

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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JUNE 13, 1997 / LE 13 JUIN 1997

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

**Rosaire Desbiens**

**c. (25805)**

**Sa Majesté la Reine**

**- et -**

**Monsieur le Juge Sarto Cloutier (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Preuve - Procédure préalable au procès - Stupéfiants - Enquête préliminaire - Erreur de compétence - Application de l'arrêt *Skogman c. R.*, [1988] 2 R.C.S. 93 - La Cour d'appel s'est-elle mal dirigée en droit en autorisant le juge qui effectue la révision de substituer son opinion à celle du juge enquêteur? - La Cour d'appel a-t-elle une conception erronée de la suffisance de la preuve dans le contexte d'une libération à l'enquête préliminaire.

**HISTORIQUE PROCÉDURAL**

Le 2 février 1995  
Cour du Québec (Chambre criminelle)  
(Cloutier j.c.q.)

Demandeur libéré de l'accusation énoncée à la dénonciation et renvoyer à subir son procès sous accusation de possession simple de cocaïne

Le 3 octobre 1995  
Cour supérieure (Chambre criminelle)  
(Tremblay j.c.s.)

Requête de l'intimée en *certiorari* du jugement du juge de paix accueillie; Décision du juge de l'enquête préliminaire cassée; demandeur cité à procès sur accusation de possession de cocaïne en vue d'en faire le trafic

Le 28 octobre 1996  
Cour d'appel du Québec  
(LeBel, Brossard et Philippon (ad hoc) JJ.A.)

Appel rejeté

Le 3 février 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Wigmore Consultants Ltd. And Rodney Dennis Wigmore**

**v. (25901)**

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

**NATURE OF THE CASE**

Criminal law - Procedure - Disclosure - Whether the Crown provided adequate disclosure to the Applicant - Incompetence

of counsel - Whether Applicant's counsel at trial was incompetent - Where the accused alleges incompetence of counsel, what is the appropriate inquiry for an appellate court - What is the standard of proof imposed upon an accused who alleges incompetence of trial counsel - Discretion of trial judge - Whether the trial judge properly exercised his discretion to prevent the Applicant from calling evidence at the close of the Crown's case when the Applicant had previously been provided several opportunities to respond to the Crown's case - Whether the Applicant waived his right to a jury trial.

**PROCEDURAL HISTORY**

October 20, 1994  
Saskatchewan Court of Queen's Bench  
(Matheson J.)

Conviction: tax evasion (17 counts); false or deceptive statement in a return of income (32 counts); false or deceptive entries in records or books (10 counts) - convictions entered on 23 counts; balance conditionally stayed

January 16, 1997  
Saskatchewan Court of Appeal  
(Tallis, Wakeling, Gerwing JJ.A)

Appeal dismissed

March 17, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**John Campbell and Salvatore Shirose**

**v. (25780)**

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

**NATURE OF THE CASE**

Criminal law - Abuse of process - Stay of proceedings - Reverse sting operation - Whether the reverse sting operation was an abuse of process warranting a stay of proceedings - Disclosure - Solicitor-client privilege - Whether there was a solicitor-client relationship between an RCMP officer and a lawyer with the Crown law office who advised him concerning the reverse sting operation - Whether material regarding communications between the RCMP officer and the Crown lawyer ought to have been disclosed - Whether the Crown proved the conspiracy charged - Whether the Applicants' sentences should have been reduced as a result of the "illegal" police conduct.

**PROCEDURAL HISTORY**

November 29, 1994  
Ontario Court (General Division) (Caswell J.)

Conviction: conspiracy to traffic in cannabis resin; conspiracy to possess cannabis resin for the purpose of trafficking

January 23, 1995  
Ontario Court (General Division) (Caswell J.)

Application to stay the proceedings denied

January 17, 1997  
Ontario Court of Appeal  
(Brooke, McKinlay, Carthy JJ.A.)

Appeal dismissed

March 17, 1997  
Supreme Court of Canada

Application for leave to appeal filed

**Roger Callow**

**v. (25891)**

**The Board of School Trustees of School District No. 45 (West Vancouver) and West Vancouver Teachers' Association and The Attorney General for British Columbia (B.C.)**

**NATURE OF THE CASE**

Administrative Law - Judicial Review - Standing - Labour Law - Labour Relations - Limitations on a union's exclusive representation rights - Relationship between a court's residual jurisdiction and a union's exclusive representation right - Whether a court's residual jurisdiction may be invoked to resolve a dispute arising under a collective agreement.

**PROCEDURAL HISTORY**

June 2, 1995 Supreme Court of British Columbia (Spencer J.)	Petition dismissed
January 17, 1997 Court of Appeal for British Columbia (Hollinrake, Newbury and Huddart, JJ.A)	Appeal dismissed
March 14, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: Chief Justice Lamer and L'Heureux-Dubé and Gonthier JJ. /  
Le juge en chef Lamer et les juges L'Heureux-Dubé et Gonthier**

**Marc St-Cyr, Nicholas Kwok, Nancy Kwok et François Dupuis**

**c. (25785)**

**The Mutual Trust Company (Qué.)**

**NATURE DE LA CAUSE**

Droit International - Procédure - Droit international privé - Procédure civile - Jugements et ordonnances - Reconnaissance et exécution de jugement émanant d'une autre province canadienne - Irrecevabilité d'une requête sous les art. 165(1) et 165(4) du *Code de procédure civile du Québec* et règle *audi alteram partem* - Portée des contestations admissibles à l'encontre d'une requête en exemplification d'un jugement canadien - Admissibilité exceptionnelle des contestations reposant sur des dispositions d'application impératives ou d'ordre public - Compétence de la Cour supérieure d'entendre une demande reconventionnelle à l'encontre d'une requête en exemplification de jugement - Prescription des recours sous la *Loi des valeurs mobilières*, L.R.Q., ch. V-1.1, et incidence des délais fixés pour entamer des procédures judiciaires en vertu de cette loi.

**HISTORIQUE PROCÉDURAL**

Le 11 avril 1996 Cour supérieure (Vaillancourt j.c.s.)	Requêtes en irrecevabilité de l'intimée pour rejet des défenses et demandes reconventionnelles des demandeurs rejetées
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Le 29 mai 1996  
Cour d'appel du Québec (Brossard j.c.a.)

Requête pour permission de faire appel d'un jugement  
interlocutoire accordée

Le 21 novembre 1996  
Cour d'appel du Québec  
(Rothman, LeBel et Rousseau-Houle jj.c.a.)

Appel accueilli; défenses et demandes  
reconventionnelles des demandeurs rejetées

Le 20 janvier 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

**Terry Kerr and William Wright**

**v. (25865)**

**Police Complaints Commissioner (Ont.)**

**NATURE OF THE CASE**

Administrative law - Judicial review - Police - Evidence - Hearsay - Whether extracts from the notebooks kept by police officers should be admitted into evidence at a board of inquiry hearing into allegations of misconduct and criminal allegations against those officers - *Police Services Act*, R.S.O. 1990 c. P. 15 - *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154 - *R. v. Hawkins*, [1996] 3 S.C.R. 1043.

**PROCEDURAL HISTORY**

December 13, 1993  
Board of Inquiry (Fuerst, Seychuk, Baker)

Complaint dismissed

December 13, 1994  
Divisional Court (McMurtry C.J.O.C., Steele and  
Flinn JJ.)

Appeal dismissed

January 9, 1997  
Court of Appeal for Ontario  
(McKinlay, Catzman, Weiler JJ.A.)

Appeal allowed

March 10, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Dr. Philip I. Polimeni**

**v. (25881)**

**Dr. Rudolph G. Danzinger and Dr. John Foerster (Man.)**

**NATURE OF THE CASE**

Torts - Intentional torts - Conspiracy - Inducement or procurement of breach of contract - Interference with employment

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relations or economic interests.

**PROCEDURAL HISTORY**

November 9, 1995 Court of Queen's Bench of Manitoba (Beard J.)	Applicant's claim dismissed
January 15, 1997 Court of Appeal of Manitoba (Twaddle, Kroft and Monnin JJ.A.)	Appeal dismissed
March 13, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Nancy Elizabeth Rose Jennings**

**v. (25946)**

**Canada (Minister of Health Canada) (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Administrative law - Civil rights - Human Rights - Canadian Human Rights Commission decision dismissing Applicant's complaint - Interpretation of "having regard to all the circumstances of a complaint", in sections 44(3) (a)(b)(i) of the *Canadian Human Rights Act*, in regard to Canadian Human Rights Commission's adjudicative discretion and Commission's investigative duties - Whether this provision implies duty of investigative thoroughness notwithstanding the external manifestations of procedural fairness - Whether lower courts erred in law on the role of a Commission investigator in report writing in respect of the Commission's jurisdiction under section 44(1) of the Act - Whether lower courts erred in law by refusing to set aside the Commission's decision.

**PROCEDURAL HISTORY**

June 13, 1995 Federal Court of Canada, Trial Division (Wetston J.)	Application for judicial review dismissed
February 12, 1997 Federal Court of Appeal (Pratte, Linden and Robertson JJ.A.)	Appeal dismissed
April 10, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**S. Bryant Smith**

**v. (25902)**

**New Brunswick Human Rights Commission (N.B.)**

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**NATURE OF THE CASE**

Procedural law - Actions - Civil Procedure - Pre-trial procedure - Motion to strike a statement of claim - Is the New Brunswick Human Rights Commission a suable entity? - Whether a legislature may limit the application of the *Charter* so as to restrict a *Charter* remedy.

**PROCEDURAL HISTORY**

July 3, 1996 Court of Queen's Bench of New Brunswick (Russell J.)	Respondent's motion allowed in part striking out portions of the Applicant's Statement of Claim
January 28, 1997 New Brunswick Court of Appeal (Rice, Turnbull, Bastarache JJ.A.)	Respondent's appeal allowed: Statement of Claim struck out against it; Applicant's cross-appeal dismissed
March 24, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Ronald Ottens**

**v. (25871)**

**Her Majesty The Queen In The Right Of The Province Of Nova Scotia (N.S.)**

**NATURE OF THE CASE**

Labour law - Statutes - Interpretation - Collective Agreement - Discharge - Whether the Court of Appeal erred in concluding that an employee employed for seven years without a written contract and three years with a written contract of employment was not discharged pursuant to s. 71(1) of the *Labour Standards Code* R.S.N.S. 1989 c.246 when the written contract ended - Whether the Court of Appeal erred in reversing findings of fact of the Tribunal.

**PROCEDURAL HISTORY**

August 6, 1996 Nova Scotia Labour Standards Tribunal (S. Ashley (Chair))	Applicant's complaint allowed: reinstatement ordered
January 10, 1997 Nova Scotia Court of Appeal (Clarke, C.J.N.S., Hallett and Flinn JJ.A.)	Appeal allowed
March 6, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

**Paul Fitzpatrick**

**v. (25819)**

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

**NATURE OF THE CASE**

Criminal law - Whether the Court of Appeal erred in failing to address in their reasons every issue raised on appeal - Whether the Court of Appeal erred in dismissing the appeal on the basis of the trial judge's findings of credibility and fact when the errors alleged by the Applicant infected and undermined the validity of the trial judge's findings of fact and credibility.

