

CANADA / JUDGMENT

R. v. Mariani

2025 BCSC 1298

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1298 R. v. Mariani

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Mariani,

2025 BCSC 1298

Date: 20250709

Docket: 89371-2

Registry: Nanaimo

Rex

v.

Luciano Emilio Mariani

Corrected Judgment: The text of the judgment was corrected at paragraph 44 on July 14, 2025.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment re: Remedy and Sentence

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Place and Dates of Hearing:

Nanaimo, B.C.

May 27-28, 2025

Place and Date of Judgment:

Nanaimo, B.C.

July 9, 2025

INTRODUCTION

- [1] On July 4, 2023, the applicant, Luciano Mariani, pleaded guilty before my now-retired colleague Justice Crossin to the first-degree murder of Caroline Bernard, a woman with whom he had briefly been involved in an intimate relationship. In the early morning hours of August 31, 2021, Mr. Mariani broke into Ms. Bernard's home in Bowser, British Columbia, and, as her young daughter lay beside her in bed, he savagely bludgeoned her to death with a baseball bat.
- [2] The mandatory penalty for first-degree murder is set out in s. 235(1) of the Criminal Code: imprisonment for life. The period of parole ineligibility for this offence is fixed in s. 745(a) of the Code: offenders must serve 25 years of their life sentence without eligibility for parole. This mandatory penalty was enacted by Parliament in 1976 when the death penalty was abolished in Canada. It was accompanied by a concurrent enactment which created a statutory right to apply for a reduction in the parole ineligibility period after the passage of 15 years. This became commonly known as the "faint hope" clause.
- [3] In *R. v. Bissonnette*, 2022 SCC 23, the Supreme Court of Canada explained the history and intention of this new sentencing regime, as follows:
- [32] The mandatory 25-year parole ineligibility period for first degree murder was presumably established to satisfy proponents of the death penalty. Indeed, it was particularly severe when compared with the ineligibility periods provided for in other Western countries at the time for similar offences. Moreover, from 1961 to 1976, the average time served in prison for the offence of capital murder had been 15.8 years, well below the newly enacted 25-year period of imprisonment.
- [33] When the death penalty was abolished, Parliament also established a right to judicial review of the parole ineligibility period, commonly known as the "faint hope" clause. This clause allowed persons who had been sentenced to life in prison for first or second degree murder without eligibility for parole for more than 15 years to apply for a review of their parole ineligibility period once they had been incarcerated for at least 15 years. The clause was added to the Criminal Code in the hope of encouraging the rehabilitation of offenders.

serving long prison sentences and, as a result, of creating a safer prison environment. As well, it tempered the increased harshness of parole ineligibility periods

[Citations omitted.]

- [4] After his guilty plea, Mr. Mariani brought an application challenging the constitutionality of various Code provisions, including ss. 745(a), 745.01(2), and 745.6(1)(a.1). The latter two provisions, enacted in 2011, had the effect of prospectively canceling the legal entitlement of first-degree murder convicts to apply for a reduction in their parole ineligibility after 15 years of imprisonment. Mr. Mariani argued, on various grounds, that this effective removal of the "faint hope" clause violated both s. 7 and s. 12 of the Charter of Rights and Freedoms.
- [5] Justice Crossin's ruling on this application was handed down on January 25, 2025, and is indexed at 2025 BCSC 129. In brief terms, he found that the 2011 legislative enactment which prohibited post-2011 offenders who were convicted of first-degree murder from applying for "faint hope" had the effect of creating a grossly disproportionate sentence for certain offenders, and thus violated s. 12 of our Charter, which guarantees the right of all Canadians not to be subjected to cruel and unusual treatment or punishment.
- [6] Justice Crossin emphasised, amongst other things, that the scope and reach of first-degree murder as it is presently defined encompasses a wide range of conduct and moral culpability, and that the mandatory sentence without the "faint hope" clause did not allow for differentiation between offenders with varying levels of blameworthiness, for example as between the offender found guilty of a single murder as an aider abettor and one who commits mass or multiple murders as a principal. He considered the negative practical impact of the sentence on offenders, noting that the now-guaranteed additional period of incarceration without the possibility of a parole eligibility review would discourage rehabilitation without advancing any other objectives of sentencing.
- [7] In the latter connection, Justice Crossin, echoing Bissonnette, observed that the "faint hope" clause had salutary penological and institutional benefits, including acting as a strong incentive for good behaviour and enhancing the objectives of individual correction and rehabilitation, thereby improving the safety and security of penitentiary staff and other inmates. He referred to evidence which showed that a significant majority of "faint hope" applications have resulted in at least some reduction in parole ineligibility, and that rates of recidivism amongst successful "faint hope" applicants have been low. In other words, the "faint hope" clause consistently produced significant positive results towards the ultimate goal of sentencing: protecting the public.
- [8] A salient feature of s. 12 Charter jurisprudence is that the court's assessment of the constitutionality of mandatory minimum sentences need not be limited to the offender or to the offence before the court. Because it is imperative that nobody should ever be subjected to cruel and unusual punishment, on s. 12 applications judges are permitted to entertain reasonable hypothetical offenders and offences in order to assess the proportionality of a given mandatory sentencing scheme in a variety of realistic scenarios. The rationale for this

