

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

Jozef Grochocki

Jozef Grochocki

v. (26239)

Solicitor General of Canada (F.C.A.)

Meg Kinnear
Dept. of Justice

FILING DATE 29.9.1997

Steven William Bray

Philip Campbell
Copeland, Campbell

v. (25909)

The United States of America (Ont.)

Robert Frater
Dept. of Justice

FILING DATE 2.10.1997

**APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST
ISSUE**

**DEMANDES SOUMISES À LA COUR
DEPUIS LA DERNIÈRE PARUTION**

OCTOBER 10, 1997 / LE 10 OCTOBRE 1997

**CORAM: Chief Justice Lamer and Cory and McLachlin JJ. /
Le juge en chef Lamer et les juges Cory et McLachlin**

Jones William Ignace, Shelagh Anne Franklin and James Allan Scott Pitawanakwat

v. (26185)

Regina (Crim.)(B.C.)

NATURE OF THE CASE

Criminal Law - Procedural Law - Appeal - Adjournment - Defence - Self-defence - Colour of right - Application made to the Court of Appeal to prefer three appeals to a panel for summary judgment on a preliminary issue of jurisdiction - Application adjourned - Whether issues of jurisdiction raised by decision to adjourn - Whether trial judge properly decided not to leave defences of self-defence or colour of right with a jury.

PROCEDURAL HISTORY

May 29, 1997 Supreme Court of British Columbia (Henderson J.)	Petition challenging jurisdiction over “William Jones Ignace” and other non-parties dismissed
April 21, 1997 Supreme Court of British Columbia (Josephson J.)	Decision not to leave defence of colour of right before jury
May 9, 1997 Supreme Court of British Columbia (Josephson J.)	Application for declaration that court has no jurisdiction dismissed
May 20, 1997 Supreme Court of British Columbia (Josephson J.)	Ignace convicted of mischief, assaulting police weapon possession and discharge of firearm; Franklin convicted of mischief; Pitawanakwat convicted of mischief and weapon possession
May 21, 1997 Supreme Court of British Columbia (Josephson J.)	Reasons issued for decision not to leave defence of self-defence before jury
July 23, 1997 British Columbia Court of Appeal (Huddart J.A.)	Application to refer appeals to a panel for summary judgment on an issue of jurisdiction adjourned
Supreme Court of Canada September 12, 1997	Application for leave to appeal filed

Harold Pascal

v. (26186)

Carl Walker (Crim.)(B.C.)

NATURE OF THE CASE

Criminal Law - Procedural Law - Appeal - Application for time extension - Interests of justice - Whether Court of Appeal properly dismissed an application for an extension of time to appeal in the interests of justice - Whether a denial of a time extension raised issues of jurisdiction.

PROCEDURAL HISTORY

May 29, 1997 Supreme Court of British Columbia (Henderson J.)	Petition challenging jurisdiction over Applicant and other non-parties dismissed
July 23, 1997 British Columbia Court of Appeal (Huddart J.A.)	Applicant's application for extension of time to appeal dismissed; Respondent's cross-application to dismiss appeal as abandoned granted
September 12, 1997 Supreme Court of Canada	Application for leave to appeal filed seeking an order to quash convictions or for stay of execution

Patrick O'Brien and Reno Stradiotto

v. (26140)

**Board of School Trustees of School District
No. 39 (Vancouver) and Attorney General of British Columbia (B.C.)**

NATURE OF THE CASE

Administrative law - Schools - Applicability of provisions of the *Compensation Fairness Act*, S.B.C., c.1 to salary and benefits paid to Applicants - Act purporting to "freeze" salaries of public service senior managers earning in excess of \$79,000 per annum - Applicants claiming their contract with Respondent Board of Trustees predating effective date of statutory freeze - Applicants failing to receive negotiated contractual salary increases for duration of the statutory freeze - Applicants' lower salaries during critical calculation period also affecting level of pension entitlement - Statutes - Interpretation - Whether the *Compensation Fairness Act* and *Guidelines* extinguished the negotiated contractual rights of the Applicants to receive salary increases - Whether definition of "senior manager" contained in impugned bulletin was *ultra vires* the Minister - Whether Minister exceeded his authority under section 25 by merely identifying senior managers by salary level, with no regard to the policies recommended under s. 27 - Whether Chambers judge erred in holding that contract negotiated by Applicants' representatives was not a "compensation plan" within the meaning of the legislation and therefore freeze applicable to the Applicants.

PROCEDURAL HISTORY

October 2, 1995 Supreme Court of British Columbia (Melnick J.)	Applicants' petitions for declaratory and other relief dismissed
May 7, 1997 Court of Appeal for British Columbia (Cumming, Prowse and Braidwood JJ.A.)	Appeal dismissed
August 6, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

L.J.S.

v. (26055)

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

NATURE OF THE CASE

Criminal law - Evidence - Similar fact evidence - Charge to the jury - Whether the trial judge erred in not instructing the jury not to rely upon the similar fact evidence of a complainant upon whose allegations it voted to acquit - Whether the trial judge erred in not warning the jury specifically regarding the impermissible chains of reasoning arising from similar fact evidence - Whether the trial judge erred in not instructing the jury that it must first determine that the two complainants had not collaborated before relying on the similarities in their evidence to support the credibility of one another - Whether the Court of Appeal erred by denying the Applicant the benefit of a conditional sentence despite his personal circumstances and because of the nature of the offence.

PROCEDURAL HISTORY

May 16, 1995 Ontario Court (General Division) (Pardu J.)	Conviction: Indecent assault
November 10, 1995 Ontario Court (General Division) (Pardu J.)	Sentence: 18 months imprisonment
June 6, 1997 Court of Appeal for Ontario (Finlayson, LaBrosse and Austin JJ. A.)	Appeal against conviction dismissed; appeal against sentence allowed and sentence of 18 months reduced to ten months imprisonment
July 11, 1997 Supreme Court of Canada	Application for leave to appeal filed

**Succession Réal Ethier, dûment représentée par
Christiane Roy-Ethier**

c. (25986)

Assurance-vie Desjardins (Qué.)

NATURE DE LA CAUSE

Code civil - Droit commercial - Assurance - Preuve - Assurance-prêt collective sur la vie - Fausse déclaration de l'adhérent - Remise d'une copie de la déclaration de risque à l'assuré - Refus d'indemniser - Risque non assurable - Opposabilité de la déclaration - Fardeau de preuve - La Cour d'appel commet-elle une erreur en intervenant dans une décision de première instance à partir d'erreurs de faits et de procédure compte tenu qu'en matière d'assurance le contrat s'interprète contre l'assureur (article 2499 du *Code civil du Bas-Canada*) et que le "Mouvement Desjardins" participe à la fois de l'assureur et de l'assuré?

HISTORIQUE PROCÉDURAL

Le 27 avril 1993 Cour supérieure du Québec (Bergeron j.c.s.)	Action de la demanderesse en remboursement de sommes empruntées en vertu d'une police d'assurance collective accueillie
Le 10 mars 1997 Cour d'appel du Québec (LeBel, Baudouin et Brossard jj.c.a.)	Appel accueilli
Le 7 mai 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

**Raymond, Chabot inc., ès qualités de liquidateur de
Les Coopérants, Société mutuelle d'assurance-vie /Coopérants, Mutual Life Insurance Society**

c. (25995)

Jean Alias et als

- et -

Nicole Beauregard et als, Jean Arcuri et als (Qué.)

NATURE DE LA CAUSE

Droit commercial - Droit des compagnies - Législation - Interprétation - Art. 72 de la *Loi sur les liquidations*, L.R.C. (1985) ch. W-11, accordant le rang de créance privilégiée aux "arriérés de salaires ou de gages dus et impayés" aux employés d'une compagnie mise en liquidation - La Cour d'appel a-t-elle erré en qualifiant de salaire l'indemnité de licenciement prévue à la convention collective? - Art. 72 prévoyant toutefois que ces arriérés ne doivent pas excéder le montant de ceux qui se sont accumulés en faveur des employés pendant les trois mois qui ont immédiatement précédé la date de l'ordonnance de mise en liquidation - La Cour d'appel a-t-elle erré en qualifiant cette restriction de quantitative seulement et non de temporelle? - La Cour d'appel a-t-elle erré en rejetant la réclamation des salariés cadres et d'agence pour indemnité de licenciement? - *Barrette c. Crabtree (Succession de)*, [1993] 1 R.C.S. 1027.

HISTORIQUE PROCÉDURAL

Le 23 mars 1995 Cour supérieure du Québec (Trudel j.c.s.)	Requêtes des intimés en jugement déclaratoire portant sur l'interprétation de l'art. 72 de la <i>Loi sur les liquidations</i> accueillies en partie
Le 13 mars 1997 Cour d'appel du Québec (Chouinard, Baudouin et Otis jj.c.a.)	Appels des intimés accueillis en partie
Le 12 mai 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 10 juin 1997 Cour suprême du Canada	Demande d'autorisation d'appel incident déposée par les intimés Jean Alias et autres

**CORAM: Sopinka, Iacobucci and Major JJ. /
Les juges Sopinka, Iacobucci et Major**

Vincent Godoy

v. (26078)

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

NATURE OF THE CASE

Criminal law - Police - Whether the Court of Appeal erred in holding that a police officer is acting in the execution of his duty when, in response to a disconnected 911 call, he enters a private dwelling house.

PROCEDURAL HISTORY

September 1, 1992 Ontario Court (Provincial Division) (Bentley P.C.J)	Acquittal: assaulting a police officer with intent to resist lawful arrest
July 6, 1995 Ontario Court (General Division) (Hoilett J.)	Summary conviction appeal allowed; new trial ordered
April 9, 1997 Court of Appeal for Ontario (Finlayson, Weiler, Austin JJ.A.)	Appeal dismissed
June 5, 1997 Supreme Court of Canada	Application for leave to appeal filed

Michael John Mercury

v. (26149)

Her Majesty The Queen in Right of the Province of Manitoba (Man.)