**PROCEDURAL HISTORY**

February 2, 1995 Ontario Court (General Division) (Marchand J.)	Conviction: sexual assault
January 29, 1997 Ontario Court of Appeal (McMurtry C.J.O., Osborne, Moldaver JJ.A.)	Appeal dismissed
April 1, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Bui Nhu Hung**

**c. (25755)**

**L'Archevêché de Montréal, représentant de l'Église Catholique Romaine (Qué.)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Appel - Action du demandeur contre l'intimé rejetée aux motifs qu'il n'avait pas l'intérêt suffisant pour ester en justice et que la demande ne possédait aucun fondement en droit - Appel du demandeur rejeté en raison de son caractère abusif et dilatoire - Requête en récusation des juges de la Cour d'appel rejetée - Requête en rétractation de jugement rejetée par la Cour d'appel - La Cour d'appel a-t-elle erré?

**HISTORIQUE PROCÉDURAL**

Le 5 janvier 1995 Cour supérieure du Québec (Vaillancourt j.c.s.)	Requête en irrecevabilité accueillie et action du demandeur rejetée
Le 9 septembre 1996 Cour d'appel du Québec (Gendreau, Delisle et Nuss jj.c.a.)	Requête du demandeur en récusation des juges de la Cour d'appel rejetée; requête de l'intimé en rejet d'appel accueillie

Le 9 décembre 1996  
Cour d'appel du Québec  
(Vallerand, Otis et Zerbisias jj.c.a.)

Requête en rétractation du jugement de la Cour d'appel  
accueillant la requête de l'intimé en rejet d'appel rejetée

Le 17 janvier 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Marie Sarah Eurig as executor of the estate  
of Donald Valentine Eurig**

**v. (25866)**

**The Registrar of the Ontario Court (General Division)  
and the Attorney General of Ontario (Ont.)**

**NATURE OF THE CASE**

Property law - Wills - Executors and administrators - Probate fees - Can a province raise revenue by means of a levy that is an estate tax return in all but name without debate or passage in the legislature? - Can a province avoid the constitutional prohibition on indirect taxation, by describing as a probate a "fee" a levy that is an indirect tax in all but name? - Does the statutory power to impose a "fee" authorize an *ad valorem* levy that bears no relationship whatsoever to the cost of the service for which the fee is levied? - Whether the Courts below erred in refusing to invalidate the Ontario regulation requiring the payment of probate fees.

**PROCEDURAL HISTORY**

October 14, 1994  
Ontario Court (General Division)  
(Morrison J.)

Applicant's application to have payment of probate fees  
required pursuant to O.Reg. 293/92 declared unlawful  
dismissed

January 16, 1997  
Court of Appeal for Ontario  
(Morden A.C.J.O., Brooke and Moldaver JJ.A.)

Appeal dismissed

March 5, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Chief Victor Buffalo acting on his own behalf and on behalf of all the other members of the Samson Indian  
Nation Band and The Samson Indian Nation and Band**

**v. (26018)**

**Her Majesty the Queen in Right of Canada and the Minister of Indian Affairs and Northern Development and  
The Minister of Finance**

**AND BETWEEN:**

**Chief John Ermineskin, Lawrence Wildcat, Gordon Lee, Art Littlechild, Maurice Wolfe, Curtis Ermineskin,  
Gerry Ermineskin, Earl Ermineskin, Rick Wolfe, Ken Cutarm, Brian Lee, Lester Fraynn, the elected Chief  
and Councillors of the Ermineskin Indian Band and Nations suing on their own behalf and on behalf of all the  
other members of the Ermineskin Indian Band and Nation**

v.

**Her Majesty the Queen in Right of Canada and the Honourable Thomas R. Siddon, Minister of Indian Affairs and Northern Development and The Honourable Donald Mazanowski, Minister of Finance (F.C.A.)(Alta.)**

**NATURE OF THE CASE**

Procedural Law - Appeal - Whether the Associate Chief Justice of the Federal Court of Canada's decision to withdraw a judge assigned to a trial before the trial commences and after an question of a reasonable apprehension of bias has been raised is a judgment or an order subject to appeal to the Federal Court of Appeal.

**PROCEDURAL HISTORY**

May 16, 1996 Federal Court (Trial Division) (Jerome A.C.J.)	Trial judge withdrawn from case
May 28, 1997 Federal Court (Court of Appeal) (Isaac C.J.)	Notice of appeal returned
May 30, 1997 Supreme Court of Canada	Applications for leave to appeal, certiorari, remand, stay of execution, expedited hearing and oral hearing filed by Chief Victor Buffalo et al.
June 6, 1997 Supreme Court of Canada	Applications for leave to appeal, certiorari, remand, stay of execution, expedited hearing and oral hearing filed by Chief John Ermineskin et al.; Letter submitted reiterating request for oral hearings

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**MOTION FOR RECONSIDERATION -- REHEARING  
DEMANDE DE RÉEXAMEN -- NOUVELLE AUDITION**

**CORAM: Chief Justice Lamer and L'Heureux-Dubé and Sopinka JJ. /  
Le juge en chef Lamer et les juges L'Heureux-Dubé et Sopinka**

Bernard St-Aubin c. Le Curateur Public du Québec (Qué.)(25764)

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

Jozsef Lakotos v. Her Majesty The Queen (Crim.)(Alta.)(25548)

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**JUNE 19, 1997 / LE 19 JUIN 1997**

**25703**            **COOPÉRATIVE DE COMMERCE “DES MILLES-ÎLES”, ANDRÉ MALO, PAUL BÉLANGER, PIERRE LAPORTE - c. - SOCIÉTÉ DES ALCOOLS DU QUÉBEC (S.A.Q.) ET LE PROCUREUR GÉNÉRAL DU QUÉBEC (Qué.)**

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

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

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

**NATURE DE LA CAUSE**

Couronne - Droit commercial - Droit administratif - Responsabilité civile - Contrats - Obligation - Injonction - Dommages-intérêts - Appel d'offres au public - Vente de succursales de la Société des alcools du Québec - Injonction permanente - Responsabilité de l'état - Dommages moraux - Exécution forcée de l'obligation de livrer une succursale - Tentative avortée de privatiser un certain nombre de succursales de la Société des alcools du Québec - Un contrat a-t-il été valablement formé entre la Société des alcools du Québec et les demandeurs, soumissionnaires, compte tenu que les décisions du Conseil des ministres remplacent celles du Conseil du trésor? - Le gouvernement et la Société des alcools du Québec sont-ils responsables en dommages à l'égard des demandeurs? - Application de la *Charte des droits et libertés de la personne*, L.R.Q. c. C-12, et de la *Charte canadienne des droits et libertés* - Entente de procéder au moyen d'une cause-type - Effet d'un jugement dans une cause-type.

**HISTORIQUE PROCÉDURAL**

Le 28 février 1994  
Cour Supérieure du Québec (Trudeau j.c.s.)

Action des demandeurs accueillie en partie

Le 23 août 1996  
Cour d'appel du Québec  
(Lebel, Tourigny et Proulx jj.c.a.)

Appel principal des demandeurs rejeté; appel incident de la Société des alcools du Québec accueilli

Le 19 décembre 1996  
Cour suprême du Canada

Demande d'autorisation d'appel et demande de prorogation de délai déposées

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**25745**            **DOMENICO MANNO - v. - UNITED STATES OF AMERICA -AND- MINISTER OF JUSTICE OF CANADA (Crim.)(Qué.)**

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 - Extradition - Double criminality - Extradition of fugitive sought on American offence of continuing criminal enterprise, which crime does not have an equivalent in Canadian law - Court of Appeal holding that the extradition judge had improperly considered foreign law in arriving at the conclusion that the extradition request could

not be granted on the continuing criminal enterprise count - Whether Court of Appeal erred in law by confusing the test required for double criminality with the standard of evidence required pursuant to s. 13 of the *Extradition Act*, R.S.C. 1985, c. E-23.

**PROCEDURAL HISTORY**

January 17, 1996 Superior Court of Quebec (Béliveau J.S.C.)	Warrant of committal on counts 1 through 8; Applicant discharged on count of continuing criminal enterprise
November 19, 1996 Court of Appeal of Quebec (Proulx, Delisle and Chamberland JJ.C.A.)	Appeal of the Respondent allowed; Applicant committed on the charge of continuing criminal enterprise; warrant of committal corrected
January 29, 1997 Supreme Court of Canada (L'Heureux-Dubé J.S.C.)	Application for extension of time granted
February 7, 1997 Supreme Court of Canada	Application for leave to appeal filed

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25792      **SENTINEL SELF-STORAGE CORPORATION - v. - HER MAJESTY THE QUEEN - and  
between - ON-GUARD SELF-STORAGE LIMITED - v. - HER MAJESTY THE QUEEN  
(F.C.A.)(Alta.)**

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**

Taxation - Assessment - Assessment of Goods and Services Tax - Whether the additional amounts paid by the defaulting tenants were a financial service or a taxable supply - Did the Federal Court of Appeal err in law by dismissing the Applicants' appeals from assessment pursuant to the *Excise Tax Act*, R.S.C, 1985, c.E-15 - Did the Federal Court of Appeal err in law by overturning findings of fact made by the Tax Court judge.

**PROCEDURAL HISTORY**

January 31, 1996 Tax Court of Canada (McArthur J.T.C.C.)	Applicants' appeals from assessment made under <i>Excise Tax Act</i> allowed; Applicants' claim for Input Tax Credits dismissed
November 28, 1996 Federal Court of Appeal (Strayer, Linden and Robertson JJ.A.)	Respondent's appeals allowed
January 27, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25830**                    **QUINTUS PERERA AND IRIS ALOYSIUS - v. - ARISTEA STAVROPOULOS** (Qué.)

CORAM:                The Chief Justice and L'Heureux-Dubé and Gonthier JJ.

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

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

**NATURE OF THE CASE**

Civil Code - Property law - Real rights - Latent defect - Purchase with legal warranty - Action to recover the costs of repairing latent defects.

**PROCEDURAL HISTORY**

November 2, 1992 Superior Court of Québec (Marx, J.)	Applicants ordered to pay the Respondent \$28,998, plus interest on \$23,498 and costs of experts
November 21, 1996 Court of Appeal of Québec (Gendreau, Fish and Forget JJ.)	Appeal dismissed
February 12, 1997 Supreme Court of Canada	Application for leave to appeal and an extension of time filed

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**25862**                    **SA MAJESTÉ LA REINE - c. - DANIEL COOK** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

**NATURE DE LA CAUSE**

Droit criminel - La Cour d'appel du Québec a-t-elle erré en droit en ordonnant la tenue d'un nouveau procès pour deux motifs nullement invoqués par l'intimé, statuant ainsi *ultra petita* et violant la règle *audi alteram partem*? - La Cour d'appel a-t-elle erré en droit en privant la demanderesse d'invoquer les dispositions réparatrices prévues à l'article 686(1)b)iii) du *Code criminel*?

**HISTORIQUE PROCÉDURAL**

Le 25 septembre 1993 Cour supérieure du Québec (Pinard J.C.S.)	Déclaration de culpabilité: meurtre au premier degré
Le 22 janvier 1997 Cour d'appel du Québec (Gendreau, Baudouin et Fish, JJ.C.A.)	Appel accueilli, ordonnance de nouveau procès
Le 26 février 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**25821**            **YVES BISSON - c. - SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est accordée quant aux questions en litige 1 et 2 seulement.

The application for leave to appeal is granted on issues 1 and 2 only.