was recently restated as follows in *R. v. Hills*, 2023 SCC 2:

- [72] Foreclosing the consideration of the reasonably foreseeable impacts of an impugned law "would dramatically curtail the reach of the Charter and the ability of the courts to discharge their duty to scrutinize the constitutionality of legislation and maintain the integrity of the constitutional order" (*Nur*, 2015 SCC 15 at para. 63). Because it is the "nature of the law" that is at issue, not the claimant's status, it suffices for a claimant to allege unconstitutional effects in their case or on third parties (para. 51, quoting *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 314). In crafting reasonable hypotheticals, a court is examining the scope of the impugned law and "not merely the justice of a particular sentence imposed by a judge at trial" (*R. v. Goltz*, [1991] 3 S.C.R. 485, at p. 503; see *Big M Drug Mart*, at p. 314; *R. v. Nur*, 2015 SCC 15 at para. 60). Further, "[i]f the only way to challenge an unconstitutional law were on the basis of the precise facts before the court, bad laws might remain on the books indefinitely" (*Nur*, at para. 51).
- [73] The effective use of judicial resources also favours the use of reasonable hypotheticals as they allow one judge to consider an impugned mandatory minimum from multiple vantage points and they help reduce the number of challenges that will be heard in or among jurisdictions. Importantly, they promote the rule of law by underscoring how no one should be convicted or sentenced under an unconstitutional law (*R. v. Lloyd*, 2016 SCC 13 at para. 16). Hence, "allowing accused to employ reasonable hypothetical scenarios is more likely to further the purpose of the Charter: protecting citizens from abuse of state power" (Fehr, Colton. "Tying Down the Tracks: Severity, Method, and the Text of Section 12 of the Charter" (2021), 25 Can. Crim. L.R. 235.Fehr, at p. 236).
- [74] It is for these reasons that, to repeat McLachlin C.J., "[t]his Court has consistently held that a challenge to a law under s. 52 of the Constitution Act, 1982 does not require that the impugned provision contravene the rights of the claimant" (*Nur*, at para. 51; see also *Goltz*, at pp. 503-4). Under well-established case law, there is no need to wait for a "real" offender to appear to impugn the constitutionality of a provision of general application.
- [9] Justice Crossin carefully engaged in this exercise. He considered two hypotheticals proposed by Mr. Mariani but properly rejected them as inapt and implausible. Instead, he configured his own hypothetical scenarios, based on two reported cases. In both of these cases, the accused was sentenced to first-degree murder. In one, Justice Crossin assumed that the offender had been convicted for his participation in a single victim murder not as a principal, but as an aider or abettor. It was a necessary implication of the hypothetical that the offender was sufficiently rehabilitated and would have been eligible to be considered for early release under the pre-2011 sentencing provisions.
- [10] After considering the circumstances of these reasonable hypothetical offenders in plausible and foreseeable circumstances, Justice Crossin concluded that a fit and proportionate sentence for an offender who has committed a single first-degree murder is life imprisonment without the possibility of parole for 25 years, with the ability to apply for a

reduction in parole ineligibility period after 15 years: see para. 242 of his judgment.

Consequently, he ruled that the prospective cancelation of the "faint hope" clause by ss. 745.01(2) and 745.6(1)(a.1) of the Code resulted in effects that were not merely excessive, but grossly disproportionate, because without the right of review after 15 years, offenders would be guaranteed up to 10 further years of parole ineligibility in circumstances where, prior to 2011, they would have been entitled to apply for early release and stood a reasonable prospect of success.

