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**The Public Trustee for British Columbia**

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v. (24152)

**Sidney Elizabeth Wynn Russ et al. (B.C.)**

R. John Kearns  
Bull, Housser & Tupper

FILING DATE 12.8.1994

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**Stephen John Jackson**

R.S. Prithipaul  
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v. (24241)

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

J. Watson, Q.C.  
A.G. of Alberta

FILING DATE 2.8.1994

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**Dame Inge Stephens**

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Sylvestre, Charbonneau

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**Les Services de santé du Québec (Qué.)**

Jacques Paquet  
Pothier, Bégin

DATE DE PRODUCTION 2.8.1994

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**Ellis-Don Limited**

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**The Ontario Labour Relations Board et al.  
(Ont.)**

Sheila Block  
Tory Tory Deslauriers & Binington

FILING DATE 11.8.1994

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D'APPEL DÉPOSÉES**

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

Graeme G. Mitchell  
Agent for the Attorney General

FILING DATE 12.8.1994

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Nozick, Sinder & Associates

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

M. B. Lorraine Prefontaine  
Dept. of Justice

FILING DATE 17.8.1994

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**Wilfred McPhillips**

Richard H. Hamilton  
Owen, Bird

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**British Columbia Ferry Corporation (B.C.)**

Don Jordan, Q.C.  
Blake Cassels & Graydon

FILING DATE 17.8.1994

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**Michael Lee Hobbs**

David W. Guenter

v. (24247)

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

Earl C. Wilson, Q.C.  
Agent for Alberta Justice

FILING DATE 19.8.1994

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**K.S.V.**

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Newfoundland Legal Aid Commission

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

Wayne Gorman  
Dept. of Justice

FILING DATE 22.8.1994

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Jean-Marie Burnett

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**Compagnie de fiducie Household et al. (Qué.)**

André Rousseau  
Laflamme, Rousseau

DATE DE PRODUCTION 18.8.1994

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**Sheila Perrins**

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Miriam Grassby & Assoc.

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Kravitz & Kravitz

DATE DE PRODUCTION 25.8.1994

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**Her Majesty The Queen**

Paul C. Bourque  
Dept. of the A.G. of Alberta

v. (24252)

**John Richard Adams (Crim.)(Alta.)**

Philip G. Lister

FILING DATE 25.8.1994

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**Jacques Armand Corbeil**

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**Nicole Paquette (Ont.)**

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FILING DATE 26.8.1994

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v. (24256)

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

A.G. of Ontario

FILING DATE 26.8.1994

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**David Pugh**

Marvin R. Bloos

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

A.G. of Alberta

FILING DATE 26.8.1994

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**Scott Jason Atkinson**

M. Naeem Rauf

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

Paul Bourque  
Dept. of the A.G. of Alberta

FILING DATE 30.8.1994

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Robert W. Staley  
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FILING DATE 31.8.1994

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**Merck Frosst Canada Inc. et al.**

J. Nelson Landry  
Ogilvy, Renault

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**The Minister of National Health and Welfare et al. (F.C.A.)**

F.B. Woyiwada  
A.G. of Canada

FILING DATE 31.8.1994

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**Mario Trunzo**

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Phillips, Aiello, Boni

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**Her Majesty The Queen (Man.)**

Dept. of Justice

FILING DATE 1.9.1994

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**John Edward Bricker**

David E. Harris  
Carter and Minden

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Brian McNeely  
Crown Law Office, Criminal

FILING DATE 2.9.1994

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**Maan Sing Sidhu**  
Louis D. Pasquin

c. (24266)

**Le Ministre de l'Emploi et de l'Immigration  
(C.A.F.)(Ont.)**

Michelle Ducharme  
Ministère de la Justice

DATE DE PRODUCTION 2.9.1994

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**William McAllister**  
Jacques Normandeau

c. (24267)

**Les États-Unis d'Amérique et al. (Qué.)**

James L. Brunton  
Min. de la Justice

DATE DE PRODUCTION 2.9.1994

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**Adrian Vernard Davis**  
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Dept. of Justice

FILING DATE 2.9.1994

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Hobson, Wellhauser, Taylor & Oldfield

FILING DATE 6.9.1994

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**Claude Caron**  
Claude Caron

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**Sa Majesté La Reine (Qué.)**  
Pierre Lapointe  
Subs. du procureur général

DATE DE PRODUCTION 31.8.1994

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**Terry Joseph Scanlon**  
Terry Joseph Scanlon

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**Her Majesty The Queen (F.C.A.)(Ont.)**  
Donald J. Gilson  
A.G. of Canada

FILING DATE 6.9.1994

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**David Witter**  
Paul Slansky

v. (24160)

**Her Majesty The Queen (Ont.)**  
Dept. of Justice

FILING DATE 31.8.1994

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**AUGUST 25, 1994 / LE 25**

**AOÛT 1994**

**CORAM: CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. /  
LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

**Her Majesty the Queen**

**v. (24227)**

**Michael Thomas Shropshire (Crim.)(B.C.)**

**NATURE OF THE CASE**

Criminal law - Sentencing - Respondent pleading guilty to a charge of second degree murder - Whether the Court of Appeal erred in holding that neither general deterrence nor specific deterrence should have any application in setting a period of parole ineligibility for second degree murder of longer than 10 years - Whether the Court of Appeal erred in ruling that the only two factors which are relevant in considering a period of parole ineligibility for second degree murder of longer than ten years are an assessment of future dangerousness and denunciation - Whether the Court of Appeal erred in ruling that denunciation would not justify a period of parole ineligibility of longer than 10 years unless it is concluded that the extra denunciation is worth more than \$50,000.00 a year to society - Whether the Court of Appeal erred in finding that the Respondent's refusal, even after conviction, to disclose any explanation for the killing, was not a relevant consideration which would justify a period of parole ineligibility of longer than 10 years.

**PROCEDURAL HISTORY**

June 17, 1993  
Supreme Court of British Columbia (McKinnon J.)

Sentence: Life imprisonment without eligibility for parole for 12 years

May 4, 1994  
Court of Appeal for British Columbia  
(Lambert, Cumming and Goldie [dissenting] JJ.A.)

Appeal against sentence allowed and period of parole ineligibility reduced to 10 years

July 4, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**AUGUST 29, 1994 / LE 29 AOÛT 1994**

**CORAM: CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. /  
LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

**Anthony Scott Beals and Robert Charles Sheppard**

**v. (24206)**

**Her Majesty the Queen (Crim.)(N.S.)**

**NATURE OF THE CASE**

Criminal law - Evidence - Statutes - Interpretation - Identification evidence - Similar facts - Whether the Court of Appeal erred in its application of section 686(1)(b)(iii) of the *Criminal Code* in dismissing the appeals of each Applicant against their robbery convictions - Whether the Court of Appeal erred in its interpretation and application of the law in relation to identification evidence - Whether the Court of Appeal erred in its interpretation and application of the law relating to the failure of the Applicants to testify.

**PROCEDURAL HISTORY**

September 24, 1993  
Provincial Court of Nova Scotia  
(Batiot J.)

Convictions: Applicant Beals convicted of 3 counts of robbery contrary to s. 344 of the *Criminal Code*; Applicant Sheppard convicted of 2 counts of robbery

April 27, 1994  
Nova Scotia Court of Appeal (Clarke, C.J.N.S.,  
Hallett and Chipman JJ.A.)

Appeal dismissed with exception of Applicant Beals' appeal from robbery conviction on third count

June 17, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /  
LES JUGES LA FOREST, SOPINKA ET MAJOR**

**Irvin Andrew Luke**

**v. (24229)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Sentencing - Prohibition of possession of firearms - Whether the Court of Appeal erred in law in holding that s.100 of the *Criminal Code*, R.S.C. 1985, c. C-46 did not violate ss. 12 or 35(1) of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal erred in law in holding that the Applicant could not receive the benefit of a change in the law governing firearms prohibition orders that was proclaimed in force after he was sentenced but before his appeal from sentence was heard and determined by the Court of Appeal - Whether the court of Appeal, having found that the constitutional issues were properly raised, erred in proceeding to decide those issues rather than sending the matter back to be reconsidered by the trial judge who had erroneously prevented the Applicant from raising the issues in the first instance.

**PROCEDURAL HISTORY**

January 9, 1992  
Ontario Court (General Division)  
(Huneault J.)

Guilty plea: assault with a weapon; sentenced to one year imprisonment and prohibition of possession of firearms for 10 years pursuant to s. 100 of *Criminal Code*

February 4, 1994  
Court of Appeal for Ontario  
(Grange, Griffiths and Osborne JJ.A.)

Appeal from imposition of firearm prohibition  
dismissed

July 7, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**CORAM: L'HEUREUX-DUBÉ, GONTHIER AND McLACHLIN JJ. /  
LES JUGES L'HEUREUX-DUBÉ, GONTHIER ET McLACHLIN**

**Canadian Human Rights Commission**

**v. (24236)**

**Attorney General of Canada (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Civil rights - Statutes - Interpretation - *Bona fide* occupational requirement - Discrimination on the basis of disability - Complainant diagnosed with "complex partial" epilepsy - Whether the Court of Appeal erred by finding that the *National Defence Act*, R.S.C. 1985, c. N-5, prescribes the occupation of a soldier such that the actual practice of the Canadian Armed Forces is irrelevant to the assessment of a *bona fide* occupational requirement defence, and in failing to give effect to the equality guarantees in the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, in the case of conflict with the *National Defence Act* - Whether the Court of Appeal erred by applying an incorrect standard for measuring "sufficiency of risk" for a *bona fide* occupational requirement defence under s. 15(a) of the *Canadian Human Rights Act* - Whether the Court of Appeal erred in respect of the issues of individual assessment and reasonable alternatives as elements of a *bona fide* occupational requirement defence.

**PROCEDURAL HISTORY**



July 4, 1991  
Human Rights Tribunal (P. Bortolussi, D. Proulx and  
R. Goldhar)

Complaint of discrimination allowed

May 24, 1994  
Federal Court of Appeal  
(Mahoney, Stone and Robertson JJ.A.)

Application for judicial review allowed

July 26, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**SEPTEMBER 7, 1994 / LE 7 SEPTEMBRE 1994**

**CORAM: CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. /  
LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

**Gandolph St. Clair**

**v. (24237)**

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

**NATURE OF THE CASE**

Criminal law - Offences - Amendment of indictment - Charge to the jury - Burden of proof - Whether the Court of Appeal erred in its decision to materially amend the indictment charging aggravated assault by wounding to include the offense of assault with a weapon contrary to s. 267(1)(a) of the *Criminal Code* - Whether the Court of Appeal erred in finding that the trial judge did not err in his charge to the jury regarding the burden of proof.

**PROCEDURAL HISTORY**

May 28, 1992  
Ontario Court (General Division)  
(Locke J.)

Conviction: assault with a weapon contrary to s.  
267 of the *Criminal Code*

January 26, 1994  
Court of Appeal for Ontario  
(Grange, Griffiths and Osborne JJ.A.)

Appeal dismissed

August 4, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Michael Lee Hobbs**

**v. (24247)**

**Her Majesty the Queen (Crim.)(Alta.)**

**NATURE OF THE CASE**

Criminal law - Evidence - Defences - Whether the Court of Appeal erred in law in holding that the trial judge did not err in stating that he was bound to weigh the evidence of flight against the Applicant - Whether the Court of Appeal erred in law in holding that the trial judge did not err in failing to refer or give any weight to the disposition of the deceased for violence - Whether the Court of Appeal erred in law in dealing with the issues of flight and the disposition of the deceased for violence as distinct from the issues of self-defence and provocation.

**PROCEDURAL HISTORY**

May 14, 1993  
Court of Queen's Bench of Alberta (Waite J.)

Conviction: second degree murder

June 24, 1994  
Court of Appeal of Alberta  
(Lomas, Irving and Côté JJ.A)

Appeal dismissed

August 19, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Her Majesty the Queen**

**v. (24207)**

**Thomas Albert Prince (Crim.)(Man.)**

**NATURE OF THE CASE**

Criminal law - Procedural law - Appeals - Evidence - Whether the Court of Appeal erred in reversing the trial judge's findings and conclusions of fact in the absence of a palpable error on the part of the trial judge - Whether the Court of Appeal, in concluding that the verdict at trial was unreasonable, erred in substituting its view of the evidence for that of the trial judge.

**PROCEDURAL HISTORY**

July 19, 1993  
Provincial Court of Manitoba (Allan P.C.J.)

Conviction: aggravated assault

May 26, 1994  
Court of Appeal for Manitoba  
(Twaddle, Lyon and Kroft JJ.A.)

Appeal against conviction allowed

June 23, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**K.S.V.**

**v. (24249)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Young offenders - Pre-trial procedure - Whether s. 150.1(3) of the *Criminal Code*, by its omission of s. 271 as an offence for which a 12 or 13 year old person cannot be tried, is contrary to s. 7 of the *Charter* - Whether the Newfoundland Court of Appeal erred in holding that there is a valid distinction between the provisions of Section 151 and Section 271 of the *Criminal Code* of Canada and that the degree of force required under s. 271 is greater than that required in s. 151 - If there is no distinction should the provisions of Section 150.1(3) of the *Criminal Code* of Canada be read to include reference to Section 271 of the *Criminal Code* of Canada.

**PROCEDURAL HISTORY**

June 14, 1993  
Provincial Court  
(Kean P.C.J.)

Order: Section 150.1(3) *Cr. C.* is to be read as to include reference to s. 271 *Cr. C.*; No jurisdiction to proceed

February 24, 1994  
Court of Appeal of Newfoundland  
(Gushue, Marshall and Cameron, JJ.A.)

