

# The Top Five 2008

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.



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## ***R. v. Singh*, [2007] 3 S.C.R. 405, 2007 SCC 48**

<http://scc.lexum.org/en/2007/2007scc48/2007scc48.html>

*In this case, the Supreme Court confirmed that the s. 7 right to silence does not oblige police to stop questioning a suspect who clearly asserts the right to silence. Police may use legitimate means of persuasion to try to obtain a statement from a detainee who has asserted a choice to remain silent.*

**Date released: November 1, 2007**

### **The Facts**

Several shots were fired outside a Vancouver bar and a man was killed. There was no physical evidence linking the accused to the shooting, but the doorman and another eyewitness implicated Singh as the shooter. He was arrested for murder, properly cautioned and advised of his right to counsel, and he privately consulted with counsel. The police interviewed him on videotape and he told them he did not want to talk about the incident, that he knew nothing about it, and that he wished to return to his cell. On each occasion, the officer persisted in questioning him and confronting him with incriminating evidence. The officer testified that he intended to put the police case before Singh in an attempt to get him to confess "no matter what". Singh did not confess but made incriminating statements, admitting that he had been in the pub on the night of the shooting and identifying himself in pictures taken from video surveillance inside the pub in question and another pub. Singh had asserted his right to silence 18 times before making these admissions. At trial, Singh challenged the admissibility of the statements. He did not contest that he made the statements voluntarily but argued that the s. 7 right to silence required the police to stop trying to obtain admissions once he had asserted his right to silence.

### **The Decision**

The Supreme Court dismissed Singh's appeal by a 5-4 majority.

Charron J. (McLachlin C.J., Bastarache, Deschamps, Rothstein JJ. concurring) held that there is considerable overlap between the question whether Singh had made the statements voluntarily and the question whether there was a breach of his pre-trial right to silence under s. 7 of the *Charter*. The s. 7 right to silence does not oblige police to stop questioning a suspect who clearly asserts the right to silence. Police may use legitimate means of persuasion to try to obtain a statement from a detainee who has asserted a choice to remain silent. An accused can change his or her mind about speaking to the police. The number of times the accused asserts his or her right

to silence is part of the assessment of all of the circumstances, but is not in itself determinative. The ultimate question is whether the accused exercised free will by choosing to make a statement.

Fish J. (Binnie, LeBel, Abella JJ. concurring) held that an incriminating statement may be voluntary and yet be obtained by state action that infringes s. 7 of the *Charter*. Section 7 is infringed where a police interrogator undermines a detainee's freedom to choose whether to make a statement or not. Detainees left alone to face interrogators who persistently ignore their assertions of the right to silence and their pleas for respite were bound to feel that their constitutional right to silence has no practical effect and that they have no choice but to answer. The accused's repeated assertions of his right to silence demonstrated convincingly that he had chosen not to talk to police about the incident that led to his arrest. The interrogator systematically disregarded the accused's wish to remain silent, implicitly communicating the message that continued resistance was futile. The accused's right to silence was violated and he was conscripted to provide evidence against himself and, therefore, his admissions should have been excluded in accordance with s. 24(2) of the *Charter*.

### Discussion Issues

1. Having watched a lot of American T.V. are you surprised that in Canada the police may continue to question suspects after they claim their right to silence?
2. Do you agree with the majority or the minority? Explain.