

But these guys are going overboard in censoring victims and their families.

The whole point of victim impact statements is to let victims and their families express their loss and sorrow in court.

And if part of their distress lies in the shortcomings of the justice system, they should be allowed to express that, too.

It's time we started giving victims and their families the same rights criminals have.

FREE PRESS

Where's justice for Crystal Taman?

Wed Aug 29 2007

By Dan Lett

FORMER Winnipeg police officer Derek Harvey-Zenk likely will never have to face a trial for the death of Crystal Taman.

Although provincial court Chief Judge Ray Wyant has yet to formally endorse a controversial plea bargain that would spare Harvey-Zenk both a trial and prison, it appears certain this case is over. As a result, we will likely never know the all facts.

What we do know is that in February 2005, following an all-night party with police colleagues, Harvey-Zenk smashed his pickup into a car driven by Crystal Taman. She died later of massive head injuries.

East St. Paul police, who investigated the fatality, would lay a wide array of charges against Harvey-Zenk, including criminal negligence and impaired driving causing death -- crimes that could produce a lengthy prison term.

The case lingered for more than two years until this past July, when a plea bargain was revealed. Harvey-Zenk opted to plead guilty to the lesser charge of dangerous driving causing death in exchange for a two-year conditional sentence that would be served in the community.

Taman's family decried the deal. The media followed suit, asking how it could be that Harvey-Zenk could avoid going to prison for such a horrific crime.

As we wait for Wyant's decision, expected sometime next month, questions continue to be posed by those who have followed the case.

Did Manitoba Justice appoint the right lawyer to prosecute the case?

One of the most intriguing issues in the case is the decision by Manitoba Justice to appoint defence attorney Marty Minuk as an independent prosecutor.

Deputy attorney general Don Slough said that to avoid any conflict of interest, the province has a policy that requires an independent prosecutor any time criminal charges are laid against anyone with a direct connection to the justice system. This would include judges, prosecutors, police or private lawyers who have handled a lot of criminal cases.

The province draws upon a short list of four lawyers who are paid an annual retainer of between \$4,000 and \$70,000, plus additional fees for longer and more complex cases on an as-needed basis.

However, in the wake of the controversial plea bargain, questions were raised about whether Minuk himself had a conflict in this case. In particular, the perception by many lawyers in Winnipeg that Minuk, in his private practice, has been a go-to guy for cops in a jam. Slough said that allegation is patently untrue.

"Marty hasn't acted for a cop in more than 15 years," Slough said. "He hasn't acted for a police officer since he started working for us."

Perhaps, but this is not the first time Minuk's work as an independent prosecutor in other cases involving police officers has drawn attention. Last year, Minuk prosecuted a case against Winnipeg police officer Bruce Huynen, who admitted looking up confidential information on police computers and communicating it to a Hells Angel associate.

In a plea bargain, Minuk agreed to drop 13 more serious charges in exchange for a guilty plea to a charge of unauthorized use of a police computer.

The charge carries a maximum penalty of 10 years but in an unusual move, Minuk made no specific recommendation to the court on sentence. Huynen was given a \$1,000 fine.

It may be unfair to paint Minuk as a "cop lawyer," but his track record as a prosecutor in cases involving cops certainly has raised some concerns. At the very least, this case has reinforced the belief by many in Manitoba's legal community that independent prosecutors hired by the province are still a bit too understanding when it comes to prosecuting police officers.

Was the fix on with the plea bargain?

There are many reasons behind plea bargains, but implied in most is the idea that the prosecutor had determined there was no reasonable likelihood of conviction if the case had gone to trial. This is the measuring stick used by all prosecutors -- independent or not -- in determining whether a case ever sees the inside of a courtroom.

In this case, it appears clear that Minuk decided he could not get a conviction on the more serious charges. In large part, this decision seems to hinge on new evidence that arose in 2006.

As *Free Press* justice reporter Mike McIntyre revealed this week, just as Harvey-Zenk was headed to a preliminary inquiry, at least one of the officers who attended the scene of Taman's death claimed he was told by East St. Paul police Chief Harry Bakema to omit all references to alcohol from his notes and "go light" on what he observed at the accident scene.

With this explosive revelation, Minuk adjourned the preliminary hearing, and ordered a police investigation of Bakema and the East St. Paul police. One must assume Minuk and Harvey-Zenk's lawyer, Richard Wolson, began talking about a plea bargain after this.

Given the fact that Harvey-Zenk had refused to take a breathalyser test, Minuk was now in the unenviable position of having to proceed based on circumstantial evidence. And if the claims made by the East St. Paul officer were correct, that evidence could be significantly tainted.

At first blush, it appears that in seeking a deal with Wolson, Minuk was just trying to make the best of a case gone bad by seeking a guilty plea on a lesser charge. But that is not the whole story here.

Although Minuk did not know when he first got the file about the attempt to "go light" on details from the crash scene, he did know there was other independent evidence suggesting alcohol was indeed involved in the accident.

The East St. Paul council called in former RCMP officer Robert Tramley to review operations of the police force. As part of that review, Tramley examined the Harvey-Zenk investigation and found notes from a paramedic who attended the crash scene and from a senior East St. Paul officer who took Harvey-Zenk into custody at the police station. Both indicated they smelled alcohol on Harvey-Zenk.

Did this make the alcohol-related charges a slam dunk? Of course not. However, the odds of conviction certainly go up if Minuk decides to use as a witness the officer who claimed Bakema told him to "go light" on any alcohol-related details of the accident.

What is still not known is what other circumstantial evidence there may have been to support the notion that Harvey-Zenk was intoxicated when he slammed into Taman's car.

Harvey-Zenk has admitted that after leaving work, he and some colleagues closed down a North End bar before heading back to one colleague's house to continue partying. Even Tramley said he did not see statements from the other police officers Harvey-Zenk was with in the hours before the accident.

And what of other officers at the scene who may have been told to "go light" on their notes? If there was one officer being counselled to help Harvey-Zenk, there could be others.

Without a breathalyser, Minuk would have to rely entirely on circumstantial evidence to prove to a court that the accused was intoxicated when the accident took place. But isn't that what prosecutors sometimes do? If a drunk driver only had to refuse a breathalyser to avoid serious alcohol-related charges, then everyone would refuse to blow in that tube.

Did Harvey-Zenk get off with a light sentence after pleading guilty to dangerous driving causing death?

The conditional sentence is a bit of a red herring.

Although the charge carries a maximum sentence of 14 years, Harvey-Zenk was never going to face that kind of penalty for this crime. A guilty plea on the dangerous driving causing death charge by anyone with no prior criminal record and no prior alcohol-related driving offenses would have, in all likelihood, resulted in a conditional sentence.

Did Harvey-Zenk get special treatment?

No matter how you slice this case, it appears that he was the beneficiary of numerous acts of manipulation and largesse that no other citizen could expect. Much of that seems to have come at the hands of the East St. Paul police department. But while we have not heard the prosecutor's reasons for the deal he has agreed to, the decisions he made not to pursue all the charges somehow seems to be just another break afforded a cop in a jam.

There is no doubt that Harvey-Zenk has suffered. He has lost his job and been publicly vilified for causing a death. But he must also know he is a lucky man who, it appears, will be spared incarceration.

Law and order zealots often wax poetic about how prison sentences, the longer the better, are not only punishment but a deterrent to criminals everywhere.

In the death of Crystal Taman, we see the worst possible outcome; little punishment and no deterrence.

FREE PRESS

Policing the police

Wed Aug 29 2007

Editorial

MANITOBA'S police act is archaic and badly in need of a rewrite. It has been barely updated since the 1920s, in the form of two regulations written a decade or more ago concerning hiring and equipment.

With minimal standards over the structuring and accountability of municipal police forces, it is little wonder that citizens lose faith in the system when bungled investigations are blamed for the failure of spectacular charges.

One analysis in 2001 concluded that Manitoba is almost alone in Canada in the laxity of regulation, control and guidance of its police forces. "It is possible for a person unsuited for police work to be hired by a municipality and to work in a department that has no adequate policy and procedures manual to guide the officer's conduct," concluded University of Manitoba criminologist Rick Linden, in a 2001 report he co-wrote for the Aboriginal Justice Inquiry implementation committee.

Manitoba's police act pales compared to the reach of Saskatchewan's rules. Saskatchewan officers must meet specific provincial standards academically and complete regular upgrading as their career progresses. Saskatchewan operates a police college under the supervision of a provincial police commission. Manitoba disbanded its police commission in 1992 and its responsibilities fell to the provincial justice department. Municipal police officers in this province need only complete a training course offered by the police service of Brandon, Winnipeg, the RCMP or another "entity" that the minister approves. There are no provincial training standards, nor a requirement for upgrading. Saskatchewan prescribes a long list for mandatory equipment; Manitoba's list covers weapons, handcuffs and a police vest. Unlike Saskatchewan, there is no requirement that Manitoba's officers have access to an approved locker for storing evidence.

Every police force in Saskatchewan must be monitored by a police board, with representatives on a provincial commission. Much of the formal oversight Manitoba's police officers might have once had has withered. When the police commission evaporated, its responsibilities to hold officers and departments accountable fell by default to provincial bureaucrats and the minister. By statute, the police commission is still responsible to call investigations into police shootings; a justice official says the minister now carries out that task. Internal or independent investigations into police shootings, investigations or officer misconduct are never subject to public scrutiny. Winnipeggers still do not know why Kevin Tokarchuk, an innocent man, was shot and killed in a gang rivalry, despite the fact Winnipeg officers had warning that he was a target.

Justice Minister Dave Chomiak needs to bring into the 21st century the rules governing policing. Police departments must be made accountable to the public. Good civilian oversight lies in robust police commissions that are given sufficient power to speak for and report to the community.

FREE PRESS

Ex-chief denies interference

Former boss at E. St. Paul claims smear

Wed Aug 29 2007

By Bruce Owen

THE embattled former chief of the East St. Paul police service fired back Tuesday at an allegation he interfered in the case of the former city police officer who killed Crystal Taman.

Harry Bakema issued a statement through his lawyer, Hymie Weinstein, saying he's the target of a false allegation and what appears to be a smear campaign coming from people he used to work with in East St. Paul.

"Sometimes people try to get revenge," Weinstein said on Bakema's behalf.

Weinstein said a review of police notes taken just after the early-morning 2005 crash on Highway 59 and the north Perimeter Highway shows Bakema had only a few moments with former Winnipeg police officer Derek Harvey-Zenk at the scene.

Weinstein said Bakema turned Harvey-Zenk over to another East St. Paul officer, Const. Jason Woychuk, who then took Harvey-Zenk back to the East St. Paul police station to be processed by Sgt. Norm Carter. Carter is now the chief of the municipal police department.

Bakema remained at the crash scene and only returned to the station later that afternoon.

Weinstein said there is no reference at all in Carter's and Woychuk's notes of Bakema telling them to not mention Harvey-Zenk's alcohol consumption.

"Harry Bakema had absolutely no contact with Harvey-Zenk at the station," Weinstein said.

"It's obvious in reading those notes they were not told to leave anything out regarding Harvey-Zenk."

The *Free Press* reported Tuesday a justice official, speaking on the condition of anonymity, said that Bakema directed the officers to not put anything in their notes about Harvey-Zenk's alcohol consumption.

