

Landmark Case

MANDATORY MINIMUM SENTENCE FOR MURDER *R. v. LATIMER*

Prepared for the Ontario Justice Education Network by a Law Student from Pro Bono Students Canada

R. v. Latimer (2001)

Facts

Tracy Latimer was quadriplegic and suffered from five to six epileptic seizures daily. She also had cerebral palsy that rendered her immobile. Twelve-year-old Tracy was assessed as having the mental capacity of a four-month-old baby and was completely dependent on others for her care. Tracy underwent repeated surgeries, however her life was not in its final stages. On November 19, 1993, Tracy was scheduled to undergo surgery to deal with her dislocated hip. After learning about the surgery, Tracy's father, Mr. Robert Latimer, decided to take his daughter's life to avoid the resulting pain. On October 24, 1993, approximately one month prior to the scheduled surgery, Mr. Latimer carried Tracy to his pickup truck where she died from intoxication by carbon monoxide. The police found carbon monoxide in Tracy's blood and Mr. Latimer confessed to having taken her life.

Judicial History

Trial Court (1994): Mr. Latimer convicted of second-degree murder and sentenced to imprisonment for life with no eligibility for parole for 10 years.

Court of Appeal for Saskatchewan (1995): Confirmed trial Court's decision.

Supreme Court of Canada (1997): Declared that a new trial was necessary for Mr. Latimer, because the prosecutor interfered with the jury selection process.

Second trial (1997): Mr. Latimer was again convicted of **second-degree murder** but was granted a constitutional exemption of the mandatory 10-year imprisonment sentence. He was ordered to serve a one year in prison term before being eligible for parole.

Court of Appeal for Saskatchewan (1998): Confirmed the conviction of second degree murder but reversed the constitutional exemption and concluded that Mr. Latimer must serve the mandatory 10-year minimum sentence before parole eligibility.

Supreme Court of Canada (2001)

The 2001 Supreme Court of Canada case dealt with the second trial, which was heard by the trial court in December 1997 and by the Court of Appeal for Saskatchewan in November 1998.

According to Mr. Latimer, the **appellant**, during the second trial, two things occurred that resulted in an unfair trial.

- **The trial judge concluded that the jury was not entitled to consider the defense of necessity.** This defense would have allowed Mr. Latimer to claim that he killed his daughter out of necessity. The trial judge refused to decide whether the defense of necessity could be considered by the jury until after **closing arguments**. At the end of the trial, the judge ruled that the jury could not consider necessity as a defense.
- **The trial judge interfered with the jury's ability to nullify by implying that the jury could offer input on sentencing.** Jury nullification is the very rare situation where a jury will ignore the law and acquit a person, based on the situation. Mr. Latimer argued that jury might have nullified but didn't because the judge gave the impression that the jury would have a say in sentencing.

After the jury returned with a guilty verdict, the judge asked the jury to recommend whether parole eligibility should exceed the minimum period of 10 years. Jury members asked if they could recommend less than the 10-year minimum. The trial judge explained that the *Criminal Code* only allows for a recommendation over the 10-year minimum. Mr. Latimer argued that if the jury had known of the mandatory 10 years imprisonment it may have considered nullification.

Criminal Code

235. (1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

(2) For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

745. Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be:

(c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefore pursuant to section 745.4...

Despite the mandatory minimum 10-year sentence, the jury recommended that Mr. Latimer serve only one year in prison before being eligible for parole. The trial judge granted a **constitutional exemption** from the mandatory minimum sentence, deciding that the mandatory sentence was cruel and unusual punishment in these circumstances.

Canadian Charter of Rights and Freedoms

- 1) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- 7) Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- 12) Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

The Court of Appeal for Saskatchewan reversed the trial judge's decision and concluded that Mr. Latimer must serve the mandatory 10-year sentence before parole eligibility.

Legal Issues

- 1) Should the jury have been entitled to consider the **defense of necessity**?
- 2) Did the timing of the trial judge's decision about the defense of necessity make the trial unfair?
- 3) Was the trial unfair because of lowered chance of **jury nullification**?
- 4) Is the imposition of the **mandatory minimum sentence** for second-degree murder cruel and unusual punishment in this case, contrary to s. 12 of the *Charter*?
- 5) If the answer to Question 4 is "yes", can that violation be justified under s. 1 as a reasonable limit?
- 6) If the answer to Question 5 is "no", should a constitutional exemption have been?

