

# Brief on Capital Punishment

2013

## Introduction

St. Leonard's Society is pleased to have the opportunity to present this brief discussing the potential outcome to an amendment of the death penalty legislation in Canada. SLSC is a membership based, charitable organization dedicated to community safety since 1967.<sup>1</sup> The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safe communities. SLSC endorses evidence-based approaches to criminal and social justice, conducts research and develops policy, supports our member affiliates, and advances collaborative relationships and communication among individuals and organizations dedicated to social justice. Our membership of twelve direct service agencies across Canada provides residential and day programs to more than 15,000 youth and adults annually.

SLSC recognizes that capital punishment has potential to be the subject of debate in Parliament during the near future, which causes significant concern. The purpose of this brief is to highlight misunderstanding around the use of capital punishment and the harmful repercussions that may result from reinstating the use of capital punishment in the *Criminal Code*. SLSC's concerns centre on the fact that capital punishment is not an effective measure for dealing with murder offences in Canada. The reinstatement of capital punishment in our *Criminal Code* undermines the principle of rehabilitation for offenders by promoting the idea that rehabilitation is not a viable option for first degree murder offences. As well, the harmful repercussions that can result from wrongful conviction are drastic enough to justify the current abolition of capital punishment in Canada. Based on our research, SLSC concludes capital punishment does not serve as a deterrent to criminal activity. We outline our reasoning in this brief and look forward to your questions and comments.

## What is Capital Punishment?

Capital punishment is the sentence of death received for a series of crimes designated as capital offences. The rationale for capital punishment is both the potential deterrent effect on individuals

---

<sup>1</sup> Incorporation #12894 06600 RR0001. Online: [www.stleonards.ca](http://www.stleonards.ca). SLSC is not a religious organization.

from committing crimes that result in the loss of life of another, and punishment that is retribution for the victim as well as for the community as a whole. This legal sanction offers, in some respects, a retributive process for the victim as well as the community as a whole. Practices of capital punishment can be seen in several states across the world with varying policy application and general use as a retributive approach to justice.

## **History of Capital Punishment in Canada**

Capital punishment in Canada was abolished from the *Criminal Code* in 1976. In the years prior to its abolition in Canada, capital punishment legislation experienced numerous transitions, each reflecting a more cautious approach to the application of capital punishment. In the early years of Canadian history, the sentence of capital punishment was only permissible in convictions of murder, rape or treason. With the passing of new legislation in 1961, Canada's *Criminal Code* made significant progress in limiting the application of the death penalty to cases of capital murder. Capital murder referred to crimes of premeditated murder, murder that involved other violent crime, and the murder of a peace officer. Again in 1976 the House of Commons revisited the issue of capital punishment resulting in the passing of Bill C-84, abolishing the use of capital punishment in Canada. As a result, capital punishment in the *Criminal Code* was replaced with a mandatory 25 year minimum prison sentence for first degree murder offences. During the period from 1859 to 1976, while capital punishment was legal, Canada executed 710 people convicted of a capital criminal offence.

## **Flaws in the Application of Capital Punishment**

### **No Emphasis on Rehabilitation**

SLSC believes in the potential of each individual to successfully engage in the process of rehabilitation regardless of the offence committed. Our philosophy aims to discover the potential of sentenced persons in a way that provides a method of accountability for their actions while offering a rehabilitative approach for the individual. Capital punishment does not adhere to the principle of rehabilitation as outlined in the *Principles of Sentencing* found in section 718 of the *Criminal Code* and serves to undermine this fundamental principle by not offering the offender an opportunity to engage in a process of rehabilitation. The reinstatement of capital punishment in the *Criminal Code* would assume that rehabilitation is not a realistic option for persons convicted

of a capital offence. The complete lack of rehabilitative options with capital punishment shows a flaw in any justice system that still maintains the practice of capital punishment. This is shown through a lack of opportunities for an offender to participate in a process of rehabilitation that addresses the systemic problems at the root of offending as well as the restoration of the offender as a functional member of the community.