NATURE OF THE CASE

Municipal law - Expropriation - Assessment - Statutes - Interpretation - Whether the Court of Appeal misapplied the “palpable and overriding error” test with respect to findings of fact made by the trial judge - Whether section 27(2)(b) of the *Expropriation Act*, R.S.M. 1987, c. E190 prevent a trier of fact from taking into account the advantages or disadvantages to the expropriated property resulting from prior expropriations of other properties in the area?

PROCEDURAL HISTORY

July 24, 1995 Court of Queen’s Bench of Manitoba (Mykle J.)	Compensation for lands expropriated pursuant to the <i>Expropriation Act</i> allowed in the amount of \$600,000
May 27, 1997 Court of Appeal of Manitoba (Scott C.J.M., Philp and Lyon JJ.A.)	Appeal on quantum allowed; land valued at \$375,000

August 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

OCTOBER 16, 1997 / LE 16 OCTOBRE 1997

25898 **FLORENT DES CHAMPS - v. - CONSEIL DES ÉCOLES SÉPARÉES CATHOLIQUES DE LA LANGUE FRANÇAISE DE PRESCOTT-RUSSELL, SUZANNE CHARETTE, ROCH LALONDE, RONALD LALONDE, R. SERGE LALONDE, HÉLÈNE LEBLANC, PIERRE LEBLANC, JEAN LEMAY, PAUL PARADIS, MARCEL PERRAS, GILLES TAILLON, FRANÇOIS THÉORET, JEAN-PAUL SCOTT** (Ont.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Procedural law - Limitation of actions - Statutes - Interpretation - Whether the shortened limitation periods that attach to acts done in pursuance of a statutory or public duty apply to employment-related decisions - For those limitation periods which are extended due to continuance of damage, does the limitation period commence to run from the date of the last act or default causing the damage, or from the date of the last damage suffered.

PROCEDURAL HISTORY

November 25, 1993
Ontario Court (General Division)
(Desmarais J.)

File 25898: Motion to dismiss action on basis of the *Public Authorities Protection Act*, dismissed; Motion to dismiss action as against individually named defendants, granted

November 30, 1993
Ontario Court (General Division)
(Desmarais J.)

File 25899: Motion to dismiss action on basis of the *Act*, dismissed

January 20, 1997
Court of Appeal for Ontario
(Weiler and Charron JJ.A. and Carnwath J.
(ad hoc))

Files 25898 and 25899: Plaintiffs' actions dismissed

March 18, 1997
Supreme Court of Canada

Applications for leave to appeal filed

25899 **ALFRED ABOUCHAR - v. - CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON - SECTION PUBLIQUE, ROSAIRE LÉGER, SUPERVISEUR ET SA MAJESTÉ LA REINE EN CHEF D'ONTARIO (MINISTÈRE DES AFFAIRES MUNICIPALES)** (Ont.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Procedural law - Limitation of actions - Statutes - Interpretation - Whether the shortened limitation periods that attach to acts done in pursuance of a statutory or public duty apply to employment-related decisions - For those limitation periods which are extended due to continuance of damage, does the limitation period commence to run from the date of the last act or default causing the damage, or from the date of the last damage suffered.

PROCEDURAL HISTORY

November 25, 1993
Ontario Court (General Division)
(Desmarais J.)

File 25898: Motion to dismiss action on basis of the *Public Authorities Protection Act*, dismissed; Motion to dismiss action as against individually named defendants, granted

November 30, 1993
Ontario Court (General Division)
(Desmarais J.)

File 25899: Motion to dismiss action on basis of the *Act*, dismissed

January 20, 1997
Court of Appeal for Ontario
(Weiler and Charron JJ.A. and Carnwath J.
(ad hoc))

Files 25898 and 25899: Plaintiffs' actions dismissed

March 18, 1997
Supreme Court of Canada

Applications for leave to appeal filed

25848 **ROBERT THÉRIEN - c. - MARCELLE PELLERIN - et - PIERRE F. CÔTÉ ET ROSAIRE SÉNÉCAL** (Qué.)

CORAM: Le Juge en chef et les juges Cory et McLachlin

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Législation - Interprétation - Libertés publiques - Droit administratif - Contrôle judiciaire - Preuve - Élection - Élection provinciale - Contestation d'élection - Manoeuvre électorale frauduleuse - Domicile - Commission de révision électorale - Chose jugée - Droit de vote - Droit d'être candidat à une élection - Composition du tribunal - Juge à la retraite - En l'absence de fraude de la part du demandeur, la Cour du Québec, saisie d'une requête en contestation d'élection, était-elle en droit de réviser l'opportunité des décisions rendues par la Commission de révision? - L'infraction de manoeuvre électorale frauduleuse prévue à la *Loi électorale*, L.R.Q. c. E-3.3, requiert-elle la preuve d'intention frauduleuse et/ou de *mens rea*? - Peut-on, par l'application des règles de preuve prévues en matière civile, priver un individu de ses droits constitutionnels? - L'audition de la *Requête en contestation d'élection amendée* a-t-elle été entendue par un banc valablement formé?

HISTORIQUE PROCÉDURAL

Le 21 février 1996 Cour du Québec, chambre civile (Charette, Paquin et Robillard jj.c.Q.)	Requête de l'intimée en annulation de l'élection accueillie; élection du demandeur comme député annulée
Le 21 février 1997 Cour d'appel du Québec (Baudouin, Delisle [dissident], et Biron (<i>ad hoc</i>) jj.c.a.)	Pourvoi principal et pourvoi incident rejetés
Le 7 mars 1997 Cour d'appel du Québec (Forget j.c.a.)	Requête en sursis contre l'arrêt de la Cour d'appel rejetée
Le 14 mars 1997 Cour suprême du Canada (Cory j.)	Requête pour sursis d'exécution rejetée
Le 22 avril 1997 Cour suprême du Canada	Demande d'autorisation d'appel amendée déposée

25791 **LUCIEN BROUILLETTE - c. - SOCIÉTÉ D'AGRICULTURE DU COMTÉ DE VERCHÈRES**
(Qué.)

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

L'affaire est renvoyée à la Cour d'appel du Québec pour réexamen conformément à l'arrêt de notre Cour dans *Construction Gilles Paquette Ltée c. Entreprises Végo Ltée* (25090) et *Syndicat des postiers du Canada c. Société canadienne des postes* (25093).

The case is remanded to the Court of Appeal of Quebec to be reconsidered in accordance with the decision of this Court in *Construction Gilles Paquette Ltée v. Entreprises Végo Ltée* (25090) and *Canadian Union of Postal Workers v. Canada Post Corporation* (25093).

NATURE DE LA CAUSE

Procédure - Procédure civile - Appel - Omission du demandeur de signifier et produire son mémoire d'appel dans le délai prévu - Appel réputé déserté aux termes de l'art. 503.1 du *Code de procédure civile*, L.R.Q. (1977), ch. C-25- Requête en prorogation de délai et annulation d'un certificat d'appel déserté rejetée par la Cour d'appel - L'art. 523 du *Code de procédure civile* peut-il être interprété comme privant la Cour d'appel du pouvoir de rendre une ordonnance d'injonction interlocutoire durant l'appel? - Les critères prévus par la jurisprudence et l'art. 523 du *Code de procédure civile* ont-ils été respectés par la Cour d'appel? - Le principe fondamental selon lequel une partie ne doit pas être privée de son appel si elle a un motif sérieux à faire valoir a-t-il été respecté par la Cour d'appel? - *Construction Gilles Paquette Ltée c. Entreprises Végo Ltée*, C.S.C., no 25090; *Société canadienne des postes c. Syndicat des postiers du Canada*, C.S.C., no 25093.

HISTORIQUE PROCÉDURAL

Le 27 mai 1996 Cour supérieure du Québec (Mercure j.c.s.)	Action du demandeur rejetée et demande reconventionnelle accueillie
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Le 2 décembre 1996
Cour d'appel du Québec
(Deschamps, Forget et Biron jj.c.a.)

Requête en prorogation de délai et annulation d'un
certificat d'appel déserté rejetée

Le 31 janvier 1997
Cour suprême du Canada

Demande d'autorisation d'appel déposée

25970 **DENNIS DAVID WILSON - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for extension of time and the application for leave to appeal are granted with respect to grounds three and four only.

La demande de prorogation de délai et la demande d'autorisation d'appel sont accordées quant aux troisième et quatrième moyens seulement.

NATURE OF THE CASE

Criminal law - Disclosure - Incest - Indecent assault - Whether the Court of Appeal erred in holding that the Applicant could not cross-examine the complainant on whether she agreed to DNA testing - Whether evidence of sexual impropriety between the Applicant and complainant prior to the period described in the indictment was admissible - Whether adoption records in the hands of the Ministry of Social Services were in the hands of the Crown for the purposes of disclosure - Whether the proper remedy if the Applicant was prevented from making full answer and defence was a stay of proceedings or whether a new trial should be ordered together with an order for DNA testing - Whether the Applicant should have been tried as a young offender.

PROCEDURAL HISTORY

September 21, 1995
British Columbia Supreme Court (Melvin J.)

Convictions: incest, rape, indecent assault

March 27, 1997
British Columbia Court of Appeal (McEachern C.J.B.C.,
Prowse J.A. [dissenting], Hall J.A.)

Appeal dismissed

April 17, 1997
Supreme Court of Canada

Notice of Appeal as of Right filed

June 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

26005 **JEANNINE GODIN - v. - MINISTER OF HEALTH AND COMMUNITY SERVICES, LAW SOCIETY OF NEW BRUNSWICK, LEGAL AID NEW BRUNSWICK, ATTORNEY GENERAL OF NEW BRUNSWICK AND THE MINISTER OF JUSTICE** (N.B.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Constitutional Law - Family Law - Custody - Whether parents have a *Charter* right to state-funded counsel when opposing Ministerial applications to take or extend custody of their children.

