

**SUPREME COURT
OF CANADA**

**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

May 9, 1997

857 - 904

le 9 mai 1997

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**APPLICATIONS FOR LEAVE TO
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Robert Thérien
Gérald R. Tremblay, c.r.
McCarthy Tétrault

c. (25848)

Madame Marcelle Pellerin et al. (Qué.)

Louis Demers
de Grandpré, Godin

DATE DE PRODUCTION 22.4.1997

Nu-Pharm Inc.

H.B. Radomski
Goodman Phillips & Vineberg

v. (25956)

Janssen Pharmaceutica Inc. et al. (F.C.A.)(Ont.)

Anthony Greber
Gowling, Strathy & Henderson

FILING DATE 21.4.1997

Hagop Kuyumcuoglu

Hagop Kuyumcuoglu

v. (25957)

Her Majesty The Queen (Ont.)

J.A. Ramsey
Crown Law Office Criminal

FILING DATE 15.4.1997

Russell Thomas Taylor

Eric T. Sigurdson
MacDonald, Sigurdson

v. (25960)

Her Majesty The Queen (F.C.A.)(Ont.)

Alexandra Brown
Dept. of Justice

FILING DATE 18.4.1996

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

Stephen John Schrang
Peter D. Ryan

v. (25880)

United States of America (B.C.)

Valerie Hartney
Dept. of Justice

FILING DATE 25.4.1997

Michelle Marie Pierce

Bruce Durno

v. (25885)

Her Majesty The Queen (Ont.)

Ian R. Smith
Min. of the A.G.

FILING DATE 28.4.1997

Victor Brian Olson

Sidney Green, Q.C.

v. (25959)

The Law Society of Manitoba (Man.)

Garth H. Smorang
Deeley, Fabbri, Sellen

FILING DATE 24.4.1997

Fednav International Ltd.

David G. Colford
Brisset Bishop

v. (25961)

Sidmar N.V., Tradeabed Inc. et al. (F.C.A.)

Louis Buteau
Sproule Castonguay Pollack

FILING DATE 25.4.1997

MAY 2, 1997 / LE 2 MAI 1997

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

Antonio Silvini

v. (25747)

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

NATURE OF THE CASE

Criminal Law - Procedural Law - Cross-examination during a *voir dire* - Accused granted a limited right to cross-examine an affiant during a *voir dire* - Crown counsel granted right to cross-examine Applicant and his witness during the *voir dire* - Whether trial judge erred by limiting accused's cross-examination - Whether trial judge erred by permitting Crown's cross-examination - Whether the *voir dire* violated sections 7 and 11(d) of the *Charter*.

PROCEDURAL HISTORY

June 29, 1993
Ontario Court (General Division) (Matlow J.)

Conviction: conspiracy to traffic in a narcotic
Sentence: six years imprisonment

December 11, 1996
Court of Appeal for Ontario
(Morden A.C.J., Carthy and Rosenberg JJ.A.)

Appeal allowed in part; sentence reduced to four years
imprisonment

January 17, 1997
Supreme Court of Canada

Application for leave to appeal filed

John Van Rooyen

v. (25800)

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

NATURE OF THE CASE

Criminal law - Impaired driving - "Over 80" - Inconsistent verdicts - Whether the Applicant's acquittal on a charge of impaired driving was inconsistent with his conviction on a charge of "over 80".

PROCEDURAL HISTORY

June 26, 1995
Ontario Court (Provincial Division) (Ord P.C.J.)

Acquittal: impaired driving

June 29, 1995
Ontario Court (Provincial Division) (Ord P.C.J.)

Conviction: "over 80"

December 18, 1995
Ontario Court (General Division) (McKay J.)

Applicant's summary conviction appeal dismissed

January 20, 1997
Ontario Court of Appeal
(Robins, Moldaver, Goudge JJ.A.)

Appeal dismissed

March 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

David Allan Nelson

v. (25875)

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

NATURE OF THE CASE

Criminal law - Unreasonable verdict - Appreciation of the evidence - Whether the trial judge misapprehended the evidence resulting in an unreasonable verdict.

PROCEDURAL HISTORY

June 2, 1993
Ontario Court (General Division) (Goodearle J.)

Conviction: second degree murder

June 13, 1996
Ontario Court of Appeal
(Labrosse, Abella, Austin JJ.A.)

Appeal dismissed

March 10, 1996
Supreme Court of Canada

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

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

A. Gary Webster

v. (25740)

Her Majesty The Queen (Crim.)(P.E.I.)

NATURE OF THE CASE

Criminal law - Jury charge - Evidence - Applicant convicted of indecent assault, gross indecency and assault with intent to commit buggery on three complainants - Assaults taking place over a period of years commencing when complainants were nine years of age - Applicant not testifying at trial - Whether trial judge erred in instructing the jury with respect to similar fact evidence - Trial - Whether trial judge erred in charging the jury regarding reasonable doubt - Whether trial judge erred in failing to raise with the jury the possibility of collusion and collaboration of the witnesses - Whether Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code*, R.S.C. 1985, c. C-46.

PROCEDURAL HISTORY

February 9, 1994
Supreme Court of Prince Edward Island - Trial Division
(Campbell J.)

Conviction: indecent assault, assault with intent, gross
indecenty, Sentence: 9 years

November 21, 1996
Supreme Court of Prince Edward Island - Appeal
Division (Carruthers, Mitchell J.J.A. and MacDonald
J.A.(ad hoc))

Appeals dismissed

January 15, 1997
Supreme Court of Canada

Application for leave to appeal filed

Wade Gerald Fleet

v. (25863)

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

NATURE OF THE CASE

Criminal law - Procedure - Whether the trial judge deprived the Applicant of his right to address the jury last - Whether the trial judge erred in charging the jury on opportunity where the sole issue before the jury was the intent of the Applicant to commit second or first degree murder - Planning and deliberation - Whether the trial judge adequately instructed the jury on planning and deliberation - Whether the trial judge's *Vetrovec* warning was adequately clear and sharp.

PROCEDURAL HISTORY

December 6, 1994
Nova Scotia Supreme Court (Trial Division)
(Palmer A.C.J.N.S.)

Conviction: first degree murder

August 15, 1996
Nova Scotia Court of Appeal
(Clarke C.J.N.S., Hart and Jones JJ.A.)