Appeal allowed; Matter remitted to the Provincial Court for trial

August 22, 1994  
Supreme Court of Canada

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

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**CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /  
LES JUGES LA FOREST, SOPINKA ET MAJOR**

**Stephen John Jackson**

**v. (24241)**

**Her Majesty the Queen (Crim.)(Alta.)**

**NATURE OF THE CASE**

Criminal law - Jurisdiction - Whether Court of Appeal erred in refusing to grant leave on the ground that the appeal did not raise a question of law alone - Whether actions of police administering a roadside screening test complied with s. 254(2) of the *Criminal Code* - Whether Applicant's rights under s. 10(b) of the *Charter* were infringed.

**PROCEDURAL HISTORY**

April 20, 1993  
Provincial Court of Alberta  
(Dzenick J.)

Conviction: operating a motor vehicle with an illegal amount of alcohol in his blood contrary to s.253(b) of the *Criminal Code*

December 7, 1993  
Queen's Bench of Alberta (Berger J.)

Summary conviction appeal dismissed

June 10, 1994  
Court of Appeal of Alberta  
(Fraser C.J.A., Belzil and Foisy JJ.A.)

Leave to appeal denied

August 2, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Terry Joseph Scanlon and Susan Alexandropoulos**

**v. (24183)**

**Her Majesty the Queen (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Procedural law - Appeal - Extension of time - Reconsideration - *Canadian Charter of Rights and Freedoms* - Taxation - Assessment - Whether the Minister of Revenue violated s. 11d) of the *Charter* by implementing s. 163(2) of the *Income Tax Act*?

**PROCEDURAL HISTORY**

September 2, 1993  
Tax Court of Canada (Goetz J.T.C.C.)

Appeals against assessments made under the *Income Tax Act* dismissed

February 9, 1994  
Federal Court of Appeal (Hugessen J.A.)

Application for an extension of time dismissed

April 8, 1994  
Federal Court of Appeal (Hugessen J.A.)

Application for reconsideration denied

June 8, 1994  
Supreme Court of Canada

Application for leave to appeal filed

June 16, 1994  
Supreme Court of Canada

Motion for an extension of time filed

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**Pinecliff Homes Inc.**

**v. (24209)**

**Fiore Disera (Ont.)**

**NATURE OF THE CASE**

Commercial law - Property law - Real property - Contracts - Evidence - Damages - Respondent bringing action for foreclosure - Applicant claiming negligent misrepresentation, common mistake and warranty - Whether or not, given negligent misrepresentations, there is a presumption of reliance such that the evidentiary burden shifts to the Applicant to prove no reliance - Whether a termination clause such as the one in the agreement of purchase and sale should be properly characterized as either true conditions precedent or conditions existing solely for the benefit of the purchaser which can be waived by the purchaser without legal consequence.

**PROCEDURAL HISTORY**

September 3, 1993 Ontario Court of Justice (General Division) (White J.)	Respondent's action for foreclosure allowed
April 29, 1994 Court of Appeal for Ontario (Catzman, Arbour and Laskin JJ.A.)	Appeal dismissed except for reduction of purchase price
June 23, 1994 Supreme Court of Canada	Application for leave to appeal filed

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**The Public Trustee for British Columbia**

v. (24152)

**Sidney Elizabeth Wynn Russ**

- and -

**Rebecca Mae Stewart, Deborah Anne Bailey, Sarah Nicola Morgan,  
Sydney Ruth Petzing, Kathleen Phillipa Cassidy, Susan Folliet Schultz,  
Joel Robert White, Mary Rhegan White Wilkins, Melanie Ruth Watt,  
Jeremy Douglas Petzing, William John Douglas Woodward,  
Christopher Charles Woodward, Elizabeth Wynn Woodward,  
Robyn Patricia Woodward, and Montreal Trust Company (B.C.)**

**NATURE OF THE CASE**

Property law - Trusts and trustees - Application of the *Trust and Settlement Variation Act*, R.S.B.C. 1979, c. 413, ss. 1 and 2 - Whether, on a trust variation application, the Court is entitled to disregard the rules of evidence governing the admission of experts' evidence - Whether, on a trust variation application, the Court should apply the prudent-adult test to determine whether the proposed arrangement will be of sufficient benefit for the persons for whom the Court is asked to give approval - Whether, on a trust variation application, the Court may approve of a trust variation arrangement which has the effect of thwarting the intention of the settlor.

**PROCEDURAL HISTORY**

December 3, 1992 Supreme Court of British Columbia (Catliff J.)	Order: trust variation agreement approved
March 25, 1994 Court of Appeal for British Columbia (Gibbs, Finch and Ryan JJ.A.)	Appeal dismissed
August 12, 1994 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: L'HEUREUX-DUBÉ, GONTHIER AND McLACHLIN JJ. /  
LES JUGES L'HEUREUX-DUBÉ, GONTHIER ET McLACHLIN**

**Sa Majesté La Reine**

c. (24173)

**Raynald Mathieu (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Infractions - Procès - Preuve - Contacts sexuels - Présomption d'innocence - Fardeau de preuve - La Cour d'appel du Québec commet-elle une erreur en intervenant dans une décision de première instance à partir d'erreurs qu'elle présume que le juge a commises lorsque ce dernier n'expose pas dans son jugement tout le raisonnement qui a conduit à son verdict?

**HISTORIQUE PROCÉDURAL**



Le 18 juin 1992  
Cour du Québec (Chambre criminelle et pénale)  
(Dubé J.C.Q.)

Déclaration de culpabilité: Contacts sexuels

Le 11 avril 1994  
Cour d'appel du Québec  
(Brossard, Fish et Delisle, J.J.A.)

Appel accueilli, ordonnance de nouveau procès

Le 10 juin 1994  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Sa Majesté La Reine**

**c. (24210)**

**Jean Polo (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Infractions - Preuve - Agressions sexuelles et contacts sexuels - La Cour d'appel du Québec commet-elle une erreur de droit en intervenant dans une décision de première instance à partir d'erreurs qu'elle présume que le juge a commises lorsque ce dernier n'expose pas dans son jugement tout le raisonnement qui a conduit à son verdict?

**HISTORIQUE PROCÉDURAL**

Le 20 mars 1991  
Cour du Québec (chambre criminelle et pénale)  
(Dumaine J.)

Déclaration de culpabilité: agressions sexuelles et  
contacts sexuels

Le 28 mars 1994  
Cour d'appel du Québec  
(Tourigny, Baudouin et Proulx, J.J.C.A.)

Appel accueilli; acquittement prononcé

Le 20 juin 1994  
Cour suprême du Canada

Demande d'autorisation d'appel et de prorogation de  
délai déposée

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**Powrmatic du Canada Ltée.**

**c. (24230)**

**Angèle Boivin**

**- and -**

**Moise Benmergui and The Registrar of the Registration  
Division of Montreal and Henry Sztern & Associés Inc. (Qué.)**

**NATURE OF THE CASE**

Procedural law - Civil procedure - Actions - Bankruptcy - *Res judicata* - Action commenced prior to bankruptcy - Applicant suing Respondent, bankrupt's wife, as Mis-en-cause or Intervenor - Permission of the Bankruptcy Court to continue proceedings obtained - Action dismissed as against the Respondent - Applicant instituting new action against Respondent, this time as defendant - Action dismissed because Applicant had not obtained permission of the Bankruptcy Court to institute action against the Respondent - Whether trial judge erred at law - Whether Applicant had obtained permission - Whether permission required when bankrupt has been discharged - Whether same parties, identical cause and same object - *Code of Civil Procedure*, arts. 75.1, 165(1),(2), and (4), and 166.

**PROCEDURAL HISTORY**

January 11, 1994  
Superior Court of Quebec (Flynn J.C.S.)

Motion for dismissal granted

June 2, 1994  
Court of Appeal for Quebec  
(Baudouin, Fish and Beauregard (dissenting) JJ.A.)

Appeal dismissed

July 7, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Canadian Forest Products Ltd.**

**v. (24235)**

**Bovar Inc. and Bovar Investments Inc.,  
carrying on business as Mainland Manufacturing,  
and Powell Machinery Ltd. (B.C.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Novation - Whether the Court of Appeal erred in overturning the trial judge's findings of fact on a summary trial without finding a palpable or overriding error - Whether the Court of Appeal erred in finding that the naming of the original debtor as a defendant in this action claiming novation was a relevant factor in determining whether the Applicant had released the original debtor and whether the Respondent Mainland Manufacturing had assumed the original obligation by way of a novation - Whether the Court of Appeal erred in misapplying the requirement in *National Trust v. Mead*, [1990] 2 S.C.R. 410 for compelling evidence in determining whether the Respondent Mainland Manufacturing assumed obligations under a guarantee by way of a novation.

**PROCEDURAL HISTORY**

March 16, 1993  
Supreme Court of British Columbia  
(Allan J.)

Respondent's application for an order dismissing the Applicant's claim dismissed

May 13, 1994  
Court of Appeal for British Columbia  
(MacFarlane, Legg and Hutcheon JJ.A.)

Appeal allowed: Respondent's application remitted back to trial court for determination on the issues not determined on the appeal

July 18, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**AUGUST 25, 1994 / LE 25 AOÛT 1994**

**24017**            **EDWIN PEARSON v. HER MAJESTY THE QUEEN** (Crim.)(Que.)

CORAM:            The Chief Justice and Cory and Iacobucci JJ.

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

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

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**24107**            **EDWIN PEARSON v. HER MAJESTY THE QUEEN** (Crim.)(Que.)(REVISED)

CORAM:            The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

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**24122**            **ONTARIO CHRYSLER (1977) LTD. v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:            The Chief Justice and Cory 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 - Offences - Fraud - Whether the Court of Appeal erred in convicting Applicant by attributing to it the criminal culpability of named and unnamed persons who were not before the Court - Whether it is a condition precedent to the conviction of a corporation on a "true criminal offence" such as fraud, that a natural person must also stand charged before the Court and be convicted of the offence - Whether the Court of Appeal erred when it found as a fact that the Applicant's business manager was a directing mind of the Applicant - Whether the Court of Appeal erred in its findings with respect to the nature of the allegations in several of the charges - Whether the Court of Appeal erred in its finding that, while affirming the Applicant's conviction on one count, its quashing of the Applicant's conviction on another precluded the application of any *res judicata* based defence with respect to the Applicant's convictions on the remaining counts.

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**24057**            **Elizabeth Rebecca Walker, Sarah Michelle Walker and Edward Michael Walker, minors, by their litigation guardian Kenneth Walker, and Kenneth Walker in his personal capacity - v. - The Bank of New York Inc., Phyllis Putter and Marie Prasad, the United States of America (a body politic), Department of the Treasury United States Customs Service, U.S. Department of Justice, Ken Prince a.k.a. Ken Pribble, Bob Grey, Tom Kuras, Ira Belkin, and China Trade Inc.** (Ont.)

CORAM:            The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Torts - Intentional torts - Statutes - Interpretation - State Immunity - Applicability of a foreign sovereign's foreign policy laws to persons conducting business in Canada - Interpretation of s. 6 of the *State Immunity Act*, R.S.C. 1985, c. S-18 and its application to torts where resultant injuries are of a multi-jurisdictional nature and occur in a foreign state - Definition

of agency in the *Act* - Whether the Bank of New York is an agent of the United States Government under the *Act* and thereby entitled to the benefit of immunity - Whether the reasoning of the Court of Appeal is inconsistent with the settled law in respect of the tort of false imprisonment.

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**24053**            **MICHAEL ALLEGRETTI v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:            La Forest, Sopinka 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 - Defence - Second degree murder - Whether the Court of Appeal erred in law in failing to hold that the trial judge erred in failing to instruct the jury that the self-defense provision, contained in s. 34(2) of the *Criminal Code*, applied whether an accused had or had not formed the intent to kill - Whether the Court of Appeal erred in law in failing to hold that the trial judge erred in requesting counsel to attend in his chambers during the course of his jury charge in the absence of the Applicant and of the court reporter - Whether the Court of Appeal erred in law in failing to hold that the exclusion of the Applicant from a vital portion of his trial did not amount to a breach of s. 650 of the *Criminal Code* which guaranteed the Applicant's right to be present during the course of his trial - Whether the Court of Appeal erred in law in holding that the failure of the Applicant to be present at his whole trial amounted to a "procedural irregularity" which could be cured by the provisions of s. 686(1)(b)(iv) of the *Criminal Code*.

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**24030**            **CHARLES WILFRED DeLOREY v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:            La Forest, Sopinka 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**

Criminal law - Procedural law - Evidence - Sentencing - Appeal - Extension of time - Applicant entering plea of guilty to second degree murder - Considerations that determine length of a sentence - Applicant alleging that he was pressured into entering guilty plea - Notice of appeal against conviction and sentence filed five (5) years from the date of conviction and sentence.

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**24062**            **B.C.C. v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:            La Forest, Sopinka 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 - Procedural law - Trial - Evidence - Whether the Court of Appeal erred in finding that the trial judge's instructions to the jury with respect to similar fact evidence was not in error.

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**24051**            **ATLANTIC PROVINCES TRUCKING ASSOCIATION v. HALIFAX-DARTMOUTH BRIDGE COMMISSION** (N.S.)

CORAM:            La Forest, Sopinka 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**

Environment law - Public utilities - Appeals - Respondent's application for increases in truck and bus tolls allowed in part by the Nova Scotia Utility and Review Board - Protection of the public interest in the setting of just and reasonable rates - Apportioning of imprudently incurred costs as between ratepayers and investors - Proper methodology for establishing just and reasonable rates where the Board lacks authority in the first instance to approve the financing decisions of a utility - Whether the decision of the majority of the Court of Appeal is inconsistent with prior decisions of the same court - Whether the decision of the majority of the Court of Appeal is contrary to the fundamental principles of rate regulation as developed in the jurisprudence of other provincial courts - Whether the decision of the majority of the Court of Appeal is contrary to the principles enunciated by the Supreme Court of Canada.

