

## The Top Five - 2003

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. Sheppard, 2002 SCC 26*** **Requirement To Give Reasons**

[http://www.lexum.umontreal.ca/cscscc/en/pub/2002/vol1/html/2002scr1\\_0869.html](http://www.lexum.umontreal.ca/cscscc/en/pub/2002/vol1/html/2002scr1_0869.html)

The accused, Sheppard, was charged with theft of two windows from a local supplier. The accused, a carpenter, had no criminal record. He had also recently separated from his girlfriend, but the separation was not amicable. The only evidence against him came from his ex-girlfriend who testified that the accused had confessed to her that he stole the windows to use in his house; however, there was no evidence that a search had been made of his premises and no stolen windows were found. He denied his guilt. Sheppard also noted other individuals had access to the windows. The trial court convicted Sheppard, saying only: "Having considered all the testimony in this case and reminding myself of the burden on the Crown and the credibility of witnesses, and how this is to be assessed, I find the defendant guilty as charged."

The Newfoundland Court of Appeal set aside the conviction and ordered a new trial. The Crown appealed to the Supreme Court of Canada. The Supreme Court of Canada (SCC) unanimously dismissed a further appeal, agreeing with the Court of Appeal of Newfoundland that a trial judge must provide reasons for her or his decision to permit an appeal judge to review the correctness of that decision. Simply put, the Supreme Court of Canada upheld the appeal ruling, thereby entitling Sheppard to another trial.

#### **Questions for Class Discussion:**

- i) The justice system is designed to give reasoned outcomes. In other words, a Justice must be able to demonstrate how she or he arrived at any decision in a logical, reasonable way. Review how the Justice arrived at the judgment. To what extent is there a reasoned outcome in this case? Use evidence from the case to support your answer.
- ii) Imagine you are the Crown or Defence counsel in this case. Outline the major arguments you would use to support your case.
- iii) Explain the role of testimony in this case. Do you think it was reliable? Explain why or why not.
- iv) As we can see in this case, a judgment may be set aside by an appeal court if there was some error or omission in the judicial process. What error or omission was made in this case? Why would a new trial be necessary?

Locate and research other cases in which judgments have been set aside. Identify the key point of law used to justify setting aside the decision