Appeal dismissed

March 7, 1997
Supreme Court of Canada

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

**Anthony W.J. Whitford, Dave Turner and The Government of The Northwest Territories as represented by
the Commissioner of the Northwest Territories**

v. (25788)

**Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill, Judith Pander, Ella May Carol Riggs, Doreen Vodnoski,
Carlene Dawn Rowsell, Karen Russell and Bonnie Lou Sa (N.W.T.)**

NATURE OF THE CASE

Procedural law - Civil Procedure - Pre-trial procedure - Striking out pleadings - Whether allegations based on a breach of a private law duty of care as regulators of the mining industry should be struck out - Did the Court of Appeal err in deciding that the Respondents' amended statement of claim should not be struck out - Rules of Court [N.W.T.], Rule 124A(1)(a).

PROCEDURAL HISTORY

April 24, 1996
Supreme Court of Northwest Territories (Vertes, J.)

Applicants' application to strike Respondents' amended
statement of claim allowed

November 25, 1996
Court of Appeal of the Northwest Territories
(Maddison, Coté and Richard JJ.A.)

Respondents' appeal allowed

January 24, 1997
Supreme Court of Canada

Application for leave to appeal filed

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

Domenic Condello

v. (25893)

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

NATURE OF THE CASE

Criminal law - Trial - Jury - Charge - Conspiracies - Procedural law - Evidence - Witnesses - Importing and trafficking in cocaine - Whether the Court of Appeal erred in finding that evidence of a transaction which occurred during the same time frame and involved cocaine packaged in the same way, and other evidence were admissible - Whether the Court of Appeal erred in applying the "no substantial wrong" provision to dismiss the Applicant's appeal, notwithstanding the errors made at trial, on the basis that the evidence was "overwhelming".

PROCEDURAL HISTORY

December 2, 1992
Ontario Court (General Division) (O'Connell J.)

Conviction: Conspiracy to import and traffic cocaine

December 15, 1992
Ontario Court (General Division) (O'Connell J.)

Sentence: Fourteen years incarceration

April 13, 1995
Court of Appeal for Ontario
(Brooke, LaBrosse and Abella JJ.A.)

Appeal against sentence allowed; appeal against conviction dismissed

April 7, 1997
Supreme Court of Canada (Iacobucci J.)

Application for extension of time granted

March 26, 1997
Supreme Court of Canada

Application for leave to appeal conviction filed

Robert Walton

v. (25933)

Annie Walton (Ont.)

NATURE OF THE CASE

Family law - Divorce - Custody and access - Parties separating due to Applicant's irrational and threatening behaviour - Psychological assessment recommending custody to Respondent - Respondent awarded custody at trial - No unsupervised access to Applicant until psychiatric report completed - Applicant claiming violations of *Charter* and *Criminal Code* in the conduct of the trial and appeal - Maintenance - Applicant earning \$8,000 per month - Respondent employed as part time nurse - Applicant in arrears of support for three children - Applicant claiming he cannot pay child and spousal support ordered - Division of property - Court awarding equalization of net family properties and lump sum spousal support - Evidence - Whether evidence improperly admitted or excluded - Whether Applicant's ss. 2(b), 7, 13, 15, and 24 *Charter* rights violated - Whether Court of Appeal failed to enforce mandatory requirements of the *Divorce Act*.

PROCEDURAL HISTORY

December 22, 1995
Ontario Court (General Division) Family Court
Beckett J.

Divorce granted; Judgment for the Respondent in terms of custody, access, spousal and child support, and equalization of net family properties

January 12, 1996
Ontario Court (General Division) Family Court
Beckett J.

Order for costs in favour of Respondent

February 18, 1997
Court of Appeal of Ontario
(Abella, Laskin, Moldaver JJ.A.)

Appeal on all issues except order for costs dismissed

April 2, 1997
Supreme Court of Canada

Application for leave to appeal filed

The Chippewas of Kettle and Stony Point

v. (25795)

The Attorney General of Canada, The Corporation of Township (Ont.)

NATURE OF THE CASE

Indians - Statutes - Interpretation - *Indian Act*, S.C. 1906, c.20, ss.48, 49, 50 - Whether the conduct of the Indian agent and the purchaser of reserve lands in respect of the surrender of those lands invalidates the surrender - Whether the doctrines of duress and undue influence invalidate the surrender of the reserve lands - Whether the surrender incorporated the terms upon which the surrender vote was premised - If a surrender is given in respect of a specific offer, what effect does the repudiation and termination of the offer have - Will the conduct in issue "taint" the surrender as suggested in *Blueberry Indian Band v. Canada*, [1995] 4 S.C.R. 344?

PROCEDURAL HISTORY

August 18, 1995
Ontario Court (General Division)
(Killeen J.)

Respondent's motion for summary judgment granted; Applicant's pleadings against the validity of the surrender dated March 30, 1927 and the patent dated June 27, 1929 dismissed

December 2, 1996
Court of Appeal for Ontario
(Brooke, Osborne and Laskin JJ.A.)

Appeal dismissed

January 30, 1997
Supreme Court of Canada

Application for leave to appeal filed

MAY 2, 1997 / LE 2 MAI 1997

25895 **CANADA SOUTHERN PETROLEUM LTD., MAGELLAN PETROLEUM CORPORATION and PANTEPEC INTERNATIONAL, INC. v. AMOCO CANADA PETROLEUM COMPANY LTD., AMOCO PRODUCTION COMPANY, AMOCO CANADA RESOURCES LTD., (formerly DOME PETROLEUM LIMITED), ANDERSON OIL AND GAS INC. (formerly COLUMBIA GAS DEVELOPMENT OF CANADA LTD.), MOBIL OIL CANADA, LTD., IMPERIAL OIL RESOURCES LIMITED (formerly ESSO RESOURCES CANADA LIMITED), MOBIL RESOURCES LTD. and MOBIL OIL CANADA PROPERTIES** (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

Labour Law - Law of Professions - Choice of Counsel - Conflict of Interest - Solicitor transfers to another firm that is representing opponents to a former client of the solicitor in civil litigation - Whether solicitor's new firm should be allowed to continue to represent the former client's opponents.

PROCEDURAL HISTORY

| | |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------|
| December 17, 1996 Court of Queen's Bench of Alberta (Moore C.J.) | Application to allow continuance of choice of counsel granted |
| February 25, 1997 Court of Appeal of Alberta (O'Leary, Picard and Hunt JJ.A.) | Appeal dismissed |
| March 18, 1997 Supreme Court of Canada | Application for leave to appeal filed |

MAY 8, 1997 / LE 8 MAI 1997

25705 **HER MAJESTY THE QUEEN v. NELS GUSTAV HANSON** (Crim.)(B.C.)