"(The officers) said they were told not to put anything in about the alcohol, to go light on what they saw at the scene," the source told the *Free Press*. "Harry (Bakema) told them what to put in their notes,"

"It was because he (Harvey-Zenk) was a city cop."

Weinstein said that accusation is false.

He said Bakema was one of two East St. Paul police officers first on the crash scene. The Winnipeg Fire Paramedic Service was already there attending to Taman.

Bakema saw a man standing outside a truck near where Taman's car had been smashed, Weinstein said.

The man appeared to be bleeding from his nose. Bakema asked him if he was OK and then asked if he was the driver of the truck that rear-ended Taman's much smaller car.

"The person appeared to be in a daze and looking down," Weinstein said, again speaking for Bakema, a former city police officer who worked briefly with Harvey-Zenk before leaving to work in East St. Paul.

Bakema then asked the man to come with him and escorted him to a East St. Paul police car driven by Woychuk.

"He was only in company of Mr. Harvey-Zenk for a maximum of two minutes," Weinstein said.

Weinstein said Bakema told Woychuk: "I haven't detected liquor on his breath. You might once he's in the cruiser car."

"Any police officer will tell you it's easier to detect the smell of liquor in a cruiser car, in the back of an ambulance or in a room at the police station," Weinstein said.

Weinstein said the truth of what happened that day will come out in the provincial review of the case, as long as it does not involve anyone connected to East St. Paul.

"I think someone has a hidden agenda," he said about the attack on Bakema.

Taman, 40, a mother of three, died after her car was hit by Harvey-Zenk's truck while stopped at a red light in February 2005.

Harvey-Zenk admitted he'd been out partying with police since the previous evening and had consumed alcohol. He has denied being drunk and believes he may have fallen asleep. There were no skid marks at the crash site.

Harvey-Zenk pleaded guilty to dangerous driving in a controversial plea agreement.

The deal -- which has angered the victim's family -- is being considered by Chief Provincial Court Judge Ray Wyant. A verdict is expected by mid-September.

Taman's widower Robert said Tuesday he did not want to talk about the case, adding he wants to see what's uncovered by the provincial review.

Manitoba Justice Minister Dave Chomiak last week called for a review of the East St. Paul police operations in the wake of a decision to stay the drunk driving charges against Harvey-Zenk.

At issue is how East St. Paul handled the case, especially with regards to making a breathalyser demand -- something Harvey-Zenk refused.

Fatal crash timeline

Feb. 25, 2005: Crystal Taman, 40, is killed when her 1991 Chevrolet Sprint convertible is rear-ended by a 1995 Dodge Dakota pickup as she waits at a red light at Lagimodière Boulevard and the north Perimeter Highway.

March 1, 2005: Const. Derek Harvey-Zenk, 31, is charged with refusing a breathalyser test, dangerous operation of a motor vehicle causing death and criminal negligence causing death.

March 2, 2005: About 700 people pay their last respects to Taman. Visitors arrive with red Mothers Against Drunk Driving ribbons tied to car aerials.

March 31, 2005: Winnipeg police confirm Harvey-Zenk is suspended without pay. He later resigns.

July 17, 2007: Harvey-Zenk pleads guilty to dangerous driving causing death. Charges of refusing a breathalyser, impaired driving causing death and criminal negligence causing death are stayed. Special Crown attorney Marty Minuk does not comment on why the charges are dropped.

Aug. 22, 2007: Special prosecutor Marty Minuk and defence lawyer Richard Wolson recommend to the court Harvey-Zenk be given for a two-year conditional sentence. Judge Ray Wyant has yet to rule on the matter.

Justice sources and Taman's husband, Robert, also claim a botched investigation by East St. Paul police forced the Crown to drop the three charges.

Aug. 23, 2007: Manitoba Justice Minister Dave Chomiak calls for a review of the East St. Paul police service. An official from East St. Paul also confirms the February 2006 firing of former chief Harry Bakema was a direct result of his failure "to follow proper investigative techniques" while probing the fatal crash.

Aug. 27, 2007: The *Free Press* quotes a justice source alleging Bakema ordered officers not to refer in their notes about Harvey-Zenk's alcohol consumption.

Aug. 28, 2007: Bakema responds through his lawyer, Hymie Weinstein, that the allegation is false.

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WINNIPEG SUN

Ex-chief fights back

Bakema's lawyer blasts 'smear campaign'

August 29, 2007

By DEAN PRITCHARD, SUN MEDIA

Former East St. Paul police chief Harry Bakema is firing back at reports that have blamed him for the botched investigation into the death of Crystal Taman.

"This is absolutely nothing more than a smear campaign," said Bakema's lawyer Hymie Weinstein yesterday. "Perhaps people have a hidden agenda, people who don't like the former chief."

Former Winnipeg cop Derek Harvey-Zenk pleaded guilty to dangerous driving causing death after his pickup truck plowed into Taman's car as she waited at a red light north of the Perimeter Highway on Highway 59 on Feb. 25, 2005.

Last week, the Crown and Harvey-Zenk's lawyer Richard Wolson jointly recommended he receive a two-year-less-a-day conditional sentence. The deal came after the Crown was forced to stay charges of refusing a breathalyser test, impaired driving causing death and criminal negligence causing death.

Dropping the charges eliminates any suggestion in the law's eyes that alcohol was involved in the crash.

Chief Judge Ray Wyant expressed reservations about the recommendation and adjourned the case to next month.

Media reports have quoted sources saying Bakema assumed the lead in the investigation and directed police officers to make no reference to Zenk's possible alcohol consumption in their notes.

Weinstein said Bakema's only contact with Harvey-Zenk was as he escorted him from the accident scene to a police cruiser, an encounter that lasted only two minutes.

"This didn't even turn out to be his case because his involvement was negligible," Weinstein said.

Bakema told another officer at the scene he smelled no alcohol on Harvey-Zenk's breath, but the officer might once he was inside the cruiser, Weinstein said. Bakema did not tell officers to "go light" on Harvey-Zenk because he was a cop or to ignore any signs he may have been drinking, Weinstein said.

"I have seen the officers' notes," he said. "They are very thorough notes. It's obvious to me there wasn't any tampering or deliberate omissions from the notes." Bakema, who now works in real estate, is considering legal action, Weinstein said.

At his sentencing hearing last week, court heard Harvey-Zenk had finished work at 11 p.m. and spent the next few hours with co-workers at a city lounge. When the lounge closed, Harvey-Zenk joined his co-workers at the home of a fellow officer, where he remained until nearly 7 a.m.

Special prosecutor Marty Minuk said there was "anecdotal" evidence of drinking that night from other cops, but nobody could say how much alcohol Harvey-Zenk consumed.

There was no evidence Harvey-Zenk applied his brakes before crashing into Taman's car, Minuk said. Police crash analysts were unable to determine how fast Harvey-Zenk was driving at the time of the crash.

A day after last week's sentencing hearing, Justice Minister Dave Chomiak ordered a review into operations at the East St. Paul Police Service.

WINNIPEG SUN

Fix Victims Bill of Rights

Provincial act contains serious and ridiculous flaws

August 29, 2007

By TOM BRODBECK

Only two formal complaints have been made by victims of crime under the province's Victims' Bill of Rights since the act was proclaimed into law in 2001.

Which means either victims are really happy with how they're treated in the court system, or most know nothing about the Victims' Bill of Rights and its formal complaint process.

I'm going to take a leap of faith and suggest it's largely because victims have no idea what rights they have under this act.

Victims of crime have a number of rights under the bill of rights, including the right to be kept up to date on the status of a court case and the right to be heard on issues such as plea bargains and sentencing.

But those rights aren't always honoured, as you saw yesterday in the case of Victoria Sveinson, the mother of Crystal Taman who was killed when a then-cop crashed into her car in 2005.

Like many victims of crime, Sveinson said she got few if any answers from the Crown about the case of Derek Harvey-Zenk. The plea bargain was not discussed with her and no one called her about the times of court dates, she said.

There are a few serious flaws with Manitoba's Victims' Bill of Rights, including the fact that few know about it.

If you don't know your rights, it's hard to exercise them -- especially during times of grief.

Another problem with the act is how it defines a "victim."

SPECIFIC OFFENCE

In order to have rights under this legislation, you have to be a victim of a specific offence prescribed in the act, which is ridiculous.

For example, if you or your family are victims of murder, manslaughter or aggravated sexual assault, you have rights under this law.

But if you're a victim of sexual assault, assault or robbery, you don't have those same rights.

If your family members are victims of impaired driving causing death, you're considered a victim under the act.

But if you're a victim of impaired driving causing bodily harm, you're not a real victim.

IT'S LUDICROUS.

Government obviously sought to limit the number of cases where Crown attorneys have to legally co-operate with victims.

Also, for victims, getting the case information they want isn't always automatic. They have to ask for it, they have to figure out who to ask and in some cases they have to register with the court to be kept up to date.

Those are pretty choppy waters to navigate for most average people, many of whom have never stepped foot in a court room.

Another problem with the act is few people are aware of the recourse victims have if they feel their rights under the act were violated.

By law, victims can make formal complaints to the director of victims services.

The director must investigate the case, provide a full report to the complainant and make whatever recommendations are necessary to fix the problem for future cases.

All complaints, with details of how they were resolved, must be reported in the director's annual report.

Trouble is, there have been only two formal cases filed with the director since the act came on the books in 2001, including no complaints over the past three years.

MOST UNAWARE

That to me says most victims are unaware of the complaints process.

And they should do a far better job of advertising that right.

Manitoba's Victims Bill of Rights isn't a bad first step in giving victims more rights. But it's not all it's cracked up to be.

It's in desperate need of a review and a major overhaul.

FREE PRESS

**Lawyer fired, sentencing delayed
Golden's son awaits fate in luring case
Fri Aug 31 2007
By Mike McIntyre**

A Winnipeg man who used the Internet to lure teenage girls to a city hotel room to take nude photographs has delayed his sentencing hearing by firing his lawyer.

Brock Golden, 26, was set to learn his fate Thursday after pleading guilty earlier this year to a charge of luring a child under the age of 18 using the Internet and making child pornography.

Golden -- the son of former city councillor and mayor candidate Al Golden -- was given an indefinite adjournment after announcing he was replacing lawyer Marty Minuk with Richard Wolson.

Golden was arrested in May 2005, after a Winnipeg police investigation.

At the time police said the investigation began after they received information a man was contacting young females through a local Internet chat room, claiming he was looking for models.

The man allegedly took the teens to a hotel on Pembina Highway where he photographed them.

Both crimes Golden has pleaded guilty to occurred on April 15, 2005, with two girls aged 14 and one 15 years of age.

At the time of his son's arrest, Al Golden said: "This is devastating. My son is a wonderful kid who's never done anything wrong in his life. We love him very much and we will support him any way we can."

No reason was given to court Thursday for Golden's surprising legal move.

Both Minuk and Wolson are currently at the heart of a controversial case that remains before the courts.

Minuk was retained by the provincial justice department as special prosecutor against former Winnipeg police officer Derek Harvey-Zenk, who is represented by Wolson.

Harvey-Zenk pleaded guilty last week to dangerous driving causing death following a February 2005 crash which killed Crystal Taman, a mother of three.

