

Manitoba



Justice

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FAX TRANSMISSION COVER SHEET

TO: Marty Minuk
DATE: September 21/2005
FAX NO.: 957-0840
FROM: Brian Kaplan
OFFICE: MB Justice - Prosecutions
PHONE NO.: 945-2860

REMARKS:

Ms Victoria Sveinson - regarding death of daughter Crystal Taman (Harvey mordenzenk). Ministerial Correspondence follows for this matter. Could you please draft a response for Brian's signature on the Justice issues and forward to me for Brian's review? ~~Please note due date of October 12/2005~~

Thanks Marty.

Colleen

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TOTAL NUMBER OF PAGES (including this one): 7

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SEP 20 2005 23:51 FR PUB. PROSECUTIONS

TO 99570640

P.03/07

09-13-05 08:51 FROM-DM Justice

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August 31, 2005

Hon. Gordon MacIntosh
Minister Justice**RECEIVED**

SEP 01 2005

Route No. 105-2742File No. 19.15

Dear Sir,

My sincere hope is that you as the Justice Minister will actually read this letter that I am directing to you. As the mother of a person violently killed in a dangerous driving "accident" by an impaired driver, I feel that I deserve, at the very least, having our Justice Minister personally read my anguished concerns about the circumstances surrounding this incident. I have heard that you are not in agreement with the many conditional sentences our courts are handing out, especially for violent crimes. I also understand that you may be sympathetic to the plight of victims of crime who at this time are given next to no consideration in the proceedings dealing with the crime that made them a victim. Our so-called "Justice system" victimizes those that are already victims of crime even more rather than giving them even the remotest resemblance to compassionate or fair treatment. At this time my only feelings are Where is the Justice.

My name is Victoria Sveinson and I am the mother of Crystal Taman who lost her life in the "accident" reported in the enclosed newspaper article. I cannot explain to you the devastation experienced by a mother, a father, a sister, a husband and children when a loved one is suddenly and violently ripped from their lives. You can't even imagine it in your wildest dreams. Does our system provide any comfort to victims? I can truly tell you that it is just the opposite! We are ignored, put off, silenced and stripped of any remaining dignity. Bringing the perpetrator of a crime such as this one to "justice" is next to impossible. If charges are laid, a publication ban is in effect because the case is before the courts. This may sound good in theory, but in actuality it only benefits the criminal. Many think such silence is helpful to the victims since bringing the "accident" up over and over appears to be hard on them. This is an illusion that only non-victims have. I can assure you that the so-called "accident" replays over and over again in our minds anyway. To have the feeling that the public is fully aware of our plight as victims and that some just consequences may be occurring would be very helpful. But, this is not what occurs in our system. If victims or the media voice such feelings that I have expressed here, our court system is set up in such a way that it could be used in favor of the criminal claiming undue prejudice or some insane idea like that. Does the truth make prejudice undue?? On the other hand, replaying all of this several years later when the case is finally brought before the courts would indeed be very hard. Hopefully, by then victims have been able to bury some of the horrific memories of a terrible tragedy only for them to be brought to the fore again by our wonderful system.

-----Where is the Justice?-----

What a boon such delays are for the alleged perpetrator! Facing his charges can be put off by remand after remand while he sits at home with his family. *Our daughter won't be home with her family ever again!!* We have been informed that we will be "lucky" to see this case come to court by the spring of 2006 or 2007. And it could even be the year 2008 since the defense can ask for remand after remand. The "accident" that took our daughter's life on February 25, 2005 took only a split second. Do you see any advantage to dragging this case on for years? I know the courts are very busy, but cases involving death should be given priority, not allowed to drag on for years while the one responsible is *free to carry on his life*. Remand after remand should not be allowed, just as a person who causes another's death should not be allowed to refuse the breathalyzer [another example of a criminal's rights held higher than a victim's rights]. There cannot be really good reasons for many remands except to delay the case and try to get a sympathetic judge. [Again both of these only benefit the criminal.] Also, I understand the police can suspend a driver's licence for only 3 months, so this person is probably driving again right now. A person charged with such horrific offences should not be allowed to drive around freely endangering other lives. In addition, we have just been informed that we cannot receive a copy of our daughter's autopsy report because of the pending case. So, as parents and victims, we cannot even know what the actual cause of our daughter's death was for 3 or 4 years, another law set up to protect the alleged criminal's rights far above the victim's rights. Long delays benefits the criminal even further. They postpone his taking responsibility for his actions and

