

30/2006 March

To the Supreme Court of Canada

Again I ask. What is the **IDENTITY** of the **“more effective pain medication”** or the **“better pain management”** this Court repeatedly claims **“was available”** in this Court’s January 18/2001 decision? There is no specific drug or pain medication identified in any of the testimony given by Dr. Dzus the orthopedic surgeon that was actually doing the surgeries on Tracy, that would have the aforementioned properties, or qualities this Court claims exists. No one has come up with a quantity, or identity of any medication, other than the vague descriptions mentioned above.

This elusive medication is the single common element, or legal instrument relied on by this Court to find on line 783 page 163 of my material: “there was no air of reality to even one of the three elements for necessity.” On line 123 page 147 this Court writes:

“Here the trial judge was correct to remove the defence from the jury since there was no air of reality to any of the three requirements for necessity.”

This finding is reinforced on the following lines:

On line 630 page 160

“If the trial judge concludes that there is no air of reality to any one of the three requirements, the defence of necessity should not be left to the jury.”

And on line 633 page 160:

In this case, there was no air of reality to the three requirements of necessity.”

And on line 703 page 161:

“Here the trial judge was correct to remove the defence from the jury.”

“The **first** requirement is imminent peril.” Line 634 page 160.

“The **second** requirement for the necessity defence is that the accused had no reasonable legal alternative to breaking the law.” Line 654 page 160.

“The **third** requirement is proportionality; it requires the trial judge to consider, as a question of law rather than fact, whether the harm avoided was proportionate to the harm inflicted.” Line 667 page 161.

These fraudulently fabricated medical claims are used by this Court on line 693 to eliminate the third requirement of proportionality for the defence of necessity to be put to a jury.

“The “harm avoided” in the appellant’s situation was, compared to death, completely disproportionate. The harm inflicted in this case was ending a life’ that harm

was immeasurably more serious than the **pain** resulting from Tracy's operation which Mr. Latimer sought to avoid. Killing a person ---- in order to relieve the suffering produced by **a medically manageable physical or mental condition** ---- is not a proportionate response to the harm represented by the non-life-threatening suffering resulting from that condition."

The fraudulently fabricated claim "**more effective pain medication**" existed is used to supply the legal alternative, needed to void the second requirement on line 657 on page 160:

"He had at least one reasonable legal alternative: he could have struggled on, with what was unquestionably a difficult situation, by helping Tracy to live and by minimizing her pain as much as possible. The appellant might have done so by using a **feeding tube** to improve her health and allow her to take **more effective pain medication**, or he might have relied on the group home that Tracy stayed at just before her death. The appellant may well have thought the prospect of struggling on unbearably sad and demanding. It was a human response that this alternative was unappealing. But it was a reasonable legal alternative that the law requires a person to pursue before he can claim the defence of necessity. The appellant was aware of this alternative but rejected it."

We know of no "more effective pain medication" that could have been given to Tracy that would have been stronger than regular strength Tylenol. Dr. Stewart explains the effectiveness of liquid Tylenol on page 20 line 35 of my material:

"The only pain relieving drug Tracy was allowed was liquid Tylenol which is easier to swallow than pills. Two teaspoonfulls of that is equivalent to one pill of full strength Tylenol; and adults or teenagers are given one or two pills for a headache or a sore throat. It would give no relief for severe pain."

So if there is no "more effective pain medication" that could have been given to effectively control Tracy's pain that Dr. Duzs describes on page 136 line 674:

Tracy had severe pain. To control it with drugs would mean using fairly powerful drugs. She already was on anticonvulsant, antiepileptic medications to control her seizures. Combining drugs can have side effects. One can add onto the other. She already in the past was having

difficulty with swallowing. We know that she had difficulty clearing some secretions from her lungs, nose and that and these children can gag on their own secretions. If you depress, by using strong drugs, some of these very primitive reflexes then you put her at risk for aspirating, getting the contents of stomach food into her lungs and ending up aspirating pneumonia, ending up very sick, depressing the respiratory function that, already

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This Court's "second requirement for the defence of necessity is that the accused had no legal alternative to breaking the law", would be a credible argument in my defence. For I had no reasonable legal alternative to breaking the law, in the eyes of this Court other than some fraudulently fabricated pain medication.

On page 157 line 529 this Court writes in their January 18/2001 decision:

"If there was a reasonable legal alternative to breaking the law, there is no necessity. It may be noted that the requirement involves **a realistic appreciation of the alternatives open to a person**; the accused need not be placed in the last resort imaginable, but he must have no reasonable legal alternative. If an alternative to breaking the law exists, the defence of necessity on this aspect fails."

This Court relies on the fraudulently fabricated medical claim of an existence of a **better pain management** this Court claims "**was available**" to tell us there was no "imminent peril" the first requirement this Court says it needs to allow a jury to consider the defence of necessity.

This Court writes on page line 648 on page 160:

"There was no evidence of a legitimate psychological condition that rendered him unable to perceive that there was no imminent peril. The appellant argued that, for him further surgery did amount to imminent peril. It was not reasonable for the appellant to form this belief, particularly when **better pain management was available**."

If this Court does not know of a “better pain management” that “was available” to treat Tracy’s post operative pain. It would then stand to reason that in the eyes of this Court there is an “air of reality” to “the first requirement” of “imminent peril”.