Both Minuk and Wolson have made a joint-recommendation for a conditional sentence, a move that has angered the victim's family. Chief Judge Ray Wyant has reserved his decision.

Justice Minister Dave Chomiak has also called for a public review of the East St. Paul police department based on allegations of misconduct connected to the investigation which forced Minuk to drop drunk driving charges against Harvey-Zenk.

WINNIPEG SUN

Golden fires lawyer in sex case; sentencing on hold

August 31, 2007

By SUN MEDIA

A long delayed sentencing hearing for Brock Golden, son of former city councillor and mayoral candidate Al Golden, was adjourned Wednesday after the junior Golden fired his lawyer.

Golden, 25, pleaded guilty last February to one count each of Internet luring and producing child pornography. The guilty pleas came after weeks of legal wrangling between his lawyer Marty Minuk and the Crown that saw the Crown stay two counts of luring and two counts of procuring the services of a person under 18.

Golden was arrested in May 2005 after he paid three underage girls to model nude for him and perform sexual favours in a city hotel room.

At the time of his arrest, police said Golden used a digital camera to photograph the girls, whom he recruited through an Internet chat line.

Golden has hired lawyer Richard Wolson to represent him and will return to court next month. No new date for sentencing has been set.

Coincidentally, Minuk -- a sometime special prosecutor -- and Wolson were opposing counsels earlier this month in the controversial sentencing of Derek Harvey-Zenk, the former city cop who pleaded guilty to dangerous driving causing death of Crystal Taman.

FREE PRESS

Ex-officer who killed facing jail?

Judge appears uncomfortable with currently submitted sentence

Sat Sep 8 2007

By Mike McIntyre

THERE'S a new twist in a high-profile deadly driving case -- and it may be a bad sign for the former Winnipeg police officer who was behind the wheel and is now waiting to learn his fate.

Chief provincial court Judge Ray Wyant has ordered lawyers back to court next week to make additional submissions on sentencing for Derek Harvey-Zenk.

The move is a clear sign Wyant is having difficulty with last month's joint recommendation that would spare Harvey-Zenk a jail term in exchange for a conditional sentence.

Wyant expressed concern at the plea bargain, questioning whether Harvey-Zenk should be held to a higher standard because he was a police officer at the time of the February 2005 tragedy.

He had told lawyers he hoped to have his verdict ready by mid-September but said he reserved the right to recall them to court if he felt uncomfortable with the deal.

A justice spokesperson told the *Free Press* Friday that is exactly what Wyant is now doing and there will likely not be a decision rendered next Wednesday.

Crystal Taman, 40, a mother of three, died after Harvey-Zenk's truck hit her car while she was stopped at a red light in February 2005 on Hwy. 59 at the Perimeter Highway.

Harvey-Zenk admitted he'd been out partying with police since the previous evening and had consumed alcohol. He has denied being drunk and believes he may have fallen asleep. There were no skid marks at the crash site.

Private lawyer Marty Minuk, who was retained by Manitoba Justice as a special prosecutor, dropped all impaired charges without explanation.

The move angered Taman's family who said they would have rather taken their chances by going to trial rather than make a deal with Harvey-Zenk. Family members also accused justice officials of keeping them in the dark about the fate of the case.

There have been several new developments since Harvey-Zenk's sentencing hearing about which Wyant may have questions, including:

- * An allegation reported by the *Free Press* from East St. Paul police officers that former chief Harry Bakema ordered them in advance not to refer in their notes about Harvey-Zenk's alcohol consumption following the deadly crash. Bakema, through his lawyer, has denied the claims. Bakema was fired in 2006 and now works in real estate.
- * A claim from retired RCMP officer Robert Tramley, who spearheaded a review of the East. St. Paul detachment following Bakema's firing, that the plea bargain with Harvey-Zenk is a "travesty."
- * A revelation that a paramedic at the scene of the deadly crash noted "a strong smell of alcohol" coming from Harvey-Zenk. That fact was included in Tramley's review.
- * A revelation by the *Free Press* that Bakema is a former Winnipeg police officer who worked in the same North End district as Harvey-Zenk before he left to go to East St. Paul. Bakema has denied working directly with Harvey-Zenk but said he recognized him at the scene of the crash.
- * A call by Manitoba Justice Minister Dave Chomiak for a full public review of the East St. Paul detachment.
- * Questions about Manitoba Justice's decision to appoint Minuk as Crown counsel, given the fact he has previously defended police officers and had recently completed work on a manslaughter case working alongside Harvey-Zenk's lawyer, Richard Wolson. Justice officials have defended the decision to farm the case out of their own department to Minuk, saying they must avoid a perception of bias given that Crowns regularly work closely with police.

Police initially laid charges of refusing a breathalyser, impaired driving causing death and dangerous driving causing death against Harvey-Zenk.

However, Minuk dropped the alcohol-related charges after Harvey-Zenk pleaded guilty to dangerous driving.

As the *Free Press* reported last month, it's believed Harvey-Zenk's lawyer was going to fight the breathalyser demand on the grounds police had no right to ask for something that Bakema -- the lead investigator at the time -- clearly felt wasn't necessary at the scene.

It was actually then-sergeant Norm Carter -- who has since taken over as chief from Bakema -- who made the breath demand of Harvey-Zenk.

Michael Wasylin, deputy reeve of East St. Paul, has credited Carter with bringing to light serious concerns about the police service under Bakema's watch. He wouldn't discuss specifics of matters that came to light.

Tramley's 2006 review of the East St. Paul operations cited two incidents where Bakema ripped up traffic tickets his members gave out to a Winnipeg police officer and the son of a city cop, the justice source said Monday.

FREE PRESS

Judge eyes nixing plea deal

Says he's being kept in dark about details in case involving ex-cop

Thu Sep 13 2007

By Mike McIntyre

A Manitoba judge says he's being left in the dark about important details of a deadly driving case and is seriously considering rejecting a controversial plea bargain that would spare a former Winnipeg police officer a jail sentence.

The high-profile case against Derek Harvey-Zenk took another troubling turn Wednesday when chief provincial court Judge Ray Wyant's request for more information about the February 2005 crash was rejected by the special Crown prosecutor.

Wyant, citing concern over the proposed conditional sentence for Harvey-Zenk, had ordered lawyers back to court following their initial submissions last month and pleaded with them to help fill in the blanks.

Wyant even took the rare step of suggesting the case be reopened to allow evidence to be called. He said there are too many questions -- especially as it relates to alcohol consumption -- which he hoped to have answered as he struggles with a proper punishment for Harvey-Zenk.

Wyant suggested the Crown call witnesses to testify about Harvey-Zenk's actions in the approximately eight hours between the end of his Winnipeg police shift and when he slammed into the back of Crystal Taman's car killing the mother of three.

"The court is being left with a gap as to what occurred at the end of (Harvey-Zenk's) shift until the accident occurred," said Wyant.

"There really isn't much information being presented to me."

But private defence lawyer Marty Minuk -- who was hired by the province to prosecute Harvey-Zenk -- quickly turned down the offer without explanation.

Wyant has now adjourned his decision until Oct. 29.

Taman's family said they were stunned at Wednesday's developments and blasted Minuk for his handling of the case. Victoria Sveinson, Taman's mother, said they had previously been told the Crown had 33 potential witnesses lined up for trial.

"This is a complete coverup," she said.

"It's like there were two defence lawyers on Harvey-Zenk's side," added her husband, Sveinn.

Taman's husband, Robert, said he couldn't believe how hard Wyant had to work to get any information from either Minuk or Wolson about the facts of the case or the circumstances surrounding the plea bargain.

He said Minuk should have jumped at the chance to call evidence when there was nothing to lose and everything to gain.

"I don't understand why he didn't," said Robert, adding the family was not consulted about the decision.

"This is all very confusing. If you weren't shaking your head in that courtroom you weren't awake."

Minuk had stated during the sentencing hearing last month that Wyant could consider the fact Harvey-Zenk consumed an unknown quantity of alcohol in the hours preceding the crash as an aggravating factor.

But Harvey-Zenk's lawyer, Richard Wolson, took exception with that fact Wednesday and said he should have made his objections clear at the initial hearing. He told Wyant he can't consider alcohol a factor in any way.

"I'm not meaning to be rude but you have the position of my client and should sentence him accordingly," said Wolson.

"If the Crown wants to advance that (alcohol consumption), then prove it."

Taman's loved ones were already angry with Minuk after he dropped all alcohol-related charges last month -- including refusing a breathalyser -- without explanation in exchange for a guilty plea to dangerous driving.

Court has heard evidence Harvey-Zenk went out to a bar for drinks with some fellow officers, then continued partying at a private residence in East St. Paul until the morning when he left to go home.

Wolson suggested Wednesday his client "failed to keep a proper look-out" in causing an "unexplained accident" -- a statement that drew audible gasps and groans from Taman's family.

Wolson sat down in disgust, saying "I can't make submissions in these conditions." Wyant warned the public gallery to refrain from any more outbursts or they'd have to leave.

After repeated questioning from Wyant, Minuk shed new light on the deal with Harvey-Zenk and admitted there were major problems with the way the East St. Paul police conducted their investigation at the crash site. No specific details were given.

Minuk said the botched probe forced him to cut a true "plea bargain" with Harvey-Zenk -- a fact Wyant said hadn't been made clear during the initial sentencing hearing.

"I'm confused. I've never heard that before. And it is very, very, very, very important," said Wyant, noting judges must give greater emphasis on deals in those types of scenarios.

Minuk said he never meant to imply the Crown had a strong dangerous-driving case against Harvey-Zenk but Wyant, citing passages from the transcript of the previous hearing, said that's exactly what was done.

Wyant said Wednesday his main source of concern with the proposed sentence is the fact Harvey-Zenk was a police officer at the time and should be held to a higher standard because of it.

Taman, 40, died after Harvey-Zenk's truck hit her car while she was stopped at a red light on Hwy. 59 at the Perimeter Highway. There were no skid marks to indicate braking.

Both Wolson and Minuk claim a conditional sentence is within the appropriate range for such a crime and filed a casebook with 20 precedents from across Canada in support of their position.

Harvey-Zenk resigned from Winnipeg police and now lives in Brandon with his wife and young child. He remains free on bail.

HAMILTON SPECTATOR
Judge May Nix Plea Deal
09/13/2007
Section: CANADA/WORLD, Pg. A03

A Manitoba judge made it clear that he might reject a controversial agreement between the Crown and defence that would let a former police officer avoid jail time for causing a deadly car crash.

While conditional sentences such as house arrest are common in such cases, the penalty is often different for police officers or others in the justice system, provincial court judge Ray Wyant said yesterday, citing precedents in Nova Scotia and other provinces.

"A higher standard of conduct is expected from someone in this position," said Wyant during a sentencing hearing for Derek Harvey-Zenk.

Wyant reserved his decision until Oct. 29.

Harvey-Zenk has pleaded guilty to dangerous driving causing death in the February 2005 crash that killed Crystal Ann Taman, 40.

His truck slammed into Taman's car, which was stopped at a red light north of Winnipeg on a clear winter morning. There were no skid marks or other signs that Harvey-Zenk tried to stop before the collision.

The case has stirred up public anger because other charges, including impaired driving causing death and refusing a breathalyzer test, were dropped.

"I think individuals have dropped the ball," said Taman's husband, Robert. "I think there are balls dropped all over the place."

