

Wrongful Conviction Lawyer Cleared After Criticizing Judges

By JD Staff

Jerome Kennedy is a prominent Canadian lawyer and director of the Toronto based Association in Defence of the Wrongly Convicted (AIDWYC). Kennedy was a key person in the exoneration of Gregory Parsons and Ronald Dalton. Parsons' 1994 conviction of murdering his mother was quashed in 1998 when DNA evidence proved his innocence. Dalton's conviction of murdering his wife was quashed in 1998 when forensic medical evidence established that she had not been strangled, but had died from choking on a piece of food. He was acquitted after a retrial in 2000.

In July 2003, Kennedy made a speech in which he explained judges who "don't know what they are doing" are an overlooked cause of wrongful convictions. Kennedy also explained that many judges have "intentional or unintentional biases" toward a defendant that aids the prosecution. He also explained that using judgeships as a form of political patronage contributed to the problem. In addition, Kennedy expressed frustration that a public inquiry into three wrongful murder convictions in Newfoundland was not look-

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in an elaborate "sex ring." Based on the information that has surfaced, and is continuing to surface in the civil suits that are still ongoing, all of the Wenatchee defendants were wrongly convicted.

The forty-four adults arrested in the "sex-ring" cases were cumulatively jailed and imprisoned for more than 60 years.

Endnotes and sources:

- 1 *Roberson v. Perez*, No. 75486-1 (Wash. 12-01-2005); 2005.WA.0001815 ¶ 29 <<http://www.versuslaw.com>>. See also, *Rodriguez v. Perez*, 99 Wn. App. 439, 451-452, 994 P.2d 874 (2000)
- 2 *Roberson v. Perez*, No. 75486-1, ¶ 36 <<http://www.versuslaw.com>>.
- 3 *Roberson v. Perez*, 119 Wn. App. 928, 934, 83 P.3d 1026 (2004).
- 4 *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 591; 70 P.3d 954 (2003)
- 5 *Roberson v. Perez*, No. 75486-1, ¶ 63 <<http://www.versuslaw.com>>.
- 6 *Id.* at ¶ 67.
- 7 *Id.* at ¶ 86. J. Sanders dissenting.

Additional source: \$20 Million Wenatchee "Sex-Ring" Suit Back On Track, *Justice:Denied*, Issue 29, Summer 2005, p. 12.



ing into the role of the judges involved as a contributory cause of the injustices.

Kennedy's activism on behalf of the wrongly convicted had for years been an embarrassment to the Canadian legal system. His speech raising questions about the integrity of Canada's judiciary provided an opportunity for those who didn't appreciate his idealism to put him on the carpet.

Newfoundland Supreme Court Chief Justice Derek Green promptly filed a complaint with the Law Society of Newfoundland and Labrador (U.S. equivalent of the bar association), alleging that Kennedy's comments could undermine the public's confidence in the impartiality of judges. The Law Society responded to the complaint by charging Kennedy with bringing the administration of justice into disrepute.

An adjudication panel began a public hearing in January 2005. It was, however, suspended when one of its ruling was appealed to the Courts.

Eleven months later Kennedy and Chief Justice Greene resolved the dispute by agreeing to a compromise. Kennedy wrote a letter to the Chief Justice in which he said he had "respect for the court" although it is "subject to fallibility in specific cases." Chief Justice Greene then wrote to the Law Society that he was satisfied, "Mr. Kennedy recognizes the importance of the court as an institution and has not intended to attack it as such." The Law Society formally dismissed the complaint on December 9, 2005.

After the complaint was dropped, James Lockyer, a prominent Toronto lawyer who has aided many innocent people, said it is an "obvious fact" that a judge can cause a wrongful conviction. Lockyer added, "Every player in the system, from witness to defence to Crown to police to judge, can all separately and independently be a cause of a wrongful conviction."

One consequence of the complaint against Kennedy is that it opened up a national debate about the use of judgeships as a form of political patronage. Hearings held in late 2005 by a House of Commons justice subcommittee heard testimony that condemned the political nature of selecting judges in much stronger terms than Kennedy had used in 2003.

Sources:

Newfoundland Lawyer Cleared of Charge, Richard Blackwell, *The Globe and Mail*, December 13, 2005. Wrongful Conviction Lawyer In Hot Water For Criticizing Judges "who don't know what they are doing," *Justice:Denied*, Issue 27, Winter 2005, p. 23.



Canadian Supreme Court Tosses "Bawdy House" Convictions

By JD Staff

On December 21, 2005, the Supreme Court of Canada quashed the convictions of two men convicted in separate cases of keeping a "bawdy house." By a 7-2 vote, the Court ruled in *R. v. Kouri* and *R. v. Labaye* (12/21/2005) that the test for an indecent act is it must be shown to "interfere with the proper functioning of society." and not simply that it might be contrary to community standards.

The defendants in the cases were James Kouri and Jean-Paul Labaye. The two men owned different swinger clubs in Montreal that allowed private sex acts, including swapping.

Kouri owned Coeur a Corps, and he had been fined \$7,500 (Canadian) after being convicted of two counts of keeping a common bawdy house. Labaye owned L'Orage, a members-only club, and he was fined \$2,500 (Canadian) after being convicted of one count of keeping a bawdy house.

The Court distinguished public sex acts that could be construed to be indecent because of their tendency to "interfere with the proper functioning of society," and the private acts allowed in the two private clubs that didn't harm the public.

In its ruling, the Court majority rejected the argument of the two dissenters that the standard of indecency for public acts should also apply to acts performed in private.

Separate Court of Appeal panels had sustained Labaye's conviction, and overturned Kouri's convictions. So the Supreme Court's ruling quashed both men's conviction by affirming the appeals court's *Kouri* decision, and reversing the *Labaye* decision.

Sources:

R. v. Kouri and *R. v. Labaye*, December 21, 2005, Supreme Court of Canada. Swingers clubs don't harm society, top court rules, *CBC News*, December 21, 2005.



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