LaRocque's (2017) argument that "feminism, then, does not belong to any particular group, and those who understand and practice the social idea of ending gender inequality and injustice are feminist" (p. 127). A single definition of Indigenous feminism is unreasonable, as conditions and lived experiences differ immensely in Indigenous communities with unique cultural practices and histories and in colonized societies, where patriarchy governs (Suzack, Huhndorf, Perreault, & Barman, 2010, p. 2). At the same time, as Lisa Sunseri, from the Oneida Nation of the Thames,

remarks, whatever their differences, Indigenous feminisms are committed to decolonized nations where Indigenous women are included, respected, and have control over their bodies and lives (Sunseri, 2011). When deliberating organizing concepts of Indigenous feminisms, it is evident that one of the main objectives is to restore Indigenous cultures and traditions (Phillips, 2012), but to do so in ways that respect women. Therefore, I draw upon Indigenous feminisms to recognize the specificities and diversities of Indigenous women's experiences (across space and time), including commonalities, differences, and shifting circumstances (Suzack et al., 2010).

As a woman-centred approach, Indigenous feminisms attend to women-specific issues and the wellness of Indigenous communities (Salleh, 1997). Indigenous feminisms differ from other women-centred methods because of their connection to nationhood, sovereignty, and decolonization (Phillips, 2012). According to Huhndorf and Suzack (2010), "Although presumed to fall within normative definitions of women of colour and postcolonial feminism, Indigenous feminisms remain an important site of gender struggle that engages the crucial issues of cultural identity, nationalism, and decolonization particular to Indigenous contexts" (p. 1-2). The most significant social issues that emerge for Indigenous women include (but are not limited to) treaty rights, political incarceration, education, healthcare, and sterilization (Mihesuah, 2003). When exploring the impacts of colonial structures and systems on Indigenous women, it is essential to recognize that Indigenous women differ in moral values, social values, and cultural ideologies (Mihesuah, 2003). As Joyce Green (2017), a feminist writer of English, Ktunaxa, and Cree Scottish Métis descent, writes:

> Indigenous feminists raise issues ranging from colonialism, racism and sexism, sexuality, environmental integrity, community integrity and infrastructure, to identity, violence against women and children, constitutional and institutional change, and political

> liberation. Indigenous feminists illuminate issues that, but for their voices, would not be raised at all. (p. 17)[4]

Indigenous women bring unique perspectives on racism, sexism, and colonialism, as well as the challenges, histories, and civilizations of their communities (Green, 2017; Coburn & LaRocque, 2020, p. 101). It is vital to understand that these voices represent "their diverse realities and theoretical and political commitments" (Coburn & LaRocque, 2020, p. 102). However, it is not enough to just acknowledge these distinct realities; we must actively create spaces for diverse voices and ensure appropriate access to resources and support.

At the heart of Indigenous feminisms lie decolonization, the process of removing colonial belief systems from the values and cultures of Indigenous peoples. For many Indigenous feminists, decolonization means confronting oppressive colonial norms that affect Indigenous peoples and their way of life (Phillips, 2012). This intricate process is a cornerstone of Indigenous feminisms, encouraging Indigenous peoples to reevaluate pre-colonial belief systems, discard patriarchal elements within these traditions, and adapt them into contemporary approaches that cater to the unique needs of modern Indigenous women (Phillips, 2012).

Within a Canadian context, Indigenous feminisms can explore how colonial practices (e.g., social practices, legislation) have affected Indigenous women. Despite these challenges, Indigenous women have shown remarkable resilience. More specifically, this framework requires attention to the racialization of poverty, the RSS, systematic oppression, and the child welfare

[4] I rely on the use of longer block quotes throughout this dissertation to share others' voices. I believe that in many cases it is important to present the original text in its entirety to accurately represent the original wording, maintaining the integrity of the source material. I include longer block quotes in hopes of demonstrating the depth and breadth of the research and to illustrate the engagement with primary sources. I believe it is important to consider and highlight multiple perspectives and give them the prominence they deserve.

system (Haig-Brown, 1988; Smith, 2005). Canadian legislation continues to discriminate against Indigenous women based on marital status, gender, and race (along with other factors). Infamously, discrimination is found in the patriarchal 1951 *Indian Act* provisions (but this only includes those deemed to be "Status," so the Métis were not included).

I apply Indigenous feminisms to recognize the struggles of Indigenous women across various institutions, policies, and systems imposed by colonialism (Anderson, 2001). This dissertation focuses on Canadian criminal courts and their role in perpetuating a long history of struggles and injustices for Indigenous women. By analyzing the records of Indigenous women and applying this knowledge to a single court case, I align with the principles of Indigenous feminisms that I believe are necessary for achieving social justice based on intersecting factors of sexuality, class, gender, and race (Suzack et al., 2010). Indigenous feminisms operate from the standpoint that social justice "can be achieved only through specific attention to gender and must be considered an integral part of, rather than a subsidiary to, struggles for liberation" (Suzack et al., p. 3). One of the key goals of Indigenous feminisms is to theorize the intersection of oppression, also known as the "double burden" of racism and sexism (Guerrero, 2003). As discussed in Chapter One of this dissertation, Indigenous women are not only defined by their gender but also by their race, ability, and class (Baca Zinn & Thornton, 1996). In this research, gender is viewed as a crucial aspect of the struggle to liberate Indigenous women, and my focus on Canadian criminal courts is an attempt to articulate and reveal how racism and sexism are embedded in and perpetuated by the colonial legal system. The urgency of addressing the intersection of oppression is a shared responsibility that we must all uphold.

Research Questions

To explore the complex issue of systemic racism and sexism in Canadian criminal courts, I adopt an open-ended approach to address the following research questions:

- *RQ1:* Do racism and sexism exist in a criminal trial involving the death of an Indigenous woman who is a sex worker, and a White man alleged to have caused the death?
- *RQ2:* Do the discourses used by court actors (defence and crown counsel, the accused, the judge, and witnesses) in reference to the Indigenous woman victim reflect deep-seated systemic racism and sexism? If so, are there instances where the narratives are challenged by the court actors?
- *RQ3:* Do court actors (defence and crown counsel, the accused, the judge, and witnesses) contribute to a history of victim-blaming and reinforce the idea that Indigenous women are sexually available and deserving of violence?
- *RQ4:* Do court actors (defence and crown counsel, the accused, the judge, and witnesses) ignore or recognize, completely or incompletely, histories of the colonial state, residential school system, intergenerational trauma, historical and contemporary sexualization, and the connection between sex work and sexual violence?

Overview of the Research Design

A half-century ago, Smith (1974) argued that "sociology… has been based on and built up within the male social universe" (p. 7), excluding women's standpoints within relationships of gendered power. Dubois (1983) claims that, in research, "the 'person' has been considered to be male, and the female, the woman, has been defined in terms, not of what she is, but of what she is not" (p. 107). It is evident that the voices of women, especially Indigenous women, are muted by this androcentric approach. I reject the androcentric foundation of research and appreciate feminist

scholarship that questions who produces knowledge, how knowledge is created, and how it is used (Westmarland, 2001). While second-wave feminism advanced challenging male-dominated knowledge production (Westmarland, 2001), it is important to recognize how Indigenous and racialized feminist scholars have highlighted the ways that racism, structures of power, and colonialism shape systems of knowledge. These perspectives are notable for understanding knowledge, as they emphasize responsibility, relationality, and lived realities. Thus, as already described, it is essential to note that I present this knowledge as a scholar with both Mi'kmaq and European ancestry, who grew up primarily disconnected from my Mi'kmaq community and culture but seeks to reconnect with and honour my heritage. I conduct this research from a standpoint informed by Indigenous feminisms and strive to create knowledge that will be useful to those seeking to create a more just society for Indigenous women, especially victims of violence.

To explore how systemic racism and sexism operate in Canadian criminal courts, I rely on quantitative and qualitative research methods. Selecting an appropriate methodological framework involves considering data collection practices, which are commonly dichotomized into qualitative or quantitative categories (Harding, 1986; Westmarland, 2001). In determining a suitable methodological framework, I compared the advantages and limitations of quantitative and qualitative methods, as research methods are "gendered," with quantitative approaches conventionally associated with masculinity, objectivity, positivism, and statistics (Oakley, 1998; Westmarland, 2001). Most contemporary quantitative methodologies must be recognized for their contribution to the social construction of Indigenous women as members of "deficit" communities (Andersen & Walter, 2013, p. 19). As Coburn (2015) notes, the "deficit 'Indigenous person' is conceived as requiring coercive, corrective colonial state interventions to assimilate or 'integrate' Indigenous persons into colonial standards that are taken for granted as both normal and

normatively desirable" (p. 124-125). I recognize that this dehumanization acts as symbolic violence, a form of violence that is not physical but is expressed through language, images, and other forms of representation (Coburn, 2015).

While I refuse to rely exclusively on a quantitative methodology that ignores women and portrays Indigenous peoples as "deficit communities," I agree with Jayaratne (1983) that we must not wholly reject quantitative methods. This dissertation demonstrates "the usefulness of quantitative methods in the naming of women's oppression and also the usefulness of qualitative methods for delving further and using feminist research for change within the women's liberation movement" (Westmarland, 2001, p. 5). Therefore, I draw on quantitative methods, offering frequency counts across 1,812 pages of the court transcripts from the trial of *R. v. Barton* (2015). This allowed me to draw attention to the repetition of certain words like "prostitute" and "native" and the absence of other words like "colonialism," and so create a picture of the kinds of arguments that different court actors put forward.

Qualitative methods are often linked to femininity, subjectivity, and interpretivism (Oakley, 1998; Westmarland, 2001). Adopting a qualitative approach helped me understand the "how" of processes, such as how the reproduction of systemic racism and sexism persists in contemporary Canadian criminal courts. I rely on thematic analysis as a qualitative method to explore how *R. v. Barton* (2015) represents "the judicial system's lack of regard and respect for Indigenous people, especially the many missing and murdered women" (Minifie, 2015, p. 1) while being attentive to those instances where such sexist racism directed toward Indigenous women is challenged within the courtroom.

This research thus adopts a mixed-methods approach, combining numerical measurement with in-depth thematic exploration. More specifically, I apply content analysis to quantify certain

words in the transcripts of the court actors' oral arguments (resulting in frequency counts). I also employ thematic analysis to better understand the significance of relationships between specific words and to make inferences about messages within the court transcripts.

Limitations of the Study

I realize the importance of positioning myself as a researcher and a cisgender woman with Indigenous ancestry. I acknowledge how my privileges, education, and experiences have shaped my ideological perspectives and recognize that I am writing from the standpoint of a "colonized 'first world' Indigenous" researcher (Andersen & Walter, 2013, p. 19). I grew up in a privileged household in a community enhanced by centuries of strong women and family ties. Like Stewart (2008), I agree that "for my research, bias, or previous experience and knowledge stemming from my position, became a valuable part of the process" (p. 59). I acknowledge that it is impossible to be free from bias when conducting research, which some may see as a limitation.

Chapter Overview

By evaluating existing literature on the specific research topic and conducting both content and thematic analysis, this dissertation explores how systemic racism and sexism exist in a criminal trial involving the death of an Indigenous woman who is a sex worker and a White man alleged to have committed the act of fatal violence. This dissertation is organized into five additional chapters*:*

Chapter Two – Review of Literature: This chapter presents a comprehensive review of the literature on the dissertation topic. Information is given on what other researchers have discovered about the existence and effect of systemic racism and sexism on Indigenous women who engage in sex work and are victims of fatal violence. This literature review also provides an overview of the RSS and its relationship to intergenerational trauma and victimization.

Chapter Three – Methodology: This chapter outlines the research design and process. I explore the importance of oral arguments in courts and then explain the steps taken to complete the quantitative and qualitative analysis. I demonstrate how both methods help to expose the systemic racism and sexism that exists within Canadian criminal courts.

Chapter Four – Results: This chapter presents the study's findings. Two prominent, related themes emerged from my combined first reading, quantitative analysis using software, and subsequent qualitative analysis relying on transcript readings: *Theme 1: Systemic Racism and References to Indigeneity; and Theme 2: Systemic Sexism and Sexualization of the Victim*. Together, these themes reveal how the colonial relationships and dynamics, including the normalization of racist and sexist violence against Indigenous women, are reproduced in the courtroom.

Chapter Five – Discussion: This chapter presents the meaning, significance, and relevance of my findings, arguing that they shed new light on systemic racism and sexism within the Canadian criminal justice system (more specifically, the criminal courts).

Chapter Six – Conclusion: This chapter summarizes the research presented in this study, reflects on it, and offers recommendations for future research.

"We honour your strength, courage and perseverance in seeking justice and healing for the loss of your grandmothers, mothers, sisters, aunties, daughters, nieces, cousins and close friends."

- National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p. 1

CHAPTER TWO: REVIEW OF LITERATURE

To better understand how systemic racism and sexism permeate the Canadian criminal courts, I acknowledge the damaging relationships and histories that have existed and continue to exist between Indigenous women and the Canadian state. A variety of factors contribute to the ongoing colonial project to eradicate Indigenous women, although Indigenous women have demonstrated remarkable resilience despite the ongoing genocide against them (Anderson & Lawrence, 2012; Coburn & LaRocque, 2020, p. 102; NIMMIWG – A Legal Analysis of Genocide, 2019).[5] Indigenous women are not just victims but are individuals representing resistance through the "determination to challenge colonial racism, patriarchy, and heterosexism, as these are expressed institutionally, socially, and through stereotypes" (Coburn & LaRocque, 2020, p. 102). This section provides a brief historical background on the colonial conditions (economic, social, and political) that shape understandings and depictions of Indigenous women. I include this section to illustrate how the Canadian state has abused, hindered, neglected, and harmed Indigenous peoples and Indigenous women specifically. This section focuses on colonialism, the RSS, and histories of sexualized violence to explore some of the critical factors that influence the denial of justice as part of the more extensive histories of colonial violence against Indigenous women.

Colonialism and the Colonial State

Colonial efforts have often worked to the detriment of local populations and to the advantage of the colonizers. While LaRocque (2010) notes that Indigenous peoples are the "original settlers, in the sense of being a deeply rooted and settled [I]ndigenous presence on this land we now call Canada" (p. 7), it is crucial to recognize and respect the unique colonial histories

[5] *A Legal Analysis of Genocide* is a 43-page supplementary volume that discusses the lack of involvement of the Government of Canada in addressing the cases of Missing and Murdered Indigenous Women and Girls.

of Indigenous peoples. Hunt (2013, p. 84) discusses the complexity of colonialism in Canada, highlighting each nation's unique experiences. Indigenous peoples' distinct histories, laws, and cultures stem from their ties to their ancestral lands (Standing Committee on Aboriginal Peoples, 2019, p. 7). Each nation represents unique practices, cultural identities, and interactions with the federal and provincial governments (Hunt, 2013, p. 84).

As colonialism expanded from east to west across Canada, it impacted Indigenous communities at different times throughout history. I include some examples of the unique impacts of colonialism on diverse Indigenous communities. For instance, the Beothuk of Newfoundland were murdered and "dwindled into extinction in 1829" (Holly, 2000, p. 79). Holly (2003) writes, "Extinct, perhaps culturally and linguistically unique, and seemingly the inhabitants of an austere and remote island in the far North Atlantic, the Beothuk have long been imagined as an archaic, timeless people" (p. 127). Another example of a unique colonial history is the Far North, where the Inuit population was not recognized in the *Indian Act*, as Canada did not acknowledge them as a distinct group (Feminist Northern Network, 2021, p. 4). Considering the impacts of colonialism on status and identity, those who identified as Métis and without status were not recognized as Indigenous until the *Constitution Act of 1982* (*Section 35*) (Isaac, 2016, p. 2). These are just a few examples of how colonialism has impacted unique Indigenous populations throughout history.

The appropriation and occupation of Indigenous lands in Canada began more than 500 years ago and continues today (Coburn, 2020, p. 430). As Coburn (2020) notes, "the colonial state presumes its political, legal and cultural authority over Indigenous peoples, who may be consulted but who are nowhere accepted as fully self-determining polities, much less having authority over colonial actors" (p. 430). To achieve Eurocentric objectives and interests, Europeans forced Indigenous communities to adopt imperialist power structures (Monchalin, 2016, p. 61), and

Indigenous peoples were incorporated into the colonial state as citizens, but with fewer rights (e.g., Status Indians were denied the right to vote until 1960). These colonial actions sought to destroy Indigenous peoples' structures of governance.

With the expansion of the British Empire across Turtle Island came increasingly rigid ideas of racial, cultural, and social superiority (Monchalin, 2016, p. 61). Monchalin (2016) notes, "This presumption of dominance also included their religious worldviews, which positioned White, Western men as having a "God-given" right to rule over others" (p. 61). Relying on Catholicism as a rationale for controlling Indigenous peoples, the Europeans believed they had the right to own and manage people and property. As a result, the Europeans dehumanized Indigenous peoples as "beasts," "infidels," "savages," and "the other" (Berkhofer, 1978, p. 9-23), justifying their dispossession and even genocide. This had obvious negative consequences for Indigenous peoples since, according to Jack D. Forbes (2011), "a colonial system almost always also assigns low status to the physical characteristics of the conquered population. The conquered people are made to feel inferior, and this inferiority is used as a weapon of psychological warfare to control them" (p. 67).

As Smith and Ross (2004) note, in the history of atrocities committed against Indigenous peoples, colonizers have tried "not only to defeat Indian people but also to eradicate their very identity and humanity" (p. 2). It was the colonizer's objective to transform Indigenous peoples from "human beings into tobacco pouches, bridle reins, or souvenirs — an object for the consumption of White people" (Smith & Ross, 2004, p. 2). Colonizers have tried to eliminate Indigenous identity by repeatedly attacking Indigenous bodies, characterizing them as less than human. The racist views resulting from the historical stereotype that Indigenous peoples were more "animal" than human have been significantly damaging and are still widely accepted in Euro-Canadian culture (Monchalin, 2016, p. 178). Today, colonial violence continues; the state is

intrinsically tied to violence against Indigenous peoples, especially Indigenous women (LaRocque, 2010).

Legacy of the Residential School System

Since the *Truth and Reconciliation Commission Final Report*, released in 2015, it is now widely recognized that the RSS is one of the significant "causes of poverty, homelessness, substance abuse, and violence among Aboriginal people" (Legacy of Hope Foundation, 2016, p. 9; TRC, 2015). While the last residential school closed in Saskatchewan in 1996 (Union of Ontario Indians, 2013), the consequences of the RSS' devastating conditions are still experienced by Indigenous women today, including – in ways at once continuous with the dehumanization in the RSS and distinct from it – within the criminal justice system.

The RSS operated from 1831 to 1996, and in that time, approximately 150,000 Indigenous children, defined as Status Indians under the *Indian Act,* attended these schools (LHF, 2016; National Centre for Truth and Reconciliation, 2022; Robertson, 2018; Starblanket, 2018, p. 18; see a timeline of colonial law and educational policy in Appendix B). With amendments to the *Indian Act* in the late nineteenth century, the federal government broadened its oversight over Indigenous education (Milloy, 1999; Truth and Reconciliation Commission of Canada, 2015). With the 1920 amendments, attendance was made mandatory for Status Indian children (Milloy, 1999; Truth and Reconciliation Commission of Canada, 2015). This resulted in the forced attendance of Indigenous children at day schools and residential schools (Milloy, 1999; Truth and Reconciliation Commission of Canada, 2015). As a result of this government action, the children and their families were denied the ability to choose whether to send the children to school (Robertson, 2018, p. 46). The Indian Agents specifically targeted single, low-income mothers (Robertson, 2018, p. 46) based on the idea of patriarchy and colonialism that went hand in hand

with the notion that Indigenous women were incapable of caring for their children independently. In many Indigenous communities, women have historically been the leading providers of care for small children since childbirth, and taking care of the family was considered women's labour and was held in high regard (Longboat, 2010, p. 4). By establishing distinct realms for each sex and designating men as the heads of the houses, colonialism and patriarchy sought to undervalue all Indigenous women and their responsibilities as mothers and caretakers (Robertson, 2018, p. 47).

Findings from the TRC (2015) emphasize that the RSS was part of the overall objective "of the Canadian government's Aboriginal policy… to assimilate, civilize, and [c]hristianize" (p. 3) supposedly "primitive" peoples. As Duncan Campbell Scott (Deputy Minister of Indian Affairs, 1920) stated, Indian[6] peoples were to be eradicated "until there is not a single Indian in Canada that has not been absorbed into the body politic" (Troniak, 2011, p. 1). Tamara Starblanket, a Nehiyaw iskwew (Cree woman) from Ahtahkakoop First Nation, describes the RSS as genocide in her book, where the title is worth quoting in full: *Suffer the Little Children: Genocide, Indigenous Children, and the Canadian State.* Article II(e) of the *Genocide Convention*. As the focus of the legal analysis, Starblanket (2018) approaches genocide as "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group" and… "Forcibly transferring children of the group to another group" (p. 17-18). This is supported by an explanation of the scope of international customary law perspectives (p. 17-18). Starblanket (2018) highlights that the residential schools sought to destroy the most intimate relationship—the child-parent relationship. She focuses on Canada's century-long history of forcibly taking at least 150,000 Indigenous children from their families, nations, and societies—many of whom were no

[6] It is important to note the danger of collapsing the terms Indigenous and Indian. These terms have unique meanings and histories, particularly in relation to the *Indian Act*. Under the *Indian Act,* not all Indigenous people are Indian.

older than five (Starblanket, 2018, p. 18). When discussing the RSS, "the stated goal was to strip them of their cultural identities and 'remake' them into 'end products' deemed useful to Canada's colonizing and ever-growing settler population" (Starblanket, 2018, p. 22).

Additionally, David B. MacDonald's (2019) *The Sleeping Giant Awakens: Genocide, Indian Residential Schools, and the Challenge of Conciliation* centres on how Survivors perceive residential schools as genocidal, drawing on interviews, memoirs, and testimonies. MacDonald (2019) compares the witness statements to the United Nations' legal definition of genocide and demonstrates how genocide played a central role in the formation of Canada. To show that acknowledging genocide is crucial for positively changing Indigenous-settler relations, MacDonald (2019) engages critics who argue against describing the RSS system as genocidal. *The Sleeping Giant Awakens* (2019) offers a unique and timely perspective on the prospects for reconciliation after the genocide, drawing on archival research and extensive interviews with members of the TRC and RSS Survivors. MacDonald (2019) highlights the challenges of moving forward as settlers lack awareness of the RSS and the ongoing colonial impacts – including the ongoing systemic racism and sexism prevalent in the Canadian criminal justice system.

Abuse, Neglect, and Intergenerational Trauma

Most RSS Survivors received a poor education (LHF, 2016), given the underfunding of these schools and the poorly qualified teaching staff. This negatively impacted the life opportunities and outcomes of those who attended (Fournier & Crey, 1997; Haig-Brown, 1988; Miller, 1996; Tait, 2003). As suggested by one Survivor (from the Mohawk Institute), for most RSS students, "There was no education there, we were treated as slaves. We worked a lot more hours than we went to school" (Longboat, 2010, p. 28) – to take just one statement among many about the harsh realities and low quality of life and education for many RSS Survivors.

The inadequate education provided to Indigenous children in the RSS is connected to an RSS legacy, which includes the ongoing economic and social marginalization of Indigenous peoples, as well as higher levels of poverty (Aguiar & Halseth, 2015; Bombay, Matheson, & Anisman, 2009; RCAP, 1996; Tait, 2003; TRC, 2015). Since poverty is related to higher family dysfunction rates and substance abuse levels, this compounds the RSS' negative legacy (Brody, 1977; Smart & Ogborn, 1986; TRC, 2015; Whitehead & Hayes, 1988). Today, residential school Survivors often lack the resources and services required to address histories of abuse, further harming this population and the next generations (Walsh, MacDonald, Rutherford, Moore, & Frieg, 2011). Indigenous communities' experiences are characterized by government policies that targeted and impacted generations of RSS Survivors and the generations after them, so many generations of Indigenous women have been and continue to be negatively affected.

In addition to affecting multiple generations, the RSS affected whole communities. This is very different from other forms of intergenerational trauma that, however devastating, affect individuals but not entire communities. As noted by Aguiar and Halseth (2015), this community-level trauma is compounding, not limited to the RSS, but aggravating the pain and suffering caused by other colonial dynamics of dispossession and the sundering of relationships within Indigenous communities:

> The trauma experienced as a result of the residential school experience has built upon trauma from earlier forms of injustice and oppression and continues to be built upon by contemporary forms such that the trauma is cumulative, with oppression and abuse becoming internalized, leading to a sense of shame and hopelessness that is transmitted and built upon through the generations […] Over an extended period of time, the effects of this trauma can reverberate throughout an entire population, resulting in a legacy of physical,

> psychological, and economic disparities that persist across generations […] Not only are individuals and families affected, but their communities are affected as well, resulting in responses such as social malaise, weakened social structures and high rates of suicide that become second-order effects. (p. 7)

The RSS is not the only cause of intergenerational trauma but is imbricated in other trauma histories through the colonial project. Given the scale of the violence in the RSS, the consequences are felt not only among individuals or families but across diverse Indigenous communities. The Legacy of Hope Foundation (2015) explicitly recognizes the contemporary damage caused in Indigenous communities through the RSS, given intergenerational trauma. Furthermore, the Legacy of Hope Foundation describes an "intergenerational Survivor" as any individual impacted by the intergenerational dysfunction resulting from the RSS experience, including anyone who has:

> been abused by persons who are Survivors or victims of Survivors and, more generally, those who inhabit dysfunctional communities whose roots lie in the fracturing of family and community wrought by the generations of children who were separated from their families. (LHF, 2015, p. 1)

Intergenerational trauma is influenced by other colonial state efforts to forcibly remove Indigenous children from their homes, for instance, infamously through the Sixties' Scoop, which saw Indigenous children adopted out and assimilated into White families, and today, in the disproportionate placement of Indigenous children in foster homes (Blackstock, 2016).

Included in the stress associated with the RSS, Bryant-Davis (2007) employs the concept of "race-based traumatic stress" to understand intergenerational trauma transmission amongst Indigenous populations. This "race-based traumatic stress" is used to explain "emotional injury

motivated by hate or fear of a person or group of people as a result of their race" (Bryant-Davis, 2007, p. 135). Furthermore, this concept emphasizes "the psychological consequences of interpersonal or institutional traumas motivated by the devaluing of one's race" (Bryant-Davis, 2007, p. 137). The transmission of trauma across generations can take several forms, including physiological processes (epigenetic and biological explanations), psychological processes (motivation, learning, thinking, memory, perception, emotion, and sensation), and social processes (alienation, marginality, and identity confusion; Bryant-Davis, 2007). This transmission of trauma through generations continues to impact Indigenous peoples in physiological, psychological, and social forms. As a consequence of long histories of neglect and abuse, some of the intergenerational problems that arise include drug and solvent abuse, alcoholism, extreme poverty, high employment rates, high suicide rates, low education rates, loss of identity, loss of parenting, and over-representation in the criminal justice system as victims and perpetrators (Cooke, Wilk, Paul, & Gonneville, 2013; Craib, Spittal, Patel, Christian, Moniruzzaman, Pearce, Demerais, Sherlock, & Schechter, 2009; Dyck, Karunanayake, Janzen, Lawson, Ramsden, Rennie, Gardipy, McCallum, Abonyi, & Dosman, 2015; Healey, 2014; Howard, 2014; Varcoe & Dick, 2008). Other intergenerational effects include depression, post-traumatic stress disorder, dysthymic disorder, and general mental distress (Anderson, 2015; Corrado & Cohen, 2003; Hackett, Feeny, & Tompa, 2016; Stout, 2010). In sum, the RSS has produced intergenerational race-based trauma rooted in the systemic devaluing and attempted eradication of diverse Indigenous cultures and languages, which shape contemporary Indigenous communities, often in devastating ways across multiple generations.

The Impacts of Patriarchy in the RSS on Indigenous Womanhood

The RSS' patriarchal nature disrupted and damaged many facets of cultural and social well-being for Indigenous women and girls, both directly and through intergenerational trauma. Varying from nation to nation, the cultural disruption to womanhood is significant. Wilk, Maltby, and Cooke (2017) state that "intergenerational effects were found… among women who had parents or grandparents attend residential schools, with women reporting that familial attendance at residential school had had an enduring impact on their lives and mental health" (p. 4). The objective of patriarchy and colonialism to devalue Indigenous women is evident in the expectations, security measures, and restrictions placed on Indigenous women and girls. The system of residential schools in Canada had a significant impact on the self-perception of female Indigenous pupils. Girls were made to feel unimportant and unworthy at the schools; many carried this self-image for the remainder of their lives. Indigenous children were taught to see their traditional worldviews (physical, spiritual, and conceptual) through a lens that dehumanized their former existence (Starblanket, 2018, p. 130-131). The worth and purity of their original worldviews were shattered, and they were conditioned to lose any connection (Starblanket, 2018, p. 130-131). Instead, the children were taught to identify with the "dehumanizing conditions and derogatory lies" forced on them (Starblanket, 2018, p. 131).