Analysis

The Supreme Court of Canada heard the case in 2001 and analyzed the six legal issues:

1) Should the jury have been entitled to consider the defense of necessity?

The Supreme Court outlined three elements that must exist before an accused could maintain that the crime was committed out of necessity. First, there must be imminent peril or danger. Second, the accused must have had no reasonable legal alternative. Third, there must be a balance between the harm inflicted and the harm avoided.

The Supreme Court also stated that a **subjective / objective test** applies. The **subjective** part of a test is met if the person believes he or she was in imminent peril with no reasonable legal alternative to committing the offence. The **objective** part of a test does not focus on what the accused believed – it considers whether the person was really in peril with no reasonable legal

alternative. A **modified objective test** falls somewhere between the two: it involves an objective evaluation, but also takes into account the situation and characteristics of the accused person. The modified objective test applies to the first two requirements of the necessity defense (imminent peril and no reasonable legal alternative). The third requirement (proportionality) is measured on an objective test.

The question before the court was whether the jury should have been allowed to consider the defense of necessity. If there was an **air of reality** to each requirement of the test, the trial judge should have let the jury consider the defense of necessity. The Supreme Court of Canada decided that, in this case, there was no air of reality to the three requirements:

a) Imminent peril: Mr. Latimer did not suggest that he faced any peril, but rather identified a peril to his daughter, stemming from her surgery. Acute suffering can constitute imminent peril, but in this case there was nothing noted in her medical condition that placed Tracy in a dangerous situation.

b) No reasonable legal alternative to breaking the law: The appellant had at least one reasonable legal alternative: continuing to struggle with the difficult situation, by helping Tracy to live. He rejected this alternative.

c) Proportionality between the harm avoided and the harm inflicted: The harm inflicted in this case, killing a person in order to relieve suffering that can be treated by medical care, is not a proportionate response to the harm of non-life-threatening suffering resulting from that condition.

The Supreme Court of Canada held that the trial judge was correct: the jury should not have been entitled to consider the defense of necessity.

2) Did the timing of the trial judge's decision about the defense of necessity make the trial unfair?

The appellant argued that refusing to decide if the defense of necessity could be considered until after closing arguments violated his right to a fair trial, as guaranteed by s. 7 of the *Charter*.

Canadian Charter of Rights and Freedoms

7) Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The Supreme Court declared that there is no constitutional right to have rulings on the availability of defenses take place prior to closing arguments. While it is customary and in most instances preferable for the trial judge to rule on the availability of a defense prior to closing arguments, failure to do so did not result in an unfair trial.

3) Was the trial unfair because of lowered chance of jury nullification?

Jury nullification is the unusual situation where a jury chooses not to apply the law in order to protect citizens against its arbitrary application or against government oppression. In these very rare cases, the jury acquits an accused, regardless of the strength of the evidence.

The Supreme Court of Canada explained that jury nullification is not a valid factor in analyzing trial fairness. The trial judge should guard against jury nullification. In fact, a judge is required to take steps to ensure that the jury will apply the law properly.

An accused is entitled to a fair trial, but is not entitled to a trial that increases the possibility of jury nullification. The Supreme Court concluded that the trial was not unfair because of the lesser chance of jury nullification.

4) Is the imposition of the mandatory minimum sentence for second-degree murder cruel and unusual punishment in this case, contrary to s. 12 of the *Charter*?

Canadian Charter of Rights and Freedoms

12) Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

For a court to decide that a punishment is cruel and unusual, it must consider “whether the punishment prescribed is so excessive as to outrage standards of decency.” The Court considered the gravity of the offence, the personal characteristics of the offender and the particular circumstances of the case to determine if the mandatory minimum sentence was grossly disproportionate in this case:

- The gravity of the offence:
 - Mr. Latimer's actions resulted in the most serious of consequences, a loss of life.
- The characteristics of the offender and the particular circumstances of the offence:
 - The mitigating circumstances (i.e. Mr. Latimer's good character and devotion as a parent) and aggravating circumstances (i.e. lack of remorse, degree of planning) are balanced against each other.

Finally, the court found that the mandatory minimum sentence is consistent with the goals of sentencing by **denouncing** murder as a completely unacceptable offence.

