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.

United States of America v. Burns **[2001] 1 S.C.R. 283**
http://www.lexum.umontreal.ca/csc-cc/en/pub/2001/vol1/html/2001scr1_0283.html

The SCC changed its mind. Law can change as society's values and convictions evolve. Canada's understanding of fundamental justice and capital punishment affects the decision to extradite an accused without first receiving assurances that the death penalty would not be imposed.

Glen Burns and Atif Rafay, Canadian citizens, were wanted in Washington state on three counts of aggravated first degree murder of Mr. Rafay's parents and sister. They were apprehended in British Columbia as the result of an RCMP sting operation during which they claimed responsibility for organizing and carrying out the murders. The United States began proceedings to extradite the accused to Washington to face trial there. If the accused were found guilty they would face either the death penalty or life in prison without possibility of parole. Under the Extradition Treaty between the United States and Canada, a fugitive may be extradited with or without assurances that the death penalty not be imposed. The Minister of Justice of Canada, after considering the circumstances and the fugitives ages, just 18 at the time of the murders, decided not to ask for assurances. The British Columbia Court of Appeal set aside the Minister's order and directed him to seek assurances as a condition of surrender. The Minister appealed.

The Minister [the executive branch of government] has a broad discretion to decide to request assurances, but it must exercise it in accordance with the Charter. The Court has traditionally given deference to the Minister is extradition cases, and the Court should not interfere with international relations, however, the Court [the judicial branch] is the guardian of the Constitution and death penalty cases are uniquely bound up with basic constitutional values. While an individual who commits a crime in another state must be answerable to the justice system of that state, in Canada the death penalty is not an acceptable element of criminal justice. Abolition of the death penalty is a major Canadian international initiative.

Since earlier Supreme Court decisions concerning extradition without assurances, there has been a change in attitude toward capital punishment in Canada, the United States and Great Britain. The death penalty does not advance the public interest in a way that life without parole wouldn't. A refusal to request assurances would not undermine Canada's international obligations or good relations. The Extradition Treaty provides for

assurances. If fugitives are returned to a foreign country to face the death penalty or to face death from natural causes after life in prison, they are equally prevented from using Canada as a safe haven.