

LOCATING Parts of the Jan. 18/2001 Decision

Defences ---- Necessity ---- No air of reality to defence were accused charged with second degree murder of severely disabled daughter ---- Not sufficient evidence on any of three requirements of immediate peril, no reasonable legal alternative and proportionality” ---- Modified objective test applying to first two requirements, ---- Assuming proportionality could be met in homicide situation, applying objective test, harm inflicted being immeasurably more serious than daughter’s pain from anticipated operation.” Page 146 line 39

Page 160 line 634 “The **first requirement** is imminent peril”

Line 651 “It was not reasonable for the appellant to form this belief, particularly **when better pain management was available.**”

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

Line 659 “The appellant might have done so by using a feeding tube to improve her health and allow her to take **more effective pain medication**”

Page 161 line 667 “The **third requirement** for the necessity defence 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.”

Page 161 line 694 “The harm inflicted in this case 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.”

Page 163 line 783 “The **ruling was obvious**: there was no air of reality to even one of the three elements for necessity.”

Page 159 line 621 “on the other hand 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. It is for

the trial judge to decide whether the evidence is sufficient to warrant putting a defence to a jury as this is a question of law alone.”

“Here the trial judge was correct to **REMOVE THE DEFENCE OF NECESSITY FROM THE JURY** since there was **NO AIR OF REALITY** to any of the 3 requirements for necessity”
Page 147 line 123

And 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.”

And on line 783 page 163:

“The ruling was obvious: there was no air of reality to even one of the three elements for necessity.”

“more effective pain medication” line 73 page 146.

“better pain management was available” line 128 page 148.

“a medically manageable physical or mental condition” line 135, page 148.

“more effective pain medication” line 325, page 152.

better pain management was available” line 652, page 160.

“more effective pain medication” line 661, page 160.

“a medically manageable physical or mental condition” line 697, page 161.

Anarchy Page 157 line 505 “that would “very easily become simply a mask for anarchy””.

Aware Page 161 line 666 “The appellant was aware of this alternative but rejected it.”

BREAKING A FINGER line 543 page 158 “like the example given in *Perka* of the person who blows up a city to avoid breaking a finger.

CANCEL OUT THEIR ULTIMATE IMPACT On page 170 line 1071 “In this regard it is possible that prior to gauging the sentence’s appropriateness in light of an appreciation of the particular circumstances weighed against the gravity of the offence, the mitigating and

aggravating circumstances might well cancel out their ultimate impact (*Morrisey, supra*, at para. 40). Indeed, this is what occurs in this case.

CHARTER CHALLENGE Page 169 line 1020 “Mr. Latimer’s challenge to their overall constitutionality was put forward in the alternative but was not pressed forcefully since no substantive argument on point was offered.”

Community Standards

Page 147 line 120 “The test must be objective as the test is a matter of **community standards infused with constitutional standards** such as, in this case, the s. 15(1) equality rights of the disabled.”

Page 158 line 568 “involuntariness is measured on the **basis of society’s expectation of appropriate and normal resistance to pressure**”

Page 159 line 594 “Evaluating the nature of an act is fundamentally a determination reflecting **society’s values** as to what is appropriate and what represents a transgression.”

Page 159 line 608 “The proper perspective, however, is an objective one, since evaluating the gravity of the act is a **matter of community standards** infused with constitutional considerations (such as, in this case, the s. 15(1) equality rights of the disabled).”

Page 168 line 954 “whether the punishment prescribed is so excessive as to **outrage standards of decency**”

Page 171 line 1092 “The objective of denunciation mandates that a sentence should **communicate society’s condemnation** of that particular offender’s conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender’s conduct should be punished for encroaching on our **society’s basic code of values** as enshrined within our substantive criminal law.”

Page 171 line 1095 “the offender’s conduct should be punished for encroaching on our society’s values as enshrined within our substantive criminal law. {Emphasis in original.}

CONVICTION MUST BE UPHELD Page 167 line 927 “we conclude that the appellant’s conviction must be upheld.”