**NATURE DE LA CAUSE**

Droit criminel - Preuve - Directives au jury - La Cour d'appel a-t-elle erré en droit en concluant que le comportement du juge envers les avocats lors du procès ne constituait pas une atteinte aux droits constitutionnels du demandeur justifiant la tenue d'un nouveau procès? - La Cour d'appel a-t-elle erré en droit en concluant que les directives du juge du procès relativement à la conscience coupable n'étaient pas erronées? - La Cour d'appel a-t-elle erré en droit en entérinant les directives du juge du procès qui avait omis de dire au jury que la déclaration du policier Girard, faite sur les ondes-radio de la Sûreté du Québec dans le cours des événements ayant mené à l'arrestation du demandeur, pouvait non seulement servir à titre de déclaration antérieure incompatible mais faisait également preuve de son contenu?

**HISTORIQUE PROCÉDURAL**

Le 24 février 1993 Cour supérieure (Chambre criminelle) (Boilard j.c.s.)	Verdict de culpabilité: meurtre au premier degré
Le 13 janvier 1997 Cour d'appel du Québec (Gendreau, Baudoin et Fish [dissident] jj.c.a)	Appel rejeté
Le 12 mars 1997 Cour suprême du Canada	Demande d'autorisation déposée

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**25682**            **HER MAJESTY THE QUEEN v. R.C.** (Crim.)(Nfld.)

CORAM:           La Forest, Gonthier and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Sentencing - Dangerous Offender - Does the hearing judge have a discretion as regards both a determination of dangerousness and the sentence to be imposed - Is there a right of appeal from a finding of dangerous offender or only from the sentence imposed - Whether the Court of Appeal erred in considering an issue not raised by counsel - Whether the Court of Appeal erred in distinguishing between individuals who are only a danger to their families and those who constitute a danger to strangers - Whether the Court of Appeal erred in concluding that the predicate offence must meet a threshold test of seriousness - Whether the Court of Appeal erred in describing the sexual abuse by the Respondent of his children as being insufficient as predicate offences for a dangerous offender application because they were minor.

**PROCEDURAL HISTORY**

June 14, 1988 Supreme Court of Newfoundland (Trial Division) (Halley J.)	Conviction: sexual assault (2 counts)
September 29, 1988 Supreme Court of Newfoundland (Trial Division) (Halley J.)	Respondent found to be a dangerous offender; indeterminate sentence imposed
October 21, 1996 Supreme Court of Newfoundland (Court of Appeal) (Gushue C.J.N., Marshall and Steele JJ.A.)	Conviction appeal dismissed; indeterminate sentence set aside; new hearing ordered
December 10, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25631**      **CCLC TECHNOLOGIES INC. v. HER MAJESTY THE QUEEN** (F.C.A.)

CORAM:      La Forest, 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**

Taxation - Assessment - Disallowance of investment tax credit - Whether amounts provided by the Province of Alberta pursuant to a Coal Research Agreement were "assistance" within subparagraph 12(1)(x)(iv) or subsections 127(11.1) and 127(9) of the *Income Tax Act*, R.S.C. 1985, c.1- Whether the amounts provided were an acquisition of an interest in property for the purposes of subparagraph 12(1)(x)(viii).

**PROCEDURAL HISTORY**

November 10, 1995 Federal Court Trial Division (Rouleau J.)	Appeal of tax assessment allowed
September 19, 1996 Federal Court of Appeal (Hugessen, Strayer and Desjardins JJ.A.)	Appeal allowed
November 15, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25628**                    **RAYMOND GAUVREAU and KAREN GAUVREAU v. LIBERO C. PACI** (Ont.)

CORAM:                La Forest, Gonthier and Major JJ.

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

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

**NATURE OF THE CASE**

Procedural Law - Civil Procedure - Evidence - Solicitor's negligence - Proof of Standard of Care - A solicitor retained in the purchase of residential property failed to conduct an engineering search that would have disclosed that the sewer line for the property ran through abutting land pursuant to a terminable license that was about to expire - Whether expert testimony was required to prove the standard of care required of a solicitor in residential real estate transaction.

**PROCEDURAL HISTORY**

June 4, 1993 Ontario Court (General Division) (Gordon J.)	Damages awarded to Applicants
June 28, 1996 Court of Appeal for Ontario (Houlden, Catzman and Rosenberg JJ.A.)	Appeal allowed
November 15, 1996 Supreme Court of Canada	Applicants' motion for extension of time filed; Application for leave to appeal filed

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**25713**                    **BRADLEY RALLISON v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:                La Forest, Gonthier and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Constitutional law - Division of powers - Jurisdiction - Whether s. 259(5)(b)(i) of the *Criminal Code*, which makes it an offence to drive while under suspension pursuant to a provincial statute, is *ultra vires* the Parliament of Canada as an impermissible interdelegation of the Federal criminal law power to the provincial legislatures.

**PROCEDURAL HISTORY**

August 20, 1993 Ontario Court (Provincial Division) (Hunter J.)	Acquittal: driving while under suspension; s. 259(5)(b)(i) declared unconstitutional
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February 4, 1994  
Ontario Court (General Division)  
(Byers J.)

Summary conviction appeal allowed

October 29, 1996  
Court of Appeal for Ontario  
(Labrosse, Abella and Doherty JJ.A)

Appeal dismissed

December 23, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25698**      **B.J. KERN & SON LTD. and DOUGLAS B. KERN v. SETTLERS SAVINGS AND MORTGAGE CORP. INC.** (Sask.)

CORAM:      La Forest, 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 - Guaranty/suretyship - Property law - Mortgages - Did the court err in construing the Applicant's, Kern, undertaking to be a guarantee of the mortgage loan of the corporate Applicant - Principles of interpretation in construing the nature of the agreement.

**PROCEDURAL HISTORY**

September 15, 1995  
Court of Queen's Bench of Saskatchewan  
(Matheson J.)

Respondent's action for balance due on a mortgage allowed; Applicants' counterclaim for damages dismissed

November 7, 1996  
Court of Appeal for Saskatchewan  
(Tallis, Cameron and Wakeling JJ.A.)

Appeal dismissed

December 18, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25660/25661**      **MERCK & CO. INC. and ZENECA PHARMA INC. v. THE MINISTER OF NATIONAL HEALTH AND WELFARE and APOTEX INC.** (F.C.A.)

CORAM:      La Forest, Gonthier and Major JJ.

The applications for leave to appeal are dismissed, and the request for an oral hearing is denied, the whole with costs.

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Les demandes d'autorisation d'appel sont rejetées, de même que la requête en obtention d'une audition, le tout avec dépens.

**NATURE OF THE CASE**

Property law - Patents - Statutes - Interpretation - Section 56 of the *Patent Act* R.S.C., 1985, c. P-4 - *Patented Medicines (Notice of Compliance) Regulations* - Does s. 56 create an exception to infringement or an immunity from liability - Did Federal Court of Appeal err in holding that an allegation of non-infringement based on s. 56 was justified under the *Regulations*?

**PROCEDURAL HISTORY**

May 26, 1995 Federal Court (Trial Division) (Richard J.)	Respondent's application for prohibition order granted
October 10, 1996 Federal Court of Appeal (Strayer, Robertson and McDonald JJ.A.)	Appeal allowed
December 9, 1996 Supreme Court of Canada	Applications for leave to appeal filed

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25726            **JAMES WALTER TAYLOR v. HER MAJESTY THE QUEEN** (Crim.)(N.S.)

CORAM:        La Forest, 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 - Provincial offences - Right to counsel - Legal Aid - Whether Legal Aid must provide counsel to an indigent accused.

**PROCEDURAL HISTORY**

December 7, 1995 Provincial Court of Nova Scotia (Archibald P.C.J.)	Judicial stay of proceedings entered
March 26, 1996 Supreme Court of Nova Scotia (Scanlan J.)	Summary conviction appeal allowed
November 8, 1996 Nova Scotia Court of Appeal (Pugsley, Hart and Bateman JJ.A.)	Appeal dismissed

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January 2, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**25759**            **ALTOBA DEVELOPMENT LTD. v. SASKPOWER** (Sask.)

CORAM:        La Forest, 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 - Building contracts - Tender calls - Action for breach of contract - Did the trial judge err in finding that the Applicant's tender failed to comply with the terms of the call for tenders.

**PROCEDURAL HISTORY**

December 27, 1995  
Court of Queen's Bench for Saskatchewan (MacLean J.)

Applicant's action for damages for breach of contract dismissed

November 12, 1996  
Court of Appeal for Saskatchewan  
(Vancise, Sherstobitoff and Jackson JJ.A.)

Appeal dismissed

January 13, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**25757**            **SASKATOON CITY HOSPITAL v. SASKATCHEWAN UNION OF NURSES** (Sask.)

CORAM:        La Forest, 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**

Judicial Review - Standard of Review - Contracts - Interpretation of a collective agreement - Anti-discrimination clauses - Applicability of jurisprudence under the *Charter* and human rights legislation to an interpretation of an anti-discrimination clause in a collective agreement - Whether declining to extend a normal retirement age for fiscal reasons constitutes discrimination on the basis of age.

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**PROCEDURAL HISTORY**

November 15, 1995 Labour Arbitration Board	Grievance allowed
February 15, 1996 Court of Queen's Bench of Saskatchewan (Sirois J.)	Grievance quashed
October 17, 1996 Court of Appeal for Saskatchewan (Vancise and Gerwing JJ.A.; Wakeling J.A. dissenting)	Appeal allowed
January 16, 1997 Supreme Court of Canada	Applications for extension of time and for leave to appeal filed

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25783      **EILEEN GRACE BAHLSEN v. HER MAJESTY THE QUEEN as represented by the Minister  
of Transport** (F.C.A.)

CORAM:      La Forest, 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**

*Canadian Charter of Rights and Freedoms* - Civil rights - Whether the Federal Court of Appeal misapplied the minimal impairment branch of the proportionality test under s.1 of the *Canadian Charter of Rights and Freedoms* - Whether the Federal Court of Appeal effectively reversed the burden of proving that a limitation under s.15 of the *Canadian Charter of Rights and Freedoms* was demonstrably justified in a free and democratic society - Whether cases in employment law under human rights legislation should have been applied - Whether the Federal Court of Appeal erred in law by effectively reversing the onus under s.1 of the *Charter*.

**PROCEDURAL HISTORY**

June 30, 1995 Federal Court of Canada, Trial Division (Gibson J.)	Declaration that section 3.18 of the <i>Transport Canada Air Personnel Licensing Handbook</i> is unconstitutional
November 25, 1996 Federal Court of Canada, Court of Appeal (Isaac C.J., Pratte and McDonald JJ.A.)	Appeal allowed
January 25, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25706**            **DOUBLE BAR L RANCHING LTD. v. BAYVET CORP. and MILES LABORATORIES INC.**  
(Sask.)

CORAM:        La Forest, 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**

Torts - Negligence - Evidence - Manufacturer's failure to warn - Did the Court of Appeal err in law in imposing an onus or legal obligation on the consumer to follow the manufacturer's instructions to seek directions beyond its product's insert and to consult with governmental recommendations (which, in effect, by imposing such obligations, resulted in the manufacturer passing on the risk to the consumer?) - Did the Court of Appeal err in law in holding that the manufacturer's instructions were not misleading and gave an adequate warning of the foreseeable risks? Did the Court of Appeal err in holding that the instructions taken from the identical product of the same manufacturer being used in the United States was of no significance? - Did the Court of Appeal err in law in failing to adhere and follow the principles underscored in *Lambert v. Lastoplex Chemicals Co. Ltd.* [1972] S.C.R. 569 in respect to its commitment to explicitness in labelling?