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**24098**            **JOSEPH McCARTEN, PIUS MacINNIS, MARIE CURRAN and DANIEL MacINNIS, in their own right on behalf of all non resident owners of non-commercial property located in Prince Edward Island, including members of the Association Against Double Taxation v. THE GOVERNMENT OF PRINCE EDWARD ISLAND** (P.E.I.)

CORAM:            La Forest, Sopinka 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* - Taxation - Constitutionality of s. 5 of the *Real Property Tax Act*, R.S.P.E.I. 1988, c. R-5 - Whether ss. 6 and 15 of the *Charter* provide protection against a provincial taxing statute which taxes non-resident property owners of the province at a rate exceeding that payable by resident property owners solely on the basis of their non-residency in the taxing province.

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**24082**            **GUILLAUME KIBALE c. SA MAJESTÉ LA REINE** (Ont.)(C.A.F.)

CORAM:            La Forest, Sopinka and Major JJ.

La demande en réexamen et la requête pour permission de contre-interroger sont rejetées.

The application for reconsideration and the motion for cross-examination are dismissed.

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**SEPTEMBER 1, 1994 / LE 1 SEPTEMBRE 1994**

**24058**    **RICHARD SIDNEY THOMAS ROSE v. RONALD B. MITTON** (N.S.)

CORAM:            La Forest, Sopinka 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 - Barristers and solicitors - Damages - Assessment - Whether the Court of Appeal erred in holding that the date of assessment of damages where a solicitor is negligent in resolving a personal injury claim is the date that the solicitor negligence or breach occurred.

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**24048 MARTSELOS SERVICES LTD. v. ARCTIC COLLEGE (N.W.T.)**

CORAM: La Forest, Sopinka 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 - Damages - Tender - Privilege clause - Breach of contract - Interpretation of *Ron Engineering & Construction Eastern Ltd.* [1981] 1 S.C.R. 111. - Whether the Court of Appeal erred in holding that the Respondent did not breach its tender contract with the Applicant in awarding the services contract to the competitor - Whether the Court of Appeal erred in holding that the Respondent was not in breach of the tender contract with the Applicant in not awarding the services contract to the Applicant.

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**24084 HENRY A. RASANEN v. ROSEMOUNT INSTRUMENTS LTD. (Ont.)**

CORAM: La Forest, Sopinka 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**

Labour law - Appeal - Estoppel - Labour Relations - Statutes - Interpretation - Issue estoppel - Wrongful dismissal - Constructive dismissal - Interpretation and application of the *Employment Standards Act* R.S.O. 1980 as amended - Parameters for common law concepts of wrongful and constructive dismissal with respect to geographic transfers.

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**24083 MIROSLAV NOVAK v. MARIE NOVAK PEDERSEN (Alta.)**

CORAM: La Forest, Sopinka 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**

Family law - Divorce - Division of property - Maintenance - Whether the trial judge and Court of Appeal erred in making the division of property between the parties and awarding maintenance for the children of the marriage.

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**24068 HERITAGE TRUST OF NOVA SCOTIA and FRIENDS OF THE PUBLIC GARDENS v. NOVA SCOTIA UTILITY AND REVIEW BOARD, BRENHOLD LTD. and THE CITY OF HALIFAX (N.S.)**

CORAM: La Forest, Sopinka 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**

Municipal law - Statutes - Statutory instruments - Interpretation - Halifax City Council approving development agreement opposed by Applicants on the basis that one of the existing buildings on the lands proposed for development was designated as a heritage building - Nova Scotia Utility and Review Board dismissing Applicants' appeal from decision of City Council - Whether the Court of Appeal erred in failing to interpret the Municipal Planning Strategy and By-Laws of the City of Halifax in the context of the purposes and policies contained in the *Heritage Property Act*, R.S.N.S. 1989, c. 199 - Whether the Court of Appeal erred in failing to find that the Nova Scotia Utility and Review Board was bound to interpret the Municipal Planning Strategy and By-Laws of the City of Halifax in a manner that was consistent with the purposes of the *Heritage Property Act* - Whether the Court of Appeal erred in finding that the interpretation placed on the Municipal Planning Strategy by the Nova Scotia Utility and Review Board was one in which the language of the strategy could reasonably bear.

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**24089 KENNETH STANLEY JAMES SINCLAIR v. HILDA ANNE SINCLAIR (Ont.)**

CORAM: La Forest, Sopinka 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**

Property law - Real property - Action for reimbursement for monies expended during co-habitation - Whether the trial action was unfair.

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**24101 BRIDGES BROTHERS LTD. v. HER MAJESTY THE QUEEN, in the name of the MINISTER OF NATIONAL REVENUE (F.C.A.)**

CORAM: La Forest, Sopinka 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 - Applicant selling land to a mining company for \$900.00 an acre and filing income tax return claiming that fair market value on Valuation Day was \$700.00 - Respondent assessing fair market value on Valuation Day at \$100.00 an acre on the basis that highest and best use of land on Valuation Day was for woodland - Whether the Federal Court, Trial Division, erred in not accepting the Applicant's method of valuation - Whether the Federal Court, Trial Division, failed to take adequate notice of the special adaptability of the subject lands in issue for the operation of a mine - Whether the Federal Court, Trial Division, acted unfairly towards the Applicant in allowing only a marginal increase in the value of the subject lands based on speculative mining potential - Whether the Federal Court, Trial Division, erred in not accepting, contrary to the evidence, that the very highest and best use of the subject lands was mining related, beyond speculation, and that this was apparent in 1971, at Valuation Day.



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**24103 DONNA E. KASVAND v. HER MAJESTY THE QUEEN** (F.C.A.)

CORAM: La Forest, Sopinka 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 - *Canadian Charter of Rights and Freedoms* - Administrative law - Judicial review - Discrimination by reason of age and disability - Constitutionality of s. 146(1)(c) of the *Income Tax Act* which defines "earned income" upon which the deductible amount of RRSP premiums is determined and which excludes income from all other sources reported by the Applicant - Whether s. 146(1)(c) denies a deduction in respect of income from sources on which many elderly, disabled persons disproportionately depend while allowing it in respect of income from sources usually more accessible to younger persons.

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**24079 JUDITH LOUISE GRIMARD v. RUEBEN BERRY and REGINA MOTOR PRODUCTS (1970) LTD.**  
(Sask.)

CORAM: La Forest, Sopinka 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 - Damages - Motor vehicles - Assessment of damages for injuries sustained in motor vehicle accident - Whether the Court of Appeal erred in assessing the base wage rate for past and future wage loss calculation - Whether the Court of Appeal erred by not including inflation to their calculations - Whether the Court of Appeal erred in calculating the management component of the Applicant's housekeeping capacity.

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**22207 WILLIAM JAMES McCANN v. ENVIRONMENTAL COMPENSATION CORPORATION** (Ont.)

CORAM: La Forest, Sopinka 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**

Environmental law - *Canadian Charter of Rights and Freedoms* - Statutes - Interpretation - Damages - Application for compensation for injuries suffered as a result of pollutants in the environment - Remedy under Part IX of the *Environmental Protection Act* restricted by Court of Appeal to spills occurring after the date of proclamation - Applicability of section 7 of the *Charter* to situations outside of the criminal justice system - Section 15, *Charter*.

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**23872 GABRIEL TARDI and ATOMIC SLIPPER CO. LTD. - and - THÉRÈSE TROLLI, FRANK, DINA and NICK TARDI v. BANQUE NATIONALE DU CANADA - and - THE REGISTRAR FOR THE REGISTRATION DIVISION OF MONTREAL and MARIO POUDRIER** (Que.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Procedural law - Civil procedure - *Canadian Charter of Rights and Freedoms* - Motion seeking condemnation in damages dismissed - Whether the Court of Appeal erred in dismissing the Applicants' motion under ss. 1, 7, 8, 13, 15, 24(1) and (2) of the *Charter* and under ss. 2, 20 and 568 of the *Code of Civil Procedure* - Whether the Court of Appeal erred by not ruling and by not giving full effect under ss. 1, 7, 8, 13, 15, 24(1) and (2) of the *Charter* and by not giving full effect of ss. 2, 20 and 568 of the *Code*.

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**23706 JAMES CLAYTON COLLIER v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: La Forest, Sopinka 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**

Criminal law - Evidence - Dangerous offender - Whether the trial judge erred in failing to explain why contradictions between the evidence submitted at trial and at the dangerous offender hearing did not cause him any concerns - Whether the trial judge erred in failing to rule at the dangerous offender hearing, in the face of perjury at trial, whether such admission ought to be treated as fresh evidence or whether such admission should be found to relate only to the issue of sentencing - Whether the trial judge erred in basing his finding of dangerousness upon evidence gathered by the police for misconduct for which the Applicant was neither charged nor tried upon - Whether the trial judge erred in relying extensively upon psychological and psychiatric professionals in reaching the conclusion of dangerousness and whether the indeterminate sentence was disproportionately harsh - Whether the Court of Appeal erred in law in holding that the Applicant had not met the onus of demonstrating that surveillance reports which had been gathered by the police were not disclosed to the defense in a timely fashion - Whether the Court of Appeal erred in law in holding that the Crown could fulfil its obligations to disclose all material by summarizing their content to defense counsel either in writing or verbally.

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**24149 HER MAJESTY THE QUEEN v. I.T.G.** (Crim.)(N.S.)

CORAM: La Forest, Sopinka 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 - Young offenders - Procedural law - Evidence - Offenses - Interpretation - Whether the Court of Appeal erred in applying an unduly onerous standard to the examination of the credibility of a sexual assault complainant - Whether the Court of Appeal erred in that they misconstrued the legal meaning of consent - Whether the Court of Appeal erred in setting aside the trial judge's conclusion that the complainant was credible - Whether the Court of Appeal erred in that they misconstrued the meaning of s. 686(1)(a)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46, and that they exceeded their jurisdiction under s. 686(1)(a)(i) by setting aside the conviction of the trial judge.

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**24162 PRIVATE ROBERT ANTHONY RYAN v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)(C.M.A.C.)

CORAM: La Forest, Sopinka 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 - Procedural law - Appeal - Extension of time - Whether the Court Martial Appeal Court erred in refusing to extend the time for filing an application to appeal conviction and in refusing the application for leave to appeal severity of sentence because the Applicant did not submit, as ordered, representations in support of both applications.

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**24096 ROD JAZRA c. BANQUE DE MONTRÉAL** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit commercial - Code civil - Banques et opérations bancaires - Contrats - Créancier et débiteur - Action de l'intimée en paiement des versements mensuels minimums dus par suite de l'utilisation d'une carte Master Card Or émise par l'intimée accueillie - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant la requête du demandeur pour permission d'interjeter appel à la Cour d'appel?

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**24044 LAMY DOMINIQUE c. MARK ABRAMOWITZ** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit du travail - Arbitrage - Indemnisation - Dommages-intérêts - Sentence arbitrale - Obligation de mitiger les dommages - La sentence arbitrale était-elle manifestement déraisonnable? - L'arbitre-intimé a-t-il erré en fixant le quantum des dommages-intérêts pour la perte de salaire du demandeur? - Y avait-il chose jugée aux termes des articles 981 du *Code de procédure civile* et 2848 du *Code civil*? - Le demandeur a-t-il mitiger ses dommages?

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**24165 EUGÈNE FLIBOTTE c. VILLE DE ST-BASILE-LE-GRAND ET CHAMBRE DE L'EXPROPRIATION ET LE REGISTRATEUR DE LA DIVISION D'ENREGISTREMENT DE CHAMBLY** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit municipal - Expropriation - Législation - Interprétation - Légalité du droit à l'expropriation pour effectuer des travaux requérant l'autorisation du ministère de l'Environnement - Le droit à l'expropriation d'un terrain pour permettre d'installer une conduite temporaire et de l'utiliser pour déverser un trop-plein provenant d'un collecteur sanitaire dans un ruisseau peut-il être déterminé uniquement en fonction des pouvoirs inhérents d'une municipalité en vertu de la *Loi sur les cités et villes*, L.R.Q., ch. C-19, sans tenir compte des dispositions particulières de la *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2, quant au rejet de contaminants dans l'environnement? - Légalité de l'expropriation d'une partie de lot non visée par la résolution de la municipalité décrétant les travaux.

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**24081** Service spécial de vidanges Inc. et Gestion des rebus D.M.P. Inc. c. Régie intermunicipale de gestion des déchets de la Mauricie, et Municipalité régionale de comté de Francheville, Municipalité régionale de comté de Maskinongé, Municipalité régionale de comté de Mékinac, Municipalité régionale de comté Le Centre de la Mauricie, Ville de Trois-Rivières et Procureur général de la province de Québec, et Chambre d'expropriation de la Cour du Québec et Le registraire du bureau d'enregistrement de Trois-Rivières (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit municipal - Droit administratif - Législation - Interprétation - Compétence - Municipalités - Expropriation - Contrôle judiciaire - Compétence d'une municipalité d'exploiter un système de gestion de rebuts - Délégation du pouvoir d'exploitation d'un service de gestion des rebuts - La Cour d'appel du Québec a-t-elle erré dans l'interprétation des dispositions pertinentes du *Code municipal*, L.R.Q., ch. C-27, sur la gestion des déchets?

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**24136** LUCILLE DUBÉ c. NATHANIEL H. SALOMON (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Actions - Prescription - Moyens préliminaires - Action en dommages-intérêts intentée par la demanderesse contre l'intimé - Requête en irrecevabilité présentée par l'intimé en vertu de l'art. 165 alinéa 4 du *Code de procédure civile*, L.R.Q. 1977, ch. C-25 - Intimé demandant le rejet de l'action au motif qu'elle n'est pas fondée en droit puisque prescrite - La Cour d'appel a-t-elle erré en concluant que le juge de première instance avait raison d'accueillir la requête en irrecevabilité?

