The Evolution of the Admissibility of Hearsay Evidence in Canada

Wayne K. Gorman

As in all other common law jurisdictions, hearsay evidence—an out-of-court statement tendered for the truth of its contents—is presumptively inadmissible in Canada. In *R. v. Khelawon*,[1] the Supreme Court of Canada described the rationale for excluding hearsay evidence:

> While no single rationale underlies its historical development, the central reason for the presumptive exclusion of hearsay statements is the general inability to test their reliability. Without the maker of the statement in court, it may be impossible to inquire into that person's perception, memory, narration or sincerity. The statement itself may not be accurately recorded. Mistakes, exaggerations or deliberate falsehoods may go undetected and lead to unjust verdicts. Hence, the rule against hearsay is intended to enhance the accuracy of the court's findings of fact, not impede its truth-seeking function.[2]

This general prohibition is, as elsewhere, subject to exceptions in Canada (such as, for instance, *res gestae*, dying declarations, etc.). However, through a series of judgments, the Supreme Court of Canada has dramatically altered the traditional common law prohibition. The Supreme Court of Canada has created what it has described as a "principled approach" to the admissibility of hearsay evidence. This has opened the door for the admissibility of such evidence in a broad context. The Law Reform Commission of Ireland recently considered the admissibility of hearsay evidence and summarized the Canadian approach in the following manner:

> The stance adopted by the Canadian courts to the rule against hearsay and its exceptions involves a principle-based approach, i.e. the judging of cases with respect to general principles such as "necessity" and "reliability" rather than precise and pre-existing rules. The effect of these decisions by the Supreme Court of Canada is that hearsay evidence is admissible if the evidence meets two criteria: that the evidence is necessary and reliable; and that the probative value of the evidence is not outweighed by its prejudicial effect. Case law establishes that the necessity criteria will be satisfied if the hearsay evidence is reasonably necessary to prove a fact in issue, the relevant direct evidence is not available, and that evidence of the same quality cannot be obtained from another source. The rationale for the new approach, as noted by Lamer CJC in *R v Smith*, is that reliable evidence ought not to be excluded simply because it cannot be tested by cross-examination. However, he qualified this by stating that the trial judge should have a residual discretion to exclude the evidence where its probative value is slight and it would thus be unfairly prejudicial to the accused for it to be admitted.[3]

In this column, I am going to review how Canadian law arrived at this point and illustrate by reference to two recent decisions of the Ontario Court of Appeal that the scope of hearsay is continuing to expand, but not without difficulties. Let us start at the beginning.

R. v. KHAN:

In *R. v. Khan*,[4] the accused, a medical doctor, was charged with sexually assaulting a three-and-one-half-year-old child. At his trial, the Crown sought to introduce statements made by the child (T.) to her mother (Mrs. O.), approximately fifteen minutes after the alleged assault. The Crown argued that they were admissible under the spontaneous-declaration exception to the hearsay rule. The comments made by the child were as follows:

Mrs. O.: So you were talking to Dr. Khan, were you? What did he say?
T.: He asked me if I wanted a candy. I said "Yes." And do you know what?
Mrs. O.: What?
T.: He said, "Open your mouth." And do you know what? He put his birdie in my mouth, shook it and peed in my mouth.[5]

The trial judge refused to admit the statements on the basis that they were not contemporaneous with the event.[6] The Supreme Court of Canada agreed. It held that "applying the traditional tests for spontaneous declarations, the trial judge correctly rejected the mother's statement."[7] However, the

Footnotes

1. [2006] 2 S.C.R. 787 (Can.).
2. *Id.* ¶ 2.
3. Law Commission of Ireland, Consolidation and Reform of Aspects of the Law of Evidence 112 (2017), http://www.lawreform.ie/_fileupload/Evidence%20Report%20Completed%20Revised%2018%20Jan.pdf.
4. [1990] 2 S.C.R. 531 (Can.).
5. *Id.* ¶ 4.
6. *Id.* ¶ 5.
7. *Id.* ¶ 19.

