

Practicing Law with Humility (Part Deux)

How can Indigenous Laws make Canadian Lawyers better?

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1L Ethics Training – January 31, 2020



INDIGENOUS INITIATIVES OFFICE

Overview

- Warm up – are you paying attention?
- Humility in the Criminal Law: **WARNING murder/gun violence case**
- Dabaadendiziwin – reminder
- Humility as law students (take your own advice!)

Leighton Hay's Case

See: R v Hay 2013 SCC 61

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13328/index.do>

The First Photo Line Up

Conducted immediately after the shooting

Many witnesses identified Gary Eunick but the only witness who identified Leighton Hay was Leisa Maillard

Maillard told police that the shooter in the blue/green plaid shirt had 2 inch picky dreads

Detective Young read Maillard cautions, told her the suspect's photo might not be in the lineup.

All of the photos were shown simultaneously. Photo of Hay was over two years old.

Maillard told the Detective... "Out of all of these pictures this gentleman [#10, Hay] most fits the description of the gentlemen I saw shooting"

She stated to the Detective that in her belief, the photo of Mr. Hay depicted the shooter in the blue/green shirt and on "a percentage scale I would probably say maybe 80 percent"

Transcript from the first lineup

(as reproduced in
the SCC decision at
para 18

[Det. Young:] Are you saying that this photograph depicts the likeness about 80 percent of the person?

[Ms. Maillard:] That's correct.

[Det. Young:] That did the shooting?

[Ms. Maillard:] That's correct.

[Det. Young:] But are you saying this is the person that did the shooting? I have to have a yes or no.

[Ms. Maillard:] No, the photograph is about 80 percent . . . of what depicts the likeness of the person that did the shooting.

[Det. Young:] Okay.

[Ms. Maillard:] I wish I could. [A.R., vol. III, at pp. 1014-16]

Preliminary Inquiry



Maillard repeatedly identified Eunick, not Hay, as the shooter in the blue/green shirt.

The Trial

Trial Crown's Case Haircut Theory

Haircut Theory

- Haircut was used to explain why Maillard couldn't ID Hay in the second lineup and as evidence of an attempt to conceal his identity
- The "picky dreads" were flushed down the toilet and the other head hairs didn't get flushed because they were smaller and got stuck to the paper:

At some point, an old piece of newspaper was laid out, and Leighton Hay's short, short dreads were shaved off, possibly by himself but more likely by Mr. Eunick because he knows how to cut hair. They were then dumped into the toilet. They were taken off, and only the small hairs that weighed the least stuck to that newspaper, and he crumpled it up and threw it in the garbage, and that's where it was, right on top, the last thing put in. Everything else was flushed. - Crown's Closing

Maillard's Identification

- Maillard was the only Crown witness called to ID Hay
- Many explanations given for why her identifications seemed unreliable:
 - At the first photo lineup she explained at trial that the 80% comment was made because she was only looking at a photograph, that it wasn't current, because the colour was off and because she couldn't see the facial hair in the photocopy. She also said she explained it in those terms because the detective conducting the lineup asked her to give a %.
 - The second photo lineup was explained with the haircut theory – Maillard didn't recognize Hay because he'd made a deliberate attempt to conceal his identity
 - In regards repeatedly pointing to Eunick when asked to identify Hay at the prelim, Maillard explained at trial that she was confused because Hay had gained weight between his arrest and the prelim

Trial: Defence

Defence: Leighton was home sleeping

- Bullets were placed in his hamper (which was beside his bedroom door) by Gary Eunick
- 1 particle of GSR on the white t-shirt was transfer from when the bullets were hidden in the hamper
- He didn't shave his head to conceal his identity, he had recently shaved his beard only!

May 29, 2004

Convicted of first
degree murder and
attempted murder



Court of Appeal



thestar.com

CRIME

Motion for
release of
evidence

News / Crime

Strands of hair may hold keys to murder

The Supreme Court is asked to order forensic testing of hairs to overturn a murder conviction in the death of a Guyanese community leader.



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reddit this!

By: Peter Edwards Staff Reporter, Published on Mon May 17 2010

A few strands of hair may hold the key to reopening a murder conviction in one of the most notorious killings in the Greater Toronto Area in the past decade.

Lawyers for Leighton Hay are asking the Supreme Court of Canada to allow them to send hairs for forensic testing that they hope will free Hay from prison after more than seven years in custody.

Hay is serving a life term in the July 2002 execution-style murder of Colin Moore, 51, a beloved member of the local Guyanese community.

