

## Senior Associate Justice James E. Duggan

### Overview of Decisions<sup>1</sup>

As one of five members of the New Hampshire Supreme Court, Justice Duggan participated in decisions in a wide range of cases, including criminal cases, complex civil litigation, family court cases, encompassing divorce, custody disputes and juvenile delinquency cases, as well as appeals from decisions by administrative agencies. In 2002, Duggan wrote the opinion for the majority in a 3-2 decision (*Claremont School District & a. v. Governor, 147 N.H. 499*) which said the state’s duty to provide a constitutionally adequate education—set down in the 1993 Claremont school financing decision—included setting up meaningful standards of accountability to ensure that duty was fulfilled. Duggan, saying it was not the Supreme Court’s job to “establish educational policy,” said the majority was hopeful that the Governor and legislature “will continue to work to satisfy their constitutional duty to ensure the delivery of a constitutionally adequate education to the public school students of this State.”

In 2008, the Supreme Court dismissed the last pending school financing case, concluding that the legislature had taken needed action to define a constitutionally adequate education (*Londonderry School District SAU #12 & a. v. State of NH, 157 N.H. 734*). Duggan, in a separate opinion, said he would have sent the case back to the trial court to determine whether the state had fulfilled its duty to provide an adequate education, saying the long-standing debate, in Duggan’s words, “is far from settled.”

Since he joined the court in January 2001, Duggan has written nearly 400 opinions. They include:

#### Damages in Negligence Cases

- *DeBenedetto v. CLD Consulting Engineers, Inc., 153 N.H. 793 (2006)*: Upheld legislation that the court said was intended to strike a fair balance between the interests of injured parties seeking to recover damages in personal injury cases and “deep pocket” defendants who may have been targeted for lawsuits because they had substantial resources, rather than for their degree of responsibility for injuries. Duggan, writing for a unanimous court in a wrongful death case, said the legislature, in passing a 1989 statute on liability, intended that juries look at all the parties responsible for an accident, not just the ones being sued, and determine the percentage of fault for each. In a lengthy opinion that reviewed “deep pocket” lawsuits in several states as well as New Hampshire’s legislative history, Duggan

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<sup>1</sup> Summaries prepared by the Judicial Branch Communications Office. The full text of opinions is available on the Judicial Branch website at <http://www.courts.state.nh.us/supreme/opinions/index.htm>.

## **Worker's Compensation**

- ***Appeal of Margeson, \_\_\_ N.H. \_\_\_ (decided July 21, 2011)***—The court adopted a new “increased risk test” for worker’s compensation cases in order to balance employees’ right to compensation for injury with the employer’s right not to be held liable for every injury that occurs on the job. In this case, Margeson had twisted his knee going up and down stairs at the Sununu Youth Center while making bed-checks. The fall was unexplained—it was not attributable to the employer or the employee. Under the newly adopted test, an employee may recover for injuries that result from “a risk greater than that to which the general public is exposed.” Writing for a unanimous court, Duggan emphasized, “Not every person suffering an injury at work is entitled to compensation.”

## **Criminal Law**

- ***State of New Hampshire v. Sheila K. LaBarre 160 N.H. 1 (2010)***: Upheld the first degree murder convictions of Sheila LaBarre, who had claimed she was not guilty by reason of insanity. Duggan, writing for a unanimous court, said the Epping police were justified in going onto LaBarre’s property without a search warrant after they received numerous concerned calls from relatives of a man who had been an acquaintance of LaBarre’s. Duggan, writing for the court, cited the “community caretaking exception” which allows police to make warrantless searches in some cases, such as helping stranded motorists, returning lost children or assisting citizens in need.

## **Attorney Misconduct**

- ***Feld’s Case, 149 N.H. 19 (2002)*** —Writing for a unanimous court, Duggan addressed the issue of the appropriate sanctions to be imposed by the court for violations of the New Hampshire Rules of Professional Conduct, which govern the conduct of lawyers. Duggan emphasized that the power of the Supreme Court to impose sanctions for lawyer misconduct is intended to “protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession and prevent similar conduct in the future.” In deciding *Feld*, Duggan said the court looked for guidance to the American Bar Association Standards for Imposing Lawyer Sanctions which set out various factors for courts to consider in making decisions about an appropriate sanction for misconduct. While the court has not formally adopted the ABA guidelines, it has continued to look to those standards in subsequent lawyer discipline cases.

## Judicial Misconduct

- ***Coffey’s Case, 157 N.H. 156 (2008)***: The court in this case adopted factors identified in a study by the American Judicature Society, the nation’s leading organization for research on judicial ethics and discipline, to determine sanctions in misconduct cases involving judges. Writing for the majority in a case involving then Superior Court Judge Patricia C. Coffey, Duggan explained that judges may be subject to “more severe” sanctions than lawyers would face, under the ABA standards, for the same conduct. “Because they assume a heightened station in our society, judges must maintain a standard of personal and professional conduct above that expected of lawyers,” the opinion said.

## Defamation

- ***Thomas v. Telegraph Publishing Co. & a., 155 N.H. 314 (2007)***: In a unanimous opinion written by Duggan, the court adopted a “libel proof plaintiff” doctrine but said it should be used “with caution and sparingly.” The court held that the existence of a criminal record is not enough to protect a defendant—in this case the Nashua Telegraph—from a libel suit charging defamation. There has to be some evidence that the plaintiff’s criminal activity was widely reported in the past, the court said, and it must be demonstrated that as a result, the plaintiff’s reputation was already damaged and could not have been harmed further by the publication of statements.

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