**PROCEDURAL HISTORY**

December 22, 1993 Court of Queen's Bench (MacLean J.)	Applicant's negligence action dismissed
October 21, 1996 Court of Appeal for Saskatchewan (Cameron, Gerwing and Jackson JJ.A.)	Appeal dismissed
December 19, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25882**            **CALDWELL & ROSS LTD. v. HER MAJESTY THE QUEEN** (Crim.)(N.B.)

CORAM:        La Forest, Gonthier and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Procedure - Whether trial judge erred in permitting Crown to amend Information at the close of the Crown's case "to conform with the evidence led at trial" when the information in question was known to the Crown before the Information was laid - Whether amendment of the Information at the close of the Crown's case denied the Applicant the right to make a full answer and defence.

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**PROCEDURAL HISTORY**

January 26, 1995 Provincial Court of New Brunswick (Savoie P.C.J.)	Conviction: releasing a contaminant into water contrary to subs.12(1) of the <i>Clean Water Act</i> , S.N.B. 1989, c. C-6.1
April 30, 1996 Court of Queen's Bench of New Brunswick (Miller J.)	Summary conviction appeal dismissed
January 9, 1996 Court of Appeal of New Brunswick (Hoyt C.J.N.B. and Ryan and Turnbull JJ.A.)	Application for leave to appeal denied
March 10, 1997 Supreme Court of Canada	Application for leave to appeal filed

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25397 **THOMAS WHITE v. WOOLWORTH CANADA INC.** (Nfld.)

CORAM: La Forest, Gonthier and Major JJ.

The applications for leave to appeal and to cross-appeal are dismissed. There is no order as to costs.

Les demandes d'autorisation d'appel et d'appel incident sont rejetées. Il n'y a pas d'ordonnance quant aux dépens.

**NATURE OF THE CASE**

Labour law - Commercial law - Contracts - Damages - Master and servant - Workers' compensation - Whether the Court of Appeal erred in assessing damages for wrongful dismissal - Whether workers with back injuries require extended notice periods - Whether the manner of dismissal in this case requires punitive or aggravated damages - Applicability of the rule against double compensation in the context of an action for wrongful dismissal - Set-off of workers' compensation benefits against pay in lieu of notice - Calculation of the commencement of the notice period for the wrongful dismissal of an employee receiving workers' compensation.

**PROCEDURAL HISTORY**

May 17, 1993 Supreme Court of Newfoundland (Riche J.)	Judgment for Plaintiff
April 23, 1996 Supreme Court of Newfoundland, Court of Appeal (Goodridge C.J.N., Marshall and Steele JJ.A.)	Appeal and cross-appeal dismissed
June 19, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**PROCEDURAL HISTORY**

January 17, 1995 Ontario Court (General Division) (Warren J.)	Respondent's action for wrongful dismissal allowed: Applicant Board ordered to reinstate Respondent as probationary constable and pay him damages in the amount of \$138,180.58
June 24, 1996 Court of Appeal of Ontario (Robins, Finlayson and Weiler JJ.A.)	Appeal allowed to the extent of deleting paragraphs 2 through 6 in trial judge's formal order: damage award remains undisturbed but Court "not taken as agreeing with all reasons given by the trial judge in deciding that Respondent wrongfully dismissed".
October 4, 1996 Supreme Court of Canada	Application for leave to appeal filed

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25608      **FRIENDS OF THE LUBICON, KEVIN THOMAS, ED BIANCHI, STEPHEN KENDA, JANE DOE, JOHN DOE and PERSONS UNKNOWN v. DAISHOWA INC.** (Ont.)

CORAM:      La Forest, Gonthier and Major 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**

Administrative law - Injunction - Torts - Whether the Divisional Court erred in granting an injunction enjoining the Applicants from intentionally interfering with Daishowa's contractual and economic relations by unlawful means, including picketing and threats of picketing aimed at Daishowa's customers - Whether the Court of Appeal erred in dismissing the application for leave to appeal from the Divisional Court's decision - Whether a secondary picketing in a non-labour context is legal in Canada.

**PROCEDURAL HISTORY**

May 30, 1995 Ontario Court (General Division) (Kiteley J.)	Injunction against the Applicant granted in part
January 23, 1996 Ontario Court (General Division) (Divisional Court) (O'Leary, McRae and Corbett JJ.)	Injunction against the Applicant granted
April 24, 1996 Court of Appeal for Ontario (Finlayson, McKinlay and Arbour JJ.A.)	Motion for leave to appeal dismissed
November 7, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25644**            **GORDON GARLAND v. THE CONSUMERS' GAS CO. LTD.** (Ont.)

CORAM:        La Forest, 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 - Interest - Criminal rate of interest - Late payment penalties - Whether the Court of Appeal erred in applying *Nelson v. C.T.C. Mortgage Corp.* (1984), 16 D.L.R. (4th) 139 (B.C.C.A.), aff'd [1986], 1 S.C.R. 749 - Whether the late payment penalties charged by the Respondent fall under s.347 of the *Criminal Code*, R.S.C. 1985, c. C-46.

**PROCEDURAL HISTORY**

February 13, 1995 Ontario Court (General Division) (Winkler J.)	Respondent's motion for summary judgment granted
September 18, 1996 Court of Appeal for Ontario (Doherty, Abella and Charron JJ.A.)	Appeal dismissed
November 15, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25710**            **COOPERS & LYBRAND LTD., in its representative capacity as the Trustee in Bankruptcy of Manning Mercury Sales Ltd. v. FORD MOTOR COMPANY OF CANADA LTD. and HER MAJESTY THE QUEEN (Canada), as represented by the Minister of the Department of National Revenue (Customs and Excise)** (Sask.)

CORAM:        La Forest, Gonthier and Major JJ.

The application for leave to appeal is remanded to the Saskatchewan Court of Appeal to be dealt with in accordance with this Court's decision in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

La demande d'autorisation d'appel est renvoyée à la Cour d'appel de la Saskatchewan pour être tranchée conformément à l'arrêt de notre Cour *Banque royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411.

**NATURE OF THE CASE**

Commercial law - Bankruptcy - Banks/banking operations - Creditor & debtor - Securities - Did the Court of Appeal err in law in concluding that the Minister of Revenue's claim for unremitted source deductions deemed trusts took priority over the bank's *Bank Act*, S.C. 1991, c. B.1.01 security - Did the Court of Appeal err in law in its determination of priority to funds realized by the sale of inventory in the ordinary course of business.

**PROCEDURAL HISTORY**

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May 9, 1994  
Court of Queen's Bench for Saskatchewan  
(Halvorson J.)

Respondent Minister of Revenue's claim for unremitted  
source deductions to take priority over the bank's s. 427  
*Bank Act* security

October 22, 1996  
Court of Appeal for Saskatchewan  
(Bayda C.J., Jackson and Tallis JJ.A.)

Appeal dismissed

December 20, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25704**            **MURRAY RYAN v. THE CORPORATION OF THE CITY OF VICTORIA, THE ESQUIMALT  
AND NANAIMO RAILWAY CO. and CANADIAN PACIFIC LTD./CANADIEN PACIFIQUE  
LTÉE (B.C.)**

CORAM:        La Forest, Gonthier and Major JJ.

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

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

**NATURE OF THE CASE**

Torts -Negligence - Nuisance - Defence of Statutory Authority - Whether railways should benefit from special rules regarding the defence of statutory authority and regarding the common law of nuisance.

**PROCEDURAL HISTORY**

May 25, 1994  
Supreme Court of British Columbia (Owen-Flood J.)

Respondents jointly and severally liable in negligence;  
Railways liable in nuisance

October 3, 1996  
Court of Appeal for British Columbia  
(Goldie, Rowles and Finch JJ.A.)

Appeal allowed in part

December 19, 1996  
Supreme Court of Canada

Applications for extension of time and for leave to  
appeal filed

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**25777**            **HER MAJESTY THE QUEEN v. GREGORY JACOB PARSONS (Crim.)(Nfld.)**

CORAM:        La Forest, Gonthier and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

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Criminal law - Evidence - Hearsay Evidence - Whether all of the hearsay evidence should have been admitted at trial where much of it was repetitive - Whether the necessity requirement for hearsay evidence involves a consideration of the amount of evidence.

**PROCEDURAL HISTORY**

February 15, 1994 Supreme Court of Newfoundland (Trial Division) (Lang J.)	Conviction: second degree murder
December 3, 1996 Supreme Court of Newfoundland (Court of Appeal) (Gushue C.J.N., O'Neill and Steele JJ.A.)	Appeal allowed, new trial ordered
January 23, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25760**      **BARBICAN PROPERTIES INC. v. HER MAJESTY THE QUEEN** (F.C.A.)

CORAM:      La Forest, 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**

Taxation - Assessment - Statutes - Interpretation - Whether the Tax Court erred in its interpretation and application of paragraphs 20(1)(c) and 18(1)(i) of the *Income Tax Act*.

**PROCEDURAL HISTORY**

April 16, 1996 Tax Court of Canada (Margeson J.)	Appeal from reassessments dismissed
November 20, 1996 Federal Court of Appeal (McDonald, Henry JJ.A. and Isaac C.J.)	Appeal dismissed
January 15, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25550**      **ERIC WILLIAM HUTCHINGS v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM:      La Forest, Gonthier and Major 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.

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**NATURE OF THE CASE**

Canadian Charter of Rights and Freedoms - Criminal law - Narcotics - Unreasonable search and seizure - Validity of warrant - Evidence - Admissibility of evidence - Expectation of privacy - Whether the Court of Appeal erred in finding that gathering evidence under the B.C. Hydro and Power Authority Electric Tariff was not an unreasonable search and seizure - Whether the Court of Appeal erred in finding that there was no reasonable expectation of privacy in the outside of a barn - Whether the Court of Appeal erred in finding that the use of a forward looking infra-red device and the information obtained with the forward looking infra-red device did not constitute a search within the meaning of s. 8 of the *Charter*.

**PROCEDURAL HISTORY**

March 23, 1994 Supreme Court of British Columbia (Selbie J.)	Conviction of one count of possession of a narcotic, one count of cultivation of a narcotic and one count of theft
October 17, 1996 Court of Appeal for British Columbia (McEachern C.J., MacFarlane and Prowse JJ.A.)	Appeal dismissed
January 30, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25775**            **RICHARD GERRY WHITE v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:        La Forest, Gonthier and Major JJ.

The application 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 - Evidence - Whether consciousness of guilt evidence must be proven beyond a reasonable doubt - Whether trial judge failed to instruct jury properly regarding the need for evidence to support or confirm a witness's testimony - Whether trial judge erred in his jury instructions regarding evidence of planning and deliberation - Whether trial judge erred by excluding from the jury the possibility that reasonable doubt might arise from a lack of evidence - Whether trial judge erred in his jury instructions regarding motive - Whether trial judge erred in his jury instructions regarding verdicts - Whether trial judge erred in his jury instructions regarding use of prior criminal records.

**PROCEDURAL HISTORY**

November 24, 1990 Supreme Court of Ontario (Isaac J.)	Convictions: first degree murder Sentences: life imprisonment
June 28, 1996 Court of Appeal for Ontario (Morden C.J., Catzman, Carthy, Doherty and Laskin JJ.A.)	Appeals dismissed

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January 23, 1997  
Supreme Court of Canada

Applications for extension of time and for leave to  
appeal filed by Richard Gerry White

January 23, 1997  
Supreme Court of Canada

Applications for extension of time and for leave to  
appeal filed by Yves Rheal Cote

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**25854**            **YVES RHÉAL CÔTÉ v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:        La Forest, Gonthier and Major JJ.