Supreme Court indicated that there was a "need for increased flexibility in the interpretation of the hearsay rule to permit the admission in evidence of statements made by children to others about sexual abuse."[8] The Supreme Court held that such evidence is admissible if it is "necessary" and "reliable:"

> The first question should be whether reception of the hearsay statement is necessary. Necessity for these purposes must be interpreted as "reasonably necessary". The inadmissibility of the child's evidence might be one basis for a finding of necessity. But sound evidence based on psychological assessments that testimony in court might be traumatic for the child or harm the child might also serve. There may be other examples of circumstances which could establish the requirement of necessity.
>
> The next question should be whether the evidence is reliable. Many considerations such as timing, demeanour, the personality of the child, the intelligence and understanding of the child, and the absence of any reason to expect fabrication in the statement may be relevant on the issue of reliability. I would not wish to draw up a strict list of considerations for reliability, nor to suggest that certain categories of evidence (for example the evidence of young children on sexual encounters) should be always regarded as reliable. The matters relevant to reliability will vary with the child and with the circumstances, and are best left to the trial judge.[9]

Though *Khan* could be interpreted as only applying to hearsay statements made by children in sexual assault cases, the Supreme Court of Canada quickly dissociated itself from such a limited interpretation. Two years after rendering its decision in *Khan*, the Supreme Court of Canada extended the principled approach set out in *Khan* to the admissibility of statements made by an adult victim in a murder case.

R. v. SMITH:

In *R. v. Smith*,[10] the accused was charged with killing Ms. Aritha King. At the accused's trial, the Crown sought to introduce a number of telephone calls made by the victim to her mother. The Crown argued that these calls established that the accused was with the victim immediately prior to her death.[11]

The Supreme Court of Canada held that the contents of the deceased's telephone calls to her mother were not admissible under the "present intentions" or "state of mind" exceptions to the prohibition against the admissibility of hearsay.[12] However, the Supreme Court indicated that *Khan* signaled "the triumph of a principled analysis over a set of ossified judicially created categories."[13] The Court concluded that the hearsay evidence was "necessary" because the declarant was deceased. The Court held that the necessity criteria will be established when "direct evidence is not, for a variety of reasons, available."[14] The Court also held that in assessing reliability, the trial judge should determine whether a "circumstantial guarantee of trustworthiness" exists.[15]

PRIOR CONSISTENT STATEMENTS:

R. v. Smith was followed a year later by *R. v. B.(K.G.)*.[16] In *B.(K.G.)*, the Supreme Court extended *Khan* to the introduction of prior consistent statements for the truth of their contents. Significantly, in *B.(K.G.)*, the declarants were available to testify. The difficulty was that although they had provided statements to the police incriminating the accused, they recanted these statements at trial. The issue became whether the Crown could introduce the witnesses' police statements not simply to contradict the reluctant witnesses but for the truth of their contents. Relying on the common law rule which prohibited the use of such statements for such a purpose, the trial judge denied the Crown's request and the accused was acquitted. [17]

On appeal, the Supreme Court of Canada held in *B.(K.G.)* that "the time has come for the orthodox rule to be replaced by a new rule recognizing the changed means and methods of proof in modern society."[18] The Supreme Court concluded that prior consistent statements could be admitted into evidence for the truth of their contents if (1) the prior statement was made under oath or solemn affirmation, (2) the entire statement was video-recorded, and (3) the opposing party had the opportunity to fully cross-examine the witness at trial respecting the statement.[19] The Court held that the necessity criterion was met because "evidence of the same value" was not available from the recanting witness or other sources.[20]

B.(K.G.) was followed by *R. v. U.(F.J.)*.[21] Once again the issue of admissibility of a prior consistent statement was considered by the Supreme Court. However, this case involved a statement a complainant had provided to the police that had not been taken under oath or video-recorded.

