

## **COMMENT – Life Imprisonment Without Parole: A Sentence Comparable to Death**

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*Canada's 2022 Supreme Court decision to eliminate life imprisonment without parole has prompted a significant shift in the Canadian criminal justice system and Canadian society. This ruling aligns with the fundamental focus on rehabilitation within the context of Canadian law. This essay examines the shifts in Canadian life sentence legislation and the intricacies surrounding the Supreme Court decision. It explores the implications of the decision on offenders and broader society, shedding light on the significance of providing opportunities for redemption and rehabilitation.*

The Canadian criminal justice system's commitment to rehabilitation is deeply rooted in domestic and international legal principles that reflect a broad commitment to upholding human dignity, including the ethical treatment of incarcerated individuals. This commitment is anchored in domestic legislation, notably the Canadian Charter of Rights and Freedoms, which safeguards civil liberties and rights for Canadians. It is also bolstered by international human rights standards as outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These international documents underscore the importance of respecting all individuals' inherent dignity, including those incarcerated, by underlining the potential for their rehabilitation and reintegration into society.

In the context of Canadian criminal law, the principle of rehabilitation holds a central position, as highlighted by landmark judicial decisions such as *R. v. Bissonette* (Supreme Court of Canada, 2022) and *R. v. Lacasse* (Supreme Court of Canada, 2015). This principle not only reflects a core moral value of Canadian society but also plays a crucial role in shaping judicial sentencing decisions to ensure they are just and appropriate (Supreme Court of Canada, 2015). The Supreme Court of Canada's unanimous 2022 decision to abolish life imprisonment without the possibility of parole underscores the significance of rehabilitation within the criminal justice system. Despite facing criticisms for perceived leniency and a

lack of consideration for victims and their families, this decision prioritizes the collective well-being of Canadian society and adheres to international human rights standards.

This essay first explores the evolution of Canadian life sentence legislation, tracing its historical transformations over time. Subsequently, it delves into the rationale underpinning the Supreme Court's unanimous decision to abolish life imprisonment without the possibility of parole. The analysis extends to critique Canada's criminal justice system and examines the 2022 legislative adjustments to life imprisonment and parole eligibility. Lastly, it analyzes the implications of current legislation pertaining to life sentences and parole for both Canadian offenders and the public, concurrently highlighting the advantages of the present system, as compared to their precursors.

By arguing in favor of the 2022 Supreme Court decision from a human rights perspective, this essay not only endorses the transition toward rehabilitative justice but also calls for further enhancements to the Canadian criminal justice system. While acknowledging the Supreme Court decision as a significant step forward, it suggests there is room for improvement – including in other countries – where governments can look toward Canada as a model. Ultimately, this essay asserts that adopting rehabilitative justice practices benefits not only offenders but also society at large, presenting a compelling case for global legislative and reform adoption in line with Canada's approach.

### **Canadian Life Sentence Legislation**

Canada's legislation concerning life sentences has undergone a series of notable adjustments. Prior to 2011, sentences for multiple murders were to be served concurrently, meaning that they would run simultaneously, with the longest term becoming the ultimate duration an offender would be incarcerated for – typically 25 years without the possibility of parole. However, under Prime Minister Stephen Harper, the government introduced a legislative change in 2011 known as the “Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act.” This legislation introduced a new provision, section 745.51(1), into the Criminal Code, empowering courts to hand down consecutive life sentences based on considerations such as “the character of the offender, the nature of the offense, and the circumstances surrounding its commission” (Minister of Justice, 1985, s 745.51[1]). This alteration granted the courts the authority to impose lifelong sentences, thereby pushing an offender's earliest chance for parole far beyond their expected remaining lifespan (Spencer, 2019).

The implementation of this legislation faced opposition and was challenged on grounds relating to the Charter's rights of offenders. Specifically, concerns were raised about potential violations of section 12 – which protects individuals against cruel and unusual punishment – and section 7 – which

protects the right to life, liberty, and security of the person. As a result, there was a notable backlash and the Harper legislation was ultimately deemed unconstitutional (Spencer, 2019).

Consequently in 2022, the Canadian Supreme Court made a unanimous decision that limited the maximum incarceration period without the chance for parole. The Court ruled that even for the most gruesome and heinous criminals, the most severe punishment that Canadian courts could impose is life imprisonment with eligibility for parole and supervised reintegration into society following a 25-year incarceration period (Supreme Court of Canada, 2022). Additionally, those who had already received sentences under this section were to have their sentences appropriately reduced (Supreme Court of Canada, 2022).

### **Life Imprisonment and Parole Eligibility**

The 2022 decision by the Canadian Supreme Court regarding parole eligibility after 25 years reflects a fundamental principle of Canadian criminal law – the right of rehabilitated offenders to seek parole. The Court emphasized that even the most serious crimes do not negate the core belief that all individuals possess the capacity for rehabilitation (Supreme Court of Canada, 2022). This stands in stark contrast to the ethos behind the 2011 legislation, which prioritized punitive measures over rehabilitation, targeting offenders whom the criminal justice system deemed unable to be rehabilitated.

This ruling is not solely rooted in valuing the lives of offenders; it also speaks to the need for limitations on the government’s authority to punish criminals. Essentially, the 2022 legislative decision seeks to punish offenders in a manner consistent with the rights provisions of the Constitution and Charter (Supreme Court of Canada, 2022). Moreover, the Court highlighted how depriving someone of the chance of parole not only extinguishes the incentive to reform, but also any prospect of freedom. This approach, embodied in Section 745.51, inflicts the most profound punishment, ingraining in offenders’ minds that irrespective of their progress or efforts at rehabilitation, their sentence only ends with their death (Spencer, 2019). In essence, the psychological toll of life imprisonment parallels that experienced by individuals on death row, for only death brings an end to their incarceration (Supreme Court of Canada, 2022).