PROCEDURAL HISTORY

December 15, 1995 Court of Queen's Bench of New Brunswick (Athey J.)	Applicant's motion dismissed
January 11, 1996 Court of Appeal (Rice J.A.)	Leave to appeal granted
March 14, 1997 Court of Appeal (Hoyt C.J., Ayles, Ryan, Turnbull, Bastarache JJ.A.)	Appeal dismissed
May 12, 1997 Supreme Court of Canada	Application for leave to appeal filed

25999 **JAMES WEBB - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for extension of time is granted and the application for leave to appeal is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Informer privilege - Whether the Crown could claim informer privilege where the informer was a participant in the alleged criminal act - Whether disclosing the identity of the informer at trial affected the validity of the search warrant - Reply evidence - Whether the trial judge erred in allowing the Crown to call the informer in reply - Sentencing - Whether the Applicant should benefit from a change in the law of possession of stolen goods so as to receive a decrease in sentence.

PROCEDURAL HISTORY

September 27, 1994 Ontario Court (General Division) (Epstein J.)	Conviction: possession of property obtained by crime (6 counts)
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January 16, 1997
Ontario Court of Appeal
(Morden A.C.J.O., Finlayson and Abella JJ.A.)

Appeal dismissed

May 12, 1997
Supreme Court of Canada

Application for leave to appeal and motion for the
extension of time filed

26017 **SHELDON S. RICHMOND ET AL. - v. - ATTORNEY GENERAL OF CANADA (PUBLIC SERVICE COMMISSION OF CANADA, DEPARTMENT OF NATIONAL DEFENCE, REVENUE CANADA, CUSTOMS & EXCISE)** (F.C.A.)(Ont.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Civil rights - Labour law - Administrative law - Judicial review - Adverse effect discrimination - Duty to accommodate - Did the employer satisfy its duty to accommodate when it denied Jewish employees leave with pay to observe Yom Kippur and Rosh Hashana - Does paid leave for religious holidays result in reverse discrimination where employees could make up the time off for religious holidays - Does the duty to accommodate require the employer to make only a reasonable offer of accommodation, or is the employer required to provide the most beneficial accommodation up to the point of undue hardship.

PROCEDURAL HISTORY

February 13, 1996
Federal Court of Canada Trial Division (Gibson J.)

Application for judicial review dismissed

March 26, 1997
Federal Court of Appeal (Isaac C.J., Desjardins and
Robertson [dissenting] JJ.A.)

Appeal dismissed

May 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

26015 **VIC VAN ISLE CONSTRUCTION LTD. - v. - THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)** (B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Whether Court of Appeal erred in law in subverting the “integrity” of the bidding system as referred to in *Ron Engineering & Construction (Eastern) Ltd. v. Ontario and Water Resources Commission*, [1981] 1 S.C.R. 111 by the application of the doctrine of estoppel.

PROCEDURAL HISTORY

November 20, 1995 Supreme Court of British Columbia (Wilson J.)	Applicant’s action dismissed
March 20, 1997 Court of Appeal for British Columbia (Gibbs J.A. [dissenting] and Rowles and Hall JJ.A.)	Appeal dismissed
May 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

25975 **M.J.B. ENTERPRISES LTD. - v. - DEFENCE CONSTRUCTION (1951) LIMITED AND THE SAID DEFENCE CONSTRUCTION (1951) LIMITED CARRYING ON BUSINESS UNDER THE NAME OF DEFENCE CONSTRUCTION CANADA AND THE SAID DEFENCE CONSTRUCTION CANADA** (Alta.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted on the following issues only:

To determine if the standard clause (the lowest or any tender shall not necessarily be accepted), also known as the privilege clause:

- (i) Allows a person calling for tenders to completely disregard the lowest proper and acceptable valid tender and to award the contract to anyone, including a non-compliant tenderer or to a contractor which did not submit a tender through the tendering process, and that such is an issue of national and public importance to commerce and to the construction industry regarding the law of tendering in Canada.
- (ii) Allows the person calling for tenders an absolute and unfettered discretion in awarding the contract, and that such is an issue of national and public importance to commerce and to the construction industry regarding the law of tendering in Canada.
- (iii) Allows the person calling for tenders to then commence bid shopping with contractors submitting tenders and contractors not submitting tenders and that such is an issue of national and public importance to commerce and to the construction industry regarding the law of tendering in Canada.

La demande d'autorisation d'appel est accordée, mais uniquement à l'égard des questions suivantes:

Est-ce que la clause type suivante: «Ni la plus basse ni aucune autre des soumissions ne sera nécessairement acceptée», connue sous le nom de clause de désistement («*privilege clause*»):

- (i) autorise la personne qui a lancé l'appel d'offres à ne tenir aucun compte de la soumission valide et acceptable la plus basse et à adjuger le contrat à qui elle veut, y compris à l'auteur d'une soumission non conforme ou à un entrepreneur qui n'a pas présenté de soumission dans le cadre de l'appel d'offres -- question qui concerne le droit relatif aux appels d'offres et revêt un intérêt public et une importance nationale pour le commerce et le secteur de la construction au Canada;
- (ii) accorde à la personne qui a lancé l'appel d'offres un pouvoir discrétionnaire absolu et illimité dans l'adjudication du contrat -- question qui concerne le droit relatif aux appels d'offres et revêt un intérêt public et une importance nationale pour le commerce et le secteur de la construction au Canada;
- (iii) autorise la personne qui a lancé l'appel d'offres à commencer le marchandage des soumissions avec des entrepreneurs qui ont présenté une soumission et des entrepreneurs qui n'en ont pas présentée -- question qui concerne le droit relatif aux appels d'offres et revêt un intérêt public et une importance nationale pour le commerce et le secteur de la construction au Canada?

NATURE OF THE CASE

Commercial law - Contracts - Invitation to tender - Privilege clause - Damages - Whether the Court of Appeal properly interpreted the privilege clause in an invitation for tenders - Whether damages should be calculated with reference to the cost of preparing the tender or the lost overhead revenue and profit.

PROCEDURAL HISTORY

December 15, 1994 Court of Queen's Bench of Alberta (Rowbotham J.)	Applicant's claim dismissed
March 5, 1997 Court of Appeal of Alberta (McClung, O'Leary, Hunt JJ.A.)	Appeal dismissed
May 2, 1997 Supreme Court of Canada	Application for leave to appeal filed
June 17, 1997 Supreme Court of Canada (McLachlin J.)	Motion to extend time to file additional material in support of application for leave to appeal granted

26042 **M.R.M. - v. - HER MAJESTY THE QUEEN** (Crim.)(N.S.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Young Offenders - Schools - Search and seizure - Are principals and teachers subject to the *Charter* in dealing with students - Whether a student's expectation of privacy in a school environment is significantly lower than in a non-school environment - Whether the search conducted on the Applicant was reasonable - Whether the vice-principal was acting as an agent of the police - Right to counsel - Whether

the Applicant was detained by vice-principal or RCMP - Whether there was an obligation to inform the Applicant of his right to counsel.

PROCEDURAL HISTORY

April 26, 1996 Youth Court for the Province of Nova Scotia (Dyer J.F.C.)	Acquittal: Possession of a narcotic
April 1, 1997 Nova Scotia Court of Appeal (Pugsley, Chipman and Roscoe JJ.A.)	Appeal allowed; new trial ordered
May 30, 1997 Supreme Court of Canada	Application for leave to appeal filed

25944 **ATTORNEY GENERAL OF CANADA - v. - CANADIANOXY CHEMICALS LTD.,
CANADIANOXY INDUSTRIAL CHEMICALS LIMITED PARTNERSHIP, AND CANADIAN
OCCIDENTAL PETROLEUM LTD.** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Search - Search warrant - Regulatory offence - Defences - Due diligence - Whether the majority of the Court of Appeal erred in holding that a search warrant under the *Criminal Code* s. 487(1)(b) did not authorize a search for evidence relating to a possible defence of due diligence in a regulatory offence.

PROCEDURAL HISTORY

July 2, 1996 Supreme Court of British Columbia (Sigurdson J.)	Search warrants quashed
March 26, 1997 Court of Appeal for British Columbia (Carrothers, Southin [dissenting], Goldie, JJ.A.)	Appeal dismissed
May 16, 1997 Supreme Court of Canada	Application for leave to appeal filed

26100 **BRIAN ARP - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Similar fact evidence - Whether the trial judge erred in instructing the jury that they could use evidence of similar facts if they found that the offences were likely committed by the same person - Search and seizure - Admissibility of evidence - Whether the trial judge erred in admitting into evidence the Applicant's hair samples lawfully obtained for one investigation and used two and a half years later for a subsequent police investigation

PROCEDURAL HISTORY

March 25, 1995 Supreme Court of British Columbia (Parrett J.)	Convictions: first degree murder (2 counts)
May 22, 1997 British Columbia Court of Appeal (McEachern C.J.B.C., Hinds, Goldie JJ.A.)	Appeal dismissed
June 25, 1997 Supreme Court of Canada	Application for leave to appeal filed

26014 **DONALD JOHN MARSHALL, JR. - v. - HER MAJESTY THE QUEEN** (N.S.)

CORAM: The Chief Justice and Gonthier and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Indians - Treaty Rights - Constitutional law - *Constitution Act, 1982*, s. 35(1) - Interpretation of the Treaties of 1760-61 - Whether the Treaties of 1760-61 provide the right to trade or sell fish free of any regulation by the government.