SLSC has seen firsthand the potential to rehabilitate federally sentenced persons through the implementation of the LifeLine® In-Reach program. LifeLine® strove to offer those serving life sentences the help and support to effectively complete their sentence of incarceration, and successfully reintegrate back in the community upon their release. The program employed life sentenced people who themselves have successfully reintegrated into their communities following their incarceration, to serve as mentors for incarcerated as well as paroled lifers. LifeLine® In-Reach workers acted as inspirational role models for incarcerated lifers, and continue to be examples of the potential for rehabilitation, showing the possibility of a fulfilling life after release. The St. Leonard's LifeLine® program served 17 federal institutions in Saskatchewan and Alberta providing services to 230 inmates.

### **Wrongful Convictions**

SLSC maintains the position that the possibility of wrongful convictions poses too great a risk to the credibility of the justice system. The moral factors attached are subject to individual interpretation; but the execution of an innocent person is an indisputable risk of the practice. Wrongful convictions in Canada have gone beyond signifying a hypothetical scenario as there have been many cases demonstrating the harsh reality that can occur during the pursuit of justice. Although capital punishment has been abolished since 1976, there have been numerous examples of wrongfully convicted persons whose crimes could have resulted in the application of capital punishment. In an estimate by The Association in Defense of the Wrongly Convicted (AIDWYC), a total of 43 wrongful convictions have taken place since 1959 for murder or crimes involving a violent sexual nature.<sup>2</sup> Although many of these cases have involved second degree murder or sexual assault, crimes which were not capital offences prior to 1976, they serve as examples of the miscarriage of justice that is associated with capital punishment. A notable example of a wrongful

---

<sup>2</sup> <http://www.aidwyc.org/timeline.html>

conviction in Canada is the David Milgaard case. Convicted of murder in Saskatchewan in 1970, it was not until 1997 that Milgaard was exonerated of his crime thanks to advances in DNA evidence.<sup>3</sup> The irreversible consequences of capital punishment, especially in the case of wrongful convictions, places an onerous responsibility on the State and jeopardizes the credibility of the justice system.

The United States, a country which has carried out 1277 executions since 1976, has exonerated 140 death row inmates.<sup>4</sup> Such a high rate of wrongful convictions is especially egregious where the death penalty is still in effect. While the US justice system does not entirely mirror that of Canada, it does serve as a potent reminder of the risk of executing people who are innocent of wrongdoing.

### **Capital punishment as a form of deterrence**

Although there is a popular belief that capital punishment acts as a deterrent for criminal behaviour, in fact, there is no correlation between the apparent deterrent effects of capital punishment and homicide rates in Canada. Prior to the abolition of capital punishment in 1976, Canada's homicide rate substantially increase starting in 1961. The homicide rate more than doubled, growing from 1.25 homicides per 100,000 in 1961, to 3.0 per 100,000 in 1976.<sup>5</sup> This is the highest homicide rate Canada has experienced. At the time of this escalation, Canada began debating the effectiveness of capital punishment, given the rising homicide rates and a perceived need to re-evaluate the application of the justice system. This increase occurred at a time when capital punishment was still applicable for a capital offence. After the abolition of capital punishment in 1976, Canada's homicide rate experienced an overall decline with the rate dropping to 1.6 per 100,000 in 2010. This is the lowest homicide rate Canada has seen since the abolition of capital punishment, and the lowest in forty years. These statistics clearly indicate there is no correlation between capital punishment and deterrence. Canada had a steady increase in the homicide rate leading to a record

---

<sup>3</sup> Bajer, R. et al. 2007. Wrongful Convictions in Canada. International Society for the Reform of Criminal Law. Conference Paper June 22-26, 2007. Retrieved: <http://www.isrcl.org/Papers/2007/YMC.pdf>

<sup>4</sup> <http://takeaction.amnestyusa.org/atf/cf/%7B4abebe75-41bd-4160-91dd-a9e121f0eb0b%7D/DEATHPENALTYFACTS-FEBRUARY%202012.PDF>

<sup>5</sup> <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561-eng.pdf>

high during years when capital punishment was still in use, while in the years following its abolition, there was an overall decline with a record low in 2010.

