

SCC HOLDS SECTION 12 CHARTER PROTECTION AGAINST "CRUEL OR UNUSUAL TREATMENT OR PUNISHMENT" NOT APPLICABLE TO CORPORATIONS

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In the recent [decision](#) of *Québec (Attorney General) v. 9147-0732 Québec inc.*, the Supreme Court of Canada ("**SCC**") unanimously ruled that section 12 of the Charter does not extend to protect corporations from cruel or unusual treatment or punishment.

Background

The corporation, 9147-0732 Québec inc., was found guilty of carrying out construction work as a contractor without holding a current license for that purpose under section 46 of the *Building Act*. As a penalty for this offence, the Québec corporation was fined the mandatory minimum of \$30,843 pursuant to section 197.1 of the *Building Act*.

9147-0732 Québec inc challenged the constitutionality of the mandatory minimum fine for corporations on the basis that it offended its right to be protected against cruel and unusual treatment or punishment under section 12 of the Charter. Specifically, section 12 states that "*Everyone has the right not to be subjected to any cruel or unusual treatment or punishment*".

The Court of Québec, and subsequently the Québec Superior Court dismissed this argument and held that the minimum corporate fine at issue was far from being cruel and unusual, and represented the norm in penal regulatory law. Notably, both of these courts emphasized that corporations were not covered by section 12, which is aimed at protecting human dignity, "a notion meant exclusively for natural persons"^[1].

However, a majority of the Québec Court of Appeal ("**QCA**") allowed the appeal and held that section 12 can extend to corporations, as the association with human dignity did not prevent the applicability of sections 8 (right against unreasonable search and seizure) and 11(b) (right to be tried within a reasonable time) of the Charter. In utilizing the "tangible benefit" approach, the court concluded that since corporations could face cruel treatment or punishment through harsh or severe fines, section 12 protection could be extended to them.

SCC Decision

The decision of the QCA was appealed to the SCC, which considered the central question of whether the right to be free from “cruel or unusual treatment or punishment” in section 12 of the Charter extends to corporations. The SCC unanimously held that it does not, offering three concurrent reasons.

The majority of the court highlighted that the threshold test for section 12 is whether the treatment of an individual is so “grossly disproportionate” as to “outrage standards of decency” and be “abhorrent or intolerable”.^[2] In applying this test to the case, the court held that “excessive fines (which a corporation can sustain), without more, are not unconstitutional”, confirming that the purpose of section 12 is “inextricably anchored in human dignity”.^[3] The court emphasized that the text of this section denotes protection that only human beings can enjoy, establishing a constitutional standard that cannot apply to treatments or punishments imposed on corporations.

The concurring opinion written by Justice Abella took a more purposive approach, analyzing the objectives and origins of the Charter, as well as how courts have interpreted the numerous international instruments containing similar provisions. Justice Abella stated that the intended beneficiaries of the section 12 protection are people not corporations, as corporations do not have the quality of “human dignity or the ability to experience psychological or physical pain and suffering”^[4]. The interpretation of “cruel or unusual” would be strained if applied to an artificial entity.^[5]

The third and final concurring opinion by Justice Kasirer highlighted that the scope of section 12 has been broadened over the years, however it is still concerned with human beings despite the principle that Charter rights must be given a large, liberal and purposive interpretation.

Conclusion

This SCC decision stands for the notion that the term “cruel or unusual treatment or punishment” in section 12 of the Charter refers to human pain and suffering (mental and physical), which cannot be experienced by inanimate objects or legal entities such as corporations.

The court further clarifies that “the existence of human beings behind the corporate veil is insufficient to ground a section 12 claim of right on behalf of a corporate entity, in light of the corporation’s separate legal personality”^[6]. As such, corporations cannot utilize this Charter protection to argue that regulatory fines on the corporation will directly affect the individuals within that entity.

From a policy lens, the decision adds to the existing jurisprudence on corporate liability, limiting the ability of corporate entities to deny the legal distinction between themselves and their employees when it is advantageous to do so, as well as avoid regulatory fines.

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[1][ps2id id='1' target=''] Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32 at para 57.

[2][ps2id id='2' target=''] Ibid at para 17 and 63.

[3][ps2id id='3' target=''] Ibid at para 17.

[4][ps2id id='4' target=''] Ibid at para 136.

[5][ps2id id='5' target=''] Ibid at para 135.

[6][ps2id id='6' target=''] Ibid at para 2 and 129.

A Cautionary Note

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