- [11] The gross disproportionality that Justice Crossin identified was emphasised by reference to Bissonnette, in which the Supreme Court of Canada struck down s. 745.51 of the Code, another 2011 sentencing innovation which permitted the imposition of consecutive periods of parole ineligibility for multiple murders. In Bissonnette, the accused entered a mosque and randomly killed six worshippers as they prayed. The Supreme Court of Canada concluded that it was unconstitutional to sentence the accused to consecutive periods of parole ineligibility. Accordingly, the accused was sentenced to life with a parole ineligibility period of 25 years. Justice Crossin concluded that the decision in Bissonnette, combined with the 2011 removal of the "faint hope" clause, created "a stark reality" in which the hypothetical offender who aids and abets in the commission of a single murder must serve the same sentence as a mass or multiple murderer.
- [12] In brief terms, Justice Crossin found that the 2011 legislative cancelation of "faint hope" had the grossly disproportionate effect, for no penologically valid purpose, of creating a "one-size-fits-all" sentence for first-degree murder whereby a reasonably foreseeable single-murder convict would receive the same sentence as a multiple or mass murderer. Such a single offender would be denied access to the pre-existing and long-standing legal right to apply for a reduction of his parole ineligibility, without regard to the circumstances of his offence, his degree of participation in it, his level of moral culpability, or the rehabilitative steps that he has taken during the first 15 years of his life sentence.
- [13] I would respectfully agree that denying an offender the ability to apply for a reduction in his parole ineligibility in this way does nothing to enhance the objectives of denunciation and deterrence; it discourages rehabilitation; it violates the principle of parity in sentencing by imposing the same penalty upon all first-degree murder convicts regardless of the number and gravity of the offences committed and the degree of responsibility of the offender; and it countermands the positive societal benefits of a measure, built into the law nearly half a century ago, that limits the severity of the penalty in appropriate cases, promotes safer prisons, and secures the good conduct of offenders.

CONTINUATION JUDGE

- [14] Justice Crossin issued his decision on January 27, 2025, just a few weeks before his retirement. He dismissed other relief sought in Mr. Mariani's application, but concluded, for the reasons just summarised, that the sentence created by the combination of ss. 745(a), 745.01(2), 745.6(1)(a.1) of the Code violated s. 12 of the Charter. He adjourned the question of

the applicability of s.1 of the Charter and of remedy so that counsel could consider their submissions. The Crown ultimately took the position that the sentence created by the combined effect of ss. 745(a), 745.01(2), and 745.6(1)(a.1) can be justified by s. 1 of the Charter.

- [15] By the time the matter returned to court, Justice Crossin had retired and was no longer able to sit as a trial judge. The continuation of the matter was assigned to me in accordance with s. 669.2 of the Code. I find myself in the somewhat unusual circumstance of having merged into this proceeding at an advanced stage where this court has already decided that there is gross disproportionality at work in the present-day effects of our sentencing laws for first-degree murder and has granted a portion of Mr. Mariani's application. The Crown has submitted that, as the presiding judge, I am in a position to revisit Justice Crossin's findings.
- [16] While I accept the Crown's advice that the doctrine of *functus officio* does not apply because no final order has been made, in my view, the overall correctness of Justice Crossin's conclusions is a matter for an appeal, not for reconsideration by me. My task is to determine whether the sentence for those convicted of a single first-degree murder - that sentence being life, without the possibility of parole for 25 years, and without the ability to apply for "faint hope" - is a reasonable and justifiable limitation of the right guaranteed by s. 12 of the Charter. If not, I must order a remedy that goes only so far as to cure the deficiency. Finally, of course, I must pronounce sentence on Mr. Mariani.

RELEVANT LEGISLATION

- [17] As already mentioned, by the combination of ss. 235(1) and 745(a) of the Code, the "primary" penalty for first-degree murder is life imprisonment without eligibility for parole for 25 years.
- [18] Section 745.01(1) requires the judge, at the time of pronouncing sentence under s. 745(a), (b), or (c) to state for the record that, although the offender has been sentenced to life imprisonment and is not eligible for parole until the expiry of 25 years, the offender may, after serving at least 15 years of the sentence, apply under s. 745.6 of the Code for a reduction in their period of parole ineligibility. Since 2011, s. 745.01(2) has provided that s. 745.01(1) does not apply to offenders convicted of an offence that was committed on or after the provision came into force on December 2, 2011.
- [19] Section 745.6(1) of the Code reads as follows:
- 745.6 (1) Subject to subsections (2) to (2.6), a person may apply, in writing, to the appropriate Chief Justice in the province in which their conviction took place for a reduction in the number of years of imprisonment without eligibility for parole if the person:
- (a) has been convicted of murder or high treason;

(a.1) committed the murder or high treason before the day on which this paragraph comes into force;

(b) has been sentenced to imprisonment for life without eligibility for parole until more than fifteen years of their sentence has been served; and

(c) has served at least fifteen years of their sentence.