Nor is there a correlation between the deterrent effects of capital punishment and existing homicide rates internationally. For instance, in 2010 the homicide rate in the US was 4.8 per 100,000, a figure more than double Canada's for the same year.<sup>6</sup> The US held the fifth position worldwide for highest number of executions in 2010.

## Public Opinion

Public opinion on the subject of capital punishment is always a crucial area to examine as public opinion typically reflects the attitude the government holds towards a particular issue. In a study released in February 2012 conducted through a partnership between Angus Reid Public Opinion and the Toronto Sun, statistics reveal a nearly even divide among those who oppose and those who favor capital punishment. The report revealed 61% percent of Canadians were in support of reinstating capital punishment, while 34% were against and 5% remained undecided. The initial impression that can be extracted from these statistics is that a majority of Canadians is in support of capital punishment. However, this does not necessary prove that in all cases of murder the majority of Canadians believe capital punishment should be appropriate measure. In the same study when participants were asked to choose between life in prison and capital punishment for a murder offence, 50% of Canadians chose life imprisonment, 38% chose capital punishment with the remaining 12% unsure of their position.<sup>7</sup> If analysing the second set of statistics the conclusion which can be drawn is that a majority of Canadians supports the reinstatement of capital punishment, although they believe the application should not be a sentence automatically received for a murder offence. Rather the majority believe capital punishment should be exercised with a high level caution, and only used in the most heinous of circumstances.

---

<sup>6</sup> <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls>

<sup>7</sup> Canseco, M. 2012. *Canadians Hold Conflicting Views on Death Penalty*. Angus Reid Public Opinion: Canadian Public Opinion Poll. Retrieved from: [http://www.angus-reid.com/wp-content/uploads/2012/02/2012.02.08\\_Death\\_CAN.pdf](http://www.angus-reid.com/wp-content/uploads/2012/02/2012.02.08_Death_CAN.pdf)

This nearly even population divide is not of new significance when debating the reinstatement of capital punishment in Canada. Each time a vote on capital punishment is raised in Parliament, the result has been a nearly even split favoring abolition. The first occurrence of this public opinion split took place with the initial parliamentary vote on capital punishment in 1976, resulting in an outcome of 130-124 for abolition. It was a close decision, with a difference of only six votes deciding the future of capital punishment in Canada. Again in 1987, a vote took place in an attempt to reinstate it, and the final result in that decision was 148-127 in favor of the current legislation.<sup>8</sup> This seems to indicate that the narrow public opinion divide has been a reoccurring event since the initial abolition of capital punishment. Ultimately, what these statistics say is that public opinion on capital punishment in Canada has not drastically changed since the original vote favoring its abolition in 1976.

## Conclusion

From the perspective of a long established criminal justice organization active in community corrections, SLSC will not support the return of the death penalty in Canada. Our experience working within the criminal justice system enables us to assert that the use of capital punishment is overall, an ineffective method of dealing with persons convicted of murder offences. The use of capital punishment offers offenders no opportunity to participate in a process of rehabilitation contrary to the *Principles of Sentencing* outlined in the *Criminal Code*. In addition, the irreversible consequences that can result from a wrongful conviction poses too great of a risk for offenders and serves to threaten the credibility of our justice system. This stance taken by SLSC is based on evidence of recent Canadian cases of injustice where the application of capital punishment would have resulted in the loss of an innocent life. Further, SLSC believes that crime statistics starting prior to the abolition of capital punishment to the current day prove capital punishment does not serve as a deterrent to murder. This is shown through the significant decrease in the homicide rate ultimately resulting in a national record low since the abolition of capital punishment.

---

<sup>8</sup> Gendreau, P. 1988. Capital Punishment in *The Canadian Encyclopedia*. Hurtig Publishers, vol 1, pp. 360-361.