

**SUPREME COURT
OF CANADA**

**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande au registraire, accompagnée de 10 \$ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada.

February 2, 1996

127 - 150

le 2 février 1996

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**Homefounders Development Joint Venture (86395
Ont. Inc.) et al.**

Charles Zubovits

v. (25121)

Michael Piggott et al. (Ont.)

Kenneth T. Rosenberg
Gowling, Strathy & Henderson

FILING DATE 24.1.1996

Clarence Maxwell Shorting

Jeffrey F. Harris
Keyser, Harris

v. (25030)

Her Majesty The Queen (Man.)

R. Finlayson
Manitoba Justice

FILING DATE 22.1.1996

Tajdin Esmail

Raj Anand
Scott & Aylen

v. (25095)

Petro-Canada (Ont.)

Susan Adam Metzler
Holden, Day, Wilson

FILING DATE 23.1.1996

Margaret Kaban

Murdoch MacKay, Q.C.
Inkster, Christie, Hughes, MacKay

v. (25108)

Sikhor Nath Sett (Man.)

Helda D. Van Iderstine
Atkins, MacAulay & Thorvaldson

FILING DATE 23.1.1996

**DEMANDES D'AUTORISATION
D'APPEL DÉPOSÉES**

Charles F. Gill et al.

Brian Morgan
Osler, Hoskin & Harcourt

v. (25109)

ScotiaMcLeod Inc. et al. (Ont.)

Robert S. Russell
Borden & Elliott

FILING DATE 22.1.1996

Mario Hudon et al.

Bernard Bélanger
Laurin, Laplante

c. (25110)

Stephen J. Frishling et al. (Qué.)

Gilles Poulin
Adessky, Poulin

FILING DATE 19.1.1996

Ernst & Young

Joseph W. Mik
Blake, Cassels & Graydon

v. (25111)

ScotiaMcLeod Inc. et al. (Ont.)

Robert S. Russell
Borden & Elliott

FILING DATE 22.1.1996

Rodelio Paraiso et al.
K.M. McCulloch

v. (25112)

Gordon Pauluik (Man.)
John M. Scurfield, Q.C.
Wolch, Pinx, Tapper, Scurfield

FILING DATE 23.1.1996

Canadian Airlines International Ltd.
V. Ross Ellison
Davis & Co.

v. (25113)

Albert Belloni et al. (F.C.A.)
Julius H. Grey
Grey Casgrain

FILING DATE 23.1.1996

Yang Tung Chiu
Malcolm N. Ruby
Gowling, Strathy & Henderson

v. (25114)

Kwok Woon Kung (Ont.)
Larry Pick
Bennett Best Burn

FILING DATE 24.1.1996

Aménagement Westcliff Ltée et al.
Élise Poisson
Lavery, de Billy, S.E.N.C.

c. (25115)

Société immobilière du Québec (Qué.)
Roch Maltais
Gilbert Maltais Bergeron & Rondeau

FILING DATE 26.1.1996

Mike Bertone et al.
Vincent Chiara
Chiara & Assoc.

c. (25119)

Patrick Aboud et al. (Qué.)
Sarto Brisebois

FILING DATE 26.1.1996

La Garantie Compagnie d'Assurance de l'Amérique du Nord
Claude Larose
Lavery, de Billy, S.E.N.C.

c. (25116)

Inter-Cité Construction Ltée et al. (Qué.)
Paul Guimond
Gagnon, Gauthier & Assoc.

FILING DATE 26.1.1996

Matériaux de Construction Lesage Ltée
Nathalie Deshaies
Prévost, Auclair, Fortin & Daoust

c. (25117)

Claude Simon et al. (Qué.)
André Rousseau
Laflamme, Rousseau

FILING DATE 26.1.1996

C.L.S.C. - N.D.G. Montréal-Ouest
Gilles Théorêt
Monette, Barakett, Lévesque, Bourque & Pedneault

c. (25118)

Syndicat des employés du C.L.S.C. - N.D.G. Montréal-Ouest (Qué.)
Pierre Cloutier
Sylvestre, Charbonneau

FILING DATE 26.1.1996

Syndicat des employés de la société Asbestos Ltée
Hélène Dubreuil
Sauvé & Roy

c. (25120)

Maurice Rousseau (Qué.)
Gilles Ouellet
Warren Ouellet Ladouceur

FILING DATE 29.1.1996

Gabriel Gladue
Leonard (Tony) Mandamin
Mandamin & Assoc.

v. (25122)

Her Majesty The Queen (Alta.)