At the same time, it was understood that the assimilation of Indigenous women and girls was necessary for removing these cultures and "civilizing" Indigenous nations. One of the first three industrial schools to open in response to the Davin Report's (1879) recommendations was the Lebret (Qu'Appelle) Industrial School, which the Roman Catholic Church ran, specifically the Missionary Oblates of Mary Immaculate and the Grey Nuns, from 1884 until 1973 (University of Regina, n.d). The institution wreaked havoc on Indigenous children's well-being and identity,

including forced starvation, torture, sexual assault, and rape (Starblanket, 2018, p. 127). From the start of the RSS until the final school closed in the 1990s, the data demonstrate that child sexual abuse was "widespread and long-standing" (Abtahi & Webb, p. 2072; Starblanket, 2018, p. 125). Starblanket (2018) writes:

> Upon being unmade and then remade into the "civilized" vision the government intended, the results of this calculated and vicious attack against the national identities of Indigenous Peoples has produced a cataclysmic fallout. Caused by the massive and widespread violence and terror against the immediate Survivors, the generations that follow bequeath an ongoing horror that has never stopped. The immense pain and sorrow that is transmitted onto further generations, such as the inability to parent, is the recipe for the further and ongoing forcible removals in the child welfare systems. (p. 127)

Female youth in the RSS were punished regularly based on sex, as exhibited in daily RSS practices. Chrisjohn, Young, and Maraun (1997) summarize the experience of sexual violence and dehumanization in the RSS and write of Indigenous children being subjected to forced masturbatory or oral-genital contact, sexual touching, and sexual intercourse. The children were also subject to "private pseudo-official inspections of genitalia" and induced "abortion in female children impregnated by men in authority" (Starblanket, 2018, p. 125).

Another example of the abuse suffered by Indigenous girls at the RSS includes tracking their menstruation cycles and shaming them for their menstruation (Grant, 1996; Haig-Brown, 1988; Robertson, 2018). As Robertson (2018) observes:

> The priests, nurses and nuns kept close track of the girls' menstruation cycles and would question them about their periods each month to make sure they were not pregnant as Indigenous women were seen as being slaves to their passions and sexually polluted. They

were often shamed for menstruating and if they happened to bleed in their underwear or beds they were beaten and mocked. One former student remembers an incident where a friend of hers was forced to place her bloody underwear on her own head while the nuns teased her and encouraged the other students to do the same. This mistreatment is inexcusable in any situation, but what makes this abuse even more confusing is often the nuns or school supervisors wouldn't provide the girls with the sanitary napkins they needed while on their periods so bleeding in their clothing or beds was unavoidable. (p. 49)

This was part of a broader pattern of pathologizing Indigenous girls' and women's bodies and sexuality. Furthermore, Indigenous women were seen as valuable only if chaste, leading to extreme monitoring of their behaviours and bodies. Robertson (2018) observes:

> There are even accounts of virginity testing that occurred within the schools as these institutions were extremely religious and a woman's value to man was to be determined on her virginity. The test was conducted by a school official, and they would stick a small instrument up young girls' vaginas to check if the hymen was still intact. If it wasn't there they were beaten and shamed by the entire school population for their impurity. The fact that these young girls were likely raped by someone within the school was not acknowledged when the beating was occurring, instead the girl's action was attributed to her inferior race as she was seen as another "loose, dirty squaw." (p. 49–50)

Many Indigenous girls remained quiet about their sexual abuse experiences due to the shame they learned to associate with sexual acts at the schools.

Beyond these extreme forms of disciplining and abuse, patriarchal norms in RSS undermined the role of Indigenous women, construing men as dominant in both the home and community (Walsh et al., 2011). Women were only valued for their conformity to "feminine"

gender norms. One RSS Survivor explains that residential school officials "didn't really care if you were hurt or sick, they were more interested in you behaving like a lady" (Longboat, 2010, p. 28).

Smith (2005) argues that a significant objective of residential schools was to instill patriarchal norms into Indigenous communities so that Indigenous women and girls would lose their sense of leadership. Relying on Longboat's (2010) writing, Robertson (2018) describes how residential schools did not prepare women for strong, mutually respectful relationships with men:

> This abuse from males and the enforced belief that all sexual relations were a sin led many of the female students to fear such intimacy and have unstable relationships with men in their adulthood. One former student stated that she knew very little about marriage and love when she graduated from the residential school, and it led her into a very dysfunctional relationship along with three children by the time she was nineteen. She attributes this to the fact she was naïve and craving love and acceptance, so she gave her heart to the first man who showed her some kindness. (p. 50)

Other residential school Survivors tell similar stories, associating the dysfunctions and sexual abuse of RSS with challenges that persisted well after leaving the schools. Many of these were connected to the RSS's failure to model loving, respectful relationships between women and men or to provide love.

Residential school Survivor Sheila Wolfleg (2012) emphasizes the connection between her trauma from the RSS and her subsequent heroin use, suicide attempts, and abusive relationships with various partners. An RSS Survivor named Bette shared the consequences of the sexual abuse she suffered and the fear of being in a relationship with any man (Longboat, 2010). The RSS

caused many former Indigenous female students to associate intimacy and love with sin and various forms of violence and left them unprepared to recognize and sustain healthy relationships.

The Native Women's Association of Canada (NWAC) (2014) argues that the families of MMIWG continue to feel the adverse impacts of residential schools since these schools left many Indigenous women in a social position that lacked basic security and safety. Thus, the NWAC's work, like the NIMMIWG, which concluded in 2019, argues that the high levels of violence against Indigenous women in contemporary society are directly linked to the pervasive consequences of the RSS across multiple generations.

Experiences of abuse in the RSS are consequential for contemporary Indigenous women's experiences of sexual violence, as the histories of sexual and physical abuse in the RSS have been felt over the next generations:

> The cycle of intergenerational trauma resulting from a legacy of mistreatment and systemic abuse continues…leaving generations of Indigenous women particularly vulnerable to acts of violence and crime. Intergenerational trauma increases the likelihood that children are exposed to violence which, in turn, perpetuates this cycle of violence. (Ontario Native Women's Association [ONWA], 2013, p. 3)

The consequences of the RSS not only remain "undiminished but may in some respects have intensified during the decades since the last [S]urvivors were released from the facilities in which the initial damage was done" (Mundorff, 2009, p. 80). Connecting the abuse and mistreatment experienced in the RSS and the ongoing violence against Indigenous women and girls is the radical devaluing of Indigenous women, both for being Indigenous and for being girls, considered less valuable within a patriarchal colonial society (Robertson, 2018). Many Survivors' memories of the physical abuse and harsh treatment they endured as female students in the schools have

persisted throughout their lives, frequently influencing their experiences daily (Robertson, 2018, p. 51). The ideas concerning sexuality promoted through the RSS and years of dehumanization have been instilled and internalized by many Indigenous peoples (Hunt, 2013, p. 93). This history matters if we are to understand the colonial context in which an Indigenous woman is dehumanized. If the current criminal justice system is a different institution from the RSS, they both participate in a long-standing colonial history of sexualizing, shaming, and devaluing Indigenous women.

Historical and Contemporary Sexualization of Indigenous Women

As noted by Andrea Smith (2005), "gender violence is not simply a tool of patriarchal control but also serves as a tool of racism and colonialism" (p. 1). Furthermore, gender violence is closely connected to the "broader colonial context" (Borrows, 2016, p. 188). To understand the prevalence of sexualized violence and victimization against Indigenous women, we must acknowledge traditional Indigenous communities and their treatment of Indigenous women. Before European contact, many Indigenous communities relied on women as leaders and established an equitable division of labour between women and men (Monchalin, 2016, p. 176). Although each nation had responsibilities and roles for Indigenous women, a shared practice amongst Indigenous communities was to respect, value, and honour Indigenous women as "sacred human beings" (Monchalin, 2016, p. 176; NWAC, 2007, p. 3). Accounts of contact with traditional Indigenous communities indicate little evidence to suggest systemic sexual violence within Indigenous communities (Monchalin, 2016, p. 177). Monchalin (2016) notes, "I do not present this evidence as a way of suggesting that acts of violence against women never took place in Indigenous societies. However, before European contact, these were rare, and when they did happen, they were not accepted or tolerated" (p. 177). In many Indigenous communities, women

actively participated as leaders (not just as secondary characters) in ceremonies, family life, decision-making, politics, and marriage (Johansen, 2009, p. 12-15; Monchalin, 2016, p. 176; Royal Commission on Aboriginal Peoples, 1996).

With the arrival of Europeans, new laws, religions, and customs were forced on Indigenous communities (Monchalin, 2016, p. 176; Smith, 2005, p. 18). Since the patriarchal European way of life differed from traditional Indigenous communal and egalitarian societies, this led to the devaluation of conventional Indigenous women's roles while negatively affecting Indigenous men (Monchalin, 2016, p. 176; La Prairie, 1987; Smith, 2005, p. 18). With colonialism, the futures of Indigenous peoples were altered. Many Indigenous men, no longer able to work the land, became unemployed wage labourers, vulnerable once they lost their traditional roles as providers, while women also lost their traditionally valued roles (La Prairie, 1987). This breakdown of conventional practices led to higher rates of gender role conflict within communities and households (La Prairie, 1987). The law also became a powerful tool in establishing the perception of Indigenous women as sexually available through White North America's ideas of "Indian princesses" and "squaws" (Acoose, 1992; Acoose, 2016; Hunt, 2013, p. 87). The portrayal of Indigenous women as "squaws":

> is one of the most degraded, most despised, and most dehumanized anywhere in the world… she has no human face, she is lustful, immoral, unfeeling, and dirty. Such a grotesque dehumanization has rendered all Native women and girls vulnerable to physical, psychological, and sexual violence. (LaRocque, 2010, p. 5)

The perception that Indigenous women are less than human and "rapable sexual objects" (Monchalin, 2016, p. 178) has influenced the higher rates of victimization for Indigenous women, especially regarding sexual, psychological, and physical abuse (LaRocque, 1994; Smith, 2011, p.

253). The sexualization of Indigenous women is evident in Western media and popular culture, presenting this group of women as hypersexualized (Monchalin, 2016, p. 78), as well as "erotic" and "exotic" "Indian princess[es]" (Monchalin, 2016, p. 179). Such portrayals of Indigenous women support the normalization of sexualized violence against them by strengthening the notion that Indigenous women are available "to be used at others' disposal" (Monchalin, 2016, p. 182). Contextualizing Indigenous women's identity, LaRocque (1991) highlights that: "racism and sexism found in the colonial process have served to dramatically undermine the place and value of women in Aboriginal cultures, leaving us vulnerable both within and outside of our communities" (p. 11). Therefore, the colonial process has worked to leave Indigenous women in a place where perpetrators of violence and colonial institutions target them.

Inés Hernández-Villa (1993) points out that although both Indigenous men's and women's bodies have been impacted by violence, Indigenous women's bodies have been singled out for torture because of their ability to have children. More specifically, it is because of sex that an Indigenous woman "is hunted down and slaughtered, in fact, singled out, because she has the potential through childbirth to assure the continuance of the people" (Hernández-Ávila, 1993, p. 386). Smith and Ross (2004) also highlight that the ability to reproduce has targeted Indigenous women for their destruction (p. 2). To destroy a people, Stannard (1992) argues that it is necessary to destroy women and children and exert control over their reproductive capacities.

Sex Work and Victim-Blaming

To better comprehend the connection between colonialism, sex work, violence, and Indigenous women, this section acknowledges the role of victim-blaming. According to the Canadian Resource Centre for Victims of Crime (CRCVC, 2009), victim-blaming is a "devaluing act that occurs when the victim(s) of a crime or an accident is held responsible — in whole or in

part — for the crimes that have been committed against them" (p. 2). Victim blaming has colonial roots (notably from the RSS) and can emerge from various sources (e.g., families, communities, media, and mental health/medical/legal professionals) (CRCVC, 2009, p. 2). Canada's criminal justice system and court actors often victim-blame based on misunderstandings predicated on skewed race and gender perceptions, which include stereotypes about Indigenous women being promiscuous or inviting of violence, reproducing and adding to the denial of Indigenous women's legal and moral rights. Not infrequently, victims are seen as seeking out violence or choosing what may be referred to as risky lifestyles.

Indigenous women who are sexual assault victims are often blamed for being suggestive, seductive, provocative, and "asking for it" through their actions and behaviours (CRCVC, 2009, p. 4). The CRCVC (2009) maintains that before 1992, the courts blamed the victim's lifestyle "choice," sexual history, and attire as the cause of rape and sexual harassment (p. 4). Despite Canada introducing rape shield laws in 1992, women, including Indigenous women who engage in sex work and sexual assault victims, still have not received the promised protection under the law (CRCVC, 2009, p. 5). In cases involving Indigenous women who engage in sex work and are victims, court actors still ask questions regarding the victim's sexual history (CRCVC, 2009, p. 5). The blame is often directed away from the perpetrators accused of sexual assault; their actions are interpreted as a product of sexual frustration, helplessness, and falling victim to a sexually provocative woman (CRVC, 2009, p. 5). When exploring the victim-blaming concept that Indigenous women are sexually available, some, but not all, feminists point to the problematic tendency to refer to women who engage in sex work as prostitutes. Therefore, I consider the significance of the word prostitute and its implications for Indigenous women who are victims. As

Ratchford (2013) notes, the term prostitute does not merely refer to an individual who sells sex, but rather:

> […] brings with it layers of 'knowledge' about her worth, drug status, childhood, integrity, personal hygiene and sexual health… it is not done in isolation, but in the context of this complex history. This stigma is far-reaching and arguably does more damage to women who work in sex work than the actual work. This stigma feeds into understandings of women that are violence-supporting and referring to victims of violence as 'prostitutes' continues to 'other' these women. (Ratchford, 2013, p. 1).

The term prostitute may have a negative connotation and is frequently connected to shame, stigma, and criminalization. Furthermore, the term is commonly used in a negative or moralistic way to characterize sex employment, meaning that it is an unethical or unlawful practice. This language fosters negative preconceptions and aids in the marginalization and discrimination of people working in the sex industry. Additionally, the prohibition of sex work in many nations has reduced the availability of health and legal services for sex workers, increasing their susceptibility to abuse and exploitation.

As Hunt (2013) warns, it is crucial not to conflate sex work with sexual violence and victimization. However, the reality is that Indigenous women are more subject to violence than non-Indigenous women on lands claimed by Canada. Reports by Statistics Canada suggest that Indigenous women experience more severe and possibly life-threatening forms of violence, including family violence, than non-Indigenous women. According to the General Social Survey (GSS) on Victimization (2014), the rate of sexual assault (self-reported) of Indigenous peoples (58 per 1,000) was almost three times higher than for non-Indigenous peoples (20 per 1,000; Boyce, 2016; Department of Justice, 2017). When analyzing the prevalence of sexual assault (self-

reported) of Indigenous women (113 per 1,000), this rate was also more than three times the rate for non-Indigenous women (35 per 1,000; Boyce, 2016; Department of Justice, 2017). For Indigenous women, the mortality rate due to violence is three times greater than for non-Indigenous women (Hunt, 2013, p. 87). In contrast, the mortality rate is five times greater for Indigenous women aged 25 to 44 (Hunt, 2013, p. 87). Understanding these statistics is crucial in addressing the issue of violence against Indigenous women.

Drawing on Barkaskas and Hunt (2017), the Vancouver Sex Workers Rights Collective (2018) argues that violence against Indigenous women must be understood as colonial violence and a devaluation of women. The Vancouver Sex Workers Rights Collective (2018) forcefully rejects the idea that sex work invites violence or legitimizes it, arguing that:

> An Indigenous woman can be assaulted, raped, or murdered in any setting, in her home, at gatherings, work, walking down a street. A family member, acquaintance, service provider, police officer, employer, customer, client, or date could target her. A person cannot revoke their human right to live free from violence and cannot legitimize or invite violence or murder, including by providing sexual services or participating in sex work or trade. Sex work itself is not a key risk factor for violence; colonization is the key factor. (p. 7)

Over-representation of Indigenous Women as Victims of Violence

As mentioned in Chapter One, Indigenous women are consistently over-represented as victims of violence (spousal abuse, physical assault, homicide, and sexual assault) in Canada (Brennan, 2011; NWAC, 2014). They are much more likely to be victims of violence than the rest of the Canadian population (Amnesty International, 2009; Anderson, Campbell, & Belcourt, 2018; Anderson & Kubik, 2010; B.C. Government, 2005; Hargreaves, 2017; Lavell-Harvard & Brant,

2016; McDiarmid, 2019; NWAC, 2015; Palmater, 2016; Smylie[7], 2009). Numerous Indigenous women who are victims of violence believe the following: (1) they should not seek assistance or involve the authorities; (2) they should be in constant fear of the violent offender; (3) the violent offence is not severe enough to seek help; (4) and the criminal justice system will not take them seriously or meet their needs (Department of Justice, 2015). Therefore, many Indigenous women have difficulty with the initial stage of accessing and receiving the appropriate support (Department of Justice, 2015).

As is now recognized, there are proportionately more Indigenous women murdered in Canada than non-Indigenous women (Amnesty International, 2009; Anderson, Campbell, & Belcourt, 2018; Anderson & Kubik, 2010; B.C. Government, 2005; Hargreaves, 2017; Lavell-Harvard & Brant, 2016; McDiarmid, 2019; National Inquiry, 2019; NWAC, 2015; Palmater, 2016; Smylie, 2009). Specifically, the rates of homicide for Indigenous women were seven times higher from 1997 to 2000 than for non-Indigenous women (Statistics Canada, 2006). These homicides are rarely considered a priority by colonial institutions, and many perpetrators are not held criminally responsible (National Inquiry, 2019; Statistics Canada, 2006). Reports reveal that while 84% of non-Indigenous homicides are solved annually in Canada, only 53% of Indigenous homicides are solved (NWAC, 2007). Statistics Canada (2006) also found that 45% of the 171 homicides of Indigenous women sex workers between 1991 and 2004 went unsolved in Canada.

Connection to the Research

This literature review sheds light on the historical and contemporary systemic racism and sexism against Indigenous women because of colonialism. Establishing an awareness of the

[7] Smylie's work presents an argument in opposition to Hunt's as Smylie believes that sex workers are the subject of violence and refuses to use the word "sex worker." Instead, Smylie relies on the word prostitute. NWAC also relies on this approach.

relationships between colonialism, the RSS intergenerational trauma, sex work, sexual assault, and victim-blaming offer context for understanding the specifics of the criminal trial for the death of an Indigenous woman who is a sex worker by a White man. This context is essential to understanding this study. Still, it matters – or should matter – if the courts are to avoid reproducing colonial dynamics of racism and sexism in their proceedings and decisions.

"Although Indigenous women do not share a single culture, they do have a common colonial history. The imposition of patriarchy has transformed Indigenous societies by diminishing Indigenous women's power, status and material circumstances."

- Huhndorf & Suzack, 2010, p. 3

CHAPTER THREE: METHODOLOGY

This dissertation investigates how the Canadian criminal justice system, specifically the criminal courts, normalizes and legitimizes the systemic racism and sexism that negatively impact Indigenous women using a single recent criminal trial for the death of an Indigenous woman. I rely on this case-study approach as it "lends itself well to capturing information on more explanatory 'how,' 'what,' and 'why' questions" (Crowe, Cresswell, Robertson, Huby, Avery, & Sheikh, 2011, p. 4), seeking to take up the research questions outlined in Chapter One. More specifically, RQ1: Do systemic racism and sexism exist in a criminal trial involving the death of an Indigenous woman who is a sex worker, and a White man alleged to have caused the death? RQ2: Do the discourses used by court actors (defence and crown counsel, the accused, the judge, and witnesses) in reference to the Indigenous woman victim reflect deep-seated systemic racism and sexism? If so, are there instances where the narratives are challenged by the court actors? RQ3: Do court actors (defence and crown counsel, the accused, the judge, and witnesses) contribute to a history of victim-blaming and reinforce the idea that Indigenous women are sexually available and deserving of violence? RQ4: Do court actors (defence and crown counsel, the accused, the judge, and witnesses) ignore or recognize, completely or incompletely, histories of the colonial state, RSS, intergenerational trauma, historical and contemporary sexualization, and the connection between sex work and sexual violence? I approach these as empirical, if pointed, questions to better understand how systemic racism and sexism play out among court actors in Canadian criminal courts and the practical consequences they have for criminal justice, Indigenous women, and their families and communities.

Describing and analyzing systemic racism and sexism and how they are reproduced – or, at times, challenged – through the Canadian criminal courts is not the same as providing concrete

solutions. Identifying solutions may be challenging since unjust dynamics are rooted in centuries-old and ongoing colonialism. As a result, challenging them demands transformations far beyond the criminal justice system. Such a change will require the collaboration of Indigenous and non-Indigenous individuals, communities, organizations, and governments to challenge the roots of systemic racism and sexism described and analyzed within this research. This project has the more modest aim of describing and analyzing how systemic racism and sexism against Indigenous women, particularly those who engage in sex work, are reproduced – and more rarely challenged – in criminal courts. If these processes are understood, they can be changed as part of broader commitments to more just relationships with Indigenous peoples.

Consideration of Ethics

I recognize that this dissertation may raise significant ethical concerns. Since Smith (1999) claims research is "one of the dirtiest words in the Indigenous world's vocabulary" (p. 1), I have undertaken a patient and reflective journey over the years while completing this work. While this research was complex, I committed myself to conducting it with respect, integrity, honesty, and intention. I recognize my responsibility as a researcher, and my primary priority was to respect Cindy Gladue, her family, and her community, given the potential for significant harm to Cindy Gladue's memory. This research highlights not only Cindy Gladue's life but also her violent death and the dehumanizing ways she was portrayed in the criminal courts. I recognize that many researchers do not seek consent for this type of research, as much of the information from a criminal trial is already available in the public domain. Although court transcripts are publicly shared, in practice, they are often prohibitively expensive to obtain. I sought permission from the family to refer to Cindy Gladue by her full name. This was important to me because this approach

humanizes her and emphasizes her individuality, rather than using the detached, nameless label of "victim".

Finally, the significance of self-care is crucial to this research (Theidon, 2014, p. 6-15). I sought to be mindful of my well-being as I read through and analyzed the violent histories of colonialism and the terrible violence described in these specific court transcripts. Theidon (2014) highlights:

> For those of us who study violence and its legacies, being on and off-guard mark points on a spatial, temporal, and phenomenological continuum. In the field, being on guard may be crucial to managing danger while we conduct our research to learning how much to reveal about who we are and what we do, and to navigating our complex emotional reactions to the people and events that engulf us. Being on guard may also be an important coping strategy that allows us to compartmentalize experiences and partition self as-researcher from self-as-vulnerable-human-being. (p. 2)

One of the self-care recommendations I followed came from Theidon's (2014) suggestion to "construct a ritual for yourself" as it is "necessary to ground yourself while conducting research in a violent context, [and] you also need to center yourself as you write about the violence" (p. 11). Since this writing provoked many feelings and emotions, many of them quite complex, throughout the research process, I learned to incorporate writing in one-hour intervals as a self-care routine that worked for me. It was a long and patient journey, as I required breaks between full reads of the court transcripts, which will be discussed in greater detail below. I admit that this process took me much longer than I had initially anticipated, but an invaluable lesson that I learned was that for me to do good, I must be well. Part of this wellness journey included accepting opportunities to work with incredible Indigenous organizations, communities, and peoples. It also included

incorporating my learnings into this research as they came through my engagement with others and the work. While this work has taken several years, I would not change a thing, as I have grown significantly as an individual and formed beautiful relationships with those who share similar interests.

Overview of Research Steps

To identify and undertake the case study, I first reviewed several high-profile cases involving Indigenous women and girls who were victims and non-Indigenous accused, selecting a single, recent case infamous for systemic racism and sexism. During the initial stages of this work, I considered the trials involving Indigenous victims Helen Betty Osborne, Pamela George, Tina Fontaine, and Cindy Gladue. I note that the cases involving Helen Betty Osborne, Pamela George, Tina Fontaine, and Cindy Gladue are only a few of the more than 5,000 estimated MMIWG across Turtle Island. To explore high-profile cases, search criteria included: 1) an Indigenous woman victim of violence; 2) violence resulting in death; 3) White men accused; 4) a case in Canada; and 5) a timeframe of 1950 to the present day.

After carefully reviewing the four mentioned cases, I selected one criminal case involving Cindy Gladue. After obtaining permission from Cindy Gladue's family, as discussed in the previous section, I drew on Indigenous feminisms. I considered the context for how the Canadian criminal courts and court actors – defence and crown counsel, the accused, the judge, and witnesses reproduce systemic racism and sexism. As discussed in the literature review, this meant understanding the context for the case study, which includes recognizing colonialism and the colonial state, the legacy of the RSS, and the historical and ongoing mistreatment and sexualization of Indigenous women. This also involved acknowledging the relationship between Indigenous women and sex work, sex work and victim blaming, in the context of the normalization of

sexualized violence against Indigenous women and the over-representation of Indigenous women as victims of violence.

Next, I obtained transcripts for *R. v. Barton* (2015). I then extensively researched the steps, advantages, and disadvantages of quantitative, qualitative, and mixed-methods research, including their applications to studying court transcripts. This comprehensive research process ensured that I selected what I believed was the most appropriate research method for this work—a mixed-methods approach incorporating both quantitative and qualitative methods. I began examining the court transcripts using a quantitative, statistical approach, specifically computer-generated word counts, utilizing Leximancer software. Next, I read the court transcripts using a qualitative, interpretive, hermeneutic approach or, in other words, thematic analysis. After completing both quantitative and qualitative analyses, I considered the insights and limitations of relying on a mixed-methods approach, specifically using thematic analysis, to examine a single criminal case using court transcripts.

Step One: Investigate Violence Against Indigenous Women

The data collection method derived from my desire to examine the complexity of the violence, especially systemic racism and sexism, against Indigenous women in a significant event, namely a criminal jury trial for the death of an Indigenous woman. In the initial stages of this research, I examined a range of possible criminal trials, as I had planned to compare two or three. In addition to the case involving Cindy Gladue, I had first sought to analyze the court transcripts of the trials involving Helen Betty Osborne in 1971, Pamela George in 1995, and Tina Fontaine in 2015 - all high-profile cases involving Indigenous women who are victims (AJI, 1991; Amnesty International, 2004), over several decades. These cases are significant as they informed my

approach to better understand the widespread systemic racism, sexism, and denial of justice for Indigenous women who are victims of violence over the last fifty years.

These cases exemplify criminal trials for deaths resulting from "gendered racial or colonial violence" (Razack, 2000, p. 125) and the compounded difficulties in receiving formal justice when violence is committed against Indigenous women. Like the case of Cindy Gladue, I believe all these trials reproduce dynamics that contribute "to masking the violence" and lessening "culpability and legal responsibility for the death" of Indigenous women (Razack, 2000, p. 125) within the broader context of Canadian colonialism.

Helen Betty Osborne (1952-1971)

On July 16, 1952, Helen Betty Osborne was born in Norway House, a small Cree settlement near the northern tip of Lake Winnipeg (Ham, 2014, p. 8). On November 13, 1971, four men abducted and killed Helen Betty Osborne in The Pas (Ham, 2014, p. 9). She had gone to a dance in the downtown area that night, where she was last seen departing at 2:30 in the morning after spending some time at a nearby café with friends earlier in the evening (Ham, 2014, p. 9). The next day, her body was discovered close to a pump house at Clearwater Lake, just a short distance from the residential school she had previously attended (Ham, 2014, p. 9). Helen Betty Osborne had endured horrific beatings, sexual abuse, and approximately fifty screwdriver stabbings (Ham, 2014, p. 9). The perpetrators were Dwayne Johnston, James Houghton, Lee Colgan, and Normand Manger, who had all been drinking and prowling the town streets, searching for Indigenous women to have sex with (Ham, 2014, p. 9). Following Helen Betty Osborne's murder, the police investigation was criticized by the public for being unfair and discriminatory. The town itself was split between citizens who were White and those who were Indigenous, in addition to the racist inclinations among police and judicial authorities (Ham, 2014, p. 9). Ham (2014) writes:

> Both Dwayne Johnston and James Houghton were arrested and charged with the murder of Helen Betty Osborne in 1987, sixteen years after the crime had been committed. After the trial, Houghton was acquitted, and Johnston was sentenced to life in prison. Johnston has since been released from prison on parole. Lee Colgan was granted immunity after testifying against Johnston. The other man involved in the investigation, Normand Manger, was never formally charged with any offence. (p. 9)

The *Aboriginal Justice Inquiry* (1991) argued that Helen Betty Osborne would not have been brutally murdered if it were not for her skin colour - being Indigenous, and being a woman (Malone, 2016). The AJI (1991) also concluded that the primary factors leading to Helen Betty Osborne's murder were indifference rooted in racism and sexism (Malone, 2016). While four White men were charged in 1987, only one individual (Dwayne Johnston) was convicted (Malone, 2016). For the Indigenous community, it was clear "that because Osborne was an Aboriginal person, the townspeople considered the murder unimportant. However, allegations of racism, neglect, and indifference, on the part of the town's citizens, the police, and the Attorney General's department, were made" (AJI, 1991, p. 1). The murder of Helen Betty Osborne remains a pivotal case in Canadian history that is still a point of reference for the rise of the MMIWG movement many decades later (Amnesty International, 2004, p. 22-25; Gunn, 2017, p. 90; National Inquiry, 2019, p. 455; Robertson, 2015).

Pamela George (1967-1995)

In 1995, an Ojibway woman named Pamela George died in Regina, Saskatchewan, due to the violence inflicted on her by two White university students, Steven Kummerfield and Alex Ternowetsky (Razack, 2000). Two years after the murder, at the trial, the defence attempted to prove that Pamela George had managed to escape the remote field where she had been abandoned

by Steven and Alex and had instead been murdered by an Indigenous man (Razack, 2000, p. 124). The defence also claimed that due to intoxication, all responsibility for the beating of Pamela George was diminished (Razack, 2000, p. 124). Both the crown and the defence argued that the case should consider the reality that she was a prostitute (Razack, 2000, p. 125). The judge told the jurors to keep this in mind as they deliberated, which caused a public uproar (Razack, 2000, p. 125). Rather than being charged with first-degree murder and sexual assault, Steven Kummerfield and Alex Ternowetsky were given a six-and-a-half-year sentence after being found guilty of manslaughter, having already served twenty months (Razack, 2000, p. 125). Disturbingly, Alex Ternowetsky was released on parole in 2000 after serving two-thirds of the six-and-a-half-year sentence (Razack, 2000, p. 125).