PROCEDURAL HISTORY

June 27, 1996 Provincial Court of Nova Scotia (Embree J.)	Conviction: three counts under the <i>Fisheries Act</i> , R.S.C. 1985, c. F-14 Sentence: absolute discharge
March 26, 1997 Nova Scotia Court of Appeal (Roscoe, Bateman and Flinn JJ.A.)	Appeal dismissed
May 23, 1997 Supreme Court of Canada	Application for leave to appeal filed

26091 **HER MAJESTY THE QUEEN - v. - IAN COCKER** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin 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 - Trial within a reasonable time - Whether the Court of Appeal erred in interfering with the trial judge's exercise of discretion in declining to grant a stay of proceedings under s. 11(b) of the *Charter*, and in particular, in disregarding the role and significance of societal interests in a determination under s. 11(b) - Whether the Court of Appeal erred in agreeing with the trial judge that the period of delay during which defence counsel was unavailable for trial should be attributed to the Crown - Whether the Court of Appeal erred in concluding that the length of the delay alone was sufficient to cause an infringement of the Respondent's s. 11(b) rights

PROCEDURAL HISTORY

March 27, 1996
Provincial Court of British Columbia (Ehrcke P.C.J.)

Conviction: sexual assault (4 counts); assault

April 24, 1997
Court of Appeal for British Columbia
(Lambert, Southin, Donald JJ.A.)

Appeal allowed; convictions quashed; judicial stay of proceeding entered

June 19, 1997
Supreme Court of Canada

Application for leave to appeal filed

26081 **ROYAL BANK OF CANADA - v. - W. GOT & ASSOCIATES ELECTRIC LTD. AND DONALD E. SANDERLIN** (Alta.)

CORAM: The Chief Justice and Gonthier and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Receivership - Banks/banking operations - Contracts - Damages - Torts - Trespass - Guaranty/suretyship - *Res judicata* - Collateral attack - Misleading affidavit evidence - Whether a bank that brings an action for recovery of a debt from a company and applies for and is granted the appointment of a receiver-manager for the company, can later be found liable in damages to that company for trespass and conversion - Whether the court erred in awarding exemplary damages against the bank - Did the court err in finding that the guarantor was not liable under the guarantee.

PROCEDURAL HISTORY

June 1, 1984 Court of Queen's Bench (Funduk, master)	Order appointing receiver - manager of corporate Respondent, granted
February 11, 1992 Court of Queen's Bench (Feehan J.)	Application to strike out paragraphs of Respondents' statements of defence and counterclaims as <i>res judicata</i> , dismissed
November 3, 1992 Court of Appeal of Alberta (Fraser C.J.A.)	Appeal of February 11, 1992, application, dismissed
February 4, 1994 Court of Queen's Bench of Alberta (McDonald J.)	Applicant awarded judgment for debt due in amount of \$2,864,075.03; Respondent awarded \$4,882,912.54 in counterclaim against Applicant; receiver as co-defendant to counterclaim found 50% jointly and severally liable for amount of \$10,000
April 15, 1994 Court of Queen's Bench (McDonald J.)	Supplementary reasons given on issues of tax, interest and costs
April 11, 1997 Court of Appeal of Alberta (Lieberman, McClung, and Hetherington)	Appeal and cross-appeal dismissed
June 9, 1997 Supreme Court of Canada	Application for leave to appeal filed

25908 **PAUL BÉRARD - c. - COMPAGNIE MONTRÉAL TRUST ET CRÉDIT FORD DU CANADA LIMITÉE** (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 commercial - Droit des biens - Législation - Interprétation - Sûretés - Acte de fiducie - Cession de biens en stock - Prise de possession d'actifs - Salaires impayés - *Loi sur les connaissances, les reçus et les cessions de biens en stock*, L.R.Q. 1977, ch. C-53 - La Cour d'appel a-t-elle erré en décidant que les biens liquidés par les intimées ou leur mandataire n'ont pas été repris uniquement en vertu de l'acte de fiducie? - La Cour d'appel a-t-elle erré en décidant que la collocation se détermine relativement au produit net de réalisation des actifs en vertu de l'acte de fiducie? - La Cour d'appel a-t-elle erré en déterminant que tout cessionnaire est propriétaire des biens visés par la cession de biens en stock? - La Cour d'appel a-t-elle erré en statuant que la créance des employés n'était pas prioritaire à celle du cessionnaire considérant le privilège dont bénéficient certains employés en vertu des art. 1994 et 2006 du *Code civil du Bas-Canada*?

HISTORIQUE PROCÉDURAL

Le 20 mai 1994
Cour supérieure du Québec
(Blanchet j.c.s.)

Recours collectif accueilli; intimées condamnées à payer conjointement et solidairement 747\$ au demandeur et 75 000\$ au greffe de la Cour supérieure pour le bénéfice des autres membres du groupe

Le 22 janvier 1997
Cour d'appel du Québec (Baudouin, Delisle [dissident]
et Biron [*ad hoc*] jj.c.a.)

Appel des intimées accueilli

Le 24 mars 1997
Cour suprême du Canada

Demande d'autorisation d'appel déposée

26073 **ROLAND ALEXIS REY - v. - HER MAJESTY THE QUEEN** (Crim.)(Man.)

CORAM: The Chief Justice and Gonthier and Major 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 - Are an accused person's s. 7 and/or 11 (d) *Charter* rights to a fair and public trial violated by a trial judge's review outside of the presence of the accused and his counsel of audio-tape recordings of a witness' trial evidence - Does this violate s. 650 of the *Criminal Code*, R.S.C. 1985, c. C-46 as am.?

PROCEDURAL HISTORY

May 2, 1996
Court of Queen's Bench (Schwartz J.)

Convictions: assault and sexual assault

March 26, 1997
Court of Appeal of Manitoba
(Huband, Philp and Twaddle JJ.A.)

Appeal dismissed

June 12, 1997
Supreme Court of Canada

Application for leave to appeal filed

26106 **JOSEPHAKIS CHARALAMBOUS - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Fresh evidence - Whether the Court of Appeal erred in the weight it accorded to the testimony adduced in cross-examination - Whether the Court of Appeal erred in the threshold it applied for the admission of the fresh evidence - Whether the Court of Appeal erred in failing to properly analyse the fresh evidence on the issue of credibility.

PROCEDURAL HISTORY

November 29, 1994 British Columbia Supreme Court (McKinnon J.)	Conviction: first degree murder; conspiracy to commit murder
May 13, 1997 Court of Appeal for British Columbia (McEachern C.J.B.C., Cumming, Prowse JJ.A.)	Appeal dismissed
July 9, 1997 Supreme Court of Canada	Application for leave to appeal filed

26095 **BRIAN MCMILLAN - v. - THE RURAL MUNICIPALITY OF THOMPSON - and - DAVID MEEK AND MANITOBA PUBLIC INSURANCE CORPORATION** (Man.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for extension of time is granted and the application for leave to appeal is dismissed without costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée sans dépens.

NATURE OF THE CASE

Commercial Law - Insurance - No fault insurance plan - Wording of plan provides benefits for “bodily injury caused by an automobile” - Whether injuries “caused by” - Whether intervening negligence a factor.

PROCEDURAL HISTORY

May 6, 1996 Court of Queen’s Bench of Manitoba (Oliphant A.C.J.)	Motion to strike action dismissed
February 10, 1997 Court of Appeal of Manitoba (Helper, Philp, Kroft JJ.A.)	Action dismissed
June 17, 1997 Supreme Court of Canada	Applications for time extension and leave to appeal filed

26098 **ALTA SURETY COMPANY - v. - CAMPBELL COMEAU ENGINEERING LIMITED** (N.S.)

CORAM: The Chief Justice and Gonthier and Major JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Contracts - Guaranty/suretyship - Whether a surety's obligation under the standard form of labour and materials payment bond extends to the principal's liability under contracts not specifically referred to in the bond.

PROCEDURAL HISTORY

September 20, 1996 Supreme Court of Nova Scotia (Goodfellow J.)	Respondent awarded total claim of \$110,012
April 23, 1997 Nova Scotia Court of Appeal (Freeman, Roscoe and Hallett JJ.A.)	Appeal dismissed
June 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

25943 **ALEXANDER FRANCOIS THOMAS v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The motion for extension of time and the application for leave to appeal are granted.

La demande de prorogation de délai et la demande d'autorisation d'appel sont accordées.

NATURE OF THE CASE

Criminal law - Appeal - Procedure - Judgments and Orders - Whether the Court of Appeal exceeded its jurisdiction by ordering, pursuant to s. 686(8) of the *Criminal Code*, that the Applicant's new trial be confined to the issue of whether the Applicant is guilty of second degree murder or manslaughter - If the Court of Appeal had jurisdiction to make such an order, whether it erred in concluding that the circumstances of this case were sufficiently exceptional to warrant making it - Whether the Court of Appeal erred in considering an affidavit filed by the Crown relating to exhibit destruction in the absence of an application to adduce fresh evidence - Whether the restricted new trial ordered by the Court of Appeal violates the Applicant's *Charter* rights.

PROCEDURAL HISTORY

March 19, 1993 Supreme Court of British Columbia (Lamperson J.)	Conviction: second degree murder
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January 7, 1997
British Columbia Court of Appeal
(Lambert, Donald, Hall JJ.A.)

Appeal allowed; new trial ordered confined to the issue
of whether the Applicant is guilty of second degree
murder or manslaughter

April 3, 1997
Supreme Court of Canada

Application for leave to appeal and motion for the
extension of time filed

25969 **BERT THOMAS STONE v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Defences - Automatism - Insane automatism - Non-insane automatism - Whether the trial judge erred in refusing to instruct the jury on non-insane automatism - Disclosure - Defence disclosure - Experts - Whether the trial judge erred in ordering the defence to produce the expert report prior to the Applicant giving evidence - Whether the Court of Appeal erred in finding that there was no miscarriage of justice as a result of the trial judge ordering defence counsel to produce the expert report prior to the Applicant giving evidence - Sentencing - Whether the Court of Appeal erred in holding that a sentencing judge might consider provocation as a mitigating factor on a sentence for manslaughter.

PROCEDURAL HISTORY

October 6, 1995
Supreme Court of British Columbia (Brenner J.)

Conviction: manslaughter

January 29, 1997
British Columbia Court of Appeal
(McEachern C.J.B.C., Cumming, Braidwood JJ.A.)