FREE PRESS

'This is not a trial by media,' lawyer complains

Thu Sep 13 2007

By Mike McIntyre

MEDIA coverage that has exposed serious flaws in the investigation of a Winnipeg police officer - and led to the calling of a public review into East St. Paul police -- came under attack in a city courtroom Wednesday.

Marty Minuk, the private lawyer who was hired by the province to prosecute Derek Harvey-Zenk, told chief provincial court Judge Ray Wyant to ignore the "baseless, yellow journalism" surrounding the high-profile case.

"Much has been said about this case outside the court which is not evidence. It is inflammatory, unsubstantiated innuendo," said Minuk.

Harvey-Zenk's lawyer, Richard Wolson, called some of the coverage "scandalous".

"This is not a trial by media and never should be," he said.

Citing a justice source, the *Free Press* recently reported that former East St. Paul Chief Harry Bakema -- the lead investigator in the Harvey-Zenk case -- was accused by his officers of ordering them in advance not to refer in their notes about Harvey-Zenk's alcohol consumption.

The justice source also reported that a paramedic at the scene of the deadly crash noted "a strong smell of alcohol" coming from Harvey-Zenk. That fact was included in a 2006 review of the East St. Paul detachment, which was spearheaded by retired RCMP officer Robert Tramley.

Tramley previously spoke to the *Free Press* and called the plea bargain with Harvey-Zenk a "travesty". He said the case should have gone to trial.

Tramley has also questioned the fact Minuk was assigned as special prosecutor, given the fact he has previously defended police officers and had recently completed work on a manslaughter case working alongside Wolson.

Justice officials have defended the decision to farm the case out of their own department to Minuk, saying they must avoid a perception of bias given that Crowns regularly work closely with police.

As the *Free Press* reported last month, it's believed Harvey-Zenk's lawyer was going to fight the breathalyser demand on the grounds police had no right to ask for something Bakema -- the lead investigator at the time -- clearly felt wasn't necessary at the scene.

It was actually then-sergeant Norm Carter, who has since taken over as chief from Bakema, who made the breath demand of Harvey-Zenk.

Michael Wasylin, deputy reeve of East St. Paul, has credited Carter with bringing to light serious concerns about the police service under Bakema's watch. He wouldn't discuss specifics of matters that came to light.

Bakema was fired in 2006 and now works in real estate. He has denied the allegations of wrongdoing through his lawyer.

WINNIPEG SUN
Higher standard for cops
Judge considers tossing deal
September 13, 2007
By DEAN PRITCHARD, SUN MEDIA

A judge has raised serious questions about a deal that would spare a former city cop from jail, saying police officers should be held to a higher standard than the general public.

Derek Harvey-Zenk has pleaded guilty to dangerous driving causing death for an early morning highway crash that killed 40-year-old Crystal Taman nearly two years ago.

At a sentencing hearing last month, Harvey-Zenk's lawyer Richard Wolson and special prosecutor Marty Minuk jointly recommended he receive a two-year conditional sentence. Minuk stayed charges of impaired driving causing death, criminal negligence causing death and refusing a breathalyzer.

Judge Ray Wyant brought the lawyers back to court yesterday to make further submissions on the deal, which he is considering rejecting.

Minuk said the Crown had a "reasonable likelihood of conviction" on the dangerous driving causing death charge, but had a weak case on the remaining charges.

"The accused offered to plead guilty in a matter fraught with more difficulties for the Crown than the defence," Minuk said.

'ANECDOTAL' EVIDENCE

Minuk said the investigation by East St. Paul police was unsatisfactory and prompted him to order his own independent investigation into the crash.

At a sentencing hearing last month, court heard Harvey-Zenk had finished work at 11 p.m. and spent the next few hours with co-workers at a city lounge. Harvey-Zenk later joined his co-workers at the home of a fellow officer, where he remained until nearly 7 a.m.

Minuk said there was "anecdotal" evidence of drinking that night from other cops, but nobody could say how much alcohol Harvey-Zenk consumed.

Wolson said alcohol played no role in Harvey-Zenk's plea and blamed the crash on "momentary inattention." Wyant gave Minuk an opportunity to enter evidence of Harvey-Zenk's alcohol consumption, which he declined.

"You can appreciate it leaves the court with a gap ... in what it can accept," Wyant said.

Wyant will render his decision on Oct. 29.

Outside court, Crystal Taman's husband Rob Taman said the hearing raised more questions than it answered.

"It was very confusing," he said. "For anybody sitting there, if you weren't shaking your head you were sleeping."

Taman said he was encouraged by Wyant's concern about the sentence.

"He's probably been the most open person in these proceedings," he said.

WINNIPEG SUN

Harvey-Zenk case proves need to change policy

September 13, 2007

By TOM BRODBECK

It's pretty obvious after the disastrous case of former Winnipeg police officer Derek Harvey-Zenk that Manitoba Justice should change its policy on how it uses defence lawyers as special prosecutors.

Harvey-Zenk pleaded guilty to killing Crystal Taman, a mother of three, after slamming his vehicle into hers at a red light in 2005.

He's been convicted of dangerous driving causing death, which carries a maximum penalty of 14 years in prison.

Despite that, Harvey-Zenk's lawyer and special prosecutor Marty Minuk -- who usually works as a defence lawyer -- submitted a joint sentencing recommendation of house arrest for the ex-cop.

It's an unacceptably lenient sentence and one the Crown should never have submitted.

SOLID CASE

The Crown had a solid case against Harvey-Zenk and should have prosecuted him to the fullest extent of the law.

Sometimes Crowns agree to plea bargains because they have a weak case and prefer to secure a conviction through a plea -- which often includes a joint sentencing recommendation -- instead of risking going to trial.

But that wasn't the case here.

There was no justification for Minuk to agree to a sentencing recommendation.

Even provincial court Judge Ray Wyant -- who's contemplating rejecting the proposed conditional sentence -- demanded to know why the Crown agreed to house arrest.

He didn't get much of an answer.

All of which raises serious questions about using local defence lawyers as Crown prosecutors in cases like these.

Manitoba Justice usually hires special prosecutors in cases where using a Crown could cause the appearance of a conflict of interest, like when prosecuting cops or other members of the justice system.

They often get Crown attorneys from other provinces to come in and take those cases.

But for some reason, they sometimes hire local defence lawyers like Minuk to prosecute cases, which is just as much of a conflict of interest as using a local Crown attorney.

You don't use lawyers who usually defend the criminals to prosecute them. It's a conflict.

And when a case is handled as badly as this one was, the public is left with the impression the conflict interfered with the Crown's mandate to prosecute to the fullest extent of the law.

Manitoba Justice should change its policy to ensure any special prosecutor is an out-of-province Crown attorney -- period.

It would eliminate the appearance of a conflict of interest and help instill greater public confidence in the justice system.

The Harvey-Zenk case is a disaster.

'BIT OF A GAP'

The court has no evidence about what Harvey-Zenk did or who he was with in the hours leading up to the crash.

Harvey-Zenk supposedly finished a 10-hour shift and then hung out with friends.

And that's it. That's all the evidence this special prosecutor has brought to court.

It's pathetic.

Harvey-Zenk supposedly remembers nothing of the crash, why he crashed, why he had a head injury or anything whatsoever in the hours leading up to the case.

"It leaves the court with a bit of a gap," Judge Wyant said yesterday.

No kidding.

Why didn't the special prosecutor subpoena the people Harvey-Zenk hung out with that night to testify in court?

The fact the special prosecutor did not bring as much evidence to court as possible to shed light on what happened is a major failure.

Having a defence lawyer as a special prosecutor, giving at least the appearance of a conflict of interest, makes it even worse.

FREE PRESS

Judgment of secrecy

Fri Sep 14 2007

Editorial

CHIEF Provincial Court Judge Ray Wyant evidently still feels a conditional sentence for a former police officer who drove into the back of a woman's car, killing her, is too lenient.

Judge Wyant has had little effect in pushing the special prosecutor in the case to give him a fuller explanation for the plea bargain he struck with a defence lawyer. His only option -- beyond stamping done a deal he does not like -- is to impose a stiffer sentence and invite an appeal.

The value of the open courtroom is that the public can watch justice in action. It can hear the charges and evidence against a person, and the circumstances of the crime, to determine for itself how acquittals, convictions and sentences are decided. That transparency is an immediate form of accountability in the justice system. But when two of the three primary actors -- the defence and the prosecutor -- refuse to openly try a case, or to give a judge a good explanation for deals they strike, transparency and accountability are diminished. That is the situation with the case against Derek Harvey-Zenk, a former Winnipeg police officer who went drinking with colleagues one night in February 2005, continued partying at a colleague's home and then, when driving home the next morning, drove into the back of Crystal Taman's car as it sat at an intersection. She died. He was charged by East St. Paul police with refusing a breathalyser test.

Neither special prosecutor Marty Minuk nor defence lawyer Richard Wolson have given the judge -- and through him, the public -- a good account of why charges of driving impaired causing death and refusing a breathalyser were stayed in exchange for a guilty plea to dangerous driving causing death and a recommendation of a conditional sentence. That has frustrated Judge Wyant and clouded public understanding of the case. Mr. Minuk previously told the judge the police investigation had problems and, on Wednesday, said that forced him into a plea bargain. It is unseemly that the judge has had to call the Crown repeatedly back into court for more information. On Wednesday, he again bemoaned the dearth of detail, and delayed his decision.

Sometimes, a judge is all that stands between a plea bargain and a secrecy that would obscure failures in the system that should be made public. Judge Wyant can do nothing about the charges

stayed, he can only impose a different sentence. If his decision is appealed to a higher court, the Crown will be asked again to defend the deal.

There are many reasons a Crown attorney can be pushed to strike deals or plea bargains. While that may be unpalatable, the public can understand such deals if given some explanation. The prosecutions branch should have a policy that compels its staff or special prosecutors to give as full a disclosure as possible to judges. The problems in the Harvey-Zenk case have sorely tested the public's trust in the justice system. The lack of disclosure around the plea bargain is doing real damage.

FREE PRESS

Justice officials must explain Taman probe breakdown

Sun Sep 16 2007

Daniel Lett

IT'S tough not to admire Chief provincial court Judge Ray Wyant, who is currently waging a one-man war to get to the bottom of Crystal Taman's death.

Taman was killed in February 2005 when a vehicle driven by former Winnipeg police officer Derek Harvey-Zenk slammed into her from behind. Harvey-Zenk was initially charged with several serious criminal offences related to alcohol. But when the case finally came to trial, those charges were dropped and he pleaded guilty to a lesser charge that would spare him jail time.

That plea bargain has become a cause célèbre in Manitoba's legal community. It has cast aspersions on both the East St. Paul police department (which investigated the Taman death) and lawyer Marty Minuk, the special prosecutor hired to prosecute Harvey-Zenk.

And all that occurred before last Wednesday, when Wyant turned up the heat on the justice system by refusing to, at least at this point, approve the plea bargain. Instead, Wyant asked Minuk to explain a bit more about what happened the night Taman died.

"The court is being left with a gap as to what occurred at the end of (Harvey-Zenk's) shift until the accident occurred," Wyant noted.

A greater understatement has never been heard in a Manitoba courtroom. Remarkably, Minuk refused.