FILING DATE 29.1.1996

Her Majesty The Queen
F. Richard Connolly
Min. of the A.G.

v. (25124)

Gordon Stogdale (Ont.)
Brian H. Greenspan

FILING DATE 30.1.1996

Bumper Development Corp. Ltd.
David C. Rolf
Parlee McLaws

v. (25125)

The Union of India et al. (Alta.)
Kenneth J. Warren
Code Hunter Wittman

FILING DATE 31.1.1996

Charles Douglas Stuart Horrey et al.
Gordon R. McKenzie
Bishop & McKenzie

v. (25127)

**Joycie Fay Litterst, formerly known as Joycie Fay
Horrey (Alta.)**
Louise Ares
Ares Kvill Rattan

FILING DATE 29.1.1996

Wilhelm Halwachs et al.
Guy Du Pont
Goodman Phillips & Vineberg

c. (25123)

**The Deputy Minister of Revenue of Québec et al.
(Qué.)**

Jean Groleau
Veillette et assoc.

FILING DATE 29.1.1996

January 30, 1996 / le 30 janvier 1996

**CORAM: Chief Justice Lamer and Gonthier and Iacobucci JJ.
Le juge en chef Lamer et les juges Gonthier et Iacobucci**

Sa Majesté la Reine

c. (24979)

Sadek Sadek (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Jury - Réponse du juge du procès à une question du jury portant sur le meurtre au premier degré - La Cour d'appel a-t-elle erré en droit en considérant la réponse du juge de première instance à une question du jury comme erronée, malgré le fait que la Cour, unanimement, a considéré l'ensemble des directives conformes, voire même "indiscutables"? - La Cour d'appel a-t-elle erré en omettant de statuer sur l'application des dispositions curatives de l'article 686(1b)(iii) du *Code criminel* et en ne les appliquant pas dans cette cause? - Article 231(5) du *Code criminel*.

HISTORIQUE PROCÉDURAL

Le 17 janvier 1992
Cour supérieure, juridiction criminelle
(Riopel j.c.s.)

Verdict: Intimé reconnu coupable de meurtre au premier degré, séquestration et voies de fait graves

Le 6 octobre 1995
Cour d'appel du Québec
(Vallerand, Baudouin et Robert jj.c.a.)

Appel accueilli; verdict cassé et nouveau procès sur l'accusation de meurtre au premier degré ordonné

Le 3 novembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**United State of America
The Honourable Allan Rock
Minister of Justice for Canada**

v. (24997)

Arye Dynar (Ont.)

NATURE OF THE CASE

Extradition - Criminal law - Whether Respondent's conduct would constitute attempt or conspiracy in Canada - Whether an accused can be convicted of attempt when the offence was impossible to commit - Whether an accused can be convicted of conspiracy where the conspiracy was impossible to commit - What does it mean to "know" a fact - What is the scope of the requesting state's duty of disclosure.

PROCEDURAL HISTORY

May 2, 1994 Ontario Court of Justice (General Division) (Keenan J.)	Respondent committed for extradition
September 29, 1994 Minister of Justice	Respondent surrendered
September 8, 1995 Court of Appeal for Ontario (Galligan, Austin and Laskin JJ.A.)	Appeal allowed; application for judicial review allowed
November 7, 1995 Supreme Court of Canada	Application for leave to appeal filed
December 13, 1995 Supreme Court of Canada	Application for leave to cross-appeal filed

Her Majesty the Queen

v. (24918)

Fibreco Pulp Inc.; Fibreco Export Inc. (F.C.A.)(B.C.)

NATURE OF THE CASE

Taxation - Statutes - Interpretation - The use of administrative practice and Parliamentary debates for interpretation
- Income Tax Act s. 127(9).

PROCEDURAL HISTORY

July 28, 1994
Federal Court of Canada Trial Division
(Muldoon J.)

Respondents' appeal from assessment dated April 3, 1989 allowed; matter referred back to the Minister of National Revenue for redetermination and reassessment of the Respondent's 1988 taxation year

June 15, 1995
Federal Court of Appeal
(Hugessen, Décarý, McDonald JJA)

Appeal dismissed

October 16, 1995
Supreme Court of Canada

Application for leave to appeal filed

**CORAM: La Forest, Cory and Major JJ. /
Les juges La Forest, Cory et Major**

Richard Donald Kostiuk

v. (25052)

Her Majesty The Queen (Crim.)(Alta.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - *R. v. Bartle*, [1994] 3 S.C.R. 173; *R. v. Pozniak*, [1994] 3 S.C.R. 310; *R. v. Harper*, [1994] 3 S.C.R. 343; *R. v. Matheson*, [1994] 3 S.C.R. 328; *R. v. Prosper*, [1994] 3 S.C.R. 236 - Effect of Supreme Court of Canada judgment staying recently released decision - Can decisions apply retroactively? - Whether evidence of breathalyzer should have been admitted.

PROCEDURAL HISTORY

January 30, 1995
Provincial Court of Alberta
(Ayotte P.C.J.)

