

The Top Five - 2003

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.



Chamberlain v. Surrey School District No. 36, 2002 SCC 86

Requirement Of Public Bodies To Take A Secular And Nonsectarian Approach In Applying Legislation

<http://www.lexum.umontreal.ca/csc-scc/en/rec/html/chamberl.en.html>

A Kindergarten-Grade One ("K-1") teacher asked the Surrey School Board to approve three books (*Asha's Mums*, *Belinda's Bouquet*, and *One Dad, Two Dads, Brown Dad, Blue Dads*) as supplementary learning resources, for use in teaching the family life education curriculum. The books depicted families in which both parents were either women or men in same-sex parented families. The *School Act* in British Columbia gives the Minister of Education the power to approve basic educational resources to be used in teaching the curriculum in public schools, and gives school boards the authority to approve supplementary educational resource material, subject to Ministerial direction. (For example, the Minister of Education can determine which textbooks are to be used, while the Board of Education can decide which videos, posters, handouts, or other educational materials can be used to supplement the text.)

The Board passed a resolution declining to approve the books. The Board's biggest concern, as found by the trial judge, was that the books would create controversy due to some parents' religious objections to the morality of same-sex relationships. The Board also felt that children at the K-1 level should not be exposed to ideas that might conflict with the beliefs of their parents; that children of this age were too young to learn about same-sex parented families; and that the material in these books was not necessary to achieve the learning outcomes in the curriculum.

The British Columbia Supreme Court, in reviewing the reasonableness of the Board resolution, quashed or rejected the Board's resolution, finding the decision offended s. 76 of the *School Act*, because members of the Board who had voted in favour of the resolution were inappropriately influenced by religious considerations. The Court of Appeal set aside the decision on the basis that the resolution was within the Board's jurisdiction. The Court of Appeal felt it did not have the authority to rule on the issue; however, the SCC in a 7-2 decision allowed the appeal and ruled that the School Board's decision was unreasonable because the Board did not apply the criteria required by the B.C. *School Act*, curriculum and the Board's own regulations for approving supplementary learning resources, and the Board failed to act in accordance with the secular or non-religious mandate of the *School Act*. The SCC noted that a secular and non-sectarian approach resonates with values in the Charter founded on

equality. In the end, the Board, by allowing religious concerns to influence its decision-making, was found to be wrong in denying use of these texts.