Dignity Cannot Be Totally Denied: The Limits of Bissonnette

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The unanimous decision in *R. v. Bissonnette*[1], handed down just two months after oral argument, seems to have been an easy one for the Supreme Court of Canada. At the hearing, questions from across the panel were deeply skeptical of government arguments offered in defense of s. 745.51 of the *Criminal Code*, which allowed judges to impose consecutive periods of parole ineligibility in cases involving multiple murder victims. The result of the provision, practically speaking, was that even young offenders could receive life sentences without the possibility of parole.

The legal issue at the heart of the case attracted no disagreement, with the Court holding that it is cruel and unusual punishment, contrary to s. 12 of the *Charter of Rights and Freedoms*, to impose a prison sentence designed to deny any realistic possibility of review before death, no matter the age of the offender. While deterrence and denunciation are properly paramount in such a case, the Court said, the state cannot fully vanquish any concern with rehabilitation.

Notwithstanding the clarity and cohesiveness in the Court's treatment of the issue, the men who aspired to lead the federal Conservative party — Patrick Brown and Pierre Poilievre — were quick to tweet that they would invoke the notwithstanding clause in the face of this decision. While s. 33 has never been used by any federal government in Canadian history, these men said they would use it to deny a largely symbolic administrative hearing 25 years down the road.

Their outrage neglected what is widely known: that the Parole Board of Canada is all but certain to deny release for the small handful of inmates who have killed multiple people. The practical impact of the decision is to ensure a parole hearing for those who commit first degree murder(s) — at least for those still alive after 25 years in custody. While that

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[1] *R. v. Bissonnette*, 80 C.R. (7th) 127, 2022 SCC 23 (S.C.C.) [*Bissonnette*].

sliver of hope may well be immensely significant to an offender and to their experience of incarceration, the prospect of actual release remains dim. The Parole Board is focused entirely on public safety, and will consider not only prison performance but also the nature and gravity of the offense and the perspective of victims.

We should not be surprised that ambitious politicians seize upon the trauma of mass killings and promise a façade of punitive strength in response. But we should also not be distracted by their rhetoric into thinking that the holding in *R. v. Bissonnette* is a radical or even particularly significant limit on the state's power to punish. This article tracks what will be the limited impact of *Bissonnette* on both individual offenders and the law of murder sentencing more broadly. The most significant impact of *Bissonnette* will be on s. 12 jurisprudence generally, as the case offered an important doctrinal clarification that will shape litigation claims moving forward.

The plan for the article is as follows. I begin by outlining the specific relief that the Court lays out for two distinct groups of offenders sentenced under the invalid law. The path to relief will be different for those who are still "within the judicial system" versus those who have been sentenced and have exhausted their right to appeal. The benefit of the retroactive declaration is limited to those still within the system, though the latter group can seek relief on the basis of an ongoing constitutional violation.

Then, I look more broadly at how the reasoning in *R. v. Bissonnette* serves to sanction and solidify the rest of the murder sentencing regime, despite years of important critique of this area.[2] In my view, the decision makes it much more difficult to conceive of a successful challenge to the 25-year period of parole ineligibility that now applies, once again, in all cases of first-degree murder. Death-in-prison remains a valid sentence in Canadian law — anyone older than 35 at the time of sentencing will get

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[2] See e.g., Debra Parkes, "Mandatory minimum sentences for murder should be abolished" *Globe & Mail*, September 24, 2018; Isabel Grant, "Rethinking the Sentencing Regime for Murder" (2001) 39:2/3 Osgoode Hall LJ 655; Isabel Grant, Crystal Choi & Debra Parkes, "The Meaning of Life: A Study of the Use of Parole Ineligibility for Murder Sentencing" (2020) 52:1 Ottawa L Rev.

the 25 years and will be likely to die in custody.[3] What's more, nothing in *Bissonnette* prevents a future Parliament from passing a law allowing for parole ineligibility beyond 25 years in some cases. So long as an offender has the prospect of parole review before death, the logic of *Bissonnette* allows extraordinarily long periods of parole ineligibility, including longer than 25 years.