Pamela George was "considered to belong to a space of prostitution and Aboriginality, in which violence routinely occurs, while her killers were presumed to be far removed from this zone, the enormity of what was done to her and her family remained largely unacknowledged" (Razack, 2000, p. 126). In other words, Pamela George's death was seen as "normal" and "routine" while those who killed her were understood not to be guilty, or not as guilty, given assumptions about their White middle-class respectability and the supposed incompatibility of that racialized respectability with murderous violence.

Tina Fontaine (1999-2014)

Tina Fontaine, a young woman from the Sagkeeng First Nation, was fifteen years old at the time of her death (Palmater, 2016, p. 260). As Palmater (2016) writes, leading up to her death, "the Winnipeg Police found Tina in a vehicle with an intoxicated older man, ran her name through the system, but sent her out alone into the night at 3:00 AM anyway" (p. 261). Paramedics subsequently discovered her to be unconscious, and they transported her to the hospital for

treatment before releasing her into the care of Manitoba's Child and Family Services (Palmater, 2016, p. 261). After being placed in a motel that housed foster children by Child and Family Services, Tina Fontaine vanished (Palmater, 2016, p. 261). Eight days after she had been reported missing, Tina Fontaine's body was discovered in the Red River in Winnipeg, Manitoba, on August 17, 2014 (Palmater, 2016, p. 254). The murder of Tina Fontaine is a call to action, prompting us to advocate for change in the Canadian police force, the standard of care given by provincial child welfare organizations, and the underlying factors that have led to young Indigenous girls being placed in foster care (Palmater, 2016, p. 254). Although a 53-year-old White man named Raymond Cormier has since been charged with the murder of Tina Fontaine, the truth is that her killing was made possible by a deadly type of racism that permeates federal and provincial laws and services, especially the judicial system (Palmater, 2016, p. 254).

Court Case Selection

While all the cases (Helen Betty Osborne, Pamela George, and Tina Fontaine) and many more deserve attention, beyond these high-profile cases, I chose to focus on the criminal trial for the death of Cindy Gladue. The selection of this case inescapably involves a subjective judgment, which I acknowledge for clarity and transparency. I selected this case since it was the first time in the country's history that a woman victim's preserved pelvic tissue was introduced as evidence and brought into the courtroom. In addition to the racist and sexist words used throughout the trial by court actors, it is crucial to study how such a grotesquely dehumanizing act arose. I focused on the 2015 trial, although the verdict was later overturned on appeal, where the accused was acquitted of first-degree murder and manslaughter (Stewart, 2021). More specifically, in February 2021, an 11-member jury in the Court of Queen's Bench found Bradley Barton guilty of manslaughter (Stewart, 2021). *R. v. Barton* (2015) reached the Supreme Court because legal errors were alleged

at trial. The Supreme Court concluded that these errors undermined the fairness of the trial, including the potential influence of harmful stereotypes about Indigenous women and jury instructions. Although the legal process ultimately resulted in an appeal and a subsequent conviction, this does not diminish the significance of examining the 2015 trial and the ways in which courtroom discourse shaped legal meaning, representation, and credibility. Analyzing the 2015 trial is important to understanding the case as a whole. Future research could include examining appellate decisions or conducting comparative analyses of cases that involve Indigenous women who are victims.

Cindy Gladue (1974-2011)

I find it essential to explain who Cindy Gladue was beyond the terrible events of her death. Cindy Gladue was born in Athabasca, Alberta, on July 23, 1974, and belonged to Métis and Cree communities (Cunliffe, 2018; IAAW, 2015). She was the eldest of four siblings from Cold Lake, Alberta (Marilyn, Jess, and Kevin) and the daughter of Donna and Lawrence (IAAW, 2015). Cindy Gladue was a mother and gave birth to her first daughter on June 23, 1996, her second daughter on June 14, 1999, and her third daughter on April 6, 2001 (IAAW, 2015). She was known for her passion for life and her love for her family (IAAW, 2015). Her family describes her this way:

> [Gladue] [w]as a mother to Cheyanne Kelly, Brandy Sierra and Brianne Nicole… She loved cooking shows and was known for her hearty breakfasts, ribs and apple crisp. She loved to draw. She celebrated Christmas and made summer pilgrimages to Lac Ste. Anne, west of Edmonton, with her family as part of a native Catholic tradition. She listened to Mötley Crüe. (Carlson, 2015)

Cindy Gladue's daughter, Cheyanne, noted, "She liked to cook, and I remember I used to sit on her lap and watch cooking shows with her. She liked to help people as much as she could" (IAAW, 2015, p. 24). Cindy Gladue's daughter, Brandy, shared:

> Me and my sisters were close to my mom, we told her everything, she was like our best friend. She was such a helpful person, she would cook sometimes, and she loved baking. She always cooked grandma breakfast. My mom was really good at drawing, and she liked writing too. It's hard for me and my sisters growing up without our mom here. We all miss her so much. (IAAW, 2015, p. 24)

Her daughter Brianne remembered:

> My mom was such a beautiful woman. She was a funny, loving, caring person! She was always a fun and outgoing woman. She loved to sing me and my sisters' songs before bed. I miss that so much! I could talk to my mother about anything, and she loved to listen to my stories. My mother also loved to watch cooking shows and learn new things. She was an awesome cook, if only she could have taught me her amazing skills. My mother was so kind she would always offer to help you do something even if she was tired. (IAAW, 2015, p. 24)

Cindy Gladue was a human being deserving of justice and was stolen from her family, friends, community, and nation. Her story deserves to be told, and her life deserves to be honoured. I briefly recall these remembrances from those who loved her as a reminder that she must not be reduced to how court actors described her, even if the brief descriptions above from her daughters offer only a glimpse into the woman and mother she was.

Criminal Court Proceedings and Court Transcripts

Analyzing criminal court proceedings is important because trials are highly consequential

for the individuals involved and for society, as they help define what is considered "right," "wrong," and what is punishable. Criminal trials matter for social understandings of what constitutes responsibility and what constitutes social and criminal wrongdoing. Methodologically, I consider court transcripts particularly useful for research because they are permanent records that I can revisit at any time. Importantly, my focus is not on the procedural constraints and formal aspects of the court case, except where these are significant for reproducing racialized and sexist colonial constructions of the Indigenous woman and the White man accused. Instead, I focused on the single case to shed light on what happened in this initial trial for Cindy Gladue since justice matters for her at the individual level, and, in addition, to shed light on ways that the judicial system reproduces colonial injustice for other Indigenous women who are victims of violence. I relied on court transcripts to address how systemic, gendered racism is presented in the oral arguments of court actors. Examining court transcripts allowed me to grasp better how the defence and crown counsel, the accused, the judge, and witnesses understand or fail to understand criminality, Indigeneity, and how they understand or fail to understand Indigeneity, gender, and power. At the same time, I was attentive and actively sought instances where the court seemed to respect the victim, but I found few. I also found a few instances where the court actors acknowledged how their word choice and the power of language, phrases, and vocabulary shape the court's perception of the victim and the perpetrator. My findings also show that in the criminal courts, there was little to no recognition of the colonial context that informed every aspect of the case.

Court transcripts provide the reader with pages of text presented like a play script, with actors and their speeches, but with little else in the way of description. Since the transcripts provide little information to help readers understand the courtroom's visual representation, there is ample

room for interpretation. In addition, the reader of the court transcripts does not have access to the physical proximity of the court actors and to their facial expressions, tone of voice, gestures, body movements, posture, and eye contact.

I recognize the importance of nonverbal communication and body language in presenting and conveying information. For instance, the human face is highly expressive, conveying a wide range of nonverbal cues (Segal, Smith, Robinson, & Boose, n.d., p. 3). Understanding the facial expressions used throughout the criminal trial may have provided a clearer sense of when the court actors exhibited happiness, sadness, anger, surprise, fear, and disgust (Segal et al., n.d., p. 3). The court transcripts do not highlight instances in which court actors substitute facial expressions or body language for the verbal message. I recognize that an individual's facial expression and body language could make a far more powerful statement than words (Segal et al., n.d., p. 3). The non-verbal messages sent and received by the court actors may have fostered trust or made people feel at ease, irritated, confounded, and challenged by what they were trying to say (Segal et al., n.d., p. 3). These signals continue even after an individual stops speaking as they express themselves nonverbally, which may have influenced the encounters, relationships, and decisions throughout this entire trial. Keeping all of this in mind, I recognize and acknowledge the limitations that may arise when analyzing the written court transcripts.

The court transcripts analyzed for this case study were from the criminal trial of *R. v. Barton* (2015), held in the Court of Queen's Bench of Alberta, Judicial Centre of Edmonton. I relied on court transcripts as the unit of analysis to examine systemic racism and sexism (Balfour, 2012; Murdocca, 2013). These court transcripts comprised the hearings that took place in Edmonton, Alberta, on the following dates:

- February 17, 2015, to February 20, 2015

- February 23, 2015, to February 27, 2015
- March 2, 2015, to March 6, 2015
- March 9, 2015, to March 11, 2015
- March 13, 2015
- March 16, 2015, to March 18, 2015

Transcript Management Services prepared the transcripts in Edmonton, totalling 1,812 pages, which constitute the official public record of the court proceedings.

Mixed-Methods Research

As noted above, I embarked on a significant research journey to uncover how court transcripts might shed light on the criminal court's failures and the prevalence of systemic racism and sexism. I obtained transcripts for *R. v. Barton* (2015) and researched the procedures, benefits, and drawbacks of quantitative, qualitative, and mixed-methods research. After careful consideration, I chose a mixed-methods approach, incorporating both quantitative and qualitative methods. I then began examining the court transcripts using a quantitative, statistical approach – specifically, computer-generated word counts using Leximancer software. Next, I delved into the court transcripts using a qualitative, interpretive, and hermeneutic approach—specifically, thematic analysis.

Quantitative Method: Content Analysis

Methods are socially understood in gendered ways, with quantitative approaches conventionally connected to masculinity, objectivity, positivism, and statistics (Oakley, 1998; Westmarland, 2001). Quantitative (positivistic) methods have been criticized for excluding women and for "adding women to male knowledge, whereby the findings from research on men are generalized to women" (Westmarland, 2001, p. 3). Mies (1983) argues that quantitative methods

are “malestream methods” used to research women’s experiences. Women’s voices, especially Indigenous women, are often muted in androcentric, quantitative approaches (Dubois, 1983). While I refused to rely solely on a quantitative methodological approach that ignores women, I agree with Jayaratne (1983) that we must not wholly reject quantitative methods, as they can shed important light on gendered patterns.

I use a quantitative method to determine word frequencies that may help answer the research questions. For instance, the computer-generated word counts highlighted the words (e.g., Native girl, Native lady, prostitute) that I believe, in context, reproduce systemic racism and sexism. This helped to answer RQ2: Do the discourses used by court actors (defence and crown counsel, the accused, the judge, and witnesses) in reference to the Indigenous woman victim reflect deep-seated systemic racism and sexism? If so, are there instances where the narratives are challenged by the court actors? RQ3: Do court actors (defence and crown counsel, the accused, the judge, and witnesses) contribute to a history of victim-blaming and reinforce the idea that Indigenous women are sexually available and deserving of violence? RQ4: Do court actors (defence and crown counsel, the accused, the judge, and witnesses) ignore or recognize, completely or incompletely, histories of the colonial state, RSS, intergenerational trauma, historical and contemporary sexualization, and the connection between sex work and sexual violence?

Content analysis, an objective approach that combines quantitative and qualitative analysis, was originally developed as a research tool to systematically read and interpret texts (Hall & Wright, 2008). This method can be applied to any text, including legal documents such as regulations, statutes, and trial court records (Hall & Wright, 2008). In this study, I employed content analysis to quantify words, enabling me to qualitatively explore specific concepts, themes,

or words within the qualitative data represented by the text (e.g., Dillon, 2012). Content analysis provides a rigorous framework for drawing inferences about the messages and meanings within the data, particularly the court transcripts. It is a trusted method for examining large bodies of text and mapping out key characteristics (Dillon, 2012), which is particularly useful given the extensive nature of the court transcripts. Quantitative content analysis allows for the observation and counting of the occurrences of "specified characteristics or dimensions of text" (Dillon, 2012, p. 1), enabling the systematic and objective recognition of the unique characteristics of the court transcripts. This includes statistical counts of recurrent words and phrases (Holsti, 1969), thereby facilitating a recognition of recurrent themes in the text and, when placed in a broader social context, helping to develop insights into its "wider social significance" (Dillion, 2012, p. 1).

The content analysis in this research is focused on the words used in the courtroom to describe an Indigenous woman who is a sex worker and victim of violence, as well as the White man who is the accused. The systematic analysis through word counts helps identify common words and typical characterizations of both the Indigenous victim and the White accused. However, the broader aim is to highlight the racialized, gendered character of the colonial justice system, making this research significant in the context of social justice.

I selected Leximancer software to provide a quantitative foundation for my analysis. I used this software to identify the most frequently used words in the court transcripts. While there are practical advantages to using Leximancer as software to support pattern identification across a large dataset, I recognize that its outputs should not be considered objective. While the tool helped me systematize more rigorously and efficiently, Leximancer is a human-designed technology that is subject to bias in its data processing, categorization, and embedded algorithms. This technology is a human-designed system that embeds specific forms of knowledge, values, and assumptions

(O'Neil, 2016). It is important to acknowledge that, rather than removing bias, technology can reproduce it. The outputs are influenced by the software's structure, the logic of co-occurrence, and the parameters I set. As such, the outputs from this tool cannot be considered unbiased or objective. This corresponds to broader critiques that challenge the idea of technological objectivity and draw attention to how data systems reproduce existing power relations (Benjamin, 2019; D'Ignazio & Klein, 2020; Noble, 2018). In this research, I used Leximancer as a supportive analytical tool to identify patterns, allowing me to interpret them while being attentive to representation, context, and issues of power.

A complete list of the computer-generated word counts is provided in Appendix C, which is broken down to explore words, categories, and counts within the court transcripts that I believe the court relies on that shape the trial and outcomes for the victim and the accused. I created an additional table in Appendix D to showcase the words, categories, and counts used to identify the victim and the accused. In Appendix E, I highlight these words and compare them side by side for the victim and the accused. The computer-generated word counts established a foundation for understanding what words may be necessary to consider during the second reading of the court transcripts. In addition to the word counts, Leximancer also presented a summaries tab with text extracts containing the most significant words identified within the text. Connectivity is determined by the sum of all text co-occurrence counts between each word and every other word presented (Leximancer, 2018). These word counts, including the textual co-occurrence of words, guided my interpretation for the rest of the analysis as I connected them to the partially intuitive thematic codes.

As presented in Appendix C, 231 words that were highlighted in the computer-generated count (e.g., consent, Native, prostitute, prostitution) were analyzed for frequencies to explore

occurrences of what I understand to be systemic racism and sexism. Each word was classified under substantive themes, including adjectives, adverbs, and nouns that speak to the same concerns. These themes are not just categories, but they represent significant aspects of the discourse that shed light on systemic issues. For instance, under the theme *substance use*, I grouped instances when the word *drunk* was used as an adjective, noun, or adverb. I added the label category for the words that I believed were used to identify a person because the practice of naming individuals is essential when studying the indifference of court actors through the process of referring to the victim with specific words (potentially contributing to stigmatizing, victim-blaming, and the violation of human rights). After considering the word counts derived from quantitative analysis, thematic analysis was used to generate broader themes.

Qualitative Method: Thematic Analysis

Qualitative methods are often linked to femininity, subjectivity, and interpretivism (Oakley, 1998; Westmarland, 2001), and so they are considered more appropriate for subjective knowledge and the promotion of equal relationships between those who are being researched and the researcher(s) (Jayaratne, 1983; Oakley, 1974; Westmarland, 2001). In this research, I rely on thematic analysis to help understand words used in the criminal court, especially how the reproduction of systemic racism and sexism is still present in contemporary Canadian criminal "justice." Thematic analysis determines the presence or absence of themes, which the court actor's role can further disaggregate.

Thematic analysis is a versatile strategy that focuses on detecting, evaluating, and capturing patterns in data, allowing for a comprehensive, thorough, and sophisticated representation of the

data (SAGE, 2019).[8] The objective of thematic analysis is to identify, analyze, and report the themes "to minimally describe data in rich detail" (SAGE, 2019, p. 3), which requires a careful process of reading and becoming familiar with the court transcripts, then re-reading for more detail and in conjunction with the words revealed through quantitative analysis. Furthermore, the themes generated are "patterns across datasets that are important to describing a phenomenon and are associated with a specific research question" (SAGE, 2019, p. 3). In this case, my questions are about how the criminal courts do and do not reproduce racist and sexist representations of Indigenous women.

Step One: Getting Familiar with Court Transcripts

To begin the thematic analysis, I followed Braun and Clarke's (2006) recommendation for step one: familiarizing myself with the data. More specifically, once I received the court transcripts, I spent approximately three months reading all 1,812 pages line by line - an intense process given the density of the court transcripts and the ethically problematic nature of much of the content. During this first read, I did not formally develop codes but actively observed the patterns and meanings. I kept a journal of my initial reactions and feelings (e.g., emotional responses, pieces that surprised me) (Appendix F), as well as ideas for possible codes to be created in the next step (Appendix G). The first reading was thus an opportunity to appreciate the text as a whole (Erlinggsson & Brysiewicz, 2017, p. 2) while introducing me to different court actors, details of the victim and the accused, and the timeframe of the trial, without the distraction of highlighting and becoming lost in the potential themes.

[8] For this research, thematic analysis was chosen over other qualitative methods like conversational analysis. The court transcripts, which were the primary materials analyzed, do not provide sufficient information on speaker interaction. These limitations led to the decision to use thematic analysis for this research.

I have reflected on the notes I kept in my *First Read Reaction Journal*, and in this first read, I found the words used by the court actors to describe and address Cindy Gladue especially striking. More specifically, I noted that the defence and crown counsel, the accused, the judge, and witnesses used similar dehumanizing and derogatory words (e.g., *prostitute, lady-friend*). At the same time, I developed a holistic sense of the text, including how the judge instructs the jury, for instance, and how the prosecution and defence build their arguments by questioning witnesses.

Step Two: Creating Initial Codes

After completing step one, the initial review of the court transcripts, I proceeded to step two. I began generating initial codes, which were words or short phrases that conveyed the essence of the data (Braun & Clarke, 2006). I created a list of codes influenced by my first read of the transcripts and the computer-generated word list. This step took approximately four months to reread the court transcripts, identify noteworthy excerpts and recurring or analogous concepts, and develop codes for them. The initial codes generated at this stage were derived from striking or recurring words, and their significance cannot be overstated (e.g., used in conjunction with *Cindy Gladue,* the words *alcohol, drunk*, and *high risk* were thematically grouped under *victim-blaming*).

Step Three: Collecting Codes and Supporting Data

Step three of the thematic analysis involved collecting codes along with supporting data, a crucial part of the process. At this step, I compiled all text excerpts related to a particular code, ensuring that no detail was overlooked. For instance, the code *prostitute* was attached to the excerpt, "*The Crown's theory is that Ms. Gladue is a prostitute. She and Mr. Barton entered into a business relationship and, following a period of drinking in the bar"* (R. v. Barton, 2015, g. 738, lines 11 & 12). The code *prostitute* was also connected to the excerpt, *"A naked prostitute walks out of the bathroom after negotiating $60. And we can't take that into account?"* (R. v. Barton,

2015, p. 1535, lines 28 & 29). This context went beyond simply "counting" to understand how different court actors mobilized particular words and themes. Since I relied on a pen-and-paper approach to this analysis, I extracted the text excerpts and organized them by their associated code. This step was highly time-consuming and sometimes challenging to manage due to the number of court transcript pages. My initial connection of the free-hand analysis themes, words, and computer-generated word counts is presented in Appendix G.

Step Four: Combining Codes into Themes

At this step, I had a collection of initial codes and excerpts to group into possible themes. Using themes was a meaningful tool for identifying patterns and trends within the court transcripts. The themes encompass more than the subject matter; they are complex and express something valuable and significant about the research questions. Over the course of one and a half months, I relied on the codes and associated excerpts from the previous step to develop potential themes. The initial themes developed during this step included *Theme 1: Objectification and Sexualization of Victim; Theme 2: Sex and Sex Work; Theme 3: Victim-Blaming and Consent; Theme 4: Responsibility of Perpetrator; Theme 5: Identifiers and Labels for Victim; Theme 6: Identifiers and Labels for Perpetrator; Theme 7: Violence Against Indigenous Female Victim;* and *Theme 8: Alcohol and Substance Use* (shown in Appendix G).

Step Five: Revisiting and Revising Themes

Step five involved revisiting the initial set of themes created in Step Four. The objective of this step was to ensure that each theme was distinct and supported by sufficient evidence, while also considering how these themes would contribute to a narrative that addresses the research questions. At this step, I combined related themes and eliminated those lacking sufficient evidence, resulting in *Theme 1: Naming the Individual; Theme 2: Systemic Sexism; Theme 3: Systemic*

Racism; and Theme 4: Victim-Blaming (shown in Appendix H). This process led to more refinement to create two final broader themes: *Theme 1: Systemic Racism and References to Indigeneity; and Theme 2: Systemic Sexism and Sexualization of the Victim.* These two broader themes comprised several sub-themes (Appendix I). These two final themes played a significant role in addressing the research questions.

Applying a Holistic, Hermeneutic Approach

Finally, in addition to content analysis (quantitative) and thematic analysis (qualitative), I undertook a textual analysis informed by hermeneutics (Vaismoradi, Turunen, & Bondas, 2013), a form of listening to texts and thinking through what makes a narrative credible (Vaismoradi et al., 2013). This intuitive approach provided an opportunity to ask, for instance, whether the court transcripts contained metaphors and, if so, how they contributed to the overall narrative. As I engaged with the court transcripts, I relied on Erlingsson and Brysiewicz's (2017) recommendation:

> You must mould the clay of the data, tapping into your intuition while maintaining a reflective understanding of how your own previous knowledge is influencing your analysis, i.e., your pre-understanding. In qualitative methodology, it is imperative to vigilantly maintain an awareness of one's pre-understanding so that this does not influence analysis and/or results. (p. 95)

Reflecting on these recommendations and checking in regularly with my opinions, personal beliefs, biases, and assumptions was both challenging and humbling. When considering the assumptions that informed my understanding of the text, it was influenced by the vast literature that highlights the racialized, gendered systemic racism that is reproduced. Nevertheless, I sought

to identify counterexamples in the words presented in the court transcripts that might challenge these assumptions.

Alvesson and Sköldberg (2017) maintain that all interpretation is a creative act, as listening to texts is a dialogue that relates parts to thematic wholes, or the overall narrative to its main story and its contradictions. The objective is to observe contradictions and evidence that counter the main story and take this into account to understand the complex dynamics that may be at play in the criminal case of violence leading to the death of an Indigenous woman. A hermeneutical approach reminds us to acknowledge where the silences exist (e.g., what is masked, repressed, and subjugated) (Alvesson & Sköldberg, 2017), where I was particularly interested, given the literature review on tendencies to sexualize Indigenous women who are victims without seeking to offer the colonial context as critically shaping Indigenous women's lives and how they are perceived. Compared to other research methods (e.g., traditional content analysis) that rely heavily on statistical counts, hermeneutics is an intuitive way of reading texts (Alvesson & Sköldberg, 2017). If the intuitive aspect is not taken seriously, there will be a loss in the textual research's analytic power. For this research, part of the process included recognizing the ability to interpretively relate "parts" of the text (court transcripts) to a broader "whole" (and back and forth) (Alvesson & Sköldberg, 2017). Hermeneutics recognizes that the text and the interpreter—reader, spectator, or listener—bring their own "horizons of understanding" to the process of interpretation. Along with the text's genre, audience, historical context, and language, these horizons also encompass the interpreter's experiences, beliefs, history, cultural context, and prejudices. To arrive at a meaningful interpretation of text, the objective is to bridge these realms.

Limitations of Methodology

As discussed above, the frequency and distribution of particular words in a text or

collection of texts were investigated using quantitative content analysis. While this approach has several benefits, such as replicability and the ability to evaluate large volumes of data, it also has drawbacks. Quantitative content analysis cannot fully capture contextual information and can only produce partial knowledge, as it focuses on the frequency of particular words or phrases within a text. As a result, it may take time to properly comprehend the relevance and meaning of the material under analysis. Measuring certain facets of importance, such as irony or sarcasm, could be challenging using this technique. Since I could not analyze nonverbal communication in the courtroom, the subtleties and intricacies of language use across various situations may be less well captured by quantitative content analysis, even though it is valuable for spotting patterns and trends.

Although thematic analysis, as a qualitative method, offers several benefits, including sensitivity to context, flexibility, and the ability to capture rich, detailed data, it also has limitations. The capacity to generalize the thematic analysis to broader cases may be constrained because it is frequently based on a limited sample of texts. Detecting and interpreting themes in the data through thematic analysis is a subjective process shaped by the researcher's biases and presumptions. Since this research involved evaluating large volumes of data, the thematic analysis was time-consuming and labour-intensive.

"Today we have recognized that it is within our power, as representatives of governments and organizations, and as Canadians, to end the cycle of violence against Indigenous women and girls. We have determined that it must end with us. Now, we must follow through on the actions we have agreed to undertake together and make them a priority in every aspect of our work and our lives."

- Inuit Tapiriit Kanatami President Natan Obed, 2016

CHAPTER FOUR: RESULTS

The court transcripts analyzed for this study were from the criminal trial of *R. v. Barton* (2015), presented in the Court of Queen's Bench of Alberta, Judicial Centre of Edmonton. I relied on these court transcripts as the unit of analysis (Balfour, 2012; Murdocca, 2013) to examine the systemic racism and sexism in a Canadian trial involving an Indigenous woman victim, who died, and a White man, the accused. As mentioned in previous chapters, court transcripts were selected because they provide a direct, straightforward record of events, including exchanges, words, and rulings, which may indicate underlying prejudices. White men accused may profit from narratives that present them as more "civilized" or "redeemable," while Indigenous women may be shown in ways that undermine their humanity and credibility (Razack, 2015). Analyzing court transcripts illustrated how these prejudices shape perceptions of the accused and the victim, enabling a thorough examination of systemic injustices in the courtroom. I believe that biases, both apparent and implicit, are present throughout the entirety of the trial, highlighting how intentional or unintentional preconceptions about Indigenous women are reinforced (e.g., believing that they are less trustworthy or more likely to agree to violence). The results of this research show how victim-blaming is frequently relied on to dehumanize Indigenous victims and how tolerance may instead advantage the White accused (Palmater, 2016).

Court transcripts offer evidence to highlight institutional racism and sexism in action through the unique patterns of questioning, sentencing statements, and judicial decision-making. The interactions between the court actors in the courtroom play a crucial role in determining the trial's outcome. The exchanges between these court actors are captured in court transcripts, including how the defence may employ racist or sexist stereotypes to cast doubt on the legitimacy of an Indigenous woman victim. To influence the jury's perception of the victim, for example,

they may make assumptions about the morals, conduct, or way of life of Indigenous women, constituting a kind of systemic discrimination (Borrows, 2016) and understanding how sexism and systematic racism function in the courtroom depends on these exchanges.

Two prominent, related themes emerged from my combined first reading, quantitative analysis using software, and subsequent qualitative analysis relying on transcript readings: *Theme 1: Systemic Racism and References to Indigeneity; and Theme 2: Systemic Sexism and Sexualization of the Victim*. Together, these themes reveal how the colonial relationships and dynamics, including the normalization of racist and sexist violence against Indigenous women, are reproduced in the courtroom. This contradicts the notion that the courts represent justice but aligns with a broader analysis of how colonial dynamics permeate every aspect of Canadian society. This trial represents a "critical case in which the bodily integrity of women and rights of Indigenous women are at stake" and "relations between Indigenous women and the criminal justice system are in crisis" (LEAF, 2018). Before exploring the main themes, I think it is essential to discuss some of the most striking elements of the case that stood out to me during my initial reading. I believe that the events that occurred throughout the trial that I will discuss next set the stage and highlight the expectation that systemic racism and sexism are allowed, acceptable, and even encouraged within the courtroom.

Creating a Space for Systemic Racism and Sexism

I note that at the very beginning of the trial, one of the first things that the judge[9] said to the jury before they were to hear the evidence to help instruct them in their role and impress on them the seriousness of the task before them, was the following:

[9] While the judge is referred to as the Court within the court transcripts, I use the term judge throughout this research.

> We, you and I, are now a court comprised of 13 Judges. As members of the jury, your function will be to try the facts. You are the sole Judges of the facts. As the sole Judges of the facts, you will have the responsibility of deciding on credibility of the Witnesses and the weight which you will give to the evidence of each witness… I therefore suggest that you listen with a great deal of care to the evidence which will be presented. (R. v. Barton, 2015, p. 4)[10]

At the very beginning of the trial, the judge instructed the jury to "try the facts" (R. v. Barton, 2015, p. 4) and decide upon the credibility of the witnesses and encouraged the jury to "listen with a great deal of care" (R. v. Barton, 2015, p. 4). However, throughout the trial, there is a lack of care in presenting information and engaging with all the facts by all parties, especially facts related to the broader colonial contexts that shape the trial. If all individuals involved listened carefully throughout the trial, systemic racism and sexism would be highly evident, as the analysis below will show. There was care shown in some instances, but not the kind of care that enabled the jury to unpack the sexist racism they witnessed in the courtroom, much less understand the colonial contexts that informed them. This was a product of routine attention to the role of the jury and the crown in a criminal case, as described by the judge, and a commitment to fairness that did not extend to actively considering racism and sexism. There is an urgent need for reform in courtroom practices to address these biases. When it came to the innocence of the accused, at the beginning of the trial, during the *Opening By The Court*[11], the judge provided the following instructions to

[10] I include an extensive number of direct quotes from the court transcripts in this chapter since I believe there is significance to sharing each one of them as an example of deeply rooted systemic racism and sexism within the court. I provide information about the context of each quote (who is speaking to whom). I look at exactly which court actors are using what vocabulary but do not discuss the court actors in a particular order; the focus is on the statements made.