Wyant has taken us to uncharted waters here. Judges do not always approve plea bargains. But they rarely suggest, as Wyant did, that the court would like to hear the evidence on which the plea bargain was based before making a decision.

Many in the public have found comfort in Wyant's tactics. Comfort in the fact that they are clearly not alone in their disbelief.

Will Wyant get a chance to ask questions, and hear more about exactly what evidence was before Minuk when he opted for a plea bargain? It's not clear he will ever get the chance. If he did, it might be interesting to anticipate the questions he might ask.

If we use our imagination, we might anticipate Wyant would want to know whether East Paul police interviewed the Winnipeg police officers who attended the after-hours drinking party with Harvey-Zenk on the night of Taman's death.

It is almost inconceivable that investigators didn't at least attempt to identify and interview the other officers who, it has been reported, were drinking with Harvey-Zenk on the night of the accident. Like many in the public, Wyant is no doubt intrigued about what, if anything, Harvey-Zenk's comrades told investigators about the events of that night.

The court has already heard confirmation that Harvey-Zenk and some fellow Winnipeg cops went to a North End bar after their shift for a few drinks, and then proceeded to the home of one of the officers when the bar shut down.

In his decision not to proceed with a trial, Minuk is certainly implying that those other police officers did not offer investigators any evidence that would have substantiated the alcohol-related charges. Or, that the officers were interviewed but refused to give statements.

Either way, the only way of testing the veracity and credibility of those officers is to view all statements provided to investigators. In agreeing to drop the charges and pursue a plea bargain, Minuk has almost guaranteed those statements will never be seen.

What right does the public have to see all the evidence uncovered in the Taman investigation?

When a case doesn't get to court, does that mean all the evidence gathered is no longer available for public viewing?

Certainly, Wyant is trying to make the case that he deserves to have more answers. He has pressed Manitoba Justice to deliver the facts, and they have refused. In fact, it is impossible to believe that Minuk is acting alone in this decision; senior officials in Manitoba Justice must have agreed to allow Minuk to refuse Wyant's inquiries.

Which brings us once again to the question of who is ultimately running the show at Manitoba Justice? Attorney General Dave Chomiak must allow his prosecutors independence from political interference. At the same time, Chomiak is accountable to all Manitobans to ensure that justice is done.

Chomiak must move quickly to investigate and report back to the public on all the troubling facts of this case. He has already pledged to look at the East St. Paul police and allegations they suppressed evidence. But as Wyant is showing us by deferring his decision on the plea bargain, there are other questions that need to be answered here.

The public needs to know what happened in this case. No one -- not Minuk, nor the accused, nor the East St. Paul police, nor the other Winnipeg police officers with Harvey-Zenk the night before the accident -- deserves to walk away from this mess.

WINNIPEG SUN

Brodsky's got it wrong

We owe it to police to give them special protection

October 16, 2007

By TOM BRODBECK

Winnipeg defence lawyer Greg Brodsky would have us believe the automatic charge of first-degree murder when a police officer is murdered is unconstitutional.

Brodsky made the comments to Sun Media over the weekend in response to the murder of RCMP Const. Chris Worden.

Emrah Bulatci was charged with first-degree murder in the Oct. 5 shooting of Worden in Hay River, N.W.T.

Under the Criminal Code, a person accused of killing a police officer "acting in the course of his duties" is automatically charged with first-degree murder.

A first-degree murder conviction carries a mandatory life sentence with no eligibility of parole for 25 years.

Normally a homicide has to be planned and deliberate to draw a first-degree murder charge.

But when the victim is a cop, the charge is automatic.

That's to ensure there's as much deterrence as possible when it comes to killing the people who enforce the law for us.

But Brodsky -- who tried, but failed, to fight this provision when he defended convicted cop killer Robert Sand in 2003 -- argues there should be no distinction between a cop and a civilian when it comes to murder.

"People who deliberately kill babies or others who cannot defend themselves due to particular mental or physical conditions are more evil than those who kill a person who is given a gun and paid to defend us," Brodsky said.

Actually, it's not about who is more evil than someone else.

PROVISION UPHELD

The reason we give police special consideration under the law is because they are the ones charged with upholding the law. They're also the ones who deal with the lowest scumbags in society, and the ones who never know whether there's a sawed-off shotgun awaiting them on the other side of a door.

Police are the ones who stand between order and disorder in society. And if we want to maintain order, we have to give police officers that special protection.

That's probably why at least three appellate courts in Canada have upheld this provision.

"My point is that we needn't take discretion away from judges in cases of a police officer being killed, but hand it back to them for more evil crimes like killing a baby," said Brodsky.

That doesn't even make sense.

Judges already have discretion when it comes to people killing babies, depending on what charge is laid.

The charge is not usually first-degree murder. It's usually second-degree murder or manslaughter, in which case the judge has all kinds of discretion.

I think Brodsky's a little confused.

And he's missing the point on why we give police officers this special protection under the law.

There's a flip side to the issue, too.

While we make a distinction between cops and civilians in murder cases, we also make that same distinction when cops break the law. Or at least we should.

Provincial court Judge Ray Wyant told court last month that police officers should be held to a higher standard than the general public when it comes to breaking the law.

He made the comment in the case of Derek Harvey-Zenk, who pleaded guilty to dangerous driving causing death after killing 40-year-old Crystal Taman when he was a cop nearly two years ago.

And he's right. Police should be dealt with differently before the law because they have a special duty to enforce the law.

In order to maintain public confidence in the justice system, police need to be held to a higher standard.

It's a two-way street.

FREE PRESS

Live broadcasts urged for courtroom decisions Manitoba judge's idea creating internal conflict

Wed Oct 24 2007

By Mike McIntyre

MANITOBA'S chief provincial court judge wants to open up courtrooms for live broadcasts of judicial decisions in a move that is creating internal conflict, the *Free Press* has learned.

Ray Wyant had already agreed the precedent-setting initiative would begin next week when he allowed live media coverage of his sentencing verdict in the high-profile deadly driving case against a former Winnipeg police officer.

Wyant ultimately decided to back off on this attempt to allow the public to hear exactly how and why he decides on sentence, but sources told the *Free Press* the issue remains alive.

Wyant is planning on meeting with every provincial court judge in the near future to discuss his proposal further and will likely table a policy that will give each judge the discretion to allow audio and possibly videotaping of court cases.

He believes the idea is a key to addressing what he calls a "crisis in confidence" that currently exists in the justice system.

Wyant -- responding to a request from talk radio station CJOB -- was going to allow for a audio feed inside the courtroom in what likely would have been a Canadian first.

All media outlets would have been able to join in, likely through a pool microphone that would have been set up. Cameras would not have been allowed this time, although that would likely change in the future.

But Wyant changed his mind on Tuesday after coming under fire from within, sources have told the *Free Press*. A letter purporting to represent the views of other provincial court judges was delivered to Wyant on Monday, expressing serious concern with his decision and the impact on the courts.

Lawyers involved in the specific case also threatened to take action by filing an emergency motion seeking to halt Wyant in his tracks prior to Monday's decision.

Derek Harvey-Zenk has pleaded guilty to killing a Winnipeg mother of three after smashing into her car following a night of partying with friends following his Winnipeg police shift.

Although he refused a breathalyser, alcohol-related charges were dropped by the Crown as part of a plea bargain that angered the victim's family. Both Crown and defence have recommended a conditional sentence which would spare Harvey-Zenk from jail. Wyant has reserved his decision since August.

The Supreme Court of Canada currently allows cameras inside their hearings, while a handful of provinces including Ontario have recently been flirting with the idea of allowing the public greater access to the courts.

Manitoba media outlets could also try and expedite the broadcasting of court cases by filing a motion in a specific case, as no such legislation exists which either allows or forbids such media coverage.

Wyant is a former journalist who believes strongly in making the justice system as open and transparent as possible.

He appears monthly on the *Crime and Punishment* national radio show (Sundays, 7 p.m. on CJOB in Winnipeg) to take cold-calls from listeners about various criminal questions and concerns.

Judges often complain that media coverage of cases is unfair because the public doesn't always get the full reasons for their controversial decisions because of time and space restrictions.

Wyant told the *Free Press* he believes allowing people to hear exactly why verdicts and sentences are handed down can only help restore public confidence.

The *Free Press* has been posting complete written decisions handed down by judges on its website for several months. Wyant said allowing for audio and perhaps video feeds would be another valuable tool.

Yet it's obvious by the negative reaction many judges fear the potential for change.

"A lot of judges just feel safe in their courtrooms, and this threatens that," said a justice source.

U.S. courts have allowed for audio and video feeds for years, although some critics believe it creates a system where lawyers, judges and even witnesses try and put on a "performance" rather than simply deal with the important task at hand.

FREE PRESS

Special Report

WHAT PRICE FOR A LIFE? The death of Crystal Taman

Mon Oct 29 2007

Derek Harvey-Zenk, a former city police officer, is to be sentenced today for killing Crystal Taman in a 2005 car crash.

The case has been controversial from the start. Justice Minister Dave Chomiak has already ordered a review of the East St. Paul police service, which did the original investigation.

How the case got to this point has revealed everything rotten with the criminal justice system, according to Taman's family. They are considering suing Harvey-Zenk in a wrongful death claim.

Even the judge hearing the case has expressed doubts. Chief provincial court Judge Ray Wyant said he had been left in the dark about where Harvey-Zenk was and who he was with before he crashed into Taman.

"The court is being left with a gap as to what occurred at the end of (Harvey-Zenk's) shift until the accident occurred," he said at an earlier hearing. "There really isn't much information being presented to me."

Today the *Winnipeg Free Press* fills that gap.

The Death of Crystal Taman: What really happened

A cop has a few with his buddies. Hours later, Crystal Taman's dead. Free Press reporter Bruce Owen sheds light on the events of that tragic morning and the Crown's weak case

Mon Oct 29 2007

Bruce Owen

On the night before Crystal Taman died, the man who killed her went out for a couple of drinks with his buddies.

Taman, as was her habit, went to bed fairly early. She had to be up early to be at work at Dr. Jerry Weiss' dental office on Regent Avenue. She was a dental assistant, and one of the first people in the door before 8 a.m.

She was killed almost instantly when a black 1995 Dodge Dakota pickup truck rear-ended her bright yellow 1991 Chevrolet Sprint convertible. She was stopped for a red light on Highway 59 at the north Perimeter.

The truck, heading south on Highway 59, was driven by a 31-year-old off-duty Winnipeg Police Service officer, Const. Derek Harvey-Zenk.

Today, Harvey-Zenk -- who resigned as a police officer more than a year ago -- will be sentenced on charges of dangerous driving causing death and dangerous driving causing bodily harm. (The second charge is in connection to injuries suffered by a woman in another car. She is the wife of a city police inspector).

He was originally charged with impaired driving causing death, refusing a breathalyser test, dangerous operation of a motor vehicle causing death and criminal negligence causing death.

Although Harvey-Zenk admitted he'd been out with fellow officers in the hours before the crash, any evidence of his alleged impairment was dismissed at an earlier court hearing.

Instead, Harvey-Zenk agreed to plead guilty to the lesser charges.

Taman's family is outraged that prosecutor Marty Minuk agreed to the plea deal. So far, he has offered no explanation to them.

"It's brick walls all around me," Taman's husband Robert said. "The most important people in this are hiding."