Finally, I address the broader jurisprudential impact of the Court's opinion. This aspect of the decision helps, I think, to explain why the Court was able to dispose of the case so easily. Those defending the law had argued that the provision allowed for a more proportionate sentencing regime in cases involving multiple murders. Since proportionality has long been at the heart of s. 12 jurisprudence, they argued, how could s. 12 invalidate a law meant to serve that very principle?[4]

In crafting a response to that submission, the Court identifies, for the first time, two distinct prongs of s. 12. Only one of those prongs is focused exclusively on proportionality — on the relationship between the moral blameworthiness of an offender and the severity of the sanction imposed. As a result of the Court identifying a second and distinct prong under s. 12, proportionality was no longer the sole or central issue in the case. Those defending the law lost their best argument.

The second prong does not begin by asking comparative questions of proportionality. Rather, the focus here is whether a sanction is intrinsically incompatible with human dignity, such that it cannot be used. Like capital or corporal punishment, a sanction of death in prison is not, the Court concludes, an acceptable sanction for the Canadian state to employ. By clearly identifying the second prong, the decision helps to clarify the analysis appropriate to a distinct set of possible s. 12 cases.

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[3] The Court pointed out that the average age of death for an incarcerated person who dies of natural causes is 60, which means that those who are older than 35 who receive 25 years' parole ineligibility are not likely to benefit from parole review: *Bissonnette* at para. 60.

[4] See e.g. the factum of the AGBC, which argued that s. 745.51 corrected a significant shortcoming in the law. "Prior to 2011, sentencing judges had almost no discretion to impose parole ineligibility periods that reflected the greater gravity of multiple murders . . . the amendments responded to a shortcoming in the pre-existing scheme; namely, its failure to allow sentencing judges to impose parole ineligibility periods that were proportionate to the gravity of offences involving multiple murders."

In sum, *R. v. Bissonnette* articulated an important but ultimately narrow constitutional limit on murder sentencing. The ruling will have a largely symbolic effect, at least in the sense that we are still unlikely to see the actual release of these offenders from prison. Though it may well improve things like morale and access to programming for those living through such long periods of custody. In the end, while the impact of *R. v. Bissonnette* on the law of murder is slight, the reasoning in the case may have an important effect on a class of s. 12 challenges to come. For prisoners who bring constitutional complaints about conditions of confinement, the *Bissonnette* framework will help judges give full expression to s. 12, which we can now clearly see as a provision that guards against more than grossly disproportionate mandatory sentences.

(1) Limits on Retroactive Relief for Individuals Sentenced Under the Law

Let me begin with a narrow, technical point about the limited impact of the decision for those people actually sentenced to consecutive periods of parole ineligibility under the invalidated s. 745.51. The Court is clear that the declaration of invalidity must be retroactive to the time the law was passed. But individual inmates must still apply for relief, and not all sentenced under the invalid law are necessarily entitled to the same relief.

The Court identified two groups. The first are those still "within the judicial system", which means those who have not been sentenced or have not appealed their sentence. For those who have not yet been sentenced, s. 745.51 is invalid and obviously cannot be used. The result is that the sentence will be life imprisonment with 25 years of parole ineligibility.

For those who have been sentenced but have yet to pursue a sentence appeal, they are also still "within the judicial system" and can ask a provincial Court of Appeal for a sentence that accords with *Bissonnette*. This may require applying for extension of time to serve and file the application for leave, but Courts of Appeal will grant such applications.[5]

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[5] See e.g. *R. v. Klaus*, 2021 ABCA 48 (Alta. C.A.) (CanLII): "The motion for an extension of time to serve and file the application for leave to appeal is granted. The application for leave to appeal . . . is remanded to the Court of Appeal for Alberta for disposition in accordance with *Her Majesty the Queen v. Alexandre Bissonnette*, 2022 SCC 23."

A second group includes those who have been sentenced and who have exhausted their right to appeal. Here the Court says that *res judicata* precludes the "re-opening of cases decided by the courts on the basis of invalid laws."[6] As a result, this group is in a different position, though relief may still be possible. These inmates cannot seek the benefit of the s. 52(1) declaration, but they can bring an application alleging a "continuing current violation" of a *Charter*-protected interest, seeking individual relief under s. 24(1) of the *Charter*.

The second group has two subgroups. Any person who received a sentence of 50 years or more "must be able to apply for a remedy" — that sentence is clearly unconstitutional and will be reduced.[7] But for those in the second group who received a period of parole ineligibility that is between 25 and 50 years, the court said this:

> . . . nothing prevents offenders upon whom consecutive ineligibility periods totalling less than 50 years have been imposed under the provision being struck down from alleging a continuing infringement of their constitutional right, provided that the infringement is proved in each case.