[11] *The Opening By The Court* is an example of the specific contexts in which the speaker (in this case, the judge) is speaking.

the jury:

> for now, you must remember that it is for the Crown to prove the guilt of Mr. Barton. He does not have to prove anything or explain the evidence offered to you by the Crown. The law presumes him to be innocent or not guilty unless or until you decide otherwise. If the Crown fails, Mr. Barton is entitled to be acquitted. That is his right, and that is your duty. (R. v. Barton, 2015, p. 10)

This instruction sought to clarify the accused's role in the trial and his rights, including the presumption of innocence. Since the court case focuses on determining whether Bradley Barton was innocent or guilty, this attention was essential and instructs the jury in accordance with Canadian law.

Similarly, much attention was focused on reminding the jury to consider the accused innocent, as the judge stated during the *Charge To The Jury*: "You may find him [guilty] only if, after you consider all the evidence, you are satisfied that the Crown has proved its case against him beyond a reasonable doubt. Mr. Barton does not have to prove anything. The onus is on the Crown, and it never shifts" (R. v. Barton, 2015, p. 1731). This instruction, while a fundamental principle of Canadian law, also highlights the significant power imbalance in the trial process. The crown, as the representative of the state, is tasked with proving the accused's guilt, and this imbalance of power can have significant implications for the fairness of the trial. Again, we can understand why this is meaningful, and the judge is carrying out their duty by reminding the jury how Canadian law works. As the accused, Bradley Barton need not present evidence of innocence. Instead, in Canadian law, the crown must show, beyond a reasonable doubt, that Bradley Barton is guilty of the violence leading to the death of Cindy Gladue.

Part of the judge's normal functioning is to inform the jury of their role. Still, notably, there was no similar instruction regarding Cindy Gladue's rights and the importance of respecting her dignity as the deceased victim. Cindy Gladue was a sex worker and an Indigenous woman, where sex work is subject to deeply rooted stigmatization and Indigenous women face established racism and sexism (Acoose, 2020; Green, 2007). The judge did not warn the jury about the importance of care in taking up the facts and their interpretation of facts in terms of possible distortions within a context of colonial racism and sexism. How can the Canadian criminal justice system place so much power in a single individual (the crown) to prove the guilt of the accused? Why is the onus not on all court actors? Why is the responsibility not put on the accused, who has admitted to the wrongdoing? Why did the accused receive impunity? When were Cindy Gladue's rights indeed recognized? Why was the jury not repeatedly instructed of their duty to provide justice for the victim?

Regarding Cindy Gladue as a sex worker and an Indigenous woman, the judge did not warn the jury about making adverse conclusions based on these facts. Considering how the judge set the foundation for systemic racism and sexism, I found it exceptionally alarming when the judge both acknowledged and reinforced stereotypes at the same time when making harmful statements like: "If she [Cindy Gladue] was unhappy with what had happened the night before, I recognize that prostitutes will do terrible things just because they need the money or -- you know, but that is all stereotypical, and I do not want to be in any way slagging the poor victim here" (R. v. Barton, 2015, p. 1537). This statement not only reinforces the stereotype of sex workers as being willing to endure violence for money, but it also suggests that Cindy Gladue's potential unhappiness with the situation is not a valid concern. This is an example of a statement made by the judge during the *Discussion* portion of an *Afternoon Session*. The context in which the judge made this

observation was when speaking to both the crown and defence. More specifically, this comment was made in response to the crown's statement: "All I'm trying to say is that I don't want them to think because she had done this in the past, she was more likely to have consented on this particular occasion. We know she was working as a prostitute on this evening" (R. v. Barton, 2015, p. 1537).

During the *Opening By The Court*, the judge shared with the jury: "Finally, I want to stress the importance of keeping an open mind. Your duty of fairness and impartiality is one of the best traditions of our legal system. The law expects no more from you and will accept no less" (R. v. Barton, 2015, p. 10). If my analysis shows that fairness and impartiality for the victim were absent, this is in part because of the ways that the judge interprets these concepts as "keeping an open mind" (R. v. Barton, 2015, p. 10). Supporting the jury in keeping an open mind does not extend to providing context, especially understanding colonial racism and sexism and how these might impact statements and interpretations. Thus, in the opening instructions, the judge states: "You must also put aside any preconceptions or personal prejudices you may have" (R. v. Barton, 2015, p. 5). However, this is presented as a question of personal integrity alone. After analyzing the themes highlighted below, I argue that the preconceptions and personal prejudices of all the court actors were not put aside and significantly influenced the trial outcomes.

During the *Opening By The Court*, the judge further warns that the jury must not listen to any news from outside the courtroom about the case, emphasizing that "information which comes to you outside the courtroom is likely to be unreliable, out of date, and inaccurate. It would be very unfair to both the Crown prosecutor and Mr. Barton to use this information without their knowledge, and it would be very dangerous to everyone's desire that this be a fair trial" (R. v. Barton, 2015, p. 7). Here, the judge warns the jury about the dangers of being unfair, but this begs

the question – if fairness is critical to the trial and if it is admissible to consider the ways that the media might unfairly influence an examination of the facts, why are other contexts not – especially systemic racism and sexism against Indigenous women – considered relevant in creating a fair trial? These questions about fairness haunt this empirical chapter and are evident in the themes presented below.

One of the most horrific examples of the mistreatment of Cindy Gladue and her family was the introduction of her partial human remains (pelvic region) as an exhibit. The judge relied on "the most intimate part of a woman's body to be evidence in a jury trial" (Big Canoe, 2015). As Big Canoe (2015) writes:

> Why would a court ever allow such a display of disrespect and degradation to occur to a victim's body? Technology should have played a significant role in any demonstration by expert Witnesses. Instead of using other tools and alternatives, Cindy's vagina was used as a demonstration tool. This is both offensive and re-victimizing.

Big Canoe (2015) also identified four significant issues that should have received more attention when the exclusion of Cindy Gladue's private parts as evidence was considered. More specifically, the following issues that should have been considered include:

> 1. The dignity of an individual, including her privacy rights; 2. What impact the use of her actual remains had on Cindy's family and their faith in the justice system; 3. The unorthodox approach to evidence was unnecessary given the medical experts had other ways to demonstrate their positions; 4. The potential for vicarious trauma to those in the courtroom and the public in general. (Big Canoe, 2015)

In the context of systematic dehumanization, it is not that unexpected that this occurred. While it is unusual enough that the judge made specific remarks, this act was part of the broader process of

dehumanizing Cindy Gladue. The judge is the most authoritative body in the courtroom and claimed that including Cindy Gladue's private parts was not as disturbing as it should have been, signalling to the jury that they should be less shocked, and that the denial of privacy rights and the dehumanization of a woman's body is standard. In a widely publicized and condemned event, the judge permitted the crown to present to the jury Cindy Gladue's preserved pelvic region as part of the prosecution. When discussing the crown's desire to present this to the jury, the judge states:

> The Crown seeks to have the preserved tissue shown to the jury by [the forensic the pathologist called by the Crown]. The Crown argues that the tissue is real evidence, it is relevant and material to the issues in the trial, and it is not subject to any exclusionary rule of evidence, and its probative value exceeds any prejudicial effect on Mr. Barton. [Both Counsel chosen by Mr. Barton] on Mr. Barton's behalf oppose showing the tissue to the jury, arguing that it is not necessary to do so, showing the tissue is duplicative of [the forensic pathologist called by the Crown]'s oral testimony as to his opinions and conclusions following the autopsy, there are already photographs of the pelvic region which are adequate to enable the jury to understand [the forensic pathologist called by the Crown]'s evidence, and there is prejudice to Mr. Barton in that the jury may be Inflamed against him as a result of seeing Ms. Gladue's tissue in this fashion. There are also issues raised concerning the preservation of the tissue and its continuity, as evidenced in this case. (R. v. Barton, 2016, p. 737-738)

During the *Submission*, while discussing the possibility of the jury viewing the "pelvic area that was taken from Cindy Gladue" (R. v. Barton, 2015, p. 500), the crown states: "But we'd like to make an application that the jurors would be allowed to view that specimen on this basis, sir. This is clearly the best evidence" (R. v. Barton, 2015, p. 501). The crown then goes on to compare their

experience of viewing Cindy Gladue's pelvic region "like walking into a Biology 30 classroom and seeing a specimen in a container" (R. v. Barton, 2015, p. 501). It was the crown who applied to have the pelvic tissue brought into the courtroom as evidence based on the argument that: "It is important for the jury to see the tissue itself, as it is real evidence that is relevant and material to a key issue in the trial, the cause of injury itself" (R. v. Barton, 2015, p. 738).

During this *Ruling (Voir Dire)*, the judge added: "Further, the court reiterates the case of the prosecution, observing that the Crown argues that it is important for the jury to see the tissue itself, as it is real evidence that is relevant and material to a key issue in the trial, the cause of the injury itself" (R. v. Barton, 2015, p. 739). Here, the judge explains that the crown seeks to present Cindy Gladue's pelvic tissue to the jury. I note the fact that the judge compares Cindy Gladue's body part to other autopsy photos during their *Ruling (Voir Dire)* when they state: "The tissue itself was not particularly recognizable as female genitalia because of the manner in which it has been preserved" (R. v. Barton, 2015, p. 739) and "The presentation using the tissue was very respectful and inoffensive once the initial shock or revulsion subsided, which in my case it did quite quickly" (R. v. Barton, 2015, p. 749). The judge proceeded to compare Cindy Gladue's tissue to a "biology class experiment" (R. v. Barton, 2015, p. 716) that "was not offensive" (R. v. Barton, 2015, p. 745), in justifying its decision to allow for the tissues to be shown. This was a careless statement as it minimizes Cindy Gladue to an object that the court has the right to dissect, observe, and criticize.

In deciding in favour of the crown, the judge makes several comments to justify using Cindy Gladue's tissue. For instance, the judge states in their *Ruling (Voir Dire)*: "With respect to the law in this area, surprisingly, there does not appear to be any Canadian law directly on the point of the use of human tissue in court" (R. v. Barton, 2015, p. 740), suggesting that the

presentation of human tissue is very unusual and in fact, without precedent. At the same time, the judge observes that: "There are numerous cases dealing with photographs of human tissue, but the use of portions of victim's body as evidence at trial appears to be novel" (R. v. Barton, 2015, p. 740). In the final decision in favour of the display of the tissue to the jury, the judge concludes that: "The tissue here is real evidence; indeed, the tissue here is unique evidence" (R. v. Barton, 2015, p. 740) and "There is also no general exclusionary rule relating to the use of tissue at trial" (R. v. Barton, 2015, p. 740). The judge here relies on the lack of guidelines to justify the presentation of part of Cindy Gladue's remains, arguing that it constitutes substantial evidence and that no juridical rule prohibits its display as evidence in court.

It is important to note that the judge acknowledges in their *Ruling (Voir Dire)* that the defence claims: "The tissue is highly disturbing, it may be offensive to some jurors, and it may tend to inflame the jury" (R. v. Barton, 2015, p. 745). The defence, as expected, made a compelling case for ensuring a fair trial for its client, underscoring the importance of justice and fairness in legal proceedings. However, the configuration of actors meant that no voice was raised on the victim's behalf. There was no mention or argument made that using the tissue as evidence would be extremely disturbing and harmful to Cindy Gladue's family and community and to her human dignity. Alarmingly, the defence responded during their *Submission*: "I've never seen or heard of Crown in the middle of the trial making an application to provide this kind of evidence to a Court, especially to a jury" (R. v. Barton, 201, p. 503). During this same *Submission*, the defence shares:

> I disagree fundamentally with my friend's assertion that this is highly probative and not prejudicial… But when my friends say this is the best evidence, no, it's not the best evidence. It is a specimen and only becomes helpful evidence through the eyes of an

> expert. And you can't turn these 12 people into experts themselves in the course of a half-day or a one and a half day's crash course on what injuries look like and say, okay, jury, off you go… The jury should be locked into deciding this issue not by viewing it themselves but by looking at the photographs as an aid to what these experts are talking about, and that's the best evidence… So there's a number of serious difficulties, and the essence is that the Crown would be inviting this jury to become their own experts instead of viewing this evidence through the eyes of experts. (R. v. Barton, 2015, p. 505)

At the same time, it is essential to note that the judge did not completely ignore the potentially disturbing nature of showing partial human remains. When the judge was to give their *Ruling (Voir Dire)* to determine the "admissibility of the preserved pelvic region of the deceased in this case, Cindy Gladue" (R. v. Barton, 2015, p. 737), they stated the following:

> My conclusion here is that the tissue is presumptively admissible. It is not a graphic depiction of evidence; it is evidence in itself. If the photographs are admissible, the object of the photograph itself should be admissible as real evidence. The issue then becomes one of balancing the probative value of the evidence and the prejudicial effect of its introduction. (R. v. Barton, 2015, p. 745)

When discussing its role as a "gatekeeper of evidence" (R. v. Barton, 2015, p. 745) during the *Ruling (Voir Dire),* the judge observes that "the more horrific the scene of the incident and the condition of the body, the more disturbing or unsettling the evidence will be. Jurors are expected to view unpleasant signs and listen to unpleasant evidence. Rarely are jurors not taken far out of their personal comfort zone" (R. v. Barton, 2015, p. 745-746). Here, the judge acknowledges the discomfort that the jury may face but does not acknowledge the impact that the introduction of the pelvic remains into the courtroom may have on the victim's family and community. More

specifically, the judge states:

> Undoubtedly, some jurors may be upset by the presence of the tissue in the courtroom. I fail to see, however, that its presence is likely to have the effect of distracting them from their duty to dispassionately and impartially consider the evidence in this case or that it may inflame them against Mr. Barton." (R. v. Barton, 2015, p. 748)

The judge also claims: "The tissue was preserved in an acceptable manner" (R. v. Barton, 2015, p. 749) but does not acknowledge how unacceptable it was that Cindy Gladue's family was not consulted on this decision and were not granted the opportunity to bury her whole. This suggests a narrow legal framing in which evidentiary procedures are prioritized, while the humanity and dignity of Cindy Gladue and her family are set aside. This legal framing also ignores the harm caused by removing, preserving, and displaying Cindy Gladue's pelvic tissue without the consent and knowledge of her family. Like the case of Saartje Bartman, this represents the White supremacist practices of objectifying the body of a woman and rendering them as an object of evidence (Clifton & Pamela Scully, 2009; Gilman, 1985).

Through the discussion of the overarching *Theme 1: Systemic Racism and References to Indigeneity* and *Theme 2: Systemic Sexism and Sexualization of the Victim*, I aim to address RQ1: Do systemic racism and sexism exist in a criminal trial involving the death of an Indigenous woman who is a sex worker, and a White man alleged to have caused the death? RQ2: Do the discourses used by court actors (defence and crown counsel, the accused, the judge, and witnesses) in reference to the Indigenous woman victim reflect deep-seated systemic racism and sexism? If so, are there instances where the narratives are challenged by the court actors? The sections below discuss several words I associate with systemic racism. First, I looked at the words the judge used. Second, I looked at the words used by the crown, then the defence. I also reviewed the words used

by the witnesses and presented this information in the sections below. I aimed to unpack how each court actor used the words and the similarities and differences between them.

Theme 1: Systemic Racism and References to Indigeneity

To explore the impacts of systemic racism in *R. v. Barton* (2015), I consider the significance of Cindy Gladue's race as presented in the court actors' oral arguments. The crown, defence, and witnesses referred to Cindy Gladue using racialized terms throughout the trial. As mentioned in Chapter One, I use the term Indigenous in this work as the more politically correct approach and the increasingly preferred word to refer to the original inhabitants of Turtle Island – what is known in a Western, colonial context as Canada (National Inquiry, 2019). However, the results of this research indicate that the term Indigenous was used in the court actors' oral arguments in zero instances. Therefore, I completed a search to explore other race-related words, including *Aboriginal, Indian, Indigeneity, Métis, First Nations, First Peoples, Inuit,* and *Native*. The only word out of this list in the court transcripts to refer to Cindy Gladue was *Native*, appearing 37 times in various contexts. I provide a more extensive breakdown in Appendix J to highlight race-related words, contexts, and speakers.

Rather than calling Cindy Gladue by her full name, she was often referred to as the *Native female* (R. v. Barton, 2015, p. 1301, 1302); *Native girl* (R. v. Barton, 2015, p. 143); *Native lady* (R. v. Barton, 2015, p. 164, 173, 179, 1301, 1302, 1303, 1308, 1314, 1316, 1317, 1321) and *Native woman* (R. v. Barton, 2015, p. 177, 178, 179, 1316). Appendix J identifies the numerous ways the word *Native* was referenced throughout the trial, the contexts in which it was used, the position in the court transcripts, and the speakers. I rely on these results to better understand how race is embedded in the oral arguments of court actors and argue that relying on this represents deep-seated racism.

The significance of Cindy Gladue's race is highlighted when the crown examined a witness and asked them directly: "Are you able to comment about the nationality or the ethnic origin of the female, please?" (R. v. Barton, 2015, p. 323). To this question, the witness replies: "I believe *Native*" (R. v. Barton, 2015, p. 323). When cross-examining a witness, the crown asks: "And you say it was a *Native lady* right?" (R. v. Barton, 2015, p. 1314) and asks: "You didn't speak to that *Native lady* out there, did you?" (R. v. Barton, 2015, p. 1317). One of the many instances where the accused was referred to by his first or last name while Cindy Gladue was referred to only by her race is represented when the crown cross-examines a witness and asks: "Did Mr. Barton pay for both of the drinks that the *Native lady* had?" (R. v. Barton, 2015, p. 1321).

The defence refers to Cindy Gladue as the *Native female* when he questions a witness and states: "All right. Now, did you -- I'm going to ask you about when you saw this *Native female* and Brad, okay?" (R. v. Barton, 2015, p. 1301-1302). The defence identifies Cindy Gladue as the *Native lady* in multiple instances, including while questioning a witness: "Okay. And could you please -- and when -- when he came back with the *Native lady*, what did he and the *Native lady* do?" (R. v. Barton, 2015, p. 1303); "From which entrance did they come in when he came with the *Native lady*?" (R. v. Barton, 2025, p. 1303) and "Did you get a sense of the lady, the *Native lady*, her sobriety?" (R. v. Barton, 2015, p. 1308). When cross-examining a witness, the defence asks: "Okay. And you were asked to rank on the same scale what this *Native Lady* looked like in terms of intoxication" (R. v. Barton, 2015, p. 173) and "Okay. So last call, then you -- you agree that you left the bar with Mr. Barton, this *Native lady*, and yourself trailing behind her at around 12:40, 12:42?" (R. v. Barton, 2015, p. 179). Again, while questioning a witness, the defence uses the term *Native Lady* to refer to Cindy Gladue: "Did you get the sense of the lady, the *Native lady,* her sobriety?" (R. v. Barton, 2015, p. 1308). The defence also relies on the term *Native woman* on

multiple occasions, including while cross-examining a witness: “You were asked to rank on the same scale what this *Native lady* looked like in terms of intoxication” (R. v. Barton, 2015, p. 173); “The Native male’s conversation was, as far as you recall, only with Mr. Barton, not with the *Native woman*; is that correct?” (R. v. Barton, 2015, p. 177); “Did you ever see him walking up to the table or walk up to this *Native woman* at any time in the bar?” (R. v. Barton, 2015, p. 178); “You said that you believe this woman, the *Native woman* in the bar, had two drinks or three, or the third one might have been a mixed drink?” (R. v. Barton, 2015, p. 179) and when questioning another witness: “So you said that Brad and this *Native woman* did go out for a smoke at some point?” (R. v. Barton, 2015, p. 1305).

Witnesses also address Cindy Gladue based on her race on multiple occasions, including (but not limited to) when examined by the crown: “*Native* girl, short, plump, dark hair, shoulder length” (R. v. Barton, 2015, p. 143); or when examined by the defence: “The *Native lady* and Brad” (R. v. Barton, 2015, p. 1301); “As far as the *Native lady* and Brad?” (R. v. Barton, 2015, p. 1302) and “Well, they came in together. Brad had left for approximately five minutes, and he arrived back with the *Native lady*” (R. v. Barton, 2015, p. 1302). When cross-examined by the crown, one witness responds: “Well, one was playing VLTs, and then there was the *Native lady*, Brad, and then the tall, skinny gentleman, and then myself” (R. v. Barton, 2015, p. 1316). When asked if they had ever seen them go out before that point, the same witness responded by asking: “With the *Native lady*?” (R. v. Barton, 2015, p. 1317). At a time during the trial when the defence was re-examining a witness, the witness shed light on what happened at the end of the night and states: “See, when -- at the very end of the night there was just the VLT player at the back of the room, and then there was Mr. Barton and the *Native lady* and also the tall, skinny gentleman” (R. v. Barton, 2015, p. 1322).

In stark contrast, at no point throughout the trial was the accused's race considered relevant or mentioned. Instead, the court actors used the following words to refer to the accused: *Accused* and cognates: *Barton Brad, Bradley, Brad Barton, Bradley Barton, client, gentleman, Mr. Barton,* and *Mr. Bradley Barton*. The accused is never referred to by his ethnicity, e.g., as a *Caucasian, White, White boy, White gentleman, White male,* or *White man*. The accused's Whiteness remains unremarked and unnoticed, while Cindy Gladue is often marked only by her racial belonging as Indigenous (referred to by court actors as *Native*). In this way, the court actors all use precisely the same racialized vocabulary around Cindy Gladue and leave the accused racially unmarked, which makes a strong case that using sexualized and racialized terms saturates the whole process.

The term *Native* can be used in a way that maintains misconceptions about Indigenous peoples. Often "othered" throughout all stages of the criminal justice system, court actors may perceive Indigenous peoples as being innately primitive, deviant, or criminal (both as the victim and accused) (Razack, 2015). These misconceptions can result in skewed beliefs that impact how Indigenous peoples (defendant, accused, witnesses, jury, etc.) are treated. Therefore, consciously or unconsciously, the stereotypes that continue to permeate the courtroom can influence rulings and outcomes. With institutional racism a considerable problem, the reality that the Canadian criminal courts disproportionately impacts Indigenous peoples is exhibited in actions like using the term *Native* without consideration for its historical and social context. I believe the inappropriate or careless use of the term *Native* throughout criminal trials promotes systemic racism by perpetuating criminalization, negative stereotypes, and colonial prejudices. All court actors must acknowledge the historical and cultural context to combat this and address systemic injustices. With that said, acknowledging the historical and cultural contexts of the terms used to

address Cindy Gladue was not discussed in the courtroom in a way that would ensure justice and a fair trial.

Theme 2: Systemic Sexism and Sexualization of the Victim

To explore the impacts of systemic sexism in *R. v. Barton* (2015), I consider the significance of Cindy Gladue's sex (being identified as female at birth) as presented in the court actors' oral arguments. The crown, defence, and witnesses referred to Cindy Gladue using sexualized terms throughout the trial. Throughout the trial, Cindy Gladue is significantly sexualized due to the intersection of societal norms, biological sex, sexual characteristics, physical appearance, and gender roles. Gender norms and patriarchal systems that connect women's values to their sexual orientation are the primary causes of this problem, which often dehumanizes and objectifies women's bodies. In the literature review, I described how Indigenous women have been sexualized as "sq---" (LaRocque, 2010, p. 5) and portrayed as sexually available to White men from the earliest decades of colonialism. I drew on Eberts' (2017) work to look at the ways that Indigenous women in sex work, for instance, are referred to as being "high risk" and, therefore, implicitly "deserve" the violence that they are subject to systemically. In short, instead of challenging the colonial racism and sexism that present Indigenous women as deserving of violence, they are blamed for the harm they are subject to.

Sex and sexual history can influence how individuals are perceived and, therefore, referred to in cultural, social, and linguistic contexts. To explore the impacts of systemic sexism in *R. v. Barton* (2015), I turn to the repeated references to and descriptions of Cindy Gladue's sex[12] and sexual history in the court actors' oral arguments. If this reference is partly understandable, because

[12] I refer to this as considered the individual biological and physiological characteristics, which are typically classified as male, female, or intersex at birth. Furthermore, characteristics connected to an individual's sex include chromosomes, reproductive organs, and hormonal profiles.

of how Bradley Barton encountered Cindy Gladue, the number of times her sex and sexual history are evoked (including engagement in sex work) participates in an established colonial narrative about Indigenous women who are deemed to be at a high risk of violence. I completed a search within the court transcripts to explore whether the sex and sexual history of the victim were mentioned in the oral arguments of court actors and compared this to whether the sex and sexual history of the accused were discussed, including the contexts. I did this because I expected that Cindy Gladue's sex and sexual history would be marked while Bradley Barton's sex and sexual history would be made practically invisible. The decision by court actors on whether to include the victim's and accused's sex and sexual history obscures the dynamic of a White man whose actions resulted in the death of an Indigenous woman, focusing uniquely on the woman as a sexualized object. I also observed that systemic sexism and the sexualization of the victim informed the discussions of Cindy Gladue's engagement in sex work.

Table 1 below presents *Theme 2: Systemic Sexism and Sexualization of Victim*. It also highlights the two codes I connected to this theme: 1) *Sexualized Labelling of the Victim* and 2) *References to Sex Work and Sexual History*. The words associated with the sub-themes *Sexualized Labelling of the Victim* found in the court transcripts include *call-in girl, lady friend*, and *prostitute(s)*. The words related to the sub-theme *References to Sex Work and Sexual History* include *prostitution, sexual history,* and *sexual services.* I provide a more extensive breakdown in Appendix K to highlight the words, contexts, and speakers I associate with sexism and sexualization.

Table 1: Systemic Sexism and Sexualization of the Victim

Theme	Sub-Themes	Words
Systemic Sexism and Sexualization of the Victim	Sexualized Labelling of the Victim	Call-In Girl Lady Friend Prostitute(s)
	References to Sex Work and Sexual History	Prostitution Sexual History Sexual Services

Sexualized Labelling of the Victim

Throughout the trial, the accused, crown, defence, and the judge referred to Cindy Gladue by using the sexualized terms: *call-in girl, lady friend*, and *prostitute(s)* (R. v. Barton, 2015). Instead of using these terms to refer to Cindy Gladue's profession, I believe that the term *sex worker* might have conferred more dignity on her person. Considering the use of the terms by the accused, when Bradley Barton was called to the witness stand by the defence, he stated: "And I asked him if -- if he had any *lady friends*" (R. v. Barton, 2015, p. 1102); "Yes. He said, yes, I might have a *lady friend*" (R. v. Barton, 2015, p. 1102); "What I meant by that, if -- um, how can I -- like if it -- she was a *prostitute* or *call-in girl*" (R. v. Barton, 2015, p. 1102); When examined by the defence, Bradley Barton explains: "Because I've known him for many years, and I -- he knew I was married, and I didn't want him to think I had a *prostitute* in my room" (R. v. Barton, 2015, p. 1151) and "She was a *prostitute*" (R. v. Barton, 2015, p. 1210). Here, the accused reduces Cindy Gladue to her profession, diminishing her humanity.

Alarmingly, the crown refers to Cindy Gladue as a *prostitute* 22 times throughout the trial. In the crown's opening remarks for the trial, they state, "Ms. Gladue was a *prostitute* at the time, and the two of them struck a working relationship" (R. v. Barton, 2015, p. 14). When a witness is being examined, the crown refers to Cindy Gladue's profession when asking: "Did he tell you she

was a *prostitute*?" (R. v. Barton, 2015, p. 29). When the crown cross-examines Bradley Barton, they rely on the term *prostitute* several times: "Now, help me with this. Yesterday you told the Court that you lied to Mr. Sullivan because you didn't want him to know you were with a *prostitute*?" (R. v. Barton, 2015, p. 1200); "I'm going to suggest that you lied to Constable Jones because you knew you were with a *prostitute*, and you wanted to distance yourself from the situation with the police" (R. v. Barton, 2015, p. 1202); "You knew she was a *prostitute*?" (R. v. Barton, 2015, p. 1214). "Edmonton is the *prostitute* of the area right now or something" (R. v. Barton, 2015, p. 1251). When cross-examining the accused, the crown asks: "And you knew this woman to be a *prostitute*?" (R. v. Barton, 2015, p. 1280). During a morning's *Preliminary Discussions*, the court states: "I had something like tell the jury they can't draw inferences from the fact that, because he cheats on his wife or hires a *prostitute*, he's more likely to have committed the offence" (R. v. Barton, 2015, p. 1487). During that afternoon's *Discussion*, the crown then proceeds to state, "However, you have heard evidence that Cindy Gladue was a *prostitute* and that she had -- and that she and Mr. Barton had consensual sexual relations on June 28th, 2011" (R. v. Barton, 2015, p. 1535); "I'll leave the issue of the *prostitute* with you" (R. v. Barton, 2015, p. 1536); "I will have my colleague jump in if she disagrees -- that she was working as a *prostitute* on that evening" (R. v. Barton, 2015, p. 1537). It is essential to highlight that when the crown states, "The issue of the *prostitute,*" this objectifies and dehumanizes Cindy Gladue and reduces her to a product that is a problem rather than a human being. When the crown makes an *Address to the Jury*, they claim, "He said in part he was concerned Mr. Sullivan was going to tell his wife that he was with a *prostitute*" (R. v. Barton, 2015, p. 1657) and "The truth is he knew a lot about Ms. Gladue. She was a *prostitute*" (R. v. Barton, 2015, p. 1658). I think it is important to note that in this same statement, where Cindy Gladue's profession as a *prostitute* is discussed, the following

statement is also made. “Her name was Cindy. She had children. She came to the hotel with a man friend” (R. v. Barton, 2015, p. 1658). In this context, there is an effort to situate Cindy Gladue more broadly: “She had children” (R. v. Barton, 2015, p. 1658) to situate Gladue as a mother. In the same *Address to the Jury*, the crown relies on the references to this profession several times: “Remember, the same *prostitute* he’s just spent at least 10 minutes with, remember, to engage in sexual contact” (R. v. Barton, 2015, p. 1667) and “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” (R. v. Barton, 2015, p. 1667).

