

Jane/Finch Fatalities, By Car Not Gun...

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2009

On Sunday October 18th I woke up as I usually do, turning to the news to see what I missed while I was dreaming of something I would undoubtedly not remember... I recall rolling my eyes when I heard of another death in the Jane/Finch area, an area I visited on occasion in a past career and hear of often while watching the news. Then the pictures flashed across the screen. A BMW. A Honda Odessey. A seat. Engine. Bodies (yes that is PLURAL!). All strewn across a street that normally attracts attention for shell casings, and knife blades. I have seen fatal car accidents, dead bodies, but none of that amounted to the carnage inflicted to that minivan.

Then as first heard from CP24, and confirmed in this CBC article, the BMW, which police allege rocketed into the Honda at approximately 200 km/h, was being operated by a man who was being investigated for "driving related offences." When I first saw the newscast, it was saying that 21 year-old Roman Luskin, was known to police for previous impaired driving offences (the CBC article makes mention of this also). Again????!!

I do not want to make this article about drinking and driving and its effects. We all know what the result is.

I want to discuss the legal ramifications of impaired driving causing death in Canada, and how those being convicted of such offences are getting away with murder.

This is the latest in a series of high profile cases that has outraged the public with relation to impaired driving cause death. The most recent, and an open wound here in Southwestern Ontario is the death of the "Pie Ladies." When these four ladies were killed by convicted impaired driver, Wladyslaw Bilski, only those seasoned in impaired driving cases would be able to predict that he would get off so easily with, a 4 year sentence. Justice Abbey's sentence, unfortunately, is in the realm of available sentences for this type of offence. The problem is, why?

Impaired Operation of a Motor Vehicle:

253. (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the

operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

255. (1) Every one who commits an offence under section 253 or 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,

(a) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely,

(i) for a first offence, to a fine of not less than \$1,000,

(ii) for a second offence, to imprisonment for not less than 30 days, and

(iii) for each subsequent offence, to imprisonment for not less than 120 days;

(b) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and

(c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than 18 months.

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Impaired Operation of a Motor Vehicle Cause Death:

255. (3) Everyone who commits an offence under paragraph 253(1)(a) and causes the death of another person as a result is guilty of an indictable offence and liable to imprisonment for life.

Life. Now how many people do you need to kill to get life? Is an older person's life less valuable than a young child's? If he had killed 4 infants or school-aged children, would Justice Abbey have seen that as a more aggravating factor in determining sentence?

When will Canadian courts stand up and take notice and actually digest the fact that criminal driving fatalities are the LEADING cause of criminal death in Canada, and punish the offenders accordingly.

I do, however, applaud the inclusion of s.752 of the Criminal Code which now excludes conditional sentencing as an option for "serious person injury offences." This December 2007 legislation should now certainly guarantee anybody convicted of impaired cause death of jail.

Prior to this legislation, it was the norm for a conditional sentence to be given to somebody convicted under s. 255. Good deal for them. Kill somebody, be held criminally culpable, yet serve your sentence from home. This is what happened in this case:

YORK REGIONAL POLICE – MEDIA RELEASE SENTENCING IN 2006 FATAL MOTOR VEHICLE COLLISION

A 55-year-old Vaughan man has received a conditional sentence in connection with a 2006 fatal motor vehicle collision that claimed the life of a 34-year-old woman in the City of Vaughan.

On Thursday, November 13, 2008, the Honourable Mr. Justice A. Stong sentenced David **CLARK** to house arrest for a period of two years less a day. He

will then be placed on two years probation that includes 240 hours of community service. He has also received a three-year driving prohibition.

In April, 2008, David **CLARK** pleaded guilty to Impaired Driving Causing Death and Impaired Driving Causing Bodily Harm.

On Tuesday, May 16, 2006, a silver Nissan Maxima operated by Mr. **CLARK** was southbound on Huntington Road south of Major MacKenzie Drive. A blue Honda Civic being operated by a 30-year-old man from Vaughan was northbound on Huntington Road when it was struck by the southbound motor vehicle. The passenger in the Honda Civic, a 34-year-old woman from Vaughan, was killed in this collision.

Impaired driving remains the number one criminal cause of death in Canada. When you drink and drive you not only risk your life and those of your passengers, but the lives of every other driver and pedestrian on the road.

The unfortunate part of this is that I was part of this incident. I saw the victim's lifeless body. I saw the paramedics try to save her. I smelled the booze coming from the suspect. I arrested Mr. Clark for impaired cause death. And I was bitterly disappointed to learn of his sentence.

I do understand how sentencing takes part, and I'm learning more and more about the mechanics behind it every day that I attend in law school.

I also understand the adversarial system in our courts and how it is absolutely necessary for a defendant to be able to be provided the best possible defence they can receive.

But what I do not understand is why the Canadian government, whether under Liberal or Conservative authority, has yet to pass stricter legislation that provides for adequate sentencing for Canada's most deadly form of criminal death. Guns kill, that's a given, but let us stop debating the gun registry, or handgun ban for a moment, and tally up the numbers. What I did learn from my first year criminal law class, is that "there is a strong correlation with deterrence and high conviction appears to show that deterrence will be effective in reducing crime."

Since impaired driving is such a technical offence with numerous requirements to satisfy the courts, perhaps this is not possible. I recall from my early days as a police officer that a charge was withdrawn because the breath technician said "the suspect had 80 millilitres of alcohol per 100 millilitres of blood." What he should have said was "the suspect had 80 **milligrams** of alcohol per 100 millilitres of blood." I think only the judge and I noticed the difference in the testimony, because as soon as the Crown went forward to the next line of questioning, they withdrew the charge because one of the two required tests under law had not met the specifications as outlined by law. I know I was shocked, and had I realized, I would have said something.

But it is this form of adversary that provides for justice to be done. Had this little mistake been overlooked, and the suspect been convicted, it has the potential to open the floodgates. But I digress into another area...

Consequently, it is not that I want harsher sentences because of any of a number of reasons. I just feel that in this specific offence there is a HUGE disconnect between the offence and sentence. One of the principles of criminal law sentencing is deterrence, and I do not believe that the current sentences for Canada's leading criminal cause of death is being satisfied.

Let us hope that should Mr. Luskin be found guilty of what he is accused of, that the disconnect mentioned has be repaired.