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**24167** SUZANNE TIMMENS LACOSTE c. SOCIÉTÉ NATIONALE D'ASSURANCES ET D.K. AUTOMOBILES INC. (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - Droit commercial - Assurance - Application de l'article 2478 du *Code civil du Bas-Canada* - Pouvoir d'intervention de la Cour d'appel - Le juge de la Cour supérieure a-t-il commis une erreur manifeste et dominante permettant l'intervention de la Cour d'appel? - Les juges de la Cour d'appel avaient-ils des motifs d'intervention sur les questions de fait?

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**24192 GÉRALD BOUGIE v. HER MAJESTY THE QUEEN** (Crim.)(Qué.)

CORAM: L'Heureux-Dubé, Gonthier 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 - Offences - Defence - Evidence - Second degree murder - Provocation - Whether the trial judge erred in instructing the jury that a confession of unfaithfulness by the victim to the accused can never be considered as provocation - Whether the trial judge erred in not directing the jury as to what elements in the proof could constitute provocation for purposes of section 232(2) of the *Criminal Code*, even though the jury asked a question during its deliberations as to the type of acts considered admissible in law as provocation?

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**24187 ANDRÉ MERCIER c. SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

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

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

**NATURE DE LA CAUSE**

Droit criminel - Infractions - Défense - Preuve - Procès devant jury - Meurtre au premier degré - Droit à une défense pleine et entière - Admissibilité de la preuve - Exposé du juge au jury - Le juge du procès a-t-il commis une erreur en n'instruisant pas le jury conformément à l'arrêt *La Reine c. Lavallée*, [1990] 1 R.C.S. 852? - La Cour d'appel du Québec a-t-elle commis une erreur en déclarant pertinents les témoignages sur la propension du demandeur à la violence? - L'exposé du juge au jury a-t-il permis au jury d'apprécier adéquatement la preuve concernant les menaces de mort, les voies de fait et la défense d'ivresse?

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**24189 Vicki Winnie Wong v. Louis A.T. Williams carrying on the practice of law under the firm and style of Louis A.T. Williams, Barrister and Solicitor** (Alta.)

CORAM: L'Heureux-Dubé, Gonthier 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**

Procedural law - Pre-trial procedure - Actions - Whether the Alberta Court of Appeal erred in upholding the decision of the trial judge dismissing the Applicant's action simply by virtue of the fact that she was unable to attend at an examination for discovery due to illness.

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**SEPTEMBER 8, 1994 / LE 8 SEPTEMBRE 1994**

**24055 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO v. KANSA GENERAL INSURANCE CO.**  
(Ont.)

CORAM: La Forest, Sopinka 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**

Procedural law - Actions - Insurance - Interpretation - Application for an order requiring the Respondent insurer to defend a third party claim brought against the Applicant insured - Whether the Court of Appeal erred in holding that the environmental exclusion in the policy applied to public authorities who allegedly failed, in their regulatory capacity, to prevent polluters from discharging pollutants - Whether the Court of Appeal erred in holding that the Applicant's alleged failure to advise of and deal with the spills and to bind all parties responsible for the spills in a clean-up order were not new acts of negligence that broke a chain of causation commencing with the first discharge of pollutants - Whether the Court of Appeal erred in finding that the American cases were not persuasive in the Canadian context and did not form a sound basis for the interpretation of the exclusion - Whether the Court of Appeal erred in applying *The Queen v. Sault Ste. Marie*, [1978] 1 S.C.R. 1299.

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**24119 ROBERT GERALD WESSELL v. HER MAJESTY THE QUEEN** (Crim)(N.S.)

CORAM: La Forest, Sopinka 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 - Offences - Trial - Sentencing - Trial judge's instructions to the jury - Similar fact evidence - Whether the Nova Scotia Court of Appeal erred in law when it deprived the Applicant of legal counsel thereby breaching his constitutional right under section 7 of the *Canadian Charter of Rights and Freedoms* - Whether Nova Scotia Court of Appeal erred in law when it failed to fully adjudicate all the grounds of appeal raised by the Applicant in his notice of appeal and in particular his primary ground of appeal being the issue of whether he received a full and proper defence by his lawyer during the course of the trial - Whether the trial judge erred in law in allowing prejudicial evidence of past events that were characterized as similar fact evidence because of their alleged probative value resulting in an unfair trial - Whether the trial judge erred in law when he argued with defence counsel about the evidentiary value of an affidavit in front of the jury thereby displaying a bias against the defence which could have and probably did prejudice the jury and result in an unfair trial - Whether the trial judge erred in law during the course of his charge to the jury when he misdirected the jury as to the use to be made of the similar fact evidence and failed to properly instruct the jury in regard to the law on the accused intending the natural consequences of his actions - Whether the trial judge erred when imposing an unduly harsh and excessive sentence which was disproportionate to the circumstances of the case and the accused.

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**24166 LRSO INVESTMENTS LTD. v. ROYAL BANK OF CANADA** (Alta.)

CORAM: La Forest, 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 - Contracts - Creditor & Debtor - Estoppel - Loan - *Res judicata* - Abuse of process - Debenture - Whether the Court of Appeal erred in striking out the Applicant's pleadings as *res judicata* - Whether the Court of Appeal erred in failing to properly interpret and apply the debenture as it was agreed to between the parties, and particularly by not finding that the terms of the debenture precluded the Applicant from opposing the Respondent's receivership application by set-off or cross-claim, and reserve to the Applicant the right to bring its claim by separate action - Whether the Court of Appeal erred in concluding that the interlocutory order declaring the Respondent entitled to a receiver was a final judgment which estopped the Applicant from later raising any issue relating to the Respondent's prior breach and repudiation of the leading/participation agreement entered into between the parties.

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**24190 THE UNIVERSITY OF ALBERTA NON-ACADEMIC STAFF ASSOCIATION v. BOARD OF GOVERNORS OF THE UNIVERSITY OF ALBERTA (Alta.)**

CORAM: La Forest, Sopinka and Major JJ.

The application leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Labour law - Judicial review - Standard of review - Two employees of the University of Alberta laid-off - Employee with less seniority re-employed - Grievance by Applicant alleging breach of collective agreement - Whether the majority of the Adjudication Board made decisions which are patently unreasonable errors of law in holding that the incumbent employee occupied a position which was "not budgeted" and in holding that the incumbent employee occupies a "non-established position".

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**24108 DIMITRY BOVBEL v. THE MINISTER OF EMPLOYMENT AND IMMIGRATION (Ont.)(F.C.A.)**

CORAM: L'Heureux-Dubé, Gonthier 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**

Immigration - *Canadian Charter of Rights and Freedoms* - Administrative law - Judicial review - Remedies - Administrative tribunals - Applicant's Convention refugee status denied - Application for judicial review allowed - Respondent's appeal allowed - Role of legal advisors when the decision makers consider factual issues - Whether there is an improper delegation of authority when legal advisers review and correct reasons for decision in circumstances where they have access to the transcript of the proceedings - What are the limits of legal advisors who provide advice to tribunals in cases where the *Charter of Rights and Freedoms*, s. 7 interests are at stake - Whether the Immigration Refugee Board's Reasons Review Policy breaches the rules of natural justice - Whether the procedures and guidelines of the Board raise concerns over the ability of members to decide freely and according to the member's own conscience, or does it raise the issue of attempt to influence the decision-maker, which gives rise to a reasonable apprehension of bias and interference in the independence of the Board Members.

**24118 REMPEL BROS. CONCRETE LTD. v. CORPORATION OF THE DISTRICT OF CHILLIWACK (B.C.)**

CORAM: L'Heureux-Dubé, Gonthier 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**

Municipal law - Indians - Constitutional law - Statutory instruments - Interpretation - Whether a municipality may regulate the use of land, namely, the removal of soil, on an Indian Reserve that is situated within municipal boundaries.

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**24110 STEVE WEBBER v. MELVIN UNRUH (an infant by his guardian *ad litem* Gail Unruh, but now of full age) (B.C.)**

CORAM: L'Heureux-Dubé, Gonthier 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**

Torts - Damages - Respondent injured while playing hockey - Whether the Courts erred in concluding that the Respondent had not accepted the risk of being injured in the way in which the injury occurred, by contact from the rear in the vicinity of the boards, and where the Applicant intended to make body contact with the Respondent but did not intend to injure him - Whether the Courts erred in identifying the appropriate standard of care applicable to participants in a fast, aggressively played body contact sport, and in concluding that the Applicant had breached that standard of care.

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**24132 CHI MAN (ANTHONY) LI v. HER MAJESTY THE QUEEN (Crim.)(B.C.)**

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

The application for extension of time is granted and the application 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 - Law of professions - Barristers and Solicitors - Conflict of interest - Solicitor and client privilege - Jewellery store robbery - Jewellery from store robbery and a home robbery found in Applicant's home - Applicant's counsel at trial also acting for person arrested for store and home robberies - New ground on appeal alleging that counsel for the Applicant at trial was acting under a conflict of interest that prejudiced the defence - Admissibility of affidavit from counsel at trial alleging that Applicant informed him of his participation in home robbery.

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**24201** **BETWEEN: Agnes Maud Ethel McRae, Executrix of the Estate of Farquhar Fraser McRae, and Agnes Maud Ethel MacRae v. Dennis Fraser McRae, John Alexander McRae and Catherine Jane McRae, Harriet Anne Jacqueline Wallace, Scotch Fir Estates Ltd. - and - Royal Trust Corporation of Canada, Executors of the Estate of Farquhar Fraser McRae, Deceased, Dennis Fraser McRae, John Alexander McRae and Catherine Jane McRae, Harriet Anne Jacqueline Wallace**  
**AND BETWEEN: Dennis Fraser McRae v. John Alexander McRae, Catherine Jane McRae - and - Royal Trust Corporation of Canada and Agnes Maud Ethel McRae, Executors of the Estate of Farquhar Fraser McRae, Deceased, and the said Agnes Maud Ethel McRae and Harriet Anne Jacqueline Wallace (B.C.)**

CORAM: L'Heureux-Dubé, Gonthier 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

Procedural law - Property law - Land titles - Judgments and orders - Whether the Court of Appeal erred in making directions and orders outside of and beyond the relief requested and issue brought in the Respondents' application - Whether the Court of Appeal erred in holding that the certificate of title of the deceased obtained as a *bona fide* purchaser for value under s. 38(1) of the *Land Registration Act*, R.S.B.C. 1948, c. 171, was subject to ss. 148(1) and (2) of the *Act*.

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**24186** **Minnie Pearl Wilder, Executrix of the Estate of Earl A. Wilder, deceased, Minnie Pearl Wilder, Terrance Wilder a.k.a. Tara Wilder, Cecilia Melrose and Tara Wilder v. Davis & Company (B.C.)**

CORAM: L'Heureux-Dubé, Gonthier 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

Procedural law - Judgments and orders - Barristers and solicitors - Supreme Court of British Columbia granting two *ex parte* orders renewing the writ of summons in action - Whether the Court of Appeal erred in reversing the Chambers judge and dismissing the Applicants' action for professional negligence and breach of contract against the Respondent in the absence of any prejudice to the law firm - Whether British Columbia's "desk order" rule may be used to renew a writ of summons where the defendant could have been but was not given notice of the writ - Whether the order of a Chambers judge may be set aside as contrary to fundamental principles where his reasons for decision do not deal with every fact placed in evidence and dealt with in argument.

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**24204** **L.G.B. v. HER MAJESTY THE QUEEN (Crim.)(Alta.)**

CORAM: L'Heureux-Dubé, Gonthier 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 - Defences - Charge to jury - Killing committed following homosexual advances by victim - Defences of self-defence and drunkenness - Judge making references to issue of capacity - Whether the Court of Appeal erred in law in declining to follow and apply the principles of law set out in *R. v. Canute* (1993), 80 C.C.C.(3rd) 403 (B.C.C.A.) and *R. v. Cormier* (1993), 86 C.C.C.(3rd) 163 (C.A. Que).

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**24196 ANTONIO FLAMAND ET MARTINE GODARD c. CORPORATION DES RELIGIEUSES DE JÉSUS-MARIE** (Qué.)

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

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

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

**NATURE DE LA CAUSE**

Droit municipal - Municipalités - Législation - Textes réglementaires - Interprétation - Demandeurs possédant un lot contigu à la propriété de l'intimée - Construction d'un gymnase par l'intimée - La Ville de Sillery devait-elle déclarer irrecevable la demande de permis de construire de l'intimée et obliger celle-ci à accompagner sa demande d'un plan de lotissement ou de subdivision conformément aux exigences des articles 1.6.3 *in fine* et 1.6.2d) du règlement de zonage de la Ville? - Si la demande de permis était recevable, la Ville a-t-elle illégalement émis le permis en raison du fait que la construction projetée ne respectait pas les marges de recul imposées tant par le règlement de zonage que par le règlement de construction par l'application implicite du Code national du bâtiment? - L'intimée et la Ville ont-elles commis à l'endroit des demandeurs un abus de droit susceptible de donner ouverture à une demande en dommages-intérêts?

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**23917 CONSTANTIN TEODORESCU c. SA MAJESTÉ LA REINE** (Qué.)

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

La demande de réexamen de la demande d'autorisation d'appel est rejetée sans dépens.

The application for reconsideration of the motion for leave to appeal is dismissed without costs.

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**23874 PIERRE ANDRÉ GAULIN v. HER MAJESTY THE QUEEN** (Crim.)(Qué.)

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

The application for reconsideration of the application for leave to appeal is dismissed.

La demande de réexamen de la demande d'autorisation d'appel est rejetée.