CORAM: **The Chief Justice and Cory and McLachlin JJ.**

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Verdict - Miscarriage of justice - Whether the Court of Appeal erred in law by substituting its own interpretation of the evidence for that of the trier of fact by characterizing the trial judge's view as a misapprehension of the evidence - Whether the Court of Appeal erred in ordering a new trial under s. 686(1)(a)(iii) rather than entering an acquittal under s. 686(1)(a)(i)

PROCEDURAL HISTORY

February 10, 1995
Supreme Court of British Columbia (Collver J.)

Convictions: indecent assault and gross indecency

October 23, 1996
Court of Appeal for British Columbia
(McEachern, Newbury and Proudfoot JJ.A)

Appeal allowed; new trial ordered

December 19, 1996
Supreme Court of Canada

Application for leave to appeal filed

25751 **TRAVIS ORLOWSKI v. THE DIRECTOR, FORENSIC PSYCHIATRIC INSTITUTE, THE
ATTORNEY GENERAL OF BRITISH COLUMBIA, AND THE ATTORNEY GENERAL OF
CANADA** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Not criminally responsible by reason of mental disorder - Whether s. 672.54 infringes a detainee's rights under ss. 7, 9 or 15 of the *Charter*.

PROCEDURAL HISTORY

September 25, 1996
British Columbia Review Board

Applicant discharged on conditions

November 19, 1996
Court of Appeal for British Columbia (McEachern
C.J.B.C, Gibbs and Williams [dissenting] JJ.A.)

Appeal dismissed

January 16, 1997
Supreme Court of Canada

Application for leave to appeal filed

25855 **GORDON WAYNE BESE v. THE DIRECTOR, FORENSIC PSYCHIATRIC INSTITUTE
AND ATTORNEY GENERAL OF BRITISH COLUMBIA** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Not criminally responsible by reason of mental disorder - Is there a burden on any party under s. 672.54 - Does s. 672.54 unfairly subject an accused to indeterminate detention contrary to ss. 7 and 15 of the *Charter* - Is s. 672.54 vague and over broad contrary to s. 7 of the *Charter* .

PROCEDURAL HISTORY

July 14, 1995
British Columbia Review Board

Applicant discharged on conditions

November 19, 1996
British Columbia Court of Appeal (McEachern C.J.B.C.,
Gibbs, Williams [dissenting] JJ.A.)

Appeal dismissed

February 14, 1997
Supreme Court of Canada

Application for leave to appeal filed

25856 **JOSEPH RONALD WINKO v. THE DIRECTOR, FORENSIC PSYCHIATRIC INSTITUTE
AND ATTORNEY GENERAL OF BRITISH COLUMBIA** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Not criminally responsible by reason of mental disorder - Is there a burden on any party under s. 672.54 - Does s. 672.54 unfairly subject an accused to indeterminate detention contrary to ss. 7 and 15 of the *Charter* - Is s. 672.54 vague and over broad contrary to s. 7 of the *Charter*.

PROCEDURAL HISTORY

May 29, 1995
British Columbia Review Board

Applicant discharged on conditions

November 19, 1997
Court of Appeal for British Columbia (McEachern
C.J.B.C., Gibbs and Williams [dissenting] JJ.A.)

Appeal dismissed

February 14, 1997
Supreme Court of Canada

Application for leave to appeal filed

25443 **FRANCIS JOSEPH GODIN v. HER MAJESTY THE QUEEN** (Crim.)(P.E.I.)

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 - Judicial bias - Whether a reasonable apprehension of bias exists if the trial judge in this case once acted as counsel for the Applicant in another criminal matter - Whether trial judge's refusal to recuse herself constitutes an infringement of s. 11(d) of the *Charter*.

PROCEDURAL HISTORY

February 23, 1996
Supreme Court of Prince Edward Island (Trial Division)
(DesRoches J.)

Application for prohibition (with certiorari in aid) to
prohibit the trial judge from proceeding with the
Applicant's case dismissed

July 3, 1996
Supreme Court of Prince Edward Island
(Appeal Division) (Carruthers C.J.P.E.I., Mitchell,
McQuaid J.J.A.)

Appeal dismissed

August 16, 1996
Supreme Court of Canada

Application for leave to appeal filed

25444 **JERRY LEE DUNN v. HER MAJESTY THE QUEEN** (Crim.)(P.E.I.)

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 - Judicial bias - Whether a reasonable apprehension of bias exists if the trial judge in this case once acted as counsel for the Applicant in another criminal matter - Whether trial judge's refusal to recuse herself constitutes an infringement of s. 11(d) of the *Charter*.

PROCEDURAL HISTORY

February 23, 1996
Supreme Court of Prince Edward Island,
Trial Division (DesRoches J.)

Application for an order of prohibition (with certiorari
in aid) to prohibit trial judge from proceeding with trial
dismissed

July 3, 1996
Supreme Court of Prince Edward Island
(Appeal Division) (Carruthers C.J. P.E.I., Mitchell and
McQuaid J.J.A.)

Appeal dismissed

August 16, 1996
Supreme Court of Canada

Application for leave to appeal filed

25561 **MICHAEL COLIN HODGSON v. HER MAJESTY THE QUEEN** (Crim.)(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

Criminal law - Evidence - Confessions - Whether confession made to complainant's parents was made to persons in authority - Whether accused bears onus of raising issue of voluntariness of confession where confession made to person not ordinarily a person in authority.

PROCEDURAL HISTORY

February 4, 1994
Ontario Court (General Division) (Paisley J.)

Conviction: Sexual assault

June 25, 1996
Court of Appeal for Ontario
(Finlayson, Abella, Austin JJ.A.)

Conviction appeal dismissed; sentence appeal allowed

October 25, 1996
Supreme Court of Canada

Application for leave to appeal filed

25559 **TORONTO COLLEGE PARK LTD. v. HER MAJESTY THE QUEEN** (F.C.A.)

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

Taxation - Statutes - Assessment - Accounting - Interpretation - Tenant inducement payments - Whether the Federal Court of Appeal erred in concluding that the payor of a lease inducement payment was required to amortize it over the term of the lease - Whether the Federal Court of Appeal elevated the "matching principle" to a paramount rule of law.

PROCEDURAL HISTORY

December 8, 1993
Federal Court Trial Division (Simpson J.)

Applicant's appeal of tax assessment allowed

June 25, 1996
Federal Court of Appeal
(Strayer, Robertson, JJ.A., Chevalier D.J.)