[20] This is the present-day substantive "faint hope" clause. As can be seen, s. 745.6(1)(a.1) specifies that an application for consideration of early parole cannot be made by an offender convicted of murder, including first-degree murder, if the crime was committed on or after the subsection came into force, which was also on December 2, 2011.

[21] Additionally, s. 745.6(2) of the Code, which was enacted in 1996, prohibits offenders convicted of more than one murder from applying for "faint hope". As Justice Crossin explained in his judgment, by virtue of s. 745.6(2), and the declaration in Bissonette, the legislative cancelation of "faint hope" for post-2011 offenders has resulted in single-victim and multiple-victim murderers receiving the same "one size fits all" penalty.

[22] Section 12 of the Charter provides that:

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[23] The rights guaranteed by the Charter are not absolute, but are subject to the "saving" provision contained in s. 1 thereof, which provides that:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

DISCUSSION

[24] The fundamental purpose of sentencing set out in s. 718 of the Code is to protect society, and to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions in service of a number of well-known objectives. In a case of murder, the most important objectives are denunciation, deterrence, and the separation of the offender from society. Criminal sentences are also intended to provide reparation for the harm done to victims, to their loved ones, and to the community. Rehabilitation is a secondary, but nevertheless substantial and pressing, objective in cases of murder.

- [25] The fundamental principle of sentencing - indeed, "a 'central tenet' of Canada's sentencing regime": *Hills* at para. 56 - is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: s. 718.1. A sentence should also be increased or reduced to account for any relevant aggravating or mitigating circumstances related to the offence or the offender, and be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: s. 718.2.
- [26] Parliament is unquestionably entitled to prescribe mandatory sentences for specific crimes, but these must be measured against the supremacy of individual rights guaranteed by the Charter. Where it is judicially determined, as it has been in this case, that in the circumstances of an individual offence and offender, either actual or hypothetical, the imposition of a mandatory penalty prescribed by Parliament is not merely excessive, but grossly disproportionate, the sentence will infringe upon the s. 12 Charter right not to be subjected to cruel and unusual treatment.
- [27] Once a declaration is made that a sentencing law infringes upon s. 12 of the Charter, the court must consider whether it is nevertheless a reasonable limitation upon the underlying right that is demonstrably justified in a free and democratic society: s. 1 of the Charter. To assess whether the infringement can be "saved" by s. 1, the court must apply the test set out in *R. v. Oakes*, [1986] 1 SCR 103. The Supreme Court of Canada summarized this test, in the context of a s. 12 infringement, in *R. v. Nur*, 2015 SCC 15, as follows
- [111] In order to justify the infringement of the respondents' s. 12 rights under s. 1 of the Charter, the [Crown] must show that the law has a pressing and substantial objective and that the means chosen are proportional to that objective. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the right in question; and (3) there is proportionality between the deleterious and salutary effects of the law: *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103. It will be difficult to show that a mandatory minimum sentence that has been found to be grossly disproportionate under s. 12 is proportionate as between the deleterious and salutary effects of the law under s. 1 [of the Charter].
- [Emphasis added]
- [28] There has never been a case anywhere in Canada in which the Crown has successfully argued that a sentencing scheme which has been judicially determined to infringe s. 12 of the Charter constituted a reasonable and demonstrably justified limitation saved by s.1. The reason for this is that most claims under s. 12, including the present one, focus on the effects of a given sentencing law on individual offenders, and the applicant must establish that it amounts to a grossly disproportionate punishment. Where this task is accomplished, it cannot plausibly be argued that the law is either "minimally impairing" of the underlying right, or that there is proportionality between "the deleterious and salutary effects of the law."