Conviction: driving "over 80"
Acquittal: impaired driving

June 4, 1995
Court of Queen's Bench (Beilby J.)

Summary conviction appeal dismissed

October 16, 1995
Court of Appeal of Alberta
(Lieberman, Belzil and Coté JJA.)

Motion for leave to challenge correctness of decision in *Lorincz* dismissed;
Application for leave to appeal adjourned

October 24, 1995
Court of Appeal of Alberta (Coté J.A.)

Leave to appeal denied

December 27, 1995
Supreme Court of Canada

Application for leave to appeal filed

Arthur Eber Sherman

v. (25008)

Her Majesty The Queen (N.S.)

NATURE OF THE CASE

Criminal law - Procedural law - *Certiorari* - Did the lower courts err in dismissing the application for an order in the nature of *certiorari* - Did the Court of Appeal err in holding that challenges to the constitutional validity of four sections of the *Criminal Code*, R.S.C. 1985, c. C-46, based on alleged violations of the *Canadian Charter of Rights and Freedoms*, which were raised in an application for an order in the nature of *certiorari*, were premature.

PROCEDURAL HISTORY

January 19, 1995 Supreme Court of Nova Scotia (Richard J.)	Application for an order in the nature of <i>certiorari</i> dismissed
September 29, 1995 Nova Scotia Court of Appeal (Hallett, Freeman and Flynn JJ.A.)	Appeal dismissed
November 29, 1995 Supreme Court of Canada	Application for leave to appeal filed

William Lasecki

v. (24983)

Her Majesty The Queen (Crim.)(Alta.)

NATURE OF THE CASE

Criminal law - Offences - Definition of assault and sexual assault - Whether sexual assault committed in circumstances - Applicability of *de minimis non curat lex*.

PROCEDURAL HISTORY

June 28, 1994 Provincial Court of Alberta (Mackie Prov. J.)	Acquittal: sexual assault
December 22, 1994 Court of Queen's Bench of Alberta (Veit J.)	Summary conviction appeal allowed; new trial ordered
September 28, 1995 Court of Appeal of Alberta (Fraser C.J.A., Lieberman J.A. and Ritter J. (ad hoc))	Leave to appeal granted; Appeal dismissed
November 6, 1995 Supreme Court of Canada	Application for leave to appeal filed

**CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ. /
Les juges L'Heureux-Dubé, Sopinka et McLachlin**

Hugh Fraser

v. (25027)

Her Majesty The Queen (Crim.)(Ont.)

NATURE OF THE CASE

Criminal law - Evidence - Right to silence - Credibility - Applicant not volunteering a statement to police - Whether the Court of Appeal erred in failing to hold that the right to silence is engaged at the time that an individual who subsequently becomes an accused is questioned by the police, such that a trier of fact is not entitled to draw an adverse inference against an accused for exercising the right to silence and not volunteering a statement to police - Whether the Court of Appeal erred in law in failing to hold that, whether or not the right to silence is engaged, an individual has the right not to volunteer a statement to the police, such that the trier of fact is not entitled to draw an adverse inference against an accused for not volunteering a statement to police - Whether the Court of Appeal erred in law in failing to hold that the trial judge erred by measuring the credibility of witnesses the use of a three-step "might reasonably be true" test which resulted in a shifting of the burden of proof to the Applicant.

PROCEDURAL HISTORY

January 6, 1994
Ontario Court (General Division) (Valin J.)

Conviction: assault causing bodily harm contrary to s.
267(1)(b) of the *Criminal Code*

September 5, 1995
Court of Appeal for Ontario
(Lacourcière, Labrosse and Austin JJ.A)

Appeal dismissed

December 6, 1995
Supreme Court of Canada

Application for leave to appeal filed

**Odelia Irene Quewezance and
Neressa Lynn Quewezance**

v. (25021)

Her Majesty The Queen (Sask.)

NATURE OF THE CASE

Criminal law - Evidence - Jury address - Whether it is proper for the trial judge to put the *Vetrovec* caution to the jury where the evidence of the impugned Crown witness also aids the accused - Whether it is proper to provide the jury with copies of *Criminal Code* provisions, and if so, whether a warning should be given as to the limited use to be made of them - Whether trial judge's redirection on definition of murder and manslaughter using layman's language was proper given that judge's example of manslaughter was far less violent than offence that occurred.

PROCEDURAL HISTORY

February 4, 1994
Court of Queen's Bench for Saskatchewan
(Gunn J.)

Conviction: second degree murder

October 4, 1995
Court of Appeal for Saskatchewan
(Bayda C.J.S. and Cameron and Jackson JJ.A.)

Appeal dismissed

November 24, 1995
Supreme Court of Canada

Application for leave to appeal filed

Ralph Henry Sahrman

v. (25017)

Jane Jean Otto (B.C.)

