



Case in Brief: ***R. v. Barton***

Judgment of May 24, 2019 | On appeal from the Court of Appeal of Alberta  
Neutral citation: 2019 SCC 33

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**NOTE:** *this document contains details that may be upsetting to some readers.*

***A man found not guilty of killing an Indigenous woman must be re-tried for manslaughter because trial rules for dealing with sexual history weren't followed, the Supreme Court has ruled.***

In 2011, Ms. Gladue bled to death from a wound inside her vagina. Mr. Barton was charged with first-degree murder, the most serious kind. In this case, it was considered so serious because the Crown (the prosecution) said Mr. Barton murdered Ms. Gladue while sexually assaulting her with a weapon. It said he cut her with a sharp object while she was very drunk, and that he wanted to seriously harm or kill her.

The Crown said even if Mr. Barton wasn't guilty of murder, he was guilty of "unlawful act manslaughter." This is when someone causes another person to die while doing something dangerous and illegal that they should have known might cause serious harm. Unlawful act manslaughter is "included" in the charge of first-degree murder. A person can be found guilty of an included offence even if they aren't found guilty of the more serious crime.

Mr. Barton said he hired Ms. Gladue to have sex two nights in a row. On the first night, he said, he put his hand in her vagina and thrust a few minutes before having sex. On the second night, he said, he did the same thing, but thrust deeper and harder. This time, he said, there was blood. He said she went to the bathroom to clean up, and he fell asleep. He said he found her dead the next morning.

Mr. Barton said he didn't cut Ms. Gladue with a sharp object, and that her death was an accident. He said she agreed to the thrusting, so there was no sexual assault—meaning there was no illegal act to turn what happened into first-degree murder or unlawful act manslaughter. Or, at least, he said he honestly *believed* she agreed to it. What he honestly believed was important, because in sexual assault cases a person might have a defence if they honestly believe the other person agreed to the acts. The defence has to be based on facts and law. A person can't rely on a defence if they get the law wrong.

The jury found Mr. Barton not guilty. But the Crown said the judge made mistakes, and there should be a new trial. The Court of Appeal agreed.

All the judges at the Supreme Court agreed that the trial judge made mistakes. The law says defences to sexual assault can't rely on things that support myths about women or sexual consent. That means these myths can't be used to help decide if someone agreed to a sexual act (or if the person charged honestly *believed* they did). The first myth is that women who have had sex before are more likely to agree to sex. The second is that such women might not be telling the truth.

These are myths because they are false. The law puts rules in place to prevent these myths from affecting jury decisions. But the rules weren't followed in this case. Mr. Barton didn't ask the court for permission to tell the jury about Ms. Gladue's sexual history from the first night. The trial judge didn't decide which evidence was allowed or tell the jury how that evidence could be used in its decision. The jury didn't have the legal instructions it needed. The mistakes were serious enough that the judges said a new trial should take place.

The majority said a new trial should only be for unlawful act manslaughter, not first-degree murder. This was because the trial judge's mistakes didn't affect the murder charge. That charge was based on the argument that Mr. Barton cut Ms. Gladue with a sharp object. The jury did not believe that happened. The majority said the jury's decision on the murder charge should stand. The majority also said that Mr. Barton had to believe Ms. Gladue *communicated* that she agreed, not just that she agreed to the sexual act.

This case raised the issue of myths and prejudices about women, sex workers, and Indigenous people, like Ms. Gladue. Everyone has an equal right to dignity and respect. Everyone has the right to make sexual choices about their own body. It doesn't matter who they are, or what their reputation is, or what they've done in the past. That's the law. If someone else doesn't respect those choices, it's a crime.

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**Breakdown of the decision:** *Majority:* Justice Michael [Moldaver](#) allowed the appeal in part (Justices [Côté](#), [Brown](#), and [Rowe](#) agreed) | *Dissenting in part:* Justices Rosalie Silberman [Abella](#) and Andromache [Karakatsanis](#) said there must be a new trial for murder as well as manslaughter because the trial judge’s mistakes allowed all of Mr. Barton’s testimony to go before the jury, which affected all its findings (including on first-degree murder); they would have dismissed the appeal (Chief Justice [Wagner](#) agreed)

**More information (case # 37769):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** trial (Court of Queen’s Bench of Alberta, not available online) | [appeal](#) (Court of Appeal of Alberta)

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