- [29] There is no dispute that the combination of ss. 235(1) and 745(a) of the Code address pressing and substantial objectives that are rationally connected to the principles of denunciation, deterrence, separation of offenders, and reparation to the community and victims. Justice Crossin expressly confirmed that life without parole eligibility for 25 years is a fit and proportionate sentence for his hypothetical offenders, but only as long as it continues to be accompanied by access to the "faint hope" clause. The real targets of this litigation, then, are s. 745.01(2) and, in particular, s. 745.6(1)(a.1) of the Code, which, at the risk of repetition, had the effect of canceling the pre-existing and long-standing legal entitlement of single-victim first-degree murder convicts to apply for a "faint hope" reduction of parole ineligibility after serving 15 years of a life sentence.
- [30] As noted in Bissonnette, the "faint hope" clause was enacted to attenuate the severity of the murder sentence that replaced the death penalty in 1976. Its objective was rehabilitative. It was a rational and pragmatic measure by which a select and limited demographic of murder convicts could show, through their good behaviour and rehabilitative efforts during the first 15 years of their life sentences, that they had already been adequately punished, deterred, corrected, and reformed. Only those who could convince a unanimous jury that they were deserving of a reduction in their parole ineligibility period were granted "faint hope".
- [31] The evidence placed before Justice Crossin showed that, while relatively few people applied, "faint hope" applicants were frequently successful and the rate of recidivism by early parolees was very low. In short, the "faint hope" clause was a humane law with tangible pragmatic benefits that advanced the ultimate goal of public protection. It must never be forgotten that offenders remain under the authority of the parole authorities for as long as they live, early parole eligibility does nothing to alter this fact, and they stand to be recommitted to custody following any instance of breach of parole conditions.
- [32] According to parliamentary transcripts considered by Justice Crossin, ss. 745.01(2) and 745.6(1)(a.1) were introduced into law primarily in the name of denunciation and deterrence, but the objectives of the "faint hope" regime were purely rehabilitative and ameliorative. All the necessary deterrence and denunciation is loaded into the mandatory sentence required by the combination of ss. 235(1) and 745(a). The "faint hope" clause was not enacted to promote those principles, and its removal does not advance them.
- [33] It was also said that the nullification of "faint hope" was necessary to promote "truth in sentencing", but by 2011 the availability of earlier parole for rehabilitated offenders had been a central and well-publicised part of our murder sentencing laws for 35 years. The truth was always available for everyone to see. Sections 745.01(2) and 745.6(1)(a.1) did not advance, and are not rationally connected to, this purpose.
- [34] For these reasons, I find that the impugned subsections are not rationally connected to the government's avowed objectives in enacting them. In view of its grossly disproportionate effects, as determined by Justice Crossin, and in the absence of rational justification for it, I am not persuaded that the 2011 enactment of ss. 745.01(2) and 745.6(1)(a.1), which

eliminated "faint hope" for post-2011 offenders, constitutes a reasonable and demonstrably justified limit on the individual right not to be subjected to cruel or unusual punishment guaranteed by s. 12 of the Charter.

- [35] Consequently, I find that the impugned provisions are not "saved" by s. 1. The Crown's argument in favour of an order to the contrary is dismissed. The remaining question is the appropriate remedy.

REMEDY

- [36] I will emphasise, for the last time, that the "faint hope" regime was enacted almost half a century ago in tandem with the present-day life sentence for first-degree murder, including the 25-year parole ineligibility provision now contained in s. 745(a). It was part of a legislative compromise that led to the abolition of capital punishment. Its purpose was to mitigate the severity of a 25-year parole ineligibility period, not for all offenders, but only for those determined to be worthy of release after 15 years of imprisonment. It was an important element of the balance that was built into the original sentencing scheme. It is the removal of that balance that Justice Crossin found to have unconstitutional effects, and that I have found to be unreasonable and unjustified in our free and democratic society.
- [37] Under s. 52 of the Constitution Act, 1982, any law that is inconsistent with the provisions of the Constitution, including the Charter, is of no force or effect to the extent of the inconsistency. In the present case, the extent of the inconsistency is clear and is limited to the effects created by ss. 745.01(2) and 745.6(1)(a.1).
- [38] The "faint hope" clause has never been repealed, but was only prospectively nullified by the enactment of these two subsections. Therefore, a targeted and neatly circumscribed remedial order is readily at hand. I hereby declare and order that s. 745.01(2) of the Code, which effectively prohibits the sentencing judge from stating for the record that the offender is entitled to make a "faint hope" application after 15 years, and s. 745.6(1)(a.1) of the Code, which disentitles offenders who committed an offence after December 2, 2011 from applying for "faint hope", are of no force or effect in relation to persons convicted of first-degree murder who are not excluded from applying by s. 745.6(2) of the Code.
- [39] The Crown made submissions in support of a suspended or prospective declaration, but, as I conceive it, these were based on Justice Crossin's conclusion that s. 745(a) was unconstitutional, and on the apprehension that it would be struck down. The targeted declaration that I have made restores the balance of "faint hope" to the sentencing provisions for first-degree murder and cures the constitutional deficiencies identified by Justice Crossin, leaving s. 745(a) untouched.

