

A Commentary on *R. v. Latimer*



By: Dani Shaw-Buchholz

(Adapted from an article that first appeared in ChristianWeek.)

Mr. Latimer appealed his conviction all the way to the Supreme Court of Canada, arguing that in the circumstances, he should have been permitted to advance the defence of necessity. The Supreme Court of Canada disagreed, stating that in order to invoke the defence of necessity, (a) there must have been “imminent peril or danger,” (b) the accused must have had “no legal alternative to the course of action he undertook” and (c) “there must be proportionality between the harm inflicted and the harm avoided.”

In reviewing Mr. Latimer’s situation, the court found that neither Tracy nor Mr. Latimer faced imminent peril. Tracy’s ongoing pain was not an emergency, nor was the treatment of it an imminent threat to her life. Secondly, the court found that there were reasonable legal alternatives to murder. Struggling on was one option. Placing Tracy in a home was another. Finally, in considering the proportionality requirement, the court questioned whether homicide could ever be considered a proportionate response to a perceived harm to be avoided. The court held that in the Latimer case, “the harm inflicted ... was ending a life; that harm was immeasurably more serious than the pain resulting from Tracy’s operation which Mr. Latimer sought to avoid.”

When it came to sentencing, Mr. Latimer asked the court to find that life in prison without eligibility for parole for 10 years constituted cruel and unusual punishment, contrary to section 12 of the Charter. He asked the court to grant him a constitutional exemption. In determining whether a sentence amounts to cruel and unusual punishment, the court held that it must ask whether the punishment prescribed is “so excessive as to outrage the standards of decency.” In assessing whether a punishment was grossly disproportionate to the crime committed, the court held that it must consider the gravity of the offence, the personal characteristics of the offender and the particular circumstances of the case in order to determine an appropriate range of sentences.

The court examined Mr. Latimer's circumstances, stating:

On the one hand, we must give due consideration to Mr. Latimer's initial attempts to conceal his actions, his lack of remorse, his position of trust, the significant degree of planning and premeditation, and Tracy's extreme vulnerability.

On the other hands, we are mindful of Mr. Latimer's good character and standing in the community, his tortured anxiety about Tracy's well-being, and his laudable perseverance as a caring and involved parent.

While the court found that the principles of rehabilitating Mr. Latimer, deterring him from committing further crimes and protecting society were not at issue, it was mindful of the fact that murder is a serious offence in Canadian law. Given the "gravest possible consequences" of Mr. Latimer's actions and society's condemnation of murder, the court felt compelled denied Mr. Latimer's request for a constitutional exemption and upheld the mandatory ministry sentence.

Was the court's decision just?

The Latimers' situation was no doubt agonizing. Tracy had a severe form of cerebral palsy. She experienced numerous seizures per day, endured numerous operations in her short lifetime and had the mental capacity of a four month old baby. The toll Tracy's situation took on the Latimers must have been enormous. Yet, as the Supreme Court pointed out, Mr. Latimer was not without legal alternatives. There were alternatives to taking his daughter's life and for his failure to consider those alternatives, Mr. Latimer will spend a minimum of 10 years in prison.

In upholding the minimum sentence, the court noted that since Tracy's death in 1993, Mr. Latimer had undergone two trials and two appeals to both the Saskatchewan Court of Appeal and the Supreme Court of Canada. Mr. Latimer's face is recognized across the country and the Latimers' story has been told over and over again. When Mr. Latimer goes to jail, Mrs. Latimer will not only have lost a daughter, she will also lose a husband. And Tracy's siblings will grow up without a father.

The Latimer decision raises a number of difficult questions, including whether the decision was just. As lawyers, we can ask whether the principle of general deterrence really was at issue, or whether Mr. Latimer's was an extreme and isolated situation that most parents would not contemplate. There are undoubtedly many parents of disabled children who would not do what Mr. Latimer did. In addition, we can ask whether the motives (as opposed to the intent) of the accused, or the quality of life of the victim, ought to influence a determination of criminal responsibility. Finally, we can ask whether mandatory minimum sentences are desirable and effective and whether incarceration is the answer to the problem of crime.

As Christians, we can ask whether it is more appropriate to avoid condemnation and advocate compassion toward Mr. Latimer or whether the principles of the sanctity of life and protection of the vulnerable should be upheld, regardless of their impact on the Latimer family. One commentator suggested, "[t]o pardon Mr.

Latimer while he maintains that his choice was the right one, the moral one, would weaken our collective grasp of the inviolability of life and the equal dignity of the disabled. It is easier to end the lives of the suffering than to address head-on the more complex problem of how to provide as much quality of life in the circumstances.”

While the Supreme Court of Canada did not answer all of these questions, the importance of asking them cannot be underestimated. Many have criticized the Supreme Court of Canada for the decision it made. When I think about the Latimers’ situation both before and after Tracy’s death, I cannot help but feel sorry for them. Yet, when I think of the alternative - that is, concluding that it is okay to end a child’s life in order to end suffering or showing leniency because Mr. Latimer had “good intentions” - I am glad the Supreme Court made the decision it did.

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