DEFENCE OF NECESSITY Page 159 Line 619:

“... a defence should not be put to the jury if a reasonable jury properly instructed would have been unable to acquit on the basis of the evidence tendered in support of that defence. On the other hand, 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. It is for the trial judge to decide whether the evidence is sufficient to warrant putting a defence to a jury as this is a question of law alone.”

Denunciation Page 171 line 1098 “Furthermore, denunciation becomes much more important in the consideration of sentencing in cases where there is a “high degree of planning and premeditation, and where the offence and its consequences are highly **publicized**, [so that] like-minded individuals may well be deterred by severe sentences”:

“Her **LIFE** was not in its **final stages**” line 330. Page 152.

“She was not terminally ill.” Line 75 page 146.

Tracy **enjoyed** music, bonfires, being with her family and the circus. Line 331, page 152.

FEEDING TUBE LAW Page 160 line 659:

“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 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.”

GUARDING AGAINST JURY NULLIFICATION Page 167 line 920:

“Guarding against jury nullification is a desirable and legitimate exercise for a trial judge; in fact a judge is required to take steps to ensure that the jury *will* apply the law properly.

HIGHLY PUBLISIZED Page 171 line 1100 “Furthermore, denunciation becomes much more important in the consideration of sentencing in cases where there is a “high degree of planning and premeditation, and where the offence and its consequences are highly publicized, [so that] like-minded individuals may well be deterred by severe sentences”:

How could there be any such right Page 166 line 904 “The appellant’s argument is a broad one, that the accused person has some right to **jury nullification**. **How could there be any such right?”**

Imperfect “While the trial judge’s approach was **imperfect**, the benchmark for measuring trial fairness is not **perfection**.”

JURY NULLIFICATION Page 167 line 920 “Guarding against jury nullification is a desirable and legitimate exercise for a trial judge; in fact a judge is required to take steps to ensure that the jury *will* apply the law properly.”

MOST SERIOUS LEVEL OF MORAL BLAMEWORTHINESS Page 170 line 1044.

Tracy enjoyed **MUSIC, BONNFIRE, BEING WITH HER FAMILY AND THE CIRCUS.**”

Page 152 line 331.

NECESSITY Page 159 line 621 **TO BE PUT TO A JURY**

“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. It is for the trial judge to decide whether the evidence is sufficient to warrant putting a defence to a jury as this is a question of law alone.”

Objective Page 159 line 605 “The evaluation of the seriousness of the harms must be **objective**”.

Page 159 line 611: “we conclude that the proportionality requirement must be determined on a purely **objective** standard.”

Realistic appreciation of the alternatives open to a person Page 157 line 530 “It may be noted that the requirement involves a realistic appreciation of the alternatives open to a person:”

“she was in **severe pain** from what we believe was her hip” Page 131 line 558.

“Tracy had **severe pain**. To control it with drugs” Page 136 line 674.

“It was **thought** she experienced a great deal of pain.” Page 152, line 331.

LOCATING PARTS OF DR. DZUS’ TESTIMONY

BLOOD LOSS Page 119 line 244 “She lost around 3 litres of blood and that was replaced.”

Page 122 line 319 “When you lose three litres of blood or require three litres of blood, that’s more than somebody Tracy’s size would have circulating in her own body”

BRAIN DAMAGE Page 112 line 70 “it’s a changing disease. There’s been at one time insult to the brain that causes the original damage and if you look at the brain as the computer of the body it’s been damaged”

HIP WAS TOO FAR GONE Page 140 line 783 “most of the time we were talking about a reconstructive procedure to put the hip in place and this was the first time that I suggested that maybe this hip was now too far gone”

MAYO CLINIC SURVEY Page 138 line 732 “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 per cent of them had survived to their tenth birthday.”

MORE SURGICAL INTERVENTION Page 135 line 643 “I expect that there may be more surgical intervention”

“that is **NOT THE END OF THE PAIN** Page 141 line 818

OPENING HER UP Page 139 Q “I take it that without actually opening her up, you weren’t in a position to know exactly what you were going to do. Is that right? --- A that’s correct.