In other words, those sentenced to 50 years or more will all be able to obtain relief. Those sentenced to a period between 25 and 50 may have a slightly harder case to make. They will need to show that there is no realistic prospect of parole given their age and the particular period of parole ineligibility imposed in their case.[8]

For all sentenced to life imprisonment, the Parole Board of Canada remains the ultimate arbiter of whether a person can be released on parole at the end of their ineligibility period. What *Bissonnette* makes clear is that most, if not all, people are entitled to a sentence that does not extend

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[6] *Bissonnette* at para. 136.

[7] *Bissonnette* at para. 137: "While some of these offenders are no longer in the judicial system, the infringement of their right guaranteed by s. 12 of the *Charter* is a continuing one, since they remain completely without access to parole. *Res judicata* cannot prevent them from bringing applications to stop this continuing infringement of s. 12 of the *Charter*. These individuals may therefore seek relief in the courts, including under s. 24(1) of the *Charter* (*Boudreault*, at para. 109; *Gamble*, at p. 649)."

[8] In short, the question will be whether the applicant will be older than 60 at the time of the first parole hearing. If so, they are likely to get relief.

the period of parole ineligibility beyond 25 years. This does not mean that anyone who will be older than 60 at their first parole eligibility is entitled to relief — it means only that the max of 25 years parole ineligibility should be substituted.

(2) Murder Sentencing Generally After Bissonnette

Turning to the broader impact of *Bissonnette*, historical perspective helps to understand the regime that the decision restores. Canada's murder sentencing regime emerged out of the 1976 abolition of capital punishment. The 25-year period of parole ineligibility for first-degree murder was considered a harsh necessity, required by the politics of the day. As Allan Manson has documented, Canada had never administered such long periods of custodial punishment. But the prospect of successfully abolishing the death penalty was far from certain, and 25 years was offered as a political tradeoff. It was not justified on any empirical or comparative basis, but was rather offered up as part of bargaining and political expediency.[9]

It is crucial to recall that the faint hope clause was part of that original package. Faint hope made it possible to review the period before which an individual was eligible to apply for parole. It allowed everyone convicted of first degree murder and second degree murder to apply, after 15 years, to request a hearing before a jury of 12 people. If the jury unanimously recommended that the prisoner be allowed to apply for parole earlier than the time originally set, the prisoner still had to convince the Parole Board that release was warranted. Since the first hearing in 1987, an average of about 5 prisoners a year had been released under this provision, and they did extraordinarily well on conditional release.[10]

In 1992, in *R. v. Luxton*, the Supreme Court rejected an argument that the sanction for first-degree murder infringes s. 12 of the *Charter*.[11] In my view, both the record and the analysis in *Luxton* is very thin. There was

[9] See Allan Manson, "The Easy Acceptance of Long Term Confinement in Canada" (1990) 79 C.R, (3d) 265.

[10] See Lisa Kerr and Anthony Doob, "The Conservative Take on Crime Policy" August 20, 2015, *The Harper Decade*. Online: http://www.theharperdecade.com/blog/2015/8/17/the-conservative-take-on-crime-policy.

[11] [1990] 2 S.C.R. 711.

no comparative evidence about approaches taken in other countries, and no empirical evidence about the experience and effects of 25 years in custody. The Court's analysis does not even consider the nature or quality of the punishment at issue, as s. 12 would seem to require. Rather, the Court rests its conclusion on the fact that it makes sense to justify the scheme for punishing first degree murder more severely than second degree. Similarly: the Court said that the grounds for classifying a murder as "first degree" made a lot of sense: planning, murdering people who are employed to protect society, and so on. The Court said these were sensible categories, responsive to individualized notions of blameworthiness.[12] In other words, *Luxton* focuses on the *conduct* the provision covers, but avoids the actual issue in the case, which was the legitimacy of the *punishment* for that conduct.

