



Monique Jilesen
416-865-2926
mjilesen@litigate.com



Margaret Robbins
416-865-2893
mrobbins@litigate.com

December 18, 2020

Four years after Indigenous manâ€™s human rights case, Cleveland removing â€˜Indiansâ€™ from team name

In a recent Law Times article, Monique Jilesen and Margaret Robbins reflect back on how the legal challenges over Cleveland's name came to Canadian shores during the 2016 American League Championship Series.

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"This was probably one of the best losses of my career," says Monique Jilesen, who acted for Cardinal. "Although a lot of consciousness has been raised by Indigenous people over the years about this issue, it was another opportunity to raise consciousness within sports, with fans, with the media, with everyone, about the impact that the use of imagery like this, and the name, would have on people like Mr. Cardinal."

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Cardinal's case was unique because, typically, similar actions will be brought in the intellectual-property realm – challenging whether the offensive word or imagery should be trademarked in the first place, says Jilesen, who is a partner at Lenczner Slaght Royce Smith Griffin LLP.

"While, interestingly, that trademark issue did feature in our case, particularly at the Divisional Court, the basis of our decision was that the use of the logo in the provision of services was a breach of Mr. Cardinal's human rights," she says.

"Whether, in fact, it did breach his human rights was never an issue that was decided. But certainly, I think it will continue to be a way of thinking about these issues for people in the future, as long as people are using imagery relating to people's race or culture, in terms of the delivery of services, like sports."

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"There's other sports teams that are using similar imagery and names who are, hopefully, in the wake of this decision as well, re-evaluating their names and logos in response to the Cleveland decision," says Margaret Robbins, a Lenczner Slaght litigator who also represented Cardinal.