Conviction appeal dismissed

March 25, 1997
British Columbia Court of Appeal
(Esson, Finch, Donald JJ.A.)

Sentence appeal dismissed

May 1, 1997
Supreme Court of Canada

Application for leave to appeal and motion for the
extension of time for Applicant Stone filed

May 21, 1997
Supreme Court of Canada

Application for leave to appeal for Applicant Her
Majesty the Queen filed

26032 **HER MAJESTY THE QUEEN v. BERT THOMAS STONE** (Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Defences - Automatism - Insane automatism - Non-insane automatism - Whether the trial judge erred in refusing to instruct the jury on non-insane automatism - Disclosure - Defence disclosure - Experts - Whether the trial judge erred in ordering the defence to produce the expert report prior to the Applicant giving evidence - Whether the Court of Appeal erred in finding that there was no miscarriage of justice as a result of the trial judge ordering defence counsel to produce the expert report prior to the Applicant giving evidence - Sentencing - Whether the Court of Appeal erred in holding that a sentencing judge might consider provocation as a mitigating factor on a sentence for manslaughter.

PROCEDURAL HISTORY

October 6, 1995 Supreme Court of British Columbia (Brenner J.)	Conviction: manslaughter
January 29, 1997 British Columbia Court of Appeal (McEachern C.J.B.C., Cumming, Braidwood JJ.A.)	Conviction appeal dismissed
March 25, 1997 British Columbia Court of Appeal (Esson, Finch, Donald JJ.A.)	Sentence appeal dismissed
May 1, 1997 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time for Applicant Stone filed
May 21, 1997 Supreme Court of Canada	Application for leave to appeal for Applicant Her Majesty the Queen filed

25962 **JOSEPH HOWARD PEACOCK, NICHOLAS WILLIAM MORIN, JOHN ROBERT MCGILLIS, BARNEY WARD, PERCY WILLIAM PAPIN, RAYMOND CARDINAL, KATHLEEN THOMAS, PEARL LOUISE CARDINAL, CLIFFORD WARD, ROMEO MORIN ON BEHALF OF THE ENOCH BAND OF THE STONY PLAIN INDIAN RESERVE NO. 135 AND ENOCH TRIBAL ADMINISTRATIVE v. IRENE MORIN, BANK OF MONTREAL, THE TORONTO DOMINION BANK and PEACE HILLS TRUST COMPANY** (Alta.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Bank/banking operations - Bills of exchange - Statutes - Interpretation - *Bills of Exchange Act*, R.S.C. 1985, c.B-4, s.48(4) - Whether the Court of Appeal erred in finding that s.48(4) of the *Bills of Exchange Act* protects a Collecting Bank - Whether a short limitation in a federal statute prevails over a longer limitation in a provincial statute for a common law remedy - Whether the Court can relieve against the effect of section 48 if the Collecting Bank had actual notice of the forgeries within a year, but not written notice.

PROCEDURAL HISTORY

October 27, 1995 Court of Queen's Bench of Alberta (Costigan J.)	Judgment for Applicants against Irene Morin; Applicants' action against the Respondent Bank of Montreal dismissed
February 27, 1997 Court of Appeal of Alberta (Hetherington, Foisy and McFadyen JJ.A.)	Applicants' appeal dismissed
April 28, 1997 Supreme Court of Canada	Application for leave to appeal filed

26002 **VERNON FREDERICK GALE, AS ADMINISTRATOR DE BONIS NON OF THE ESTATE OF BRIAN CHARLES GALE, KELLY ANN CLOUTIER, TYLER WARREN CLOUTIER, AN INFANT WHO SUES BY HIS GRANDMOTHER AND NEXT FRIEND THERESE MARIE GALE, THE SAID VERNON FREDERICK GALE, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF THE SAID THERESE MARIE GALE, VERNON FREDERICK GALE, GORDON ROBERT GALE, JOHN PAUL GALE, VERNON HARRY GALE, MARGUERITE RUTH McAREE and THERESA RENE BEERMAN v. ROBIN ALEXANDER HOMINICK, ETHEL HOMINICK, JOHN LESKO and ROBERT JOSEPH LEWIS POULIOT** (Man.)

CORAM: L'Heureux-Dubé, Sopinka 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 - Civil - Statutes - Interpretation - Civil Rights - Whether the courts erred in concluding that the definition of "wife" as found in *The Fatal Accidents Act*, R.S.M. 1970, c. F50 did not include a common law wife - Whether the Court of Appeal erred in holding that the *Human Rights Code*, C.C.S.M., c. H175 is not retrospective legislation - Whether the courts erred in holding that s. 15 of the *Canadian Charter of Rights and Freedoms* did not apply.

PROCEDURAL HISTORY

April 10, 1996 Court of Queen's Bench of Manitoba (Duval J.)	Applicant's motion allowed: declaration of entitlement to claim damages pursuant to the <i>The Fatal Accidents Act</i> , R.S.M. 1970, c. F50
April 8, 1997 Court of Appeal of Manitoba (Scott C.J.M., Huband and Helper JJ.A.)	Respondents' appeal allowed; Applicant's cross-appeal dismissed
May 14, 1997 Supreme Court of Canada	Application for leave to appeal filed

26013 **THE CHILDREN'S FOUNDATION v. PATRICK ALLAN BAZLEY and THE SUPERINTENDENT OF FAMILY AND CHILD SERVICES IN THE PROVINCE OF BRITISH COLUMBIA and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTRY OF SOCIAL SERVICES AND HOUSING** (B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Vicarious liability - Intentional torts - Sexual assault of a child in the care of an employee in residential setting - Whether the Court of Appeal erred in law in rejecting the *Salmond* test and replacing it with a new test for determining whether an employee's intentional acts of sexual abuse were committed within the course of his or her employment - Whether the Court of Appeal erred in law by adopting and applying the wrong legal test in deciding that the employee's intentional acts of sexual abuse were committed within the course of his employment - Whether the Court of Appeal erred in law by finding that policy considerations did not support the adoption of a different legal test for considering whether a non-profit society was vicariously liable for the intentional acts of sexual abuse committed by its employees.

PROCEDURAL HISTORY

May 15, 1995 Supreme Court of British Columbia (Lowry J.)	Judgment on special case to Applicant, with damages to be assessed
March 25, 1997 Court of Appeal for British Columbia (Hollinrake, Finch, Donald, Newbury and Huddart, JJ.A.)	Appeal dismissed
May 26, 1997 Supreme Court of Canada	Application for leave to appeal filed

26041 **GAIL TAYLOR-JACOBI, RANDAL CRAIG JACOBI and JODY MARLANE SAUR v. BOYS' AND GIRLS' CLUB OF VERNON and HARRY CHARLES GRIFFITHS** (B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Vicarious liability - Intentional torts - Sexual assault of children by employee of a children's club - Whether the Court of Appeal erred in finding that the employee's tortious acts were not sufficiently connected to the duties given to him by the Respondent Club - Whether the Court of Appeal erred in rejecting the traditional test for vicarious liability and applying a new test.

PROCEDURAL HISTORY

October 25, 1995 Supreme Court of British Columbia (Wilkinson J.)	Judgment for Applicants Jacobi and Saur; damages of \$40,707.90 and \$52,034.43, respectively
March 25, 1997 Court of Appeal for British Columbia (Hollinrake, Finch [dissenting], Donald, Huddart and Newbury [dissenting], JJ.A.)	Appeal allowed; judgment set aside
May 27, 1997 Supreme Court of Canada	Application for leave to appeal filed

26008 **STEVEN SIMONYI-GINDELE v. THE ATTORNEY GENERAL OF BRITISH COLUMBIA**
(Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Judicial review - Jurisdiction - Preliminary inquiry - To what extent may a supervisory court review the manner in which a preliminary inquiry judge weighs evidence for the purpose of determining whether the preliminary inquiry judge committed jurisdictional error in discharging an accused person - Whether the Court of Appeal erred in its determination of the extent to which it could review the manner in which a preliminary inquiry judge weighs evidence, and erred in its conclusion that the preliminary inquiry judge in this case committed jurisdictional error - To what extent may a preliminary inquiry judge weigh the evidence for the purpose of deciding whether to commit or discharge an accused person, and what is the correct application of the decision of this Court in *United States of America v. Shephard*, [1977] 2 S.C.R. 1067 - Should the test set out in the decision of this Court in *R. v. Mezzo*, [1986] 1 S.C.R. 802 and *R. v. Monteleone*, [1987] 2 S.C.R. 154, which concern the review of a decision of a trial judge to withdraw a case from the jury, be applied to the review of a decision of a preliminary inquiry judge to discharge an accused person.

PROCEDURAL HISTORY

August 4, 1993 Provincial Court of British Columbia (Cronin J.)	Applicant discharged at preliminary inquiry
June 29, 1995 Supreme Court of British Columbia (Tysoe J.)	Application for certiorari and mandamus dismissed
March 20, 1997 Court of Appeal of British Columbia (McEachern C.J.B.C., Lambert [dissenting] and Esson JJ.A.)	Appeal allowed; judgment of Provincial Court quashed; judgment of Supreme Court set aside
May 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

26059 **JEFFREY HUGH WILLIAMS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
(F.C.A.)(Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Immigration - *Canadian Charter of Rights and Freedoms* - Administrative law - Judicial review - Appeal - Whether the Court of Appeal erred in deciding that the deportation of a permanent resident did not engage the liberty interests of s.7 of the *Charter* - Whether the Court of Appeal erred in deciding that the issuance of a Minister's opinion that the Applicant constituted a danger to the public pursuant to subsection 70 (5) of the *Immigration Act*, R.S.C. 1985, c. I-2 did not engage the Applicant's s. 7 liberty interests - Whether the Court of Appeal erred in deciding that the Minister was under no duty pursuant to principles of fundamental justice under s. 7 of the *Charter* or the common law to provide reasons for a subsection 70 (5) opinion - Whether the Court of Appeal erred in deciding that subsection 70 (5) of the *Immigration Act* was not unconstitutionally vague.