Appeal allowed

October 24, 1996
Supreme Court of Canada

Application for leave to appeal allowed

25674 **IKEA LTD. v. HER MAJESTY THE QUEEN** (F.C.A.)

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

Taxation - Statutes - Assessment - Accounting - Interpretation - Tenant inducement payments - Whether the Federal Court of Appeal erred in concluding that the recipient of a lease inducement payment was required to declare the payment in the year in which it was received - Whether the Federal Court of Appeal erred in failing to distinguish *Kenneth B.S. Robertson Ltd. v. M.N.R.*, 2 D.T.C. 655 (Ex. Ct.).

PROCEDURAL HISTORY

December 31, 1993
Tax Court of Canada (Bowman J.T.C.C.)

Appeal from the assessment for the 1986 year dismissed

September 19, 1996
Federal Court of Appeal
(Linden, Robertson, McDonald JJ.A.)

Appeal dismissed

December 2, 1996
Supreme Court of Canada

Application for leave to appeal and application for
extension of time filed

25789 **HELEN MARIE BOTTRELL v. HERBERT BRUCE BOTTRELL** (B.C.)

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

Family law - Division of Property - Maintenance - Evidence - Applicant wife's counter-petition for division of family assets pursuant to *Family Relations Act*, R.S.B.C. 1979, c. 121, and maintenance dismissed - Little or unsatisfactory evidence to support her claims - Protracted proceedings - Failure on part of Applicant's counsel to take advantage of numerous opportunities to present evidence - Evidence deficient in any event - Whether Court of Appeal erred in deciding that trial judge did not err in law and in misapprehending the evidence before him - Whether Court of Appeal erred in deciding that the rulings of the trial judge were solely in his discretion and that the discretion was properly exercised.

PROCEDURAL HISTORY

| | |
|-----------------------------------------------------------------------------------------------|-----------------------------------------|
| February 22, 1994 Supreme Court of British Columbia (Bouck J.) | Applicant's counter-petition dismissed |
| November 27, 1997 Court of Appeal for British Columbia (Cumming, Finch, and Ryan JJ.A.) | Applicant's appeal dismissed with costs |
| January 24, 1997 Supreme Court of Canada | Application for leave to appeal filed |

25689 **NINAL KADENKO, BORIS FEDOSOV, ALEXANDER FEDOSOV et MILA FEDOSOV c. LE MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION** (C.A.F.)(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

Immigration - Revendication du statut de réfugié - Citoyens d'Israël d'origine ukrainienne et de religion chrétienne - La Cour d'appel fédérale a-t-elle erré en concluant que le refus de certains policiers d'intervenir ne saurait en lui-même rendre l'État incapable de le faire? - A-t-elle erré en tenant pour acquis que l'État d'Israël possède des institutions politiques et judiciaires capables de protéger ses citoyens? - A-t-elle erré en statuant que le fardeau de preuve qui incombe au revendicateur sur la question de la capacité de l'État de protéger ses ressortissants est directement proportionnel au degré de démocratie atteint chez l'État en cause? - *Canada (Procureur général) c. Ward*, [1993] 2 R.C.S. 689.

HISTORIQUE PROCÉDURAL

Le 31 janvier 1994
Commission de l'immigration et du statut de réfugié
(Section du statut de réfugié)

Revendication par les demandeurs du statut de réfugié
refusée

Le 9 juin 1995
Cour fédérale (Section de première instance)
(Tremblay-Lamer j.)

Demande de contrôle judiciaire accordée, décision de la
Commission cassée et affaire renvoyée devant un
nouveau panel; certification d'une question en vertu de
l'art. 83(1) de la *Loi sur l'immigration*

Le 15 octobre 1996
Cour d'appel fédérale
(Hugessen, Décary et Chevalier jj.c.a.)

Appel accueilli, réponse négative à la question certifiée,
jugement de la Section de première instance cassé et
demande de contrôle judiciaire rejetée

Le 16 décembre 1996
Cour suprême du Canada

Demande d'autorisation d'appel déposée

25730 **WALTER KOSZIL v. NATIONAL BANK OF CANADA** (B.C.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Banks/banking operations - Loan - Whether the Court of Appeal erred in failing find a fiduciary duty owed by a bank to a borrower - Whether the Court of Appeal erred in failing to hold the applicant had a right to call a chartered accountant as an expert witness - Whether the Court of Appeal erred in basing their decision on findings of credibility adverse to the applicant - Whether the Court of Appeal erred in restricting their consideration of the evidence to events up to about the end of November, 1979.

PROCEDURAL HISTORY

December 16, 1994
Supreme Court of British Columbia (Bouck J.)

Respondent's claim allowed; Applicant's counterclaim dismissed

November 5, 1996
Court of Appeal for British Columbia
(Southin, Donald, Newbury JJ.A.)

Appeal dismissed

December 20, 1996
Court of Appeal for British Columbia
(Southin, Donald and Newbury JJ.A.)

Application for rehearing dismissed

January 6, 1997
Supreme Court of Canada

Application for leave to appeal filed

25754 **RONALD CROSS v. HER MAJESTY THE QUEEN** (Crim.)(Que.)

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 - Defence - Evidence - Application for separate trials or to sever counts - Where an accused, on a motion to sever counts and order separate trials pursuant to s. 591 of the *Criminal Code*, intends to give evidence with regards to an identifiable group of counts and to remain silent with respect to another identifiable group of counts: Is the accused under an obligation to disclose his defence and if so to what degree? - Assuming the accused is under an obligation to disclose his defence, is it not sufficient if it can be demonstrated that there is an air of reality to the defence?

PROCEDURAL HISTORY

September 26, 1991
Superior Court of Québec (Greenberg J.)

Accused's pre-trial motion to sever counts and be tried separately dismissed

December 30, 1991
Superior Court of Québec (Greenberg J.)

Applicant's motion to sever counts and be tried separately dismissed

November 15, 1996
Cour d'appel du Québec
(Rothman, Proulx, and Robert JJ.A)

Appeal dismissed

January 14, 1997
Supreme Court of Canada

Application for leave to appeal filed

25803 **GORDON DOMM v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Disobeying a lawful order - Publication bans - Collateral attack - Whether the common law rule against collateral attack should be relaxed where an accused charged with disobeying a lawful order seeks to challenge the lawfulness of the underlying court order as part of his defence - Whether an accused can be convicted of violating a court order even where the order is constitutionally invalid - Whether the rule against collateral attack must give way when its application would restrict an accused's right to make full answer and defence under s. 7 of the *Charter*.

