

Notes

original trial — life, 40 years

- 745.51 is against the charter because it only allows the stacking of 25 year periods
- judge read in to give other judges the discretion of parole ineligibility period of not just being in 25-year blocks
- 40 years — 5 counts at one time (25) + 1 one count (15) stacked

appeal (Bissonnette appeal) — life, 25 years

- reading in was inappropriate
 - because reading in assumes that the Parliament erred in writing the law and the original intention of the law would be better conveyed by reading in
 - but the original intention of the Parliament was actually in 25-year blocks
 - reading in was inappropriate because allowing judges the discretion was not the original intention and undermines the Parliament's role in legislation
- 745.51 was ruled unconstitutional (section 12) due to 25-year blocks being grossly disproportionate and because the role of rehabilitation is of importance
 - it was deemed unconstitutional because it gave the opportunity for judges to impose grossly disproportionate sentences
 - struck down 745.51
- no choice but to give 25 years as part of section 235 (1)

supreme court (Crown appeal) — life, 25 years

- proved (again) that reading in was inappropriate
- proved (again) that 745.51 was unconstitutional
- no choice but to give 25 years as part of section 235 (1)

Dr. Iftene Report

- can be found at https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1727&context=scholarly_works
- will talk about how sentencing for murder works, how 745.51 has affected sentencing for first-degree murder cases, and the Quebec Court of Appeals decision on the Bissonnette case
 - analyzed around 50 cases and the judge's reasoning for applying 745.51 on those cases
- first discusses the decision by the trial judge and the QCCA — why 745.51 is not rationally connected to “accounting for every life lost” and why reading in would minimize the role of the Parliament
 - important: goal of sentencing in Canada is proportionality — “sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender” (from justice.gc.ca)
 - totality principle: for multiple offences, the goal is to create a total sentence that is not excessive
 - excessive: not aligned with rehabilitation and reintegration

- issue with 745.51 may be that sentences may be applied that are essentially lifelong, but one may argue that it is implied, and the law can be interpreted in a way that it is only applied when the offender has a reasonable prospect of release
 - difficult to do in practice
 - many cases that applied 745.51 did not even consider lifelong imprisonment as an issue — although it was an issue
 - many judges used 745.51 to sentence offenders to a parole ineligibility period that crossed their lifespan
 - so, it has been shown that 745.51 is cruel and unusual under s. 12 of the Charter
- other Western countries have maximum parole ineligibility periods of around 25 years — Denmark and Finland having periods of 12 years each
- impossible to know if someone will rehabilitate, so that should be up to the parole board to decide that and not up to the judge to decide if/when someone will rehabilitate and having that reflect in their parole ineligibility period
 - 50 years of parole ineligibility may make some lose hope of rehabilitation
- in some cases, denouncement and retribution must be the guiding factor for sentencing, according to some judges
 - but some judges may have differing views on rehabilitation
- 745.51 overreaches in its objective since it is mainly for the worst people who have committed the most heinous acts but it allows sentencing anyone that has commit more than one murder to consecutive sentences
- issue of single vs numerous transactions was brought up

Punishment factors in Canada: rehabilitation, denouncement, deterrence, retribution — as stated in s. 718 of the Criminal Code: <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-718.html>