- [40] In light of the seriousness of the infringement of the right of every individual not to be subjected to cruel and unusual punishment, and to stop the infringement that would be caused by the ongoing application of the impugned subsections, the declaration will have immediate effect and apply retroactively to the date of the provisions' enactment on December 2, 2011. Such a temporal scope is appropriate in these circumstances: Bissonnette at para. 134.
- [41] I would note, as a practical matter, that the "faint hope" clause has always remained available to persons convicted of murders committed before December 2, 2011, and that those offenders presently in custody serving sentences for offences committed after that date have not yet served 15 years. My declaration will therefore not yield a rush of applications that will overburden the system. It will also have the effect of eliminating a marked and arbitrary inequality in the legal right of offenders presently serving time for the same offence to apply for early parole based solely on whether their offences were committed before or after December 2, 2011.
- [42] I will now pronounce the sentence required by law upon Mr. Mariani.

SENTENCE

- [43] Stand up please, Mr. Mariani.
- [44] You will have noticed that Justice Crossin's evaluation of the constitutional questions put to him was not based on your own case, but on those of hypothetical offenders. There is nothing disproportionate about the mandatory penalty for you, Mr. Mariani, because the murder that you committed was exceptionally violent, rehearsed and deliberated over many months, and committed in cold blood against a vulnerable person and a former intimate partner. You broke into her home in the dead of night and ruthlessly beat her to death with a blunt instrument whilst her four-year-old daughter lay beside her in bed.
- [45] This was, it goes quite without saying, a crime of obscene brutality with maximally aggravating features fully justifying the severe penalty that the law requires me to impose. I would repeat the remarks of Justice Crossin that there are precious few meaningful things to be said in mitigation of your extremely violent, utterly appalling, premeditated, and pitiless transgression of the most basic norms of human decency. The damage that you have done to Ms. Bernard's family and friends is profound and permanent. The magnitude of the insult and injury that you have inflicted upon our local community is enormous. And first and foremost, you have brutally extinguished the life of a fine young woman who was beloved by all who knew her.
- [46] Luciano Emilio Mariani, for the first degree murder of Caroline Bernard, I hereby impose a sentence of life imprisonment without eligibility for parole until you have served 25 years. In accordance with the ruling of this court herein, after serving at least 15 years of your sentence, you may apply under s. 745.6 of the Code for a reduction in the number of years of imprisonment without eligibility for parole. If the jury hearing the application reduces the

period of parole ineligibility, you may then make an application for parole under the Corrections and Conditional Release Act at the end of that reduced period.

[47] I would emphasise that the right to make an application for a reduction of parole ineligibility does not guarantee that it will be granted. The Chief Justice must first determine that it has a substantial likelihood of success, and then a jury must unanimously recommend it. In any event, parole is by no means automatic once the period of ineligibility has lapsed. Prisoners serving life sentences for murder are often denied parole for many years after they become eligible to apply for it, and of course the most serious, dangerous and high-risk offenders never succeed in getting it. A jury might recommend a reduction, but ultimately the question of parole eligibility is left to the expertise and experience of the national parole board, whose paramount mandate is to ensure the safety and security of the public.

[48] I hereby make the following ancillary or related orders:

- a) Pursuant to s. 109 of the Code, there will be a firearms and weapons prohibition. Mr. Mariani is hereby prohibited for life from possessing any firearm, prohibited firearm, restricted firearm, prohibited weapon, restricted weapon, ammunition, prohibited ammunition, prohibited device and explosive substance.
- b) I will make the mandatory DNA order under s. 487.051 of the Code. Mr. Mariani must forthwith provide a sample of his DNA by the least-intrusive means available in accordance with the directions of correctional authorities.
- c) Pursuant to s. 743.2 of the Code, I order that the following documents must be forwarded to the Correctional Service of Canada:
 - 1) the Agreed Statement of facts;
 - 2) a copy of these reasons for sentence;
 - 3) all presentence reports and victim impact statements.
- d) Pursuant to s. 743.21, Mr. Mariani is prohibited from communicating, directly or indirectly, with any member of Caroline Bernard's family, including, especially, A.B., while he remains in custody and serving this sentence.

[49] My clerk has confirmed that Justice Crossin already made an order of forfeiture on June 11, 2024.

[50] That concludes this matter. We are adjourned.

"Baird J."

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