NATURE OF THE CASE

Family law - Division of property - Divorce - Maintenance - Whether economic disadvantage arising from marriage or its breakdown is properly a support consideration, a property consideration or, subject to avoiding double compensation, both? - What is the appropriate evidentiary foundation for an order aimed at redressing economic disadvantage, or should such an order be the presumptive rule?

PROCEDURAL HISTORY

July 22, 1994
Supreme Court of British Columbia
(Koegnisberg J.)

Respondent awarded custody, spousal and child support and a disproportionate share of family assets

September 26, 1995
Court of Appeal for British Columbia
(Cumming, Wood and Ryan JJ.A.)

Appeal dismissed

November 27, 1995
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

**JUGEMENTS RENDUS SUR LES
DEMANDES D'AUTORISATION**

February 1, 1996 / le 1 février 1996

24950 MULTITECH WAREHOUSE (MANITOBA) DIRECT INC. v. HER MAJESTY THE QUEEN
(Crim.)(Man.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Appeals - Crown's appeal of acquittals on charges under s. 57(2) of *Competition Act* - Substitution of convictions.

PROCEDURAL HISTORY

April 12, 1991 Provincial Court of Manitoba (Criminal Division) (Lismer Prov. J.)	Applicant acquitted
September 28, 1993 Court of Queen's Bench of Manitoba (Clearwater J.)	Summary conviction appeal allowed
July 6, 1995 Court of Appeal of Manitoba (Scott C.J.M., Lyon and Kroft JJ.A)	Appeal dismissed
October 30, 1995 Supreme Court of Canada	Application for leave to appeal filed

24899 VILLE DE BROSSARD c. SERGE MALO, ET AL (Qué.)

CORAM: Le Juge en chef et les juges L'Heureux-Dubé et Gonthier

La demande d'autorisation d'appel est rejetée avec dépens.

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit du travail - Employeur et employé - Convention collective - Interprétation - L'application d'une disposition d'une convention collective peut-elle être une cause juste et suffisante de congédiement au sens de l'art. 124 de la *Loi sur les normes du travail*, L.R.Q. 1977, ch. N-1.1? - Le syndicat peut-il renoncer au nom des salariés membres de l'unité de négociation au bénéfice d'une disposition d'ordre public, tel l'art. 124 de la *Loi*, conformément aux conditions établies par l'arrêt *Garcia Transport Ltée c. Compagnie Trust Royal*, [1992] 2 R.C.S. 499.

HISTORIQUE PROCÉDURAL

Le 7 juillet 1993
Commissaire du travail (Côté-Desbiolles)

Plaintes pour congédiement sans cause juste et
suffisante rejetées

Le 11 novembre 1993
Cour supérieure du Québec (Lemieux j.c.s.)

Requête en évocation rejetée

Le 15 juin 1995
Cour d'appel du Québec (Beauregard, Proulx et
Rousseau-Houle jj.c.a.)

Pourvoi accueilli

Le 10 octobre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

25059 **John A. Turnbull and Louis Ellement - and - The Canadian Institute of Actuaries and The Investigation Team of the Canadian Institute of Actuaries - and - The Committee on Discipline of the Canadian Institute of Actuaries and the Disciplinary Tribunal of the Canadian Institute of Actuaries** (Man.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal and application for stay are dismissed with costs.

La demande d'autorisation d'appel et la demande d'arrêt des procédures sont rejetées avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Jurisdiction - Injunction - Division of powers - Apprehension of bias - Motion for stay of proceedings - Whether an applicant challenging the jurisdiction of a disciplinary tribunal on the basis of apprehension of bias, conflict of interest, and failure to comply with its own process, has recourse to the courts prior to submitting to the jurisdiction of the tribunal at first instance - Whether, where an administrative tribunal acts without jurisdiction, prerogative relief is precluded by the existence of a right of appeal - *Is An Act to incorporate Canadian Institute of Actuaries*, S.C. 1964-65, c. 76 *ultra vires* the Canadian Parliament - *Canadian Pacific Limited et al. v. Matsqui Indian Band et al.*, [1995] 1 S.C.R. 3.

PROCEDURAL HISTORY

June 30, 1995
Court of Queen's Bench of Manitoba
(Oliphant A.C.J.)

Interlocutory injunction and Order of prohibition granted, prohibiting Respondents from proceeding with disciplinary hearing against Applicants until issues raised in Notice of Application resolved by Court; Order expunging parts of affidavits; Order dismissing Respondents' motion to strike the Notice of Application

October 25, 1995
Court of Appeal of Manitoba
(Scott C.J.M., Huband, Lyon JJ.A.)

