

R. v. Bissonnette, 2022 SCC 23 – parole ineligibility periods

Facts:

On January 29, 2017, Alexandre Bissonnette entered the Great Mosque of Québec during evening prayers. He was armed with a semi-automatic rifle and pistol, and he opened fire on the 46 worshippers. He killed six people and seriously injured five more. Bissonnette pleaded guilty to the 12 charges against him, including six counts of first degree murder. Under section 745(a), the penalty for first degree murder is an automatic life sentence. The offender cannot apply for parole (an early leave from prison, under close supervision) for 25 years.

The Crown asked the judge to apply section 745.51 of the *Criminal Code*. That section says that if a person is convicted of multiple murders, the judge may order the parole ineligibility period for each murder to be served consecutively (one after the other). This would mean that Bissonnette would not be eligible for parole for 150 years (6 murders times 25 years).

The trial judge held that applying section 745.51 would be cruel and unusual punishment. This goes against sections 12 and 7 of the *Canadian Charter of Rights and Freedoms*. It could not be saved under section 1 of the *Charter*. However, the judge also said that section 745.51 could be read to mean that courts had discretion to choose the length of any parole ineligibility period beyond 25 years. He set a total parole ineligibility period of 40 years.

The Québec Court of Appeal agreed that section 745.51 goes against sections 7 and 12 of the *Charter*. They also agreed it could not be saved under section 1. But, they found that setting a 40 year parole ineligibility period had no basis in law. In the Court of Appeal's view, imposing consecutive 25-year ineligibility periods would almost always lead to a situation that was either disproportionate or absurd. Parliament's choice to set the first degree murder parole ineligibility period at 25 years was closely connected to its legislative objectives. If courts read in new interpretations, they would be intruding on Parliament's authority. The Court of Appeal decided section 745.51 was unconstitutional, effective immediately. They said Bissonnette's six 25-year ineligibility periods would be served concurrently (at the same time)

The Crown appealed to the Supreme Court of Canada.

The Decision:

The Supreme Court found that section 745.51 went against section 12 of the *Charter* and could not be saved. They did not look at whether section 745.51 violated section 7. They declared section 745.51 of no force and effect, retroactively to the time it was enacted.

When Parliament removed the death penalty in 1976, it made life

Discussion Questions:

- 1) Do you agree with the Court's decision in this case? Why or why not?
- 2) Can you think of any ways section 745.51 might have been saved?

Relevant Law:

The Criminal Code of Canada, sections 745(a) and 745.51

The Canadian Charter of Rights and Freedoms, section 12.

Resources:

You can read the entire case at:

<https://canlii.ca/t/jpf5d>

You can find the *Criminal Code* here:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

You can find the *Charter* here:

<https://laws-lois.justice.gc.ca/eng/const/page-12.html>

imprisonment the punishment for all murder convictions. It also set out a mandatory period of time where the offender would not be eligible for parole. First degree murder had a 25-year period. Second-degree murder had a period ranging from 10 years to 25 years. This was a political compromise made to satisfy people who believed the death penalty should not have been removed. The 25-year ineligibility period was significantly higher than the average time people who committed first degree murder actually spent in prison, looking at the period of 1961-1976.

Parliament also included a provision that allowed judges to review parole ineligibility periods once 15 years had passed. This was just in case some offenders could be considered rehabilitated in that time. This was also to encourage good behaviour in prison and the rehabilitation of offenders. In 2011, Parliament removed this provision and introduced section 754.51.

Section 12 of the *Charter* guarantees the right to be free from cruel or unusual punishment. A parole ineligibility period falls under the protection of section 12, because the length of the ineligibility period is meant to be part of an offender's punishment. A punishment may violate section 12 if:

- 1) The punishment is not compatible with human dignity, or
- 2) The punishment is "grossly disproportionate" in the particular circumstances.

The court felt that section 745.51 violated section 12 because it was not compatible with human dignity. The Supreme Court agreed with the Court of Appeal, that if a court used section 745.51 on multiple first degree murder convictions, it would need to impose the full mandatory ineligibility period for each charge. Parliament's intent about this was clear when they enacted section 745.51. There was nothing in section 745.51 to suggest that it was possible to reduce the ineligibility period for the additional convictions.

The result was that almost every offender serving multiple first degree murder sentences with consecutive parole ineligibility periods would die in prison. This was even in the "best case" scenario, an offender who had been convicted at age 18 of two first degree murders. That offender would be forced to serve 50 years in prison before being eligible for parole at age 68. Although this would be possible, the average life expectancy for inmates who die of natural causes is only age 60. That is far lower than the life expectancy for the general public. In the most extreme cases, the period could last even longer than any human has ever lived.

The goal of rehabilitation is closely linked to human dignity. It reflects our society's belief that it is possible for all offenders to reform themselves and re-enter society. Not all offenders do reform themselves in prison, but not giving them with a realistic chance to do so goes against the central principles of Canadian criminal law, and amounts to cruel and unusual punishment.

Relevant Law:

The Criminal Code of Canada:

745 Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be

(a) in respect of a person who has been convicted of high treason or first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

745.51 (1) At the time of the sentencing under section 745 of an offender who is convicted of murder and who has already been convicted of one or more other murders, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and the recommendation, if any, made pursuant to section 745.21, by order, decide that the periods without eligibility for parole for each murder conviction are to be served consecutively.

(NOTE: As a result of this case, section 745.51 is no longer in effect.)

The Canadian Charter of Rights and Freedoms:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.