

The Top Five 2006

Each year Justice Stephen Goudge of the Ontario Court of Appeal identifies five cases that are of significance in the educational setting. This summary, based on his comments and observations, is appropriate for discussion and debate in the classroom setting.



R. v. B.W.P.; R. v. B.V.N., [2006] 1 S.C.R. 941

<http://scc.lexum.org/en/2006/2006scc27/2006scc27.html>

General deterrence is found not to be a sentencing factor under the YCJA.

This decision deals with two appeals; one from the Manitoba Court of Appeal and the other from the British Columbia Court of Appeal. The cases were heard together because they both asked the Court to consider the same issue and interpret the same section of the Youth Criminal Justice Act.

B.W.P., a Manitoba youth, killed a man during a fight and pled guilty to manslaughter. After reviewing the relevant provisions of the *Youth Criminal Justice Act*, the sentencing judge held that *general deterrence* was no longer a principle of sentencing under the new *YCJA* regime and therefore was not something to be taken into consideration in determining an appropriate sentence. *General deterrence* refers to when an offender is given a more severe punishment in order to deter or dissuade others from engaging in criminal activity. General deterrence is a legal principle of adult sentencing that was also a recognized principle under the *Young Offender Act* (the legislation that existed before the *YCJA*).

The sentencing judge also found (contrary to the Crown's argument), that s. 42(2)(o) of the *YCJA* allowed the Court discretion in determining the length of the custody and supervision portions of a manslaughter sentence. The judge sentenced B.W.P. to a 15 month custody and supervision order which required him to serve one day in open custody and the rest under conditional supervision in the community. The Manitoba Court of Appeal upheld this decision.

In the second case, B.V.N., a youth from British Columbia, pled guilty to aggravated assault causing bodily harm. He was sentenced to nine-months of closed custody and a supervision order. Both the sentencing judge and British Columbia Court of Appeal concluded that general deterrence was a factor, although a minor one, in determining the appropriate sentence under the *YCJA*. The Court of Appeal noted that the use of general deterrence by the sentencing judge did not increase the sentence B.V.N. would have received otherwise.

Both cases were appealed to the Supreme Court of Canada. The Supreme Court of Canada heard them together because they dealt with the same issue and the Court addressed two questions. First, whether general deterrence is a sentencing factor under the *YCJA* and second

whether, under sub-section 42(2)(o) of the *YCJA*, a sentencing judge must impose a particular sentence in cases of manslaughter that requires a youth to spend a certain minimum amount of the time in custody.

On the first issue, the Supreme Court of Canada unanimously agreed with the Manitoba Court that general deterrence is not a principle of sentencing under the *YCJA*. The Court noted that the *YCJA* introduced a new, more detailed and regulated sentencing regime, which is a complete code for sentencing young persons.

The Court considered what Parliament's intention was when it decided to leave general deterrence out of the *YCJA*. The Court found that this was likely done deliberately, with the goal of requiring judges to focus on the particular circumstances of the individual before the courts rather than on the deterrence of others when making appropriate sentencing decisions. The Court noted that by excluding the idea of general deterrence from the text of the *YCJA*, parliament has decided to promote the long-term protection of the public by addressing the behaviour of the particular young person before the courts, and rehabilitating and reintegrating that person into society while holding that person accountable through meaningful punishment related to the specific harm done.

On the second question, the Court was asked to interpret s. 42(2)(o) of the *YCJA* in order to determine whether sentencing judges have discretion when deciding the custody and supervision portions of sentences attached to manslaughter, attempted murder and aggravated sexual assault.

In the B.W.P. Manitoba case, the Crown had argued that s. 42(2)(o) had to be read in tandem with s. 42(2)(n) which would require the sentencing judge to impose that two thirds of a young person's manslaughter sentence would be served in custody. The Supreme Court of Canada found that the sentencing judge and the Manitoba Court of Appeal decisions were the correct approach rather than the argument put forth by the Crown. The Court found that s.42(2)(o) makes no restriction on what part of a sentence has to be spent in a custodial setting allowing the judge discretion in deciding a sentence in this area. The Court noted that s.42(2)(o) states maximum custody and supervision order, but doesn't state minimum custody or supervision orders leaving this up to the sentencing judge.

In the first case, since the sentencing judge had not applied the principle of general deterrence and was correct in applying discretion when deciding the length of the youth's custody, the punishment was not reviewed by the Supreme Court. In the second case, although the British Columbia Court of Appeal had incorrectly applied the idea of general deterrence in sentencing, this only played a minor role in the sentence which was given out and the young person had already served his sentence at the time this appeal was being heard so the Supreme Court did not review this sentence either.

Discussion Issues:

- In its reading of the *YCJA* and decision about what Parliament intended, the Supreme Court looked at the fact that there was no reference to general deterrence in the *YCJA*. It concluded that this omission meant Parliament didn't want general deterrence to be a factor in sentencing decisions. Do you think this was the right interpretation of the *YCJA*? Were there other things the Court should have considered in interpreting the *YCJA*?
- What challenges do you think the Court has when trying to interpret what parliament intended? If the Court has a different understanding than what parliament intended what happens then?
- What is the difference between specific and general deterrence?
- Do you think that general deterrence works? Are there situations when it should be used? Should it never be a factor?
- Why do you think the Court is ok with general deterrence being a factor in sentencing for adult offenders but not for young offenders? Do you agree or disagree?