Luxton reads like an outdated piece of early *Charter* litigation. The Court simply concludes that the sanction is deservedly severe because it covers bad conduct, and it asserts that Parliament has been sensitive in its legislative drafting by setting out a number of distinct categories of bad conduct. *Luxton* also relies on the fact that this penalty can only be imposed where the accused has a *mens rea* of subjective foresight of death. Recall that the court constitutionalized a high standard of *mens rea* for murder in *R. v. Martineau*, decided at the same time.[13] In *Luxton*, the Court makes use of that high standard to justify the sanction attached to an intentional killing. The Court seems to say: we offered an important protection to defendants in terms of *mens rea*, such that any punishment to follow is justified. But *Bissonnette* itself makes clear that even multiple intentional killings do not justify any punishment. The question of proportionate punishment for intentional murder is its own, distinct question, worthy of meaningful review. *Luxton* does not engage in meaningful review of that question, though it was at the heart of the case.

It follows that the main precedent from the Supreme Court of Canada that upholds the most serious punishment in our system contains little in the way of reasoning and nothing in the way of evidence. And the punishment itself was born of political expedience rather than reason or evi-

[12] See also *R. v. Arkell*, [1990] 2 S.C.R. 695, 79 C.R. (3d) 207 (S.C.C.).

[13] [1990] 2 S.C.R. 633, 79 C.R. (3d) 129 (S.C.C.).

dence. Nevertheless, the Court in *R. v. Bissonnette* explicitly affirms *Luxton* as follows:

> The 25-year parole ineligibility period reflects society's condemnation of the commission of such a crime and does not outrage our standards of decency (*Luxton*, at pp. 724-25). Because of the 25-year mandatory ineligibility period, an elderly offender who is convicted of first degree murder will thus have little or no hope of getting out of prison. As was decided in *Luxton*, that sentence is nonetheless compatible with s. 12 of the *Charter*, since it is within the purview of Parliament to sanction the most heinous crime with a sentence that sufficiently denounces the gravity of the offence, but that does not exceed constitutional limits by depriving every offender of any possibility of parole from the outset.[14]

In other words, the *Bissonnette* decision takes care to emphasize that the ruling does not require a realistic prospect of parole in every case. The Court explicitly affirms *Luxton* and sanctions the 25-year period of parole ineligibility, on the basis that this period of time is required so as to sufficiently denounce this kind of intentional killing. It might be apparent at sentencing that an offender will die before the passing of 25 years, but that is not a problem according to *Bissonnette*.[15] All that "human dignity" requires is for a door to be left open after 25 years, no matter the age of the offender at sentencing.[16]

As a final critical point about this state of affairs, it bears emphasis that the Court in *Luxton* pointed to the existence of the faint hope clause as a key component of the constitutionality of the murder sentencing regime. *Bissonnette* does not mention this fact. *Luxton* said that the existence of the faint hope clause "indicates that even in the cases of our most serious offenders, Parliament has provided for some sensitivity to the individual

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[14] *Bissonnette* at para. 86.

[15] *Bissonnette* at para. 85: "Parliament has latitude to establish sentences whose severity expresses society's condemnation of the offence committed, and while such sentences may in some circumstances have the effect of dooming offenders to die behind bars, they are not necessarily contrary to s. 12 of the *Charter*."

[16] *Bissonnette* at para. 85: "To ensure respect for human dignity, Parliament must leave a door open for rehabilitation, even in cases where this objective is of minimal importance."

circumstances of each case when it comes to sentencing."[17] But the federal government repealed the faint hope clause in 2011. All murders committed after that date are ineligible. *Bissonnette* points to *Luxton* as authority for the regime, but *Luxton* was at least partly premised on an ameliorative provision that no longer exists.

(3) Section 12 After Bissonnette

In a 2020 article, Benjamin Berger and I argued that an important distinction was being blurred in s. 12 jurisprudence, with significant analytic consequences.[18] The court in *Bissonnette* endorsed this view, agreeing that s. 12 forbids, first, punishment that is so excessive as to be incompatible with human dignity and, second, punishment that is intrinsically incompatible with human dignity.[19] What Berger and I called the two "tracks" of s. 12 protect against (1) unacceptable *severity* in punishment and (2) unacceptable *methods* of punishment. Each track is focused on distinct harms and calls for a distinct method of analysis.

Bissonnette agrees, holding that the first "prong" of s. 12 looks at whether a sentence is grossly disproportionate in amount. This requires a "contextual and comparative analysis" focused on whether the amount of the sanction is "just and appropriate having regard to the offender's personal characteristics and the circumstances surrounding the commission of the offence."[20] This prong of s. 12 is well-known, as it has been developed in the context of many challenges to mandatory minimum sentences. In these cases, the *nature* or *method* of the punishment is not a problem: imprisonment or fines are acceptable kinds of state sanction. The only relevant constitutional question is whether the length of custodial time or the cost of the fine is excessive: whether it is *too much* of an otherwise acceptable form of punishment.