Hay's trial lawyer, Jeff House, argued Hay was at home asleep at the time of the shootings.

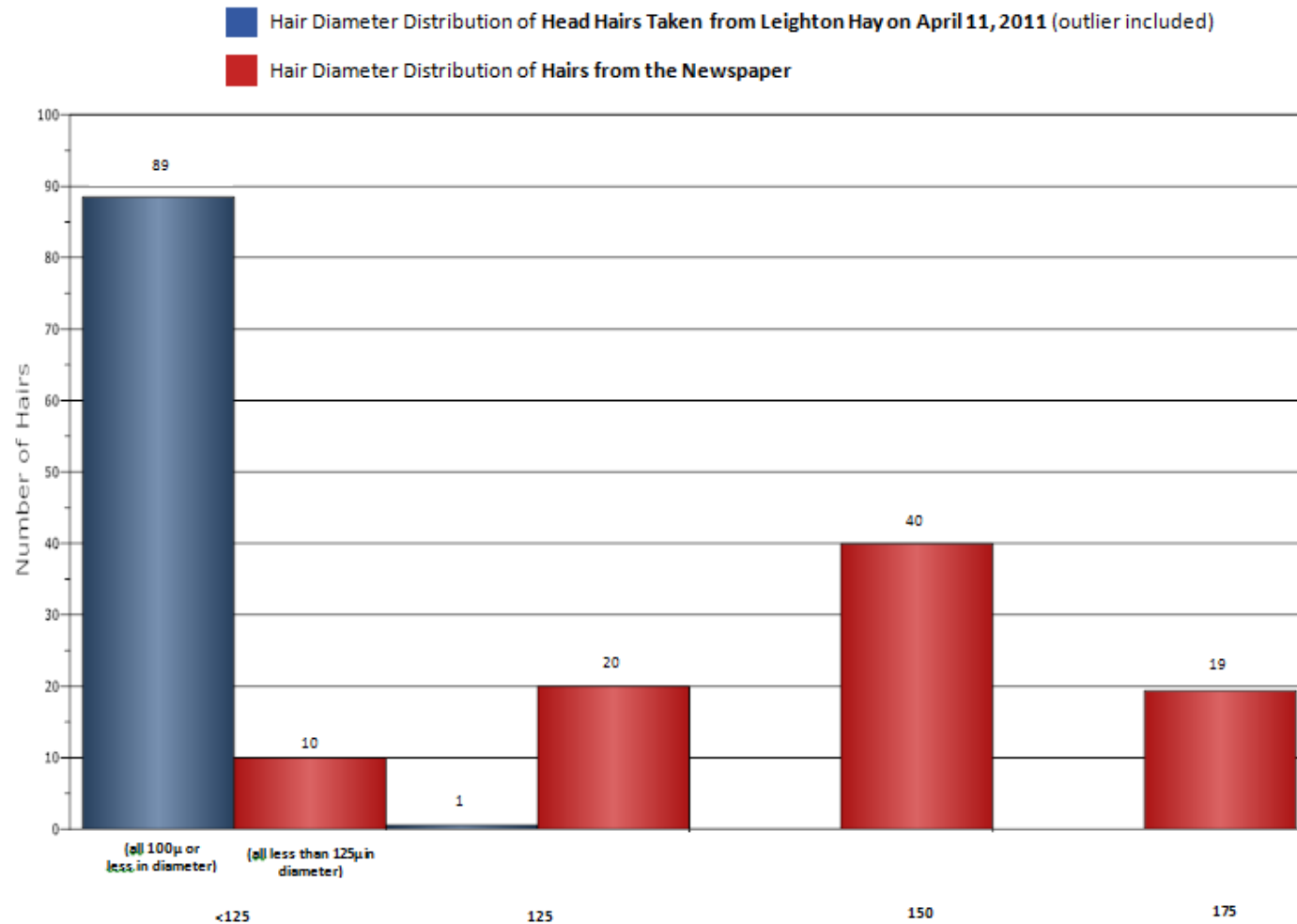
The Crown accused Hay of shaving his head immediately after Moore's murder to confuse eyewitnesses, and noted that a police search of his residence turned up hair clippings wrapped in newspaper.

Now, Hay's appeal lawyers, James Lockyer and Philip Campbell, have applied to the Supreme Court to have the clippings filed as exhibits in his trial tested at the Centre for

Results of the Forensic Testing

It can now be stated with a reasonable degree of scientific certainty that the hairs from the clipper (Item 87) and from the newspaper (Item 88) are populations of facial (beard) hair. Neither sample contains a significant number of scalp (head) hairs to challenge this conclusion.