PROCEDURAL HISTORY

May 30, 1994
Ontario Court (General Division) (Smith J.)

Conviction: Attempting to disobey a lawful order;
disobeying a lawful order

December 6, 1996
Court of Appeal for Ontario
(Osborne, Doherty and Austin JJ.A.)

Appeal dismissed

February 4, 1997
Supreme Court of Canada

Application for leave to appeal filed

25828 **DENNIS ALPHONSE LEBEUF 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

Canadian Charter of Rights and Freedoms - Criminal law - Detention - Search and seizure - Appeal - Whether the police have a power at common law to search persons incident to detention - Whether the search of the Appellant violated s. 8 of the Canadian Charter of Rights and Freedoms - Whether the Court of Appeal erred in law in conducting a s. 24 analysis as an alternate basis for dismissing the appeal - Whether the Court of Appeal erred in law in its interpretation of s. 24 of the Canadian Charter of Rights and Freedoms.

PROCEDURAL HISTORY

July 4, 1995
Provincial Court of Alberta (Patterson J.)

Conviction: one count of possession of a narcotic for the purpose of trafficking, on count of possession of a prohibited weapon

December 10, 1996
Court of Appeal of Alberta
(Fraser C.J., MacFadyen and Perras JJ.A.)

Appeal dismissed

February 10, 1997
Supreme Court of Canada

Application for leave to appeal filed

25756 **CANADIAN AIDS SOCIETY v. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO, DR. RICHARD SCHABAS and THE CANADIAN RED CROSS SOCIETY** (Ont.)

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

The application for leave to appeal is dismissed without costs.

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

NATURE OF THE CASE

Canadian Charter - Civil - Civil Rights - Procedural law - Administrative law - *Canadian Charter of Rights and Freedoms* - Did the Court of Appeal err in finding that there was an obligation to report pursuant to the *Health Protection and Promotion Act of Ontario*, R.S.O. 1990, c.H.7, s.29 - Did the Court of Appeal err in finding that the violation of the donors' rights pursuant to s. 7 of the *Charter* was in accordance with the principles of fundamental justice - Did the Court of Appeal err in finding the violation of the donors' rights pursuant to s. 8 of the *Charter* was not an unreasonable seizure.

PROCEDURAL HISTORY

August 4, 1995
Ontario Court of Justice (General Division)
(Wilson J.)

Application for a order prohibiting the Red Cross from notifying and reporting the HIV positive donors dismissed

November 29, 1996
Court of Appeal for Ontario
(Morden A.C.J.O., Catzman and Carthy JJ.A.)

Appeal dismissed

January 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

25773 **KANSA GENERAL INTERNATIONAL INSURANCE COMPANY LTD. v. JOHNSON & HIGGINS LTD.** (Man.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial Law - Agency - Mandate - Insurance - Liability of insurance broker to insurer - Whether broker owes duty to insurer to ascertain and disclose information material to assessment of risk - Scope of broker's duty of care towards insurer.

PROCEDURAL HISTORY

June 16, 1995
Court of Queen's Bench of Manitoba (Barkman J.)

Cross-claim dismissed

November 21, 1996
Court of Appeal of Manitoba
(Twaddle, Lyon and Helper JJ.A.)

Appeal dismissed

January 20, 1997
Supreme Court of Canada

Application for leave to appeal filed

24663 **CANDEREL LIMITED v. HER MAJESTY THE QUEEN** (Fed.Ct.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for reconsideration and the application for leave to appeal are granted.

La demande en vue d'obtenir le réexamen d'autorisation d'appel et la demande d'autorisation d'appel sont accordées.

25446 **SALVATORE GRAMAGLIA v. SUNLIFE TRUST CO. and DOUG VENSEL** (Alta.)

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

The application for reconsideration is dismissed with costs.

La demande de réexamen est rejetée avec dépens.

1.5.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion to extend the time in which to file the notice of intervention

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

BY/PAR: A.G. of Ontario

With the consent of the parties.

IN/DANS: Canadian Egg Marketing Agency

v. (25192)

Pineview Poultry Products Ltd.
(N.W.T.)

GRANTED / ACCORDÉE

It is hereby ordered that the time for filing the notice of intention to intervene of the A.G. for Ontario is extended to no later than April 25, 1997.

1.5.1997

Before / Devant: LE REGISTRAIRE

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

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

Lucie Chabot

Avec le consentement des parties. / With the consent of the parties.

c. (25869)

Mohamed Lahlou (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 15 avril 1997.

1.5.1997

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the case on appeal and the appellant's factum

Requête en prorogation du délai imparti pour déposer le dossier d'appel et le mémoire de l'appelant

Terence Lawrence Caslake

With the consent of the parties.

v. (25023)

Her Majesty The Queen (Man.)

GRANTED / ACCORDÉE

It is ordered that an extension of time to file the case on appeal to March 4, 1997 and the appellant's factum to April 2, 1997 be granted.

1.5.1997

Before / Devant: THE REGISTRAR

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

William Mullins-Johnson

v. (25860)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to April 23, 1997.**Requête en prorogation du délai imparti pour signifier et déposer la réplique du requérant**

With the consent of the parties.

2.5.1997

Before / Devant: CHIEF JUSTICE LAMER

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

Margaret Ann Malott

v. (25613)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to May 6, 1997.**Requête en prorogation du délai imparti pour déposer le mémoire de l'appelante**

With the consent of the parties.

2.5.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be not deemed abandoned

Margaret Ann Malott

v. (25613)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE**Requête en déclaration que le présent appel est censé ne pas avoir été abandonné**

With the consent of the parties.

2.5.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion to appoint counsel

Doris Bekoe

v. (25615)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE**Requête en nomination d'un procureur**

With the consent of the parties.

2.5.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion to extend the time in which to file the case on appeal and the appellant's factum

Doris Bekoe

v. (25615)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

Time for filing the case on appeal is extended to June 16, 1997 and that the time for filing the appellant's factum is extended to June 30, 1997.

Requête en prorogation du délai imparti pour déposer le dossier d'appel et le mémoire de l'appelante

With the consent of the parties.

2.5.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be not deemed abandoned

Doris Bekoe

v. (25615)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE**Requête en déclaration que le présent appel est censé ne pas avoir été abandonné**

With the consent of the parties.