PROCEDURAL HISTORY

May 6, 1996
Federal Court, Trial Division (Rothstein J.)

Order granting leave to apply for judicial review of Minister's decision

October 29, 1996
Federal Court, Trial Division (Reed, J.)

Order quashing decision of Minister and certifying questions for appeal

April 11, 1997
Federal Court of Appeal
(Strayer, Robertson and McDonald JJ.A.)

Appeal allowed, order quashing Minister's decision, set aside

June 10, 1997
Supreme Court of Canada

Application for leave to appeal filed

25937 **THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES c. COMPAGNIE DES**
CHEMINS DE FER NATIONAUX DU CANADA (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Iacobucci

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 - Arbitrage - Convention collective - Interprétation - Exercice par l'arbitre de sa compétence - Directive de l'employeur selon laquelle les employés doivent porter une montre ferroviaire - Grief du syndicat selon lequel l'employeur est tenu de défrayer le coût des montres - Caractère arbitral du grief - L'arbitre a-t-il commis une erreur juridictionnelle justifiant l'intervention de la Cour supérieure en décidant que le grief n'était pas arbitral?

HISTORIQUE PROCÉDURAL

Le 11 octobre 1991 Bureau d'arbitrage des chemins de fer du Canada (Picher, arbitre)	Grief de la demanderesse rejeté
Le 13 février 1992 Cour supérieure du Québec (Piché J.C.S.)	Requête de la demanderesse en évocation accueillie
Le 5 février 1997 Cour d'appel du Québec (Deschamps, Nuss et Robert JJ.C.A.)	Appel de l'intimée accueilli
Le 3 avril 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

26084 **FORD MOTOR COMPANY OF CANADA, LIMITED v. THE MINISTER OF NATIONAL REVENUE** (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Statutes - Interpretation - Definition of "manufacturer or producer" in subsection 2(1)(f) of the *Excise Tax Act*, R.S.C. 1970, c. E-13 - Application of the *ejusdem generis* principle - Whether reimbursements by vehicle importer and manufacturer to automobile dealers for the cost of preparing and conditioning domestically manufactured vehicles prior to delivery to customers could be deducted to reduce the sale price in determining sales tax payable - Whether Respondent discriminated in its decision that the Applicant could not be considered as the manufacturer or producer of all imported motor vehicles sold by it in Canada pursuant to section 26.1(1) of the *Excise Tax Act*, R.S.C. 1970, c. E-13 (as amended).

PROCEDURAL HISTORY

October 26, 1994 Federal Court, Trial Division (Gibson J.)	Declaration in favour of the Applicant
April 25, 1997 Federal Court of Appeal (Linden, McDonald, Stone JJ.A.)	Appeal allowed, cross-appeal dismissed
June 18, 1997 Supreme Court of Canada	Application for leave to appeal filed

26092 **SUSAN WEISS v. THE ATTORNEY GENERAL OF CANADA** (F.C.A.)(Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Judicial review - Unemployment insurance - Whether the Court of Appeal breached the principles of natural justice - Whether the Court of Appeal erred in law - Whether the Court of Appeal based its decision on an erroneous finding of fact.

PROCEDURAL HISTORY

June 27, 1995 Board of Referees (Meredith, Chairperson, Tuz and Hershkovitz, Members)	Applicant's appeal from a decision of the Canada Employment and Insurance Commission denied
August 23, 1996 Umpire (McGillis J.)	Applicant's appeal dismissed
May 28, 1997 Federal Court of Canada (Appeal Division) (Stone, Décary, McDonald JJ.A.)	Applicant's application for judicial review dismissed
June 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

25926 **GAÉTAN DELISLE c. LE PROCUREUR GÉNÉRAL DU CANADA** (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Iacobucci

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Charte canadienne des droits de la personne - Droit du travail - Législation - Interprétation - Est-ce que l'article 109(4) de l'ancien *Code canadien du travail*, L.R.C. (1985) c. L-2 et le par. (e) de l'art. 2 de la *Loi sur les relations de travail dans la fonction publique*, L.R.C. (1985) c. P-35 violent les garanties constitutionnelles des articles 2(b), 2(d) et 15 de la *Charte*?

HISTORIQUE PROCÉDURAL

Le 28 novembre 1989 Cour supérieure du Québec (Michaud j.c.s.)	Requête pour faire déclarer inopérants l'article 109(4) de l'ancien <i>Code canadien du travail</i> et le par. (e) de l'art. 2 de la <i>Loi sur les relations de travail dans la fonction publique</i> rejetée
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Le 29 janvier 1997
Cour d'appel du Québec
(Baudouin [dissident], Fish et Forget jj.c.a.)

Appel rejeté

Le 1er avril 1997
Cour suprême du Canada

Demande d'autorisation d'appel déposée

26083 **SAIL LABRADOR LIMITED v. THE OWNERS, NAVIMAR CORPORATION LTEE AND ALL OTHERS INTERESTED IN THE SHIP "CHALLENGE ONE", HER EQUIPMENT, BUNKERS AND FREIGHTS and THE SHIP "CHALLENGE ONE" HER EQUIPMENT BUNKERS AND FREIGHTS (F.C.A.)(Ont.)**

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for leave to appeal is granted and the application for leave to cross-appeal is dismissed.

La demande d'autorisation d'appel est accordée et la demande d'autorisation d'appel incident est rejetée.

NATURE OF THE CASE

Commercial Law - Contracts - Option to purchase contained in a charter party agreement - Whether substantial performance of the terms of the charter party agreement is sufficient grounds for an option holder to invoke an equitable jurisdiction to compel performance of an option - Whether equitable doctrines applied to a charter party agreement.

PROCEDURAL HISTORY

June 28, 1996
Federal Court, Trial Division (Nadon J.)

Declaration granted

April 15, 1997
Federal Court of Appeal
(Chevalier D.J., Décary and Pratte JJ. A.)

Appeal allowed

June 13, 1997
Supreme Court of Canada

Application for leave to appeal filed

August 11, 1997
Supreme Court of Canada

Application for leave to cross-appeal filed

25784 **WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA v. FRANCES ELIZABETH KOVACH AND G.S. SINGH - and - DR. G.S. SINGH v. FRANCES ELIZABETH KOVACH, WORKERS' COMPENSATION BOARD AND ATTORNEY GENERAL OF BRITISH COLUMBIA (B.C.)**

CORAM: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

Upon the applications of the Workers' Compensation Board of British Columbia and Dr. G.S. Singh for leave to appeal to this Court from the decision of the British Columbia Court of Appeal dated December 2, 1996, quashing the Board's Certificate issued under s. 11 of the *Workers Compensation Act*, R.S.B.C. 1979, c. 437, it is ordered that the matters which are the subject of the said judgment are hereby remanded to the Court of Appeal of British Columbia to be

reconsidered and dealt with in accordance with this Court's judgment in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, S.C.C. appeal no. 24913, released August 28, 1997.

Sur demandes présentées par la Workers' Compensation Board (la «Commission») de la Colombie-Britannique et le D^r G.S. Singh en vue d'obtenir l'autorisation d'appeler à notre Cour de la décision de la Cour d'appel de la Colombie-Britannique datée du 2 décembre 1996, annulant le certificat délivré par la Commission en application de l'art. 11 de la *Workers Compensation Act*, R.S.B.C. 1979, ch. 437, il est ordonné que les questions faisant l'objet du jugement de la Cour d'appel de la Colombie-Britannique soient renvoyées à ce tribunal pour réexamen et décision conformément à l'arrêt de notre Cour *Pasiechnyk c. Saskatchewan (Workers' Compensation Board)*, C.S.C., N^o 24913, rendu le 28 août 1997.

NATURE OF THE CASE

Administrative law - Judicial review - Jurisdiction - Torts - Negligence - Whether the Workers' Compensation Board of British Columbia erred in determining that the injuries allegedly suffered by an employee during the treatment of a work-related injury, were also injuries "arising out of and in the course of her employment", which precluded her from bringing an action in negligence against the employee/doctor - If the Board was in error, was it an error of law made within its jurisdiction, or an error as to the jurisdiction of the Board.

PROCEDURAL HISTORY

October 6, 1993 Workers' Compensation Board - Appeal Division	Certificate issued under s. 11 of the <i>Workers Compensation Act</i>
March 6, 1995 Supreme Court of British Columbia (Huddart J.)	Petitioner's application dismissed
December 2, 1996 Court of Appeal for British Columbia (Donald, Newbury and Proudfoot JJ.A.)	Appeal allowed, certificate issued under s. 11 of the <i>Act</i> set aside
January 28, 1997 Supreme Court of Canada	Application for leave to appeal filed by The Workers' Compensation Board of British Columbia
January 30, 1997 Supreme Court of Canada	Application for leave to appeal filed by Dr. Singh

9.10.1997

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour déposer le mémoire de l'intimée

Paula Leeann Lewis et al.

v. (24999)

Her Majesty The Queen in right of B.C. (B.C.)

GRANTED / ACCORDÉE Time extended to July 24, 1997.

10.10.1997

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour déposer la réponse de l'intimée

New Investors Committee of Mater's Mortgages

With the consent of the parties.

v. (26179)

Peat Marwick Thorne Inc. (Ont.)

GRANTED / ACCORDÉE Time extended to October 31, 1997.

15.10.1997

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

Motion to appoint counsel

Requête en nomination d'un procureur

John David Lucas et al.

Clayton C. Ruby and John Norris, for the appellants.

v. (25177)

John B. Laskin and Sarah L. MacKenzie, for the intervener the Canadian Civil Liberties Association.

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

Graeme G. Mitchell, for the respondent.

Robert Frater, for the intervener the A.G. of Canada.

M. David Lepofsky, for the intervener the A.G. for Ontario.

Shawn Greenberg, for the intervener the A.G. of
Manitoba.