In contrast, the second prong of s. 12 is concerned with methods of punishment. This less developed area of Canadian law concerns a "narrow

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[17] *R. v. Luxton*, [1990] 2 S.C.R 711, 79 C.R. (3d) 193 (S.C.C.) at para. 9, 6 W.W.R. 137.

[18] Lisa Kerr and Benjamin Berger, "Methods and Severity: The Two Tracks of Section 12" (2020), 94 S.C.L.R. (2d) 235, at pp. 235-236).

[19] *Bissonnette* at para. 60.

[20] *Bissonnette* at para. 60.

class of punishments that are cruel and unusual by nature."[21] These punishments will "always be grossly disproportionate" because they are intrinsically incompatible with human dignity because of their "degrading and dehumanizing" nature.[22]

Corporal punishments like the lash, castration, and lobotomization are obviously included here. Consider that the problem with the lash is not encountered when one receives too many lashings. Rather, the problem with the lash is the degrading and dehumanizing nature of even a single instance of it. Torture also falls into this category, since it entails "the denial of a person's humanity."[23] A punishment that is cruel and unusual by nature is "so inherently repugnant that it could never be an appropriate punishment, however egregious the offence."[24] The question in such a case is not what the offender did, but what methods the state can employ in response. As *Bissonnette* puts it, some methods of punishment are simply "excluded from the arsenal of sanctions available to the state."[25] They cannot be saved by judicial discretion or specific exemptions.

While imprisonment is generally an acceptable penal method, *Bissonnette* concludes that imprisonment that denies all possibility of reform and release infringes s. 12 because it is intrinsically incompatible with human dignity. Such a sentence has no rehabilitative purpose — it recognizes no possibility of transformation or growth. With no hope of eventual review, the entire experience of incarceration is necessarily meaningless. The Court observed that the psychological consequences of such imprisonment are comparable with those experienced by people on death row, since only death will end their incarceration.[26] Such prisoners also have little incentive to conform to prison rules, making the job of prison officials even more difficult. These sentences are an affront to penal order in Canada.

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[21] *Bissonnette* at para. 63

[22] *Bissonnette* at para. 64.

[23] *Bissonnette* at para. 66, citing *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1 (S.C.C.) at para. 51.

[24] *Suresh* at para. 51.

[25] *Bissonnette* at para. 68.

[26] *Bissonnette* at para. 96.

Let me close by considering how the two prongs of s. 12 may affect other areas of inmate litigation. Before *Bissonnette*, many Canadian courts failed to distinguish between the two prongs. As a result, they would treat *methods* cases like *severity* cases in a way that made the claim harder to prove. Consider the Ontario Court of Appeal decision on the constitutionality of prison conditions experienced at Maplehurst Correctional Complex.[27] In this case, Laskin J.A. attempted to measure the proportionality of an impugned punishment (prong one) in a case that was really a complaint about an unacceptable penal method (prong two), namely solitary confinement.

Briefly, the facts of the case were that during two years of pre-trial detention at Maplehurst, Jamil Ogiamien and Huy Nguyen were often held in lockdowns: confined to their cells for most of the day and night for several months. The application judge held that the lockdowns violated s. 12, and awarded *Charter* damages in the amount of $60,000 and $25,000 to Ogiamien and Nguyen, respectively.

In overturning that decision, the Ontario Court of Appeal held that the frequency and duration of these lockdowns, which it said were caused largely by staff shortages, did not violate s. 12. The litigants in *Ogiamien* did not ask the court to distinguish between the two prongs of s. 12 — no doubt because *Bissonnette* had not yet offered that clarification. But this case was clearly a complaint about the method of state treatment: the claim was that it was intrinsically incompatible with human dignity to incarcerate a person, particularly in a pretrial setting, in this fashion.