5.5.1997

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

New evidence - Reconsideration of the leave application**Nouvelle preuve - Réexamen de la demande d'autorisation d'appel**

Damon Gregory Horne

Damon Gregory Horne, for the motion. (Calgary)

v. (25240)

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

Paul Moreau, contra. (Edmonton)

DISMISSED / REJETÉS

5.5.1997

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

Show cause**Audience de justification**

Allen Hopeton

Henry S. Brown, Q.C., for the motion.

v. (25549)

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

David Butt, contra.

Appeal deemed not abandoned on condition that the case on appeal to be filed by June 1, 1997 and that the appellant's factum to be filed by June 30, 1997.

5.5.1997

CORAM: Chief Justice Lamer and Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Motion for leave to intervene**Requête en autorisation d'intervention**BY/PAR: Coalition of Concerned
Congregations on the Law Relating to
War Crimes and Crimes against
Humanity Including those of the
Holocaust and Kenneth M. Narvey

Kenneth M. Narvey, for the motion.

Michael Code, for Helmut Oberlander.

Donald Bayne, for Johann Dueck.

IN/DANS: Erichs Tobiass et al.

Gesta J. Abols, for Erichs Tobiass.

v. (25811)

Christopher A. Amerasinghe, Q.C., and Ian Binnie,
Q.C., for the respondent.The Minister of Citizenship and
Immigration (F.C.A.)(Ont.)**DENIED / REJETÉE**

5.5.1997

CORAM: Chief Justice Lamer and Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Motion to adduce new evidenceThe Minister of Citizenship and Immigration
(F.C.A.)(Ont.)

Erichs Tobiass et al.

v. (25811)

Requête visant à produire de nouveaux éléments de preuve

Michael Code, for Helmut Oberlander.

Donald Bayne, for Johann Dueck.

Gesta J. Abols, for Erichs Tobiass.

Christopher A. Amerasinghe, Q.C. and Ian Binnie, Q.C.,
contra.

GRANTED / ACCORDÉE

THE CHIEF JUSTICE (orally):

Applying the principles set down in *Brown v. Gentleman*, [1971] S.C.R. 501, this motion is granted but only as regards the introduction into evidence of those documents referred to in sub-paragraph (i) of paragraph 1 of the Notice of Motion:

- “(i) The internal Department of Justice documents concerning the fact referred to in the Report on Communications between Justice officials and the Courts by Charles L. Dubin, Q.C., L.L.D., dated August 23, 1996 (The Dubin Report). These documents disclose the steps taken and the advice given, within the Department of Justice, immediately before and immediately after the meeting between Assistant Deputy Minister Thompson and Chief Justice Isaac on March 1, 1996;

In other respects the motion is dismissed.

5.5.1997

CORAM: Chief Justice Lamer and Cory, McLachlin, Iacobucci and Major JJ.

Motion on behalf of the Micmacs of Gesgapegiag Band for an order to rescind and annul a portion of the Order of the Court rendered January 17, 1997

Reference concerning certain question relating to the unilateral secession of Quebec from Canada / Renvoi sur certaines questions relatives à la sécession unilatérale du Québec du reste du Canada (Ont.)(25506)

Requête de la part de Micmacs of Gesgapegiag Band pour une ordonnance cassant et annulant une partie de l'ordonnance de la Cour rendue le 17 janvier 1997

Richard Gaudreau, for the motion / pour la requête.

Bruce Clark, contra.

Jean-Marc Aubry, Q.C., Warren J. Newman, for the A.G. of Canada.

DISMISSED / REJETÉE

THE CHIEF JUSTICE (orally) -- The motion is dismissed.

The order, as regards your client, Mr. Clark, in relation to the length of the factum and time for oral argument was suspended pending this motion. The motion being dismissed, I intend to grant you 30 minutes oral argument and a 30-page factum. You have 30 days to file your factum.

6.5.1997

Before / Devant: SOPINKA J.

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

Leonard Tomah

v. (25813)

Her Majesty The Queen (N.B.)

Requête en prorogation du délai de dépôt de l'autorisation d'appel

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to February 7, 1997.

7.5.1997

CORAM: Chief Justice Lamer and La Forest, Sopinka, Cory and Major JJ.

Motion for a stay of execution

Thomson Newspapers Co. Ltd.

v. (25593)

Attorney General of Canada (Ont.)

Requête en vue de surseoir à l'exécution

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

Alan S. Davis and Charles D. Johnston, contra.

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

THE CHIEF JUSTICE (orally) -- Following our 1984 decision in *Robert Gould v. The Attorney General of Canada and the Solicitor General of Canada*, [1984] 2 S.C.R. 124 the application is dismissed, costs in the cause.

6.5.1997

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the appellant R. West & Associates' factum

Requête en prorogation du délai imparti pour déposer le mémoire de l'appelante R. West & Associates

R. West & Associates Inc. et al.

v. (25193)

Telecom Leasing Canada (TLC) Ltd. (B.C.)

GRANTED / ACCORDÉE Time extended to April 18, 1997.

6.5.1997

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the appellant A.G. of B.C.'s factum

Requête en prorogation du délai imparti pour déposer le mémoire de l'appelant le procureur général de la C.-B.

R. West & Associates Inc. et al.

v. (25193)

Telecom Leasing Canada (TLC) Ltd. (B.C.)

GRANTED / ACCORDÉE Time extended to April 25, 1997.

6.5.1997

Before / Devant: THE REGISTRAR

Motion to file factum in its present form

Requête en acceptation du mémoire dans sa forme actuelle

Reference concerning certain question relating to the unilateral secession of Quebec from Canada / Renvoi sur certaines questions relatives à la sécession unilatérale du Québec du reste du Canada (Ont.)(25506)

With the consent of the parties. / Avec le consentement des parties.

GRANTED / ACCORDÉE

La requête pour obtenir une ordonnance aux fins de produire le mémoire de l'intervenant Yves Michaud tel que déposé est accordée.

7.5.1997

Before / Devant: LE JUGE SOPINKA

Requête en prorogation du délai de dépôt de l'autorisation d'appel**Motion to extend the time in which to apply for leave to appeal**

Suzy Lebel et al.

Avec le consentement des parties.

c. (25958)

Banque Nationale du Canada (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 13 juin 1997.

7.5.1997

Before / Devant: SOPINKA J.

Motion to file a factum of 30 pages**Requête pour produire un mémoire de 30 pages**

Winnipeg Child and Family Services

With the consent of the parties.

v. (25508)

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

GRANTED / ACCORDÉE The motion on behalf of the intervener LEAF for leave to file a 30-page factum is granted. The motion on behalf of the interveners Women's Health Clinic Inc. et al. for leave to file a factum of 30 pages is granted.