REJECTED / REJETÉE

14.10.1997

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai imparti pour
déposer la réponse de l'intimée**

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

Martin Labelle

c. (26157)

Sa Majesté La Reine (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 8 octobre 1997.

14.10.1997

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the
appellant's factum**

**Requête en prorogation du délai imparti pour
déposer le mémoire de l'appelant**

Robert J. Dowling

With the consent of the parties.

v. (25493)

City of Halifax (N.S.)

GRANTED / ACCORDÉE Time extended to October 24, 1997.

14.10.1997

Before / Devant: LE JUGE GONTHIER

Requête en suspension des procédures

Motion for a stay of proceedings

Anna-Maria Sicilia

Brigitte B. Garceau & Anne-Marie Lévesque, pour la
requête.

c. (26228)

Leo Di Battista & Dorina Tucci, pour l'intimé.

Walter Di Ciccio (Qué.)

Dominique Legault, pour le mis en cause le procureur
général du Québec.

GRANTED / ACCORDÉE

UPON APPLICATION by counsel on behalf of the applicant for an order for a stay of proceedings pursuant to s. 65.1 of the *Supreme Court Act* and Rule 27 of the *Rules of the Supreme Court of Canada*;

AND HAVING read the material filed and heard the submissions of counsel for the applicant and counsel for the respondent.

IT IS HEREBY ORDERED THAT:

1. Order will issue staying the proceedings until such a time as the application for leave to appeal has been considered and determined. In the interim, the two children shall be under the care of their mother, the applicant. The present order shall terminate and cease to have effect on disposition of the application for leave, subject to any further order of the Court.
2. The application for leave to appeal is to be expedited. The applicant shall serve and file their argument and documentation in support of the application for leave no later than October 21, 1997, and the respondent shall serve and file their response no later than October 28, 1997.

15.10.1997

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour déposer le mémoire de l'appelant

Joseph Ronald Winko

v. (25856)

The Director, Forensic Psychiatric Institute et al. (B.C.)

and

Gordon Wayne Bese

v. (25855)

The Director, Forensic Psychiatric Institute et al. (B.C.)

GRANTED / ACCORDÉE Time extended to December 8, 1997.

16.10.1997

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour déposer la réponse de l'intimée

Priya Prasad

v. (26135)

GAN Canada Insurance Co. (Ont.)

GRANTED / ACCORDÉE Time extended to September 22, 1997.

16.10.1997

Before / Devant: MAJOR J.

Motion for a stay of proceedings

Requête en suspension des procédures

M & D Farm Limited et al.

v. (26215)

The Manitoba Agricultural Credit Corp. (Man.)

DISMISSED / REJETÉE

THIS APPLICATION for a stay of proceedings overlooks the ratio of *Richter & Partners Inc. v. Ernst & Young* (1997), 2 S.C.R. 6, where the principle is stated that the purpose of the recent amendment to s. 65.1 of the *Supreme Court Act* was to enable parties to apply to a judge of the court appealed from for a stay of proceedings.

THE PARTY applying first to the Supreme Court of Canada must provide valid reason why the rationale for s. 65.1 is not applicable to the application. That is, there must be some unusual circumstance in the case to permit the Supreme Court of Canada to act on the application prior to the application first being made to the court from which the leave to appeal is sought.

THIS APPLICATION is therefore dismissed with leave to re-apply.

**NOTICES OF INTERVENTION FILED
SINCE LAST ISSUE**

**AVIS D'INTERVENTION DÉPOSÉS
DEPUIS LA DERNIÈRE PARUTION**

BY/PAR: Attorney General of Canada

IN/DANS: **Joseph Ronald Winko**

v. (25856)

The Director, Forensic Psychiatric Institute et al. (B.C.)

BY/PAR: Attorney General of Canada

IN/DANS: **Gordon Wayne Bese**

v. (25855)

The Director, Forensic Psychiatric Institute et al. (B.C.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

9.10.1997

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

Thomson Newspapers Co. Ltd. et al.

v. (25593)

Attorney General of Canada (Ont.)

W. Ian C. Binnie, Q.C. and Michael J. Bryant, for the appellants.

Sydney L. Goldenberg and Stephen L. McCammon, for the intervener the Canadian Civil Liberties Association.

Roslyn J. Levine, Q.C. and Gail Sinclair, for the respondent.

Joseph J. Arvay, Q.C., for the intervener the A.G. of B.C.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Statutes - Interpretation - Freedom of expression - Right to vote - S. 322.1 of Canada Elections Act, R.S.C. 1985, c. E-2 banning broadcast, publication or dissemination of results of public opinion polls for several days immediately prior to holding of federal election - Did the Ontario Court of Appeal err in holding that an absolute ban on a form of political speech for the final three days before a Federal election is consistent with the right to an informed vote under section 3 of the Canadian Charter of Rights and Freedoms? - Did the Ontario Court of Appeal err in holding that section 322.1 of the Canada Elections Act constitutes a reasonable limit of section 2(b) of the Canadian Charter of Rights and Freedoms? - Did the Ontario Court of Appeal err in holding that the infringement was justified under section 1 of the Canadian Charter of Rights and Freedoms?

Nature de la cause:

Charte canadienne des droits et libertés — Lois — Interprétation — Liberté d'expression — Droit de vote — Article 322.1 de la Loi électorale du Canada, L.R.C. (1985), ch. E-2, interdisant la publication de résultats de sondages sur les intentions de vote des électeurs pendant plusieurs jours précédant immédiatement la tenue d'une élection fédérale — La Cour d'appel de l'Ontario a-t-elle commis une erreur en statuant qu'une interdiction absolue d'une forme de discours politique pendant les trois derniers jours d'une élection fédérale est compatible avec le droit à un vote éclairé en vertu de la Charte canadienne des droits et libertés? — La Cour d'appel de l'Ontario a-t-elle commis une erreur en statuant que l'article 322.1 de la Loi électorale du Canada constitue une limite raisonnable imposée à l'alinéa 2b) de la Charte canadienne des droits et libertés? — La Cour d'appel de l'Ontario a-t-elle commis une erreur en statuant que l'empiétement était justifié en vertu de l'article premier de la Charte canadienne des droits et libertés?

9.10.1997

CORAM: L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Major and Bastarache JJ.

Velupillai Pushpanathan

v. (25173)

Minister of Citizenship and Immigration (Ont.)

Lorne Waldman and Jaswinder Singh Gill, for the appellant.

David Matas and Sharryn Aiken, for the intervener the Canadian Council for Refugees.

Urszula Kaczmarczyk and Bonnie Boucher, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Immigration - Statutes - Interpretation - Did the Federal Court of Appeal err in interpreting Article 1F(c) of the *United Nations Convention Relating to the Status of Refugees* (incorporated into Canadian law by the *Immigration Act*, R.S.C. 1985 c. I-2, s. 2) to exclude from refugee status an individual guilty of possession of heroin for the purposes of trafficking in Canada?

Nature de la cause:

Immigration — Lois — Interprétation — La Cour d'appel fédérale a-t-elle commis une erreur en interprétant l'alinéa Fc) de l'article premier de la *Convention des Nations Unies relative au statut des réfugiés* (incorporé au droit canadien par la *Loi sur l'immigration*, L.R.C. (1985), ch. I-2, art. 2) de manière à exclure du statut de réfugié une personne coupable de possession d'héroïne en vue d'en faire le trafic au Canada?

10.10.1997

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

D.A.L.

Terence C. Semenuk, for the appellant.

v. (25556)

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

Goran Tomljanovic, for the respondent.

THE CHIEF JUSTICE (orally for the Court) -- The Court is ready to render judgment now. Justice Cory will give the judgment of the Court.

LE JUGE EN CHEF (oralement pour la Cour) -- La Cour est prête à rendre jugement maintenant. Le juge Cory prononcera la décision de la Cour.

CORY J. -- We are in substantial agreement with the majority of the Court of Appeal.

LE JUGE CORY -- Nous sommes d'accord pour l'essentiel avec la décision de la majorité de la Cour d'appel.

The rebuttal evidence introduced by the Crown relating to Olive Hinds was properly admitted. It went to the context and the essential fabric of the alibi defence. The Crown could not have known in advance either that the appellant would testify or the testimony he would give. The rebuttal evidence was clearly relevant to an issue raised in the defence. The discretion of the trial judge to permit the rebuttal evidence was not improperly exercised in those circumstances.

La contre-preuve produite par le ministère public relativement à Olive Hinds a à bon droit été admise. Elle portait sur le contexte et l'essence même de la défense d'alibi. Le ministère public ne pouvait pas savoir à l'avance que l'appellant témoignerait ni ce qu'il dirait sans sa déposition. La contre-preuve était clairement pertinente à l'égard de la question soulevée dans la défense. Vu les circonstances, le juge du procès n'a pas exercé irrégulièrement le pouvoir discrétionnaire qu'il avait d'admettre la contre-preuve.

Even if the second prong of the rebuttal evidence was improperly admitted it did not appear to influence the reasons of the trial judge. The evidence against the appellant was overwhelming. In the circumstances it is appropriate to apply the curative provisions of s. 686(b)(i) and the appeal is therefore dismissed.

Même si le second volet de la contre-preuve a à tort été admis, cette preuve ne semble pas avoir influencé les motifs du juge du procès. La preuve contre l'appellant était accablante. Dans les circonstances, il convient d'appliquer les dispositions réparatrices du sous-al. 686(1)b)(i), et le pourvoi est par conséquent rejeté.

10.10.1997

CORAM: Les juges L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major et Bastarache

Eddy Solomon

Jean Villeneuve, pour l'appellant.

c. (25515)

Sa Majesté La Reine (Crim.)(Qué.)

Yves Briand et Gaétan Plouffe, pour l'intimée.

MADAME LE JUGE L'HEUREUX-DUBÉ (oralement pour la Cour) -- Nous n'avons pas besoin de vous entendre M. Briand. Nous sommes prêts à rendre jugement. Le jugement de la Cour sera rendu par M. le juge Iacobucci.