The application 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 - Evidence - Whether consciousness of guilt evidence must be proven beyond a reasonable doubt - Whether trial judge failed to instruct jury properly regarding the need for evidence to support or confirm a witness's testimony - Whether trial judge erred in his jury instructions regarding evidence of planning and deliberation - Whether trial judge erred by excluding from the jury the possibility that reasonable doubt might arise from a lack of evidence - Whether trial judge erred in his jury instructions regarding motive - Whether trial judge erred in his jury instructions regarding verdicts - Whether trial judge erred in his jury instructions regarding use of prior criminal records.

**PROCEDURAL HISTORY**

November 24, 1990  
Supreme Court of Ontario (Isaac J.)

Convictions: first degree murder  
Sentences: life imprisonment

June 28, 1996  
Court of Appeal for Ontario (Morden C.J., Catzman,  
Carthy, Doherty and Laskin JJ.A.)

Appeals dismissed

January 23, 1997  
Supreme Court of Canada

Applications for extension of time and for leave to  
appeal filed by Richard Gerry White

January 23, 1997  
Supreme Court of Canada

Applications for extension of time and for leave to  
appeal filed by Yves Rheal Cote

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**25809**            **RADCLIFFE MARK HALL v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM:        L'Heureux-Dubé, Sopinka and Iacobucci 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 - Unreasonable verdict - Whether the verdict was unreasonable and not supported by the evidence - Defences - Honest but mistaken belief in consent - Whether the trial judge erred in not charging the jury on the defence of honest but mistaken belief in consent.

**PROCEDURAL HISTORY**

January 22, 1994 Court of Queen Bench of Alberta (Brennan J.)	Conviction: sexual assault
September 15, 1995 Court of Appeal of Alberta (Kerans, Irving and Russell JJ.A)	Appeal dismissed
February 6, 1997 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

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**25905**            **M.C.L. v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

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 - Young Offenders - Transfer to ordinary court - What is the correct approach when determining whether the conditions for transfer have been met - What is the effect of s. 3 of the *Young Offenders Act* on the test for transfer - Is there a legal burden on the young person to establish that he is capable of being rehabilitated - What effect should the possibility of a post-conviction placement hearing have on the test for transfer - What is the correct standard of review for an appellate court reviewing a transfer order.

**PROCEDURAL HISTORY**

March 4, 1996 Family and Youth Court (Jordan P.C.J.)	Application for transfer of young person to ordinary court denied
November 6, 1996 Alberta Court of Appeal (Irving, Conrad, Côté JJ.A.)	Appeal allowed; transfer ordered
March 21, 1997 Supreme Court of Canada	Application for leave to appeal filed

**25806**            **LEONARDO G. GALUEGO v. CAROL HENSLEY and DARYL BEAN** (Ont.)

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

The application to add the Public Service Staff Relations Board as a party to the application for leave to appeal and the application for leave to appeal are dismissed with costs.

La demande d'ajout de la Commission des relations de travail dans la Fonction publique comme partie à la demande d'autorisation d'appel et la demande d'autorisation d'appel sont rejetées avec dépens.

**NATURE OF THE CASE**

Administrative Law - Judicial Review - Jurisdiction - Whether the Federal Court of Appeal properly exercised its discretion when it dismissed an application to reconsider an order quashing an application for judicial review.

**PROCEDURAL HISTORY**

March 14, 1996 Public Service Staff Relations Board (Dumoulin D., Registry Officer)	Hearing re-scheduled until November 1996
September 3, 1996 Federal Court of Appeal (Marceau, Stone and Robertson JJ.A)	Application for judicial review quashed
December 10, 1996 Federal Court of Appeal (Marceau, Stone and Robertson JJ.A)	Application for reconsideration dismissed
February 6, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25804**            **GORDON H. FREUND PROFESSIONAL CORPORATION AND BRUCE G. MacDONALD PROFESSIONAL CORPORATION, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF MacDONALD & FREUND v. PAUL HALJAN** (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**

Procedural law - Judgments and orders - Duties arising upon the making of an order of a court for the protection of a creditor - Whether the solicitor was in breach of an undertaking.

**PROCEDURAL HISTORY**

August 3, 1994 Court of Queen's Bench of Alberta (Lewis J.)	Applicant's action dismissed
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January 8, 1997  
Court of Appeal of Alberta  
(Hetherington, Irving and McFadyen JJ.A.)

Appeal dismissed

February 3, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**25801**            **JOE W. HARRIS v. CINABAR ENTERPRISES LTD. and LARRY B. NUGENT** (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**

Property law - Mines and minerals - Commercial law - Contracts - Interpretation - Oil and gas - Law pertaining to mineral royalties - Overriding royalties in Crown petroleum and natural gas leases - Whether the beneficiary of restrictive covenant relating to property will have an effective remedy in law or equity against the promisor where there is no privity of contract - Unjust enrichment and restitution where the beneficiary is not party to the contract containing the covenant and where the covenant was imposed and assumed for services and benefits rendered by the beneficiary.

**PROCEDURAL HISTORY**

December 1, 1995  
Court of Queen's Bench of Alberta (MacLeod J.)

Applicant's action allowed

December 2, 1996  
Court of Appeal of Alberta  
(Lieberman, Côté and Hunt JJ.A.)

Appeal allowed

January 31, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**25678**            **RÉAL MELANSON c. L'UNIVERSITÉ DE MONTRÉAL, LA FACULTÉ DE MÉDECINE DE L'UNIVERSITÉ DE MONTRÉAL et DR. PIERRE BOIS** (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 administratif - Justice naturelle - Contrôle judiciaire - Preuve - Recours en mandamus et en dommages du demandeur demandant qu'il soit ordonné qu'on lui décerne le diplôme de doctorat en médecine qu'on lui refuse au motif qu'il aurait échoué un examen en fin de 5<sup>ième</sup> année d'étude - Preuve d'expert - La Cour d'appel a-t-elle erré en droit en ne reprochant pas au premier juge d'avoir substitué, selon le demandeur, son opinion personnelle à une conclusion découlant d'une

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preuve claire à l'effet que le demandeur n'a subi aucun échec durant sa 5<sup>ième</sup> année? - La Cour d'appel et le juge de première instance ont-ils manifestement erré en droit en recherchant, selon le demandeur, la démonstration effective d'un parti pris et d'un préjugé réels pour invalider les décisions contestées (*nemo judex*)? - La Cour d'appel et le juge de première instance ont-ils manifestement erré en fait et en droit en ne concluant pas dans les circonstances à la violation flagrante par les intimés d'autres règles élémentaires de justice naturelle? - Les intimés ont-ils manqué à leurs obligations contractuelles de fair-play?

### **HISTORIQUE PROCÉDURAL**

Le 24 mai 1988 Cour supérieure du Québec (Reeves j.c.s.)	Recours en mandamus et en dommages rejeté
Le 15 octobre 1996 Cour d'appel du Québec (Vallerand, Gendreau et Proulx jj.c.a.)	Appel rejeté
Le 12 décembre 1996 Cour suprême du Canada (Major j.c.s.)	Demande de prorogation de délai accordée
Le 15 janvier 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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25743      **ANAMOR INVESTMENTS INC. c. LEVY PILOTTE ET ASSOCIÉS INC. et PETER WOLKOVE** (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 commercial - Faillite - Législation - Interprétation - Ordre de priorité - Articles 72(1), 136(1) et 146 de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3 - Conséquences en matière de faillite d'une sûreté dont les conditions de formation n'ont pas été respectées - Article 1979h du *Code civil du Bas-Canada* stipulant que le privilège du créancier nanti n'est pas opposable au locateur avant la notification du nantissement - En matière de faillite, l'article 1979h permet-il au locateur, créancier privilégié aux termes de l'art. 136(1)f) de la *Loi*, d'être payé avant le créancier nanti, créancier garanti aux termes de l'art. 136(1), lorsque le nantissement ne lui a pas été notifié? - *Husky Oil Operations Ltd. c. Ministre du Revenu national*, [1995] 3 R.C.S. 453.

### **HISTORIQUE PROCÉDURAL**

Le 11 mars 1993 Cour supérieure du Québec (Kennedy j.c.s.)	Requête en réformation de la décision du syndic accueillie; syndics intimés condamnés à verser 52 000\$ à la demanderesse
Le 12 novembre 1996 Cour d'appel du Québec (Vallerand, Brossard [dissident] et Zerbisias jj.c.a.)	Pourvoi accueilli

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Le 13 janvier 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**25681**            **ERIC YU-HUA CHU - v. - HUBERMAN CRISTALL HUTCHINSON** (B.C.)

CORAM:        The Chief Justice and Cory and McLachlin JJ.

The application for reconsideration is dismissed.

La demande de nouvel examen est rejetée.

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**23388**            **GEORGES GUAY c. SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande de réexamen est rejetée avec dépens.

The application for reconsideration is dismissed with costs.

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12.6.1997

Before / Devant: IACOBUCCI J.

**Motion to extend the time in which to file the notice of appeal**

**Requête en prorogation du délai imparti pour déposer l'avis d'appel**

Oskar Chan

With the consent of the parties.

v. (26027)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE** Time extended to May 22, 1997.

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12.6.1997

Before / Devant: IACOBUCCI J.

**Motion to extend the time in which to apply for leave to appeal**

**Requête en prorogation du délai pour obtenir l'autorisation d'appel**

Anthony Carl Moore

v. (26044)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE** Time extended to May 27, 1997.

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12.6.1997

Before / Devant: IACOBUCCI J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: Canadian Bankers' Association

IN/DANS: Continental Bank Leasing Corp.

v. (25532)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE**

1. The application for intervention is granted; the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes;

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2. The applicant shall not be entitled to adduce further evidence or otherwise to supplement the record apart from its factum and oral submissions.

13.6.1997

Before / Devant: CHIEF JUSTICE LAMER

**Motion to extend the time to file additional documents forming part of case on appeal**

In the matter of Section 53 of the *Supreme Court Act*, R.S.C. 1985, Chap. S-26; and in the matter of a Reference by the Governor in Council concerning certain questions relating to the secession of Quebec from Canada, as set out in Order in Council P.C. 1996-1497, dated the 30th day of September 1996;  
 Dans l'affaire de l'art. 53 de la *Loi sur la Cour suprême*, L.R.C. (1985), ch. S-26; et dans l'affaire d'un renvoi par le gouverneur en conseil au sujet de certaines questions concernant la sécession du Québec du reste du Canada, formulées dans le décret C.P. 1997-1497 en date du 30 septembre 1996 (25506) (Ont.)

