

The Top Five - 2002

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.



Falkiner v. Ontario (2002) 59 OR (3d) 481 Ont. C.A.

<http://www.ontariocourts.on.ca/decisions/2000/september/falkiner.htm>

“Spouse in the House”

In 1995 the government of Ontario changed the definition of the word “spouse” in legislation affecting the payment of income assistance benefits. The government’s purpose was to save money and to treat married and common law couples equally. Prior to 1995 a man and a woman who lived together continuously for three years were considered spouses whether they were married or not. Under the 1995 rule persons of the opposite sex who lived in the same place who had (1) a “mutual arrangement regarding their financial affairs” and (2) a relationship which amounted to “cohabitation” were defined as spouses. This definition became known as the “spouse in the house” rule.

Ms. Falkiner, a single mother on income assistance, had been living for less than a year with a man. They shared rent and utilities, but he did not support her or her children. The government ended Ms. Falkiner’s benefits because it decided that she was a “spouse”, and therefore she was not eligible to receive benefits as a “sole support parent”. The Social Assistance Review Board decided that the new definition of “spouse” infringed sections 7 and 15 of the Charter. The Divisional Court agreed that the definition infringed the section 15 equality rights of women and sole support mothers on social assistance. The government appealed to the Court of Appeal.

The Court of Appeal decided that the government’s definition of spouse included persons in relationships that were not marriage-like. The economic component of a spousal relationship is generally characterized by support or a support obligation, or by financial interdependence. Marriage-like financial relationships are not just “fair share”.

The Court found that the definition of spouse violated section 15(1) of the Charter. Ms. Falkiner and others like her had been discriminated against on the basis of their sex, as single mothers and as single mothers on assistance. Although women at the time only accounted for 54% of all persons receiving benefits and only 60% of single persons, they accounted for nearly 90% of those whose benefits were terminated because of the new definition of spouse. Single mothers were similarly disproportionately impacted.

The Court decided that the government's objectives in treating unmarried and married couples alike and to allocate public funds to those most in need were pressing and substantial, but it had not justified its violation of the Charter. The new definition of spouse was not rationally connected to the objectives and there was significant impairment of equality rights. The only positive effect was cost savings, but the negative effects were considerable and included reinforcement of dependency, deprivation of financial independence and state interference with close personal relationships.