

## Ian Mulgrew: Ivan Henry's lawyer lambastes Crown's case

Vancouver police, prosecutors used unethical, pathetic; evidence against wrongfully convicted man

BY IAN MULGREW, VANCOUVER SUN AUGUST 31, 2015



Ivan Henry, wrongfully convicted in 1983 of sexual assault, leaves B.C. Supreme Court during a lunch break in Vancouver, B.C., on Monday, Aug. 31, 2015.

Photograph by: DARRYL DYCK, THE CANADIAN PRESS

The Vancouver Police Department and prosecutors used unethical, oppressive techniques and "pathetic" evidence to railroad Ivan Henry, his lawyers say.

In a hard-hitting opening of the lawsuit for compensation in B.C. Supreme Court, lead lawyer John Laxton pointed to a "farcical lineup," a fatally flawed photo array, the destruction of exculpatory DNA evidence, statements intentionally hidden and the non-disclosure of a mountain of material that would have helped clear the wrongfully convicted man.

He read from a Crown memo that suggests keeping victim statements and reports to police suppressed, calling the case "hot" because their identification of a perpetrator was "disastrous," yet police had put so much money into the investigation "there is an incredible amount of pressure to keep him in."

"The consequences to Mr. Henry and his family have been devastating and the honour and integrity of the judicial system has been seriously harmed," Laxton said.

The misconduct of the prosecution included having Henry's original appeal of his convictions dismissed for want of a trial transcript in what Laxton called "one of the most appalling acts of counsel I have seen in a long time."

It was a stinging three-hour rebuke of the police, prosecutors and judges who dealt with Henry.

"It has been suggested ... that Henry simply fell through the cracks of an imperfect system — in our submission, that is a very naive interpretation," Laxton said.

"He didn't fall through the cracks, he was pushed through the cracks by state actors who had come to accept that a public conviction was better than a public confession that they were mistaken."

The crowd of reporters, relatives and the curious — who filled the 32 seats in the gallery and formed a small knot in the doorway — hung on every word.

In March 1983, Henry was wrongfully convicted of 10 counts of sexual assault against eight women during 1981 and 1982.

At his trial, Henry had defended himself — which exacerbated his predicament.

"Henry was intellectually, emotionally, mentally, and psychologically incapable of representing himself and importantly (the police and prosecutors) knew all about that," Laxton said.

He quoted from a court-ordered psychiatrist who said Henry had a mental disorder, was paranoid, psychotic and incapable of properly representing himself.

Even trial judge John Bouk, cited Henry's "peculiar behaviour" and that he seemed "incapable of comprehending the nature of his actions."

The B.C. Court of Appeal ordered Henry acquitted of all charges in October 2010 on the grounds that no properly instructed jury should have convicted him.

But Laxton said Henry's release from custody after nearly 27 years had not released him from "the demons that haunted him in custody."

"This is the first time a victim of such an egregious wrong has found it necessary to bring his claim for compensation to court," Laxton complained.

"(This case) will be a precedent that should never have been necessary."

The province, which was responsible for Henry's prosecution, insists the late Crown prosecutor Michael Luchenko didn't withhold material intentionally and says he isn't here to explain his conduct.

And Laxton told court the city, which is liable for police misconduct, insists Henry's acquittal isn't the same as a declaration of innocence and that he is actually guilty.

Chief Justice Christopher Hinkson seemed taken aback: "Is it open to them to make that submission?"

"In my opinion, the city will not be able to advance any evidence of the guilt of Mr. Henry now 33 years later," Laxton told him. "No such evidence exists."

"I'm concerned he's been acquitted, surely that's the end of that?" the Chief Justice asked.

"In my submission, it should be," Laxton replied, "and I'm really, really surprised to see this defence is still there."

"Well, I will hear from the city," Justice Hinkson said.

"It's astonishing," Laxton added.

The grim-faced jurist disagreed: "I'm not astonished, Mr. Laxton."

Federal justice ministers, who over the years rejected Henry's pleas for a review of his convictions, should also be held to account, the lawyer said.

Although Laxton made a compelling argument, the defence will begin calling evidence Tuesday to support its claims and the proceedings are expected to last for several months.

An amiable Henry, now 69, sat in the public gallery with his daughter and grandchildren. During breaks, he shook hands with well-wishers and chatted with reporters.

He noted the eight gowned barristers representing the three levels of government arrayed against him, and quipped: "They need all those lawyers."

The trial continues.

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