**GRANTED / ACCORDÉE**

UPON APPLICATION by Counsel on behalf of the Attorney General of Canada for an order extending the time to file and serve the following additional documents as part of the Case on Appeal:

1. News release from the Office of the Premier of Quebec dated May 7, 1997, entitled: *Processus d'accession à la souveraineté: Le rappel des faits*;
2. Questions and answers concerning the Premier of Quebec's knowledge of Mr. Jacques Parizeau's intentions with respect to a possible unilateral sovereignty proclamation; Oral questions and answers, *Journal des débats*, National assembly of Quebec, May 7, 1997, pp. 6496-6504;
3. News release by former Premier Mr. Jacques Parizeau to journalists of the press gallery in Quebec City, May 8, 1997;
4. Questions and answers concerning the Premier of Quebec's knowledge of Mr. Jacques Parizeau's intentions with respect to a possible unilateral sovereignty proclamation; Oral questions and answers, *Journal des débats*, National assembly of Quebec, May 8, 1997, pp. 6552-6558;

**Requête en prorogation du délai imparti pour déposer les documents additionnels faisant partie du dossier conjoint**

À LA REQUÊTE de l'appelant le Procureur général du Canada visant à obtenir une ordonnance prorogeant le délai imparti pour déposer les documents additionnels suivants au dossier conjoint:

1. Communiqué du Cabinet du premier ministre du Québec, en date du 7 mai 1997, intitulé: *Le processus d'accession à la souveraineté: le rappel des faits*.
2. Connaissance par le premier ministre des intentions de M. Jacques Parizeau quant à une éventuelle proclamation unilatérale de souveraineté; Questions et réponses orales, *Journal des débats*, Assemblée nationale du Québec, 7 mai 1997, pp. 6496-6504.
3. Communiqué de l'ancien premier ministre M. Jacques Parizeau aux journalistes de la tribune de la presse à Québec, 8 mai 1997.
4. Connaissance par le premier ministre des intentions de M. Jacques Parizeau quant à une éventuelle proclamation unilatérale de souveraineté; Questions et réponses orales, *Journal des débats*, Assemblée nationale du Québec, 8 mai 1997, pp. 6552-6558.

5. Excerpt from Mr. Jacques Parizeau's book, *Pour un Québec souverain*, VLB éditeur, published on May 13, 1997; Introduction, "La reconnaissance internationale d'un Québec souverain", pp. 281-288;

6. Decision of the Cabinet of the Government of Quebec on the fifteenth anniversary of the coming into force of the *Constitution Act, 1982*; Decision N° 97-092, April 16, 1997.

UPON CONSIDERING the materials filed by the Attorney General of Canada in respect thereof;

IT IS HEREBY ORDERED THAT:

1) The application for an extension of time is granted; and

2) The application to serve and file the additional documents is granted;

16.6.1997

Before / Devant: McLACHLIN J.

**Hearing of miscellaneous motions allowing the applicant to file confidential exhibits identified as vol. III of the application for leave to appeal**

Telus Communications Inc.

v. (26045)

The Attorney General of Canada (Alta.)

**GRANTED / ACCORDÉE**

16.6.1997

Before / Devant: THE REGISTRAR

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

Brian William Frederick Allender

v. (25179)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE** Time extended to June 2, 1997.

5. Extraits de l'ouvrage de M. Jacques Parizeau, *Pour un Québec souverain*, VLB éditeur, publié le 13 mai 1997, «La reconnaissance internationale d'un Québec souverain, Introduction», pp. 281 à 288.

6. Décision du Conseil des ministres du gouvernement du Québec lors du quinzième anniversaire de l'entrée en vigueur de la *Loi constitutionnelle de 1982*, Décision n° 97-092, 16 avril 1997.

APRÈS AVOIR EXAMINÉ les documents déposés par le procureur général du Canada à cet égard;

IL EST ORDONNÉ PAR LES PRÉSENTES CE QUI SUIT:

(1) la demande de prorogation de délai est accordée, et

(2) la demande de signification et de dépôt des documents additionnels est accordée.

**Audience sur diverses requêtes permettant au requérant de déposer des pièces confidentielles décrites comme vol. III de la demande d'autorisation d'appel**

With the consent of the parties.

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

With the consent of the parties.

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16.6.1997

Before / Devant: McLACHLIN J.

**Motion to strike out**

**Requête en radiation**

Air Canada

v. (25984)

Air Treads of Canada Ltd. (Ont.)

**DISMISSED / REJETÉE**

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16.6.1997

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour  
déposer le mémoire d'un intervenant**

BY/PAR: EGALE

With the consent of the parties.

IN/DANS: Delwin Vriend et al.

v. (25285)

Her Majesty The Queen in right of  
Alberta (Alta.)

**GRANTED / ACCORDÉE** Time extended to June 4, 1997.

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12.6.1997

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'appelante**

Nancy Law

With the consent of the parties.

v. (25374)

Minister of Human Resources Development (B.C.)

**GRANTED / ACCORDÉE** Time extended to July 31, 1997.

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17.6.1997

Before / Devant: McLACHLIN J.

**Motion to extend the time in which to file additional material**

**Requête en prorogation du délai imparti pour déposer des documents additionnels**

M.J.B. Entreprises Ltd.

v. (25975)

Defence Construction (1951) Ltd. et al. (Alta.)

**GRANTED / ACCORDÉE**

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17.6.1997

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai imparti pour déposer la réponse des intimés**

**Motion to extend the time in which to file the respondents' response**

Lévesque, Beaubien, Geoffrion Inc.

Avec le consentement des parties.

c. (25966)

Christiane Bouchard et al. (Qué.)

**ACCORDÉE / GRANTED** Délai prorogé au 6 juin 1997.

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17.6.1997

Before / Devant: McLACHLIN J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: Attorney General of Canada;  
Grand Council of the Crees et al.;  
Attorney General of Alberta;  
Federation of Saskatchewan Indians Nations;  
Attorney General of Manitoba;  
Attorney General of B.C.

IN/DANS: Minister of Finance for New Brunswick et al.

v. (25427)

Union of N.B. Indians et al. (N.B.)

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**GRANTED / ACCORDÉE**

UPON APPLICATION by the applicants Grand Council of the Crees (Eeyou Estchee) et al., Attorney General of Canada, Attorney General of Alberta, Federation of Saskatchewan Indians Nations, Attorney General of British Columbia, Attorney General of Manitoba

AND HAVING READ the material filed;

It is hereby ordered that:

1. The motion for leave to intervene of the applicants Grand Council of the Crees (Eeyou Estchee) et al. is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.
2. The motion for leave to intervene of the applicant Attorney General of Canada is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.
3. The motion for leave to intervene of the applicant Attorney General of Alberta is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.
4. The motion for leave to intervene of the applicants Federation of Saskatchewan Indians Nations is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.
5. The motion for leave to intervene of the applicant Attorney General of British Columbia is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.
6. The motion for leave to intervene of the applicant Attorney General of Manitoba is granted. Leave is granted to file a factum not to exceed 20 pages and to present oral argument limited to 15 minutes.

The intervenors shall have four weeks from the date of this order to serve and file their factums.

17.6.97

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the intervenor’s factum**

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

Winnipeg Child & Family Services

With the consent of the parties.

v. (25508)

G. (D.F.) (Man.)

**GRANTED / ACCORDÉE** Time to file the factum of the intervenor, Southeast Child and Family Services et al extended to June 10, 1997.

**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

16.6.97 to/au 17.6.97

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

**Delgamuukw, a.k.a. Earl Muldoe, suing on his own behalf and on behalf of all the members of the House of Delgamuukw et al.**

v. (23799)

**Her Majesty The Queen in Right of the Province of British Columbia et al. (B.C.)**

Stuart Rush, Q.C., Peter Grant, Michael Jackson, Louise Mandell and David Paterson, for the appellants / respondents on cross-appeal The Gitksan Hereditary Chiefs et al.

Marvin R. V. Storrow, Q.C., Joanne R. Lysyk and Joseph C. McArthur, for the appellants / respondents on cross-appeal Wet'Suwet'en Hereditary Chiefs et al.

Arthur Pape, Harry A. Slade, Peter Hogg and Jean Taillet, for the intervener the First Nations Summit.

Jack Woodward and Albert C. Peeling, for the intervener Westbank First Nation.

Marvin R.V. Storrow, Q.C., Joanne R. Lysyk and Joseph C. McArthur, for the interveners the Musqueam Indian Band et al.

Joseph J. Arvay, Q.C., Mark G. Underhill and Brenda Edwards, for the respondent / appellant on cross-appeal Her Majesty The Queen in Right of the Province of British Columbia.

Graham Garton, Q.C., Judith Bowers, Q.C., Murray T. Wolf and Geoffrey S. Lester, for the respondent the A.G. of Canada.

J. Keith Lowes, for the interveners the B.C. Cattlemen's Association et al.

Charles F. Willms, for the intervener Skeena Cellulose Inc.

J. Edward Gouge, Q.C. and Jill M. Marks, for the intervener Alcan Aluminium Ltd.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Indians - Land - Aboriginal Rights - Whether Court of Appeal erred in its definition of the nature, extent and status of aboriginal rights.

**Nature de la cause:**

Indiens - Terres - Droits ancestraux -- La Cour d'appel a-t-elle commis une erreur dans sa définition de la nature, de l'étendue et du statut de droits ancestraux?

18.6.1997

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

**Winnipeg Child and Family Services (Northwest Area)**

**v. (25508)**

**G. (D.F.) (Man.)**

Heather Leonoff, Q.C. and Norman Cuddy for the appellant.

David A.W. Phillips, Joe Aiello and Darren Sawchuk for the Respondent.

Shawn Greenberg for the Intervener Attorney General of Manitoba.

Howard Kushner and Thomas Ulyett for the Intervener Government of Yukon.

David M. Brown and Danielle Shaw for the Interveners Evangelical Fellowship of Canada, et al.

William J. Sammon for the Intervener Catholic Group for Health, Justice and Life.

Angela M. Costigan and Marcelle Crouse for the Intervener Alliance for Life.

Hugues Létourneau et Viviaine Primeau pour l'intervenante Association des Centres de jeunesse du Québec.

Jeffrey F. Harris and Edward J. Gilson for the Interveners Southeast Child and Family Services, et al.

John B. Laskin and Cynthia L. Tape for the Intervener Canadian Civil Liberties Association.

Beth Symes and Lucy K. McSweeney for the Intervener Canadian Abortion Rights Action League.

Sheilah Martin and Sharon McIvor for the Intervener Women's Legal Education and Action Fund.

Arne Peltz and John Myers for the Interveners Women's Health Clinic Inc., et al.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Torts - Family law - Statutes - Interpretation - S. 56 of the *Mental Health Act*, R.S.M. 1987, c. M110 - Exercise of *parens patriae* jurisdiction - Foetal rights - Legal status of unborn child - Does a birth mother who has chosen to carry a fetus to full term owe a duty of care to the fetus? - If the answer to question 1 is “yes”, in what circumstances, if any, should a Court intervene to enforce compliance with the duty of care?

**Nature de la cause:**

Responsabilité délictuelle - Lois - Interprétation - Article 56 de la *Loi sur la santé mentale*, S.R.M. 1987, ch. M110 - Exercice de la compétence *parens patriae* - Droits du fœtus - Statut juridique de l'enfant à naître - Est-ce que la mère par le sang qui a décidé de mener sa grossesse à terme a une obligation de diligence envers le fœtus? - Dans l'affirmative, dans quelles circonstances une cour de justice devrait-elle intervenir pour assurer le respect de cette obligation de diligence?

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19.6.1997

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

**Husky Oil Operations Ltd.**

v. (24855)

**Saint John Shipbuilding Ltd. et al.**

and between

**Bow Valley Industries Ltd.**

v.

**Saint John Shipbuilding et al.**

and between

**Saint John Shipbuilding Ltd.**

v.

**Bow Valley Husky (Bermuda) Ltd. et al.**

and between

**Raychem Canada Ltd. et al.**

v.

