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Something good may have come from Pickton case - justice for Ivan Henry

Ian Mulgrew, Vancouver Sun: Wednesday, January 14, 2009



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An undated handout photo of Ivan Henry.

Photo Credit: Handout, Handout

The horrendous injustice suffered by Ivan Henry might never have come to light if not for the investigation into the heinous crimes of serial killer Robert Pickton.

The B.C. Court of Appeal buried Henry more than a decade ago — and Tuesday's extraordinary historic reversal by the province's high bench would not have occurred without a Vancouver Police Department review of old sex cases spurred by the Pig Farm murders.

A subsequent investigation, dubbed

Project Small Man, led directly to the 2006 appointment of special prosecutor Len Doust over fears a miscarriage of justice might have occurred.

His report last year on Henry's case was the catalyst for this week's unprecedented order it be reopened.

Now 62, Henry has served 26 years in prison for a series of sex crimes he always insisted he did not commit.

Doust concluded he had good reason to feel aggrieved.

In the unanimous decision of the appeal court, sloppy police work, prosecutorial lapses, mistakes by the trial judge and mental illness were all cited as reasons for suspecting a terrible mistake has occurred.

Henry's trial was manifestly unfair and the Court of Appeal never considered the merits of his complaints on two previous occasions.

The high bench rejected with finality Henry's self-presented submissions in 1997 and refused even to support his application for legal aid so a lawyer could focus his pleadings.

That the court has a chance to make amends is solely and sadly the result of happenstance.

Under Project Small Man, police reviewed sex crimes that occurred in the city during the 1970s and 1980s and investigators identified a pattern of offences that suggested a single perpetrator.

They arrested and charged a man who was convicted in 2005 and ordered imprisoned for five years for attacks on three women, though he was suspected of assaulting many, many more: Fifty-one women!

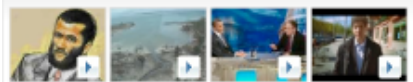
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That was scarcely three years ago, yet this man has been freed and police have no idea where he is.

His name is currently being protected by the court at the request of the Crown while they try to find him.

After this man's conviction, the province appointed Doust to examine Henry's case because many of the attacks he was accused of committing, matched this other man's M.O. Not only that, the other man looks like Henry and lived in the same neighbourhood.

The only evidence against Henry was notoriously unreliable eyewitness testimony from terrified women attacked in darkness by someone who hid part of his face.

There was no physical evidence presented although police had semen from the culprit on a pillowcase.

Regardless, police have since destroyed or returned the physical evidence in Henry's case, so there is nothing today that can be tested for DNA.

I find the entire performance by police and prosecutors in this case to have been reprehensible, especially when you consider Henry was suffering from mental illness.

Although he was deemed fit to stand trial, the Crown learned in August 1983 during the sentencing process, that he was displaying signs of psychosis and suffering from delusions. He was probably not fit to stand trial but not only was put on trial, he was allowed to conduct his own defence — a performance the judge and everyone else found perverse and eccentric.

In spite of all this, the Court of Appeal in 1984 wouldn't stoop to consider whether the proceedings were fair. It dismissed Henry's appeal because he couldn't afford to pay for transcripts and other documents.

Some 14 years later when it gave him another hearing, the court again stood on procedure.

Those who made that decision — Chief justice Lance Finch and colleagues Ian Donald and John Hall — remain on the bench.

Their ruling would have kept Henry buried in the prison system if Doust had not raised the alarm.

Henry won a great victory Tuesday, but it is only the start.

He still must persuade the Court of Appeal to overturn his conviction; he needs to get out of jail; and he needs to reunite with the family stolen from him.

His middle-aged daughters exploded in tears when Justice Mary Saunders declared their dad was getting a new hearing.

"It's been a hard road," 33-year-old Kari said. "It's difficult to have lived the way I've lived for the past 26 years. But I think there's hope for us."

"It's been a long time coming," added Tanya, 35. "We've waited a long time. And we just want to be a family again. ... We were nine and seven. ... So, when you are nine and seven you can't make judgments for yourself, you get, or you think what the law is telling you is true. Over the years we have come to understand and realize things were wrong."

The family was rent by the convictions.

"It's been a huge family secret," Tanya said. "We were kicked out of neighbourhoods, moved around many times to try and hide who we were. My father has been without love. He's been denied affection and family."

It was the death of their mother when they were 17 and 15 that prodded the daughters to get to know their father.

"He just feels strongly this is the life God gave him and there was a reason for it," Tanya said.

"Twenty-six years is a long time. Those were the best years of his life, those were the best years of our life. It can't be brought back, but we can hope with today's verdict we can start the healing process with our family."

As for compensation?

"That's an issue for a later time," Henry's lead lawyer, Cameron Ward, replied. "He's concerned about getting vindicated, being cleared of these convictions and getting out of jail."

A full hearing on the province's most egregious wrongful conviction will probably occur later this



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Henry will remain in Mountain Institution in Agassiz while his lawyers consider applying for bail.

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