



Case in Brief: *R. v. Poulin*

Judgment of October 11, 2019 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2019 SCC 47

A convicted person has the right to the punishment that applied either when they committed their crime or when they are sentenced, whichever is lower, the Supreme Court has ruled. They don't have a right to the lowest punishment that might have existed any time in between.

Everyone charged with a crime has certain rights. These rights are found in the *Canadian Charter of Rights and Freedoms*, part of Canada's Constitution. Section 11(i) sets out what happens when the punishment for a crime changes between the time a person commits the crime and the time they are sentenced for it. It says the person has the right "to the benefit of the lesser punishment" in that case.

Mr. Poulin committed sexual crimes between 1979 and 1987. He was charged in 2014, convicted in 2016, and sentenced in 2017. He was old and in poor health, so he asked for a conditional sentence. A conditional sentence meant Mr. Poulin wouldn't go to jail, but had to follow certain conditions. The sentencing judge agreed.

The Crown said the judge was wrong to give Mr. Poulin the conditional sentence. It said this wasn't an option either when Mr. Poulin committed his crimes, or when he was sentenced. It said that the judge could only look at those two points in time when deciding on the "lesser" punishment.

Mr. Poulin said section 11(i) meant the judge had to look at those two points in time. But he said the judge also had to look at all the points in time between. He said he should have the benefit of the lowest punishment that was available for his crimes at *any time* over those three decades. There was a period of time when the law made a conditional sentence an option for his crimes. He said section 11(i)'s guarantee of the "lesser punishment" meant he should be able to get it.

Most courts in Canada had followed Mr. Poulin's interpretation in the past. The Court of Appeal also agreed.

The majority of the Supreme Court said Mr. Poulin's interpretation of section 11(i) was wrong. It said the sentencing judge should only look at the time the crime was committed and the time Mr. Poulin was sentenced when deciding the lesser punishment.

The majority said rights should be interpreted generously – but only within the limits set out by their purposes. Looking at the purposes of section 11(i), the majority said only two points in time were really relevant to section 11(i). The first was the time the crime was committed. The punishment in force at this time reflected the legal risk the person took in choosing to commit the crime. The second was the time the person is sentenced. The punishment in force at this time reflects society's most up-to-date view on what is appropriate.

The majority said section 11(i) wasn't meant to give a person the right to comb through the past to find the most favourable punishment ever available. Section 11(i) protects people against the unfairness of being sentenced to a punishment that society no longer thinks is appropriate for their crimes. But it would be unfair to make lower punishments available to people who got away with their crimes longer. This is often the case with sexual crimes like Mr. Poulin's. Longer time periods would mean more chance that punishments might change, even through error or oversight. Offenders like Mr. Poulin would benefit from a punishment that had little connection either to their criminal behaviour or to society's view of the crimes when they were sentenced. Section 11(i) clearly wasn't meant to work like that.

The majority noted there could be a situation where the punishment changes between the time a person is charged and the time they are sentenced. It could be unfair to give them a harsher punishment that became law later if they relied on the lower one and turned themselves in. But the majority said this would have to be decided in a future case.

The issue was moot before the Supreme Court heard it. "Moot" means a judge's decision doesn't matter for the immediate purpose of the parties. This was because Mr. Poulin died shortly before the Supreme Court heard the case. The Court decided to hear it anyway because the issue was important and it might affect others.

Breakdown of the decision: *Majority:* Justice Sheilah [Martin](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#) and [Côté](#) agreed) | *Dissenting:* Justice Andromache [Karakatsanis](#) said the Court shouldn't have heard the case because Mr. Poulin had died, but would have dismissed the appeal because courts' consistent interpretation that a person had a right to the lowest punishment available over the whole time was fair and supported by the *Charter* wording (Justices [Abella](#) and [Brown](#) agreed)

More information (case # 37994): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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