MADAME JUSTICE L'HEUREUX-DUBÉ (orally for the Court) -- We do not need to hear from you, Mr. Briand. We are ready to hand down judgment. The judgment of the Court will be delivered by Mr. Justice Iacobucci.

LE JUGE IACOBUCCI -- Nous sommes tous d'avis que ce pourvoi de plein droit doit être rejeté.

IACOBUCCI J. -- We are all of the view that this appeal as of right should be dismissed.

En présumant qu'il y a eu une violation de l'art. 8 de la *Charte canadienne des droits et libertés*, vu les circonstances de cette affaire, les trois appels téléphoniques provenant du Québec étaient admissibles en vertu du paragraphe 24(2) de la *Charte*.

Assuming that there was an infringement of s. 8 of the *Canadian Charter of Rights and Freedoms*, in view of the circumstances of this case, the three telephone calls from Quebec were admissible under s. 24(2) of the *Charter*.

14.10.1997

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

Margaret Ann Malott

Michelle Fuerst, for the appellant.

v. (25613)

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

Scott C. Hutchison, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Trial - Procedural law - Defence - Evidence - Self defence - Jury instruction - Whether the majority of the Court of Appeal erred in concluding that the charge to the jury was sufficient as it related to the issue of self defence in the context of a pattern of domestic violence where the Appellant was a victim of Battered Woman Syndrome.

Nature de la cause:

Droit criminel — Procès — Procédures — Défense — Preuve — Légitime défense — Directive au jury — Les juges majoritaires de la Cour d'appel ont-ils commis une erreur en concluant que l'exposé au jury était suffisant quant à la question de la légitime défense dans un contexte de violence familiale où l'appelante souffrait du syndrome de la femme battue?

14.10.1997

CORAM: Les juges L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major

Porto Seguro Companhia de Seguros Gerais

George J. Pollack et Andrew Ness, for the appellant.

c. (25340)

Belcan S.A., et al. (Qué.)

Richard Gaudreau et Yves Derôme, pour les intimés.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Procedural law - Shipping and navigation - Evidence - Expert evidence - Natural justice - Claim for damages to cargo from a collision between two ships - English practice proscribing expert witnesses on matters pertaining to navigation and seamanship where assessors are used - Having determined that the English practice did not apply to prevent a judge sitting with assessors who are seamen from hearing experts testify on subjects outside the competence of the assessors, should the majority of the Federal Court of Appeal have remanded the case to the Trial Division for re-hearing? - Whether natural justice requires that expert witnesses called by the parties be heard where nautical assessors are also used.

Nature de la cause:

Droit administratif - Droit de la procédure - Navigation - Preuve - Preuve d'expert - Justice naturelle - Réclamation pour dommages causés à la cargaison par suite d'une collision entre deux navires - La pratique anglaise interdit les témoignages d'experts sur les questions relatives à la navigation et au matelotage lorsqu'on a recours à des conseillers - Après avoir statué que la pratique anglaise n'empêchait pas un juge siégeant avec des conseillers qui sont des marins d'entendre le témoignage d'experts sur des sujets outrepassant la compétence des conseillers, la Cour d'appel fédérale aurait-elle dû, à la majorité, renvoyer l'affaire à la Section de première instance pour nouvelle audition? - La justice naturelle exige-t-elle que les témoins experts assignés par les parties soient entendus lorsqu'on a également recours à des conseillers nautiques?

15.10.1997

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

John David Lucas et al.

v. (25177)

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

Clayton C. Ruby and John Norris, for the appellants.

John B. Laskin and Sarah L. MacKenzie, for the intervener the Canadian Civil Liberties Association.

Graeme G. Mitchell, for the respondent.

Robert Frater, for the intervener the A.G. of Canada.

M. David Lepofsky, for the intervener the A.G. for Ontario.

Shawn Greenberg, for the intervener the A.G. of Manitoba.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - *Canadian Charter of Rights and Freedoms* - Defamation - Whether *Criminal Code* s. 300 (defamation) violates *Charter* s. 2(b) and 7 - What is the *mens rea* of the offence of defamation.

Nature de la cause:

Droit criminel - *Charte canadienne des droits et libertés* – Diffamation – L'article 300 (diffamation) du *Code criminel* viole-t-il les art. 2b) et 7 de la *Charte*? - Quelle est la *mens rea* de l'infraction de diffamation?

16.10.1997

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

Philippe Adrian et al.

v. (24711)

Zittreer, Siblin and Associates Inc. (Ont.)

Steven M. Barrett and Kathleen Martin, for the appellants Philippe Adrian et al.

David Vickers, for the appellant the Ministry of Labour for Ontario (on costs only).

Raymond M. Slattery, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Labour law - Bankruptcy - Statutes - Interpretation - Whether employees are entitled to termination and severance pay under the *Employment Standards Act* when their employment is ended by their employer being petitioned into bankruptcy, such that employees can claim termination and severance pay as ordinary creditors in a bankrupt estate.

Nature de la cause:

Droit du travail) Faillite) Lois) Interprétation) Les employés ont-ils droit à une indemnité de fin d'emploi en vertu de la *Loi sur les normes d'emploi* lorsqu'il est mis fin à leur emploi par la mise en faillite de leur employeur, de sorte qu'ils peuvent réclamer une indemnité de fin d'emploi à titre de créanciers ordinaires du failli?

16.10.1997

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

Her Majesty The Queen

Christine Bartlett-Hughes, for the appellant.

v. (25198)

C.C.F. (Crim.)(Ont.)

Christopher Hicks, for the respondent.

SOPINKA J. (orally for the Court):

LE JUGE SOPINKA (oralement pour la Cour):

The appeal is allowed, the judgment of the Court of Appeal is set aside and the conviction is restored, with reasons to follow.

Le pourvoi est accueilli, la décision de la Cour d'appel est infirmée et la déclaration de culpabilité est rétablie, motifs à suivre.

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the week beginning October 20, 1997.

ORDRE DU JOUR pour la semaine commençant le 20 octobre 1997.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court is not sitting this week

La Cour ne siège pas cette semaine

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.

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

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:

Motion day : **November 3, 1997**
Service : October 13, 1997
Filing : October 20, 1997
Respondent : October 27, 1997

Motion day : **December 1, 1997**
Service : November 10, 1997
Filing : November 17, 1997
Respondent : November 24, 1997

Motion day : **February 2, 1998**
Service : January 12, 1998
Filing : January 19, 1998
Respondent : January 26, 1998

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 :

Audience du : **3 novembre 1997**
Signification : 13 octobre 1997
Dépôt : 20 octobre 1997
Intimé : 27 octobre 1997

Audience du : **1er décembre 1997**
Signification : 10 novembre 1997
Dépôt : 17 novembre 1997
Intimé : 24 novembre 1997

Audience du : **2 février 1998**
Signification : 12 janvier 1998
Dépôt : 19 janvier 1998
Intimé : 26 janvier 1998

DEADLINES: APPEALS

DÉLAIS: APPELS

The Winter Session of the Supreme Court of Canada will commence January 19, 1998.

La session d'hiver de la Cour suprême du Canada commencera le 19 janvier 1998.

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:

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:

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

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

Appellant's factum must be filed within four months of the filing of the notice of appeal.

Le mémoire de l'appelant doit être déposé dans les quatre mois du dépôt de l'avis d'appel.

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

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

Intervener's factum must be filed within four weeks of the date of service of the respondent's factum.

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

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

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).

Judgments reported in [1997] 2 S.C.R. Part 2

Canada Post Corp. v. Canadian Union of Postal Workers, [1997] 2 S.C.R. 294

Construction Gilles Paquette Ltée v. Entreprises Végo Ltée, [1997] 2 S.C.R. 299

Martin v. Artyork Investments Ltd., [1997] 2 S.C.R. 290

Hickman Motors Ltd. c. Canada, [1997] 2 S.C.R. 336

R. v. Allender, [1997] 2 S.C.R. 333

R. v. Bedford, [1997] 2 S.C.R. 292

R. v. Currie, [1997] 2 S.C.R. 260

R. v. Jack, [1997] 2 S.C.R. 334

R. v. Senior, [1997] 2 S.C.R. 288

Soulos v. Korkontzilas, [1997] 2 S.C.R. 217

Sylvester v. British Columbia, [1997] 2 S.C.R. 315

United States of America v. Desfossés, [1997] 2 S.C.R. 326

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

Jugements publiés dans [1997] 2 R.C.S. Partie 2

Construction Gilles Paquette Ltée c. Entreprises Végo Ltée, [1997] 2 R.C.S. 299

États-Unis d'Amérique c. Desfossés, [1997] 2 R.C.S. 326

Hickman Motors Ltd. c. Canada, [1997] 2 R.C.S. 336

Martin c. Artyork Investments Ltd., [1997] 2 R.C.S. 290

R. c. Allender, [1997] 2 R.C.S. 333

R. c. Bedford, [1997] 2 R.C.S. 292

R. c. Currie, [1997] 2 R.C.S. 260

R. c. Jack, [1997] 2 R.C.S. 334

R. c. Senior, [1997] 2 R.C.S. 288

Société canadienne des postes c. Syndicat des postiers du Canada, [1997] 2 R.C.S. 294

Soulos c. Korkontzilas, [1997] 2 R.C.S. 217

Sylvester c. Colombie-Britannique, [1997] 2 R.C.S. 315

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1997 -

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

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

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

- 1998 -

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	M 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

MARCH - MARS						
S D	M L	T M	W M	T J	F V	S S
1	M 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				

APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
			1	2	3	4
5	6	7	8	9	H 10	11
12	H 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
					1	2
3	M 4	5	6	7	8	9
10	11	12	13	14	15	16
17	H 18	19	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
	M 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				

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:



18 sitting weeks / semaines séances de la cour
83 sitting days / journées séances de la cour
7 motion and conference days /
journées requêtes, conférences
3 holidays during sitting days /
jours fériés durant les sessions