

# Because you can never have too much jail ...



By [Jacob Stilman](#)

How appropriate that the Super Bowl is coming up. Once again, like a well-practiced football team, the Conservative government is breaking out its playbook and going with its favourite scoring set piece: the old “let’s-get-tough-on-crime” touchdown pass.

And so this week Canadians were introduced to the latest Conservative crime initiative with the announcement that they will introduce a penalty of “life without parole” for certain categories of murder.

Presumably Coach Stephen Harper sees a need to put more points on the board, lest his government be overtaken in the polls.

This much is certain. Harper will parade out the spouses of murdered police officers, perhaps the parents of a murdered child, to make an appeal to the most visceral sentiments of the public. The government will bank that the public cannot help but be moved by such emotive appeals. The initiative will ultimately pass, but only after the 2015 election, where the distraction of this phony issue may just be the ticket that delivers the Conservatives another mandate.

So what more can be said that has not already been expressed?

We know this much:

1. Murder rates have been in steady decline overall since the abolition of capital punishment in 1976 and are now at the level they were in 1966;
2. The harshness of a penalty does not act as a deterrent against criminal acts;
3. The numbers demonstrate that the likelihood of recidivism for offenders convicted of murder is negligible;
4. Persons convicted of first-degree murder are unlikely to be released from custody at the 25-year mark (the current mandatory parole ineligibility period under the Criminal Code) in any event;
5. The flood of mandatory minimum penalties that have been introduced by this government has resulted in over-incarceration, stress on our penal institutions, and is going to result in an increase in recidivism as jails become over-crowded and less able to deliver rehabilitative programs;
6. The U.S. experience of draconian sentencing has been a demonstrable failure, resulting in the highest rate of incarceration in the free world, but a crime rate significantly above comparable developed democratic nations.

If this is sounding repetitive it is because all of these arguments have previously been made each time the government has ratcheted-up penal sanctions and restricted judicial discretion. And although many of the government’s criminal justice initiatives have been found to be unconstitutional this appears to have had little impact on our policy makers.

This latest proposed amendment may in fact pass constitutional muster: Does a sentence of life without parole for certain categories of murder really offend our “fundamental principles of justice?” The recent amendment that resulted in consecutive terms of parole ineligibility, where a person commits multiple homicides (imposed, most notoriously, on Justin Bourque for the murder of three Mounties, and likely to be imposed on Christopher Husbands for the Eaton Centre double homicide), has not yet been constitutionally tested at the appellate level, but it may well withstand Charter scrutiny.

Is a “true life sentence” completely out of whack with our societal standards? The answer to this question is highly subjective and value laden, and subject to each individual’s intrinsic belief in what our criminal justice system ought to represent. For this reason it may be precisely the sort of law which defies constitutional review.

Nonetheless, what is troublesome about this latest proposal is that it caters to our worst instincts; it appeals to a perceived need for vengeance and retribution, rather than being founded on any rational principle of penal justice. But still, Harper can legitimately argue: “What's wrong with a little retributive justice reserved for the worst among us?”

Greater legal minds will ultimately tackle this issue. Canadians, meanwhile, must decide whether we want our laws to promote a system that assumes the worst, punishes to an ever-greater extent, and is motivated by vengeance alone.

And if the collective answer to all of this is “yes,” then can capital punishment be far behind?