Appeal allowed; interlocutory injunction and prohibition order dissolved; Notice of Application struck out as premature

December 27, 1995
Supreme Court of Canada

Application for leave to appeal filed

24803 **VICTOR BRIAN OLSON v. THE LAW SOCIETY OF MANITOBA** (Man.)

CORAM: La Forest, Cory and Major JJ.

The application for an extension of time for leave to appeal is dismissed with costs.

La demande de prorogation de délai pour une demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Procedural law - Law of professions - Barristers and solicitors - Statutes - Interpretation - Applicant found guilty of professional misconduct - When a professional society is given, by statute, the right to make punitive findings against a practising member and when the only redress from such a decision is an appeal to the Court of Appeal, is the Court of Appeal, in exercising its jurisdiction, bound by findings of fact where there is no identifiable evidence to support the findings of fact and when the society and the court have been challenged to identify the evidence of which the findings have allegedly been based and have failed to do so?

PROCEDURAL HISTORY

December 21, 1993 Law Society of Manitoba	Applicant found guilty of professional misconduct, reprimanded and ordered to pay \$750
November 1, 1994 Court of Appeal of Manitoba (Scott, C.J.M., Lyon and Kroft, JJ.A.)	Appeal dismissed
April 20, 1995 Court of Appeal of Manitoba (Scott, C.J.M., Lyon and Kroft, JJ.A.)	Application for reconsideration dismissed
June 8, 1995 Court of Appeal of Manitoba (Scott, C.J.M., Lyon and Kroft, JJ.A.)	Application for leave to appeal to the Supreme Court of Canada pursuant to s. 37 of the <i>Supreme Court Act</i> dismissed
June 28, 1995 Supreme Court of Canada	Application for leave to appeal filed

24765 **DERKSEN BROTHERS HOLDINGS LTD., 45075 MANITOBA LTD. and FRANK DERKSEN v. CANADIAN IMPERIAL BANK OF COMMERCE - AND - DERKSEN BROTHERS HOLDINGS LTD. and FRANK DERKSEN v. CANADIAN IMPERIAL BANK OF COMMERCE - AND - CORAL-REEF HOLDINGS LTD. and NORTHMAIN PROPERTIES LTD. v. CANADIAN IMPERIAL BANK OF COMMERCE** (Man.)

CORAM: La Forest, Cory and Major JJ.

The applications for leave to appeal are dismissed with costs.

Les demandes d'autorisation d'appel sont rejetées avec dépens.

NATURE OF THE CASE

Procedural Law - Civil Procedure - Evidence - Summary Judgment - Whether a fiduciary or other special relationship existed between the litigants - Whether the Applicants have a fundamental right to have the merits of their claims heard by a trial judge - Whether the Court of Appeal erred in granting summary determinations of claims remaining to be litigated between the parties on the grounds of *res judicata* and issue estoppel - Whether the Court of Appeal erred in making credibility findings without affording the applicants the right to be tried by a trial judge.

PROCEDURAL HISTORY

August 10, 1994 Court of Queen's Bench, Manitoba (Morse J.)	The Coral-Reef action: motion for striking out or dismissing the claims dismissed. The Green Meadows and Northmain actions: motions for summary judgment dismissed.
March 28, 1995 Manitoba Court of Appeal (Scott C.J.M., Huband and Lyon JJ.A.)	Appeals allowed: Applicants' claims dismissed in the Coral-Reef action; summary judgments granted in the Green Meadows and Northmain actions and counterclaims struck out.
May 29, 1995 Supreme Court of Canada	Applications for leave to appeal filed.

25.1.1996

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the respondent's factum

Requête en prorogation du délai de dépôt du mémoire de l'intimé

John Robert Verdun

With the consent of the parties.

v. (24604)

The Toronto-Dominion Bank (Ont.)

GRANTED / ACCORDÉE Time extended to January 24, 1996.

25.1.1996

Before / Devant: THE REGISTRAR

Miscellaneous motion on appeal accepting appellant's factum without marginal numbering

Autre requête en appel visant à accepter le mémoire de l'appelante sans numérotation dans la marge

Manulife Bank of Canada

With the consent of the parties.

v. (24499)

John Joseph Conlin (Ont.)

GRANTED / ACCORDÉE

25.1.1996

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de dépôt de la réponse de l'intimé

Motion to extend the time in which to file the respondent's response

Century 21 Direct Courtier Inc.

c. (25028)

Michel Mailhot (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 24 janvier 1996.

25.1.1996

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the applicant's reply

Requête en prorogation du délai de dépôt de la réplique de la requérante

City of Prince George

With the consent of the parties.

v. (24966)

A.L. Sims & Sons Ltd. (B.C.)

GRANTED / ACCORDÉE Time extended to January 18, 1996.

29.1.1996

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the respondent's response

Requête en prorogation du délai de dépôt de la réponse de l'intimé

Yvan Morin

v. (24894)

Her Majesty The Queen (Sask.)