I have been asking this Court for about 5 years now for the identity of this elusive medication. This Court has not yet explained this very real legal instrument used against us to do serious damage to us. I think it is important for most Canadians to know just what kind of horror this government could possibly require of them in their dying days. The extreme abuse that this Court felt should have been done to Tracy’s is repulsive to most thinking Canadians. I do not believe this Court can identify the **“more effective pain medication”** and the **“better pain management”** this Court claims **“was available”** to treat Tracy’s pain. Or offer **“a realistic appreciation”** of the legal instruments this Court has used against us. I want to know the identity of the **“more effective pain medication”** and **“better pain management”** this Court claims **“was available”** to treat Tracy’s pain.

If the new government is serious about being accountable it would be nice if that would apply to our Supreme Court, but lets be realistic, or “have a realistic appreciation” of just how far that will go. Canadians just don’t look to Ottawa for straight answers.

This Court didn’t hesitate to tell me on line 530 page 157:

“It may be noted that the requirement involves a realistic appreciation of the alternatives open to a person”.

Then this Court goes on to repeatedly endorse fraudulent fabrications of the medical descriptions that were given of Tracy’s condition. When this Court wrote “her life was not in its final stages” on line 330 on page 152. How long did this Court expect Tracy to live? How could this Court reach such a conclusion if it accepts Dr. Dzus’ testimony on the survivability of people as badly injured as Tracy was on line 732 on page 138?

“The best way I can answer that is by referring to a study that came out of the **MAYO CLINIC** in Rochester where they looked at the survival of children with cerebral palsy and when they specifically looked at the totally involved child, total body involvement, about 50 per cent of them had died or 50 percent of them had survived to their tenth birthday.”

So if this Court considered that Tracy was within one month of her thirteenth birthday when she died, this Court could then establish that the average life span of someone as badly injured as Tracy was would have a life expectancy of 10 years, or 120 months. This Court could

then realize that Tracy had lived for 155 months, or 35 months longer than what was the average life expectancy of someone as badly injured as Tracy was. Tracy lived over 29% longer than what was the average life expectancy of people that were as badly injured as she was.

So this Court's claim or finding that Tracy's life was not in its final stages" is not "a realistic appreciation" of the situation Tracy was in.

This Court could have just decided to do as much damage to us as possible, and not give reasons for their decision. But this Court chose to regurgitate the fraudulently fabricated medical claims that are not backed up by the medical testimony of Dr. Dzus the Orthopedic surgeon that was actually doing the surgeries on Tracy.

This Court's endorsement of such depraved appraisals of Tracy's condition shows no respect for Tracy, or her family.

Most definitions of murder contain the descriptive term malicious. For this Court to call Tracy's death murder is malicious judgement.

If this Court was to achieve an honest "**appreciation**" of Tracy's medical condition it would understand how **75.5 %** of the 1507 Canadians surveyed on June 22/2001, shown on the last line on page 68 of my material felt that someone in my situation should not be prosecuted. This survey was done about 6 months after this Court had delivered its decision condemning my actions. If Canadians could see through this very flawed decision, and not agree with it, I believe a jury selected out of a group similar to the group that was surveyed could find me not guilty. As this Court states on line 621 of its January 18/2001 decision on page 159 of my material:

"if a reasonable jury properly instructed could acquit on the basis of the evidence tendered with regard to that defence, then it must be put to the jury."

I can understand how hard it would be for this Court to relinquish its ill-gotten conviction of me, but the alternative is just more deceit?

It was this Court that allowed itself to be swamped with so much deceit by allowing so many intervenors to consume so much time at the hearing before it on June 14/2000.

On May 14/2002 this Court dismissed my application for a rehearing (page 107) and once again endorsed fraudulent fabrications such as prosecutor Kenneth W. Mackay made on April 4/2002 on pages 87, and 88 of my material:

"Moreover, a feeding tube decreased the risks associated with administering more powerful pain killers such as difficulties with swallowing and aspirating stomach contents into her lungs."

We know of no “better pain management” that “was available” to treat Tracy’s pain, other than regular strength Tylenol. Had she undergone the operation to remove the top ¼th of her femur, which Dr. Dzus describes on page 141 line 810:

“post operative pain can be incredible, difficult to manage for the same reasons we talked about before.”

Why does this **more effective pain medication**” or **“better pain management”** this Court claims **“was available”** to treat Tracy’s pain have to be kept a state secret? When this Court endorsed these fraudulent fabrications it is now clear that this Court should have been able to specify which drugs or medication would have been so beneficial in treating Tracy’s pain. There is no specific medication recorded in any of the Court proceedings that fits this Court’s descriptions.

If this Court had taken the time to achieve “a realistic appreciation” of Tracy’s medical condition, this Court would have understood just how difficult it was to treat Tracy’s pain. By not taking the time to read and understand just how troubling Tracy’s situation was this Court allowed itself to be seriously misled with some very vague medical claims to this malicious judgement.

As an example of how this Court’s decision has troubled so many people that have contributed so much to our country, I have enclosed a letter from a Second World War pilot David Stewart.

It is my hope that this Court believes just as it did on May 19th of last year in the case of J. J. Gunning “it is for the jury, and the jury alone, to decide whether, on the facts, the offence has been proven.”

Like a child forced by his parents to return a stolen toy to the store it came from, and understand just what is expected of him or her. This Court must be honest in its findings for and against an individual. Canadian’s do sincerely want an honest Supreme Court of Canada.

Again I ask What is the **IDENTITY** of the **“more effective pain medication”** or **better pain management”** this Court claims **“was available”** to treat Tracy’s pain?

There is no good reason for this Court to continue to endorse these fraudulent fabrications.