Minuk's decision also removed any evidence of where Harvey-Zenk was, who he was with and what he was doing before the crash.

As Judge Ray Wyant has already said, there is a seven-hour gap in the case -- a gap no one wants to fill.

A request under the Manitoba Freedom of Information and Protection of Privacy Act to Winnipeg police for notes, statements and reports on their involvement in the Harvey-Zenk case was refused.

Here is what the Free Press has learned through sources close to the case:

- Harvey-Zenk and other officers stationed in District 3 in north Winnipeg left work some time late Thursday night or early Friday morning.
- They had finished a week of shifts and had a few days off before going back on patrol.
- They met at the former Branigan's lounge on Leila Avenue in Garden City to have a few drinks.
- By the time all the officers got there it was near closing, and the officers agreed to go to Const. Sean Black's house northeast of the city to continue what's commonly known in police circles as a "shifter", a get-together to blow off some steam. (Black is now a patrol sergeant).
- The "shifter" continued into the early morning hours and at about 7 a.m., Harvey-Zenk, a police officer of three years, headed home alone to see his family.
- At 7:10 a.m. he crashed into Taman.

In the hours after the crash, East St. Paul police asked Winnipeg police for help in the investigation. Specifically, they wanted the professional standards unit to interview each of the officers who were with Harvey-Zenk at Black's residence.

The focus of the questions to each of the officers was simple: How much did you see Harvey-Zenk drink and did he appear intoxicated?

East St. Paul police were already investigating the deadly collision as one caused by impairment; Harvey-Zenk had declined to provide a breath sample after the crash.

It was at this point -- long before the case got into Minuk's hands -- when things started to fall apart, sources said.

First, each of the officers interviewed by investigators said essentially the same thing: yes, they were with Harvey-Zenk; yes, they think he may have had a couple of drinks; no, he did not appear intoxicated.

Second, any evidence the East St. Paul police collected to back up their charges against Harvey-Zenk for impairment was woefully inadequate for courtroom purposes.

"There was nothing in the notes," a source said. "Nothing."

Soon after the plea deal, there was criticism against former East St. Paul police chief Harry Bakema for how he led the investigation. There was also an allegation Bakema had instructed his subordinates not to refer in their notes to Harvey-Zenk's alcohol consumption following the crash.

Bakema, through his lawyer, said the allegation is false and that he had left Harvey-Zenk to be processed by Norm Carter, the current chief.

Ultimately, Harvey-Zenk was still charged by East St. Paul police with impaired driving causing death and refusing a breathalyser test. However, no evidence was given to the Crown to back that up.

There was nothing in the officers' notes on whether his speech was slurred, whether he smelled of liquor or had blurry eyes.

Such police notes are not only routine in these cases, they are vital for the prosecution. To not document these indicators of impairment makes no sense, even beyond the allegation made against Bakema, one source said.

Taken all together, the file handed to Minuk was weak from the start.

Minuk could have risked putting the entire case in front of the judge at Harvey-Zenk's 2006 preliminary hearing.

But without evidence from East St. Paul police supporting the charges, and the Winnipeg police officers each stating Harvey-Zenk was not intoxicated, going in front of a judge was pointless. The case could have been thrown out and all the charges dismissed.

Instead, Harvey-Zenk agreed to a plea deal with the recommendation he serve no time in jail.

His lawyer, Richard Wolson, said his client took full responsibility for the accident.

Sources say the evidence points to what it was all along -- a tragic accident.

There were no skid marks at the scene, an indication Harvey-Zenk fell asleep behind the wheel, only to wake up when Taman was dead.

Serious crime, but no time

Manitoba cases in which people involved in serious crashes avoided jail time:

April 2002: A cab driver is fined \$200 after pleading guilty to careless driving under the Highway Traffic Act. The fine is in connection to a September 2000 mishap which led to the death of an 83-year-old woman. The Crown had *no* evidence to pursue criminal charges.

January 2003: A Department of Manitoba Highways worker, originally sentenced to two years less a day for running a red light on the Perimeter Highway near Assiniboia Downs and killing two people in October 2000, is granted a two-year conditional sentence to be served at home after he took his case to the Manitoba Court of Appeal.

December 2003: A 55-year-old woman is acquitted of dangerous driving causing death in a 2001 incident that killed a pedestrian on Portage Avenue. The judge said the sun temporarily blinded the woman and that there was *no* evidence a criminal offence took place.

December 2003: A man is fined \$200 for careless driving under the Highway Traffic Act in a car crash in which a Winnipeg man lost both his legs. The Crown had *no* evidence to lay criminal charges.

January 2004: A local boxer is fined \$400 after pleading guilty under the Highway Traffic Act to proceeding when it was unsafe to do so in a crash that killed a woman a year earlier. Again, the Crown had *no* evidence to lay criminal charges.

April 2006: A 62-year-old man who ran a red light, killing a three-year-old girl, is fined \$2,000 plus \$1,060 in court costs after pleading guilty to disobeying a traffic control device. No criminal charges were ever laid against him because there was *no* evidence of dangerous driving, such as speeding, alcohol or a pattern of reckless road behaviour.

April 2006: A Manitoba psychiatric nurse is fined \$500 after she pleads guilty to careless driving in connection to an August 2003 crash near Selkirk that killed a 42-year-old man. The woman pleaded guilty after special prosecutor Marty Minuk dropped criminal charges against her due to a lack of evidence. Minuk was brought in because the woman's husband is a Winnipeg police officer.

October 2007: A 51-year-old man gets a conditional sentence for a February 2004 drunk driving crash that killed his fiance – despite the fact he had a prior impaired driving conviction. The court rejected a bid by the Crown, who was seeking a two-year jail term. The judge followed a Supreme Court ruling that said aboriginals should get special consideration based on their troubled upbringing.

Info request refused

The Free Press submitted a request under the Manitoba Freedom of Information and Protection of Privacy Act to Winnipeg police for notes, statements and reports on their involvement in the Harvey-Zenk case.

The request was submitted to learn what information city police had gathered from the officers who were with Harvey-Zenk on the day Crystal Taman was killed.

It was refused on three points:

- 1) It was an unreasonable invasion of privacy.
- 2) The information requested was compiled by police as part of an investigation to be disclosed only at prosecution.
- 3) Disclosure of the information could negatively affect the conduct of existing or anticipated legal proceedings.

FREE PRESS – OPINION
Rule made to be written
Tue Oct 30 2007

DEREK Harvey-Zenk was sentenced according to the law Monday and will serve his time in the community, not in a jail. This is widely considered unfair, but it was supported by the few facts presented to Chief provincial court Judge Ray Wyant.

The public is still waiting to hear what happened in the early morning hours before the then-Winnipeg police officer plowed into the car of Crystal Taman, who was stopped at a red light. Harvey-Zenk hit that car without braking. Ms. Taman was killed, another driver was injured. No evidence about Harvey-Zenk's drinking was presented. In its totality, the case was a travesty. Judge Wyant used less provocative words to describe the failure of the system to bring justice to bear, but the public justifiably believes it so.

Despite the fact Harvey-Zenk went out drinking with colleagues after his shift, and went to a colleague's house when the bar closed, none of his co-workers could or would say how much he drank and none was called to testify. Charges of impaired driving and refusing a breathalyser, laid in a bungled investigation, were dropped. Harvey-Zenk struck a bargain with the Crown to plead guilty to charges of dangerous driving causing death, and causing bodily injury.

In the absence of evidence of dangerous driving other than the collision, Judge Wyant was left to consider a case of dangerous driving that was at the lower end of the scale.

The bulk of the judge's frustration fell on Marty Minuk, special prosecutor for the Crown's office. Mr. Minuk -- handed a foul set of circumstances -- in a deal with the defence dropped charges of impaired driving and of refusing a breathalyser. He reluctantly gave some explanation for the deal, and divulged the plea bargain only after being recalled by the judge. The defence insisted Harvey-Zenk's drinking did not contribute to the crash; Mr. Minuk gave no evidence to challenge that. Judge Wyant pointed out that while there was no legal obligation, Mr. Minuk, representing the public's interest in the case, had a practical duty to present evidence about Harvey-Zenk's drinking, but didn't.

Understandably the public has been scandalized, relying on media accounts of Harvey-Zenk's actions before the collision. The judge said that rules of disclosure would demand a better explanation from the Crown, and in the absence of that, Mr. Minuk contributed to public misunderstandings of the case.

In fact, no rule compels the Crown to explain why charges are reduced, or why a bargain is struck. Judge Wyant is correct, though, in spirit. There ought to be such a rule. Manitobans are thirsting for good accountability in this case. In the absence of that, the Crown has reinforced the public's perception it was failed by the system, a system that defended Harvey-Zenk's interests very well, indeed.

FREE PRESS

**Let us join a grieving widower's revolution
Time for us to stand up and say enough is enough
Tue Oct 30 2007
Lindor Reynolds**

ROBERT Taman wants to start a revolution.

Standing on the front steps of the Law Courts building moments after the man responsible for his wife's death was spared a prison sentence, Taman said he's tired of playing by the rules.

"I have been quiet for too long," said the grieving man, flanked by his three teary-eyed children. "We decided we were going to take the high road."

He paused, shook his head at the absurdity of that plan.

"It's time for everyone to stand up," he said. "It's time for the public to say this can't go on."

With that, the man who uses the Manitoba Victims' Bill of Rights as his computer screen saver, hugged his children, straightened his shoulders and went off to visit his wife's gravesite.

Crystal Taman died in February 2005, when former police officer Derek Harvey-Zenk, fresh from several hours of partying with fellow officers, plowed his truck into the back of her yellow convertible.

Chief provincial court Judge Ray Wyant did everything but hold his nose as he upheld Harvey-Zenk's two-year-less-a-day conditional sentence Monday afternoon.

Wyant showed remarkable restraint. This case has stunk from the start.

The judge did his best to express his sorrow for the family's suffering. He spoke of the devastation the Tamans feel, of their loss and their diminished future. He was poetic, angry and anguished by turns, wishing for a magic wand to make everything right.

But he can't perform that miracle.

Derek Harvey-Zenk made sure nothing will ever be right again for this family. Our flawed legal system, along with the East St. Paul police force, has aided and abetted him every inch of the way.

By one o'clock Monday afternoon, Crystal Taman's family filled the first two rows of the large courtroom, packed in shoulder to shoulder, many dressed in the black of mourning. They had come hoping to hear that Ray Wyant could find a reason to jail the man who had stolen their wife, mother, daughter and friend.

He couldn't.

He could only acknowledge the public perception of what happened: that a cop was out partying and drinking with buddies; that he slammed into an innocent woman without making any effort to stop; that the cop claims to have no memory of what happened; that charges of impaired driving causing death and refusing a breathalyser test were dropped; and that the investigating police dropped the ball, not bothering to take notes on many significant details of the case.

"The only person who can tell us what happened that night is you, Mr. Zenk," the judge said Monday. The disgraced cop has chosen to remain silent.

Unfortunately, while the court of public opinion clearly believes Harvey-Zenk should go to jail, Wyant can only make his judgment based on the slim evidence before him.

The rest of us are left wondering about the plea agreement between the Crown and the prosecution, when the family wanted a trial.

