

# The Top Five 2007

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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## *R. v. Truscott*, 2007 ONCA 575

<http://www.ontariocourts.on.ca/decisions/2007/august/2007ONCA0575.htm>

*Scientific developments lead to fresh evidence and the acquittal of Truscott almost 50 years after he was first convicted.*

On June 11, 1959, the body of 12-year-old Lynne Harper was found in a wooded area close to where she lived in south-western Ontario (two days after she had been reported missing). She had been sexually assaulted and strangled with her own shirt.

On September 30, 1959, her 14-year-old classmate, Steven Truscott, was convicted of first-degree murder and sentenced to hang. His sentence was later changed to life imprisonment. His attempts to appeal this conviction failed.

In the early evening of June 09, 1959, Truscott had given Harper a ride on the crossbar of his bicycle from the vicinity of their school along a county road. The timing and duration of their encounter and what transpired when they were together have been contentious issues since 1959. Truscott has always maintained his innocence. In his defence he alleged that on the night in question, he took Lynne Harper to the intersection of the county road and the highway where he left her unharmed. When he looked back, he saw that a vehicle had stopped and he watched her enter the car. He claims that this was the last time he ever saw Harper.

A 1966 book entitled *The Trial of Steven Truscott* scrutinized the police investigations and the trial. In particular, it suggested that significant "exculpatory evidence" relating to Truscott's innocence had been ignored at trial. The assertions in this book rekindled public debate about the case, and the federal Minister of Justice at the time referred the conviction to the Supreme Court of Canada for consideration. The Supreme Court of Canada upheld Truscott's conviction.

After spending ten years in prison, Truscott was released on parole in 1969. He assumed a new name and maintained a low profile until 2000, at which time he publicly proclaimed his innocence and renewed the fight to clear his name, with the assistance of lawyers from the Association for the Defence of the Wrongly Convicted (AIDWYC).

In 2001, Truscott made a further request to the Minister of Justice for a review of his conviction. The Minister ordered an investigation into the matter. In 2004, the investigation

report, which revealed new information, convinced the Minister that there was a reasonable basis to conclude that a miscarriage of justice had occurred.

The Minister of Justice referred the conviction to the Ontario Court of Appeal. This Court was asked to look only at the new information available and decide, in light of this new information ("fresh evidence"), whether the results of the trial and the first reference constituted a miscarriage of justice. A panel of five justices of the Court of Appeal heard testimony from seventeen witnesses.

The bulk of the new evidence related to the time of Harper's death. The time of death was crucial to determining whether Truscott was the murderer. In Truscott's trial, the coroner had determined, based on his examination of Harper's stomach contents that her death occurred between 7 and 7:45pm. According to the Crown's argument, if Harper died between 7 and 8pm, Truscott was the murderer, but if she was murdered after 8pm, he was not.

Between 1959 and the 2007 Reference, a number of scientific developments have emerged to more accurately determine the time of death. In particular, new scientific evidence regarding the reliability of stomach contents to determine time of death cast doubt on the time frame originally given by the coroner for Harper's death.

The Court of Appeal concluded that this new evidence, when considered in the context of all of the evidence, would give a jury at least a reasonable doubt that Harper died before 8pm. If a jury had reasonable doubt about the time of death, then it would also have reasonable doubt about Truscott's guilt.

Based on these findings, the Court of Appeal unanimously decided that the conviction of Truscott was a miscarriage of justice and should be quashed (annulled, set aside). Under the *Criminal Code*, where a conviction is quashed on appeal, the court has three options:

1. order an acquittal,
2. order a new trial, or
3. order a new trial and enter a stay of that new trial.

In this case, the Court of Appeal was not satisfied that Truscott's factual innocence had been established or that an acquittal would be guaranteed in a new trial. Typically, this result would lead to a new trial being ordered. However, in light of the unusual circumstances surrounding the case, including the practical impossibility of a new trial 48 years later, and the fact that Truscott had already served his time in prison, the court chose instead to envision how a new trial might proceed and what evidence would be weighed in coming to a decision. In doing so, the Court determined that in a hypothetical new trial an acquittal would be the most likely result. Based on this conclusion, the Court entered an acquittal.

Following the release of the decision, former Attorney General of Ontario, Michael Bryant, offered an apology to Truscott and stated that the Crown had no plans to appeal the decision.

**Discussion Issues:**

- In our justice system, the rules of legal procedure and evidence (such as the hearsay rule or the rule regarding disclosure of evidence) change or evolve from time to time. Should persons convicted under old rules be entitled to have their cases reviewed due to a change in procedure? How would you decide?
- What impact did forensic science have on this case? Should a change or evolution in science always entitle a convicted person to a review of his or her case?
- Explain why the Ontario Court of Appeal was asked by the Minister to look only at the “fresh evidence”, and not to review and analyze all of the evidence of the case?
- How would you define a “miscarriage of justice”? Why did the court call Truscott’s conviction a “miscarriage of justice” rather than declaring him not guilty?
- Under the Criminal Code, when convictions are quashed on appeal, the Court has the 3 following options: order an acquittal, order a new trial, or order a new trial and enter a stay of that new trial. Should the Criminal Code allow a “declaration of innocence” as the fourth option?
- How was the re-consideration of the Truscott case and the path it took unique when compared to other cases which are heard by the Ontario Court of Appeal?
- Why is the final resolution of a case (final determination with no further chance of review or appeal) important within our justice system?
- Do you believe Mr. Truscott should be compensated for the time he spent in jail and the fact that he lived with the stigma of a murder conviction for 48 years? If so, how should the compensation be established? If not, why?