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paying for his crimes, they cause the public to lose track of and interest in a case, and witnesses to forget what actually happened or perhaps even die before the case is heard. On top of all this, we understand that the courts often hand out conditional sentences for such cases. So, after years of delay, if the perpetrator should be found guilty, he could be given a conditional sentence which is almost like giving him nothing at all. Where is the justice.

Even the Bible confirms that such delays create more problems than they solve. At Ecclesiastes 8 verse 11 it states—"Because sentence against a bad work has not been executed speedily, that is why the heart of the sons of men has become fully set in them to do bad" Clearly, lax punishment administered slowly only promotes more crime. This should be quite evident by the fact that we are seeing 3rd and even 4th offences. And even then, the same kinds of sentences are handed down! There can be no rehabilitation and no deterrent if there are no real consequences. Where is the ZERO tolerance to impaired driving that was so loudly proclaimed?? We are told again and again that our laws are getting stricter but if those laws aren't enforced and strict consequences never handed out, they are totally useless. They only serve to twist statistics to make it look like crime is down, and convince politicians that they are doing a good job. It wouldn't matter if an impaired driver's blood alcohol was at .05, .08, or even .20 since it could never be proven because he was able to refuse the breathalyzer. Also, the prosecuting attorney can "cut a deal" if he finds it politically expedient. Again, the victims of the crime have no say in this decision which is not based on right or wrong but on personal advantage or money. Where is the Justice??

In addition to all of this, when death is caused by a vehicle "accident", the victims must deal with MPIC. That is the biggest atrocities of all. They administer their "laws" like the dictatorial S.S. did. They show absolutely no compassion as if trained to be as hard and cold as possible. Instead of trying to make a most difficult situation run smoothly, they actually throw as many obstacles as possible at the victims who are already distressed enough. They use a victim's weakened state to bully them into compliance. They look down their nose at a victim's plight while bragging about how meticulously they adhere to rules that must have been instituted by people who also have ice water running in their veins. An innocent life is placed in some ridiculous preset category with a specific amount set per category. Why should one life be worth more or less than another. They all pay the same insurance premiums which are not based on their net worth or position in life. Why should the settlement be based on such things? And then there is this most ridiculous "no fault" insurance which prohibits victims from suing the perpetrator on their own. In other words, they are telling us that we don't even have the right to take the person who killed our daughter to court, even if he was impaired!! Who the hell are they, that they should have this power over a criminal offence?? We simply must accept what they dictate! This is indeed a very, very sick system! Where is the Justice??

I know the argument is that money cannot bring back our loved one and that is true. But, that is all the more reason why a settlement in such a case should be substantial. Just like the sentence for a crime—it should reflect the seriousness of the crime, and the fact that our loved one cannot be brought back makes it as serious as it possibly could be. It's that word "justice" that confuses the issue here. Similarly, an insurance settlement should reflect the value of a human life, since money is all that they can compensate victims with. I'm sure you would agree that if they offered only \$1.00 as a settlement everyone would be outraged. Well, if money is not the issue why should it matter? But, I think we all know that it matters, if only in principle. And, surely some settlement should be paid to the children as well. My daughter was a wife and a mother. Her salary contributed to her family's household. Sure, her children are considered adults, but they are still young adults [aged 20-22]. They are still very impressionable, still attempting to make their own way in the world. They still live at home, still taking courses [one is in university] Their mother was only 40 years old. She could have worked another 20+ years to contribute to her family's welfare. It was on her way to her job that this terrible tragedy occurred. She was a guiding force, a friend, and a helper to her children. All of that was wiped out in one split second. Her children were and still are totally devastated by her sudden violent death. They are grieving deeply and angry. Two of her children were on the scene before their mother was removed from her car. Can you imagine your children undergoing such a

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normal experience? Now, to be victimized again and again by our justice system surely compounds this terrible tragedy. How can these 3 young people rebuild their lives and grow into responsible adults when all they see is a system that victimizes them even further, gives them no say in the proceedings that deal with their mother's death, drags the so-called justice on for years, and any mercy or compassion that may be shown are shown only to the perpetrator of this crime. All they see is a government that provides half-way medicine, gusapo insurance, and backroom justice.