We can also question the existence of what the judge called "the thin blue line" that leads to cops protecting their own and, at the end of the day, the lack of justice that sees a woman dead and the man who drove the vehicle that killed her walk free.

We can also question, as Robert Taman does, why the family was left to learn many of the details of the case and the investigation from the media.

And so a man stood on the front steps of the Law Courts building Monday, flanked by his grieving family. Before they went to the cemetery to pay their respects to a woman whose death has gone barely punished, Robert Taman railed against our justice system.

"This is just the end of Phase 1," he said. "My family and I are just regular people who have been walked over."

His own father chimed in: "A sleeping giant has just been awoken."

Manitoba's Victims' Bill of Rights, the document that Robert Taman sees every time he turns on his computer, says that all victims of crime "should be treated with courtesy, compassion and respect."

Tell that to Robert Taman, a little guy whose wife was killed by a cop.

Then persuade him his rights -- and those of his late wife -- ever had a place in the courtroom.

Help him start the revolution. It is time for the public to say this can't go on.

FREE PRESS

NO JAIL FOR TAMAN'S KILLER: 'This can't go on,' husband vows

Testimony, truth are 'worlds apart,' says judge

Tue Oct 30 2007

By Mike McIntyre

A former Winnipeg police officer spends the night drinking and partying and gets behind the wheel of his car "loaded".

Fellow off-duty officers who were with him at the time apply the "thin blue line" in refusing to tell the truth about what they saw.

An innocent mother of three is killed in a deadly crash and the cover-up begins, ending in a watered-down case being presented to the court "wrapped in a tight package".

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■ **Reynolds: Let us join a grieving widower's revolution**

■ **Editorial: Rule made to be written**

In the words of Chief provincial court Judge Ray Wyant, that's the troubling chain of events he laid out Monday to explain what the vast majority of the public believes has occurred in the controversial Derek Harvey-Zenk case.

Moments later, a clearly frustrated Wyant held his nose and grudgingly went along with a plea bargain that spares Harvey-Zenk jail and allows him to remain free in the community under a two-year conditional sentence.

Wyant said the differences between "what we all know happened" and the limited facts presented in court for him to consider "are worlds apart" and made this such a difficult case.

"It's a perfect storm of cynicism and why many feel you are, in the proverbial sense, getting away with murder," he told Harvey-Zenk.

A high-ranking justice source told the *Free Press* there was hope Wyant would refuse to sentence Harvey-Zenk at all, finding that not enough information had been given to court and ordering it to proceed to trial. Such a move would be unprecedented in recent legal history.

Crystal Taman, 40, died after Harvey-Zenk's truck hit her car while she was stopped at a red light in February 2005 on Highway 59 at the Perimeter Highway.

Harvey-Zenk admitted he'd been out partying with police since the previous evening and had consumed alcohol. He has denied being drunk and believes he may have fallen asleep. There were no skid marks at the crash site.

Private lawyer Marty Minuk, who was retained by Manitoba Justice as a special prosecutor, dropped all impaired charges without explanation in exchange for a guilty plea to dangerous driving causing death in August.

The move angered Taman's family who said they would rather have taken their chances by going to trial rather than make a deal with Harvey-Zenk. Family members also accused justice officials of keeping them in the dark about the fate of the case.

Wyant had expressed serious doubts about the joint recommendation and made a rare move by calling lawyers back to court last month to give further submissions on the issue.

Wyant even proposed having the case reopened to allow evidence to be called. He said there are too many questions -- especially related to alcohol consumption -- which he hoped to have answered as he struggled with a proper punishment for Harvey-Zenk.

Wyant suggested the Crown call witnesses to testify about Harvey-Zenk's actions in the approximate eight hours between the end of his Winnipeg police shift and the time he slammed into the back of Taman's car.

But Minuk quickly turned down the offer without explanation or consultation with the victim's family.

"There may be cases, and this is one of them, where the Crown is almost compelled to call evidence," Wyant said Monday. Not doing so "undermines the process", he said.

The city's largest courtroom was packed with family and friends of Harvey-Zenk and Taman, along with a large contingent of reporters and other lawyers.

"I've spent countless hours thinking about this case," said Wyant, who told the Taman family he is deeply sorry for their loss.

"I wish I could wave a magic wand and turn back time. Instead of a lifetime of hope and happiness, you have a life of pain and anguish."

Minuk had stated during the initial sentencing hearing in August that Wyant could consider the fact Harvey-Zenk consumed an unknown quantity of alcohol in the hours preceding the crash as an aggravating factor.

But Harvey-Zenk's lawyer, Richard Wolson, took exception to that when the case returned to court in September, saying he should have made his objections clear at the initial hearing. He told Wyant he can't consider alcohol a factor in any way.

"I'm not meaning to be rude but you have the position of my client and should sentence him accordingly," said Wolson.

"If the Crown wants to advance that (alcohol consumption), then prove it."

The Taman family said they were shocked when Minuk refused to do so, noting they had previously been told the Crown had 33 potential witnesses lined up for trial.

"This is a complete cover-up. It's like there are two defence lawyers in there," said Victoria Sveinson, the victim's mother.

Wyant weighed in Monday, saying the consumption of alcohol would be a "significant factor" and questioning where the evidence of Harvey-Zenk's colleagues was.

"Why did trained police have no relevant information to give? Is it because they weren't paying attention to the actions of (Harvey-Zenk)? Well, that's what we're asked to suspect," he said.

"If there were police officers who witnessed Mr. Zenk consuming alcohol, why weren't they called?"

When the lawyers returned to court last month, Minuk shed new light on the deal with Harvey-Zenk and admitted there were major problems with the way the East St. Paul police conducted their investigation at the crash site. No specific details were given.

Minuk said the botched probe forced him to cut a true "plea bargain" with Harvey-Zenk -- a fact that Wyant said hadn't been made clear during the initial sentencing hearing when it appeared to be more of a "meeting of the minds" between lawyers over a strong case.

Wyant said Monday judges are under clear instructions from higher courts to give serious consideration to true plea bargains such as the one that apparently exists in this case.

Wyant said his main source of concern with the proposed sentence was the fact Harvey-Zenk was a police officer at the time and should be held to a higher standard because of it.

"That duty doesn't end when they go home each day. It extends to 24 hours," he said.

Both Wolson and Minuk had argued vigorously that a conditional sentence is within the appropriate range for such a crime and filed a casebook with 20 precedents from across Canada in support of their position.

Harvey-Zenk resigned from Winnipeg police and now lives in Brandon with his wife and young child. His conditional sentence includes a nightly curfew and community service work.

FREE PRESS

**Once trap set, judge unable to escape
But Wyant did his best to expose the truth
Tue Oct 30 2007**

CHIEF Provincial Court Judge Ray Wyant couldn't bring Crystal Taman back to life. But on Monday, he made sure the man responsible for her death, and the lawyers who spared him any real-punishment, were laid bare before the court.

Wyant spent 40 minutes, almost to the second, expounding on the sorry tale of a woman who was killed when an off-duty police officer, fresh from an all-night drinking party, smashed his pickup into the back of her car.

The case has become a cause célèbre, in large part because Derek Harvey-Zenk did not face any alcohol-related charges and the heavy prison time that would have accompanied them.

Wyant has become a central figure in the case after he courageously refused to accept a joint recommendation for a guilty plea to a charge of dangerous driving causing death, and a two-year conditional sentence to be served in the community. Yesterday, he left everyone know what he really thought about the case.

After expressing heartfelt sympathy for the Taman family, Wyant launched into a remarkable narrative about what he called a "tale of two cases." The first was the case as put before Wyant on Aug. 22; the second was the case as presented on Sept. 12.

At the August hearing, Wyant was presented with a "joint recommendation" from defence attorney Richard Wolson and special prosecutor Marty Minuk. Harvey-Zenk would plead guilty to dangerous driving causing death; a host of other alcohol-related charges would be dropped due, in large part to a lack of evidence.

Minuk told the court that although there was an "anecdotal, historical evidence of the consumption of alcohol," he could not prove impairment. And yet, both lawyers recommended Harvey-Zenk undergo substance abuse counselling, which seemed to Wyant to imply there was consensus the former cop had been drinking. Even Wolson did not contest the assertion that Harvey-Zenk had consumed alcohol.

Wyant said he was uncomfortable with the joint recommendation, and told Wolson and Minuk as much in a letter he wrote to counsel warning them he was thinking about rejecting the deal.

Wolson and Minuk must have studied Wyant's letter very closely. When they arrived back in court Sept. 12, the material facts of the case were, in Wyant's words, "disturbingly different."

Out of the blue, the two lawyers said their recommendation was the result of a plea bargain, a deal more complex and binding than a mere joint position. A plea bargain implies a quid pro quo, an expectation by the accused that if they give up their right to a trial, they get something in return, and it's more difficult to reject.

Wolson also made a fundamental change in his strategy. Now, Wolson refused to concede his client had consumed any alcohol the night of Taman's death.

At this point, Wyant turned to Minuk and invited him to call evidence to substantiate his earlier allegation. After a recess, Minuk said with no explanation he would not call any evidence.

With obvious pain in his voice and on his face, and looking only at the part of the courtroom holding Taman's family, Wyant said that when there is a factual dispute, the Crown must call evidence to support its assertion because it alone shoulders the burden of proof. If no evidence is called, the judge is forced to accept the assertions of the defence.

It was a legal checkmate.

Although he was not explicit, if you consider Wyant's version of events, once the two lawyers saw that the court was not inclined to approve the joint recommendation, they changed tack and came up with a scenario in which Wyant was virtually powerless to refuse a plea arrangement.

Wyant would not impugn motives or question the character of the lawyers involved. However, he let it be known that he wasn't happy with the this turn of events.

"I recognize as well that in the minds of some, the events of September 12 might be viewed as a zealous attempt (by Wolson and Minuk) to support a joint recommendation that was in jeopardy," Wyant told the court.

"While I reject that notion, it troubles me to the extent that it reflects badly on the administration of justice and can only serve to undermine the confidence in our administration of justice."

Even after that stunning observation, Wyant wasn't finished. To ensure that the court record would contain a more fulsome picture of what had happened, Wyant read out a statement of facts that, while they could not be proven in court, were a more likely version of what happened the night Taman was killed.

He looked Harvey-Zenk directly in the eye, and recounted a story of an exhausted police officer who stayed up all night long and then got behind the wheel of his truck. Facts that could not be considered by the court in sentencing, but facts that Wyant believed had some basis in truth.

It was a remarkable autopsy of a case that could not pass the smell test from the moment Wolson and Minuk walked into court last August. Wyant gently, diplomatically, laid bare a horrible manipulation of the justice system. Not a miscarriage of justice, per se, but a deftly constructed short-circuiting that, while clearly within the rules, was not in keeping with the spirit of the law.

Wyant could not wave his magic wand to bring Taman back to life. Nor was he able to escape being snookered by Wolson and Minuk.

It's not justice but thanks to Wyant, the public knows exactly what happened in this case. And perhaps that is enough to convince whip-smart lawyers to take fewer liberties with the justice system.

FREE PRESS

Sheriff's officers help Harvey-Zenk sneak out of court

Tue Oct 30 2007

By Mike McIntyre

Former Winnipeg police officer Derek Harvey-Zenk was given special treatment by courthouse officials Monday that spared him from having to face the public following his controversial deadly driving sentencing.