- Richard Bisbing

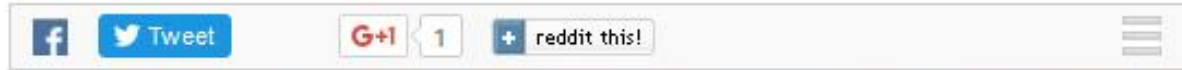


Supreme Court of Canada



Supreme Court orders new trial for murder convict Leighton Hay

Judges say new evidence supports the innocence claims of Hay, serving life for the 2002 murder of Colin Moore at a Guyanese community event.



PETER EDWARDS / TORONTO STAR [Order this photo](#)

Lawyer James Lockyer, left, and Lascelles Hay, right, react joyfully to news that the Supreme Court voted 7-0 to grant Lascelle's son Leighton, 30, a new trial after he was convicted of 2002 GTA murder. Leighton Hay is serving a life term in Millhaven Penitentiary.

November 11,
2013 – all 7
judges of the
SCC ordered a
new trial

Crown: *It is no longer in the public interest to pursue the case*

Nov. 28, 2014

Charges
withdrawn



Apology





Twelve and a
half years in
prison



The Interrupting Husband



WISDOM

LOVE

RESPECT

BRAVERY

HONESTY

HUMILITY

TRUTH



Art: Aura & Chief Lady Bird

Dabaadendiziwin



Dabaadendiziwin



- We can talk of humility, but until we can look at the squirrel sitting on the branch and know we are no greater and no less than her, it is only then that we have walked with humility
- Humility is a state of positioning oneself in a way that does not favour one's own importance over another's
- Humility is a condition of being teachable
- Humility allows us to recognize our dependence on others and to consider their perspectives along with our own
- To measure out or be careful with your thoughts and views and appropriately apportion your judgements
- Looking outside of your own worldview and considering another perspective

Balance



Humility is not about viewing oneself as being above or below another. It is instead seeing all life as equally deserving of respect. Space must be taken up as necessary, just as it must be given away at times as well.

How would practices of
humility have helped
Leighton?

How can practices of
humility improve your
experience as a law
student?

TAKE YOUR OWN ADVICE!

Always assume you can learn something from everyone you talk to.

- not dominating small group class conversations
- being okay with Ps
- not feeling like helping others is sabotaging your own chances at an H/HH

* Understand that we're a part of a bigger law community, that UofT students aren't greater or less than students of other law schools.

Humility

- in legal aid settings, being willing to learn from clients (not be solely an "expert")

- be happy with B

Marie Night for our small group
Knowing how to be happy with Ps

Asking questions in ~~school~~ class without hesitating (ie. focusing on improving knowledge rather than maintaining reputation)

- Participate in a co-curricular that you normally wouldn't consider. You might be able to consider the issues of a new community that'll give you more perspective in your legal career.

1) Remember that we are in an interdisciplinary class and that multiple perspectives can arise in a discussion

2) Get to know people as humans, rather than their tied identity as law students

Humility at law school: saying "I don't know" (especially when cold-called!)

Knowing that learning and growth feel uncomfortable \rightarrow and being okay with that. Accepting a humble position and stance in the growth mindset while learning.

Asking for help.

◦ Having humility will help accept our journey on the steep learning curve of law school (ask questions, be ok with not ~~have~~ always being the smartest)

- recognize when to go easy on ourselves

Share lunch w squirrels on Philospor(sp)

walk
Openly share notes w classmates in need
Recognize what you don't know + be open to new ideas

- make sure everyone gets a chance to sy. surely.
- strong incentives for help + correct other mistakes + participate

- Not judging others for their questions and responses
- Not talking over the professor
- Speaking to peers with an open mind, understanding that multiple perspectives help inform your own values and opinions
- Helping others because we are all ~~peers~~ equal peers
- Not depending upon your own response to the point where you are unwilling to be challenged or re-shape your thoughts upon the points raised by other students and professors



BEING HERE ON

FRIDAY MAKES

ME SAD

||

∩

- Recognizing that Everyone's time is valuable -
my peers, my profs, invited guests, clients -
Not just my own interests.

↳ Time is valuable in a Non Capitalist sense



Marsee Miigwetch Nia:wen

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<https://www.facebook.com/IIOUT/>