

# TOP FIVE 2022

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases (or in this year's resource, six cases) that are of significance in the educational setting. The 2022 cases were selected and discussed by Mr. Justice Lorne Sossin, then of the Ontario Superior Court of Justice and currently of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

## ***R v. Bissonnette, 2022 SCC 23***

**Date released: May 27, 2022**

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19405/index.do>

### **Facts**

On January 29, 2017, Alexandre Bissonnette opened fire in a Quebec Mosque during evening prayers, killing six people and seriously injuring five others. He was found guilty of six counts of first degree murder. The period where somebody is unable to apply for parole for a first degree murder conviction is 25 years. However, under section 745.51 of the *Criminal Code*, the Crown can ask the court to set the parole ineligibility period consecutively<sup>4</sup>, instead of concurrently, for multiple convictions of first degree murder. The Crown applied for this in Mr. Bissonnette's case, meaning that the Crown was asking for a total parole ineligibility period of 150 years for the six convictions.

### **Procedural History**

The trial judge at the Quebec Superior Court of Justice found that section 745.51 infringed both sections 12 (cruel and

unusual treatment or punishment) and 7 (right to life, liberty, and security of the person) of the *Charter* and could not be saved under section 1. The judge set the parole ineligibility period at 40 years - 25 years for the first 5 counts served consecutively and 15 years for the sixth count, served concurrently.

The Quebec Court of Appeal allowed the appeal and found that section 745.51 was unconstitutional because it infringed sections 12 and 7 of the *Charter*. It decided that a parole ineligibility period which exceeded one's life expectancy was degrading and incompatible with human dignity. The Court of Appeal also found that the provision was overbroad and its effect was disproportionate. It ordered that Mr. Bissonnette serve each of the 25 year parole ineligibility periods on a concurrent basis.

---

<sup>4</sup> Consecutively means "in a row", as opposed to concurrently, which means "at the same time".

## Issue

Two issues arose in this case:

1. Does section 745.51 of the *Criminal Code* infringe section 12 or section 7 of the *Charter*?
2. If section 12 or section 7 is infringed, can section 745.51 be saved under section 1 of the *Charter*?

## Decision - Unanimous

A unanimous Supreme Court found that section 745.51 infringed section 12 of the *Charter* and could not be saved under section 1. Given the violation of section 12, the SCC did not need to consider section 7 as well.

## Ratio

Consecutive parole ineligibility periods which completely foreclose the possibility of rehabilitation are unconstitutional.

## Reasons

The Supreme analyzed the history of section 745.51, the Canadian parole system, and sentencing objectives. The court began with their analysis of section 12 and found that consecutively served parole ineligibility periods under section 745.51 are degrading in nature and intrinsically incompatible with human dignity. This is because they prevent the offender from

the realistic possibility of being granted parole and from ever reintegrating into society, entirely negating the principle of rehabilitation. The sentence sought for Mr. Bissonnette (150-year parole ineligibility period) would “bring the administration of justice into disrepute and undermine public confidence in the rationality and fairness of the criminal justice system”.

The section 1 analysis (see examples of the “Oakes” test above) was fairly straightforward in this case. The appellants had not made any arguments with respect to the justification of section 745.51 under section 1 and, even if they had, the Supreme Court stated it would have been very difficult to justify, in a free and democratic society, a punishment that was cruel and unusual by its very nature. Section 745.51 was declared of no force or effect immediately. Mr. Bissonnette would serve the parole ineligibility period concurrently.

## Discussion

1. What is a parole ineligibility period?
2. What is the difference between a concurrent sentence and a consecutive sentence?
3. Why did the Supreme Court say that this law likely would not have passed the Oakes test?
4. What was the main problem with a sentence that was longer than somebody is reasonably expected to live?
5. Why is the idea of rehabilitation important in Canada, even to somebody convicted of a heinous crime?