

## **SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS**

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## SUPPLEMENTARY SUBMISSION ON SENTENCING

As an alternative to sentencing by a judge alone, or by Parliament via mandatory minimums, I propose that juries play a role, by determining whether, based on the trial evidence they have heard, a standard minimum sentence should be the starting point for sentencing by the trial judge.

In the case of the aggravated sexual assault of a victim under 16, here is how it would work:

1. For this offence, under section 61J(2) of the Crimes Act, there is a maximum penalty of 20 years' jail and a standard non parole period of 10 years.
2. If the members of a jury found the accused guilty of this crime, the judge would ask them whether, based solely on the evidence they had heard during the trial, the standard minimum should be the starting point for the trial judge.
3. If the jury answered 'yes', then the judge would consider all the things he/she usually considers when sentencing, including the prisoner's assistance to the police, prior good/bad character, criminal record etc. After weighing these matters, the judge would determine a sentence of not less than 10 years, up to the possible maximum of 20 years' jail.
4. If the jury answered 'no', then the trial judge would be able to consider these matters in the context of the full sentencing range i.e. from no jail at all to a maximum of 20 years.
5. Apart from answering this question 'yes' or 'no', the jury would have no further role in sentencing and would be discharged.
6. If the jury found the accused guilty but could not answer 'yes' or 'no' on sentencing, then the sentence would be left entirely to the judge.

This proposal has a number of benefits as follows:

- The wider public, via their delegates the jurors, would have some say in sentencing which as the then chief justice Jim Spigelman said in 2007, would be no bad thing.
- The jurors would not be delayed beyond the end of the trial by a separate sentencing phase and would give a yes/no answer to a question no more complex than the question of guilt which they would by then have determined.
- With juries basing their sentencing answer on the evidence they had heard, the inflexibility of mandatory minimums set by Parliament would be avoided.
- The role of the judge in sentencing would also be preserved.
- Parliament could be involved too, by legislating for a list of offences to which this system would apply and then setting an appropriate standard minimum for each of them.



Andrew Tink AM

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