It was not necessary to answer Questions 5 and 6 because the mandatory minimum sentence was found to be constitutional.

Conclusion

The appeal was dismissed. Mr. Latimer's sentence of life imprisonment with no parole eligibility for 10 years was upheld.

Application for Day Parole

On December 5, 2007, Mr. Latimer became eligible to apply for day parole, having served 7 years of his life sentence. The National Parole Board denied him day parole after a hearing at William Head Penitentiary in Victoria, BC. Disability rights advocates, as well as Mr. Latimer's family and supporters observed the 80-minute parole hearing. Mr. Latimer maintained that he had done the right thing for his daughter, Tracy, when he took her life in 1993. The board refused to grant parole because Mr. Latimer did not show insight into and understanding of his actions. The Board emphasized his lack of remorse and regret as factors influencing its decision.

On February 27, 2008 the National Parole Board's Appeal Division overturned the December 5th ruling and ordered the immediate release of Mr. Latimer on day parole. In its ruling, the appeal division said the earlier decision was unreasonable and unsupported in law, and that Mr. Latimer had in fact demonstrated insight and understanding of his decision to take his daughter's life. Mr. Latimer was released under the conditions that he not have responsibility for, or make decisions for, any individuals who are severely disabled, and that he undergo psychological counselling. Mr. Latimer applied for release to a halfway house in Ottawa in order to advocate for his original conviction to be overturned.



Classroom Discussion Questions

1. What is the defense of necessity?
2. How did Mr. Latimer plan to argue the defense of necessity?
3. What is jury nullification and when does it occur?
4. What decision did the Supreme Court of Canada make in February 1997? What is the impact?
5. What sentence would you have recommended as a juror for Mr. Latimer? What would influence your decision?
6. Do you think that Mr. Latimer should have been granted a constitutional exemption of the mandatory 10-year sentence? Why or why not?
7. Do you think that giving Mr. Latimer a lesser sentence sends a message that euthanasia or mercy killing is acceptable?
8. Do you think that ignoring the mandatory minimum sentence would have jeopardized the rights of people with disabilities in Canadian society? What message would this send about the quality of life of people with disabilities?
9. Would you feel differently about the case if Tracy Latimer were able to express her wishes?
10. What other options did Mr. Latimer have besides taking Tracy's life? What would you have done in his situation?
11. What were the consequences of Mr. Latimer's actions for the rest of the family? The Community? Canadian society?
12. Do you think the Appeal Division of the National Parole Board made the right decision to allow Mr. Latimer day parole? Why or why not?



R. v. Latimer: Timeline of Events

October 24, 1993 -

November 19, 1993 -

September 1994 -

July 1995 -

February 1997 -

November 1998 -

January 2001 -

December 5, 2007 -

February 27, 2008 -



R. v. Latimer: Worksheet 1

Using your textbook, a dictionary or the *Criminal Code*, define the following terms. They are in **bold** typeface in the case summary.

Appellant

Air of Reality

**Constitutional
Exemption**

**Defense of
Necessity**

Jury Nullification

Closing Arguments

Subjective Test

Objective Test

**Modified Objective
Test**

**Mandatory
Minimum Sentence**

**Second-Degree
Murder**

Denounce



R. v. Latimer: Worksheet 2

A LOOK AT THE LAW

This case involved legislation from two different branches of the law.

- **Criminal** - The *Criminal Code* of Canada;
- **Constitutional** – The *Canadian Charter of Rights and Freedoms*

The Criminal Code of Canada

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The Canadian Charter of Rights and Freedoms

- 1) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- 7) Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- 12) Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Questions

