

The Top Five - 2005

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.



Tierney-Hynes v. Hynes, 2005 (Ont. C.A., application for leave to SCC was dismissed)

<http://www.ontariocourts.on.ca/decisions/2005/june/C42400.htm>

The court's ability to vary a dismissal or termination of a support order, if one of the spouses' financial situation changes

The husband was a physician who had been supported by his wife during his medical training. They divorced and a court order was made granting spousal support (to the wife) and child support. When the husband went back to school for specialist training in his field of medicine, the wife agreed that support should be stopped (terminated) since his finances would be strained while he was studying. So, the husband got a court order which dismissed the original spousal support order.

After his training, the husband did very well financially and the wife had health problems and could not support herself. The wife brought an application to the courts to re-institute spousal support.

The Motion Court judge, who first considered her application to re-institute spousal support, decided that the court lacked the jurisdiction to vary a dismissal of a support order. The wife appealed this decision.

The Court of Appeal allowed the appeal. In doing this it looked at the *Divorce Act* and interpreted this statute (this process is called statutory interpretation). The court found that spousal support is considered by this statute to be a contractual issue, and as such can be considered to be a private matter. The court considered the party's responsibility towards each other and our social interests to ensure that justice is done between spouses. The court acknowledged that finality is an important issue in our system and that the husband had relied on the certainty and finality of a court order. However, the court found that the existing order should not be a constraint on a new application if one of the spouse's financial situation changes.

The law had been moving toward the "clean break" view and towards the expectation of self sufficiency of the spouses but Parliament has signaled its intention to move away

from this model with recent amendments to the *Divorce Act*. The case raised issues about the appropriate balance between providing just results and enforcing the certainty

and finality of a court order. The unanimous court took a contextual approach and found that, although spouses can make an agreement about support, it is necessary to retain the flexibility to deal with unanticipated life changes and to be able to respond to this as required. This is consistent with recent moves towards a compensatory model of support.