

Meeting with Professor Vincent Chiao

1. Opinion of Professor Chiao on s. 745.51
  - a. Not a fan of long sentences, so he wouldn't have voted in favour of the law in the first place
  - b. His opinion on the Supreme Court striking it down — different issue
    - i. Not entirely sure Supreme Court should be this involved in striking down legislation
    - ii. But this law is very narrow — impact not that large
2. Should there be a distinction made between a murderer and a multiple murderer?
  - a. Under the current system, judges have much discretion
  - b. It is easy to argue morally that a distinction should be made
  - c. Hard for a judge not to take that into account
    - i. Whether to go as far as 745.51 may or may not be the right decision
  - d. Idea: discretion is essential in a justice system
3. Isn't 25 years itself unconstitutional?
  - a. If the Supreme Court had their way, they would make everything discretionary
  - b. Two ways to look at it
    - i. Trying to put a number on morals
    - ii. A political battle between the courts and Parliament
      1. Both sides want a say in what punishments are
  - c. If courts had their way, there would be no mandatory ineligibility period
    - i. Courts would like as much power as they can get
  - d. In essence, this case can be viewed as a political battle
  - e. (Mostly a hypothetical question – how many 80-year-old serial killers are there?)
4. Is it a fault of legislation for providing the discretion to apply a greatly disproportionate sentence, or the fault of the judge that uses the discretion to apply such a sentence?
  - a. Not a fault of either — a fault of both
  - b. Canadian law does not have a single purpose of sentencing
    - i. Has a list of all of them
  - c. Judges are given the discretion to apply each of the sentencing objectives
    - i. Laws are meant to consider each of the objectives too
  - d. So, it is really a fault of both
5. Do judges have to consider all of the factors in s. 718 and consider them equally?
  - a. Yes, they should
  - b. As a society, we don't have a consensus on what objectives we must consider for punishment
  - c. Considering all objectives would still lead to differences in personal opinion
    - i. Different judges may consider different objectives for the same case — which is totally okay
6. Other countries allow such sentences; what makes Canada's approach different?
  - a. Supreme Court in Canada is more aggressive
    - i. In terms of their decisions and opinions
    - ii. If the court says something is cruel and unusual, they strongly say so without considering the public opinion

- b. More of a moral question, is a life sentence without parole ever appropriate in any set of circumstances?
    - i. People have different opinions
    - ii. This is why we utilize democracy
  - c. One argument for why Parliament should make calls about laws and not the Supreme Court
  - d. Legal system should be attentive to what happens in similar countries
  - e. Should courts lead public opinion, or follow public opinion?
7. Should there be some sort of standardization in how judges consider each punishment objective?
- a. We as a society don't agree on what objectives we need to consider more
  - b. Which is why s. 718 says "one or more of the following objectives"
  - c. When you get to a specific set of facts, hard to argue that circumstances are the same so there cannot be too much standardization
    - i. We cannot think of it algorithmically
  - d. In practice it is difficult to standardize
8. What is the opinion of some aggravating factors totally changing the sentence? For example, California. First degree murder = 25 years. First degree murder where killing(s) were motivated by race, gender, religion, no possibility of parole
- a. There doesn't need to be a law itself that mandates a change in punishment for a judge to change the sentence based on the aggravating factors
  - b. Aggravating factors are already considered by a judge
9. How should the law change based on societal consensus and beliefs?
- a. Complicated question
  - b. In a democratic country, laws have to be responsive to society to some degree
  - c. Sometimes it goes the other way
    - i. Changing laws means a change in public opinion, given enough time
    - ii. For example, death penalty
      - 1. Publicly very popular
      - 2. Few political and social elites abolished it
      - 3. Along with that, the public opinion slowly shifted
  - d. It's a two-way street