

Goodmans^{LLP} Update

Charter Protection Against Cruel and Unusual Punishment Does Not Apply to Corporations

The Supreme Court of Canada recently ruled that the constitutional protection against cruel and unusual treatment or punishment under s. 12 of the *Canadian Charter of Rights and Freedoms* does not apply to corporations. It only applies to human beings. The corporate veil that separates a corporation from the human beings who manage and direct it, like its officers and directors, was a factor that weighed against s. 12 of the *Charter* applying to corporations.

Background

In 2016, 9147-0732 Québec inc. (the “**Company**”) was convicted under Quebec’s *Building Act* of carrying out construction work as a contractor without holding a current licence. The Court of Québec consequently imposed a fine of \$30,843, which was the mandatory minimum penalty under the *Building Act*. The Company challenged the fine’s constitutionality on the basis that it violated the Company’s right to protection against cruel and unusual treatment or punishment under s. 12 of the *Charter*.

The Company’s arguments were initially unsuccessful, with two levels of court in Quebec holding that s. 12 is intended to only protect human dignity. A majority at the Québec Court of Appeal, however, found that s. 12’s association with the concept of human dignity did not prevent corporations from benefiting from protection under s. 12. A dissenting judge reasoned that s. 12 is concerned with human dignity and therefore corporations cannot be subject to cruel and unusual punishment.

Supreme Court Decision

The Attorney General of Quebec appealed the decision to the Supreme Court, which, in its decision in *Quebec (Attorney General) v. 9147-0732 Québec inc.*, unanimously held that the s. 12 *Charter* protection does not extend to corporations. The words “cruel and unusual treatment or punishment” refer to human pain and suffering, both physical and mental, and is a protection only human beings enjoy.

Much of the discussion in the three separate opinions that make up the Supreme Court’s decision concerned a debate about the proper place in constitutional interpretation of foreign and international sources. But the decision also contains important insights into the constitutional protections afforded to corporations.

In the majority decision, Justices Brown and Rowe held that the concept of human dignity underlies the s. 12 protection against cruel and unusual treatment or punishment. They specifically stated that “the existence of human beings behind the corporate veil is insufficient to ground a s. 12 claim of right on behalf of a corporate entity, in light of the corporation’s separate legal personality.” So while a corporation’s officers and directors have a personal constitutional right to protection against cruel and unusual treatment, the corporate veil that separates those natural persons from the corporation itself prevents the corporation from benefiting from s. 12. As a result, excessive fines imposed on a corporation, without more, are not unconstitutional. This is in contrast to fines that are imposed upon individuals, which can be unconstitutional if they are “so excessive as to outrage standards of decency” and “abhorrent or intolerable” to society.

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In a concurring decision, Justice Abella noted that of all the “Legal Rights” set out in ss. 7-14 of the *Charter*, only two have been held to apply to corporations: the s. 8 right to be secure against unreasonable search and seizure, and the s. 11(b) right to be tried in criminal and penal matters within a reasonable time. She noted that while “[c]orporations are, without question, entitled to robust legal protection, constitutional or otherwise”, it is widely acknowledged internationally that protections in human rights legislation against cruel and unusual treatment do not apply to corporations. As Justice Abella pithily noted, “there is a reason they are called *human* rights.”

Concluding Remarks

The Supreme Court’s judgment emphasizes that while there are significant benefits to the separate legal personality afforded to corporations, those benefits do not include many *Charter* rights that protect natural persons. If a corporation is facing excessive fines or penalties, it should consult its legal advisors about what other recourse may be available to it.

For more information concerning this case, please contact any member of our [Litigation Group](#).