In the wake of the 2022 decision, numerous critics emerged to voice their reservations and critiques about the criminal justice system. Detractors argued that parole eligibility offsets the severity of life imprisonment, negating the concept of “life in prison” (Fine, 2022; Moye, 2023). Prior to the 2011 legislation, there was a prevailing sentiment that those convicted of multiple murders received undue leniency on sentencing for every additional murder and, instead, should be locked up and have the key

thrown away (Ruddell et al., 2010). During this era, the primary aim of the criminal justice system was not rehabilitation, but the containment of individuals deemed threats to society. Following the 2022 Supreme Court decision, critics contended that granting parole opportunities undermines the punitive aspect, affording criminals an easier way out of their punishment (Fine, 2022; Leamon, 2022; Moye, 2023). Yet, an examination of the nuances surrounding parole eligibility reveals that this assertion is unfounded.

While parole has now been integrated into the sentences that offenders receive, it is important to note that not all individuals serving life imprisonment will receive parole (Government of Canada, 2023). During the parole application process, the Parole Board of Canada holds the authority to deny parole to those it perceives as an ongoing threat to public safety (Ruddell et al., 2010). Several factors are assessed when making parole decisions, including the offender's level of remorse, their criminal history, and their behavior while incarcerated (Government of Canada, 2023). Hence, while a parole eligibility threshold of 25 years exists, it does not guarantee an automatic reintegration into society or immediate release. By considering this, it is reasonable to assert that although the current approach demonstrates more flexibility compared to its 2011 counterpart, it still incorporates limitations that prevent potential risks to public safety and ensures that offenders remain accountable for their crimes.

Overall, the 2022 decision marks a significant juncture whereby the criminal justice system finds a balance between rehabilitation and punishment, steering away from strict containment policies and embracing the belief in the potential for rehabilitation. This crucial ruling underscores the necessity for progressive development of the criminal justice system, emphasizing the significance of striking a balance between safeguarding the public while also respecting the inherent human rights of offenders. By recognizing the need for rehabilitation alongside punishment, the principles of justice are upheld while simultaneously pursuing the betterment of society at large.

### **Parole Eligibility and Rehabilitation**

Life sentences, designed to penalize serious offenders for their crimes, often fall short in effectively promoting rehabilitation or enhancing societal well-being. Instead of fostering the reformation of these individuals into responsible citizens and facilitating their reintegration into society, life sentences tend to extinguish prospects for redemption, hope, and rehabilitation. The absence of parole eligibility or redemption in such sentences creates an environment devoid of optimism which may result in various negative repercussions.

Individuals subject to life imprisonment face heightened risks of both homicide and suicide while incarcerated, jeopardizing not only their own safety but also the well-being of others within the prison system (Ruddell et al., 2010). In essence, the practice of imprisoning someone for an entire lifetime without the possibility of parole results in unduly severe sentences that increase mental turmoil and strip prisoners of any hope for eventual release. This approach can be viewed as a form of inhumane punishment that elevates the risk of harm to others.

Conversely, the current approach offers a potential avenue for offenders to secure parole and reintegrate into society, although this avenue remains exceedingly slim for those convicted of serious offenses (Government of Canada, 2023). The recent shift towards allowing the opportunity for parole reflects an acknowledgment of offenders' capacity for rehabilitation. It communicates to them that reform and reintegration are possible, demonstrating that the government and its agencies maintain hope for their change. In response, incarcerated offenders may find motivation to conscientiously consider their actions and conduct, aiming to enhance their prospects for parole and overall rehabilitation.

Rehabilitation stands as a central moral principle embraced by Canadian courts and the criminal justice system. By granting offenders the possibility of parole, the system instills within them an incentive to actively pursue rehabilitation, personal transformation, and overall self-improvement (Augliere, 2015). In other words, the ability for rehabilitation offers prisoners a glimmer of hope, which is more advantageous than resigning them to hopelessness. Even in cases where parole is denied, the existence of a parole possibility carries more humane undertones than outrightly conveying that these individuals are destined for perpetual confinement. This opportunity aligns with both the Canadian Constitution and the Universal Declaration of Human Rights, emphasizing the importance of equal treatment for all individuals while safeguarding prisoners against cruel and unusual punishment and upholding their right to life, liberty, and security of the person. Moreover, the commitment to rehabilitation can provide offenders with a sense of support and counteract the feelings of isolation that often accompany incarceration. This commitment reinforces the notion that they are not alone, even amidst the physical seclusion of imprisonment.

## **Conclusion**

The unanimous decision by the Supreme Court of Canada in 2022 to abolish life imprisonment without the possibility of parole marks a significant advancement for the Canadian criminal justice system, signifying its dedication to rehabilitation and signaling a progressive move towards a more

compassionate form of criminal justice. This ruling, deeply aligned with domestic and international human rights frameworks, highlights the belief in the rehabilitative potential of even the most serious offenders. By fostering a rehabilitative rather than a purely punitive approach, Canada exemplifies a humane path for global criminal justice systems. This stance underscores a sharp contrast with certain states in the United States and globally, where the death penalty still exists. This essay highlights the evolution of Canadian life sentence legislation, critically examines the 2022 Supreme Court decision, and explores the implications of parole eligibility to reveal the advantages of a rehabilitative approach for both offenders and society at large. It calls for continued improvements to the criminal justice system, stressing the importance of balancing public safety with the fundamental human rights of offenders. By adopting rehabilitative justice principles, Canada reaffirms its commitment to human dignity and the potential for change, offering valuable insights into the constructive impact the criminal justice system can have in fostering a more equitable and compassionate society.

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