**Bow Valley Husky (Bermuda) Ltd. et al.**

and between

**Bow Valley Husky (Bermuda) Ltd.**

v.

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Anthony J. Jordan, Q.C., Eric P. Groody and Susan M. Purcell for Husky Oil Operations Ltd.

W. Ian C. Binnie, Q.C., Harry Underwood, Bonita Croft and Camille A. Nelson for Bow Valley Industries Ltd.

Michael F. Harrington, Q.C. and Colm St. R. Seviour for Bow Valley Husky (Bermuda) Ltd.

J. Edgar Sexton, Q.C., John F. Rook, Q.C., Stephen J. May and Donald D. Hanna for Saint John Shipbuilding Limited.

W. Wylie Spicer, Q.C. and Aidan J. Meade for Raychem Canada Limited, et al.

**Saint John Shipbuilding Ltd. et al. (Nfld.)**

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Torts - Commercial law - Property law - Negligence - Contracts - Damages - Remedies - Contributory negligence - Breach of contract - Right of recovery for pure economic loss - Whether the Appellants are entitled to recover under the principles adopted in *Canadian National Railway Co. v. Norsk Pacific Steamship Co. Ltd. et al.*, [1992] S.C.R. 1021 - Whether a duty to warn creates the necessary proximity to ground a claim for pure economic loss - Existence of joint venture or co-adventure - Relational economic loss - Duty to warn - Liability for negligent manufacture or supply - Rights of a co-contractant to damages for loss of use of property owned by another.

**Nature de la cause:**

Responsabilité délictuelle - Droit commercial - Droit des biens - Négligence - Contrats - Dommages-intérêts - Réparation - Négligence contributive - Rupture de contrat - Droit de recouvrement pour une perte purement économique - Les appelantes ont-elles droit de recouvrer en vertu des principes adoptés dans l'arrêt *Compagnie des chemins de fer nationaux du Canada c. Norsk Pacific Steamship Co. Ltd. et autres*, [1992] 1 R.C.S. 1021? - Une obligation de mise en garde crée-t-elle le lien étroit nécessaire pour fonder une réclamation rattachée à une perte purement économique? - Existence d'une entreprise conjointe ou d'une coentreprise - Perte économique relationnelle - Obligation de mise garde - Responsabilité en cas de négligence dans la fabrication ou l'approvisionnement - Droits d'un cocontractant à des dommages-intérêts au titre de la perte d'usage d'un bien appartenant à une autre personne.

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## WEEKLY AGENDA

## ORDRE DU JOUR DE LA SEMAINE

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**AGENDA for the week beginning June 23, 1997.**

**ORDRE DU JOUR pour la semaine commençant le 23 juin 1997.**

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<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
25/06/97	Canadian Red Cross Society et al. v. The Honourable Horace Krever, Commissioner of the Inquiry on the Blood System in Canada (F.C.A.)(Ont.)(25810)
26/06/97	Erichs Tobiass v. Minister of Citizenship and Immigration - and between - Helmut Oberlander v. Minister of Citizenship and Immigration - and between - Johann Dueck v. Minister of Citizenship and Immigration (Crim.)(F.C.A.)(Ont.)(25811)
27/06/97	André Côté, et al. v. George Addy (F.C.A.)(Qué.)(25262)

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### 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.

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**25810** *The Canadian Red Cross Society et al and Bayer, Inc. and Baxter Corporation v. The Honourable Horace Krever, Commissioner of the Inquiry on the Blood System in Canada*

Administrative law - Public inquiries under the *Inquiries Act*, R.S.C. 1985, c.I-11 - Whether the procedures adopted by the Commissioner were appropriate - Jurisdiction of Commissioner to issue notices of misconduct under section 13 of the *Inquiries Act* - Whether findings of criminal or civil responsibility against named persons were threatened in the notices of misconduct - Whether such findings are beyond the power of the Commissioner - Whether the Commissioner lost jurisdiction to issue notices of misconduct.

On October 4, 1993, the Government of Canada appointed the Honourable Horace Krever to review and report on the blood system in Canada in a Commission issued under the *Inquiries Act*. The Commission held public hearings throughout Canada. An interim report, released in February, 1995, included notice to the Red Cross under s. 13 of the Act. The final report is due following this Court's judgment.

By memorandum on October 26, 1995, Commission counsel invited all parties to inform the Commission of the findings of misconduct they intended to urge on the Commission in respect of other persons by November 10, 1995. These confidential submissions would be read only by Commission counsel, and would be considered for inclusion in notices issued by the Commissioner. On December 21, 1995, the final day for hearings, forty-five confidential notices naming ninety-five individuals, corporations and governments, each containing between one and one hundred allegations, were delivered under section 13 of the Act. The recipients were given until January 10, 1996 to decide whether to respond to the notices in their final submissions or in another way.

A number of the recipients of notices brought applications for judicial review. Richard J. declared that no findings of misconduct could be made against forty-seven of the Appellants for judicial review, but otherwise dismissed the applications for judicial review. Many recipients whose notices were not quashed appealed. The Federal Court of Appeal quashed the notices against Dr. Craig Anhorn, but dismissed the remaining appeals.

Origin of the case:	Federal Court of Appeal
File No.:	25810
Judgment of the Court of Appeal:	January 17, 1997
Counsel:	Earl A. Cherniak Q.C., Kirk F. Stevens and Christopher I. Morrison for the Appellants The Canadian Red Cross et al Randy T. Hughes and Tracey Patel for the Appellant Bayer, Inc. Philip Spencer Q.C. for the Appellant Baxter Corporation. Paul Lamek Q.C. and Angus T. McKinnon for the Respondent

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**25810** *La Société canadienne de la Croix-Rouge et autres, et Bayer Inc., et Baxter Corporation c. L'honorable Horace Krever, Commissaire de l'enquête sur le système d'approvisionnement en sang au Canada*

Droit administratif — Enquête publique en vertu de la *Loi sur les enquêtes*, L.R.C. (1985), ch. I-11 — Les procédures adoptées par le commissaire étaient-elles appropriées? — Compétence du commissaire de délivrer des préavis en vertu de l'art. 13 de la *Loi sur les enquêtes* relativement à une possible conclusion de faute — Les personnes nommées dans ces préavis ont-elles été menacées de conclusions engageant leur responsabilité civile ou criminelle? — De telles conclusions sont-elles du ressort du commissaire? — Le commissaire a-t-il perdu la compétence de délivrer des préavis relativement à une possible conclusion de faute?

Le 4 octobre 1993, le gouvernement du Canada a chargé l'honorable Horace Krever de faire un examen du système canadien de collecte et de distribution du sang et de présenter un rapport dans le cadre d'une Commission établie en vertu de la *Loi sur les enquêtes*. La Commission a tenu des audiences publiques dans tout le pays. Un rapport provisoire rendu public en février 1995 comportait un préavis adressé à la Croix-Rouge en vertu de l'art. 13 de la Loi. Le rapport final sera présenté à la suite de l'arrêt que rendra la Cour.

Par une note en date du 26 octobre 1995, les avocats de la Commission ont demandé à toutes les parties d'informer la Commission, au plus tard le 10 novembre 1995, de toutes les conclusions de faute qu'elles se proposaient de recommander à la Commission à l'égard d'autres personnes. Seuls les avocats de la Commission prendraient connaissance de ces allégations faites confidentiellement, qui seraient prises en considération quant à leur inclusion dans les préavis délivrés par le commissaire. Le 21 décembre 1995, le dernier jour des audiences, quarante-cinq préavis confidentiels où étaient désignés quatre-vingt-quinze particuliers, personnes morales et gouvernements, chacun contenant d'une à cent allégations, ont été délivrés en vertu de l'art. 13 de la Loi. Les destinataires ont eu jusqu'au 10 janvier 1996 pour décider s'ils répondraient aux préavis dans leurs observations finales ou par un autre moyen.

De nombreux destinataires des préavis ont déposé des demandes de contrôle judiciaire. Le juge Richard a déclaré qu'aucune conclusion de faute ne pouvait être tirée contre quarante-sept des requérants à la procédure de contrôle judiciaire, mais, à tous autres égards, il a rejeté les demandes de contrôle judiciaire. De nombreux destinataires dont les préavis n'ont pas été annulés ont interjeté appel. La Cour d'appel fédérale a annulé les préavis décernés contre le D<sup>r</sup> Craig Anhorn, mais a rejeté les autres appels.

Origine :	Cour d'appel fédérale
N° du greffe :	25810
Arrêt de la Cour d'appel :	Le 17 janvier 1997
Avocats :	Earl A. Cherniak, c.r., Kirk F. Stevens et Christopher I. Morrison, pour les appelants La Croix-Rouge canadienne et autres. Randy T. Hughes et Tracey Patel, pour l'appelante Bayer, Inc. Philip Spencer, c.r., pour l'appelante Baxter Corporation. Paul Lamek, c.r., et Angus T. McKinnon, pour l'intimé.



**25811 *Helmut Oberlander v. The Minister of Citizenship and Immigration; Erichs Tobiass v. The Minister of Citizenship and Immigration; Johann Dueck v. The Minister of Citizenship and Immigration***

Procedural Law - Courts - Judges - Independence of judiciary - Reasonable apprehension of bias - Whether the majority of the Federal Court of Appeal erred in law in holding that the Respondent Minister has a right of appeal from the stay of proceedings in light of the explicit prohibition against appeals in s. 18(3) of the *Citizenship Act* - Whether *ex parte* meeting and correspondence between an Assistant Deputy Attorney General of the Department of Justice of the Government of Canada and the Chief Justice of Federal Court regarding Appellants' cases, and an intervention by the Chief Justice of the Federal Court in the cases, raised a reasonable apprehension of bias and warranted stays of proceedings.

The Respondent filed three Notices of Reference with the Federal Court, Trial Division, alleging that each Appellant had been admitted to Canada for permanent residence and granted Canadian citizenship based on false representations, fraud, or known concealment of material circumstances. The Minister of Citizenship sought a declaration that would allow him to make a report to the Governor in Council, seeking the cessation of the Appellants' citizenships. On June 30, 1995, the Associate Chief Justice, who was responsible for managing the three cases, ordered the matters joined for the purposes of resolving the questions regarding procedure and disclosure. On December 12, 1995, oral argument commenced on the motions for disclosure but only one party had time to make submissions, therefore, a continuation of oral arguments was scheduled for May 15 and 16, 1996.

On March 1, 1996, the Chief Justice of the Federal Court and the Assistant Deputy Attorney General of the Department of Justice met and discussed the Appellants' cases without the Appellants' counsel being present at the meeting or being notified of the meeting. The Assistant Attorney General wrote that in the meeting he had advised the Chief Justice that the Attorney General of Canada was being asked to consider taking a Reference to this Court to determine some preliminary points of law regarding the Appellants' cases primarily because the Federal Court, Trial Division was unable or unwilling to proceed with the cases expeditiously. The Chief Justice replied in writing that he had discussed the concerns raised by the Assistant Deputy Attorney General with the Associate Chief Justice and that the Associate Chief Justice was prepared to take all reasonable steps possible to avoid a Reference to this Court.

The correspondence was disclosed to counsel for the Appellants approximately one week after the meeting. On April 30, 1996, the Associate Chief Justice decided that carriage of these cases should be turned over to another judge. The parties were notified of his decision on May 6, 1996. The Appellants then successfully brought motions to stay the proceedings before Cullen J. of the Federal Court, Trial Division. The Respondent appealed. A majority of the Court of Appeal dismissed motions to quash the appeals and the same panel unanimously allowed the appeal.