GRANTED / ACCORDÉE Time extended to March 18, 1996.

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

**APPELS ENTENDUS DEPUIS LA
DERNIÈRE PARUTION ET
RÉSULTAT**

26.1.1996

CORAM: Chief Justice Lamer and L'Heureux-Dubé, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

W.W.D.S.

J.C. Marc Richard and Christa A. Bourque, for the appellant.

v. (24631)

Her Majesty The Queen (Crim.)(N.B.)

John J. Walsh and Graham J. Sleeth, Q.C., for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Evidence - Charter - Seizures of hair, buccal swabs and tooth impressions - Seizures of tissue from a waste receptacle - Whether the majority of the Court of Appeal erred in law in holding that the seizure of the discarded tissue was not done in a manner which infringed or denied the Appellant's rights as guaranteed by the *Canadian Charter of Rights and Freedoms* - Whether the majority of the Court of Appeal erred in law in holding that the evidence obtained in a manner which infringed or denied the Appellant's rights and freedoms as guaranteed by the *Canadian Charter of Rights and Freedoms* should not be excluded pursuant to section 24(2) of the said *Charter*.

Nature de la cause:

Droit criminel - Preuve - Charte - Saisies de poils, d'écouvillons et d'empreintes dentaires - Saisie de papier hygiénique dans un panier à rebuts - La Cour d'appel à la majorité a-t-elle commis une erreur de droit en statuant que la saisie de papier hygiénique jeté aux rebuts n'a pas été faite d'une manière qui violait ou niait les droits de l'appellant garantis par la *Charte canadienne des droits et libertés*? - La Cour d'appel à la majorité a-t-elle commis une erreur de droit en statuant que la preuve obtenue d'une manière qui violait ou niait les droits et libertés de l'appellant garantis par la *Charte canadienne des droits et libertés* ne devrait pas être écartée en application de l'art. 24(2) de la *Charte*?

26.1.1996

CORAM: Sopinka, Gonthier, Cory, McLachlin and Major JJ.

Wendel Dewald

Irwin Koziembrocki, for the appellant.

v. (24363)

Her Majesty The Queen (Crim.)(Ont.)

Rick Libman, for the respondent.

SOPINKA J. (orally for the Court) -- We agree with Arbour J.A. that the delay in demanding an ALERT test in this case was not in compliance with s. 254(2) of the *Criminal Code* as interpreted in this Court's

LE JUGE SOPINKA (oralement au nom de la Cour) -- Nous sommes d'accord avec le juge Arbour de la Cour d'appel pour dire que le délai intervenu dans la demande de test ALERT en l'espèce n'était pas

decision in *R. v. Bernshaw*, [1995] 1 S.C.R. 254. As a result, there occurred a breach of the appellant's rights under the *Canadian Charter of Rights and Freedoms*.

conforme au par. 254(2) du *Code criminel*, L.R.C. (1985), ch. C-46, selon l'interprétation que la Cour en a donnée dans *R. c. Bernshaw*, [1995] 1 R.C.S. 254. En conséquence, il y a eu violation des droits garantis à l'appellant par la *Charte canadienne des droits et libertés*.

In the circumstances, the case of *Rilling v. The Queen*, [1976] 2 S.C.R. 183 has no application. With respect to s. 24(2), we are of the opinion that in all the circumstances, the admission of the evidence did not render the trial unfair. The breach of the *Charter* was

technical and the police officer acted in good faith. The admission of the evidence would not bring the administration of justice into disrepute.

Dans les circonstances, l'arrêt *Rilling c. La Reine*, [1976] 2 R.C.S. 183, ne s'applique pas. Pour ce qui est du par. 24(2) de la *Charte*, nous sommes d'avis que, compte tenu de toutes les circonstances, l'utilisation de la preuve n'a pas rendu le procès inéquitable. La violation de la *Charte* était de pure forme et le policier a agi de bonne foi. L'utilisation n'est pas susceptible de déconsidérer l'administration de la justice.

The appeal is dismissed.

Le pourvoi est rejeté.

29.1.1996

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Stephen Edward Fitt

v. (24628)

Her Majesty The Queen (Crim.)(N.S.)

and between

Spyro Kouyas

v. (24513)

Her Majesty The Queen (Crim.)(N.S.)

Ralph W. Ripley, for the appellants.

Kenneth W.E. Fiske, Q.C. and Peter G. MacKay, for the respondent.

Monique Rousseau et Gilles Laporte, pour l'intervenant le procureur général du Québec.

These appeals come to us as of right. The appeals are dismissed, substantially for the reasons given by Mr. Justice Hallett.

Les présents pourvois, qui nous ont été présentés de plein droit, sont rejetés, essentiellement pour les motifs formulés par le juge Hallett.

