

Should cop killers serve extra time?

BY JOE FANTAUZZI
jfantauzzi@yrmg.com

An idea to change the way police deaths are prosecuted has garnered mixed reaction from legal experts.

And, while one professor believes a federal majority government could easily change the Criminal Code to boost penalties in the criminal death of an officer, even if a lesser charge were laid, others believe there would be no marked increase in deterrence.

The Criminal Code allows for a charge of first-degree murder when the victim is a police officer on duty — regardless of whether that killing is premeditated or not.

LESSER CHARGE

In April, a Newmarket jury found Scarborough resident Nadeem Jiwa, 23, guilty of manslaughter for killing York Regional Police Det.-Const. Robert Plunkett in 2007.

Mr. Jiwa was originally charged with manslaughter in the days after the officer's death but the charge was later upgraded to first-degree murder, ostensibly because the police believed there was the evidence to support the charge and Crown believed there was a reasonable prospect of conviction.

The decision to convict on the lesser charge disappointed some in law enforcement and clearly upset the officer's family.

The issue also has potential future ramifications because a first-degree murder charge has been laid against a youth in the June 28 death of Const. Garrett Styles.

That charge has not been

proven.

In sentencing Mr. Jiwa, Justice Michelle Fuerst ruled the jury rejected the Scarborough man's claim he panicked and then accelerated his vehicle when surrounded by police, fatally crushing the officer against a tree with the car.

Mr. Jiwa was sentenced to 12 years in prison last week, which means after being given credit on a two-for-one basis for time in pre-sentence custody, he will serve another four years and two months.

James Morton, a York University law professor and past Ontario Bar Association president, doesn't believe the law should read that any on-duty death of a police officer is tantamount to murder.

The Crown's burden in these types of cases is to not only prove murder, be it first or second degree, but also prove the accused was aware the victim was a police officer, Mr. Morton said.

He supports laying the applicable charge based on the offence, as is the case with any other victim, but changing the Criminal Code to ensure the punishment acknowledges the victim is a cop.

That legal tactic is often used in hate crimes cases, such as the sentencing last year of Georgina resident Trevor Middleton, convicted of ramming a car full of Asian-Canadian anglers and their friends into a tree. In his submissions, Crown prosecutor Amit Ghosh argued Mr. Middleton's driving behaviour was, in part, fuelled by bias, prejudice or hatred based on race, a statement the judge agreed with in

handing down a two-year sentence.

But, another legal expert, Hamish Stewart, a University of Toronto associate law professor, believes judges already use the fact a murder victim was a police officer as an aggravating factor when designing a sentence.

The deterrent effect of the first-degree murder charge and subsequent penalty, relies on the idea that the murder of a police officer leads to a very long sentence, he added.

"If it cannot be proven that the offender knew the victim was a police officer, then it is not clear what additional deterrent effect an additional sentence would have," he said.

STATUS QUO OK: CHIEFS

The Ontario Association of Police Chiefs believes police are well-served by the laws and tools currently available, said president Matt Torigian, who is also chief of Waterloo Regional Police.

Meanwhile, the special provision for killing police officers serves two functions, according to Ryerson University assistant professor Anne-Marie Singh: symbolic recognition of the sacrifice of an officer murdered while protecting society and as a deterrent to keep others from doing the same.

However, Ms Singh does not believe those who accidentally cause the death of police officers will be deterred by a change in prosecution.

And, as for people who intentionally target officers, those people often don't do a lot of thinking beforehand about the legal ramifications of their behaviour, she added.



SUN-TRIBUNE FILE PHOTO

In the wake of this week's funeral for Const. Garrett Styles, an idea to change the way police deaths are prosecuted has garnered mixed reaction.



Beat the heat!
Enjoy a cool treat!

Tim Hortons COLD STONE CREAMERY

First 100 guests
will receive a FREE
Like It™ Signature Creation™
4-6 p.m. Monday, July 11th
Markham location only
8310 McCowan Rd. (at Hwy 7)
905-947-9859