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EARLY CANADA

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Capital Punishment

Capital punishment existed in various forms in Canada until 1998, when the federal government completely abolished the death penalty.



Justice

The statue Justicia in front of the Supreme Court of Canada overlooking the Peace Tower of Parliament in Ottawa.

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In pre-Confederation Canada, hundreds of criminal offences were punishable by death. Murder remained a capital crime until 1998, when Canada completely abolished the death penalty.

Early Canada

One of the earliest recorded executions in Canada came in 1749 in newly-founded Halifax. A sailor named Peter Cartcel killed a man and was tried before a general court comprised of Halifax's governor and six councillors. He was quickly found guilty and hanged two days later.

Before 1859, Canada (then British North America) operated under British law. Some 230 offences, including stealing turnips and being found disguised in a forest, were punishable by death. By 1865 only murder, treason and rape were still considered capital offences.

Gradual Abolition

The drive either to further limit or abolish capital punishment began in 1914, when Member of Parliament Robert Bickerdike presented a private member's bill calling for its abolition, but the law remained unchanged despite frequent submissions to Parliament.

In 1967, a government bill to apply mandatory life imprisonment in all murder cases, except when the victim was an on-duty police officer or prison guard, was passed by a House of Commons vote of 105 to 70 for a five-year trial period. This legislation was again sustained in 1973, supported by a 13-vote majority.



House of Commons

(photo by Roy Grogan, courtesy Library of Parliament, Government of Canada)

In 1962, Ronald Turpin and Arthur Lucas were the last prisoners to be executed in Canada.

In 1976, the Commons abolished hanging by a majority of six votes. Capital punishment remained lawful only under the *National Defence Act*, which permitted the death penalty for members of the Armed Forces found guilty of cowardice, desertion, unlawful surrender, or spying for the enemy.

In 1998, Canada eliminated the death penalty for military members, thus becoming a fully abolitionist country when it comes to state executions.

Public Debate

There has been a vigorous public debate over whether capital punishment should be reinstated. Those in favour claim it is an effective deterrent to homicide. However, the majority of studies in Western societies

conclude that murder rates have remained stable or declined, along with decreasing use of capital punishment. Neither abolition nor the re-introduction of capital punishment have been shown to affect homicide rates significantly.

In a historic vote on 30 June 1987, the House of Commons voted 148–127 not to reinstate the death penalty, effectively quashing any attempt to restore it in the near future.

A public opinion poll conducted in 2013 found that 63 per cent of Canadians supported reinstating the death penalty for murder, while 30 per cent opposed it. Support was highest in Manitoba and Saskatchewan (75 per cent) and lowest in Québec (where 36 per cent of respondents opposed reinstatement).

Despite the apparent support, as of 2016 no major Canadian political party was advocating bringing back the death penalty.

Faint Hope Clause

Another recent debate concerns a statutory provision connected with the abolition of capital punishment. This is section 745 of the *Criminal Code*, the "faint hope clause." The section originally applied to offenders sentenced to life imprisonment without parole eligibility for 15 years or more, as well as offenders convicted of high treason or first degree murder who were not eligible for parole for 25 years, and offenders convicted of second degree murder, whose parole eligibility is set between 10 and 25 years.

Under the original faint hope clause, an offender who served 15 years of a life sentence could apply to the appropriate chief justice of the province where he or she was convicted for a reduction of his parole eligibility period. The chief justice then designated a superior court judge (see Courts of Law) to empanel a 12-member jury – which represents the community and its conscience – to hear and determine the application.

The jury was to consider the offender's character, his conduct while serving his sentence, the nature of his offence, other matters the judge deemed relevant, and information from persons immediately affected by the offence, such as members of victims' families. The jury could reduce or terminate the offender's parole eligibility period (by a two-thirds majority vote), or deny the application. The offender could appeal the jury's determination directly to the Supreme Court of Canada.

Restriction and Repeal

The purposes of section 745 were to provide imprisoned "lifers" with an opportunity to earn early release, to provide an incentive for good institutional behaviour, and to allow a reduction of sentence in light of changed circumstances.

Despite these humanitarian and prison-system objectives, the prospect of convicted serial killers such as Clifford Olson or Paul Bernardo becoming eligible for parole after serving only 15 years prompted a public call for the repeal of section 745.



Prison Bars

View through the upper tier of a cellblock

In 1996, the Liberal government of Prime Minister Jean Chrétien amended the clause. Offenders convicted of multiple murders became ineligible to apply. Offenders who could apply were first required to first persuade a judge that their hearing had a reasonable chance of success. And the jury panel, after hearing the appeal, had to unanimously agree before an offender's parole eligibility period could be reduced.

In 2011 the Conservative government of Prime Minister Stephen Harper, advocating a "tough-on-crime" approach, repealed the faint hope clause altogether. The change meant that only offenders serving life sentences for murder or high treason committed *before* December 2011, could still apply for parole after 15 years in prison.

Since 2011, inmates convicted of such sentences must serve at least 25 years in prison before they can apply for parole. In some cases murderers can also get longer sentences. In 2012, Travis Baumgartner killed three co-workers as he robbed an armoured car in Alberta. He was ordered to serve at least 40 years before he can apply for parole.

TREASON

EXECUTION

HANGING

MURDER

CRIMINAL CODE

CRIME

DEATH PENALTY