I also note that while the crown relies on the term *prostitute* as a means of referencing the victim in these discussions, they sought to warn the jury not to draw unwarranted conclusions about consent: “It’s part of the narrative, but I don’t want there to be the impression that because she’s a *prostitute* you should automatically assume she’s consenting” (R. v. Barton, 2015, p. 1535) and they later repeat this warning, emphasizing that the law “basically says you can’t use the fact that a woman is a *prostitute* to lead to the inference that she was more likely to have consented on that particular occasion” (R. v. Barton, 2015, p. 1537). This is a repeated theme, where the crown emphasizes Cindy Gladue’s right to say “no” to engaging in sexual acts. During *Discussions* between the judge, defence, and the crown, the crown states: “All I’m trying to say is that I don’t want them to think because she had done this in the past, she was more likely to have consented on this particular occasion. We know she was working as a *prostitute* on this evening” (R. v. Barton, 2015, p. 1537), and again: “I’m just trying to say the jury cannot presume because she agreed to sex on night one on the 20th that she necessarily agreed to sex on night two. The fact that she’s a *prostitute* on this particular occasion, that, I agree” (R. v. Barton, 2015, p. 1539). Hence, the crown did seek on many occasions to emphasize that being a sex worker (which they

refer to as a *prostitute)* did not imply consent, partially challenging stereotypical assumptions about sex workers as necessarily agreeing - in this case, to violent sex or, in fact, to any sexual relation at all.

The judge also labelled Cindy Gladue as a *prostitute* on several occasions. For instance, the judge summarizes the crown's account, picking up and repeating their vocabulary when reading the *Ruling (Voir Dire)*: "The Crown's theory is that Ms. Gladue is a *prostitute*. She and Mr. Barton entered into a business relationship and, following a period of drinking in the bar" (R. v. Barton, 2015, p. 738). When providing the charge to the jury, the judge states: "You have heard that Mr. Barton hired a *prostitute*, Cindy Gladue" (R. v. Barton, 2015, 1741) and "You have heard evidence that Cindy Gladue was a *prostitute* and that she and Mr. Barton had consensual sexual relations on June 28th, 2011" (R. v. Barton, 2015, p. 1754). Here, the judge echoes language used throughout the trial, which I firmly believe leaves the jury with the notion that when considering the final verdict, it is essential to consider that Cindy Gladue was (as referred to by court actors) a *prostitute.*

Finally, considering these sexualized terms that I associate with the theme of *Systemic Sexism and Sexualization of Victim*, the defence labelled Cindy Gladue a *prostitute* 11 times. Examples of when these labels were relied on by the defence include when cross-examining a witness: "And particularly in this case she -- you understood the circumstances were that she was hired as a *prostitute*. Is that correct?" (R. v. Barton, 2015, p. 812). The defence also uses this term when providing an *Opening Statement* during a *Morning Session*: "The other thing is people think, well, police arrest an individual, probably guilty. In this case, it's even worse for Mr. Barton. Mr. Barton hired a *prostitute*. And as you're going to hear, that meant that he cheated on his wife" (R. v. Barton, 2015, p. 1083); "So you may come away already with the feeling that you may not like

or appreciate particularly Mr. Barton. But that's not what this case is about. It's not whether you like him or whether he hired a *prostitute"* (R. v. Barton, 2015, p. 1084); "These other issues about whether he hires a *prostitute* or cheated on his wife or lied to the police or lied to the 911 operator or lied to the construction worker in the back of the van, those are side issues" (R. v. Barton, 2015, p. 1084); "In essence, that's what it's about. It's not about his moral character as somebody might judge him because of hiring a *prostitute* or lying about not knowing about her to the police or to even his buddies" (R. v. Barton, 2015, p. 1084).

While all the instances mentioned above are equally disturbing, I was left in disbelief and disgust when reading some of the following statements made in the defence's *Discussion* during an *Afternoon Session*: "A naked *prostitute* walks out of the bathroom after negotiating $60. And we can't take that into account?" (R. v. Barton, 2015, p. 1535). When the defence later makes an *Address to the Jury*, they state: "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" (R. v. Barton, 2015, p. 1626); "Looks to me like things went well for night number one. And, by the way, she's a *prostitute*, she's there for a good time, not a long time, and proof positive is she's there on night number one for less than an hour. That's what happens" (R. v. Barton, 2015, p. 1641) and "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" (R. v. Barton, 2015, p. 1648). During the same *Address to the Jury*, when considering the topic of consent, the defence makes the claim: "She's a *prostitute*, and she's consenting to the sex" (R. v. Barton, 2015, p. 1649) and "Maybe she was playacting because she's a *prostitute*. I don't know. But there were no signs that

she was in disagreement" (R. v. Barton, 2015, p. 1649).

I also consider the use of the word *prostitutes* and when the various court actors generally use this word to label those engaged in sex work. When the defence cross-examines a witness, they state: "And often, unfortunately, endemic to this high-risk lifestyle is that they can be drug and alcohol abusers…. That is, the *prostitutes* themselves, right?" (R. v. Barton, 2015, p. 812, 813). When the crown cross-examines, the crown states: "Because we know *prostitutes* are selling their bodies for money" (R. v. Barton, 2015, p. 1208). The crown makes assumptions and harmful claims during an *Address to the Jury* by stating: "We all know that *prostitutes* sell sex for money, and they negotiate, just as Ms. Gladue did with Mr. Barton. Remember on night one she wanted a hundred dollars, and they settled on $60?" (R. v. Barton, 2015, p. 1666); "Money is important to *prostitutes*" (R. v. Barton, 2015, p. 1666) and "Well, money is important to all of us. But money is important to *prostitutes*, and that is why she was there that night" (R. v. Barton, 2015, p. 1666).

References to Sex Work and Sexual History

An example of the use of the word *prostitution* is when the crown used the word and connected it to commercial transactions during their *Address to the Jury*: "The next thing I want to talk to you about is the commercial nature of *prostitution*. Mr. Barton and Ms. Gladue engaged in a commercial transaction" (R. v. Barton, 2015, p. 1666). During *Preliminary Discussions*, the crown also refers to *sexual services* to discuss Cindy Gladue's relationship with the accused, stating: "Mr. Barton hired Ms. Gladue for *sexual services* on the night in question" (R. v. Barton, 2015, p. 1458) and "The alternate being that Mr. Barton, again, the beginning part being the same, engaged her in *sexual services"* (R. v. Barton, 2015, p. 1458). During the *Charge To The Jury*, the judge states: "The theory of the Crown is that Mr. Barton hired Ms. Gladue for *sexual services*" (R. v. Barton, 2015, p. 1760). References to *prostitution* and *sexual services* were a means of

devaluing Cindy Gladue's life as a human being and, instead, influenced the perception that she was simply an object in a "commercial transaction" (R. v. Barton, 2015, p. 1666). This emphasizes broader historical patterns of the treatment of Indigenous and racialized women in sex work, where their identities are based on transactional terms (Benoit, Jansson, Smith, & Flagg, 2015; Razack, 1998). Within social and legal contexts, the credibility and humanity of many Indigenous and racialized women are diminished as a result of colonialism, racism, and sexism (Benoit et al., 2015; Razack, 1998).

Throughout the trial, the defence labelled Cindy Gladue based on her *sexual history* and made countless alarming statements. As the Court of Appeal of Alberta (2015) notes, admitting "evidence of Ms. Gladue's sexual history, including her engagement in sexual activity in exchange for payment… risked distracting the jury from the step-by-step analysis of subjective consent to sexual activity that is required by Canadian law" (p. 1). During the *Discussion* during an *Afternoon Session*, the defence brought up *sexual history* on multiple occasions, stating: "The only limit to that consent was if he went beyond what she consented to, not that she was not consenting generally to sex. So that's really it. And all of that evidence is relevant. And you raise a very good point, Sir. The deceased is not here to be cross-examined as to her prior *sexual history*" (R. v. Barton, 2015, p. 1539) and continues to say: "But if -- you know, in another case, if the complainant says, you know, we had sex the night before, but I wanted nothing to do with him on night number two, to discredit the complainant not because she's less worthy of belief but to discredit the fact that she wanted nothing to do with a guy, you can raise *sexual history* because then it's relevant to something other than the twin myths" (R. v. Barton, 2015, p. 1539). These statements are just a few examples of how the court actors referred to sex work and *sexual history* in their oral arguments.

The ways that all court actors sexualize the victim and refer to Cindy Gladue's involvement in sex work sends the message that engagement in sex work is inevitably linked to violence. In other words, consent to engage in is consent to extreme forms of violence. Considering consent, there was a failure to notify the jury that "consent to a given form of sexual touching does not extend to the use of any conceivable degree of force by one's sexual partner" (Court of Appeal of Alberta, 2015, p. 2). Therefore, the judge avoided the central tenet of criminal law in Canada that "having control over who touches one's body, and how, lies at the core of human dignity and autonomy" (A v. Ewanchuk, U9991SCJ no 10, para 28, per Major J). There was no direct evidence for the court actors to define Cindy Gladue's "subjective internal state of mind to the touching at the time that it occurred" (Ewanchuk, para 26, per Major J). The accused, Bradley Barton, spoke of his agreement with Cindy Gladue and her behaviour throughout their time together. The information presented to the jury represents deeply rooted racist and sexist stereotypes about Indigenous women engaged in sex work. Furthermore, the "trial Court's uncritical admission of irrelevant and prejudicial information, coupled with the inadequacy of its jury charge regarding the Canadian law of consent to sexual activity, constituted errors in law" (Court of Appeal, 2015, p. 1). The Institute for the Advancement of Aboriginal Women (IAAW) and the Women's Legal Education and Action Fund (LEAF) speak on this issue and state that:

> the trial Judge erred in admitting evidence of Ms. Gladue's sexual history into the trial and that he failed to instruct the jury on the law of consent properly. These judicial errors allowed prejudice to infect the trial proceedings, raising discriminatory myths about Indigenous women and consent based on sexual history. In addition, the Judge failed to adequately inform the jury that consent to a given form of sexual touching does not extend to the use of any conceivable degree of force by one's sexual partner. (n.d)

This case represents the Canadian criminal courts undercutting an Indigenous woman's ability "to deny consent to violence and death based on racist, discriminatory, and sexist characterizations" (Institute of Advancement for Aboriginal Women, 2015, p. 4).

Reducing someone to their profession is damaging since it oversimplifies their identity, overlooks the complexity of their experiences, and perpetuates harmful stereotypes. For those in disadvantaged or stigmatized occupations, like sex workers or low-wage workers, this is particularly harmful. Dehumanization strengthens social bias and amplifies the marginalization of individuals based on their employment (Van Der Meulen et al., 2022). Instead of portraying them as complete human beings, individuals participating in professions like sex work or domestic labour often come with entrenched negative societal assumptions, such as immorality or a lack of ambition. This leads to further discrimination and stigmatization by overlooking the complex socio-economic forces (e.g., systemic inequalities or economic necessities) that might shape career choices. Equating an individual's worth with their profession reinforces narrow, capitalist definitions of success, often privileging high-status or high-paying jobs over others. This hierarchical thinking devalues essential but lower-paid jobs, such as caregiving or service work, and can make those working in these professions feel and be perceived as invisible or unimportant. It promotes a materialistic view of human worth, disregarding an individual's other meaningful contributions to their communities and society.

Linking Systemic Racism to Systemic Sexism

I believe that the case of *R. v. Barton* exhibits the strong relationship that exists between systemic racism and sexism. Keeping the two overarching themes in mind, I aimed to address the questions of RQ3: In what ways do court actors (defence, crown, accused, judge, jury, and witnesses) contribute to a history of victim-blaming and reinforce the idea that Indigenous women

are sexually available and deserving of violence? Are there instances where actors in the court challenge these narratives? Cindy Gladue's lifestyle is brought up by the defence to label her as risky and to blame her for choosing to work in a profession that is part of what is considered a *high-risk lifestyle* based on her engagement in sex work. The defence cross-examines a witness and asks the following about Cindy Gladue's lifestyle: "You understood that the deceased, Cindy Gladue, lived a *high-risk lifestyle*. Is that correct sir?" (R. v. Barton, 2015, p. 812); "And women in *high-risk lifestyles* in Alberta can come into harm's way in various -- from various sources" (R. v. Barton, 2015, p. 812); "And often, unfortunately, endemic to this *high-risk lifestyle* is that they can be drug and alcohol abusers" (R. v. Barton, 2015, p. 812) and "As a result they can come into harm's way in several ways given this *high-risk lifestyle*, right?" (R. v. Barton, 2015, p. 813). During this cross-examination, when the defence discusses "women in high-risk lifestyles" and asks a witness if these women: "May be assaulted by johns, that is, guys that hire them, right?" (R. v. Barton, 2015, p. 812) and "Their boyfriends or their pimps may assault them: is that right?" (R. v. Barton, 2015, p. 812). I think it is important to highlight that the defence connects the engagement in sex work to assault, which may send the message that when one chooses this profession, they are consenting to violence.

When cross-examining a witness, the defence asks: "Due to her *lifestyle*, use of drugs or alcohol, can that impact adversely on strength of membranes such as vaginal walls?" (R. v. Barton, 2015, p. 980). In their *Address To The Jury*, the defence states: "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" (R. v. Barton, 2015, p. 1637), highlighting the use of the victim's so-called *high-risk lifestyle* and *sexual history* to continue the court's legacy of victim-blaming. To address the issue of victim-blaming, the court transcript was analyzed to understand the extent to which the

White man accused is held responsible for their actions against the Indigenous woman victim. Considering assumptions based on high-risk lifestyles, Eberts (2017) writes:

> All Indian women lead a "high-risk" life because of colonialism, sexism, racism and many aspects of government policy and legislation. However, the general riskiness of their lives in the Canadian state and under the *Indian Act* is lost sight of or made to disappear in favour of an individualist framework that attributes to all Indigenous victims the imputed factors that led to violence and death. They highlight specialized use of the term "high-risk lifestyle" implies a cluster of meanings, including bad personal choices and prostitution or availability for sex with strangers" (p. 71).

The following questions were also addressed in this work: RQ4: How do court actors ignore or recognize, completely or incompletely, histories of the colonial state, RSS, intergenerational trauma, historical and contemporary discrimination, and the connection between sex work and sexual violence? To approach these questions, the court transcripts were thoroughly scanned for the following carefully selected words: *assimilation*; *colonial, colonialism, colonization, colonized, colonizer, cultural genocide, discriminate, discrimination, displacement, dispossession, exploitation, expropriation, genocide, hegemony, hierarchy, homeless, homelessness, intergenerational trauma, oppress, oppression, oppressor, poverty, race, racism*, *residential schools*, *residential school system, segregation, subjugation, and sexism*. Results indicate that at no point throughout the entire trial were the histories of displacement, residential schools, or colonialism addressed or acknowledged by the court actors.

During the second reading of the court transcripts, I searched for specific words that could be considered connected to the root causes of victimization and victim-blaming. I provide a more extensive breakdown in Appendix L that highlights victim-blaming words and contexts, their

frequencies, and the speakers who use them. These results give reason to believe that there was no consideration by the court actors of how systemic racism and sexism operate to further victimize and criminalize the Indigenous woman victim. The use of words related to race, gender, class, sex, and sexual orientation can imply that specific individuals are deserving of violence and can promote victim-blaming. Stereotypes and gendered language around sexual assault and violence often hold the victims responsible for the harm that they endure. This, in turn, influences public opinion and trial outcomes, making it more difficult for victims to obtain justice.

Overview of Results

As the focus of analysis, the court transcripts (Balfour, 2012; Murdocca, 2013) allowed me to examine the systemic racism and sexism in a Canadian criminal trial involving an Indigenous woman victim, who died, and a White man, the accused. Two prominent, related themes that emerged from this analysis were: *Theme 1: Systemic Racism and References to Indigeneity; and Theme 2: Systemic Sexism and Sexualization of the Victim*. Together, these themes exposed how the colonial relationships and dynamics, including the normalization of racist and sexist violence against Indigenous women, are reproduced in the criminal court. This challenges the notion that the Canadian criminal justice system represents impartiality and fairness. Instead, the results highlight a broader analysis of colonial dynamics across every aspect of Canadian society. This criminal trial symbolizes a case where the integrity of women and the rights of Indigenous peoples are being denied (LEAF, 2018). I believe that the events that occurred throughout the trial that were discussed address the overarching question of how systemic racism and sexism exist in a criminal trial involving the death of an Indigenous woman who was a sex worker and a White man who is alleged to have committed the violence. The speculations and interpretations made from these results are elaborated on further in the next chapter.

“We used hard words because the violence against Indigenous women, girls, and 2SLGBTQQIA people is a difficult, critically important crisis to address and in which we all have a role.”

- National Inquiry into Missing and Murdered Indigenous Women and Girls (2019).

CHAPTER FIVE: DISCUSSION

In analyzing the court transcripts, there were opportunities to explore how words (unit of analysis) used in court actors' oral arguments do or do not represent deep-seated systemic racism and sexism. Through careful study, I aim to reveal how the Canadian criminal courts evade acknowledgment of its internal failure to tackle the widespread problem of continued racialized and sexualized violence against Indigenous women who engage in sex work and are victims of violence. Rather than performing an ameliorative role, criminal courts continue to expose this population of women and their families and communities to destructive stereotypes as the "other." There is often an emphasis on Indigenous women as "abject" and victims rather than actors (Andersen & Walter, 2013). To reverse this gaze, there is a need to take a more in-depth look at the unjust actions or inactions of the Canadian criminal courts. I refer to and rely on significant contributions by authors who explore this constant racialized and sexualized violence against Indigenous women (Anderson, Campbell, & Belcourt, 2018; Hunt, 2013; Razack, 2002).

In conjunction with other literature, this discussion draws from the information provided in the results section to address the research questions. These results are based on the understanding that the criminal justice system significantly shapes Canadian society and is among the most influential governmental institutions. Additionally, it is an institution dependent on interrelated components (e.g., law enforcement, victim services, legal aid, prosecution services, courts, correctional services, legislatures, and social support systems). As fundamental institutions that influence societal attitudes and values, courts can have devastating impacts. When considering the integrated role of the courts, it is difficult to ignore how all these pieces contribute to the denial of justice for Indigenous women who are victims of violence (NWAC, 2007).

The Canadian criminal justice system (and specifically the courts) connects to Indigenous women's erasure and dispossession. More specifically, "European systems of justice were established in the colonies of the Americas – including what is now Canada – on the myth of 'discovering' the land that was declared terra nullius, or 'empty of people'" (IAAW, 2015, p. 3). Indigenous women posed a significant threat to the Canadian state when it came to the appropriate use of lands (IAAW, 2015). To colonize, the colonial structures of criminal justice removed Indigenous women's human rights through the practices of violent assault and legal subjugation (IAAW, 2015, p. 3). This discussion section aims to demonstrate that the removal of rights for Indigenous women and the denial of social status remain present in the Canadian criminal courts, which operate on an exceptionally discriminatory foundation.

As discussed in previous chapters, many Indigenous women who encounter the criminal justice system (as victims or accused) are negatively impacted by systemic barriers. These systemic barriers include (but are not limited to) the lack of Indigenous perspectives (e.g., lack of Indigenous judges, jurors, and lawyers), lack of counsel representation, language gaps, cultural insensitivity, and lack of knowledge of processes within the criminal justice system (NWAC, 2007). Cultural insensitivity and the lack of Indigenous representation contribute to the historical and contemporary racism and sexism within the Canadian criminal justice system, evident in *R. v. Barton* (2015). Looking specifically at the Canadian criminal courts, the courts have "never been kind or considerate of Indigenous women. The trust that should be a cornerstone of this relationship has been mostly absent and often violent" (IAAW, 2015, p. 22). The Canadian criminal courts' lack of consideration is evident in the specific words used by criminal justice actors. Furthermore, these words influence the negative public perceptions of Indigenous women and the continuous violence that they experience (even for the deceased). The racism and sexism in *R. v. Barton* (2015)

highlight the power of labels, the influence of Indigeneity, disregard for colonial history, reliance on victim-blaming, and the violation of legal and moral rights.

The Power of Words in the Courtroom – General Context

When it comes to social equality, words used by court actors play a critical role. Barry (2009) shares linguist de Saussure's claim that "language constitutes our world; it doesn't just record it or label it. Meaning is always attributed to the object or idea by the human mind and constructed by and expressed through language: it is not already contained within the thing" (p. 42). Rather than merely expressing social attitudes, language is fluid and flexible and can drive these attitudes and impact society's most marginalized populations. Language and the use of specific words (especially by those who hold "power" in "powerful institutions") are connected to the labelling and stigma that impact those involved in the criminal justice system. In terms of words, labelling can be considered a political act, as it has the power to include or exclude individuals and groups. When it comes to Indigenous peoples, Retzlaff (2005) notes:

> […] labelling has real-world-consequences… connotations continue to shape both the direction of federal policy and popular prejudices towards the Aboriginal population in Canada. How people refer to themselves, or are referred to by others, shape not only their perception but also other people's views of who they are. Negative labels (and implications) can disempower groups through the creation of potent negative stereotypes and can thus be a powerful means of exercising social control and a tool to manipulate identities. (p. 610)

Through tools of social control, Indigenous peoples are exposed to negative labels and become subjects of manipulated identities. Lawyers may use language to maintain their control of the discourse (Westcott & Page, 2002) by limiting the extent to which witnesses can provide

information while leading them to co-construct a convincing narrative (Henderson, 2016). Through the construction of lawyers' narratives, jurors are encouraged to perceive events in the light of personal and societal conceptions (Howarth, 2006; Willig, 2008).

The discursive construction of identity within Canadian criminal courts influences the realities of individuals and groups. Furthermore, this discursive process establishes the foundation for which identities are controlled and created. Often, derogatory words are used in academia, media, politics, law, and public interactions, creating a vicious cycle of stigma and discrimination (Pheterson, 1989; Scambler, 2007). This research emphasizes the role of derogatory words used by criminal justice actors in the Canadian criminal courts. More specifically, this research highlights the words used by the defence and crown counsel, the accused, the judge, and witnesses in *R. v. Barton* (2015). Analyzing the various words used in the courtroom provides an opportunity to explore the significance of Indigeneity, the denial of colonial history, victim-blaming, and the violation of legal and moral rights.

The Power of Words in the Courtroom - *R. v. Barton* (2015)

The treatment of Cindy Gladue by court actors is not an abnormality. Canadian criminal courts (as an extension of the criminal justice system) operated the way that it was intended to, as in the criminal cases involving other Indigenous female victims of homicide (e.g., Helen Betty Osborne and Pamela George). The treatment of Cindy Gladue demonstrates the continuous systemic discrimination by using specific words attached to women who are believed to be living high-risk lifestyles (IAAW, 2015). In the case of women who engage in sex work, if they are Indigenous and poor, they are often labelled as high-risk. This implies that the women have made bad choices, thus making themselves vulnerable to and deserving of sexual violence (Gilchrist, 2010; Razack, 2002). Furthermore, Canadian criminal courts continue to preserve the words and

stereotypes that weaken Indigenous women's autonomy and humanity. Considering the unique circumstances of Cindy Gladue, Hunt and Sayers (2015) claim that:

> The treatment of Ms. Cindy Gladue demonstrates just how a 36-year-old mother can be imagined as different from the jurors' own mothers, and how the stigma of her work in the sex trade, her indigeneity and her womanhood all combined to naturalize her death as routine by the jury. It was well established that Ms. Cindy Gladue met Mr. Barton in the context of her work in the sex trade. She met him twice and camera evidence was presented showing the two of them entering the hotel room where she later died. (p. 1)

The naturalizing of Cindy Gladue's death was evident throughout the entire trial. Relying on specific words in the courtroom detracted from the accused's accountability, which left Cindy Gladue in a position to be treated like a woman who was replaceable and disposable. The extent to which words promote the ongoing mistreatment of Indigenous women is apparent in the ways that Indigeneity and ignoring a colonial history influence dialogue in the courtroom.

Considering the violation of human and legal rights, the words used in the trial influenced the jury to base their decisions on racial, classist, and gendered beliefs. It is important to think through the less dramatic parts of *R. v. Barton* (2015) and condemn the systemic nature of the ways that Indigenous women are treated. While asking how something so horrendous was made possible, it is also essential to look at the less visible instances of systemic discrimination that occur frequently and silently in other cases. For instance, analyzing how court actors continuously referred to the victim as a "Native woman" may be just as important as other breaches of law. Considering the influence of words and stereotypes:

> Great care must be taken to avoid reinforcing negative stereotypes that Indigenous women contend with on a daily basis; without thoughtful evaluation these seemingly

> innocuous calculations can reinforce the marginalization of Indigenous women and girls. Therefore, it is necessary to present the facts, but ensure that context is given; without context, Aboriginal peoples can be misrepresented by research and statistics. (Anderson, 2017, p. 108)

Influences of Indigeneity and Ignoring a Colonial History – General Context

In general, Indigenous peoples have been labelled as "savages" and the "other" both within and outside the courtroom. Embedded in the belief that Indigenous peoples did not contribute to the colonial efforts, this population was deemed (and is continuously deemed) inferior, barbaric, violent, and irrational (Retzlaff, 2005). Furthermore, the:

> […] constructed images of 'the Indian' were initiated, maintained and perpetuated through the dominant society and its discursive practices including institutionalized discourses and media representations. The image of Aboriginal people as either 'good' or 'bad' reduced them to two-dimensional symbols, which had consequences in the real world. Public policies assumed that the "Imaginary Indian" corresponded to an actual reality, which in turn affected the social and individual construction of identities for Native people. (Retzlaff, 2005, p. 612)

These images reinforce the existing structures of colonial power. As Acoose (1992) argues, colonial structures strategically establish an image of Indigenous peoples as being "less than human." More specifically, dehumanizing words and stereotypes suggest that Indigenous women are property rather than persons. Understanding these desensitizing stereotypes requires addressing the ideological foundation of Euro-Canadian beliefs informed by White-Christian patriarchy (Acoose, 1992). Furthermore, Euro-Canadian institutions proliferate Indigenous women's imageries as "beasts of burden" (Weist, 1983), "squaw drudges" (Acoose, 1992), "tawny

temptresses" (Acoose, 1992), and "prostitutes" (Razack, 2002). Indigenous women are oppressed with negative labels and stereotypes that add to the ongoing dehumanization and denial of personhood (Acoose, 1992; Anderson, 2013; Carter, 2012; Razack, 2002; Smith, 2005; Weaver, 2009). These destructive labels and stereotypes are often promoted through language, which is certainly not neutral (Fairclough, 2009).

Because of degraded, sexualized imageries of Indigenous women, violence (sexual, verbal, psychological, physical) is promoted through cultural attitudes and labels within the Canadian courts (Acoose, 1992). Culleton (1983) discusses what is referred to as the "squaw drudge," "native girl syndrome," and the "Indian princess," which are all stereotypes that promote violence against women based on their gender and Indigeneity. LaRocque (1991) approaches the stereotype of the "squaw" as a person who is dirty, immoral, and lustful with "no human face." LaRocque (1991) argues that these stereotypes expose Indigenous women to higher rates of violence and reduce this population to a marginalized state. The degraded personage is connected to denying the most basic human rights and the higher victimization rates of rape, murder, and assault (Green, 2017).

When it comes to the silencing of Indigenous women's voices using labels, a key component is the establishment of the "White ideal" and the concept of the sexually available yet "undesirable native girl" (Adams, 1989). As Adams (1989) describes it, the "White ideal" reflects the woman with flowing hair, blue eyes, pale skin, and thin lips. This concept of the "White ideal" became the standard for what is considered virtuous, idyllic, and attractive, leading to the oppression of women who do not fit into this "ideal" (Adams, 1989). As a result of this "White ideal," Indigenous women have been relatively degraded, seeming comparatively unworthy and without value. These stereotypes and labels cause Indigenous women to be perceived as "the other"

and not worthy of human and women's rights (Adams, 1989). As a result, there is a lack of care when Indigenous women are subjected to violence, even murderous violence. Indigeneity and the rejection of colonial history influence the denial of justice, demonstrating that Indigenous bodies do not matter. This promotes the idea that Indigenous bodies cannot be damaged, Indigenous bodies do not count, and Indigenous women are not human. Therefore, as a so-called "non-human," Indigenous women "cannot be murdered" (especially those who are considered to work in sex work) (Kaiser-Derrick, 2019). Indigenous women are encouraged to believe that their life stories do not matter, leading to feelings of alienation by institutions of power (Kaiser-Derrick, 2019). Additionally, multiple stakeholders (Indigenous leaders, Indigenous communities, judges, lawyers, and organizations) indicate that Indigenous women in the Canadian criminal courts (especially as victims) continue to feel their experiences are not valid. This feeling influences the overall distrust and lack of confidence in the Canadian criminal courts, especially when achieving justice for those whose lives have been taken.

Influences of Indigeneity and Ignoring a Colonial History – *R. v. Barton* (2015)

The treatment of Cindy Gladue sends a chilling message to all Indigenous women in Canada. Indigeneity influenced the dialogue between court actors in this case, as it involved an Indigenous woman and a White man accused. Cindy Gladue was constantly referred to by her physical appearance and Indigenous ancestry rather than her birth name. The defence claimed that both the prosecutor and they used the term "Native" to refer to Cindy Gladue as a means of dialogue after the witnesses had used the word to describe the victim. Denying Cindy Gladue of personhood, the defence states, "we can't Whitewash the circumstances regarding who she was and what she was doing there" (Cunliffe, 2018, p. 1). When asking the question of what was "Whitewashed" at the trial, Cunliffe (2018) argues that it was "certainly not Cindy Gladue's

Indigeneity or her reasons for being in that motel room. Racist and misogynistic stereotypes utterly defined her. Private aspects of her life and body were on full display, literally and metaphorically" (p. 1).