Harvey-Zenk and his family were allowed to remain inside a locked courtroom while his conditional sentence papers were prepared. The documents were then brought directly to him to sign within the hour.

Normal practice forces a convicted offender to wait in a public area on the main floor of the Law Courts building, often for several hours.

Harvey-Zenk and his supporters were then whisked by sheriff's officers out of the courtroom through a private exit and out of the Law Courts building through yet another escape route that only employees with special access cards can use.

A large contingent of media waiting outside the official courthouse exit had hoped to get a quote from or at least a picture of Harvey-Zenk. Instead, they were told he had left the building about 10 minutes after he was gone.

No explanation was given for the extraordinary steps. Such protection is usually only given to an offender who has expressed safety concerns.

A sheriff's officer, who did not want his name published, said other police officers who have landed in court have been given similar treatment in the past. "That's not right. They shouldn't be doing that," he said.

The former head of sheriff services had warned his staff to change the practice, but it resumed once he was gone, the officer said. "He had said they should be treated like every other criminal."

Security was at normal levels for the sentencing hearing and all previous court appearances, and there have been no confrontations between the victim's family and Harvey-Zenk.

In fact, Crystal Taman's loved ones quietly left the courtroom without comment as Chief provincial court Judge Ray Wyant was just finishing going through the various conditions Harvey-Zenk must follow.

FREE PRESS

**Chomiak orders review after controversial case
Tue Oct 30 2007**

JUSTICE Minister Dave Chomiak has ordered a review of the province's practice of hiring independent lawyers to prosecute some cases.

That's in addition to a review of the East St. Paul police service Chomiak ordered in August after questions emerged about how thoroughly the embattled department investigated the car crash that killed Crystal Taman.

Former Winnipeg police officer Derek Harvey-Zenk was given a conditional sentence of two years less a day Monday for causing the crash that killed Taman in 2005.

Chomiak would not comment on the sentence, which Taman's family says is inadequate. Chomiak said it's not appropriate for the government to interfere politically in the judicial process.

But he said he has asked retired Court of Queen's Bench justice Ruth Krindle to review the protocol that allows the government to hire independent lawyers to prosecute cases that the staff roster of Crown attorneys cannot take on because of conflicts of interest.

That is often done when judges, lawyers or police officers are charged with a crime, and it's the protocol that was used to hire lawyer Marty Minuk to prosecute Harvey-Zenk.

But some have suggested Minuk might have been in a conflict, since he has represented police officers in the past.

Chomiak said the review will look at how Manitoba's rules compare to other jurisdictions and what improvements might be needed to ensure public confidence in the judicial system.

Meanwhile, Chomiak has asked the RCMP and the Brandon Police Service to look into the operation of the East St. Paul police department. He announced that review in August, but work on it had to wait until Harvey-Zenk's case concluded.

Chomiak said he expects both reviews to be completed within a matter of months.

FREE PRESS

**Reporters praised for efforts to dig up truth
Tue Oct 30 2007
By Mike McIntyre**

MANITOBA'S chief provincial court judge is applauding media efforts to expose the scandal surrounding former Winnipeg police officer Derek Harvey-Zenk and his role in a fatal crash.

Ray Wyant told lawyers who have criticized the news coverage they have only themselves to blame because they kept the victim's family, the public and even the court in the dark about why a controversial plea bargain was struck.

"Much of the misunderstanding and anguish here could have been avoided with a clear explanation of the plea bargain and the reasons for it at first instance," Wyant said Monday.

"I believe the more information the better."

Defence lawyer Richard Wolson had previously called media coverage of his client's case "scandalous", while special Crown prosecutor Marty Minuk labeled it "baseless yellow journalism."

Wyant defended the coverage, saying reporters were forced to go fishing for answers when both Wolson and Minuk were unwilling to provide much insight.

Among details which emerged outside of court over the past two months:

- * An allegation reported by the *Free Press* from East St. Paul police officers that former chief Harry Bakema ordered them in advance not to refer in their notes about Harvey-Zenk's alcohol consumption following the deadly crash. Bakema, through his lawyer, has denied the claims. Bakema was fired in 2006 and now works in real estate.
- * A claim from retired RCMP officer Robert Tramley, who spearheaded a review of the East. St. Paul detachment following Bakema's firing, that the plea bargain with Harvey-Zenk is a "travesty."
- * A revelation that a paramedic at the scene of the deadly crash noted "a strong smell of alcohol" coming from Harvey-Zenk. That fact was included in Tramley's review.
- * A revelation by the *Free Press* that Bakema is an ex-Winnipeg police officer who worked in the same North End district as Harvey-Zenk before he left for East St. Paul. Bakema has denied working directly with Harvey-Zenk but he recognized him at the crash scene.
- * Questions about Manitoba Justice's decision to appoint Minuk as Crown counsel, given the fact he has previously defended police officers and had recently completed work on a manslaughter case working alongside Harvey-Zenk's lawyer, Richard Wolson. Justice officials have defended the decision to farm the case out of their own department to Minuk, saying they must avoid a perception of bias given that Crown attorneys regularly work closely with police.
- * A revelation that Harvey-Zenk's lawyer was going to fight the breathalyser demand on the grounds police had no right to ask for something that Bakema -- the lead investigator at the time - clearly felt wasn't necessary at the scene.

Michael Wasylin, deputy reeve of East St. Paul, has credited Carter with bringing to light serious concerns about the police service under Bakema's watch. He wouldn't discuss specifics of matters that came to light.

WINNIPEG SUN

No jail time for ex-cop

For killing young mom in road collision

October 30, 2007

By DEAN PRITCHARD, SUN MEDIA

A former Winnipeg cop who killed a mother in a car crash after a night spent partying with fellow officers was spared a jail sentence yesterday.

Judge Ray Wyant granted Derek Harvey-Zenk a two-year conditional sentence for dangerous driving causing death, upholding a controversial joint recommendation that outraged Crystal Taman's family.

Wyant said he could not sentence Harvey-Zenk on what he believed really happened without evidence before him to support it.

Wyant began the hearing by directing an apology to Taman's family.

"Like a lot of people, I wish I could wave a magic wand and turn back time, but life's not like that," he said, his voice appearing to crack with emotion. "We have no second chances here."

Taman was on her way to work, stopped at a red light in the southbound lane of Highway 59 just north of the Perimeter Highway about 7 a.m. on Feb. 25, 2005, when her convertible was rear-ended by Harvey-Zenk's pickup truck.

Wyant had stinging criticism for special prosecutor Marty Minuk and defence lawyer Richard Wolson, who made no mention at an August sentencing hearing that their conditional sentence recommendation came as the result of a plea bargain.

That only became clear after Wyant expressed serious concerns about the recommendation and ordered the case be adjourned for further submissions in September.

Court has heard Harvey-Zenk spent several hours at a city lounge the evening before the crash and then headed to a co-worker's home for an all-night party.

There was no evidence presented from fellow police officers as to how much alcohol Harvey-Zenk consumed that night. Minuk could only provide the court with "anecdotal evidence" that Harvey-Zenk consumed "some" alcohol, said Wyant.

"Police trained in the power of observation seemingly had no relevant information to present to the court about Mr. Harvey-Zenk's activities prior to the collision," Wyant said. "This lack of evidence appears to be more a matter of the 'thin blue line' protecting their own."

East St. Paul police, who investigated the crash, initially charged Harvey-Zenk with refusing a breath demand but the charge was later stayed by Minuk, as were charges of impaired driving causing death and criminal negligence causing death.

Harvey-Zenk claimed he injured his head in the crash and had no memory of what happened, a claim unsubstantiated by any medical evidence.

These facts made for a "near-perfect storm of cynicism" and explain why many people feel Harvey-Zenk is "getting away with murder," said Wyant.

"Make no mistake, I have no sympathy for you," Wyant said. "You are the author of your own fate.

"Your punishment will be a life sentence, because you will never be able to escape the memory of what you did. Your actions brought shame on the uniform you wore and all the other men and women sworn to protect us."

Harvey-Zenk's sentence includes a nightly curfew for the next 15 months and requires that he abstain from alcohol and perform 180 hours of community service work.

WINNIPEG SUN

No justice for Crystal Taman, angry family says

October 30, 2007

By DEAN PRITCHARD

A plea bargain made behind closed doors has robbed Crystal Taman of justice, angry family members charged yesterday.

"We have not even heard anything of what took place that day," said Crystal's husband Rob Taman, minutes after former Winnipeg cop Derek Harvey-Zenk received a two-year conditional sentence for the crash that claimed her life.

"We are not allowed to know, and it's up to all the regular people out there to get up and shout 'We have had it, this is enough.' "

Taman said he spoke with special prosecutor Marty Minuk just three times in the 2 1/2 years since Crystal's death.

'Enough'

"Our family decided a long time ago that we were going to take the high road and we were going to allow the system to do what the system does. But now that we have seen what the system does, that is enough," he said. "It's time to start yelling."

Taman said family members had remained "quietly optimistic" that Judge Ray Wyant might reject a controversial plea bargain and sentence Harvey-Zenk to jail.

"You could see he was biting his tongue and that he wanted to make a change but I think we all know that Judge Wyant doesn't rule here, he's just a speaker."

Because Harvey-Zenk's sentence came as a result of a plea bargain, it can't be appealed, said Crystal's father, Sveinn Sveinsson.

Taman said East St. Paul police, accused of botching the investigation into his wife's death, "haven't heard the last" of him.

He would not confirm whether he is considering a lawsuit.

WINNIPEG SUN

Judge Wyant's a winner

Harvey-Zenk ruling a disgrace

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By TOM BRODBECK

What provincial Judge Ray Wyant concluded yesterday is that if you drive your car recklessly on the highway, slam into another vehicle waiting at a red light and kill the passenger, you shouldn't do jail time.

Not even 30 or 60 days behind bars, just to ensure there's some modicum of deterrence and denunciation for such a violent and criminal act.

Nope.

What you should get, Wyant ruled, is house arrest -- a conditional sentence -- where you can watch football on the basement jumbo screen, enjoy long soaks in the hot tub and practice a little chipping in the back yard.

Deterrence? Denunciation? Who needs it?

Dangerous driving causing death isn't that serious of a crime. You can't put a guy in jail for that, can you?

Obviously, Wyant doesn't think so.

Derek Harvey-Zenk got off easy in a Winnipeg courtroom yesterday after Wyant accepted a joint recommendation of house arrest for the former Winnipeg cop, who killed Crystal Taman after smashing his car into hers in 2005.

For that, Wyant is the latest winner of this column's Eight-Ball Award, handed out to highlight some of the worst perversions of justice in our court system.

Wyant wins the award because he failed to put adequate weight on the very important sentencing principles of deterrence and denunciation and to ensure the sentence was proportionate to the severity of the crime.

He fouled this one up, big time.

Dangerous driving causing death carries a maximum penalty in the Criminal Code of 14 years.

There are oodles of precedents where judges have handed down jail time for similar cases.

But Wyant chose to ignore those cases (I've laid them out in a previous column which I'll happily forward to you, Judge Wyant). Wyant chose instead to build an argument of why he should cut Harvey-Zenk some slack.

Wyant didn't have to accept the joint recommendation from the defence and special prosecutor Marty Minuk. (Might be your last job as a special prosecutor, Marty).