POST OPERATIVE PAIN CAN BE INCREDIBLE Page 141 line 810

SEVERE PAIN Page 131 line 548

“Her breathing became easier in that she wasn’t as congested and she did not vomit as much so that quality of life improved but now instead of being a flexible person that can move side to side, forward and back, we have somebody who is literally very stiff from the top of her spine right down to the pelvis so she has lacked - - she now lacks that mobility so that takes away some of that quality of life, plus the fact that she has lost weight in the summer prior to her death and that **she was in severe pain** from what we believe was her hip”

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”

SURGICAL INTERVENTION Page 135 line “643 Because of her weight loss if that continued for whatever reason, I expect that there may be more surgical intervention”

FORCE FED Page 135 line “651 Q: She would be force fed or - -“ A: I won't use the word "force fed" because that might have different connotations - -

Locating parts of the book

SUPREME COURT JANUARY 18/2002 DECISION On pages 145 to 172 or under CRIMINAL REPORTS of this site.

CONFIRMING GUILTY VERDICTS Page 46 is the questionnaire put to potential jurors.

DR. DZUS’S TESTIMONY On pages 110 to 144. Or on page 110 of this site.

DR. DZUS’S 35 pages of testimony that was given at my first trial in 1994, and read into the second trial, for she could not attend it for medical reasons.

The Eichmann Defence Page 52 2nd column 3rd paragraph “This is just another example of the Eichmann defence, the defence Adolf Eichmann gave when tried as a was criminal for his part in the Holocaust. But Eichmann’s defence, “I was just following orders” did not morally excuse him from what he did and neither does it morally excuse the jury from the injustice they have inflicted upon Robert Latimer and his family.”

When **DIETRICH BONHOEFFER** CHOSE TO DIE RATHER THAN TO COMPLY WITH NAZI DEMANDS, we regard him as heroic. Why? Because he demonstrated that how we live is more important than simple existence.” Prof. LefCourt wrote on page 80.

“It is not because **JUSTICE MATTERS** that we care, rather , it is because we care that Justice matters.” Prof. Krutzen page 47.

PROFESSOR KRUTZEN Has written more than the 11 parts featured in my present material on page 47. The 11 parts are:

The Case of Robert and Tracy Latimer

The Question of Punishment

The Matter of Consent

The Abuse of the Disabled

The Rhetoric of Slippery-Slope Arguments

Drawing The Line

Quality of Life’ Decisions

The Role of Emotions

Misplaced Duty and Compassion

A Parliamentary ‘Free Vote’ – A Matter of Individual Conscience

Conclusion

Morally castrated Page 52 ROLE OF EMOTIONS (PART)last line in column 1 “In following the judge’s orders not to let their emotions play a part in their deliberations and in agreeing to be guided solely by reason and the law, the members of the jury **morally castrated** and dehumanized themselves in the process.”

“NO PRICE IS TOO HIGH TO PAY FOR THOSE WHO DO NOT HAVE TO PAY IT NOR IS ANYTHING IMPOSSIBLE FOR THOSE WHO DO NOT HAVE TO DO IT.”
Page 52 paragraph 1.QUALITY OF LIFE DECISIONS (PART)

PROFESSOR LEFCOURT Has written more than the 1 page featured on page 80.

The **QUESTIONNAIRE** that the RCMP used to “**CONFIRM GUILTY VERDICTS** is on page 46.

NATIONAL PUBLIC **SURVEYS** are on pages 55 to 79of the book.

SCIENTIFIC ILLITERACY Page 206 “Most of the people in law, if not this room probably went into law to get away from things like chemistry and physics and mathematics. There is a

kind of pride in scientific illiteracy through the profession.” Justice Binnie speaking to law student in Toronto.

SIDE ISSUES Page 206 “the science was a **side issue** in the Latimer ruling” Justice Binnie again.