30.1.1996

CORAM: Chief Justice Lamer and L'Heureux-Dubé, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

Donald Leo R.

v. (24766)

Her Majesty The Queen

and between

Donald George W.

v.

Her Majesty The Queen

and between

Helen Susan R.

v.

Her Majesty The Queen (Crim.)(Sask.)

THE CHIEF JUSTICE (orally) -- In the case of D.W., the appeal is allowed, and an acquittal is entered. Dissenting, Justices Cory and Iacobucci would have ordered a new trial; Justice L'Heureux-Dubé would dismiss.

In the case of D.R. and H.R., the appeal is allowed and a new trial is ordered. Dissenting, Justice L'Heureux-Dubé would dismiss.

Reasons to follow.

Roger J. Kergoat, for the appellant Donald Leo R.

John D. Hillson, for the appellant Helen Susan R.

Donald L. MacKinnon, for the appellant Donald George W.

Kenneth W. MacKay, Q.C., for the respondent.

LE JUGE EN CHEF (oralement) -- Dans l'affaire D.W., le pourvoi est accueilli et un verdict d'acquiescement est inscrit. Dissidents, les juges Cory et Iacobucci auraient ordonné un nouveau procès, et le juge L'Heureux-Dubé aurait rejeté le pourvoi.

Dans l'affaire D.R. et H.R., le pourvoi est accueilli et un nouveau procès est ordonné. Dissidente, le juge L'Heureux-Dubé rejeterait le pourvoi.

Motifs à suivre.

31.1.1996

CORAM: La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Sinnadurai Paramadevan et al.

v. (24325)

Bernard Semelhago (Ont.)

John Swan and Barbra H. Miller, for the appellants.

Martin Sciszizi and Orlando Da Silva, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Commercial law - Contracts - Damages - Whether a plaintiff can recover more for breach of contract than he would have made had the contract been performed.

Nature de la cause:

Droit commercial - Contrats - Dommages-intérêts - Relativement à un manquement à un contrat, un

plaignant peut-il recouvrer plus que le montant auquel il
aurait eu droit s'il y avait eu exécution du contrat?

31.1.1996

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, L'Heureux-Dubé, Sopinka, Gonthier, Cory,
McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

Wendy Rubin, for the appellant.

v. (24486)

Norman Rolland Austin (Crim.)(B.C.)

Christine Birnie, for the respondent.

THE CHIEF JUSTICE (orally) -- We are all of the view,
for the reasons of Chief Justice McEachern, to allow this
appeal, set aside the Order of the Court of Appeal and
restore the trial judge's order.

LE JUGE EN CHEF (oralement) -- Pour les raisons
exposées par le juge en chef McEachern, nous sommes
tous d'avis d'accueillir le présent pourvoi, d'annuler
l'ordonnance de la Cour d'appel et de rétablir
l'ordonnance du juge du procès.

1.2.1996

CORAM: Chief Justice Lamer and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Prince Rupert Grain Ltd.

R. Alan Francis, for the appellant.

v. (24428)

Peter A. Gall, Maryse Tremblay and Andrea Zwack, for
the respondent Canadian Labour Relations Board.

**International Longshoremen's and Warehousemen's
Union, Ship and Dock Foremen, Local 514 et al.
(F.C.A.)(B.C.)**

Bruce Laughton, for the respondent International
Longshoremen's & Warehousemen's Union.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Labour law - Administrative law - Judicial review -
Certification - Jurisdiction - Interpretation - Application
of s. 33 of the *Canada Labour Code* - International
Longshoremen's and Warehousemen's Union, Ship and

Dock Foremen, Local 514, application for certification
for a unit of foremen employed by the Appellant
dismissed by the Canada Labour Relations Board -
Whether the Federal Court of Appeal's finding that the
Board could not certify a larger unit without the union's
consent deprived the Board from holding that the
smaller unit applied for was inappropriate - Whether the
Board has the authority to decide that a bargaining unit
relating to a single employer is inappropriate and that a
multi-employer unit is the appropriate unit?

Nature de la cause:

Droit du travail - Droit administratif - Contrôle judiciaire
- Accréditation - Compétence - Interprétation -
Application de l'art. 33 du *Code canadien du travail* -
Rejet par le Conseil canadien des relations du travail de
la demande d'accréditation pour un groupe de
contremaîtres employés par l'appelante, présentée par le
Syndicat international des débardeurs et magasiniers,
Ship and Dock Foremen, section locale 514 - La
conclusion de la Cour d'appel fédérale que le Conseil ne
pouvait accréditer une unité plus grande sans le
consentement du syndicat empêchait-elle le Conseil de
décider que l'unité plus restreinte proposée n'était pas
appropriée? - Le Conseil a-t-il compétence pour décider
qu'une unité de négociation relative à un employeur
unique n'est pas appropriée et qu'une unité
multipatronale l'est?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning February 5, 1996.
ORDRE DU JOUR pour la semaine commençant le 5 février 1996.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

05/02/96

Motions - Requêtes

NOTE:

This agenda is subject to change. Hearing dates should be confirmed with Process Registry staff at (613) 996-8666.