Origin of the case:	Federal Court of Appeal
File No.:	25811
Judgment of the Court of Appeal:	December 12, 1996
Counsel:	Michael Code for the Appellant Oberlander Gesta J. Abols for the Appellant Tobiass Donald Bayne for the Appellant Dueck George Thomson for the Respondent

**25811 *Helmut Oberlander c. Le ministre de la Citoyenneté et de l'Immigration; Erichs Tobiass c. Le ministre de la Citoyenneté et de l'Immigration; Johann Dueck c. Le ministre de la Citoyenneté et de l'Immigration***

Droit procédural - Tribunaux - Juges - Indépendance du pouvoir judiciaire - Crainte raisonnable de partialité - Les juges majoritaires de la Cour d'appel fédérale ont-ils commis une erreur de droit en statuant que le ministre intimé a le droit d'interjeter appel d'une suspension des procédures compte tenu du fait que l'art. 18(3) de la *Loi sur la citoyenneté* interdit explicitement les appels? - Une rencontre *ex parte* et un échange de lettres entre un sous-procureur général adjoint du ministère de la Justice du gouvernement du Canada et le juge en chef de la Cour fédérale relativement aux affaires des appelants, et une intervention du juge en chef de la Cour fédérale dans ces affaires, ont-ils soulevé une crainte raisonnable de partialité et justifiaient-ils les suspensions des procédures?

L'intimé a déposé auprès de la Section de première instance de la Cour fédérale trois avis de renvoi dans lesquels il affirmait que chaque appelant a obtenu l'admission au Canada à titre de résident permanent puis la citoyenneté canadienne par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels. Le ministre de la Citoyenneté a demandé le prononcé d'un jugement déclaratoire qui lui permettrait d'adresser au gouverneur en conseil un rapport demandant la révocation de la citoyenneté des appelants. Le 30 juin 1995, le juge en chef adjoint, qui était responsable de la gestion des trois instances, a ordonné la jonction des instances afin de régler les questions touchant la procédure et la communication de documents. Le 12 décembre 1995, les débats ont commencé dans le cadre des requêtes en communication, mais une seule partie a eu le temps de présenter ses arguments, de sorte que la poursuite des débats a été fixée aux 15 et 16 mai 1996.

Le 1<sup>er</sup> mars 1996, le juge en chef de la Cour fédérale et le sous-procureur général adjoint du ministère de la Justice se sont rencontrés pour discuter des affaires des appelants sans que les avocats des appelants n'assistent à la rencontre ou ne soient informés de sa tenue. Le sous-procureur général adjoint a écrit que, lors de cette rencontre, il a informé le juge en chef que le procureur général du Canada était invité à envisager de présenter un renvoi à notre Cour pour régler certaines questions de droit préliminaires concernant les affaires des appelants, principalement parce que la Section de première instance de la Cour fédérale ne pouvait pas ou ne voulait pas instruire les affaires avec diligence. Le juge en chef a répondu par écrit qu'il avait discuté des préoccupations exprimées par le sous-procureur général adjoint avec le juge en chef adjoint et que ce dernier était disposé à prendre toutes les mesures nécessaires pour éviter un renvoi devant notre Cour.

L'échange de lettres a été porté à la connaissance des avocats des appelants environ une semaine après la rencontre. Le 30 avril 1996, le juge en chef adjoint a décidé que l'instruction de ces affaires devrait être confiée à un autre juge. Les parties ont été informées de sa décision le 6 mai 1996. Les appelants ont ensuite présenté des requêtes en suspension des procédures, auxquelles le juge Cullen de la Section de première instance a fait droit. L'intimé a interjeté appel. La Cour d'appel à la majorité a rejeté des requêtes en annulation des appels et la même formation a accueilli l'appel à l'unanimité.

Origine :	Cour d'appel fédérale
N° du greffe :	25811
Arrêt de la Cour d'appel :	Le 12 décembre 1996
Avocats :	Michael Code pour l'appelant Oberlander Gesta J. Abols pour l'appelant Tobiass Donald Bayne pour l'appelant Dueck George Thomson pour l'intimé

**25262 *André Côté et al. v. George Addy***

Proceedings - Courts - Appeal - Jurisdiction - Judicial review - Legislation - Interpretation - *Canadian Charter of Rights and Freedoms* - Search - Seizure - Search warrants issued under s. 15 of the *Competition Act* - Motion to rescind the search warrants based, *inter alia*, on ss. 7 and 8 of the *Canadian Charter* - Motion dismissed by the Trial Division - Arguments based on ss. 7 and 8 of the *Canadian Charter* found premature - Appeal to the Federal Court of Appeal dismissed for want of jurisdiction - No right to appeal - Whether the majority of the Federal Court of Appeal erred in finding that it had no jurisdiction to ascertain the propriety of a judgment in review of an order issuing search warrants - Application of s. 27(1) of the *Federal Court Act*.

In 1994, in accordance with the *Competition Act*, R.S.C. 1985, c. C-34, one of the Respondent's representatives investigated the services provided by the Appellants, notaries in the Rimouski and Rivière du Loup area, with respect to immovable transactions. On March 16 and 22, 1995, in an information laid before McGillis J. of the Federal Court - Trial Division, he alleged that between January 1994 and February 1995, the Appellants had unlawfully conspired to unduly lessen competition in services provided with respect to immovable transactions, contrary to s. 45(1)(c) of the *Competition Act*. On March 16 and 22, 1995 respectively, on an *ex parte* application, McGillis J. issued search warrants authorizing the Director of Investigation and Research and his representatives to search certain premises, including the Appellants' offices, for records and other things and to copy them or seize them for examination and copying.

On April 24, 1995, the Appellants filed a motion to have the orders made *ex parte* by McGillis J. rescinded, to have all the things seized and the copies and extracts thereof returned and to have all the records and things seized placed in escrow pending final judgment. In their motion under Rule 330 of the *Federal Court Rules*, the Appellants argued that McGillis J.'s orders violated ss. 7 and 8 of the *Canadian Charter* and were not authorized by s. 15(1) of the *Competition Act* in so far as the information did not establish any reasonable grounds to believe that an offence had been committed. The Appellants also argued that the description of the things to be seized was too broad and that the authorization to search was an abuse of process.

On October 17, 1995, Richard J. of the Federal Court - Trial Division found that there were grounds justifying the issuance of the search warrants. He also ruled that the arguments based on ss. 7 and 8 of the *Canadian Charter* were premature. He therefore dismissed the Appellants' motion. The Federal Court of Appeal dismissed the Appellants' appeal for want of jurisdiction. Décaré J.A., dissenting, would have allowed the appeal, permitted the Appellants to apply to the Court for review of the *ex parte* orders and, rendering the judgment that he felt should have been rendered, would have allowed the application for review, rescinded the search warrants and ordered that all the things seized be returned to the Appellants.

Origin of the case:	Quebec
File No.:	25262
Judgment of the Court of Appeal:	February 5, 1996
Counsel:	Bruno J. Pateras, Q.C., and Danielle Barot for the Appellants François Rioux for the Respondent

**25262 M. André Côté et al c. M. George Addy**

Procédures - Tribunaux - Appel - Compétence - Contrôle judiciaire - Législation - Interprétation - *Charte canadienne des droits et libertés* - Perquisitions - Saisie - Mandats de perquisition décernés en application de l'art. 15 de la *Loi sur la concurrence* - Requête en annulation des mandats de perquisition fondée *inter alia* sur les art. 7 et 8 de la *Charte canadienne* - Requête rejetée en Section de première instance - Arguments fondés sur les art. 7 et 8 de la *Charte canadienne* jugés prématurés - Appel à la Cour d'appel fédérale rejeté, faute de compétence - Inexistence du droit d'appel - La Cour d'appel fédérale, à la majorité, a-t-elle erré en concluant qu'elle n'a pas compétence pour vérifier le bien-fondé d'un jugement en révision d'une ordonnance portant délivrance de mandats de perquisition? - Application du par. 27(1) de la *Loi sur la Cour fédérale*.

En 1994, conformément à la *Loi sur la concurrence*, L.R.C. (1985), chap. C-34, un représentant de l'intimé fait enquête sur les services offerts par les Appelants, des notaires de la région de Rimouski et de Rivière du Loup, en matière de transactions immobilières. Les 16 et 22 mars 1995, dans une dénonciation déposée devant le juge McGillis de la Section de première instance de la Cour fédérale, il reproche aux Appelants d'avoir, entre les mois de janvier 1994 et février 1995, illégalement comploté en vue de réduire indûment la concurrence dans les services offerts en matière de transactions immobilières, contrevenant ainsi à l'alinéa 45(1)c) de la *Loi sur la concurrence*. Les 16 et 22 mars 1995 respectivement, dans une demande *ex parte*, le juge McGillis délivre des mandats de perquisition autorisant le directeur des enquêtes et recherches et ses représentants à perquisitionner certains lieux, dont les bureaux des Appelants, en vue d'obtenir des documents et autres objets et d'en faire copie ou de les emporter pour examen ou pour en faire copie.

Le 24 avril 1995, les Appelants déposent une requête visant à faire annuler les ordonnances rendues *ex parte* par le juge McGillis, à ordonner le retour de tous les effets saisis ainsi que copies et extraits de ceux-ci et à faire entiercer tous les documents et effets saisis en attendant jugement final. Dans une requête fondée sur l'art. 330 des *Règles de la Cour fédérale*, les Appelants prétendent que les ordonnances du juge McGillis portent atteinte aux art. 7 et 8 de la *Charte canadienne*, ne sont pas autorisées par le par. 15(1) de la *Loi sur la concurrence* dans la mesure où la dénonciation n'établit aucun motif raisonnable de croire qu'une infraction a été commise. Les Appelants prétendent également que la description des effets à saisir est trop large et que l'autorisation de perquisitionner constitue un abus de procédures.

Le 17 octobre 1995, le juge Richard de la Section de première instance de la Cour fédérale conclut à l'existence de motifs justifiant la délivrance des mandats de perquisition. Quant aux arguments fondés sur les art. 7 et 8 de la *Charte canadienne*, le juge Richard les estime prématurés. Il rejette donc la requête des Appelants. La Cour d'appel fédérale rejette l'appel des Appelants, faute de compétence. Le juge Décary, dissident, aurait accueilli l'appel, permis aux Appelants de s'adresser à la Cour en révision des ordonnances rendues *ex parte* et, rendant le jugement qui aurait dû être rendu à son avis, il aurait accueilli la demande de révision, annulé les mandats de perquisition et ordonné que tous les effets saisis soient retournés aux Appelants.

Origine:	Québec
N° du greffe:	25262
Arrêt de la Cour d'appel:	Le 5 février 1996
Avocats:	Bruno J. Pateras Q.C. et Danielle Barot pour l'appelants François Rioux pour l'intimé

## DEADLINES: APPEALS

## DÉLAIS: APPELS

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The Fall Session of the Supreme Court of Canada will commence October 6, 1997.

La session d'automne de la Cour suprême du Canada commencera le 6 octobre 1997.

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.

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SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

- 1997 -

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	10	11	12
13	14	15	16	17	18	19
20	M 21	22	23	24	25	26
27	28	29	30			
30						

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

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  
8 motion and conference days / journées requêtes, conférences  
1 holidays during sitting days / jours fériés durant les sessions