The Alberta Court of Appeal (ABCA) (2015) suggested that the judge's failure to acknowledge that the word "Native" implicitly encouraged 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" (p. 8). Furthermore, the label "Native" provided the jury with implied permission to conclude that Cindy Gladue was fundamentally less worthy of protection under Canadian law. This denial of protection was encouraged by racist and threatening labels that considered Cindy Gladue "available for the taking" regarding sexual acts and services. As an Indigenous woman, Cindy Gladue was classified as the "other," further influenced by her sex work.

The lack of confidence in the Canadian criminal courts based on the treatment of Indigenous peoples (demonstrated by the court's inability in *R. v. Barton* (2015) to comply with *section 276* of the *Canadian Criminal Code*) can be traced to a long history of displacement, residential schools, and colonialism. While Cindy Gladue was not the accused in this trial, it is essential to consider that the Canadian criminal courts continued the history of estrangement and alienation as an Indigenous woman. At no point in the criminal trial did any court actors acknowledge a colonial past and its intergenerational impacts on Cindy Gladue, her family, and her community. As Perrie (2018) argues, "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" (p. 1). Furthermore, no information was located on whether the victim's immediate family attended

residential schools and whether there were any histories of abuse or trauma. Ignoring this colonial history further erases the experiences of Indigenous peoples in general, especially as victims.

The judge, in this case, failed to recognize that a "history of colonialism translates into higher rates of victimization, racial bias, stereotypes and assumptions that result in Indigenous women being viewed as less than worthy victims or less believable" (ABCA, 2018, p. 5). When considering the broad background and systemic factors impacting Indigenous peoples, "to be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples" (ABCA, 2018, p. 5). At no point during this trial did any of the court actors consider how the history of colonialism and displacement may have resulted in negative consequences for the victim (AJI, 1991; RCAP, 1996; TRC, 2015). The court actors should have relied on reports, inquiries, and documentation to acknowledge how Canada's colonial legacy has influenced the sexual victimization of Indigenous women (AJI, 1991; RCAP, 1996; TRC, 2015).

Sexualization and Victim-Blaming – General Context

Lister (2017) suggests that the original use of the term *prostitute* was in the 1530s, with its meaning traced from "the classical Latin prōstitūt (past participial stem of prōstituere), meaning to offer for sale – to put to an unworthy use, to expose to public shame, dishonour. 'Prostitute' generally refers to a woman and to a state of female sexual dishonour. (Of course, men have been selling sex as long as women have, but they have been referred to throughout history specifically as 'male prostitutes'" (p. 1). In 1530, the term was first used as a verb, which implied the sexual dishonouring of oneself (Lister, 2017). The first use of the term prostitute as a noun was in

Beaumont's (1607) work, where the term was used as an insult. Beaumont (1607) writes, "my loue and dutie will not suffer mee / To see you fauour such a prostitute." Dryden (1664) similarly relies on the word prostitute to offend women, stating "she's an Infamous, leud Prostitute; I loath her at my Soul" (p. 161). These are just a few examples of how the word was used in the past to attach a negative label to women and essentially deny them their human rights.

When analyzing *The Proceedings of the Old Bailey* (1674-1913) and the use of the term *prostitute* in criminal trials, the term is primarily used as a noun. For instance, this word is seen mentioned in criminal trials in the following ways: "most impudent Prostitute" (1716); "the prisoner was a common prostitute" (1750); and "rendezvous for about a Dozen notorious Whores and common Prostitutes" (1750) (Old Bailey, 2018). When examining the proceedings, the word prostitute is found in 42 criminal trials before the year 1800 (Old Bailey, 2018). As Norton (2006) found, "from the first occurrence in 1685 through 1739, 4 trials (less than 10%); from 1740 through 1769, 13 (31%); from 1770 through 1799, 25 (60%). The word "whore" occurs in a total of 163 trials at the Old Bailey up to 1800: From the first occurrence in 1679 through 1739, 66 trials (just over 40%); from 1730 through 1769, 61 (just over 37%); from 1770 through 1799, 36 (22%)" (p. 1). I include this information as it is important to consider the origin and contexts in which these sexualized terms were used and the intention behind the use of the word in criminal trials. There are similar trends in how this word is relied on to strip women of their legal and moral rights. This word is also relied on in criminal courts when discussing consent and sex work (R. v. Barton, 2015).

Sexualization and Victim-Blaming – *R. v. Barton* (2015)

The Canadian criminal courts and its actors reflect a lack of effort to move away from a victim-blaming model, especially in *R. v. Barton* (2015). This victim-blaming model constitutes a

violation of legal and moral rights. When considering *R. v. Barton* (2015), numerous concerns were (and continue to remain) significant in impact and severe in scope. Minifie (2015) claims that three legal precedents should have led to the accused's conviction. First, it should have been considered that, with or without consent, it is not legal to harm another human being (Minifie, 2015). Therefore, individuals cannot provide legal consent to extreme bodily harm (Minifie, 2015). Next, consent cannot be given if the individual providing consent is under the influence of drugs or alcohol (Minifie, 2015). Lastly, regardless of intent, all individuals must be held accountable for any damage or physical harm that they have caused to others (Minifie, 2015).

The Institute for the Advancement of Aboriginal Women (IAAW) and The Women's Legal Education and Action Fund (LEAF) submitted an appeal on March 15, 2015, on the acquittal of the accused. This appeal was founded on two errors made throughout the *R. v. Barton* (2015) trial. First, an error was made in the court's admittance of evidence of Cindy Gladue's sexual history (e.g., exchange of sexual services for payment) (ABCA, 2015). Secondly, "the Court failed to inform the jury that consent to a given form of sexual touching does not extend to the use of any conceivable degree of force by one's sexual partner" (ABCA, 2015, p. 1). The Interveners also submitted a risk of prejudice when considering consent after not sufficiently cautioning the jury about racial bias and the inappropriate dependence on sexual history.

Admittance of Cindy Gladue's sexual history as evidence "risked distracting the jury from step-by-step analysis of subjective consent to sexual activity that is required by Canadian law" (ABCA, 2015, p. 19). The discriminatory words indirectly encouraged the jury to "bring to the fact-finding process discriminatory beliefs or bias about the sexual availability of Indigenous women and especially those who engage in sexual activity for payment" (R. v. Barton, ABCA, 2017, p. 216). The ABCA (2015) indicated that referring to an individual as a *prostitute* is a type

of sexual conduct, as evidenced by *Section 276* of the *Criminal Code of Canada*. Therefore, "since it is not evidence of a specific instance of sexual activity as required under *s. 276(2)(a)*, it is, by itself, inadmissible" (R. v. Barton, 2015). The appeal acknowledges the objective "to address the prevalence of sexual violence against women in Canada while promoting and protecting the rights guaranteed under *ss. 7 and 15* of the *Charter*" (ABCA, 2015, p. 5). *R. v. Barton* (2015) is a clear example of the permitting of sexual history evidence without careful consideration. The ways that Cindy Gladue was labelled throughout the trial based on her sexual history "increased prejudicial effects because of the possible conflation of both the twin myth stereotypes and the racial bias that exists against Indigenous people" (R. v. Barton, 2019, p. 8). The twin myth stereotypes suggest that a woman may be considered less believable due to her sexual history (R. v. Barton, 2019). With these stereotypes in mind, Jiwani and Young (2006) note:

> …[I]ndigenous women are placed at the bottom of a brutal race and class hierarchy within prostitution itself. Aboriginality, in this instance, constitutes the contested battlefield of meanings that can only be won when society recognizes its complicity in reproducing neo-colonial systems of valuation that position Aboriginal women in the lowest rungs of the social order, thereby making them expendable and invisible, if not disposable. Similarly, and intersecting with Aboriginal status, sex work also needs to be recuperated from the dominant gaze that sees it simply as a degenerate trade characteristic of deviant bodies confined to the realms of disorder and criminality.

Cindy Gladue was made to be invisible and disposable throughout the entire case based on her previous sexual encounters. Indigenous women are often considered disposable, and so "brutal victimization against them is justified because victims are stigmatized as prostitutes, street people, and addicts—even if they are not. The invocation of such stereotypes mitigates the seriousness of

their victimization, signalling to the public that crimes against them do not matter. Degrading stereotypes also render racialized women's experiences of violence invisible" (Gilchrist, 2014, p. 376). During the trial, both the crown and defence referred to Cindy Gladue's exchange of sexual services for payment with the accused. The crown described Cindy Gladue as being in a "working relationship" with the accused. At the same time, the defence highlighted that Cindy Gladue's engagement in sex work demonstrated her agreement (implying consent) and the expectations she must have had for her sexual encounters (R. v. Barton, 2015). One of the primary concerns of this case is whether Cindy Gladue consented to all sexual acts that she engaged in with the accused. There was no evidence put before the jury to conclude that Cindy Gladue had consented to or approved of the bodily harm inflicted on herself by the accused. Therefore, legal consent to sexual assault resulting in bodily harm was not an issue that was brought before the court in this case. Consenting to sell sexual services or to engage in sex does not automatically "mean consenting to violence and consent can be rescinded at any time" (Amnesty International, 2016). The testimony given by the accused on the consent given by Cindy Gladue to engage in sexual activity depended on the evidence of a previous interaction between the two. More specifically, this prior interaction occurred roughly 26 hours before their second encounter (R. v. Barton, 2015).

The accused's testimony suggested that Cindy Gladue agreed to engage in sexual activity (manual penetration and intercourse) for a payment of 60 dollars. The Accused testified, "no, none at all. It was good" (R. v. Barton, 2015, p. 1105) when asked about whether there were "problems or difficulties or disagreement on her part" (R. v. Barton, 2015, p. 1105). More specifically, the accused testified that "things were good. She was – I was enjoying it, she was enjoying it, good moans" (R. v. Barton, 2015, p. 1128). The accused claims on behalf of the deceased and attempts to convince the court that Cindy Gladue was enjoying the sexual encounter. The accused claimed

that he had her consent during manual stimulation of her vagina" (R. v. Barton, 2015, p. 1761). The accused also testified to his exchange of payment for sexual activity with Cindy Gladue, discussing their negotiation, activities that occurred the night before her death, and Cindy Gladue's behaviour before, throughout, and after the sexual encounter (R. v. Barton, 2015). It is important to note that the jury and court were given no direct evidence to govern Cindy Gladue's "subjective internal state of mind" to the events and activities that were taking place (Maither, 2016; R. v. Ewanchuk, 1999).

The court supported the notion that many Indigenous women (like Cindy Gladue) consent to violence, causing the "worthiness" of these victims to be questioned. It also implied that the individual was more likely to have given consent to sexual activity if they had consented to sexual activity in the past. Since Cindy Gladue was labelled a "Native" prostitute and was "significantly intoxicated – 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" (R. v. Barton, 2019, SCC 33). There were countless instances in the trial where the court actors assumed that Cindy Gladue had consented to all the sexual activity she had engaged in, which eventually led to her death. Her sexual history was connected to the automatic consent to sex (in its various forms). For instance, the defence connects prostitution to consent and claims: "She's a prostitute, and she's consenting to the sex" (R. v. Barton, 2015, p. 1649); "But when it comes to consent, that's a -- that's a cognitive issue. That's a mental issue, Sir" (R. v. Barton, 2015, p. 866); and "if she's highly intoxicated but still conscious and aware of her surroundings, she's not unable to consent, correct?" (R. v. Barton, 2015, p. 905). The necessary caution received by the jury was insufficient when it came to considering whether Cindy Gladue gave consent to the sexual activity in question—stating that the victim was not unable to consent implied that she consented to all the harm and violence

against her.

The concept of consent is raised by all court actors in various forms, including "consensual" (88)[13], "consensually" (1), "consent" (384), "consented" (50), "consenting" (43), and "consents" (2). The court states: "he described it firstly as consensual, but he also had his observations as to his perceptions of Ms. Gladue's enjoyment. And, you know, so it seems to me when someone is testifying as to consent and that they are both enjoying things that his evidence could be interpreted as positive evidence that there was no motive" (R. v. Barton, 2015, p. 1480); "It is either there is evidence that she may have consented or there is some evidence that she consented" (R. v. Barton, 2015, p. 1531). Furthermore, the crown claims: "if the Crown can't prove specific subjective intent, consent becomes an issue" (R. v. Barton, 2015, p. 1523); "I can see why that would go to evidence that she consented on this particular night" (R. v. Barton, 2015, p. 1533); and "However, you have heard evidence that Cindy Gladue was a prostitute and that she had -- and that she and Mr. Barton had consensual sexual relations on June 28th, 2011" (R. v. Barton, 2015, p. 1535). The defence relies on the issue of consent and states: "I believe it should say, this element is proved if you are satisfied beyond a reasonable doubt that Mr. Barton touched Ms. Gladue without her consent" (R. v. Barton, 2015, p. 1526); "Give careful thought to her ability to consent and whether the Crown has proven beyond a reasonable doubt the lack of consent. Because that is a material element to the offence" (R. v. Barton, 2015, p. 1530); "And then you say, in this case, there is some evidence that Cindy Gladue may have consented to the application of force by Mr. Barton, including sexual activity" (R. v. Barton, 2015, p. 1530); and "I suggest you should say, in this case, there is evidence that Cindy Gladue may have, or you could say there is some

[13] These numbers represent the number of times the word was present throughout the court transcripts.

evidence that Cindy Gladue did consent" (R. v. Barton, 2015, p. 1530). These are just a few examples of how the concept of consent was raised during the trial.

The Impact of Racism and Sexism on a Jury

The violation of legal and moral rights was exhibited by the fact that no one on the jury was Indigenous. Mr. Willier (First Nations Lawyer) claims that juries must represent a cross-section of individuals from society (Wheeler, 2015). When considering *R. v. Barton* (2015), Willier (2015) claims that "what has transpired here is that we have nine men, two women, one Asian person and one black person, but no aboriginal people so they don't really understand or empathize or identify with Cindy Gladue. Had they identified or understood her better, the verdict may have been different" (p. 1). When analyzing the instructions given to the jury in this case, it was evident that:

> […] in the circumstances here (woman, native, prostitute) equaled consent to the risk of bodily harm, or actual bodily harm…When sex trade workers contract to sell sex, they do not agree to sign away their lives. Were the law otherwise, this would give purchasers of sex an open invitation to inflict bodily harm on sex trade workers with impunity, all under the guise of engaging in 'sexual activity'. Changes must be made in order to ensure that all juries need to be made aware of the fact that those working in the sex trade do not give implied consent. (Willier, 2015, p.1)

Members of the jury who had racial prejudices may have considered the victim as less worthy based on her race. The racism and sexism within the criminal courts held power to encourage racial prejudice and influence the jurors' decision-making process. The jury was also significantly affected by the way the court actors treated Cindy Gladue's body.

Bodily Autonomy and Violation of Human Rights

R. v. Barton (2015) is a case that resulted in severe consequences for an Indigenous woman's rights to bodily autonomy (Perrie, 2018; Seguin, 2018). During the disgusting attempt to "achieve justice," an image of Cindy Gladue's naked body (covered in blood) was displayed over the court projector, exposing her family and members in the courtroom to images that dehumanize the victim. Additionally, Cindy Gladue's vaginal tissue was admitted to the courtroom. Even after Cindy Gladue's death, her "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" (Perrie, 2018, p. 1). Human remains have never been allowed into the courtroom, as the action is entirely unnecessary and an extreme violation of legal and moral rights. Cindy Gladue was reduced to a single body part. While it may be essential to dissect the pelvic region of a victim during the post-mortem examination (to conclude the cause of injury or death), the grounds for relying on human remains to prove the opinions of medical professionals to the jury are unreasonable and inhumane. The Court of Appeal of Alberta did not review the admission of this piece of evidence, and this concern was not submitted for review at the October 11, 2018, hearing of the Supreme Court of Canada (Perrie, 2018). Perrie (2018) claims:

> 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... 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. (p. 1)

Taken together, there is a relationship between what happened in the case of Cindy Gladue and the histories of displaying bodies and body parts of colonized peoples. The story of Saartje Baartman is a notorious example of the racialized and gendered exploitation of an Indigenous Khoisan woman from South Africa (Qureshi, 2004). In the early 19th century, Saartje Baartman was brought to Europe and exhibited to display her physical characteristics as part of the broader practice of dehumanizing and objectifying African peoples, specifically women, regarding them as phenomena that are available to the public for viewing purposes (Qureshi, 2004). In 1815, following her death, the exploitation continued when her body was dissected, and her remains (brain and genitalia) were used as part of French scientist Georges Cuvier's scientific research (Schiebinger, 1993; Qureshi, 2004). More specifically, the objective of his anatomical studies was to provide scientific evidence for racial hierarchies and to argue that African peoples were biologically inferior to their European counterparts (Schiebinger, 1993; Qureshi, 2004). These practices and research represent the reliance on scientific racism to justify colonial dominance and racial discrimination (Schiebinger, 1993; Qureshi, 2004).

Deeply rooted racism and sexism are presented in histories of colonial practices, such as the practice of educational institutions and museums across the globe displaying Indigenous body parts. By treating body parts and remains as scientific objects, academic institutions and museums have traditionally contributed to the dehumanization of Indigenous peoples (Anderson & Kubik, 2010). Practices of dissecting and displaying bodies represent the notion that Indigenous bodies and body parts should be treated as subjects of research rather than as human beings that should be treated with care, humanity, and dignity (Anderson & Kubik, 2010). The act of collecting and exhibiting Indigenous body parts (e.g., skulls, bones, and hair) reinforces the colonial belief that these communities are "primitive" beings. Throughout history, it has been a common practice for

anthropologists, archaeologists, and medical experts (without the consent of Indigenous families or communities) to remove body parts to research, display, or utilize them (Fitzhugh, 2012). It is important to understand the experiences of Indigenous women in Canada within the broader context of colonial and White supremacist ideology and practices that have contributed to the dehumanization and exploitation of Indigenous and racialized women on a global scale.

The introduction of the *Canadian Victims Bill of Rights* (2015) implies that "victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity" (p. 1). In front of the entire courtroom, Cindy Gladue's body parts were "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" (Perrie, 2018, p. 1). Cindy Gladue and her family had no voice in the courtroom. Still, the judge, crown, and the medical examiner "spoke volumes by denying an Indigenous woman her dignity" (Perrie, 2018, p. 1). The court did not consider Cindy Gladue's individual dignity or respect Indigenous burial traditions or beliefs of caring for the deceased. Cindy Gladue and her family were denied the rights to a proper ceremony, simply because the court believed that Cindy Gladue's remains were required for the conservation of evidence (R. v. Barton, 2015).

The judge, crown, and defence have obligations under provincial and national *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" (Federation of Law Societies of Canada, 2020). An attorney must also "encourage public respect for and try to improve the administration of justice" (Federation of Law Societies of Canada, 2020). The judge and court

made ethical decisions to bring the matter before the court and then ultimately admit Cindy Gladue's vaginal tissue as evidence (Perrie, 2018). The crown decided to rely on bringing the vaginal tissue before the court to seek so-called justice for Cindy Gladue. The crown made the argument that vaginal tissue "is not subject to any exclusionary rule of evidence, and its probative value exceeds any prejudicial effect" (R. v. Barton, 2015, p. 737). However, the defence argued that relying on photographs of Cindy Gladue's vaginal tissue would be sufficient to present to the jury and that bringing the remains into the court was unnecessary (R. v. Barton, 2015). To defend their claim, the defence presented issues with the continuity and preservation of human tissue (R. v. Barton, 2015). A voir dire took place during the trial to conclude whether Cindy Gladue's vaginal tissue (referred to as the preserved pelvic region) should be admitted as a piece of evidence (R. v. Barton, 2015). The voir dire was conducted to determine if Cindy Gladue's vaginal tissue should be displayed and exposed to the jury as an exhibit (R. v. Barton, 2015). With the preservation of Cindy Gladue's vaginal tissue in June 2011 and the voir dire in February 2015, her body was left in the hands of the Canadian state for four years (R. v. Barton, 2015). Considering the Canadian state's "ownership" over Cindy Gladue's vaginal tissue:

> […] 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. (Perrie, 2018, p. 1)

Admitting Cindy Gladue's vaginal tissue into the courtroom represented the objectification of Indigenous women's bodies. Referring to Cindy Gladue's body as an "exhibit" and "specimen" further abuses sex workers' bodies and cultivates the notion of "the cheapness" of Indigenous women's lives (Dimanno, 2015). When considering the reality of the case, admitting Cindy Gladue's vaginal tissue into the courtroom was unnecessary as there were a variety of alternative options available to the court (Dimanno, 2015; Perrie, 2018). Big Canoe (2015) claims that "technology should have played a significant role in any demonstration by expert Witnesses. Instead of using other tools and alternatives, Cindy's vagina was used as a demonstration tool. This is both offensive and re-victimizing" (Big Canoe, 2015, p. 1). Big Canoe (2015) also argues that modern technology should have been used to generate a 3D image, rather than using a human body part to reveal disparities among the opinions of "experts" (p. 1). Presenting Cindy Gladue's vaginal tissue was a tool that retraumatized the individuals who were directly impacted (Lee, 2015). Considering this re-traumatization:

> 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. (Perrie, 2018, p. 1)

Acknowledging the human right to a fair trial, admitting Cindy Gladue's vaginal tissue as evidence impacted "the ability of the jury to focus objectively on the issues in the case" (R. v. Violette, 2009, p. 421). When considering the admission of human remains in court, Kerr and Sigurdson (2015) raise concerns about fairness. More specifically:

> The principal concern of criminal proceedings is fairness, given that the Accused faces the protentional loss of personal liberty. A further goal is to secure convictions that will improve public safety and deliver just punishment. The public interest is also engaged. The respectful treatment of all participants in a criminal trial is mandated by the public interest but was neglected here. When the Crown asked the court to allow the use of Gladue's remains in this way, its goal was undoubtedly to protect the public by securing a conviction of the person who had inflicted her fatal injury. The jury still acquitted. We must carefully consider what message was sent in the process, by all involved, about Gladue and the value of her life and death as a woman, an indigenous person and a sex worker. This case reminds us of the harm that a criminal trial can itself visit upon human dignity, adding to the violence that preceded it. (p. 1)

Big Canoe (2015) discusses four specific concerns that should have been emphasized when deliberating the inclusion of Cindy Gladue's vagina as evidence during the trial. More specifically, these four issues include the following: Cindy Gladue's legal privacy rights and dignity; the potential for vicarious trauma to the public and individuals in the courtroom; the ability for medical experts to share their opinions; and the harm to Cindy Gladue's family and the negative impacts on their confidence in the Canadian criminal justice system. There is no doubt that mechanisms within the Canadian justice system act as a means of normalizing the continuous violence against Indigenous women and girls. The treatment of Cindy Gladue's body in the courtroom epitomizes

the constant dehumanization of Indigenous peoples through the course of law. For centuries, the bodies of Indigenous peoples (especially Indigenous women) have been regarded as specimens. This treatment promotes racism and sexism, which is also highlighted through discussion on the power of words, the influence of Indigeneity, disregard for colonial history, victim-blaming, and the violation of legal and moral rights. These discussions lead to further consideration of how to address these issues within criminal courts and ways toward reconciliation.

“We have the answers. The answers lie in our communities.”

- National Chief Phil Fontaine, 2022

CHAPTER SIX: CONCLUSION

In Canada, "the racist behaviour from the colonizers has remained deeply embedded in present day society" (Collins, 2017, p. 18). We must acknowledge the racist behaviour, damage, and deliberate genocidal attempts against Indigenous women at the hands of the Canadian state. The treatment of Indigenous women who are victims of homicide is an extension of Canada's long history of genocide. The final report of the *NIMMIWG* (2019) claims:

> Ending the Canadian genocide of Indigenous peoples requires an honest and active process of decolonization and indigenization of structures, institutions, legislation and policies. The swift implementation of the National Inquiry's Calls for Justice is essential to address the violence against Indigenous women, girls, and 2SLGBTQQIA people. It is also mandated by international law as measures of reparation, a direct consequence of Canada's responsibility for the commission of genocide. It is time to call it as it is: Canada's past and current colonial policies, actions and inactions towards Indigenous peoples is genocide. And genocide, as per law binding in Canada, demands accountability. The National Inquiry hopes that its legal analysis and findings will contribute to the necessary discussion on genocide in Canada and trigger further research on this characterization of colonial violence, which is a fundamental root cause of the violence experienced by Indigenous women, girls, and 2SLGBTQQIA people. (National Inquiry, 2019, p. 1)

What is being criminalized is not the "so-called deviant activity," but rather the actual "state of being" that is being deemed as criminal. The path forward must include recognizing the Canadian criminal courts as a tool that operates to criminalize and dehumanize Indigenous women. The

Canadian criminal justice system is not balanced and just. Rather, the racism and sexism that are intrinsically related to one another fuel a continuous cycle of violence and harm.

Some Canadian institutions have been connected to the practice of exhibiting human remains. Anthropologists, for example, supported notions of racial classification using a collection of Indigenous bones from McGill University. Such collections were believed to be of great value to the emerging field of anthropology, which often viewed non-European civilizations as "living fossils" of human development (Harrison, 2013). This racist rhetoric perceived Indigenous peoples as objects, and their bodies were taken to support Eurocentric myths of human development. In recent decades, Indigenous peoples have advocated for the return of ancestral remains from academic institutions and museums engaged in this practice. These initiatives are part of a larger initiative to correct past wrongs, including the return of human remains to mend the harm inflicted by the past objectification of Indigenous bodies and to restore dignity (Truth and Reconciliation Commission, 2015). It appears the act of bringing Cindy Gladue's pelvic tissue into the courtroom did not shock the court, arguably because it was continuous with such practices. To remedy historical injustices against Indigenous communities and to foster a more just and respectful relationship amongst Canada's institutions, these remains must be returned.

Moving Forward – A Path to Justice and Reparation

There have been multiple sources (at an international and national level) that have criticized Canada's response to the issue of violence against Indigenous women. The *1996 Royal Commission on Aboriginal Peoples* has influenced numerous public inquiries, summits, policy forums, reviews, and research reports. All of these have provided insight into the extent of the violence impacting Indigenous women in Canada. When the Government of Canada diverted funds

from the *Sisters in Spirit* project to "move to a more concrete focus," they were redirected to departments that did not focus solely on Indigenous women (Voices, 2012).

The Native Women's Association argues that the *National Inquiry* and its *Terms of Reference* fail in the following ways: there is no requirement to apply a human rights framework; there is no explicit reference made to the criminal justice system and police; there is no means of completing an independent review of cases; it is not a *National Inquiry* yet; there is a lack of witness and participant supports; and there are no opportunities for Indigenous women's organizations (NWAC, 2016). When it comes to data, the following issues arise: there is no reliable or consistent data collection; no standard or coordinated protocols for police to follow when Indigenous women go missing; and no consistent standard of conduct for police engagement with Indigenous women (e.g., transparent and enforceable) (NWAC, 2016). Furthermore, when it comes to Indigenous communities and their socioeconomic conditions that impact Indigenous women living both off and on reserve, there is no clear strategy or plan. The budgetary allocations are also unclear, and the reserves inherently have insufficient funds for child welfare services (NWAC, 2016).

Several recommendations have not been implemented to address the distrust that exists between Indigenous communities and legal authorities (NWAC, 2016). For instance, there is a lack of effort to address the police brutality against Indigenous women and inadequate processes for making police complaints (NWAC, 2016). It is also important to note that discriminatory laws still exist. Frameworks focused on reconciliation must highlight justice and emphasize tools designed to enforce accountability. I strongly agree with the following recommendations set forth by the NWAC (2016) to: create means of compensation for victims (and their families) of police neglect, violence, and failures; provide independent reviews of cases involving Indigenous

women; ensure there is special consideration of the vulnerability of cases involving runaways, homeless, children in care, and those exposed to sexualized and violence and racism by police; and complete extensive investigations into police violence against Indigenous women (NWAC, 2016). Furthermore, I agree that Canada must work to: ensure the consideration of all investigations, prosecutions, complaints, and charges; review international and domestic human rights obligations when it comes to Indigenous women and their protection from sexualized violence and racism by state actors (e.g., child welfare workers, Judges, law enforcement, healthcare professionals, and lawyers); and complete a thorough review of all policies, regulations, police acts, and laws that involve the discipline, prevention, and investigation into acts of violence and racism against Indigenous women (NWAC, 2016).

Additionally, Canada must work toward implementing the recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Inter-American Commission on Human Rights, the Truth and Reconciliation Commission, and other United Nations frameworks related to MMIWG. Canada must also work toward implementing recommendations that go beyond the origination of a *National Inquiry* and focus on factors specifically impacting Indigenous women and girls (e.g., safety and security, socio-economic status, sex discrimination, violence, and health, safety, and security). There is consensus when it comes to the recommendations to address the violence against Indigenous women. Reports show that there were over 700 recommendations for action to prevent and end this violence (Feinstein & Pearce, 2015). From 58 reports and 700 recommendations, 16 overarching themes were identified and are presented in Appendix M (Feinstein & Pearce, 2015).