Cet ordre du jour est sujet à modification. Les dates d'audience devraient être confirmées auprès du personnel du greffe au (613) 996-8666.

BEFORE THE COURT:

Pursuant to Rule 23.1 of the *Rules of the Supreme Court of Canada*, the following deadlines must be met before a motion before the Court can be heard:

DEVANT LA COUR:

Conformément à l'article 23.1 des *Règles de la Cour suprême du Canada*, les délais suivants doivent être respectés pour qu'une requête soit entendue par la Cour:

APPEALS HEARD SINCE LAST ISSUE AND
DISPOSITION

APPELS ENTENDUS DEPUIS LA DERNIÈRE
PARUTION ET RÉSULTAT

Motion day : February 5, 1996

Service : January 15, 1996
Filing : January 22, 1996
Respondent : January 29, 1996

Audience du : 6 février 1996

Signification : 15 janvier 1996
Dépôt : 22 janvier 1996
Intimé : 29 janvier 1996

Motion day : March 4, 1996

Service : February 12, 1996
Filing : February 19, 1996
Respondent : February 26, 1996

Audience du : 4 mars 1996

Signification : 12 février 1996
Dépôt : 19 février 1996
Intimé : 26 février 1996

Motion day : April 1, 1996

Service : March 11, 1996
Filing : March 18, 1996
Respondent : March 25, 1996

Audience du : 1^{er} avril 1996

Signification : 11 mars 1996
Dépôt : 18 mars 1996
Intimé : 25 mars 1996

The session of the Supreme Court of Canada will commence January 22, 1996.

Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing:

Case on appeal must be filed within three months of the filing of the notice of appeal.

Appellant's factum must be filed within four months of the filing of the notice of appeal. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within five months.

Respondent's factum must be filed within eight weeks of the date of service of the appellant's factum.

Intervener's factum must be filed within four weeks of the date of service of the respondent's factum. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within two weeks.

The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum

La session d'hiver de la Cour suprême du Canada commencera le 22 janvier 1996.

Conformément à la *Loi sur la Cour suprême* et aux *Règles*, il faut se conformer aux exigences suivantes avant qu'un appel puisse être inscrit pour audition:

Le dossier d'appel doit être déposé dans les trois mois du dépôt de l'avis d'appel.

Le mémoire de l'appelant doit être déposé dans les quatre mois du dépôt de l'avis d'appel. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les cinq mois.

Le mémoire de l'intimé doit être déposé dans les huit semaines suivant la signification de celui de l'appelant.

Le mémoire de l'intervenant doit être déposé dans les quatre semaines suivant la signification de celui de l'intimé. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les deux semaines.

Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de signification du mémoire de l'intimé.

THE STYLES OF CAUSE IN THE PRESENT TABLE ARE THE STANDARDIZED STYLES OF CAUSE (AS EXPRESSED UNDER THE "INDEXED AS" ENTRY IN EACH CASE).

LES INTITULÉS UTILISÉS DANS CETTE TABLE SONT LES INTITULÉS NORMALISÉS DE LA RUBRIQUE "RÉPERTORIÉ" DANS CHAQUE ARRÊT.

Judgments reported in [1995] 3 S.C.R. Part 2

G. (L.) v. B. (G.), [1995] 3 S.C.R. 367

G. (L.) v. B. (G.), [1995] 3 S.C.R. 370

RJR-MacDonald Inc. v. Canada (Attorney General),
[1995] 3 S.C.R. 199

Jugements publiés dans [1995] 3 R.C.S. partie 2

G. (L.) c. B. (G.), [1995] 3 R.C.S. 367

G. (L.) c. B. (G.), [1995] 3 R.C.S. 370

RJR-MacDonald Inc. c. Canada (Procureur général),
[1995] 3 R.C.S. 199

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPRÊME DU CANADA

- 1996 -

JANUARY - JANVIER						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
	H 1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY - FÉVRIER						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
				1	2	3
4	M 5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

MARCH - MARS						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
					1	2
3	M 4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

APRIL - AVRIL						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
	M 1	2	3	4	H 5	H 6
H 7	H 8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

MAY - MAI						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
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5	M 6	7	8	9	10	11
12	13	14	15	16	17	18
19	H 20	21	22	23	24	25
26	27	28	29	30	31	

JUNE - JUIN						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Hearing of appeal days:
Journée d'audition de pourvois:



Motion days:
Journées de requêtes:



Holidays:
Congés statutaires:

