

Meeting with Professor Steve Coughlan

1. Opinion of Professor Coughlan on 745.51
 - a. In recent times, Supreme Court has become more active in applying the Charter principles
 - i. Why?
 - ii. This is because due to changes in law (that were enacted without much empirical evidence) and the political sphere
 - b. So, politics affects sentencing and what the court decides in various cases
2. Should there be a distinction made between a murderer and a multiple murderer?
 - a. For a moral standpoint, it's not hard to argue that a distinction should be made
 - i. Hard to calibrate this
 - b. Is there a system to support that?
 - c. Related to natural and positive law; from a natural law standpoint, it is easy to argue that a distinction should be made
 - d. But positive law dictates that the law is the final source of truth and need not be directly related to morals, since morals are hard to codify
 - e. In this case, such a distinction is hard to codify, so Canadian law should stick to its positive law foundation
 - f. Plus, killing one person itself lands you the harshest sentence, how can we go up?
 - i. We can't go down since it wouldn't be popular in Canada from a legal and societal standpoint
3. Isn't 25 years itself unconstitutional?
 - a. Cruel and unusual tends to be based on the rules in the abstract and not for specific individuals
 - b. Take into consideration the youngest adult offender age (18), as the judges in the Bissonnette case used that to rule 745.51 unconstitutional and not the age of the actual offender
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. You have to have discretion in a justice system
 - b. Have a system that structures the discretion enough so all sentences in the range are constitutional
 - i. "Range of reasonableness" – good way to put it
5. Do judges have to consider all of the factors in s. 718 and consider them equally?
 - a. Judges should consider all of the objectives
 - i. Some judges may consider some objectives in a greater light
 - b. Sometimes judges give grossly disproportionate sentence; not a charter violation, just appeal and the judge will determine if the balance of the consideration of the objectives was incorrect
 - c. Main issue in Bissonnette case: 745.51 **prevented** consideration of rehabilitation, which is a charter violation, so it was struck down
6. Trial judge read in (which itself was incorrect) but was what the judge read in alright?
 - a. We're not in a position to say whether the reading in was right or wrong!
 - i. Neither is the judge
 - b. Requires research, consultation, empirical evidence

- c. Which is why the judge should not read in and instead defer it to the Parliament to rewrite
 - i. Judge's role is instead to determine if a piece of legislation is so wrong that it is a charter violation
- 7. Other countries allow such sentences; what makes Canada's approach different?
 - a. Other countries can be lenient/strict in different ways
 - b. We take inspiration from other countries, but in different ways