

Should the Media Impact Sentencing Decisions?

The judicial principles of sentencing have been set to ensure fair and just repercussions of convictions. According to section 718 of the *Criminal Code* the purpose of these principles are “to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society”¹. Denunciation, deterrence, rehabilitation, protection of the public, reparation, and responsibility are all principles that a judge will take into consideration when issuing a sentence.

Historically it was only a judge who would issue sentences, and while newspapers would report on the going-ons of the court system, print media can be forgotten. Fast forward hundreds of years, and the media is more advanced and ingrained in society. With the development of the internet, people have more access to more information than ever before. With this information comes a difficult question for the judicial system to address: Is the media effectively filling part of the roles of denunciation and deterrence outside of judge-imposed sentences?

Judges roles are becoming more complex and considerations should possibly be given to the media as it becomes more prevalent in the daily lives of Canadians. The media is able to publish thousands of articles about people who are being charged even before they are convicted of crimes. For some, this will have little impact on their lives. For others, this could be more devastating than a criminal record. The “Googleability” of people is becoming more important and is now used for renting new homes, getting jobs, and meeting new people.

A simple example of this is seen every time Manitoba or Ontario publish the list of holiday driving impaired offences². These lists contain the names, ages, and home city of all drivers that were pulled over during the holiday season – regardless of guilt or if a conviction ever took place. Not only is this now eradicating the presumption of innocence until proven guilty in the media’s eyes, but it also will affect those on the list as their name is now linked to an article claiming they were driving impaired.

From a logical standpoint, this makes getting a drive impaired charge in the winter months far worse than the summer. A drive impaired offence in the summer will result in a possible conviction, minimum fine, and minimum driving prohibition (or higher). A charge in the winter months will include the same, plus your name being published, very publicly, online, forevermore. Suddenly the repercussions for the same crime, in a different month, is drastically worse. The published list of holiday offenders seems to act as a clear public denunciation of the crime, but also as a deterrence for others to not do the same. Googling any name from the 2017/2018 published list results the drive impaired list being one of the first Google hit. Some websites even refer to the people on this list as “the disgraces”³. This will affect many of the people on the list moving forward. A drive impaired offence is one that often times neighbours, co-works, and friends, may never find out about. The publication of these lists removes the

¹ *Criminal Code*, RSC 1985, c C-46, s 718.

² Manitoba, Manitoba Justice, *Impaired Driving; Drinking and Driving DON'T CROSS THE LINE* (informative website) <<https://www.gov.mb.ca/justice/commsafe/impaired.html>>.

³ Peyton Sloane, “The Disgraces: WPS Holiday Checkstop List” (2017), online: *Reddit* <https://www.reddit.com/r/Winnipeg/comments/5n05p3/the_disgraces_wps_holiday_checkstop_list/>.

possibility of anonymity or “flying under the radar” and lambasts these people in a public online forum. Even worse, these articles have no follow up on actual convictions nor do they give any context. It is simply a name on a list.

Recently, Manitoba Liquor and Lotteries has begun posting a similar list, this time of persons caught allegedly shoplifting. This list too, provides no context, background, or follow up on conviction (or lack of conviction), but is once again, simply a list of those ‘caught shoplifting’⁴. The director of the Centre for Professional and Applied Ethics and the University of Manitoba stated that MLL and the media is “basically convicting [the accused] the court of the public, and [is] potentially subjecting them to all kinds of consequences before they’ve even been tried”⁵. This raises an interesting argument that the articles will remain available online, even if a conviction is not found or if a diversion program is accepted. This will effectively colour societies view of a person who is on the list without any factual information of whether the person was guilty or not.

Without even considering cases that gain heavy media attention, such as David and Collet Stephen, it is evident that the media is unintentionally affecting sentencing provisions. Judges should have at their discretion the option to analyze these publications and determine if the sentencing principles denunciation and deterrence has partly been fulfilled by the media. This is not to say that the media could fully encompass these principles, judges will still have to ensure they are met, but perhaps they could lead to a lessened sentence since some principles were partly fulfilled. It would be left to judicial discretion and would be important that each judge look at the case at bar and not have wide sweeping precedents, as each case would have to be uniquely analyzed.

⁴ Manitoba, Manitoba Liquor and Lotteries, *Our Priority is Safety* (informative website) <<https://www.mll.ca/stoptheft>>.

⁵ Austin Grabish, “Manitoba Liquor & Lotteries Under Fire for Posting Names of People Charged with Store Crimes”, *CBC News* (26 March 2019) <https://www.cbc.ca/news/canada/manitoba/liquor-mart-crimes-names-online-1.5072257?fbclid=IwAR2JyuvUvivoQYdm-OG-1_pa72f5Eo1VSgltQDgG25v5luKQsMTCvDNDURw>.