

## 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.



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### ***Starson v. Swayze, 2003 SCC 32***

#### **Consent To Treatment**

<http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc032.wpd.html>

Starson suffered from bipolar disorder, a type of mental illness that involves extreme mood swings. (Individuals with bipolar disorder experience highs of mania and lows of deep depression. The manias are often characterized by tremendous bursts of energy, feelings of invincibility, and sleeplessness. The depressions can include excessive fatigue and very low energy.) Starson was found not criminally responsible for making death threats and was detained in a hospital. Starson's physicians', including Dr. Swayze, proposed treatment included various medications which Starson refused to take. Starson, although functioning behind the walls of a secure facility during his appeals, was regarded as a leading Physics thinker. Despite not having advanced university degrees in Physics, the level and quality of his thinking led to Nobel prize-winning scientists to co-author academic papers with him.

Starson argued that the medications prevented him from working and thinking at his full capacity. Dr. Swayze found that Starson lacked the capacity to decide whether or not to accept the proposed treatment. The Ontario Health Care Consent Act permitted a person to be treated without consent on the ground of lack of capacity – the ability to make an informed choice -- if it was found that they could not understand the information relevant to making a decision about treatment and could not appreciate the reasonable foreseeable consequences of that decision. The Ontario Consent and Capacity Board confirmed Swayze's finding of incapacity. The Board's decision was overturned by the Superior Court on judicial review. The Ontario Court of Appeal upheld the findings of the reviewing judge. Swayze appealed.

The SCC dismissed the appeal and ruled that the reviewing judge correctly held that the Board's finding of incapacity was unreasonable, as it was based on findings that were not supported by the evidence, and that the Board had misapplied the statutory test for capacity. Simply put, Starson was not incapacitated. While the Board found that Starson failed to appreciate the risks and benefits of treatment, it did not address whether the reasons for that failure demonstrated an inability to appreciate these risks and benefits. The Board went beyond its powers in deciding about capacity and improperly allowed its own conception of Starson's best interests to influence its finding of

incapacity. In the end, Starson's capacity to make decisions about his treatment was upheld.