When considering inquiries, it is important to recognize that they often act as a reproduction of colonial truths and can function to ignore dispossession and colonial violence

against Indigenous women. The Canadian government must focus on the unique circumstances impacting Indigenous women. This is also true for civil society groups, policy makers, and monitors of international human rights (Taefi, Czapska, Webb, & Aleem, 2008). Canadian policies and programs that are gender-neutral continue to neglect gender equality under the *Canadian Charter of Rights and Freedoms* (*Section 15*). These gender-neutral policies and programs continue to ignore the sexism present in Canadian society. There is no doubt that these gender-neutral methods continue to act as a way of promoting the marginalization of Indigenous women. Policies must consider the complexity of Indigenous women's "lived realities of inequality and violence as manifested at the intersection of multiple forms of oppression such as poverty, colonization, racism, sexism, and age discrimination" (Taefi et al., 2008, p. 6). Since Indigenous women are a distinct population, programs and policies developed at the provincial and federal levels must be steered by the principles of human rights and equity.

There is no doubt that Canada has not been able to address and prevent violence against Indigenous women; therefore, it is not meeting its obligations. Various themes must be considered when approaching the topics of prevention and action on violence against Indigenous women in Canada. When developing a framework, consider the following themes: intervention and supports; awareness and education; prevention; court and sentencing; follow-up and reintegration; and investigation and enforcement. First, regarding interventions and supports, there must be an increase in the number of programs available across all sectors. Furthermore, these programs must collaborate with partners to address anger management, addictions, domestic violence, and mental health. It is also important to ensure that these programs and supports are provided both on and off reserve and are responsive, culturally sensitive, and accessible.

When it comes to awareness and education, this theme must acknowledge the practices and outlooks that maintain violence and reduce the status/position of Indigenous women. Furthermore, Indigenous women must be made aware of the factors that increase their risk of victimization, the types of violence, and the types of resources and services available to them. When considering prevention, there must be continuous support for the reduction of vulnerability amongst Indigenous women and the increase in safety planning. Additionally, there must be initiatives to address the root causes of victimization and violence committed by Indigenous men. When it comes to the courts and sentencing, there must be attention placed on cases that involve Indigenous female victims. There must be opportunities for victims to have input into how the criminal justice system handles specific cases.

There must be culturally specific approaches to the reintegration and rehabilitation of individuals back into their communities. Considering follow-up and reintegration, it is important to understand the supports that are available to Indigenous women in the long term. There must be opportunities for the Indigenous communities to heal from a history of colonization, receive support, and utilize culturally sensitive approaches (e.g., therapeutic correctional programs and courts). Lastly, when addressing the theme of investigation and enforcement, it is important to recognize the significance of ongoing training. There must be a solid understanding of the unique dynamics impacting Indigenous women, especially when it comes to cases involving missing persons, domestic violence, and/or sexual assault. It is also important to consider the advantages of allowing the loved ones of missing and murdered Indigenous women to participate in the investigation process (Taefi et al., 2008).

Further recommendations should consider the following: community safety planning; prevention and awareness campaigns; socio-economic action plans for Indigenous women; Justice

Task Forces; First Nations policing; community engagement; collaboration, information sharing, and databases; and cultural competency training. There must be an approach to promoting the healing of Indigenous communities, addressing the root causes of violence against Indigenous women, and encouraging community safety. Approaches must support children, youth, and families by addressing the intergenerational trauma that has resulted in the overrepresentation of Indigenous children in the child welfare system. This approach must also consider the overrepresentation of Indigenous youth in the youth criminal justice system. Some examples of support in this area may include opportunities for early intervention, community-based programs for children who are victims of violence, and an increase in front-line service workers within Indigenous communities.

Future Research and Hopes

Through a case study of *R. v. Barton* and the death of Cindy Gladue, this dissertation has examined the systemic racism and sexism present within the Canadian criminal justice system. Drawing on Indigenous feminisms and using a mixed-methods approach (quantitative content analysis and qualitative thematic analysis), I argued that the criminal courtroom served as a site of gendered colonial violence. More specifically, a space where the innocence of a White man accused was supported, while an Indigenous woman victim was reduced to a disposable possession. Considering the facts and context, future research must acknowledge how Indigenous women advocate for themselves and re-centre Indigenous women's voices as actors seeking to change the system. It is fundamental that policy-based and legal work integrate the advice and voices of Indigenous women. To influence responses within the Canadian criminal justice system, the histories of Indigenous women must be heard and presented to the courts. Just as Razack (1998) contends, "storytelling in law" must be recognized for its "potential as a tool for social change,"

with its positioning toward "putting the context back into law" (p. 37). *R. v. Barton* (2015) "exemplifies how the Canadian legal system does not adequately address Indigenous concerns and protocols; refuses to protect those we know are most victimized; and shows that the justice system is not resolving the sociological phenomenon of missing and murdered Indigenous women" (Big Canoe, 2015, p. 1). Analyzing the racism and sexism present throughout *R. v. Barton* (2015) indicates the need for social change and putting context back into the law.

As Perrie (2018) claims:

> Including Indigenous communities in 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.

Future research must continue to address this sensitive topic and address the following questions: What can be done to help protect Indigenous communities (especially those involved in sex work) from racist, gendered violence? What can be done within communities (urban and rural) that does not rely on the criminal (in)justice system for the protection of Indigenous populations? To what extent is the Government of Canada to be held responsible for the discrimination and systemic oppression of Indigenous women in Canada?

We must strongly disapprove of a criminal justice system that continuously operates in a way that criminalizes the bodies of Indigenous women. We must honour the stories of the women

who have experienced violence in a criminal justice system that has been deliberately created to silence them. The continuous abuse against Cindy Gladue throughout the entire trial and the accused's acquittal in the 2015 trial must be regarded as "a wakeup call to the general Canadian public" about the prevalent issue of violence against Indigenous women and girls in Canada. This case acts as an appalling and heartbreaking reminder of the significance of the "colonial nation state" placed on Indigenous women's bodies.

By demonstrating how courtroom discourse constructs credibility, recognition, and victimhood, this dissertation extends Indigenous feminist scholarship into the study of courtroom discourse by positioning legal meaning itself as a site through which colonial power is produced and sustained. In doing so, it argues that colonial power functions not only through legal outcomes but also through the production of legal meaning. We must establish space for transformative change and systems of knowledge. We must create opportunities for Indigenous organizing and uphold Indigenous peoples' rights and dignity (LHF, 2016). We must confront the structural inequalities and injustices embedded within Canadian institutions. Considering Canada's institutions, the path forward must keep "Indigenous sovereignty at the centre of its vision, attend to modern forms of colonization and ongoing practices of unjust enrichment, and confront the systematized devaluing of Indigenous lives that runs through the institutions of contemporary Canada" (Razack, 2016, p. 4). I hope that we move forward in solidarity. I hope that we acknowledge the Indigenous women who lead decolonization efforts and that we honour the women who have suffered violations to their culture, lands, and bodies. I hope that we work to reclaim the dignity, safety, and power of all Indigenous women.

May we continue to honour all Indigenous women not only through remembrance, but through accountability, action, and the pursuit of justice.

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APPENDICES

Appendix A
Letter to Cindy Gladue's Mother

Dear xxxxxx xxxxxxx,

I am a PhD student, studying at York University (Toronto, ON) in the Department of Gender, Feminist, and Women's Studies. I identify as an Indigenous woman, through the ancestry of my grandfather *Mattie Mitchell* (June 1846 - 1921) who was a Mi'kmaq Chieftain, guide, prospector, and explorer. I have a strong passion to utilize my research in a way that may help fight the injustices experienced by Indigenous women in Canada. I am writing to you in hopes that there may be a way for me to serve your family in this fight for justice, as I write my dissertation.

But first, I would first like to state my sincerest condolences for the loss of your beautiful daughter Cindy Gladue and for the pain and injustices your family has experienced at the hands of the Canadian criminal (in)justice system. I would also like to show my utmost respect for your continuous fight for justice and the recognition of Missing and Murdered Indigenous Women in Canada.

My thesis is tentatively titled *The Canadian Criminal (In)Justice System: The Impact of Systemic Racism and Sexism on the Denial of Justice for Indigenous Female Victims of Homicid*e. For this research, I have extensively reviewed the R. v. Barton court transcripts and am absolutely horrified at the mistreatment, disrespect, and discrimination exhibited by key players in the Canadian court.

Before I begin writing my dissertation, I would like to consult with you and your family to ask for your blessing to move forward with referring to your daughter by her name. I believe that the injustices exhibited in this case can shed light on the continuous cycles of violence and harm done by the Canadian criminal justice system. I believe it is important to share your daughter's story and to expose Canada's colonial system. I believe that Cindy is a person worthy of justice and hope to join you in continuing this fight for justice.

I am hoping to expose the ways in which the criminal justice system violated the rights of Cindy as an Indigenous female victim of homicide. I am hoping to expose the ways that the criminal justice system continues the history of victim-blaming. I am hoping to shed light on the ways that Indigeneity influences judicial decision-making and the criminalization/legal portrayal of Indigenous female victims of homicide. With your blessing, I would like to help continue the fight for justice and create awareness.

I would be happy to speak with you about this further if you have any questions. Please feel free to contact me at your convenience at (xxxxxxxxx@xxxxx.xxx) or (xxx-xxx-xxxx).

Sincerely,
Jessica Rumboldt

Appendix B
Timeline of Colonial Law and Educational Policy

Year	Event	Details
1620	Earliest Missionary School	A religious order from France (the Récollets) established the first residential school near Québec City.
1763	Royal Proclamation of 1763	Issued by the British Crown, recognizes Indigenous rights to land as "not having been ceded or purchased by Us, are reserved to them."
1831	Mohawk Indian Residential School Opens	The Mohawk Indian Residential School opened in Brantford, Ontario.
1844	The Bagot Commission	The Commission makes recommendations to establish schools for 'Indian' children for manual labour.
1857	Gradual Civilization Act	This act aimed to ensure that Indigenous men over the age of 21 (who could read, write, and speak French or English) were enfranchised. This meant that they became British subjects and surrendered their 'Indian' status.
1867	The *Constitution Act* (*British North America Act*)	This act establishes the Dominion of Canada, which includes Quebec, Nova Scotia, New Brunswick, and Ontario.
1872	The Dominion Lands Act	This act encourages European settlement in Canada's prairie provinces. It allocates 160 acres of land to settlers who agree to develop a homestead and cultivate at least 40 acres.
1876	The *Indian Act*	This act grants the government the authority to enact legislation affecting Indigenous lands and Indigenous populations. This act distinguishes who is 'Indian' and who determines legal rights.
1879	The Davin Report	This report recommends developing an industrial school system in which children are removed from their families to reduce the influence of the 'wigwam.'
1884	The *Indian Act* amendments	Amendments are made to address and prohibit traditional 'Indian' ceremonies (i.e., Sun Dances, potlatches).
1884	Fight for Recognition	In Saskatchewan, the fight for recognition of treaty and land rights is made by Métis and First Nations peoples

		(including Gabriel Dumont, Big Bear, Poundmaker, and Lois Riel). While Poundmaker and Big Bear are imprisoned for treason, Riel and others are hanged.
1889	Allegations of Abuse	Allegations of sexual and physical abuse emerge at Rupert's Land School (Selkirk, Manitoba).
1892	Formal Agreement	A formal agreement to operate residential schools was made between some Christian churches and the federal government of Canada.
1896	Forty-Five Residential Schools in Operation	Throughout Canada, forty-five schools are operating.
1905	Dominion of Canada	British Columbia, Alberta, Saskatchewan, Prince Edward Island, and Manitoba joined the Dominion of Canada.
1906	*Indian Act* Amendments	Amendments are made to this act so that Indigenous peoples are forced to leave reserves and relocate to close towns with over 8,000 inhabitants.
1907	A National Crime	Peter Henderson Bryce (Chief Medical Officer for Indian Affairs) reports that conditions in residential schools are dangerous. In 1922, a report on these findings entitled "A National Crime" was published.
1920	Residential School made Mandatory	Residential schools were made mandatory for Indigenous children (ages 7 to 15) by Duncan Campbell Scott (Deputy Superintendent of Indian Affairs).
1927	*Indian Act* Amendments	Amendments to this act make it illegal to solicit funds for Indigenous legal claims without permission.
1939	Classification of Inuit	The Supreme Court of Canada insists that Inuit are to be 'classified' as 'Indian' and ruled by the *Indian Act*.
1940	Integration and Standardization	The federal government of Canada has begun integrating Indigenous students into regular schools and applying provincial curriculum standards within the RSS.
1951	Revisions to the *Indian Act*	Revisions made to the *Indian Act* include the participation of Indigenous women in band democracy. There was also the removal of prohibitions on traditional Indigenous ceremonies and practices.
1955	Expansion of RSS	The federal government of Canada expands the RSS and hostels allocated for Inuit students residing in the North.

1958	Closure of Residential Schools Recommended	The abolition of residential schools is recommended by Indian Affairs regional inspectors.
1960	Beginning of the "60's Scoop"	As an attempt to address the lack of Indigenous parental skills, provincial and federal programs forcibly removed thousands of Indigenous children from their families. Rather than assisting parents, Indigenous children were made wards of a poorly structured child welfare system.
1960	Sixty Residential Schools in Operation	Approximately 10,000 students are enrolled in the RSS across Canada.
1961	Voting Rights	Amendments are made to the *Indian Act*, allowing Indigenous populations to vote without having to surrender their status.
1969	Government and Church Partnership Ends	The partnership between the churches and the government ends. The federal government takes over the RSS, and the transfer of control of the RSS to Indian bands commences.
1977	Berger Inquiry	This final report recommends that no gas pipeline be built until land claims are settled. The report recommends establishing a new precedent for relations between the federal government and Indigenous peoples.
1979	Twelve Residential Schools Operating	Approximately 1,200 children are enrolled in the operation of 12 residential schools.
1982	*Constitution Act* Amendments	Amendments are made to this act to recognize and affirm the rights of "Indian, Inuit, and Métis peoples of Canada."
1986	Church Apology	From 1986 to 1994, formal apologies were issued (from the Anglican Church, Presbyterian Church, United Church, and the Catholic Missionary Oblates of Mary Immaculate) for the participation in the RSS.
1990	Oka Crisis	Beginning on March 11, for six months, there were violent conflicts between the town of Oka, Quebec and the Mohawk Nation.
1991	RSS Abuse Public Speech	Phil Fontaine (who later became the National Chief of the Assembly of First Nations (AFN) speaks publicly on the abuse he experienced while in the RSS.

1991	Cariboo Tribal Council Publishes "The Impact of the Residential School"	This publication contributed to the Royal Commission on Aboriginal Peoples framework.
1995	Indecent Assault Charges	The former supervisor of the Alberni Indian residential school (Arthur Henry Plint) pleaded guilty to a total of 16 counts of indecent assault against RSS Survivors. Plint is sentenced to 11 years in prison.
1996	Closure of the Last Residential School	The Gordon Indian Residential School in Punnichy, Saskatchewan, closes.
1996	Final Report of the Royal Commission on Aboriginal Peoples	The Final Report of the Royal Commission on Aboriginal Peoples was released. The Report requests a public inquiry into the impacts of the RSS.
1998	Aboriginal Healing Foundation Established	The Gathering Strength: Canada's Aboriginal Action Plan was established by the federal government to address the relationship between Canada and the Indigenous population. The AHF is developed to manage a ten-year healing fund ($350 million).
1999	Nunavut as a Territory	Formerly a part of the Northwest Territories, Nunavut became Canada's largest and third territory.
2005	Class Action Lawsuit Announced	The AFN National Chief Phil Fontaine announced a class action lawsuit against the Government of Canada over the legacy of the residential schools.
2006	Indian Residential Schools Settlement Agreement (IRSSA)	The IRSSA included financial initiatives and programs. Funds were provided for commemoration and healing initiatives. This also included reimbursements for legal expenses and processes for resolving claims.
2008	Apologies	Apologies were offered by the following: the Anglican Church, the Presbyterian Church, the RCMP, and the United Church.
2008	Federal Apology	On behalf of Canada, Prime Minister Stephen Harper apologizes to RSS Survivors.
2008	Truth and Reconciliation Commission	The TRC is launched as part of the IRSSA.
2009	Acknowledgement	The Canadian Conference of Catholic Bishops continues to refuse to issue a formal apology. In 2009, Pope Benedict XVI expressed sorrow in a private meeting with

		Phil Fontaine (National Chief of the Assembly of First Nations).
2010	TRC First National Event	The TRC hosts its first national event in Winnipeg, Manitoba.
2011	Canadian Conference of Catholic Bishops	The Canadian Conference of Catholic Bishops refuses to apologize formally.
Source: Legacy of Hope Foundation. (2015). Where are the children? Healing the legacy of the residential school system. Retrieved from http://wherearethechildren.ca/en/ and Legacy of Hope Foundation. (2016). 100 Years of Loss. Retrieved from http://legacyofhope.ca/wp-content/uploads/2016/05/100-years-printweb.pdf.		

Appendix C
Words, Categories, and Counts within Court Transcripts

Words	Category	Count
Abuse	Noun / Verb	11
Abused	Adjective / Verb	1
Abusers	Noun	1
Accident	Noun	36
Accidental	Adjective	6
Accidentally	Adverb	6
*Accused	Noun / Label	200
*Accused's	Noun / Label	16
Admit	Verb	13
Admitted	Verb	58
Admitting	Verb	3
Admits	Verb	7
Agree	Verb	259
Agreed	Verb	88
Agreeing	Verb	7
Agreement	Noun	50
Agrees	Verb	6
Alcohol	Noun	351
Alcohols	Noun	2
Alcoholic	Adjective / Label	17
Alcoholics	Adjective / Label	4
Alcoholism	Noun	4
Apologies	Noun	10
Apologize	Verb	74
Apologizing	Verb	1
Apology	Noun	3
*Assailant	Noun / Label	4
Assault	Verb	270
Assaulted	Verb	36
Assaults	Noun / Verb	2
*Barton	Name Person / Label	1225
Body	Noun	231
Body's	Noun	1
*Brad	Name Person / Label	67

*Brad's	Name Person / Label	3
*Bradley	Name Person / Label	53
*Brad Barton	Name Person / Label	13
*Brad Barton's	Name Person / Label	2
*Bradley Barton	Name Person / Label	38
Brutal	Adjective	1
Brutality	Noun	2
Call-In Girl	Noun / Label	1
Choice	Noun	10
**Cindy	Name Person / Label	61
**Cindy's	Name Person / Label	9
**Cindy Gladue	Name Person / Label	97
**Cindy Gladue's	Name Person / Label	11
**Cindy Ivy Gladue	Name Person / Label	3
*Client	Noun / Label	12
*Client's	Noun / Label	1
Conscience	Noun	3
Conscious	Adjective	15
Consciousness	Noun	21
Consciously	Adverb	2
Conscientious	Adjective	3
Consensual	Adjective	88
Consensually	Adjective	1
Consent	Noun / Verb	384
Consented	Verb	50
Consenting	Verb	43
Consents	Noun / Verb	2
Control	Noun / Verb	24
Controlled	Adjective / Verb	2
Controlling	Verb	1
Corpse	Noun	3
Danger	Noun	8
Dangers	Noun	2
*Dangerous	Adjective / Label	78
Dangerousness	Noun	19
Dangerously	Adverb	1
Dead	Adjective / Adverb	38
Death	Noun	283

Deaths	Noun	20
**Deceased	Noun / Adjective / Label	58
**Deceased's	Noun / Adjective / Label	22
Denial	Noun	2
Denied	Verb	5
Denies	Verb	10
Deny	Verb	3
Drink	Noun / Verb	55
Drinks	Noun / Verb	5
Drinker	Noun / Label	41
Drinkers	Noun / Label	5
Drinking	Noun / Verb	51
Drug	Noun / Verb	29
Drugs	Noun / Verbs	17
Drunk	Adjective / Noun / Verb	35
Drunken	Adjective	1
Drunkenness	Adjective	11
Exchange	Noun / Verb	9
Exchanged	Noun / Verb	5
Exchanges	Noun / Verb	2
Fault	Noun	12
**Female	Adjective / Noun / Label	48
**Female's	Adjective / Noun / Label	2
Females	Adjective / Noun / Label	2
Force	Noun / Verb	238
Forced	Noun / Verb	5
Forceful	Adjective	1
Forces	Noun / Verb	13
*Gentleman	Noun	54
*Gentleman's	Noun	7
**Girl	Noun / Label	20
**Girl's	Noun / Label	1
Girls	Noun / Label	2
Guilt	Noun / Verb	46
Guilty	Adjective	119
Harm	Noun / Verb	195
Harmed	Verb	5
Harmful	Adjective	1

High-Risk	Adjective	6
Hire	Noun / Verb	7
Hired	Adjective / Verb	15
Hires	Adjective / Verb	2
Homicide	Noun	60
Homicides	Noun	17
Horrible	Adjective	7
Human	Adjective / Noun	63
Humanity	Noun	2
Humans	Noun	1
Human Remains	Noun	2
Hurt	Noun / Verb	49
Hurts	Verb	1
Innocence	Noun	7
Innocent	Adjective / Noun	17
Intercourse	Noun	31
Kill	Noun / Verb	20
Killed	Noun	10
Killer	Noun	3
Killing	Verb	4
Killings	Verb	1
Knowingly	Adverb	2
**Lady	Adjective / Noun / Label	99
**Lady's	Adjective / Noun / Label	5
**Lady Friend	Adjective / Noun / Label	7
Lady Friends	Adjective / Noun / Label	2
Life	Noun	54
Lifestyle	Noun	9
Lifestyles	Noun	1
Lifetime	Noun	2
*Male	Adjective / Noun / Label	41
*Man	Adjective / Noun / Label	101
Money	Noun	25
*Mr. Barton	Name Person / Label	996
*Mr. Barton's	Name Person / Label	133
*Mr. Bradley Barton	Name Person / Label	5
**Ms. Cindy Gladue	Name Person / Label	2
**Ms. Gladue	Name Person / Label	265

**Ms. Gladue's	Name Person / Label	108
Murder	Noun / Verb	161
Murders	Noun / Verb	1
*Murderer	Noun / Label	1
Murderous	Adjective	6
**Native	Adjective / Noun / Label	1
Native Fella	Adjective / Noun / Label	1
**Native Female	Adjective / Noun / Label	1
Native Gentleman	Adjective / Noun / Label	3
**Native Girl	Adjective / Noun / Label	1
**Native Lady	Adjective / Noun / Label	19
Native Male	Adjective / Noun / Label	1
Native Male's	Adjective / Noun / Label	1
Native Man	Adjective / Noun / Label	4
**Native Woman	Adjective / Noun / Label	4
Natives	Adjective / Noun / Label	1
Non-consensual	Adjective	51
No consent	Noun / Verb	15
Permission	Noun	26
Perpetrate	Verb	1
Perpetrated	Verb	2
Perpetrator	Noun	1
**Prostitute	Noun / Verb / Label	38
Prostitution	Noun	5
Prostitutes	Noun / Verb / Label	7
Respect	Noun / Verb	175
Respectful	Adjective	23
Respectfully	Adjective	34
Responsible	Adjective	37
Responsibilities	Noun	10
Responsibility	Noun	22
Rights	Adjective / Noun	9
Risk	Noun / Verb	50
Risks	Noun / Verb	8
Risky	Adjective	2
Service	Noun / Verb	107
Services	Noun / Verb	13
Sex	Noun / Verb	81

Sex Act	Noun	7
Sex Acts	Noun	1
Sexist	Adjective	1
Sexual	Adjective	375
Sexual Abuse	Noun / Verb	2
Sexual Activity	Noun	51
Sexual Activities	Noun	3
Sexual Acts	Noun	3
Sexual Assault	Noun	203
Sexual Assault's	Noun	1
Sexual Assaults	Noun	
Sexual History	Noun	2
Sexual Services	Noun	3
Sexually	Adjective	33
Sorry	Adjective	519
Specimen	Noun	161
Specimens	Noun	31
Struggle	Noun / Verb	2
Struggled	Verb	3
Struggling	Adjective / Verb	5
Tissue	Noun	584
Tissues	Noun	108
Uterus	Noun	21
Vagina	Noun	393
Vaginal	Adjective	459
Vaginal Wall	Noun	280
Vaginas	Noun	5
**Victim	Noun / Label	9
**Victim's	Noun / Label	8
Victims	Noun / Label	6
Violated	Verb	4
Violates	Verb	3
Violence	Noun	21
Violent	Adjective	8
Vulnerable	Adjective	8
Vulnerability	Noun	3
Weakness	Noun	5
Weapon	Noun	96

Weapons	Noun	7
**Woman	Adjective / Noun / Label	109
**Woman's	Adjective / Noun / Label	14
Women	Adjective / Noun / Label	27
Women's	Adjective / Noun / Label	3
Worker	Noun / Label	13
Workers	Noun / Label	3
Young Lady	Adjective / Noun / Label	16

Appendix D
Word, Category, and Count – Identifying the Victim and the Accused

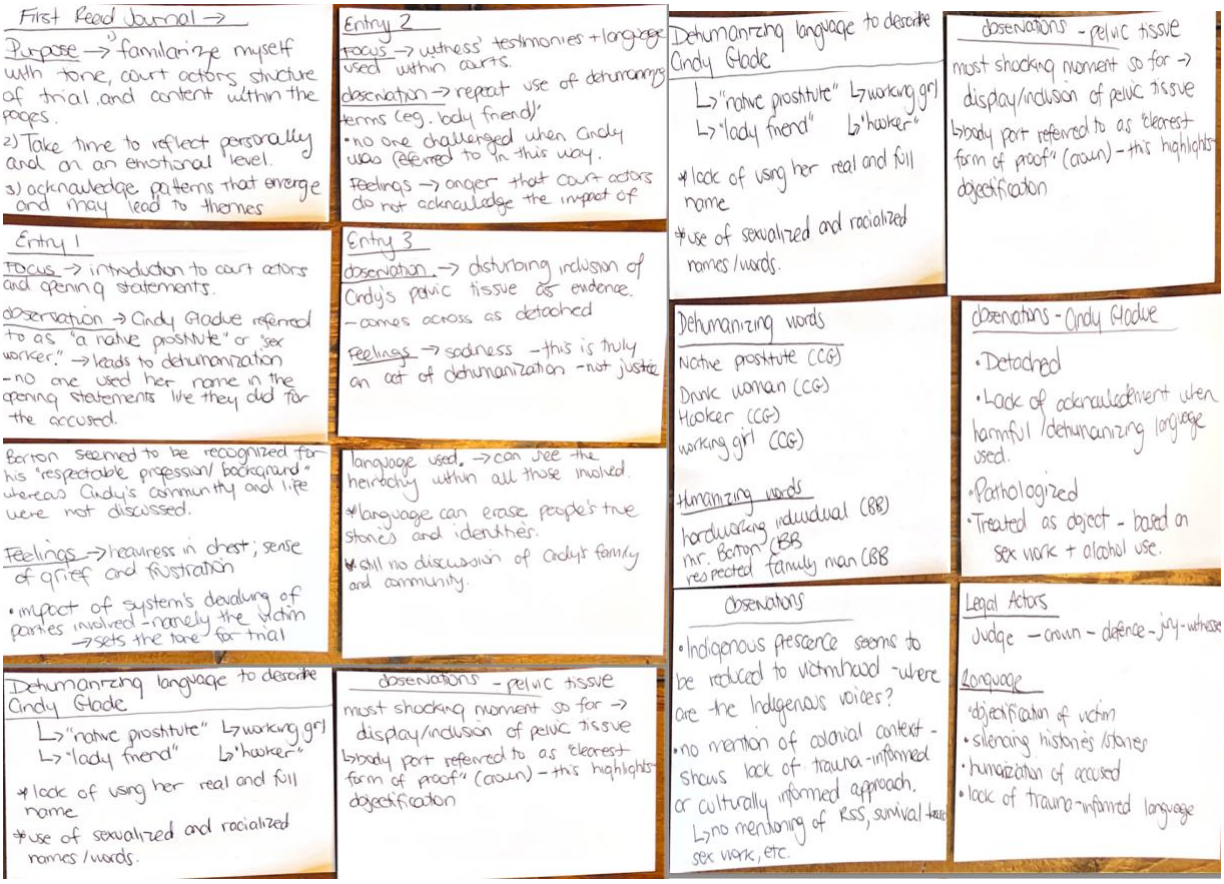
Word	Category	Count
**Accused	Noun / Label	200
**Accused's	Noun / Label	16
**Assailant	Noun / Label	4
**Barton	Name Person / Label	1225
**Brad	Name Person / Label	67
**Brad's	Name Person / Label	3
**Bradley	Name Person / Label	53
**Brad Barton	Name Person / Label	13
**Brad Barton's	Name Person / Label	2
**Bradley Barton	Name Person / Label	38
*Call-In Girl	Noun / Label	1
*Cindy	Name Person / Label	61
*Cindy's	Name Person / Label	9
*Cindy Gladue	Name Person / Label	97
*Cindy Gladue's	Name Person / Label	11
*Cindy Ivy Gladue	Name Person / Label	3
**Client	Noun / Label	12
**Client's	Noun / Label	1
*Deceased	Noun / Adjective / Label	58
*Deceased's	Noun / Adjective / Label	22
*Female	Adjective / Noun / Label	48
*Female's	Adjective / Noun / Label	2
**Gentleman	Noun	54
**Gentleman's	Noun	7
*Girl	Noun / Label	20
*Girl's	Noun / Label	1
*Lady	Adjective / Noun / Label	99
*Lady's	Adjective / Noun / Label	5
*Lady Friend	Adjective / Noun / Label	7
**Male	Adjective / Noun / Label	41
**Man	Adjective / Noun / Label	101
**Mr. Barton	Name Person / Label	996
**Mr. Barton's	Name Person / Label	133
**Mr. Bradley Barton	Name Person / Label	5

