

Death by Incarceration

Do mass murderers deserve hope? The Quebec Court of Appeal will have to answer this question when [the case of the Quebec City mosque shooter](#) comes before them in January 2020. What they decide in this case will have far reaching consequences for future *Charter* litigants and for how those who commit crimes involving multiple murders are sentenced. No matter how despicable a person is, or how heinous their crime may be, their constitutional rights cannot be ignored. By denying hope, the [sentencing law](#) for those convicted of multiple murders does just that.

In Canada, part of sentencing involves a consideration of rehabilitation and, no matter how faint, possibility of release. As Justice Campbell of the PEI Supreme Court said in regards to this law in [Vuozzo](#), “As a society, we don’t seek vengeance, we seek justice. We don’t torture others, even if their crime was that of torture. We don’t murder others, even if their crime was that of murder.” While momentarily satisfactory, vindictiveness is not the goal of a criminal trial. For Justice Huot, who sentenced the shooter, life in prison with virtually no chance for parole goes against Canadian sentencing principles and in doing so also violates guaranteed *Charter* rights. In essence it amounts to death by incarceration.

In 2011 changes to the *Criminal Code* allowed parole for those convicted of multiple murders to be served consecutively, rather than concurrently, permitting these types of sentences. A first degree-murder conviction carries a mandatory penalty of life in prison and 25 years without chance of parole. In 2014 [the man who killed three RCMP officers](#) in Moncton was

convicted of three first-degree murder charges. He was sentenced to life plus 75 years without chance of parole. He will be eligible for release when he is 99 years old.

The Quebec City mosque shooter was convicted of 6 first-degree murders. Justice Huot had the ability to set his parole at increments of 25 years, to a maximum 150 years. However, he read in flexibility to the law and set parole at 40 years. For him, 25 years was too low, but 50 was excessive. It would extend his sentence beyond the duration of his natural life, guaranteeing he would die in prison. In doing so it would deprive him of any hope of ever being released thereby violating his [section 7 Charter](#) rights to liberty and security of the person.

Part of the section 7 analysis includes a determination of whether the violation of the rights to liberty and security of the person are in accordance with the principles of fundamental justice. The judge found a 50 year parole sentence was excessive and therefore not in accordance with the fundamental principles of overbreadth and gross disproportionality. Notably, Justice Huot went further than necessary and recognized the protection of human dignity as a new principle of fundamental justice. This directly goes against Supreme Court precedent, as they declined to do the same in [Rodriguez](#).

If human dignity were to stand up as a principle of fundamental justice on appeal it would be consequential for *Charter* rights claims far beyond this criminal context. It would lend itself to litigants seeking equality, healthcare and socioeconomic rights within section 7 of the *Charter*. Historically such cases have been unsuccessful. The higher courts have to decide if it will stick this time around. It is unfortunate these rights for marginalized Canadians might only come about now because of a mass murderer's prison sentence.

The recognition of human dignity in this context also sends a strong message about how the Canadian criminal justice system treats those convicted of multiple murders. The shooter is

not eligible for parole until 2059, when he will be 69 years old. He may never be a free man again. He deserves none of our sympathy, but respecting his guaranteed constitutional rights, as Justice Huot did, is a requirement of the law. It is the task of the Quebec Court of Appeal to determine whether Canada locks up the worst among us and throws away the key, or grants them a grain of hope for redemption.