

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.



Young v. Bella, [2006] 1 S.C.R. 108

<http://scc.lexum.org/en/2006/2006scc3/2006scc3.html>

A university student is suspected to be a child abuser. Teacher and university are found liable for reporting without having reasonable cause.

Young, a social work student at Memorial University, submitted a term paper that included a case study as an appendix. The case study was a personal confession of a woman who had sexually abused children. She did not footnote the source of the personal confession in her paper and her professor, Bella, speculated that the case study was Young's own personal account and a "cry for help". In fact, Young had taken the case study from a textbook which was listed in the bibliography of her paper. Bella also suspected that Young had plagiarized the paper.

Bella took her concerns and suspicions about Young being a child abuser to the Director of the Social Work Department at the University. The Director did not ask Young for an explanation, and instead sent a "suspected ill-treatment" report to the Child Protection Services (CPS). Three of Young's university professors discussed the possibility of her being a suspected child abuser without ever raising this issue with her. The RCMP was also informed, in addition to at least ten social workers in several communities, many who knew Young through her summer employment.

More than two years after the initial report Young was contacted by a CPS worker. When confronted about the personal account by the CPS worker, Young showed the worker the textbook. Young sued her professors and the University. She claimed negligence and damages based on the fact that their actions had negatively affected her reputation, her ability to complete her education, and had reduced her income-earning capacity.

At the trial level, a jury found that the professors and the University had been negligent and destroyed Young's career prospects. Young was awarded damages. The University and professors then appealed. A majority of the Court of Appeal set aside the damages award by the Trial Court. The Court of Appeal concluded that Young had no case against her professors or the University because they were protected by s.38(6) of the *Child Welfare Act*. This section of the *Child Welfare Act* protects informants reporting on ill-treatment of children as long as they are not making the report maliciously or without reasonable cause.

Young appealed to the Supreme Court of Canada. The Supreme Court held that the trial judgment should be restored. The Court found that the *Child Welfare Act* does require those who have a statutory duty (such as teachers) to report cases where a child has been or may be in danger of sexual abuse, but that the informant must have “reasonable cause” for making a report. In this case, the Court found that the university professors acted on speculation and conjecture instead of “reasonable cause” in making their report. To establish reasonable cause, the professors would have had to show that they had information that the CPS “reasonably ought to have been asked to look into.” The Court found that the case study on its own was not information that a child was in danger or in need of protection from the student and there was nothing in the case study that tied the experiences directly to the student in such a way that warranted reporting to the CPS.

The Supreme Court confirmed that university professors do owe a duty of care to their students, and a standard of care which requires that professors take the necessary care to get their facts straight before taking a potential career-ending action. The Court found that both professors should have asked Young for an explanation as they both would have known that making a report with the Director’s name on it to the CPS would have serious consequences for Young and would likely cause her name to be placed on a Child Abuse Registry.

In discussing damages, the Supreme Court noted that there was a causal connection between the professors’ and University’s breach of their duty to this student and the losses sustained and that the damages she suffered were foreseeable. The damages awarded by the Trial Court were found to be proportionate and reasonable in light of the harm Young had suffered.

Discussion Issues:

- What sort of liability can come out of teacher/student relationships?
- How much information is enough information for a teacher to report child abuse without being sued in a school context?
- What happens to teachers who don’t report abuse that is later discovered?
- Should teachers have a statutory duty to report potential or suspected child abuse?
- How do we balance a teacher’s duty to report with the duty of care they owe to their students?
- What other types of professions have a duty to report child abuse and should they have this duty?
- Should other kinds of professions also be added to the list?
- How will this case impact on reporting of suspected child abuse?