As remanded prisoners, Ogiamien and Nguyen did not even stand convicted of an offence. As such, they were not in a position to allege a lack of proportionality between their convicted conduct and the the punishment or treatment they received. Still, without the benefit of the *Bissonnette* opinion, the *Ogiamien* court used only the lens of proportionality to analyze the complaint. Borrowing the framework from the mandatory sentencing caselaw, Laskin J.A. proceeds to consider what were “proportionate” or “ordinary” prison conditions. Rather than asking whether extensive lockdown is a constitutionally available method of state treatment in pre-trial facilities in contemporary Canada, Laskin J.A. asks whether

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[27] *Ogiamien v. Ontario (Community Safety and Correctional Services)*, [2017] O.J. No. 4401, 2017 ONCA 667, 40 C.R. (7th) 119 (Ont. C.A.), at para. 10 [*Ogiamien*].

the lockdowns were grossly disproportionate compared to ordinary prison conditions. That would no longer be seen as the right question under the second prong of s. 12, per *Bissonnette*.

Laskin J.A. then compares ordinary prison conditions with the conditions in lockdown, accepting evidence that the lockdowns involved stress, no stimuli, no exercise, no family visits, no telephone, no clean linen, and no access to programming.[28] Ultimately, however: "[t]he treatment of Ogiamien and Nguyen under lockdowns compared to their treatment under ordinary conditions may have been excessive or disproportionate, but that it was not grossly disproportionate. Thus their treatment did not meet the high bar required to establish a s.12 violation."[29]

The inmates in *Ogiamien* raised a complaint about intolerable methods. The first prong of s. 12, a framework developed for review of mandatory minimum sentences, is a poor fit for resolving a complaint about extensive periods of cellular confinement in a pre-trial facility. By treating that complaint like a severity case, Laskin J.A. tried to answer the first prong's proportionality question that was not the heart of the issue. The complaint was not about an excessive state response to wrongdoing but about penal methods alleged to be, in their nature, objectionable.[30]

The blurry state of s. 12 that pre-existed *Bissonnette* shows up in another case from the Ontario Court of Appeal, this time involving a constitutional challenge to the legislation that allowed solitary confinement. In her reasons, Benotto J.A. said that s. 12 requires her to compare solitary to conditions in general population. Drawn to precedents like *Ogiamien*

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[28] *Ogiamien* at para. 42

[29] *Ogiamien* at para. 57.

[30] Along with the risk of misdirected analysis, this approach may set up bad incentives for prison officials. Notice how Laskin J.A. tries to compare "ordinary" prison conditions with the impugned conditions, in order to satisfy the comparative demand inherent in the gross disproportionality analysis. Prison officials will soon realize that ensuring austere norms as part of ordinary conditions will help to protect against successful complaints asserting deviation from the norm. What if "ordinary" conditions at Maplehurst involved leaving a cell just once per week so as to access a brief shower? If lockdowns result in the loss of that minimal weekly reprieve from extreme solitary, would we say there is no constitutional problem because the new treatment is not a significant deviation from the norm?

that blur the two tracks, Benotto J.A. writes that "a proper comparative exercise must consider the effects of prolonged administrative segregation against incarceration in an ordinary prison range."[31]

In the crucial part of her analysis, however, notice that Benotto J.A. is clear that solitary violates s. 12 because of its harmful effects — because placement in a cell for most of the day and night exposes inmates to a risk of "severe and often enduring negative health consequences."[32] Her analysis is not comparative in substance. There is no discussion of the particular conditions or health effects that flow from ordinary maximum-security confinement. She cites *Ogiamien*, but ultimately takes an approach that accords with the s. 12 framework endorsed in *Bissonnette*. Her view is not that solitary is a problem because it departs from ordinary prison conditions. Rather, Benotto J.A. points to the powerful findings of the application judge on these issues, showing that the problem with solitary is that it is a method of incarceration that causes foreseeable and expected harm when it extends beyond 15 days.[33]

It is clear that the problem with solitary is not simply a lack of proportionality between the offence and the sanction, nor because of the degree to which it departs from treatment unfolding elsewhere in the prison. To analyze the wrong of solitary confinement, at least as it has been legislated and practiced in Canadian prisons and jails in recent decades, courts must use the second prong of s. 12: by asking if solitary is intrinsically incompatible with human dignity. In the wake of *Bissonnette*, judges have a far clearer framework for analyzing s. 12 complaints. I have argued here that the case largely condones Canada's harsh regime of murder sentencing. Where *Bissonnette* may be more significant is in future prison condition cases, guiding judges to better track and adjudicate the full range of wrongs that s. 12 prohibits.

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[31] *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243 (Ont. C.A.) at para. 97 [*CCLA*].

[32] *CCLA* at para. 97.

[33] *CCLA* at para. 73.