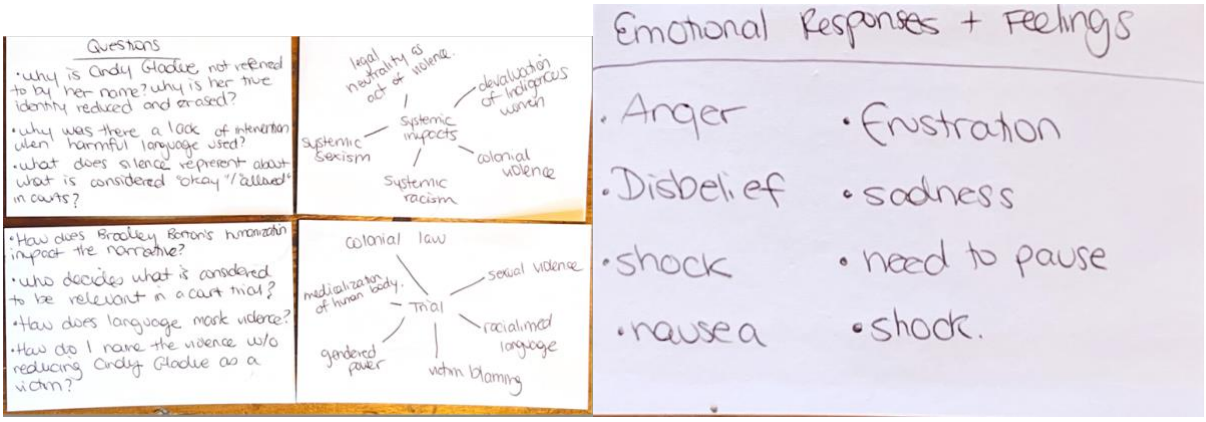
*Ms. Cindy Gladue	Name Person / Label	2
*Ms. Gladue	Name Person / Label	265
*Ms. Gladue's	Name Person / Label	108
**Murderer	Noun / Label	1
*Native	Adjective / Noun / Label	1
*Native Female	Adjective / Noun / Label	1
*Native Girl	Adjective / Noun / Label	1
*Native Lady	Adjective / Noun / Label	19
*Native Woman	Adjective / Noun / Label	4
*Prostitute	Noun / Verb / Label	38
*Victim	Noun / Label	9
*Victim's	Noun / Label	8
*Woman	Adjective / Noun / Label	109
*Woman's	Adjective / Noun / Label	14
*Young Lady	Adjective / Noun / Label	16

Appendix E
Words Used to Identify Victim vs. Words Identifying the Accused

Cindy Gladue (Victim)	**Bradley Barton (Accused)**
Call-in Girl	Accused / Accused's
Cindy / Cindy's	Assailant
Cindy Gladue / Cindy Gladue's	Barton
Cindy Ivy Gladue	Brad / Brad's
Deceased / Deceased's	Bradley
Female / Female's	Brad Barton / Brad Barton's
Girl / Girl's	Bradley Barton
Lady / Lady's	Client / Client's
Lady Friend	Gentleman / Gentleman's
Ms. Cindy Gladue	Male
Ms. Gladue / Ms. Gladue's	Man
Native	Mr. Barton / Mr. Barton's
Native Female	Mr. Bradley Barton
Native Girl	Murderer
Native Lady	
Native Woman	
Prostitute	
Victim / Victim's	
Woman / Woman's	
Young Lady	

Appendix F
First Read Reaction Journal





Appendix G
Free-Hand Analysis of Themes

Themes	Concepts (Sub-Themes)	Computer-Generated Word Counts
Objectification and Sexualization of the Victim	Call-in Girl	1
	Lady Friend	7
	Lady Friends	2
	Prostitute	38
	Prostitutes	7
	Prostitution	5
	Sexual History	2
	Sexual	375
	Sexually	33
	Vulnerable	8
	Vulnerability	3
	Weakness	5
Sex and Sex Work	Exchange	9
	Exchanged	5
	Exchanges	2
	Hire	7
	Hired	15
	Hires	2
	Intercourse	31
	Prostitute	38
	Prostitutes	7
	Prostitution	5
	Service	107
	Services	13
	Sex	81
	Sex Act	7
	Sex Acts	1
	Sexual	375
	Sexual Activity	51
	Sexual Activities	3
	Sexual History	2
	Sexual Services	3
	Worker	13
	Workers	3
Indigeneity	Native	1
	Native Fella	1
	Native Female	1
	Native Gentleman	3
	Native Girl	1

	Native Lady	19
	Native Male	1
	Native Male's	1
	Native Man	4
	Native Woman	4
	Natives	1
Victim-Blaming and Consent	Alcohol	351
	Alcohols	2
	Alcoholic	17
	Alcoholics	4
	Alcoholism	4
	Consensual	88
	Consensually	1
	Consent	384
	Consented	50
	Consenting	43
	Consents	2
	Fault	12
	Knowingly	2
	High-Risk	6
	Lifestyle	9
	Lifestyles	1
	Non-consensual	51
	Non-consent	15
	Permission	26
	Risk	50
	Risks	8
	Risky	2
Responsibility of the Perpetrator	Accident	36
	Accidental	6
	Accidentally	6
	Admit	13
	Admitted	58
	Admitting	3
	Admits	7
	Agree	259
	Agreed	88
	Agreeing	7
	Agreement	50
	Agrees	6
	Apologies	10
	Apologize	74
	Apologizing	1
	Apology	3
	Choice	10

	Conscience	3
	Conscientious	3
	Consensual	88
	Consensually	1
	Consent	384
	Consented	50
	Consenting	43
	Consents	2
	Consensual	88
	Consensually	1
	Denial	2
	Denied	5
	Denies	10
	Deny	3
	Fault	12
	Guilt	46
	Guilty	119
	Innocence	7
	Innocent	17
	Knowingly	2
	Permission	26
	Responsible	37
	Responsibilities	10
	Responsibility	22
	Sorry	519
Identifiers and Labels for Victim	Call-in Girl	1
	Cindy	61
	Cindy's	9
	Cindy Gladue	97
	Cindy Gladue's	11
	Cindy Ivy Gladue	3
	Corpse	3
	Deceased	58
	Deceased's	22
	Female	48
	Female's	2
	Girl	20
	Girl's	1
	Human	1
	Human Remains	2
	Lady	99
	Lady's	5
	Lady Friend	7
	Ms. Cindy Gladue	2
	Ms. Gladue	265

	Ms. Gladue's	108
	Native	1
	Native Female	1
	Native Girl	1
	Native Lady	19
	Native Woman	4
	Prostitute	38
	Specimen	161
	Specimens	31
	Tissue	584
	Tissues	108
	Uterus	21
	Vagina	393
	Vaginal Walls	280
	Vaginas	5
	Victim	9
	Victim's	8
	Victims	6
	Woman	109
	Woman's	14
	Women	27
	Women's	3
	Young Lady	16
Identifiers and Labels for Perpetrator	Accused	200
	Accused's	16
	Assailant	4
	Barton	1225
	Brad	67
	Brad's	3
	Bradley	53
	Brad Barton	13
	Brad Barton's	2
	Bradley Barton	38
	Client	12
	Client's	1
	Gentleman	54
	Gentleman's	7
	Male	41
	Man	101
	Mr. Barton	996
	Mr. Barton's	133
	Mr. Bradley Barton	5
	Murderer	1
	Abuse	11
	Abused	1

Violence Against Indigenous Female Victims	Abusers	1
	Assault	270
	Assaulted	36
	Assaults	2
	Brutal	1
	Brutality	2
	Control	24
	Controlled	2
	Controlling	1
	Corpse	3
	Danger	8
	Dangers	2
	Dangerously	1
	Dead	38
	Death	283
	Deaths	20
	Deceased	58
	Deceased's	22
	Force	238
	Forced	5
	Forceful	1
	Forces	13
	Harm	195
	Harmed	5
	Harmful	1
	Homicide	60
	Homicides	17
	Hurt	49
	Hurts	1
	Kill	20
	Killed	10
	Killer	3
	Killing	4
	Killings	1
	Murder	161
	Murders	1
	Murderer	1
	Murderous	6
	Perpetrate	1
	Perpetrated	2
	Perpetrator	1
	Sexual Abuse	2
	Sexual Assault	203
	Sexual Assault's	1
	Sexual Assaults	2

	Struggle	2
	Struggled	3
	Struggling	5
	Violated	4
	Violates	3
	Violence	21
	Violent	8
	Weapon	96
	Weapons	7
Alcohol and Substance Use	Alcohol	351
	Alcohols	2
	Alcoholic	17
	Alcoholics	4
	Alcoholism	4
	Drink	55
	Drinks	5
	Drinker	41
	Drinkers	5
	Drinking	51
	Drug	29
	Drugs	17
	Drunk	35
	Drunken	1
	Drunkenness	11

Appendix H
Revisit and Revision Themes

Theme	Codes	Words
Naming the Individual	References to Victim by Name	Cindy Cindy's Cindy Gladue Cindy Gladue's Cindy Ivy Gladue Ms. Cindy Gladue Ms. Gladue Ms. Gladue's
	References to Accused by Name	Barton Brad Brad's Brad Barton Brad Barton's Bradley Bradley Barton Mr. Barton Mr. Barton's Mr. Bradley Barton

Theme	Codes	Words
Systemic Sexism	Sexualization Of Victim	Call-In Girl Lady Friend Lady Friends Prostitute Sexual Sexually
	References to Sex Work	Sexual History Exchange Exchanged Exchanges Hire Hired Hires Intercourse Prostitutes Prostitution Service, Service Sexual Services Sexual Activity Sexual Activities Sex

		Sex Act Sex Acts Worker Workers

Theme	**Codes**	**Words**
Systemic Racism	Racialization Of Victim	Native Female Native Girl Native Lady Native Woman
	Indigeneity (Persons Other Than Victim)	Native, Natives Native Fella Native Male Native Male's Native Man

Theme	**Codes**	**Words**
Victim-Blaming	References to Lifestyle	Alcohol Alcohols Alcoholic Alcoholics Alcoholism Drink Drinks Drinker Drinkers Drinking Drug Drugs Drunk Drunken Drunkenness High-Risk Lifestyle Lifestyles Risk Risks Risky

	References to Victim's Consent	Choice Consensual Consensually Consent Consents Consented Consenting Permission

Appendix I
Final Themes and Words

Theme	Words
Systemic Racism and References to Indigeneity	Native Native Female Native Girl Native Lady Native Peoples Native Woman Natives
Systemic Sexism and Sexualization of the Victim	Call-In Girl Lady Friend Lady Friends Prostitute Prostitutes Prostitution Sexual History Sexual Services

Appendix J
Race-Related Words, Context, and Speaker

Word	Context	Page #/ Line(s) #	Speaker
Native	I believe *Native*	323 / 35	Staff Sergeant
Native Female	All right. Now, did you -- I'm going to ask you about when you saw this *Native female* and Brad, okay?	1301, 1302 / 41, 1	Defence
Native Girl	*Native girl*, short, plump, dark hair, shoulder length	143 / 23	Witness
Native Lady	The Native man that you've described outside while you were smoking, did you ever see him talking to that -- to the *Native lady*?	164 / 12, 13	Crown
	Okay. And you were asked to rank on the same scale what this *Native lady* looked like in terms of intoxication, and you had her at --	173 / 37, 38	Defence
	Okay. So last call, then you -- you agree that you left the bar with Mr. Barton, this *Native lady,* and yourself trailing behind her at around 12:40, 12:42?	179 / 31, 32	Defence
	The *Native lady* and Brad	1301 / 11	Witness
	All right. So, you -- you identified Brad, and you identified a *Native lady* on the video?	1301 / 28, 29	Defence
	As far as the *Native lady* and Brad?	1302 / 6	Witness
	Well, they came in together. Brad had left for approximately five minutes, and he arrived back with the *Native lady.*	1302 / 12, 13	Witness
	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*	1303 / 23, 24	Witness
	Okay. And could you please -- and when -- when he came back with the *Native lady*	1303 / 26	Defence
	…what did he and the *Native lady* do?	1303 / 27	Defence

	From which entrance did they come in when he came with the *Native lady*?	1303 / 30	Defence
	Did you get a sense of the lady, the *Native lady*, her sobriety?	1308 / 9	Defence
	And you say it was a *Native lady*	1314 / 35	Crown
	Well, one was playing VLTs, and then there was the *Native lady*, Brad, and then the tall, skinny gentleman, and then myself	1316 / 12, 13	Witness
	With the *Native lady*?	1317 / 10	Witness
	All right. And you didn't speak to that *Native lady* out there, did you?	1317 / 30	Crown
	Did Mr. Barton pay for both of the drinks that the *Native lady* had?	1321 / 10	Crown
	Ms. Dunster, you agreed with my friend just a few minutes ago, that you saw this *Native lady* walk in and then walk out during the smokes and then walk back in again; is that right?	1321 / 31, 32, 33	Defence
	Because I actually walked everybody out because I lock the door when everybody leaves. See, when -- at the very end of the night there was just the VLT player at the back of the room, and then there was Mr. Barton and the *Native lady* and also the tall, skinny gentleman	1321, 1322 / 40, 41, 1	Witness
Native Peoples	So, it is just a matter of me now making -- getting a fresh copy, deleting the issue with respect to *Native peoples*	520 / 20, 21	Crown
Native Woman	And his comment -- the Native male's conversation was, as far as you recall, only with Mr. Barton, not with the *Native woman*; is that correct?	177 / 15, 16	Defence
	Okay. That is, did he -- did you ever see him walking up to the table or walk up to this *Native woman* at any time in the bar?	178 / 4, 5	Defence
	Okay. You said that you believe this woman, the *Native woman* in the bar, had two drinks or three, or the third one might have been a mixed drink?	179 / 14, 15	Defence
	Okay. All right. So you said that Brad and this *Native woman* did go out for a smoke at some point?	1316 / 39, 40	Defence

Natives	He's concerned about certain parts of the transcript, the last portion of the transcript, which refers to *Natives*	518 / 3, 4	Crown

Appendix K
Sex-Related Words, Context, and Speaker

Word	Context	Page # / Line(s) #	Speaker
Call-in Girl	What I meant by that, if -- um, how can I -- like if it -- she was a prostitute or *call-in girl*	1102 / 17, 18	Accused
Lady Friend	Yes. He said, yes, I might have a *lady friend*	1102 / 14	Accused
	What did you mean by *lady friend*?	1102 / 16	Defence
	He says, I have a *lady friend* right there. So I talked to her	1103 / 15	Accused
	Okay. I'm going to take you back now to the night of the 20th again, please, sir. And you've told the Court that you were looking for a lady friend	1228 / 30, 31	Defence
Lady Friends	*Lady friends*	1208 / 2	Accused
Prostitute	Ms. Gladue was a *prostitute* at the time, and the two of them struck a working relationship	14 / 16	Crown
	Did he tell you she was a *prostitute?*	29 / 36	Crown
	The Crown's theory is that Ms. Gladue is a *prostitute*. She and Mr. Barton entered into a business relationship and, following a period of drinking in the bar	738 / 11, 12	Court
	And particularly in this case she -- you understood the circumstances were that she was hired as a *prostitute*. Is that correct?	812 / 26, 27	Defence
	The other thing is people think, well, police arrest an individual, probably guilty. In this case, it's even worse for Mr. Barton. Mr. Barton hired a *prostitute*. And as you're going to hear, that meant that he cheated on his wife	1083 / 39, 40, 41	Defence
	So you may come away already with the feeling that you may not like or appreciate particularly Mr. Barton. But that's not what this case is about. It's not whether you like him or whether he hired a *prostitute*	1084 / 4, 5, 6, 7	Defence

	These other issues about whether he hires a *prostitute* or cheated on his wife or lied to the police or lied to the 911 operator or lied to the construction worker in the back of the van, those are side issues	1084 / 17, 18, 19	Defence
	In essence, that's what it's about. It's not about his moral character as somebody might judge him because of hiring a *prostitute* or lying about not knowing about her to the police or to even his buddies, Mr. Sullivan	1084 / 21, 22, 23	Defence
	What I meant by that, if -- um, how can I -- like if it -- she was a *prostitute* or call-in girl	1102/ 17, 18	Accused
	Because I've known him for many years, and I -- he knew I was married, and I didn't want him to think I had a *prostitute* in my room	1151 / 6, 7	Accused
	Now, help me with this. Yesterday you told the Court that you lied to Mr. Sullivan because you didn't want him to know you were with a *prostitute*?	1200 / 9, 10	Crown
	I'm going to suggest that you lied to Constable Jones because you knew you were with a *prostitute*, and you wanted to distance yourself from the situation with the police	1202 / 27, 28, 29	Crown
	She was a *prostitute*	1210 / 40	Accused
	You knew she was a *prostitute?*	1214 / 6	Crown
	Mr. Barton at line 14: Edmonton is -- and then there's something that's inaudible. Edmonton is the *prostitute* of the area right now or something	1251 / 12, 13, 14	Crown
	Okay. And you knew this woman to be a *prostitute*?	1280 / 38	Crown
	Yes. I had something like tell the jury they can't draw inferences from the fact that, because he cheats on his wife or hires a *prostitute*, he's more likely to have committed the offence	1457 / 32, 33	Crown
	So it's the paragraph 104, the second line. However, you have heard evidence that Cindy Gladue was a *prostitute* and that she had and that she and Mr. Barton had consensual sexual relations on June 28th, 2011	1535 / 8, 9, 10	Crown

	- prior act. And, two, reference to *prostitute*	1535 / 15	Crown
	It's part of the narrative, but I don't want there to be the impression that because she's a *prostitute* you should automatically assume she's consenting	1535 / 19, 20, 21	Crown
	A naked *prostitute* walks out of the bathroom after negotiating $60. And we can't take that into account?	1535 / 28, 29	Defence
	I'll leave the issue of the *prostitute* with you	1536 / 26	Crown
	But the B.C. Court of Appeal in Drakes, and I'm just going off of memory, basically says you can't use the fact that a woman is a *prostitute* to lead to the inference that she was more likely to have consented on that particular occasion	1537 / 1, 2, 3	Crown
	I will have my colleague jump in if she disagrees -- that she was working as a *prostitute* on that evening	1537 / 30, 31	Crown
	All I'm trying to say is that I don't want them to think because she had done this in the past she was more likely to have consented on this particular occasion. We know she was working as a *prostitute* on this evening	1537 / 31, 32, 33	Crown
	I'm just trying to say the jury cannot presume because she agreed to sex on night one on the 20th that she necessarily agreed to sex on night two. The fact that she's a *prostitute* on this particular occasion, that, I agree	1539 / 2, 3, 4	Crown
	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	1626 / 15, 16, 17	Defence
	Looks to me like things went well for night number one. And, by the way, she's a *prostitute*, she's there for a good time, not a long time, and proof positive is she's there on night number one for less than an hour. That's what happens	1641 / 25, 26, 27	Defence
	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	1648 / 28, 29, 30, 31, 32	Defence

	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		
	She's a *prostitute*, and she's consenting to the sex	1649 / 1	Defence
	Maybe she was playacting because she's a *prostitute*. I don't know. But there was no signs that she was in disagreement	1649 / 13, 14	Defence
	He said in part he was concerned Mr. Sullivan was going to tell his wife that he was with a *prostitute*. Does it make any sense to you that you would seek advice from someone you can't trust?	1657 / 15, 16, 17	Crown
	The truth is he knew a lot about Ms. Gladue. She was a *prostitute*. Her name was Cindy. She had children. She came to the hotel with a man friend	1658 / 21, 22, 23	Crown
	He says Ms. Gladue the *prostitute*, remember, the woman who's there to make money	1667 / 7, 8	Crown
	remember, the same *prostitute* he's just spent at least 10 minutes with, remember, to engage in sexual contact -- just shrugged it off	1667 / 8, 9, 10	Crown
	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	1667 / 12, 13, 14	Crown
	You have heard that Mr. Barton hired a *prostitute*, Cindy Gladue	1741 / 15	Court
	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	1754 / 7, 8, 9	Court
Prostitutes	And often, unfortunately, endemic to this high-risk lifestyle is that they can be drug and alcohol abusers…. That is, the *prostitutes* themselves, right?	812, 813 / 40, 41, 3	Crown
	Now, when you first met up with Steve, did you really say do you have any lady friends, or did you	1207, 1208 / 41, 1, 2	Crown

	say do you have any *prostitutes* for me?		
	Because we know *prostitutes* are selling their bodies for money	1208 / 40	Crown
	If she was unhappy with what had happened the night before, I recognize that *prostitutes* will do terrible things just because they need the money or -- you know, but that is all stereotypical, and I do not want to be in any way slagging the poor victim here	1537 / 37, 38, 39	Court
	We all know that prostitutes sell sex for money, and they negotiate, just as Ms. Gladue did with Mr. Barton. Remember on night one she wanted a hundred dollars, and they settled on $60?	1666 / 32, 33	Crown
	Money is important to *prostitutes*	1666 / 33, 34	Crown
	Well, money is important to all of us. But money is important to *prostitutes*, and that is why she was there that night	1666 / 34, 35	Crown
Prostitution	So from that investigative detention card that you read to him, he wasn't advised by you whether it was for murder or aggravated assault or assault or even something related to *prostitution*, right	361, 362 / 41, 1, 2	Crown
	Do you remember having a conversation with the undercover operator about Edmonton and *prostitution*?	1250 / 40, 41	Crown
	And then the undercover officer responds at line 17, "Sorry, for *prostitution*?" And at line 18, you say, "Yeah."	1251 / 20, 21	Crown
	And then at line 35 -- or page 35, I'm going to suggest you continue on with that conversation about *prostitution*, and you say -- let me just find the reference for you. At line 3 of page 35	1251 / 24, 25, 26	Crown
	The next thing I want to talk to you about is the commercial nature of *prostitution*. Mr. Barton and Ms. Gladue engaged in a commercial transaction	1666 / 30, 31	Crown
Sexual History	The only limit to that consent was if he went beyond what she consented to, not that she was not consenting generally to sex. So that's really it. And all of that evidence is relevant. And you raise a very	1539 / 22, 23, 24, 25, 26	Defence

	good point, Sir. The deceased is not here to be cross-examined as to her prior *sexual history*		
	But if -- you know, in another case, if the complainant says, you know, we had sex the night before, but I wanted nothing to do with him on night number two, to discredit the complainant not because she's less worthy of belief but to discredit the fact that she wanted nothing to do with a guy, you can raise *sexual history*, because then it's relevant to something other than the twin myths	1539 / 26, 27, 28, 29, 30	Defence
Sexual Services	Mr. Barton hired Ms. Gladue for *sexual services* on the night in question	1458 / 12	Crown
	The alternate being that Mr. Barton, again, the beginning part being the same, engaged her in *sexual services*	1458 / 26, 27	Crown
	The theory of the Crown is that Mr. Barton hired Ms. Gladue for *sexual services*	1760 / 37	Court

Appendix L
Victim-Blaming Words, Context, and Speaker

Word (Substance Abuse)	Context	Page / Line(s)	Speaker
Alcoholic	Which is to say, if you had had two people, and they were both brought up to 340 milligrams percent, one was a teetotaler, and one was serious *alcoholic* or serious drinker	558 / 12, 13, 14	Defence
	Now, if I can just confirm that I'm looking at the same thing, Doctor, the top of the document reads Stages of Acute *Alcoholic* Influence and Intoxication?	596 / 8, 9, 10	Crown
	And I can't recall if you said clearance at 20 milligram percent is average or not. A It's slightly higher than average. For an *alcoholic* it's probably average or even below average. For most of the population, the average is actually about 18 milligram percent per hour	603/ 13, 14, 15, 16	Crown
	Yes. And it's true, is it not, that, sure, if alcoholics -- *alcoholic* can be faster eliminators. So average human beings or most of us in this room, I take it, we eliminate at the range of between 10 and 20 milligrams percent, and you say the average is usually between 15 and 20; is that correct?	617 / 38, 39, 40, 41	Defence
	But an *alcoholic*, I think you said this morning, could be higher than 20, 20 to 25?	618 / 3	Defence
	But if a person's a severe *alcoholic*, their liver doesn't work as well anymore, does it?	618 / 6	Defence
	Alcohol tolerance is a person's ability to resist changes in motor function, judgment, mood, and other effects that normally result from consuming *alcoholic* beverages	622 / 14, 15, 15	Defence
	But one sister rarely drinks alcohol, and the other sister unfortunately drinks copious amounts of alcohol bordering on her being an *alcoholic*	622 / 33, 34, 35	Defence
	If we were to sit these two sisters down, identical twins down, and ask them to consume six beers in two hours, you would agree with me that the one who hardly drank	622 / 35, 36, 37, 38	Defence

	would show greater signs of impairment than the one who was bordering *alcoholic*		
	And that means not just her outward manifestations of impairment, that is, perhaps poor balance, poor speech, slurred speech, confusion, but also her cognitive abilities would be greater impaired than her *alcoholic* sister, correct?	622, 623 / 41, 1, 2	Defence
	And it's also your opinion that it would not apply exactly to somebody who is a seasoned *alcoholic*. Agreed?	626 / 3, 4	Defence
	So an -- a seasoned *alcoholic* may not be captured by the Dubowski chart. Correct?	626 / 7	Defence
	And you've never sat down and experimented with a seasoned drinker or a mere *alcoholic* drinker what he or she would exhibit at 340 either, correct?	626 / 25, 26	Defence
	Yes. And also a seasoned *alcoholic* or alcohol drinker would have a greater cognitive ability to know what's going on than an average person, correct?	626 / 38, 39	Defence
	There's no evidence before the Court that she was an *alcoholic*. There's no evidence before the Court that she was a tolerant drinker	1541 / 26, 27	Crown
	because there is no evidence that she was an *alcoholic*. All we know is that she had this high alcohol content	1547 / 22, 23	Court
	Now, there is no direct evidence in this Court before you in this case that Ms. Gladue was an *alcoholic* or a tolerant drinker	1675 / 38, 39	Crown
Alcoholics	Most people will eliminate in the range of 15 to 20 milligrams per hundred mils per hour. *Alcoholics* or people with a fairly high degree of alcohol use can clear alcohol at a rate exceeding 20 or even exceeding 25 milligrams per hundred mils per hour	590 / 5, 6, 7, 8	Crown
	Alcoholics increase their ability to metabolize or clear alcohol	594 / 39, 40	Witness
	the clearance rate for *alcoholics* may be closer to 20 or as high as 25 or more milligrams percent per hour	594 / 40, 41	Witness

	Yes. And it's true, is it not, that, sure, if alcoholics -- *alcoholic* can be faster 39 eliminators	617 / 38, 39	Defence
Alcoholism	So all of these things take -- you take into account if someone was to say, well, is this tissue going to behave like a perfect, healthy, young woman, or are there factors that could increase the vulnerability of this tissue that you just put in place and say nutrition, chronic *alcoholism,* frequent sexual activity, possible previous injuries	1388 / 37, 38, 39, 40, 41	Crown
	But the whole thing about neutralizing, the issue of nutrition, sure. But what is -- how did chronic *alcoholism* come up and prior sexual acts come up?	1563 / 33, 34, 35	Crown
	We certainly didn't bring up chronic *alcoholism* or anything of that nature	1565 / 12, 13	Crown
	Dr. Ophoven said chronic *alcoholism* can be associated with lack of nutrition, and lack of nutrition can affect vaginal wall strength	1565 / 16, 17, 18	Defence
Lifestyle	You understood that the deceased, Cindy Gladue, lived a high-risk *lifestyle*. Is that correct, sir?	812 / 22, 23	Defence
	And often, unfortunately, endemic to this high-risk *lifestyle* is that they can be drug and alcohol abusers	812 / 40, 41	Defence
	And as a result they can come into harm's way in several ways given this high-risk *lifestyle*, right?	813 / 6, 7	Defence
	And you -- in terms of *lifestyle* and how healthy a woman may be	980 / 28	Defence
	due to her *lifestyle*, use of drugs or alcohol, can that impact adversely on strength of membranes such as vaginal walls?	980 / 28, 29, 30	Defence
	Okay. So there's no definitive data on how one's health or *lifestyle* affects vaginal wall strength	980 / 34, 35	Defence
	Where's the fact that she even went for a medical checkup, given her *lifestyle*?	1568 / 10, 11	Defence

	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	1637 / 15, 16, 17	Defence
	She talked about multiple pregnancies back to back, poor nutrition tends to affect skeletal muscle first and smooth muscle last, and she didn't have any definitive data on how one's health and *lifestyle* affects vaginal wall strength	1631 / 10, 11, 12	Defence
Lifestyles	And women in high-risk *lifestyles* in Alberta can come into harm's way in various -- from various sources	812 / 30, 31	Defence

Appendix M
Recommendations to Address Violence Against Indigenous Women

Recommendations	Years Of Publication	# Of Reports
• Establish a national commission of inquiry into the issue of violence against Indigenous women in Canada	2012 - 2015	4
• Create a national action plan • Call for service providers and governments to ensure the coordination of action	2002 - 2015	12
• Establish public acknowledgement and priority on violence against Indigenous women	2004 – 2012	4
• Recognize the significance of Indigenous-specific programs that focus on the causes of violence and provide support to Indigenous women and their families who have experienced violence	1996 – 2015	28
• Recognize the important of getting to include Indigenous peoples in the delivery and development of programs	1996 - 2015	12
• Improve publication and data gathering that are Indigenous-specific	1994 - 2015	14
• Create awareness for raising and efforts of public education	2005 - 2014	15
• Improve physical access to accommodation and transport services (i.e., shelters and safe housing)	2002 - 2013	12
• Provide additional support for community-based search and rescue and first response	2002 - 2012	5
• Ensure greater protection of Indigenous women involved in sex work	2004 – 2012	4
• Improve relationships between Indigenous communities and police	2001 - 2015	21
• Improve investigations into missing and murdered Indigenous women	2004 – 2015	15
• Recognize significance of community-based and restorative justice	2001 – 2015	6
• Ratify international conventions and endorse international declarations that promote Indigenous people's rights and the safety of women	1996 – 2013	5
• Reform domestic laws	1996 – 2009	5
• Compensate and/or fund victims of violence	2006 – 2012	4