7.5.1997

Before / Devant: SOPINKA J.

Motion for a stay of execution**Requête en vue de surseoir à l'exécution**

Richter & Partners Inc.

v. (25917)

Ernst & Young (Ont.)

DISMISSED / REJETÉE

This is an application to stay the Order of the Court of Appeal for Ontario dated January 14, 1997. The order grants leave to the respondent Ernst & Young (E & Y) and George R. Albino et al. (appellants in the Court of Appeal) to assert a claim against the applicant Trustee in proceedings in Michigan brought by the respondent The Superintendent of Financial Institutions (Canada). The applicant has served and filed an application for leave to appeal from the Order referred to as well as from another order made the same day which allowed an appeal from an order disallowing proof of claim of the respondent E & Y in the bankruptcy proceedings.

The applicant's solicitor has requested an oral hearing in a letter to the Registrar but nothing in the material filed demonstrates why the usual practice in Rule 22(2) should not apply. The application for a stay is made pursuant to s. 65.1 of the *Supreme Court of Canada Act* (the Act) and Rule 27. By virtue of this recent amendment to the Act the court appealed from or a judge thereof is given concurrent jurisdiction. The rationale for this amendment was stated in *Esmail v. Petro Canada* (25095) (released February 8, 1996) as follows:

The purpose of the amendment was to enable litigants to apply to the court that had recently dealt with the matter. Often the court appealed from is more conveniently located so as to permit the matter to be dealt with more

expeditiously. It is only in special circumstances that successive applications to a judge of the court appealed from and a judge of this Court should be permitted.

For this reason a party applying in the first instance to a judge of this Court must provide a valid reason why the rationale for the new provision does not apply to the application.

In response to a query from the Registrar as to the absence of any such reasons in the material filed, the applicant responded in writing as follows:

(i) Firstly, in our stay motion we seek, by way of ancillary relief, an order expediting the hearing of the application for leave to appeal, and if leave is granted, the appeal itself. It does not appear that the Provincial Courts of Appeal have jurisdiction under the *Supreme Court Act* to grant that ancillary relief, whereas the Supreme Court certainly does. Further, it would not appear to be appropriate for a Provincial Court of Appeal to deal with a Supreme Court timetable.

(ii) Secondly, in the commentary to section 65.1 of the *Supreme Court Act* in Supreme Court of Canada Practice 1996, B. Crane and H. Brown, Carswell, 1995, the authors question (at page 115, first full paragraph) the likelihood of Provincial Court of Appeal issuing stays of their own orders “when a significant aspect of the decision is the likely merit in the proposed application for leave – a matter the appeal courts have consistently held is for the Supreme Court of Canada to decide.” It would seem somewhat strange for a court from which leave to appeal is being sought to be asked to say, or say inferentially, that it thinks that there is some merit in the application for leave to appeal its decision, i.e. this is not the same as seeking a stay where there is an unquestioned right of appeal and the sole question is the effect of the granting a stay.

With respect to the second point, this reasoning is at variance with the practice of this Court as set out in *Esmail, supra*. However, the applicant can be excused for not referring to the case since it appears not to have been reported. But I do not agree that the judges of the courts of appeal would not be objective in assessing whether an appeal raises a serious issue. There are numerous provisions which require judges to make a similar determination notwithstanding that a decision on the issue has already been made. For example, until comparatively recent times, leave to appeal to this Court was often granted by the court appealed from pursuant to s. 37 of the Act. That provision is still in the Act and fell into disuse because courts of appeal decided that this Court should determine its own workload and not by reason of any reluctance to reassess the merits for the purpose of identifying an issue fit to be decided by this Court.

The first reason referred to might in some circumstances be sufficient although there is usually no impediment to having the two applications proceed concurrently in different fora. In view of my disposition of the application, it is unnecessary to express any final conclusion on this point. I have concluded that the balance of convenience favours dismissal of the application subject to certain conditions. First, the hearing of the application for leave is to be expedited. I would grant the extension of time as requested. Second, the application for a stay is dismissed without prejudice to it being renewed before a judge of the Court of Appeal. Third, if leave to appeal is granted, the application may be renewed before me subject to any disposition that may have been made by a judge of the Court of Appeal.

In my opinion, the applicant will suffer no serious prejudice by the delay pending a decision on the application for leave. Unless the wheels of justice move much more quickly in Michigan than in Ontario, I doubt that the proceedings against the applicant will be advanced substantially pending a decision of this Court on the application for leave. In any event, if I am wrong in this respect, an application can be made to a judge of the Court of Appeal.

Accordingly, the application for a stay is dismissed and the applications for an expedited hearing of the application and for an extension of time with reference thereto are granted.

8.5.1997

Before / Devant: LE REGISTRAIRE

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

Sa Majesté La Reine

c. (25221)

Michel Cogger (Qué.)

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

Avec le consentement des parties.

ACCORDÉE / GRANTED Délai prorogé au 23 avril 1997.

2.5.1997

Her Majesty The Queen

v. (25738)

Henry Gerard Cuerrier (B.C.)

7.5.1997

Melville Neuman

v. (25565)

Her Majesty The Queen (F.C.A.)(Ont.)

BY/PAR: Attorney General of Ontario

IN/DANS: **Nancy Law**

v. (25374)

Minister of Human Resources Development (F.C.A.)

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

**AVIS DE DÉSISTEMENT DÉPOSÉS
DEPUIS LA DERNIÈRE PARUTION**

2.5.1997

Beloit Canada Ltée / Ltd.

v. (25849)

Valmet Oy (F.C.A.)

(motion)

6.5.1997

Her Majesty The Queen

v. (25940)

Jozef Arsiuta (Man.)

(motion)

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning May 12, 1997.
ORDRE DU JOUR pour la semaine commençant le 12 mai 1997.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court is not sitting this week

La Cour ne siège pas cette semaine

NOTE:

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

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

NOTICES TO THE PROFESSION AND PRESS RELEASE

AVIS AUX AVOCATS ET COMMUNIQUÉ DE PRESSE

Counsel are hereby notified of amendments to Rules 16, 21 and 23 of the *Rules of the Supreme Court of Canada*, registered as SOR/97-210 and published in Part II of the Canada Gazette on April 30, 1997.