Where is the Justice?

So, because nothing can bring her back, shall we say we should do nothing? Punishing the perpetrator won't bring her back. Money won't bring her back. Is that good reason not to punish and not to pay a decent settlement? Justice should demand the severest punishment and the highest insurance settlement possible. Even then, the scales of justice could not be balanced, because only bringing her back could fully balance those scales. But, because we cannot fully balance it, should we not place any weight on the payment side of the scale? My view of justice, and the view of many I believe, is that as much weight as possible should be piled on that side of the scale. Our grief can never be eradicated, but proper consequences can be like salve on a burn. The salve doesn't heal the burn, but it does ease the pain a little. I think Crystal's family deserves a little salve from a system that advocates justice instead of the salt that they continue to rub into victims' wounds.

This was and is a tragedy beyond compare. It shouldn't happen to anyone but it does, and did happen to our family. My husband and I have lost one of our 2 daughters. Our other daughter has lost her only sister. Our 3 grandchildren have lost their mother and our son-in-law his wife. Add to that numerous others next in line that feel this terrible grief, [nieces, nephews, aunts, uncles, cousins and in-laws, workmates, friends] In all of this we are expected to simply sit back and bear it quietly, while the powers that be deal with this situation in their "wisdom". Coldly being told that nothing can bring her back only accentuates the gross lack of respect our system appears to have for an innocent human life. Surely experience has shown that the only thing that brings any comfort to victims is the feeling that justice is being carried out. But victims are not given priority. Under the guise of justice, our system deals with these cases in a cold, sterile, objective manner. They pride themselves on executing useless laws to the letter, laws that hurt victims even more but benefit the criminal. But, laws that would force criminals to suffer the consequences of their actions are nullified by conditional sentences or objectivity. Heaven forbid that any compassion should be shown to the victims since it would be politically incorrect to appear non-objective. Only the criminals and politicians benefit by such a system. It appears successful because they put forward this facade of justice and honor while our politicians sit in their "ivory towers". The public in general cannot see that this is just a facade unless they are personally the recipients of this type of treatment. To be a recipient one must be the victim of a tragedy or be allowed to see how unjustly these cases are handled. All of this is kept secret by a publication ban so that they wouldn't be faced by a public outcry for true justice.

Therefore, can anyone change these injustices? Only if they recognize them for what they are, and have a keen desire and the fortitude to work at it? It's obvious that no-one has had that! I'm not sure anyone can have enough of that to be successful without personally experiencing a tragedy similar to ours. But then, if they experienced such a thing, they couldn't be objective, could they? And our so called "justice" system is based on this cold objectivity, an objectivity that is shown only to the victims. Mercy and forgiveness are preached and often extended, but only to the criminal. This one is now centered out as the one needing compassion and mercy, forgetting it seems that he is the one who perpetrated the crime, causing untold suffering to numerous victims who far outnumber him and who will now be haunted by this horrific tragedy every day for the rest of their lives. So, how likely is a real change when our judges are guided by ridiculous precedents rather than their own faculties? I assure you that tragedies like this one will continue to occur unless proper consequences are meted out to the perpetrators of such "accidents". Only such consequences can serve as a rehabilitation or a deterrent to the perpetrator as well as to others who see the results. But, as it is, we are at the mercy of a system that is just in name only.

There is no Justice !!

A grieving Mother

City constable charged in fatal collision

Accused of drunk driving after mother of 3 killed

By Bruce Owen

A Winthrop Police Service officer was charged yesterday with impaired driving causing death after a crash last Friday killed a mother of three.

Const. Derek Harvey-Zenk, 31, was also charged with refusing a breathalyzer test, dangerous operation of a motor vehicle causing death and criminal negligence causing death.

