

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.



R. v. Teskey, 2007 SCC 25

<http://scc.lexum.org/en/2007/2007scc25/2007scc25.html>

A long delay between a verdict and the judge's reasons for the verdict raised issues about whether the judge engaged in proper legal reasoning and resulted in a new trial.

Mr. Teskey was charged with aggravated assault, break and enter, and theft related to an incident that took place in an apartment building. His trial lasted five days and the evidence presented was complex, largely circumstantial and contained contradictions. The strongest evidence against Mr. Teskey came from an eyewitness. The trial judge found however that the witness' evidence was less reliable due to certain flaws in the photo line-up.

Four months after the trial ended, the trial judge convicted Mr. Teskey on all charges, but did not provide reasons for his verdict. Eleven months later, the judge delivered his written reasons.

The central issue before the courts was whether the trial judge arrived at a verdict before engaging in the necessary legal reasoning and analysis, and whether the delay in giving reasons for the decision was evidence of this.

It is important to know that all judge's decisions are held up to certain legal standards. Upon reaching a verdict, a trial judge is required to give reasons to justify and explain how he or she reached the verdict. The rationale behind this is that an individual convicted of a crime is entitled to know why he or she was convicted and be able to prepare for a possible appeal. Reasons are also necessary for the public to see for themselves whether justice has been done. Reasons that do not adequately explain how a verdict was reached will be "insufficient" and may result in a new trial.

Judge's actions also benefit from a "presumption of integrity". This means judges are presumed to overcome personal bias and partiality and to carry out the oath of their office to the best of their ability. The "presumption of integrity" is only displaced by strong evidence that would lead a reasonable person to believe the reasons delivered were an after-the-fact justification of the verdict instead of the true reasoning that led to the verdict.

In this case, the Alberta Court of Appeal found that the *oral reasons* given 4 months after the trial ended were insufficient. The trial judge only recited the verdicts and did not provide any grounds supporting them. However, the Court of Appeal decided to re-consider the *written*

reasons of the trial judge delivered 11 months later. A majority found his reasons to be appropriate and, on this basis, upheld the convictions.

The Supreme Court of Canada considered whether the Court of Appeal should have looked at the content of the trial judge's written reasons given 11 months later, when deciding if the trial judge acted improperly in coming to his verdict. It also discussed the issues at play when evaluating how a judge comes to a verdict and whether he or she has made a decision improperly.

A majority of the Court emphasized that reasons delivered long after a verdict may cause a reasonable person to suspect that the trial judge engaged in "result-driven reasoning". This means that instead of the reasons reflecting the judge's actual legal and factual analysis leading to a decision, the judge came to her decision and then tailored the reasons to fit his or her already predetermined verdict. The Supreme Court of Canada clarified that a delay between the verdict and reasons for the verdict does not necessarily mean that a judge has shown bias or acted improperly.

The majority concluded that in this case a reasonable person would have suspected that reasons for a verdict, delivered more than 11 months later, did not reflect the real basis for Mr. Teskey's convictions. In addition to the delay, there were other important factors in this case that together called the judge's reasoning into question including: the judge's difficulty in reaching a verdict in the months following the trial; the nature of the evidence that called for a detailed analysis before any verdict could be reached; and the failure of the judge to respond to repeated requests from counsel to give reasons. The majority of the Supreme Court found that, in this case, the Court of Appeal should not have re-considered the trial judge's written reasons. It also disagreed with the Alberta Court of Appeal's decision, and a new trial was ordered.

Several Supreme Court Justices dissented. They found that the delivering of reasons after a verdict does necessarily mean that the verdict was not carefully thought through. According to the dissent, unless the content of the reasons reflects some absence of judicial integrity, reasons should be accepted as being honest reflections of a decision. Excessive delay should not result in a refusal to even consider the reasons. In this particular case, the dissenting judges found that the reasons responded to the facts and issues at trial and should have been reviewed on their merits by the Court of Appeal.

Discussion Issues:

- Why is it important for trial judges to give reasons? Can you think of a time when you felt unfairly treated because you weren't given a reason for a decision that affected you?
- In this case, the Supreme Court was concerned that the trial judge tailored his reasons to fit his pre-determined verdict. What are some arguments why judges shouldn't engage in "result-driven" reasoning?
- In deciding whether a delay between a verdict and reasons has led to "result-driven"

reasoning, what did the court consider? Should it consider anything else?

- Would or should the outcome have been different if the judge gave his reasons 6 months after announcing his decision? What about three months?
- The Crown's case was not particularly strong in *R. v. Teskey*. Do you think this led to questions about the trial judge's reasoning in this case? What if the Crown had a stronger case?
- Should a trial judge be required to give more detailed reasons where the accused is charged with a more serious offence? Should more detailed reasons be required if the case is more complex or if the trial takes longer? Why?
- Why is it important that justice not only be done but also that it *appear* to be done?
- Why is the independence of the judiciary from other spheres of government and society important?
- Why does the existence of judicial independence make it more important that trial judges give full reasons?