

The Top Five 2006

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. Boulanger*, [2006] 2 S.C.R. 49**

<http://scc.lexum.org/en/2006/2006scc32/2006scc32.html>

Public officer did not breach trust by asking for an additional report on his daughter's car accident.

Following a car accident involving his daughter, Boulanger, a Director of Public Security, asked the officer in charge of the case to prepare a second, more complete accident report. This more comprehensive report led to the conclusion that Boulanger's daughter was not at fault. As a result she did not have to pay the \$250 insurance deductible.

Boulanger was charged with *breach of trust by a public officer* under s.122 of the *Criminal Code*. This charge arises when a public official has acted in connection with his/her official duties but for personal benefit instead of public good. Those acting as public officers are held to higher standards and broader liability than private persons. They can face up to 5 years imprisonment for this offence.

At the trial level, Boulanger was convicted on the basis that he had used his office to obtain personal benefit. The conviction was then appealed and upheld by a majority at the Court of Appeal. The Supreme Court of Canada allowed the appeal and Boulanger was acquitted. When the court finds that an accused is not-guilty, that person is "acquitted" and can go free without any criminal record.

In reviewing the case, the Supreme Court revisited the necessary elements for establishing that a breach of trust by a public official has occurred. It affirmed that the Crown must prove beyond a reasonable doubt that:

- 1) The accused is an official;
- 2) The accused was acting in connection with the duties of his or her office;
- 3) The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
- 4) The accused's conduct was a serious and marked departure from the expected standards of an individual in the accused's position of public trust; and
- 5) The accused acted with the intention to use his or her public office for a purpose other than the public good, such as, a dishonest, corrupt or unfairly biased purpose.

The Supreme Court found that in this case the Crown had successfully proven that Boulanger was an official who, by asking a subordinate officer to prepare a second report, was acting in connection with the duties of his office. The Crown had also proven that Boulanger was pursuing a personal interest contrary to the *Code of ethics of Quebec police officers*, which requires him to perform his duties “disinterestedly”. The Court however concluded that while his performance of duties in an “interested” manner may be enough for him to face disciplinary action under the *Code of ethics*, his actions were not necessarily at a level of seriousness to establish a breach of trust by a public official under the *Criminal Code*.

In its decision, the Court highlighted that there was a reasonable doubt as to whether Boulanger had the “mens rea” or mental intent necessary for a conviction under s. 122 of the *Criminal Code*. The officer’s report was found to be accurate, and Boulanger did not intend to use the supplementary report to mislead the insurance company. Although he knew he would benefit from the report, this was not enough to establish a “culpable state of mind” (mens rea). Boulanger’s intention was to have the officer make a second, more complete report, and not to have the officer skew the report in one way or the other for personal gain.

In addition, the Supreme Court found that the “actus reus” portion of the offence (the criminal activity or prohibited conduct) had not been proven. While the proper course of conduct would have been for Boulanger to have had his insurance company communicate directly with the officer, his actions did not represent a marked departure from the course of action he should have taken as a public official whose job is to ensure that reports are thorough and accurate. Rather, Boulanger’s conduct was simply an error in judgment. In view of these facts and circumstances, the Supreme Court found that the actions of the accused were not serious enough to establish the “actus reus” of this offence and he was acquitted.

Discussion Issues:

- Why was Boulanger convicted of breach of trust at the trial level?
- Explain why the Supreme Court of Canada felt that the elements of the crime – actus reus (the criminal conduct or prohibited activity)+ mens rea (mental intent, culpable state of mind) – were not proven beyond a reasonable doubt in this case.
- In the past it was not necessary to prove intent in order to establish that a public officer had breached the public’s trust. Criminal law has evolved to a point where dishonesty and adverse mental element must now be established to find someone guilty of this crime. Should the fact that the official has received a personal benefit be enough, or is this a good change in the law that now we have to consider dishonesty as an element of the crime?
- Should public officials be held to higher standards of behaviour than ordinary citizens? Why or why not?
- Can you think of an instance where a public official would be acting in breach of the public’s trust? What sort of punishment is appropriate when a public official has breached the public’s trust?