- 1) Do you think that a 10-year mandatory minimum sentence is appropriate for second-degree murder?
- 2) Why do you think parliament has enacted a mandatory minimum sentence for murder?
- 3) Do you think that the Supreme Court of Canada was correct in giving Mr. Latimer the mandatory minimum sentence? Why or why not?
- 4) What do you think would be the appropriate sentence for Mr. Latimer? Why?
- 5) It has been argued that Mr. Latimer is a compassionate father who broke the law out of love and he shouldn't be treated the same as other criminals who commit second-degree murder. What do you think of this argument?
- 6) Why does cruel and unusual punishment violate the *Charter*?
- 7) What is the impact of a *Charter* violation?
- 8) Why do you think the Courts decided that the 10-year mandatory minimum sentence was not cruel and unusual punishment in this case?
- 9) Do you think that Courts should be imposing mandatory sentences at all? What factors should judges consider when sentencing?
- 10) What kind of political pressure do you think influences the setting of mandatory minimums?
- 11) Do you think that the Courts should always abide by the written law, or should judges have room to consider extenuating circumstances?
- 12) Do you think that offering leniency to Mr. Latimer would send a message to other convicted murderers that they, too, might be victims of "cruel and unusual punishment" and deserve reduced mandatory sentences?



R. v. Latimer: Worksheet 3

LOOKING AT BOTH SIDES OF THE ISSUE

Some people believe that Mr. Latimer committed an act of compassionate homicide by killing Tracy while others believe that giving leniency to Mr. Latimer would convey a lack of concern or protection for people with disabilities, or imply that they do not enjoy the same rights as other Canadians.

Research the arguments made in this case both for and against imposing the mandatory minimum sentence on Mr. Latimer. Use the chart below to record your answers under the appropriate heading. Prepare at least three arguments for each side.

Arguments in Favour of Mandatory Minimum Sentence for Murder	Arguments Against Mandatory Minimum Sentence for Murder

RECOMMENDED WEBSITES

The following websites are good sources for information related to this case.

Supreme Court of Canada

<http://www.scc-csc.gc.ca/>

This site provides information on the Supreme Court of Canada, the judges, court cases and judgements. For the full text of the judgement in appeal of this case go to

<http://scc.lexum.umontreal.ca/en/2001/2001scc1/2001scc1.html>

Guide to Ontario Courts

<http://www.ontariocourts.on.ca/>

This site provides information on the courts of Ontario, court cases, judgments, etc.

Department of Justice – Canada

<http://www.canada.justice.gc.ca/>

This site provides information related to Canada's justice system including the courts, legislation (including the full text of the *Charter of Rights and Freedoms*) and much more.

Canadian Legal Information Institute (CanLII)

<http://www.canlii.org/>

This site has links to courts, to journals, cases and legislation.

Canadian Civil Liberties Association

www.ccla.org

Council of Canadians with Disabilities

<http://www.ccdonline.ca/>

Canadian Association for Community Living

<http://www.cacl.ca/>



R. v. Latimer: Worksheet 4

PREPARING ARGUMENTS

Choose two arguments from Part B, one argument that supports the mandatory minimum sentence and one argument against it. Develop the argument in writing (1-2 pages).

Be sure to include the following:

- A brief summary of the facts
- A detailed description of the argument
- Supporting evidence and reasoning
- Analysis of the legal issues
- Implications for Canadian society
- An explanation of why you think the argument is valid



R. v. Latimer: Worksheet 5

DEBATING THE ISSUES

The issue of mandatory minimum sentencing is controversial. Hold a classroom debate on whether or not mandatory minimum sentencing should be eliminated. This can be done in small groups or by dividing the entire class in half. Refer to the exercises you completed for Worksheets 3 and 4 to help you prepare your arguments and anticipate those of the opposing side. Prepare questions and rebuttals accordingly.

Debate Proposition: Mandatory minimum sentences should be eliminated

Debate Structure: one team argues in support of the proposition and one team against it.

1. The supporting position presents their arguments (5-7 minutes)
 - Give a good introduction that gets the opposing team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Give a strong conclusion
2. The opposing position questions the supporting position (3-5 minutes)
 - Ask questions about the supporting team's position
 - Prepare questions to challenge them in advance
3. The opposing position presents their arguments (5-7 minutes)
 - Give a good introduction that gets the supporting team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Question the supporting position
 - Give a strong conclusion
4. The supporting position questions the opposing position (3-5 minutes)
 - Ask questions about the opposing team's position
 - Prepare questions to challenge them in advance
5. The supporting position presents their rebuttal (5 minutes)
 - Restate and strengthen your position
 - Identify how your argument is stronger than the opposing position
 - Summarize your case and give a strong conclusion
6. The opposing position presents their rebuttal (5 minutes)
 - Restate and strengthen your position
 - Identify how your argument is stronger than the supporting position
 - Summarize your case and give a strong conclusion