In *U.(F.J.)*, the complainant provided a statement to the police in which she indicated that the accused, her father, was having sex with her "'almost every day.'"[22] The interviewing police officer had attempted to tape the interview, but the tape recorder had malfunctioned. After interviewing the complainant, the officer interviewed the accused. The accused admitted to having sexual intercourse with his daughter "'many times.'"[23] He described similar sexual acts as were described by the complainant in her police statement. At trial,

8. *Id.* ¶ 26.
9. *Id.* ¶¶ 31-32.
10. [1992] 2 S.C.R. 915 (Can.).
11. *Id.* ¶¶ 4-8.
12. *Id.* ¶ 27-28.
13. *Id.* ¶ 30.
14. *Id.* ¶ 36.
15. *Id.* ¶ 30.
16. [1993] 1 S.C.R. 740 (Can.).
17. *Id.* ¶¶ 4-7.
18. *Id.* ¶ 1.
19. *Id.* ¶ 106.
20. *Id.* ¶ 112.
21. [1995] 3 S.C.R. 764 (Can.).
22. *Id.* ¶ 4.
23. *Id.* ¶ 5.

the complainant recanted the allegations of sexual abuse. The issue became whether the complainant's unrecorded statement was admissible for the truth of its contents.

The Supreme Court concluded in *U.(F.J.)* that the complainant's statement was "substantively admissible" because the "statements made by the accused and by his daughter contained both a significant number of similarities in detail and the strikingly similar assertion that the most recent sexual contact between the two had been the previous evening."[24]

The Supreme Court indicated in *U.(F.J.)* that its earlier decisions were designed to ensure that the Canadian approach to the admissibility "of hearsay as evidence would be sufficiently flexible to adapt to new situations."[25]

A FLEXIBLE APPROACH:

In *R. v. Starr*[26] and *R. v. Baldree*,[27] the Supreme Court of Canada affirmed its suggestion in *U.(F.J.)* that the principled approach should be sufficiently flexible to apply to a multitude of hearsay issues. [28]

In *Starr*, the Supreme Court of Canada held that if the proposed hearsay evidence was admissible within a traditional hearsay exception, the evidence "may still be inadmissible if it is not sufficiently reliable and necessary. The traditional exception must therefore yield to comply with the principled approach."[29] In *Baldree*, the Supreme Court of Canada indicated that hearsay evidence is admissible if it falls under a traditional exception to the hearsay rule or if the principled framework of necessity and reliability is established. [30]

SPOUSAL INCOMPETENCY:

In *R. v. Hawkins*,[31] the Supreme Court applied *Khan* to the issue of spousal testimonial incompetence. The Court held that the principled approach made the introduction of hearsay necessary in that case because the witness, the accused's spouse, was incompetent to testify.[32] Subsequently, however, in *R. v. Couture*,[33], the Supreme Court rejected that proposition that the accused's confession to his spouse was admissible on the basis that it was necessary because of the spouse's incompetency to testify against the accused. The Supreme Court held that the confession was inadmissible because its admission under the principled exception to the hearsay rule would, in the circumstances of this case, undermine the spousal incompetency rule and its underlying rationales.[34] The Court concluded that the principled approach to the admissibility of hearsay evidence should be applied in a manner which preserves and reinforces the integrity of the traditional rules of evidence.[35]

More recently, in *Baldree*, the Supreme Court considered the application of its principled approach to "drug purchase calls."[36] In the case, the accused was arrested and charged with the offence of possessing marijuana and cocaine for the purposes of trafficking. After the accused was arrested, an unknown and unidentified person telephoned his cell phone to arrange for a drug delivery. A police officer answered the call and agreed to deliver the drugs at the price the accused normally charged.[37] The Supreme Court concluded that none of the traditional exceptions applied and the principled exception was not established because of the lack of evidence concerning reliability. The Supreme Court of Canada noted that though the call received in this particular case was inadmissible, this did not mean that all "drug purchase calls" were inadmissible.[38]

THE SUPREME COURT'S MOST RECENT CONSIDERATION OF KHAN:

The Supreme Court of Canada's most recent foray into the

24. *Id.* ¶ 55.
25. *Id.* ¶ 21.
26. [2000] 2 S.C.R. 144 (Can.).
27. [2013] 2 S.C.R. 520 (Can.).
28. As we have seen, the Canadian courts have adopted a broad and flexible approach to the admissibility of hearsay evidence based on reliability and necessity. The requirement of necessity has been found, for instance, to have been met in a multitude of scenarios:

- the witness is deceased (see *R. v. Khelawon*, [2006] 2 S.C.R. 787);
- the child witness would be "traumatized" if required to testify (see *R. v. Rockey*, [1996] 3 S.C.R. 829);
- a young child was unable to answer numerous questions asked of her while testifying (see *R. v. F.(W.J.)*, [1999] 3 S.C.R. 569);
- a witness who had provided an incriminating statement against the accused recanted while testifying (see *R. v. Devine*, [2008] 2 S.C.R. 283);
- a witness alleged that she could not remember the events described in a statement she provided to the police (see *R. v. Zaba*, 2016 ONCA 167 (Can. Ont.));
- a witness had previously given a fuller account of the events in question (see *R. v. B.(P.S.)*, [2004] N.S.J. No. 49 (Can. N.S.)); and
- the identity of the declarant could not be determined (see *R. v. Middleton*, 2012 ONCA 523 (Can. Ont.)).

29. *Starr*, [2000] 2 S.C.R. 144, ¶ 106.
30. See *Baldree*, [2013] 2. S.C.R. 520, ¶ 66.
31. [1996] 3 S.C.R. 1043 (Can.).
32. *Id.* ¶¶ 2-3.
33. [2007] 2 S.C.R. 517 (Can.).
34. *Id.* ¶ 63.
35. *Id.* In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), the accused was charged with assault and attempted murder. The State sought to introduce a recorded statement that his spouse had made during police interrogation as evidence that the stabbing was not in self-defense. The accused's spouse did not testify at the trial because of Washington State's marital privilege. The trial court admitted the statement. The State Supreme Court upheld the conviction, deeming the statement reliable because it was nearly identical to, i.e., interlocked with, petitioner's own statement to the police, in that both were ambiguous as to whether the victim had drawn a weapon before petitioner assaulted him. On appeal, the United States Supreme Court held that the use of the statement violated the Confrontation Clause because, where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation. 541 U.S. at 53-59.
36. [2013] 2. S.C.R. 520.
37. *Id.* ¶ 14.
38. *Id.* ¶¶ 68-73.

principled approach to the admission of hearsay is *R. v. Youvarajah*.[39]

In *Youvarajah*, the accused was charged with murder. The co-accused (D.S.) pleaded guilty and signed an agreed statement of facts (ASF) implicating the accused. D.S. was called as a witness by the Crown at the accused's trial, but DS testified that he could not remember signing the ASF.[40] The trial judge rejected an application by the Crown to have the ASF entered as evidence. However, the Ontario Court of Appeal set aside the acquittal and ordered a new trial.[41]

On appeal to the Supreme Court of Canada, the acquittal was restored. The Supreme Court noted that the ASF had not been under oath nor videotaped. The Supreme Court also noted that though the ASF was against D.S.'s interests, "the underlying rationale for the admissibility of admissions as against the party making them falls away when they are sought to be used against a third party."[42] The Court ultimately determined that the ASF was not reliable:

> The circumstances identified by the trial judge raise significant concerns about the threshold reliability of the portions of the ASF upon which the Crown sought to rely at the appellant's trial, all of which minimized D.S.'s involvement in the murder. D.S. endorsed the ASF as part of a plea bargain for second degree murder and a sentence in youth court. In these circumstances, there was motivation to shift responsibility to his co-accused. D.S. was also assured that he would not have to make any further statements to police and he testified at the appellant's trial that this was one of the reasons that he had accepted the plea agreement. D.S. further testified that he agreed to some facts in the ASF that he said he did not or could not know and that he did not understand everything that he read before agreeing to the statement's contents. Those portions of the ASF that shifted responsibility for the murder to the appellant are inherently unreliable.[43]

A SUMMARY:

In *R. v. Mapara*,[44] the Court summarized its conclusions on the admissibility of hearsay evidence through a principled approach:

a. Hearsay evidence is presumptively inadmissible unless it falls under an exception to the hearsay rule. The traditional exceptions to the hearsay rule remain presumptively in place.
b. A hearsay exception can be challenged to determine whether it is supported by indicia of necessity and reliability, required by the principled approach. The exception can be modified as necessary to bring it into compliance.
c. In "rare cases", evidence falling within an existing exception may be excluded because the indicia of necessity and reliability are lacking in the particular circumstances of the case.
d. If hearsay evidence does not fall under a hearsay exception, it may still be admitted if indicia of reliability and necessity are established on a voir dire.[45]

RECENT DEVELOPMENTS:

Two recent decisions from the Ontario Court of Appeal, *R. v. Zou*[46] and *R. v. Khan*,[47] illustrate the ongoing difficulties caused by the introduction of hearsay evidence and the enlarged scope for its introduction.

USE OF NARRATIVE EVIDENCE AS CORROBORATION:

In *Zou*, the accused was convicted of the offence of sexual assault. The complainant (A.Y.) had sent an anonymous email to the police in which she said that she had been sexually assaulted by the accused. The Court of Appeal indicated that A.Y.'s "email to the police was introduced into evidence during her examination-in-chief. She read the document into the record in its entirety and it was made an exhibit." [48] Trial counsel for the accused did not object and there was "no indication by counsel or the trial judge of the purpose for which the email was tendered or any limitation on its use."[49] The Ontario Court of Appeal noted that the appeal raised "the often vexing question of the evidentiary use that can be made of a complainant's prior consistent statement."[50]

In convicting the accused, the trial judge referred to the email: "I find A.Y.'s email, sent contemporaneously with the events, to be corroboration of her evidence."[51]

The accused appealed from conviction. The Ontario Court of Appeal set aside the conviction and ordered a new trial. It held that although the email "could be used to undermine the defence position as to the motive for A.Y.'s false accusation," it could not be used to corroborate the complainant's testimony.[52] The Court of Appeal indicated that the trial judge's "use of the word 'corroboration' in the context of a prior consistent statement by a witness is troubling. That word, as commonly understood, refers to evidence from a source other than the witness whose evidence is challenged which is capable of confirming the veracity of the evidence of the challenged witness."[53]

The Court of Appeal noted that the email "did not have either characteristic required for evidence to be corroborative. It was not from a source independent of A.Y. Nor could the email confirm the veracity of A.Y.'s trial testimony unless the

39. [2013] 2 S.C.R. 720 (Can.).
40. *Id.* ¶ 10.
41. *Id.* ¶ 16.
42. *Id.* ¶ 59.
43. *Id.* ¶ 69.
44. [2005] 1 S.C.R. 358 (Can.).
45. *Id.* ¶ 15.
46. 2017 ONCA 90 (Can. Ont.).
47. 2017 ONCA 114 (Can. Ont.).
48. *Zou*, 2017 ONCA 90, ¶ 26.
49. *Id.*.
50. *Id.* ¶ 2.
51. *Id.* ¶ 33.
52. See *Id.* ¶¶ 35, 50.
53. *Id.* ¶ 40.

email was improperly used for the truth of its contents, or the consistency between the email and A.Y.'s testimony was improperly viewed as confirmatory of her trial testimony."[54]

THE USE OF PRIOR STATEMENTS AS CIRCUMSTANTIAL EVIDENCE:

In *Khan*, the accused, a police officer, was convicted of the offence of sexual assault.[55] The complainant was a prisoner the accused was transporting to a police station. She alleged that the accused sexually assaulted her while performing searches of her in the back of a police cruiser. When the accused and the complainant arrived at the police station, a female police officer (Constable Flint) told the complainant that she would be searching her. The complainant became upset and said: "'I've been searched three fucking times. How many times am I going to be searched?'"[56] The trial judge ruled that this statement was admissible as "'a spontaneous utterance and as a prior statement to assist the court with the ultimate credibility of [the complainant]."[57] The trial judge also indicated that the statement was admissible under the principled approach to the hearsay rule.[58]

The Ontario Court of Appeal held that though "the necessity requirement under the principled approach does not require that the witness be absent or unable to give evidence,"[59] necessity was not met in the case:

> I am of the view that necessity was not met, and thus the statement is not properly admitted under the principled approach. The complainant testified consistently about the essential parts of the allegations. Whatever lapses may have existed in her memory, they did not go to the essential details of the allegation that she had been previously searched numerous times. The record does not establish that the complainant was unable or unwilling to give a full account of events, or could not recall significant details of the event. The necessity component of the principled approach to hearsay is not satisfied.[60]

The Court of Appeal noted that as "pure narrative, prior consistent statements carry no weight because they are tendered simply to give the background to explain how the complaint came to be before the court."[61] However, the Court of Appeal also pointed out that if "the circumstances surrounding the making of the prior consistent statement are such that the statement assists in assessing the reliability and credibility of a witness's in-court testimony" this gives the "prior consistent statements admitted as 'narrative' a more substantive use. . . . This is referred to as narrative as circumstantial evidence."[62]

The Ontario Court of Appeal concluded that the trial judge had "properly placed the prior consistent statement on the scale in assessing the credibility of the complainant's in-court testimony by considering the circumstances in which she made her initial complaint to Constable Flint:"[63]

> In my view, taking the reasons as a whole, the trial judge used the prior consistent statement for the permissible purpose of evaluating the context in which the initial complaint arose, in particular the fact and timing of the complaint, and the spontaneous nature in which it came out, in order to assist him in assessing the truthfulness of the complainant's in-court testimony. While some of the trial judge's language was not ideal, his phraseology must be put in context. In referring to the "consistency of her complaint" . . .
>
> The trial judge properly placed the prior consistent statement on the scale in assessing the credibility of the complainant's in-court testimony by considering the circumstances in which she made her initial complaint to Constable Flint. To this extent, the prior consistent statement does add to the credibility of the complainant's in-court testimony and had probative value beyond mere repetition. It was evidence of the sequence and timing of events and the emotional state of the complainant at the time of the utterance, and assisted the trial judge in evaluating the credibility of the complainant's in-court testimony. The trial judge's use of the prior consistent statement was proper.[64]

On June 29, 2017, as this issue of *Court Review* was headed to the printer, the Supreme Court of Canada issued its opinion in *R. v. Bradshaw*,[65] where it addressed this hearsay question: "When can a trial judge rely on corroborative evidence to conclude that the threshold reliability of a hearsay statement is established?"[66]

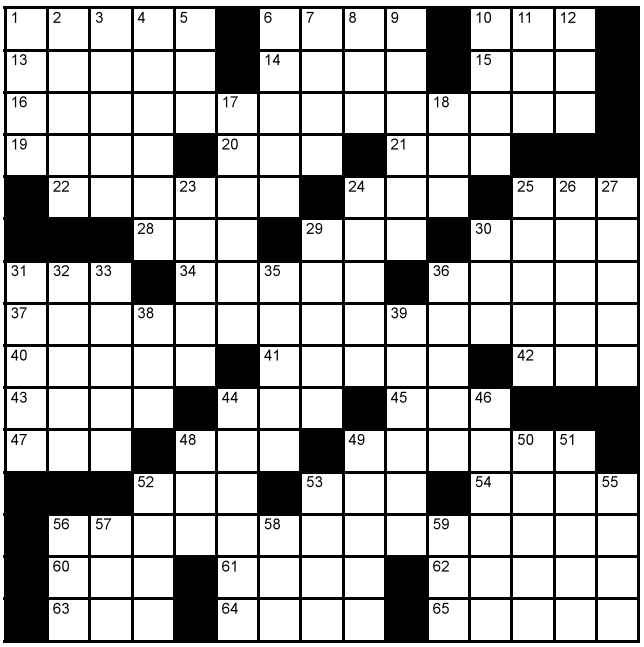
The Court's answer:

> [C]orroborative evidence may be used to assess threshold reliability if it overcomes the specific hearsay dangers presented by the statement. These dangers may be overcome on the basis of corroborative evidence if it shows, when considered as a whole and in the circumstances of the case, that the only likely explanation for the hearsay statement is the declarant's truthfulness about, or the accuracy of, the material aspects of the statement. The material aspects are those relied on by the moving party for the truth of their contents.[67]

(*continued on page 86*)

54. 2017 ONCA 90, ¶ 41.
55. 2017 ONCA 90, ¶ 1.
56. *Id.* ¶ 6.
57. *Id.* ¶ 7.
58. *Id.*
59. *Id.* ¶ 21.
60. *Id.* ¶ 23.
61. *Id.* ¶ 30.
62. *Id.* ¶ 31.
63. *Id.* ¶ 44.
64. *Id.* ¶¶ 43-44.
65. 2017 SCC 35 (Can.).
66. *Id.* ¶ 3.
67. *Id.* ¶ 4.

SOME SERIOUS COURTING by Judge Victor Fleming



Across

1 Milan opera house, with "La"
6 The ___ Radio Hour
10 Crow call
13 Divvy up
14 Sandwichy cookie
15 "To a Mouse," e.g.
16 Snacks for the dig-set-spike crowd? (2 courts)
19 Stuntman Knievel
20 Cottonseed product
21 Disruptive noise
22 Got an ___ (saw a lot)
24 Barnyard scratcher
25 Actor Waterston
28 Part of DJIA
29 Arlo, to Woody
30 Plant used to make poi
31 1960s justice Fortas
34 Main thrusts
36 Merchandizing events
37 Gourd veggie for the shuttlecock crowd? (2 courts)
40 Insurance investigator's concern
41 American statesman Root
42 Bambi's mother, for example
43 Shoe insert
44 "What did I tell you?"
45 Fink (on)
47 "Electric" fish
48 Hone of the Braves, briefly
49 "... ___ more than he could chew"
52 Hit the wrong button, say
53 Brooks who has won an Oscar, Emmy, Grammy and Tony
54 Collection of shops
56 Moldable mud for the hoops crowd? (2 courts)
60 "___ Today"
61 Scorch on a grill
62 Yacht club site
63 Make use of snowy slopes
64 Answer with attitude
65 Rudder's place

Down

1 Not squander
2 Garlic piece
3 See 46-Down
4 Dangled
5 Partook of
6 It merged with Exxon
7 Dentist's kind of surgery
8 ___ Aviv
9 William of "Stalag 17" and "Network"
10 Ring-tailed critter
11 ___ Annie ("Oklahoma!" character)
12 Hitched
17 "I concede"
18 Five-dollar bill, in slang
23 Surround a with dense mist
24 Egypt's Mubarak
25 Healthy lunch choice
26 Comeback to "Am not!"
27 Dayan or Arens
29 Ripped off
30 Fraternity letter
31 Taper off
32 Ballerina's support
33 The "Ishtar" of cars
35 Superman's makeup?
36 Diddly-___
38 Cohort of Curly and Larry
39 Unpleasantly penetrating
44 Accentuate
46 3-Down feline
48 Genesis vessel
49 Market pessimists
50 "... bear ___ witness against ..."
51 Natural ability
52 Morales of "The Burning Season"
53 Degs. held by Romney and Bush
55 "Coal Miner's Daughter" singer Loretta
56 Clean tables
57 Put a question to
58 Crumpets go-with
59 Weigh-in abbr.

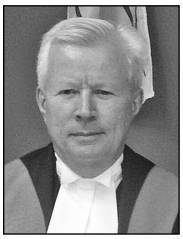
Vic Fleming is a district judge in Little Rock, Arkansas.

Answers are found on page 72.

(*continued from page 52*)

CONCLUSION

As can be seen, the principled approach to the admissibility of hearsay evidence, as formulated by the Supreme Court of Canada, allows for the introduction of hearsay evidence in a potentially broad context. The recent decision of the Ontario Court of Appeal in *Khan*, in which reference was made to narrative evidence as circumstantial evidence, illustrates this point. However, the same Court's decision in *Zou* illustrates that despite the Supreme Court of Canada's willingness to allow for prior consistent statements to be admitted; great caution in their use is still warranted.



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