

THE BETRAYAL OF THE LATIMER JURY

Supreme Court must restore public faith in a profound civic duty

By BARNEY SNEIDERMAN

The Supreme Court of Canada is expected to rule Thursday on whether Robert Latimer goes to prison to serve a life sentence, with no eligibility for parole for 10 years. The case of the Saskatchewan farmer has seldom been out of the public eye since 1993, when he was charged with murder for asphyxiating his disabled 12-year-old daughter, Tracy.

Although the case has produced voluminous media commentary, one aspect has been ignored: the feeling of betrayal experienced by the 12 citizens who fulfilled their civic duty as jurors in Latimer's trial on a charge of second-degree murder. Before rendering their verdict, the jurors asked trial judge Ted Noble what penalty would likely follow from a conviction. Judge Noble declined to tell them, because of the conventional legal wisdom that juries deal with facts and judges deal with law - in other words, the jury is only concerned with the crime; the punishment is a judicial matter.

Fair enough, but the Latimer jurors did not know that the Criminal Code sets a mandatory minimum sentence for murder. For second-degree murder, it is life imprisonment with parole eligibility set somewhere between 10 and 25 years.

In any event, the jurors went on to convict Latimer, because the evidence was uncontested that he had killed his daughter. But they had undoubtedly assumed the law was sufficiently enlightened to allow for a sentence reflecting the facts of the case. I say that because the jury reacted with shock and outrage when informed by Justice Noble after their verdict that the least time Latimer could serve was 10 years. The news reduced a number of jurors to tears.

But then something remark-able happened: The Criminal Code requires that a judge, upon a conviction for second-degree murder, ask the jury to recommend a minimum sentence of 10 to 25 years. (The judge is not bound by the recommendation, but must ask for it.) The jury unanimously disregarded the law, and recommended Latimer serve but one year. Surprisingly, Judge Noble granted Latimer a constitutional exemption from the mandatory minimum, and sentenced him to two years - the first in custody and the second by confinement to the family farm.

Justice Noble said, it was clear Latimer was "a caring and responsible person (whose) relationship with Tracy was that of a loving and protective parent (and who) was motivated solely by his love and compassion for Tracy and the need at least in his mind that she should not suffer any more pain."

The Crown appealed and the Saskatchewan Court of Appeal overturned the two-year sentence and imposed the mandatory minimum. The appeals court ruled that a jury is concerned only with the crime, not the punishment. In effect, its message to the jury was, "butt out, this is none of your business."

If the 10-year minimum sentence is upheld by the Supreme Court of Canada, these 12 jurors will surely look back with a sense of bitterness and betrayal. The law puts the fate of a fellow citizen in their hands, but refuses to tell them the implications of a guilty verdict.

In most cases, it really does not matter that the jury is ignorant of the prescribed punishment, because of the wide sentencing discretion granted to judges in the Criminal Code. For example, an accused convicted of manslaughter, which carries a maximum life term, might not go to prison if the judge decides upon probation or a suspended sentence.

So here are 12 jurors who sat through the trial and were able to take the measure of the man and his crime, and their collective sentiment was that 10 years was out of line. Their thinking was in line with that of the Special Senate Committee on Euthanasia and Assisted Suicide, which unanimously recommended in 1995 that the Criminal Code be amended to provide for a less severe penalty in cases where there is the essential element of compassion or mercy. The committee acknowledged that it felt the need for a special category of compassionate homicide only because of the mandatory minimum sentences for murder.

In most cases, the judge's hands are not tied when it comes to imposing punishment, and an appropriate sentence will be handed down. However, in this case the jurors' ignorance of the mandatory life sentence meant they were not able to weigh the implications of a conviction when the fate of Robert Latimer was placed in their hands.

We do not know if the result would have been different if the jury had learned about the minimum sentence, and about jury nullification - the inherent power of a jury to acquit an accused no matter how strong the Crown's case. There was no way the defence attorney could tell them, because the Supreme Court has ruled that, although the jury has that power, it has to figure it out for itself. A juror interviewed after the trial said none knew about nullification.

It has been said for centuries that a jury is the conscience of the community. Yet how can that conscience find expression when a jury is kept in deliberate ignorance of information that it surely has the right to know? When citizens are asked to decide the fate of a fellow citizen, they should at least be allowed to pass judgment with their eyes open. The Latimer jurors are, for now, left with the haunting realization they have helped send a man to prison for far longer than they deemed warranted by the nature of the crime.

An affirmation by the Supreme Court of the 10-year sentence will be a slap in the face to almost all Canadians, because almost all of us are eligible for jury duty. The court would,

in effect, be saying that jurors should be kept ignorant of the awesome implications of the role thrust upon them.

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