Crystal Toman, 40, was killed when her 1991 Chevrolet Sprint convertible was rear-ended by a

1993 Dodge Dakota pickup truck as she walked at a red light at Langmoore Boulevard and the north Perimeter Highway.

Winthrop police Const. Jack Resnick said yesterday he has not yet had any paid administrative leave until the charges, which were filed by East St. Paul police, are reviewed. Harvey-Zenk was off duty when the crash occurred.

Police sources said that before the crash, a group of officers from District 3 station on Haddonford Avenue to West Kildonan had gone for drinks at a north Winthrop bar after work at around midnight. Police call such get-togethers "shifters."

"They're frequently here," an employee, who did not want to be named, said yesterday.

Continued
Please see **CONSTABLE A2**



Crystal Toman was killed when a pickup truck rear-ended her car as she walked at a red light at Langmoore and the Perimeter about 7 a.m. Friday.

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FROM-DM Justice

It won't be long before more violent
drives join drunk driving causing death as
crimes that are virtually ineligible for jail
sentences.

Impaired drivers who kill rarely get jail
time — anyone — except
those who are first-
time offenders.

Judges now routinely
reject the argument
that offenders in those
cases are poorly served
by conditional sen-
tences — in which
they serve "time" at
home — are a more
credible response
to the courts.

But what happened
last week in the case of
a 22-year-old driver
who killed a woman
after she lost control of a Ford
Explorer, rolling it into a ditch, which killed
passenger, Gregory Sinclair.
The driver, who didn't have a driver's licence,
was charged with a blood alcohol level of almost three
times the legal limit.

Eight- Ball Award



Despite that, Queen's Bench Chief Justice
Morrison spared her full time and gave
her a conditional sentence instead.

It's a gross injustice. It fails to meet the
Criminal Code's most basic sentencing prin-
ciples. And it sends the message to society
that drunk driving causing death is not a
serious crime.

And for that, Morrison is the latest winner of
the Eight-Ball Award — given out regularly in
this column to highlight some of the worst
perceptions of justice in our court system.
The problem with the trend toward non-
incarceratory sentences for violent crimes is
that the courts are forgetting why we some-
times put people in jail.

We don't do it simply to punish people or
to be vengeful.

We do it because society must denounce
serious, violent crimes. We do it to provide
general and specific deterrence and to
ensure that the sentence is proportionate to
the gravity of the crime.

These sentencing principles are as sup-
posed to be trumped by the rehabilitative

needs of the offender. Not should they take
a back seat to the vague direction given by
Parliament to use non-incarceratory sen-
tences where possible.

Unfortunately, judges like Morrison are
allowing the latter to take precedence. The
effect of that is to send a broad and consis-
tent message to the public that driving while
impaired and killing someone is more of a
misadventure than a real crime.

Gross Injustice

That may not be the intention, but that is
the effect. And that's why it's a gross injus-
tice.

The reality is, you can apply the same
arguments for conditional sentences in
less serious crimes, even non-violent
ones.

Take a gross, or conviction, for example.
Grow-up convictions, even relatively small
ones, often result in jail terms — sometimes
very long ones.

Why? Because the courts want to send the

message that drug trafficking is a serious
crime. It's not about punishment or
vengeance. It's about deterrence and
denunciation.

But you could, if you wanted to, make the
same arbitrary argument for a conditional
sentence in those cases, too.

My fear is that the rationale used for con-
ditional sentences in drunk driving causing
death cases will start to make its way into
other violent crimes — and in some cases
already has — such as manslaughter and
sexual assault. And, eventually, they could
become routine, too.

That's why I'll keep handing out the Eight-
Ball Awards. Somebody's got to keep these
guys in check.

Reach Tom at 632-2742 or by e-mail at
tom@tomwagner.com.

Should there be a mandatory
jail sentence for impaired driv-
ing resulting death?
See Feedback, p.A.

TUESDAY MARCH 1 2005 ■ WINNIPEG SUN

Message is terrible

Judge should have jailed killer-drunk driver

Sentences like these are deplorable. D.S.