



A Famous Case Revisited

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Whatever Happened To ... Feeney?

People are famous for different reasons. Some buy fame and immortality by forking over millions of dollars for naming rights to professional schools and arenas. If something bears your name in criminal law, however, it comes free. Some singular legal significance of your case carries long-term notoriety. By way of example, murderer Michael Feeney has a warrant named after him.

Early on the morning of Saturday, June 8, 1991, the body of 85-year-old Frank Boyle was found in his ransacked home in remote Likely, British Columbia, population 250. He was brutally bludgeoned to death by five blows to the head with a crowbar, each strike having enough force to kill him.

The RCMP needed more than two hours to drive to Likely from the nearest detachment in Williams Lake. Several terrified residents, including a relative, identified Feeney who they had seen earlier that morning abandoning Boyle's truck which he had crashed near Boyle's residence. A police officer went to Feeney's dwelling, a windowless equipment trailer. When there was no response to his knocks on the door, he identified himself as police. Finally, he tried the door, found it unlocked and entered without permission. He went to Feeney's bed, shook his leg and said, "I want to talk to you." He asked Feeney to get out of bed and, in better light, he noticed blood spattered all over Feeney's T-shirt and shoes — blood that was later matched to Boyle.

The police officer read Feeney his rights to consult any lawyer without delay and to remain silent. When asked whether he understood his rights, Feeney snapped, "Of course, do you think I am illiterate?" He was arrested. He voluntarily answered a few police questions, and gave statements and fingerprints. Another day passed before a lawyer would help him. He admitted to strik-

ing Boyle, and stealing Sportsman cigarettes, beer, and cash from Boyle's residence. His T-shirt and shoes were seized as evidence. A search warrant was granted to obtain other items from his trailer.

Feeney was convicted of second degree murder by a jury trial in the Supreme Court of British Columbia in 1992. The British Columbia Court of Appeal unanimously dismissed his appeal.

He appealed to the Supreme Court of Canada on the constitutional grounds that the police had violated sections 8 (unreasonable search and seizure) and 10(b) (right to a lawyer) of the *Charter of Rights and Freedoms*. Feeney asked that the evidence gathered as a result of these violations be excluded under s. 24(2) of the *Charter*. He might get away with the murder. The Supreme Court of Canada, in a five to four decision, agreed with Feeney. His murder conviction was reversed.

Police need a warrant to enter a dwelling to arrest someone. *Charter* privacy rights (section 8) call for police to obtain prior judicial authorization to enter, unless in exceptional circumstances such as hot pursuit, destruction of evidence, or endangerment of life, none of which were present here. The minimum four hour return drive to the nearest detachment and judge to obtain a warrant and the terror which gripped this hamlet did not sway the five judge majority.

An accused must also be informed of the 10(b) right to counsel at the start of detention or arrest which is when the police assume control over one's movement by a demand or direction. In this case, detention began when the officer touched Feeney's leg and ordered him to get out of bed. He was not cautioned at that time and was not given adequate opportunity to obtain a lawyer; accordingly, his 10(b) right was violated.

Since police collected the cash, cigarettes, T-shirt, shoes, admissions, and fingerprints from these "very serious" and "bad faith" sections 8 and 10(b) violations of the *Charter*, all this evidence was tossed out by the top Court and a new trial was permitted.

A few weeks later, a man shot and killed three young men at a campground at Kitimat, B.C.. The RCMP, bound by the *Feeney* decision, could not enter the murderer's dwelling. While they went to obtain a warrant to enter from a judge, he escaped under the cover of darkness. He still has not been located and brought to justice.

Canadians were furious at how a mere five unelected and unaccountable judges could overrule eight other judges and quash the *Feeney* conviction. If the police had done something wrong, couldn't they be punished? Should obvious factually guilty murderers be released? Will police have any powers left to investigate serious crimes? The *Charter of Rights* was now considered a murderer's best friend, and respect for it plummeted.

The Canadian government amended the *Criminal Code* to create the "Feeney warrant." Soon police across Canada could call Justices of the Peace in larger centres from the scene on any day, around the clock. With valid reasons for entering the dwelling, the warrant, digitally recorded by the JP, can be immediately authorized and later faxed to the police car or detachment.

Whatever happened to Michael Feeney? All the evidence used to convict him was obtained in violation of his *Charter* rights. Once the Supreme Court of Canada excluded all that evidence, there was nothing left upon which to convict Feeney, so his conviction was overturned. The Court granted prosecutors an opportunity to obtain new evidence and re-try Feeney.

When the second trial took place in 1999, this time in Vancouver, DNA forensics were well-known and reliable techniques. New DNA evidence confirmed that Feeney had murdered Frank Boyle eight years earlier. Saliva on a cigarette collected from Boyle's yard matched Feeney's DNA. His fingerprints were on a beer can in Boyle's vehicle and on the refrigerator in Boyle's house. They were compared to Feeney's fingerprints held by the Calgary Police Service, as

continued on page 32

and a restored sense of identity to the community.

The B.C. Council's view of why language is worth preserving is worth repeating:

The loss of a language means the loss of thousands of years worth of cultural nuances, rituals and practices. It is through language that a culture is transmitted. Each language holds unique ideas, philosophy, points of view, and intricate details of a culture including everything about a way of life such as family and community relations, systems of politics and power, food and health, art, songs and dance, spirituality and values, history,

biology, biodiversity, natural and physical sciences, and interconnectedness with the environment. Every culture has adapted to unique environmental, social and political circumstances, and the language holds an accumulation of the experiences and circumstances of the people.

For those of us who see intrinsic value in language, the preservation or revival of Canada's Aboriginal languages is good news. But the revival must be real; the long-term survival of Aboriginal languages requires their use in the home and in everyday discourse. For a language to be more than a curiosity or museum piece, a critical mass of users is

needed. For all the good efforts of agencies, preservation is finally up to the home and the community. Yet it is to be hoped that the restorative value to a community of reviving its language does not isolate it. It must be balanced with engagement with the larger community. As the late Chief Justice Lamer wrote, seeking reconciliation within diversity, "We are all here to stay."

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A famous case revisited, continued from page 30

Feeney had been fingerprinted there a year earlier in connection with another serious crime. Blood on the crowbar was traced to Boyle. The jury in the second trial in 1999 found Feeney guilty of second degree murder beyond a reasonable doubt. A vigorous appeal to the British Columbia Court of Appeal on seven different legal grounds was dismissed a decade after the crime.

The *Feeney* case forever changed police searches and seizures for suspected criminals and evidence. They must now obtain a warrant before entering a home. Even murderers can be freed if their *Charter* rights are not observed. In law, the means are as important as the ends. With Feeney, perhaps law enforcement got lucky.

With the dubious fame of a warrant

bearing his name, Feeney will be released from prison shortly.

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