Rule 16

Rule 16, which deals with service, has been rewritten and updated to reflect current practices. In particular, counsel are directed to the provisions for service by fax. All documents served by fax transmission must now include a cover page that shows (a) the sender's name, address and telephone number; (b) the name of the party being served and the party's counsel, if any; (c) the date and approximate time of the transmission; (d) the number of pages transmitted, including the cover page; (e) the fax number of the transmitting fax machine; and (f) the name and telephone number of a person to contact if there are transmission problems. Proof of service of documents served by fax may be made by affidavit annexing this cover page and the transmission slip that confirms the date and time of transmission. Documents served between five o'clock in the afternoon and midnight are deemed to have been served on the next day that is not a Saturday or holiday.

Subrule 21(2)

The amendment to the French version of subsection 21(2) of the Rules adds the word "demandeur" for consistency with Rule 23.

Subrule 23(12)

Subsection 23(12) sets out the time allowed for an applicant to serve and file a reply to a respondent's response to the leave application. Where there is an application for leave to cross-appeal, the reply may be served and filed at the same time as the applicant's response to the application for leave to cross-appeal.

For further information, please contact Louise Meagher, Deputy Registrar, at (613) 996-7520.

Les avocats sont avisés des modifications suivantes qui ont été apportées aux *Règles de la Cour suprême du Canada*, et publiées dans DORS/97-210, Gazette du Canada, partie II, le 30 avril 1997.

Article 16 des Règles

Le nouveau libellé de l'article 16 des *Règles* reflète la pratique actuelle en matière de signification. Les avocats sont priés de noter les dispositions portant sur la signification par télécopie. Tous les documents signifiés par télécopie doivent comporter une page couverture indiquant: a) les nom, adresse et numéro de téléphone de l'expéditeur; b) le nom de la partie qui doit recevoir signification et celui de son procureur, le cas échéant; c) la date et l'heure approximative de la transmission; d) le nombre de pages transmises, y compris la page couverture; e) le numéro du télécopieur utilisé pour la transmission; et f) les nom et numéro de téléphone de la personne à contacter en cas de difficultés de transmission. La preuve de signification de documents transmis par télécopie peut être faite au moyen d'un affidavit portant en annexe la page couverture et le bordereau de transmission qui confirme les date et heure de transmission. Les documents signifiés entre 17 h et minuit sont réputés avoir été signifiés le jour suivant qui n'est ni un samedi ni un jour férié.

Le paragraphe 21(2) des Règles

Le terme "demandeur" a été ajouté à la version française du paragraphe 21(2) pour des raisons de conformité avec l'article 23 des *Règles*.

Le paragraphe 23(12) des Règles

Le paragraphe 23(12) fixe le délai accordé au demandeur pour signifier et déposer sa réplique à la réponse de l'intimé. Lorsqu'une demande d'autorisation d'appel incident est déposée, la réplique peut être signifiée et déposée dans le délai applicable à la signification et au dépôt de la réponse à la demande d'autorisation d'appel incident.

Toutes questions concernant le présent avis doivent être adressées à Louise Meagher, registraire adjoint, (613) 996-7520.

Anne Roland
Registrar - Registraire

April, 1997

Avril 1997

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| Sept. 1986 | Use by counsel of the S.C.R. citations when available. | Sept. 1986 | Utilisation par les avocats de la référence des arrêts dans le R.C.S. quand ils y sont publiés. |
| April 1987 | | | |

Procedure upon completion of oral argument.

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| | | | |
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| May 1989 | Motions to expedite the hearing of an appeal. | Mai 1989 | Requêtes pour place spéciale sur le rôle. |
| June 1990 | Court's policy concerning applications for intervention. | Juin 1990 | Politique de la Cour relative aux demandes d'intervention. |
| June 1990 | Filing of factums in reply. | Juin 1990 | Production des mémoires en réponse. |
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| June 1993 | Compliance with section 677 of the <i>Criminal Code</i> regarding the formal order of the Court of Appeal in appeals as of right. | Juin 1993 | Respect de l'article 677 du <i>Code criminel</i> concernant le jugement formel de la cour d'appel lors des appels de plein droit |
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| Dec. 1993 | Compliance with Rule 23 respecting applications for leave. | Déc. 1993 | Demandes d'autorisation d'appel et application de l'article 29 des <i>Règles de la Cour suprême du Canada</i> . |
| Nov. 1994 | Books of authorities. | Nov. 1994 | Recueils de jurisprudence et de doctrine. |
| Nov. 1994 | Compliance with s. 62 of the <i>Supreme Court Act</i> respecting the case on appeal. | Nov. 1994 | Respect de l'article 62 de la <i>Loi sur la Cour suprême</i> concernant le dossier. |
| Nov. 1994 | Filing reasons for judgment with notice of appeal as of right. | Nov. 1994 | Dépôt des motifs de la juridiction inférieure avec l'avis d'appel de plein droit. |
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BEFORE THE COURT:

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

Motion day : **April 21, 1997**
Service : March 31, 1997
Filing : April 7, 1997
Respondent : April 14, 1997

Motion day : **May 5, 1997**
Service : April 14, 1997
Filing : April 21, 1997
Respondent : April 28, 1997

DEVANT LA COUR:

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

Audience du : **21 avril 1997**
Signification : 31 mars 1997
Dépôt : 7 avril 1997
Intimé : 14 avril 1997

Audience du : **5 mai 1997**
Signification : 14 avril 1997
Dépôt : 21 avril 1997
Intimé : 28 avril 1997

The Spring session of the Supreme Court of Canada will commence April 21, 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:

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

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

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

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

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

La session de printemps de la Cour suprême du Canada commencera le 21 avril 1997.

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

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

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

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

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

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

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

| DECEMBER - DECEMBRE | | | | | | |
|---------------------|-----|----|------|------|----|----|
| S | M | T | W | T | F | S |
| D | L | M | M | J | V | 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 | H 25 | H 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

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

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

| MARCH - MARS | | | | | | |
|--------------|------|----|----|----|------|----|
| S | M | T | W | T | F | S |
| D | L | M | M | J | V | S |
| | | | | | | 1 |
| 2 | M 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 | H 28 | 29 |
| 30 | H 31 | | | | | |

| APRIL - AVRIL | | | | | | |
|---------------|------|----|----|----|----|----|
| S | M | T | W | T | F | S |
| D | L | M | M | J | V | 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 | M | T | W | T | F | S |
| D | L | M | M | J | V | 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 |

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|-------------|-----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| D | L | M | M | J | V | 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 | | | | | |

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