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18.8.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for directions**

RJR -- MacDonald Inc.

v. (23460)

Attorney General of Canada

and between

Imperial Tobacco Ltd.

v. (23490)

Attorney General of Canada (Qué.)

**GRANTED / ACCORDÉE****Demande pour obtenir des directives**

Colin K. Irving, for RJR-MacDonald Inc.

Simon Potter, for Imperial Tobacco Ltd.

James Mabbutt, for the respondent.

Andrew Raven, for the interveners Canadian Cancer Society et al.

Sylvie Roussel, for the Attorney General of Québec.

1. The orders sought in points 2 and 3 of the Notice of motion dated July 8, 1994 are granted. (respondent's factum be filed by Sept. 15, 1994 and interveners' factums be filed by Sept. 30, 1994.)

2. The schedule for hearing will be as follows:

For the appeal:

RJR--MacDonald	1 1/2 hours
Imperial Tobacco	1 1/2 hours
Attorney General of Québec	15 minutes

Against the appeal:

Attorney General of Canada	3 hours
Attorney General of Ontario	15 minutes
Attorney General of B.C.	15 minutes
Attorney General of Sask.	15 minutes
Canadian Cancer Society et al.	15 minutes

Reply:

RJR--MacDonald	15 minutes
Imperial Tobacco Ltd.	15 minutes

3. With respect to reply factums Counsel may reapply to me, if so advised, after the interveners factums have been filed.

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22.8.1994

Before / Devant: CORY J.

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

**Requête en prorogation du délai de dépôt de  
l'avis d'appel**

Lucien Cleghorn

With the consent of the parties.

v. (24248)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to August 15, 1994

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22.8.1994

Before / Devant: THE DEPUTY REGISTRAR

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

Verlie Ann Halcrow

v. (23542)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE** Time extended to August 9, 1994

**Requête en prorogation du délai de dépôt du  
mémoire de l'intimée**

With the consent of the parties.

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23.8.1994

Before / Devant: LE JUGE LA FOREST

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**Requête en vue de surseoir à l'exécution**

William McAllister

c. (24238)

Les États-Unis d'Amérique et al. (Qué.)

**Motion for a stay of execution**Jacques Normandeau et Sylvie Roussel, pour la  
requête.

Bernard Laprade, contra.

**REJETÉE / DISMISSED**  

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24.8.1994

Before / Devant: LE REGISTRAIRE ADJOINT

**Requête en prorogation du délai de dépôt du  
mémoire de l'intimée**

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

Ville de Beauport

c. (23753)

Caisse populaire de Charlesbourg (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 29 août 1994.

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24.8.1994

Before / Devant: LE JUGE LA FOREST



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**Requête en acceptation d'un mémoire d'appel de plus de 40 pages**

RJR MacDonald Inc.

v. (23460)

Attorney General of Canada

and between

Imperial Tobacco Ltd.

v. (23490)

Attorney General of Canada (Qué.)

**Motion for acceptance of factum on appeal over 40 pages**

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

**GRANTED / ACCORDÉE**

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25.8.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for a new place on the list**

N. Naoufal

v. (24158)

Her Majesty The Queen (Ont.)

**Requête en obtention d'une nouvelle place sur le rôle**

Robert Frater, for the motion.

Karen Cuddy, contra.

Robert Houston, Q.C., for the respondent in Pizzardi and Levis v. R.

**GRANTED / ACCORDÉE**

1. These cases will be heard consecutively on Dec. 9, 1994 beginning with Pizzardi and Levis v. R. (Court Files Nos. 23760 & 23809)
2. The Court will begin sitting at 9:30 a.m. on that day, and
3. The time for filing the case on appeal in Naoufal appeal is extended to Sept. 15, 1994.

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29.8.1994

Before / Devant: LE JUGE IACOBUCCI

**Requête en autorisation d'intervention**

BY/PAR: Charter Committee on Poverty  
Issues et al.;

Support and Custody Orders for  
Priority Enforcement (SCOPE)

IN/DANS: Sa Majesté La Reine

c. (24154)

Suzanne Thibault  
(C.A.F.)(Qué.)

**Motion for leave to intervene**

Avec le consentement des parties.

**ACCORDÉE / GRANTED**

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30.8.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Her Majesty The Queen

v. (23876)

Darryl Gordon Park (Alta.)

**GRANTED / ACCORDÉE**

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

With the consent of the parties.

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30.8.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Antonio Silveira

v. (24013)

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.

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30.8.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that this appeal is to be deemed not abandoned and motion to extend the time in which to file the appellant's factum**

Arkady Felix Feldman

v. (23992)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE**

**Requête en déclaration que le présent appel est censé ne pas avoir été abandonné et requête en prorogation du délai de dépôt du mémoire de l'appelant**

With the consent of the parties.

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30.8.1994

Before / Devant: THE REGISTRAR

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

Camile Huot

v. (23849)

Her Majesty The Queen (Ont.)

**Requête en prorogation du délai de dépôt du  
mémoire de l'intimée**

With the consent of the parties.

**GRANTED / ACCORDÉE** Time extended to August 19, 1994.

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31.8.1994

Before / Devant: THE REGISTRAR

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

Antonio Silveira

v. (24013)

Her Majesty The Queen (Ont.)

**Requête en prorogation du délai de dépôt du mémoire de l'appelant**

With the consent of the parties.

**GRANTED / ACCORDÉE** Time extended to August 8, 1994.

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31.8.1994

Before / Devant: LE JUGE L'HEUREUX-DUBÉ

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**Requête en vue de surseoir à l'exécution**

Sheila Perrins

c. (24251)

Morris Rotstein (Qué.)

**Motion for a stay of execution**

Miriam Grassby, for the motion.

Daniel St-Pierre, contra.

**GRANTED / ACCORDÉE**

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31.8.1994

Before / Devant: LE JUGE L'HEUREUX-DUBÉ

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**Requête en vue de surseoir à l'exécution**

Minister of Justice of Canada

v. (24253)

Daniel Jamieson (Qué.)

**Motion for a stay of execution**

Robert Frater, for the motion.

Pierre Poupart & Ronald Prigent, contra.

**GRANTED / ACCORDÉE**

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2.9.1994

Before / Devant: THE REGISTRAR



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

**Requête en prorogation du délai de dépôt du mémoire de l'appelante**

C.R.T.C. et al.

With the consent of the parties.

v. (23717)

B.C. Telephone Co. et al. (F.C.A.)(B.C.)

**GRANTED / ACCORDÉE** Time extended to September 2, 1994.

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2.9.1994

Before / Devant: THE REGISTRAR

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**Motion to file factum in its present form**

**Requête en acceptation du mémoire dans sa  
forme actuelle**

Victor R. Durish

With the consent of the parties.

v. (23483)

White Resource Management Ltd. et al. (Alta.)

**GRANTED / ACCORDÉE**

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2.9.1994

Before / Devant: THE REGISTRAR

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

Victor R. Durish

v. (23483)

White Resource Management Ltd. et al. (Alta.)

**GRANTED / ACCORDÉE**

2.9.1994

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai de dépôt du mémoire de l'appelant**

With the consent of the parties.

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**Requête en prorogation du délai de dépôt du  
mémoire de l'appelante**

L'Honorable Andrée Ruffo

c. (23127)

Conseil de la Magistrature et al. (Qué.)

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

Avec le consentement des parties.

**GRANTED / ACCORDÉE** Délai prorogé au 6 septembre 1994.

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2.9.1994

Before / Devant: THE REGISTRAR

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**Motion to extend the time in which to file the case  
on appeal**

Derik Christopher Lord

v. (23943)

Her Majesty The Queen (B.C.)

**Requête en prorogation du délai de dépôt du  
dossier d'appel**

With the consent of the parties.

**GRANTED / ACCORDÉE** Time extended to August 19, 1994.

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2.9.1994

Before / Devant: THE REGISTRAR

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

Shaw Cable Systems British Columbia Ltd. et al.

v. (23717)

B.C. Telephone Co. et al. (B.C.)

**GRANTED / ACCORDÉE**

2.9.1994

Before / Devant: THE REGISTRAR

**Requête en prorogation du délai de dépôt du  
dossier d'appel et du mémoire de l'appelante**

With the consent of the parties.

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**Motion to extend the time in which to file the case  
on appeal**

Cameron Robert Laporte

v. (24140)

Her Majesty The Queen (Man.)

**Requête en prorogation du délai de dépôt du  
dossier d'appel**

With the consent of the parties.

**GRANTED / ACCORDÉE** Time extended to August 16, 1994.

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2.9.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Her Majesty The Queen

v. (23843)

Bevin Bervmay McIntosh (Ont.)

**GRANTED / ACCORDÉE**

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

With the consent of the parties.

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2.9.1994

Before / Devant: CHIEF JUSTICE LAMER



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

**Requête en prorogation du délai de dépôt du dossier d'appel et du mémoire de l'appelante**

Her Majesty The Queen

With the consent of the parties.

v. (23843)

Bevin Bermary McIntosh (Ont.)

**GRANTED / ACCORDÉE** Time to file the case on appeal to August 2, 1994 and the appellant's factum to August 5, 1994.

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8.9.1994

Before / Devant: LE JUGE EN CHEF LAMER

**Requête en déclaration que le présent appel est censé ne pas avoir été abandonné et requête en obtention d'une place spéciale sur le rôle**

Jocelyne Levasseur

c. (24072)

Sa Majesté La Reine (Qué.)

**GRANTED / ACCORDÉE**

**Motion for an order that this appeal is to be deemed not abandoned and motion for a special place on the list**

Avec le consentement des parties.

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8.9.1994

Before / Devant: LE JUGE McLACHLIN J.

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**Requête pour déposer d'autres éléments de preuve**

**Motion to adduce further evidence**

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

**ACCORDÉE / GRANTED**

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**NOTICES OF APPEAL FILED SINCE  
LAST ISSUE**

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

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9.8.1994

**Lucien Cleghorn**

**v. (24248)**

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

**AS OF RIGHT**

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29.8.1994

**Brendon Fitzpatrick**

**v. (24254)**

**Her Majesty The Queen (Crim.)(B.C.)**

**AS OF RIGHT**

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1.9.1994

**Her Majesty The Queen**

**v. (24262)**

**Steven Joseph Tanner (Crim.)(Ont.)**

**AS OF RIGHT**

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1.9.1994

**Her Majesty The Queen**

**v. (24263)**

**Nagui Mina (Crim.)(Ont.)**

**AS OF RIGHT**

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2.9.1994

**Santokh Sing Khela et al.**

**c. (24265)**

**Sa Majesté La Reine (Crim.)(Qué.)**

**DE PLEIN DROIT**

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**NOTICES OF INTERVENTION FILED  
SINCE LAST ISSUE**

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

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BY/PAR: Charter Committee on Poverty Issues (CCPI)

IN/DANS: **Sa Majesté La Reine**

c. (24154)

**Suzanne Thibault (C.A.F.)(Qué.)**

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**NOTICES OF DISCONTINUANCE  
FILED SINCE LAST ISSUE**

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

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26.8.1994

**L'Honorable Andrée Ruffo**

c. (23222)

**Le Conseil de la magistrature et al. (Qué.)**

(appel)

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6.9.1994

**Patrick Lynn Albright**

v. (24031)

**Her Majesty The Queen (Crim.)(B.C.)**

(appeal)

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**Reasons for judgment are available**

**Les motifs de jugement sont disponibles**

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**SEPTEMBER 1, 1994 / LE 1 SEPTEMBRE 1994**

**23712 HER MAJESTY THE QUEEN v. PAUL WAYNE MOYER** (Crim.)(Ont.)

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

The appeal is allowed, the acquittals of the Court of Appeal are set aside and the convictions of the trial judge are reinstated. Charges three and four against the respondent are amended to read as follows:

3. And further, on or about the same time and place, in the said Region, unlawfully did indecently offer an indignity to the human remains of S.L., by photographing a young male in front of the headstone while the male was exposing his penis toward the stone wearing a T-shirt inscribed Fuck off and Die **and by supplying the props and directing the actions of the young male (i.e., choreographing the event)**, contrary to the provisions of Section 182(b) of the Criminal Code of Canada.

4. And further, on or about the same time and place, in the said Region, unlawfully did indecently offer an indignity to the human remains of N.S., by photographing a young male sitting on the headstone **simulating** urinating and holding a Nazi style bayonet in front of the deceased's name **and by supplying the props and directing the actions of the young male (i.e., choreographing the event)**, contrary to the provisions of Section 182(b) of the Criminal Code of Canada.

Le pourvoi est accueilli, les acquittements inscrits par la Cour d'appel sont annulés et les déclarations de culpabilité prononcées par le juge du procès sont rétablies. Deux des trois actes d'accusation relativement auxquels l'intimé a été déclaré coupable ont été modifiés comme suit:

3. De plus, environ à la même heure et au même endroit, dans ladite région, d'avoir illégalement, en contravention de l'al. 182b) du Code criminel du Canada, commis une indécence ou indignité envers les restes humains de S.L., en photographiant devant la pierre tombale un jeune homme vêtu d'un t-shirt portant l'inscription «*Fuck off and Die*» qui pointait son pénis vers la pierre tombale, **et en fournissant les accessoires nécessaires et dirigeant les actes du jeune homme (la composition des scènes).**

4. De plus, environ à la même heure et au même endroit, dans ladite région, d'avoir illégalement, en contravention de l'al. 182b) du Code criminel du Canada, commis une indécence ou indignité envers les restes humains de N.S., en photographiant sur la pierre tombale un jeune homme assis qui **faisait semblant d'uriner** et tenait une baïonnette de type nazi devant le nom du défunt, **et en fournissant les accessoires nécessaires et dirigeant les actes du jeune homme (la composition des scènes).**

**23466 DOUGLAS JAMES WHITTLE v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

The appeal is dismissed.

Le pourvoi est rejeté.

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**23321 R. v. TRAN**

CORAM: Lamer C.J. and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

Hearing and judgment: February 25, 1994 ; Reasons delivered: September 1, 1994. /

Audition et jugement: 25 février 1994; Motifs déposés: 1<sup>er</sup> septembre 1994.





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*Her Majesty the Queen v. Paul Wayne Moyer (Crim.)(Ont.)(23712)*

Indexed as: *R. v. Moyer* / Répertoire: *R. c. Moyer*

Judgment rendered September 1, 1994 / Jugement rendu le 1 septembre 1994

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Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Cory, McLachlin and Iacobucci JJ.

*Criminal law -- Indignity to human remains -- Photographs taken at identifiable gravesites of human remains -- Photographs featuring skinhead wearing neo-Nazi symbols and simulating urinating on monument in Jewish cemetery -- Accused choreographing photo shoot and providing props -- Whether 'offering indignities' requires physical contact with human remains -- Whether indignities can be offered to monuments -- Criminal Code, R.S.C., 1985, c. C-46, s. 182(b).*

*Appeal -- Charge -- Amendment of charge -- Charge as drafted overly broad and capable of encompassing innocent activity -- Charge as redrafted not prejudicing accused -- Whether or not charge should be amended by this Court -- Criminal Code, R.S.C., 1985, c. C-46, ss. 683(1)(g), 695(1).*

Respondent and a young "skinhead" took neo-Nazi photographs in a Jewish cemetery. (Skinheads are often identified by their use of clothing with Nazi and white supremacist symbols.) Respondent choreographed the photo shoot, which included pictures of the skinhead's simulating urinating on actual identifiable gravestones, and supplied the props. He was charged, on the basis of the photographs, with offering indignities to human remains contrary to s. 182(b) of the *Criminal Code*. The Court of Appeal overturned his conviction. At issue here was whether 'offering indignities' requires physical contact with human remains and whether the section only captures indignities offered to human remains or whether it also captures indignities offered to monuments. An issue arising at the oral hearing on this appeal involved whether the Court could amend the charge as laid. The unacceptable implication flowing from conviction on the charges as laid was that the photographing by anyone of a young male offering indignities to human remains in and of itself constitutes offering an indignity to human remains.

*Held:* The appeal should be allowed.

Physical interference with a dead body or human remains is not necessary under s. 182(b) and the indignities must be offered to the dead body or human remains (as opposed to monuments *per se*). However, where monuments mark the presence of human remains, offering indignities to the monuments constitutes offering indignities to the human remains that are marked by the monuments. This interpretation is not impermissibly vague -- the courts can give it clear content. Nor is this interpretation overbroad for it does not include showing disrespect to a memorial plaque or a photo of the deceased far removed from the human remains but rather is confined to human remains and to grave sites and monuments that mark the final resting place of human remains.

Respondent's conduct *in toto* constituted acts of defilement and callous disrespect towards the remains of the individuals buried under the monuments that feature so prominently in his photographs. Doing what he did with and to the monuments placed on the graves constituted offering indignities to the remains buried below. If there had been no remains, then his conduct would have been reprehensible but not criminal under s. 182(b).

Respondent's claim that he offered indignities to Jewish people in general, as opposed to the remains of any specific Jewish individuals, was not supported by the trial judge's reasons and this finding of fact about his intent should not be disturbed on appeal for no reason. It did not matter, however, whether the respondent's claim were true. If he used an individual Jewish person's monument, gravesite and human remains as a means to the end of offering indignities to Jewish people in general, then he is guilty.

The Court of Appeal, pursuant to s. 683(1)(g) of the *Code*, may amend the charge, where it considers it to be in the interests of justice, unless it is of the opinion that the accused has been misled or prejudiced in his defence or appeal. The Supreme Court of Canada, pursuant to s. 695(1), may make any order that the Court of Appeal might have made and may make any rule or order that is necessary to give effect to its judgment. It was clearly in the interests of justice to amend the charge to conform with the evidence and to describe fully the activities that constituted the offence. Furthermore, the respondent at the oral hearing conceded that he had not been misled or prejudiced in his defence or appeal by the charges and would not be prejudiced by the amendments.

APPEAL from a judgment of the Ontario Court of Appeal (1993), 64 O.A.C. 389, 83 C.C.C. (3d) 280, 25 C.R. (4th) 115, allowing an appeal from conviction by Cavarzan J. Appeal allowed.

*Rosella Cornaviera*, for the appellant.

*Bruce Duncan*, for the respondent.

*Solicitor for the appellant: Attorney General for Ontario, Toronto.*

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*Solicitors for the respondent: Burke-Robertson, Ottawa.*

Présents: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Cory, McLachlin et Iacobucci

*Droit criminel -- Indignité envers des restes humains -- Photographies prises sur le site de tombes identifiables -- Photographies représentant un skinhead portant des symboles nazis et faisant semblant d'uriner sur un monument dans un cimetière juif -- Composition des scènes des photos et fourniture des accessoires par l'accusé -- La «perpétration d'une indignité» nécessite-t-elle un contact physique avec des restes humains? -- Une indignité peut-elle être commise envers des monuments? -- Code criminel, L.R.C. (1985), ch. C-46, art. 182b).*

*Pourvoi -- Accusation -- Modification de l'acte d'accusation -- Acte d'accusation initialement rédigé en termes trop généraux et susceptibles d'inclure une activité tout à fait innocente -- Acte d'accusation modifié non susceptible de causer un préjudice à l'accusé -- La Cour devrait-elle modifier l'acte d'accusation? -- Code criminel, L.R.C. (1985), ch. C-46, art. 683(1)g, 695(1).*

L'intimé et un jeune «skinhead» ont pris des photographies de style néo-nazi dans un cimetière juif. (Les «skinheads» sont souvent reconnus par le port de vêtements ornés de symboles nazis et d'emblèmes de suprématie de la race blanche.) L'intimé a fait la composition des scènes photographiées, dont des photos du skinhead faisant semblant d'uriner devant des pierres tombales identifiables; il a aussi fourni les accessoires nécessaires. Il a été accusé, sur la foi des photos, de perpétration d'indignités envers des restes humains, en contravention de l'al. 182b) du *Code criminel*. La Cour d'appel a annulé la déclaration de culpabilité. La question en litige vise à déterminer si l'expression «commet [. . .] [une] indignité» nécessite un contact physique avec des restes humains, et si la disposition vise seulement l'indignité commise envers des restes humains ou si elle vise aussi l'indignité commise envers des monuments. À l'audition du présent pourvoi, on s'est demandé si la Cour pouvait modifier l'acte d'accusation initial. Une déclaration de culpabilité fondée sur l'acte d'accusation tel qu'il a été rédigé a comme conséquence inacceptable que le fait de photographier un jeune homme en train de commettre une indignité envers des restes humains constitue en soi la perpétration d'une indignité envers des restes humains.

*Arrêt:* Le pourvoi est accueilli.

Un contact physique avec un cadavre ou des restes humains n'est pas nécessaire dans le cadre de l'al. 182b) et l'indignité doit être commise envers un cadavre ou des restes humains (par opposition aux monuments mêmes). Cependant, dans les cas où un monument indique la présence de restes humains, la perpétration d'une indignité envers un tel monument constitue une indignité envers des restes humains dont la présence est indiquée par ce monument. Cette interprétation n'est pas d'une imprécision inacceptable -- les tribunaux peuvent y attribuer un contenu clair. Cette interprétation n'est pas non plus trop générale -- elle ne vise pas un manque de respect envers une plaque commémorative ou une photo d'une personne décédée qui se trouve à un endroit très éloigné des restes humains en question, elle ne vise que les restes humains, les tombes et les monuments qui indiquent la dernière demeure de restes humains.

L'ensemble de la conduite de l'intimé constituait des actes de profanation et d'irrespect impitoyable envers les restes des personnes inhumées sous les monuments que l'on voit bien sur les photos. Ce que l'intimé a fait avec les monuments placés sur les tombes en question constituait la perpétration d'une indignité envers les restes humains qui y étaient inhumés. S'il n'y avait pas eu de restes humains, sa conduite aurait été répréhensible, mais n'aurait pas constitué une infraction criminelle visée à l'al. 182b).

L'intimé prétend avoir commis une indignité envers l'ensemble des Juifs et non envers les restes de personnes juives en particulier, mais les motifs du juge du procès n'appuient pas cette prétention, et cette conclusion de fait relativement à l'intention de l'intimé ne devrait pas être modifiée en appel sans motif. Il importe peu de savoir si la prétention de l'intimé est exacte. S'il s'est servi du monument, de la tombe et des restes humains d'une personne juive comme moyen de commettre une indignité envers l'ensemble des Juifs, il est coupable.

En vertu de l'al. 683(1)g) du *Code criminel*, la cour d'appel peut, lorsqu'elle l'estime dans l'intérêt de la justice, modifier l'acte d'accusation, à moins qu'elle ne soit d'avis que l'accusé a été induit en erreur ou qu'il a subi un préjudice dans sa défense ou son appel. Conformément au par. 695(1), la Cour suprême du Canada peut rendre toute ordonnance que la cour d'appel aurait pu rendre et peut établir toute règle ou rendre toute ordonnance nécessaire pour donner effet à son jugement. De toute évidence, il est dans l'intérêt de la justice que l'acte d'accusation soit modifié de façon qu'il corresponde aux éléments de preuve et décrive pleinement les activités constitutives de l'infraction. En outre, l'intimé a admis, à l'audience, qu'il n'a pas été induit en erreur ou qu'il n'a pas subi un préjudice dans sa défense ou son appel, et qu'il ne subirait pas un préjudice du fait des modifications.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1993), 64 O.A.C. 389, 83 C.C.C. (3d) 280, 25 C.R. (4th) 115, qui a accueilli un appel contre une déclaration de culpabilité prononcée par le juge Cavarzan. Pourvoi accueilli.

*Rosella Cornaviera*, pour l'appelante.

*Bruce Duncan*, pour l'intimé.

*Procureur de l'appelante: Procureur général de l'Ontario, Toronto.*

*Procureurs de l'intimé: Burke-Robertson, Ottawa.*

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***Douglas James Whittle v. Her Majesty the Queen (Crim.)(Ont.)(23466)***

**Indexed as: R. v. Whittle / Répertoire: R. c. Whittle**

Judgment rendered September 1, 1994 / Jugement rendu le 1 septembre 1994

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Present: Lamer C.J. and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

*Constitutional law -- Charter of Rights -- Right to counsel -- Waiver -- Degree of mental capacity required to exercise right -- Accused suffering from a mental disorder arrested on warrants of committal for unpaid fines and informed of his right to counsel -- Accused telling police he wanted to talk and admitting he was responsible for a murder and three robberies -- Police charging accused with these offences and informing him again of his right to counsel -- Accused indicating that he did not wish to speak to counsel and making additional statements -- Accused later exercising his right to counsel but continuing to make statements to police -- Whether statements obtained in violation of accused's right to counsel -- Whether waiver valid -- Canadian Charter of Rights and Freedoms, s. 10(b).*

*Constitutional law -- Charter of Rights -- Fundamental justice -- Right to silence -- Degree of mental capacity required to exercise right -- Accused suffering from a mental disorder arrested on warrants of committal for unpaid fines and informed of his right to remain silent -- Accused telling police he wanted to talk and admitting he was responsible for a murder and three robberies -- Police charging accused with these offences and informing him again of his right to remain silent -- Accused making additional statements to police despite counsel's advice to remain silent -- Whether statements obtained in violation of accused's right to silence -- Canadian Charter of Rights and Freedoms, s. 7.*

*Criminal law -- Evidence -- Confessions -- Voluntariness -- Mental state of accused -- Accused suffering from a mental disorder arrested on warrants of committal for unpaid fines -- Accused telling police he wanted to talk and admitting on several occasions he was responsible for a murder and three robberies -- Whether accused's statements admissible -- Operating mind test.*

*Criminal law -- Appeals -- Crown appeal -- Court of Appeal setting aside accused's acquittal and ordering new trial -- Supreme Court not precluded from disposing of appeal on question of law alone if Court of Appeal's decision based on mixed law and fact -- Court of Appeal having jurisdiction under s. 676(1)(a) of Criminal Code to decide Crown's appeal even if it may have exceeded it.*

*Criminal law -- Appeals -- Powers of Court of Appeal -- Accused's inculpatory statements to police excluded by trial judge -- Crown declining to call further available evidence after adverse ruling and accused acquitted -- Statements found to have been wrongly excluded on appeal -- Court of Appeal concluding that Crown sincerely believed remaining evidence not of sufficient probative force to constitute prima facie case against accused -- Court of Appeal not erring in applying s. 686(4)(b)(i) of Criminal Code to set aside acquittal and order new trial.*

The accused was arrested pursuant to outstanding warrants of committal for unpaid fines and was informed of his right to counsel and cautioned. Prior to the arrest, the police officer had noticed the accused's strange conduct and, at the station, advised the constable in charge of the cells that the accused was mentally unstable. While in his cell, the accused asked to speak to police officers and made several statements indicating that he was responsible for a murder and three robberies. The police, after verifying the accused's information, arrested him for those offences. He was informed of his right to counsel and cautioned. The accused indicated that he understood his rights, but that he did not wish to contact a lawyer. The accused then offered to take the police to where he had discarded the murder weapon. During that trip, he continued to disclose details relating to the murder and the robberies and, on two or three occasions, made unusual comments. On the way back to the station, the accused accepted the police's suggestion that he make a videotaped statement. He was again advised of his rights and, once again, he indicated that he did not wish to speak with a lawyer. The videotaping ceased when the accused decided to consult counsel. The lawyer advised him to remain silent but the accused told him that he needed to talk to the police in order to stop the voices in his head. After speaking with the lawyer, the accused indicated to the police that he still wished to continue with the videotaped statement and confessed to the murder. Over the course of his hour-long statement, the accused also made several bizarre comments. After the videotaped statement, the accused offered to take the police to the place where he had discarded the victim's wallet. The wallet was eventually found in that location. Later, while being transported to a different police station, the accused provided further details of the murder. He had been given another opportunity to consult counsel before being transported. Prior to trial, the accused underwent psychiatric examination the results of which supported his fitness to stand trial. Upon his return from the 30-day examination, the accused again spoke to the police even though his lawyer had advised him not to do so.

At the accused's trial on a charge of first degree murder, a *voir dire* was held to determine the admissibility of the statements. Both defence and Crown psychiatrists testified that the accused suffers from schizophrenia and that a common symptom of this illness is auditory hallucination. According to the defence psychiatrist's evidence, the accused was aware of what he was saying and what was said to him and of the court process. He was also fit to instruct counsel but, because of the voices in his head that were telling him to unburden himself, he did not care about the consequences.

Ruling on the *voir dire*, the trial judge found that, based solely on the "operating mind" test, the accused's inculpatory statements were voluntary in the traditional sense but that they should be excluded because the accused's rights under s. 10(b) of the *Canadian Charter of Rights and Freedoms* had been violated. The trial judge accepted the defence psychiatrist's evidence and concluded that the accused's psychological condition prevented him from an awareness of the consequences which would flow from giving the statements, and that this inability to appreciate what was at stake nullified any alleged waiver of his right to counsel. The statements made by the accused after the psychiatric evaluation were also excluded because they were obtained in violation of s. 10(b). The Crown declined to call further evidence and the accused was acquitted. The Court of Appeal set aside the acquittal and ordered a new trial. The court found that all the statements were admissible, concluding that the trial judge erred in finding that the accused's s. 10(b) rights had been violated.

*Held:* The appeal should be dismissed.

The accused's statements were voluntary and were not obtained in a manner that breached his rights under ss. 7 and 10(b) of the *Charter*. The accused had the requisite degree of mental competence to make the choices inherent in the confession rule, the right to silence and the right to counsel. The "operating mind" test, which is an aspect of the confession rule, includes a limited mental component which requires that the accused have sufficient cognitive capacity to understand what he is saying and what is being said. This includes the ability to understand a caution that the evidence can be used against the accused. The same standard applies with respect to the right to silence in determining whether the accused has the mental capacity to make an active choice. In exercising the right to counsel or waiving the right, the accused must possess the limited cognitive capacity that is required for fitness to stand trial. The accused must be capable of communicating with counsel to instruct counsel, and understand the function of counsel and that he can dispense with counsel even if this is not in the accused's best interests. It is not necessary that the accused possess analytical ability. The level of cognitive ability is the same as that required with respect to the confession rule and the right to silence: the accused must have the mental capacity of an "operating mind". On the basis of evidence which the trial judge accepted, the accused's mental condition satisfied the "operating mind" test, including the subjective element, and there was no obligation on the Crown to establish that the accused possessed a higher degree of cognitive capacity. To the extent that the inner voices prompted the accused to speak in apparent disregard of the advice of his counsel and to his detriment, because he did not care about the consequences or felt that he could not resist the urging of the voices, they cannot be the basis for exclusion. Inner compulsion, due to conscience or otherwise, cannot displace the finding of an "operating mind" unless, in combination with conduct of a person in authority, a statement is found to be involuntary. As for the *Charter* rights asserted, once the "operating mind" test is established, an accused is not exempted from the consequences of his actions absent conduct by the police which effectively and unfairly deprived the suspect of the right.

The trial judge's decision to exclude the statements was based on an erroneous view that the evidence which he accepted did not satisfy a separate "awareness of the consequences" test. Had he applied the correct instruction in law, he would have found that the test with respect to the requisite state of mind of the accused had been met. In the result, the statements were admissible in that they satisfied the criteria of the confession rule and the accused either waived or availed himself of the right to counsel and chose to speak to the police. With respect to waiver, all the other necessary requirements were met by the Crown and the sole issue was whether the mental element was satisfied. The mental element was satisfied in each of the statements at issue.

APPEAL from a judgment of the Ontario Court of Appeal (1992), 59 O.A.C. 218, 78 C.C.C. (3d) 49, allowing the Crown's appeal from the accused's acquittal on a charge of first degree murder and ordering a new trial. Appeal dismissed.

*James Lockyer*, for the appellant.

*David Finley*, for the respondent.

*Solicitors for the appellant: Pinkofsky, Lockyer, Kwinter, Toronto.*

*Solicitor for the respondent: The Ministry of the Attorney General, Toronto.*

Présents: Le juge en chef Lamer et les juges La Forest, Sopinka, Cory, McLachlin, Iacobucci et Major.

*Droit constitutionnel -- Charte des droits -- Droit à l'assistance d'un avocat -- Renonciation -- Degré de capacité mentale requis pour l'exercice du droit en question -- Accusé atteint de troubles mentaux arrêté en exécution de mandats d'incarcération relatifs au non-paiement d'amendes, et informé de son droit à l'assistance d'un avocat -- Accusé faisant part à la police de sa volonté de faire une déclaration et avouant être responsable d'un meurtre et de trois vols qualifiés -- Police inculquant l'accusé de ces infractions et l'informant de nouveau de son droit à l'assistance d'un avocat -- Accusé indiquant qu'il ne souhaite pas parler à un avocat et faisant d'autres déclarations -- Accusé exerçant par la suite son droit à l'assistance d'un avocat, mais continuant de faire des déclarations à la police -- Les déclarations ont-elles été obtenues*

*contrairement au droit de l'accusé à l'assistance d'un avocat? -- Y a-t-il eu renonciation valide? -- Charte canadienne des droits et libertés, art. 10b).*

*Droit constitutionnel -- Charte des droits -- Justice fondamentale -- Droit de garder le silence -- Degré de capacité mentale requis pour l'exercice du droit en question -- Accusé atteint de troubles mentaux arrêté en exécution de mandats d'incarcération relatifs au non-paiement d'amendes, et informé de son droit de garder le silence -- Accusé faisant part à la police de sa volonté de faire une déclaration et avouant être responsable d'un meurtre et de trois vols qualifiés -- Police inculquant l'accusé de ces infractions et l'informant de nouveau de son droit de garder le silence -- Accusé faisant de nouvelles déclarations à la police malgré le conseil de son avocat de garder le silence -- Les déclarations ont-elles été obtenues contrairement au droit de l'accusé de garder le silence? -- Charte canadienne des droits et libertés, art. 7.*

*Droit criminel -- Preuve -- Confessions -- Caractère volontaire -- État mental de l'accusé -- Accusé atteint de troubles mentaux arrêté en exécution de mandats d'incarcération relatifs au non-paiement d'amendes -- Accusé faisant part à la police de sa volonté de faire une déclaration et avouant à maintes reprises être responsable d'un meurtre et de trois vols qualifiés -- Les déclarations de l'accusé étaient-elles admissibles? -- Critère de l'état d'esprit conscient.*

*Droit criminel -- Appels -- Appel du ministère public -- Cour d'appel annulant l'acquittement de l'accusé et ordonnant la tenue d'un nouveau procès -- Possibilité pour la Cour suprême de trancher un pourvoi en fonction d'une question de droit seulement lorsque l'arrêt de la Cour d'appel repose sur des questions mixtes de droit et de fait -- La Cour d'appel était compétente en vertu de l'art. 676(1)a) du Code criminel pour statuer sur le pourvoi du ministère public, même si elle a pu excéder cette compétence.*

*Droit criminel -- Appels -- Pouvoirs de la Cour d'appel -- Juge du procès écartant les déclarations incriminantes de l'accusé à la police -- Refus du ministère public de produire d'autres éléments de preuve disponibles à la suite de cette décision défavorable et accusé acquitté -- Déclarations jugées en appel avoir été écartées à tort -- Cour d'appel concluant que le ministère public avait sincèrement cru que les autres éléments de preuve disponibles n'avaient pas une force probante suffisante pour constituer une preuve prima facie de la culpabilité de l'accusé -- Cour d'appel n'ayant pas commis d'erreur en appliquant l'art. 686(4)b)(i) du Code criminel pour annuler l'acquittement et ordonner la tenue d'un nouveau procès.*

L'accusé, arrêté en exécution de mandats d'incarcération relatifs au non-paiement d'amendes, a été informé de son droit à l'assistance d'un avocat et a reçu une mise en garde. Avant l'arrestation, le policier avait constaté que l'accusé se comportait étrangement et, au poste de police, il a signalé à l'agent du bloc cellulaire que l'état mental de l'accusé était instable. Alors qu'il se trouvait dans sa cellule, l'accusé a demandé à parler à des policiers et leur a fait plusieurs déclarations dans lesquelles il avouait être l'auteur d'un meurtre et de trois vols qualifiés. Après avoir vérifié les renseignements de l'accusé, la police l'a arrêté relativement à ces infractions. Il a été informé de son droit à l'assistance d'un avocat et a reçu une mise en garde. L'accusé a indiqué qu'il comprenait ses droits, mais qu'il ne souhaitait pas communiquer avec un avocat. Il a alors offert aux policiers de les conduire à l'endroit où il s'était débarrassé de l'arme du crime. Chemin faisant, il a continué de donner des détails sur le meurtre et les vols qualifiés et a fait des remarques étranges à deux ou trois occasions. En revenant au poste de police, l'accusé a accepté la proposition de la police de faire une déclaration sur bande vidéo. Il a de nouveau été informé de ses droits et a indiqué encore une fois qu'il ne souhaitait pas s'entretenir avec un avocat. L'enregistrement sur bande vidéo a pris fin lorsque l'accusé a décidé de consulter un avocat. L'avocat lui a recommandé de garder le silence, mais l'accusé lui a dit qu'il avait besoin de parler à la police pour que cessent les voix dans sa tête. Après son entretien avec l'avocat, l'accusé a indiqué à la police qu'il souhaitait encore poursuivre sa déclaration sur bande vidéo et a avoué avoir commis le meurtre. Au cours de cette déclaration d'une heure, l'accusé a également dit plusieurs bizarreries. Une fois l'enregistrement de la déclaration terminé, l'accusé a offert aux policiers de les conduire à l'endroit où il s'était débarrassé du portefeuille de la victime. Le portefeuille a finalement été découvert à cet endroit. Plus tard alors qu'on l'amena à un autre poste de police, l'accusé a fourni d'autres détails du meurtre. On lui avait donné une autre possibilité de consulter un avocat avant de l'amener. Avant le procès, l'accusé a subi un examen psychiatrique qui a permis de conclure qu'il était apte à subir son procès. À son retour de l'examen psychiatrique de 30 jours, l'accusé a de nouveau parlé à la police, même si son avocat lui avait recommandé de ne pas le faire.

Au procès de l'accusé relativement à une accusation de meurtre au premier degré, un voir-dire a été tenu afin de déterminer l'admissibilité de ses déclarations. Tant le psychiatre de la défense que celui de la poursuite ont témoigné que l'accusé souffrait de schizophrénie et qu'un symptôme typique de cette maladie était l'hallucination auditive. D'après le témoignage du psychiatre de la défense, l'accusé était conscient de ce qu'il disait et de ce que lui était dit, ainsi que du processus judiciaire. Il était également apte à donner des instructions à un avocat, mais, comme des voix dans sa tête lui disaient de soulager sa conscience, il ne se souciait pas des conséquences. À l'issue du voir-dire, le juge du procès a conclu que, compte tenu du seul critère de l'«état d'esprit conscient», les déclarations de l'accusé étaient volontaires au sens traditionnel, mais qu'il y avait lieu de les écarter en raison de la violation des droits que lui garantissait l'al. 10b) de la *Charte canadienne des droits et libertés*. Le juge du procès a retenu le témoignage du psychiatre de la défense et a conclu que l'état psychologique de l'accusé l'avait empêché d'être conscient des conséquences qu'auraient les déclarations,

et que cette incapacité de l'accusé à réaliser ce qui était en jeu avait eu pour effet d'annuler toute prétendue renonciation au droit à l'assistance d'un avocat. Les déclarations faites par l'accusé après l'évaluation psychiatrique ont également été écartées parce qu'elles avaient été obtenues d'une manière contraire à l'al. 10b). Le ministère public a refusé de produire d'autres éléments de preuve et l'accusé a été acquitté. La Cour d'appel a annulé le verdict d'acquittement et ordonné la tenue d'un nouveau procès. La cour a conclu que toutes les déclarations étaient admissibles et que c'est à tort que le juge du procès avait conclu à la violation des droits garantis à l'accusé par l'al. 10b).

*Arrêt:* Le pourvoi est rejeté.

Les déclarations de l'accusé étaient volontaires et n'ont pas été obtenues d'une manière qui portait atteinte aux droits que lui garantissaient l'art. 7 et l'al. 10b) de la *Charte*. L'accusé avait le degré d'aptitude psychologique requis pour effectuer les choix qui sont inhérents à la règle des confessions, au droit de garder le silence et au droit à l'assistance d'un avocat. Le critère de l'«état d'esprit conscient», qui est une facette de la règle des confessions, comporte un élément psychologique limité selon lequel l'accusé doit avoir une capacité cognitive suffisante pour comprendre ce qu'il dit et ce qui est dit. Cela inclut la capacité de comprendre une mise en garde selon laquelle la déposition pourra être utilisée contre l'accusé. La même norme s'applique à l'égard du droit de garder le silence lorsqu'il s'agit de déterminer si l'accusé est en mesure psychologiquement de faire activement un choix. En exerçant son droit à l'assistance d'un avocat ou en y renonçant, l'accusé doit avoir la capacité cognitive limitée qui est nécessaire pour être apte à subir son procès. Il doit être en mesure de communiquer avec un avocat pour lui donner des instructions et il doit saisir le rôle de l'avocat et comprendre qu'il peut se passer des services d'un avocat même si ce n'est pas au mieux de ses intérêts. Il n'est pas nécessaire que l'accusé ait une aptitude analytique. Le degré de capacité cognitive est le même que celui qui est exigé à l'égard de la règle des confessions et du droit de garder le silence: l'accusé doit avoir la capacité mentale qui découle d'un «état d'esprit conscient». Compte tenu de la preuve que le juge du procès a acceptée, l'état mental de l'accusé satisfaisait au critère de l'«état d'esprit conscient», y compris l'élément subjectif, et le ministère public n'était pas tenu de prouver que l'accusé avait un degré plus élevé de capacité cognitive. Dans la mesure où les voix intérieures incitaient l'accusé à parler sans tenir compte, apparemment, de la recommandation de son avocat et à son détriment, parce qu'il ne se souciait pas des conséquences ou qu'il estimait qu'il ne pouvait résister à ces voix, elles ne peuvent justifier l'exclusion. La contrainte intérieure, due à la conscience ou à un autre facteur, ne peut supplanter une conclusion à l'existence d'un «état d'esprit conscient» sauf lorsqu'il est déterminé, à la lumière de la conduite d'une personne en autorité, qu'une déclaration est involontaire. Quant aux droits garantis par la *Charte* qui sont invoqués, une fois qu'il est établi que le critère de l'état d'«esprit conscient» est respecté, l'accusé n'échappe aux conséquences de ses actes que si la conduite de la police a effectivement et inégalement privé le suspect du droit en question.

La décision du juge du procès d'exclure les déclarations se fondait sur l'opinion erronée que la preuve qu'il avait acceptée ne satisfaisait pas à un critère distinct de la «conscience des conséquences». S'il avait appliqué les principes juridiques appropriés, il aurait conclu que l'état d'esprit de l'accusé satisfaisait au critère applicable. En définitive, les déclarations étaient admissibles en ce sens qu'elles satisfaisaient au critère de la règle des confessions et que l'accusé avait renoncé à son droit à l'assistance d'un avocat, ou s'en était prévalu, et avait choisi de parler aux policiers. En ce qui concerne la renonciation, le ministère public a satisfait à toutes les autres exigences et il s'agissait seulement de déterminer si le critère de l'élément psychologique était respecté. Le critère de l'élément psychologique a été respecté dans chacune des déclarations en cause.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1992), 59 O.A.C. 218, 78 C.C.C. (3d) 49, qui a accueilli l'appel interjeté par le ministère public contre l'acquittement de l'accusé relatif à une accusation de meurtre au premier degré et qui a ordonné la tenue d'un nouveau procès. Pourvoi rejeté.

*James Lockyer*, pour l'appelant.

*David Finley*, pour l'intimée.

*Procureurs de l'appelant: Pinkofsky, Lockyer, Kwinter, Toronto.*

*Procureur de l'intimée: Le ministère du Procureur général, Toronto.*



***Quoc Dung Tran v. Her Majesty the Queen (Crim.)(N.S.)(23321)*****Indexed as: R. v. Tran / Répertoire: R. c. Tran**

Hearing and judgment: February 25, 1994; Reasons delivered: September 1, 1994. /

Audition et jugement: 25 février 1994; Motifs déposés: 1<sup>er</sup> septembre 1994.

Present: Lamer C.J. and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

*Constitutional law -- Charter of Rights -- Right to interpreter -- Trial -- Accused's court-appointed interpreter testifying as defence witness -- Interpreter not translating testimony in full but only summarizing evidence -- Whether accused's right to assistance of an interpreter breached -- Canadian Charter of Rights and Freedoms, s. 14.*

The accused, a native of Vietnam, was charged with sexual assault. In her statement to the police a few hours after the assault was alleged to have occurred, the complainant described her two assailants as "Asian", one being "fat" and "clean-shaven". The complainant later picked the accused's photo from a photo line-up. At trial, the accused appeared as slender with a mustache. The complainant identified him in court as the man she had previously described as clean-shaven and fat, but conceded on cross-examination that as he appeared in court he was not fat. The defence called the accused's court-appointed interpreter to testify about the accused's weight at the time the attack was alleged to have taken place. Instead of translating his testimony in full as he gave it, as instructed by the trial judge and by defence counsel, the interpreter answered in English and only summarized his evidence in Vietnamese at the end of his direct examination and again after his cross-examination. An exchange between the trial judge and the interpreter which followed his cross-examination appears not to have been interpreted at all. The accused was convicted. He appealed his conviction on the grounds that the identification evidence was flawed and that deficiencies in the translation of the evidence deprived him of the right to be actually present at his trial, contrary to s. 650 of the *Criminal Code*. The Court of Appeal upheld the conviction. The main issue in this appeal is whether the failure to provide the accused with full and contemporaneous translation of all the evidence at trial constituted a breach of his right to an interpreter, as guaranteed by s. 14 of the *Canadian Charter of Rights and Freedoms*.

*Held:* The appeal should be allowed and a new trial ordered.

The right of an accused who does not understand or speak the language of the proceedings to obtain the assistance of an interpreter ensures that a person charged with a criminal offence hears the case against him or her and is given a full opportunity to answer it. This right is also intimately related to our basic notions of justice, including the appearance of fairness, and to our society's claim to be multicultural, expressed in part through s. 27 of the *Charter*. The magnitude of these interests favours a purposive and liberal interpretation and a principled application of the right to interpreter assistance under s. 14 of the *Charter*. The principle underlying all of the interests protected by the right to interpreter assistance under s. 14 is that of linguistic understanding.

In determining whether there has in fact been a breach of s. 14, it must be clear that the accused did not understand or speak the language being used in court and was thus actually in need of interpreter assistance. Where an interpreter was appointed and it is the quality of the interpretation provided that is being challenged, it is necessary to determine whether there has been a departure or deviation from what is considered adequate interpretation. While the interpretation provided need not be perfect, it must be continuous, precise, impartial, competent and contemporaneous. The question should always be whether there is a possibility that the accused may not have understood a part of the proceedings by virtue of his or her difficulty with the language being used in court. Not every deviation from the protected standard of interpretation will constitute a violation of s. 14 of the *Charter*: the claimant of the right must establish that the lapse in interpretation was in respect of the proceedings themselves, thereby involving the vital interests of the accused, and was not merely in respect of some collateral or extrinsic matter. In determining whether the alleged deviation in interpretation was part of an occurrence which actually served in some way to "advance the case", one must consider whether there was an unfolding or development in the proceeding with respect to a point of procedure, evidence and/or law. Since s. 14 guarantees the right to interpreter assistance without qualification, it would be wrong to introduce into the assessment of whether the right has been breached any consideration of whether or not the accused actually suffered prejudice when being denied his or her s. 14 rights. The *Charter* in effect proclaims that being denied proper interpretation while the case is being advanced is in itself prejudicial and is a violation of s. 14. There will be situations where the right to interpreter assistance cannot be waived for reasons of public policy. Where waiver is possible, the Crown must not only show that the waiver was clear and unequivocal and made with a knowledge and understanding of the right, but also that it was made personally by the accused or with defence counsel's assurance that the right and the effect on that right of waiving it were explained to the accused in language in which the accused is fully conversant.

Here the accused was in need of interpreter assistance throughout his trial, since he did not understand or speak English, and there is no doubt that the interpretation of the proceedings in which the interpreter was involved as a witness fell well below the guaranteed standard. First, the accused did not receive continuous interpretation of all the evidence at his trial, since the questions posed to and answers given by the interpreter were condensed into two one-sentence summaries and the interpreter's exchange with the judge was not translated at all. Second, the interpretation was not

precise, as the summaries failed to convey everything that had been said and the first summary was incorrect in that it referred to something which had not in fact been said. Third, while there is no reason to doubt the actual impartiality or objectivity of the interpretation provided in this case, the practice of having an interpreter act as both a witness and an interpreter is one which should be avoided in all but exceptional circumstances. Finally, the timing of the interpretation was unsatisfactory, in that it should have occurred contemporaneously with the asking of questions and the giving of answers. These lapses were not trivial or *de minimis* in nature, but rather occurred at a point when the accused's vital interests were clearly involved and the case was thus being advanced. The problems with the interpretation arose during the testimony of a witness, and the evidence given by that witness covered a topic of considerable importance to the accused, namely, the issue of identification upon which his entire defence was built. There was no clear or unequivocal waiver by the accused of his right to interpretation. There is also no indication that the accused personally understood the scope of his right to interpreter assistance and what he was giving up, and that the waiver was made by him personally. The curative provisos of the *Criminal Code* are not applicable when an infringement of the right to interpreter assistance is in issue. While denial of a *Charter* right constitutes an error of law, it is by its very constitutional nature a serious error of law, and certainly not one which, for *Criminal Code* purposes, can be characterized as minor or harmless, or as a "procedural irregularity". Recourse should be had to s. 24(1) of the *Charter*, which allows a court to tailor the remedy to the particular circumstances of the violation. Since the violation of s. 14 of the *Charter* in this case occurred in the trial proper, the appropriate and just remedy under s. 24(1) is to quash the accused's conviction and order a new trial.

APPEAL from a judgment of the Nova Scotia Supreme Court, Appeal Division (1992), 116 N.S.R. (2d) 300, 320 A.P.R. 300, dismissing the accused's appeal from his conviction on a charge of sexual assault. Appeal allowed and new trial ordered.

*Marguerite J. MacNeil and Frank E. DeMont*, for the appellant.

*Robert E. Lutes, Q.C.*, for the respondent.

*Solicitors for the appellant: Coady Filliter, Halifax.*

*Solicitor for the respondent: Robert E. Lutes, Halifax.*

Présents: Le juge en chef Lamer et les juges La Forest, Sopinka, Cory, McLachlin, Iacobucci et Major.

*Droit constitutionnel -- Charte des droits -- Droit à l'assistance d'un interprète -- Procès -- Interprète désigné par la cour pour assister l'accusé témoignant pour la défense -- Interprète se contentant de résumer le témoignage au lieu de le traduire intégralement -- Y a-t-il eu violation du droit de l'accusé à l'assistance d'un interprète? -- Charte canadienne des droits et libertés, art. 14.*

Originaire du Viêt-nam, l'accusé a été inculpé d'agression sexuelle. Quelques heures après que l'agression se serait produite, la plaignante a déclaré à la police que ses deux assaillants étaient «asiatiques», l'un d'eux étant «gras» et «rasé de près». La plaignante a subséquemment choisi la photo de l'accusé lors d'une séance d'identification. Au procès, l'accusé était mince et moustachu. La plaignante a déclaré que l'accusé, dans la salle d'audience, était l'homme qu'elle avait antérieurement décrit comme étant «rasé de près» et «gras», mais elle a reconnu, lors du contre-interrogatoire, que l'accusé, qui était dans la salle d'audience, n'était pas gras. La défense a appelé l'interprète désigné par la cour pour assister l'accusé pour qu'il témoigne sur le poids de l'accusé au moment où l'attaque aurait eu lieu. Au lieu de traduire intégralement le témoignage qu'il faisait, comme le juge du procès et l'avocate de la défense lui avaient demandé de le faire, l'interprète a répondu en anglais et n'a résumé son témoignage en vietnamien qu'à la fin de son interrogatoire principal et, de nouveau, après son contre-interrogatoire. Il semble que l'échange qui a eu lieu entre le juge du procès et l'interprète, après le contre-interrogatoire de ce dernier, n'a pas été traduit du tout. L'accusé a été déclaré coupable. Il a interjeté appel de sa déclaration de culpabilité pour le motif que la preuve d'identification était viciée et que les lacunes dans la traduction du témoignage l'avaient privé de son droit d'être réellement présent à son procès, contrairement à l'art. 650 du *Code criminel*. La Cour d'appel a maintenu la déclaration de culpabilité. Il s'agit principalement, en l'espèce, de déterminer si le défaut de fournir à l'accusé une traduction intégrale et concomitante de tous les témoignages au procès a violé son droit à un interprète, garanti par l'art. 14 de la *Charte canadienne des droits et libertés*.

*Arrêt:* Le pourvoi est accueilli et un nouveau procès est ordonné.

Le droit d'un accusé qui ne comprend pas ou ne parle pas la langue des procédures d'obtenir l'assistance d'un interprète garantit que la personne accusée d'une infraction criminelle entend la preuve qui pèse contre elle et a pleinement l'occasion d'y répondre. Ce droit est aussi lié étroitement à nos notions fondamentales de justice, dont l'apparence d'équité, et à notre prétention d'être une société multiculturelle, exprimée en partie à l'art. 27 de la *Charte*. L'importance de ces intérêts favorise une interprétation libérale et fondée sur l'objet visé du droit à l'assistance d'un interprète, garanti à l'art. 14

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de la *Charte*, ainsi qu'une application de ce droit qui soit fondée sur des principes. Le principe qui sous-tend tous les intérêts protégés par le droit à l'assistance d'un interprète, que garantit l'art. 14, est la compréhension linguistique.

Pour déterminer s'il y a effectivement eu violation de l'art. 14, il doit être clair que l'accusé ne comprenait pas ou ne parlait pas la langue du prétoire et avait donc vraiment besoin de l'assistance d'un interprète. Si un interprète a été désigné et que c'est la qualité de son interprétation qui est mise en cause, il faut examiner s'il y a eu manquement ou dérogation à ce qui est considéré comme une bonne interprétation. Bien que l'interprétation fournie n'ait pas à être parfaite, elle doit être continue, fidèle, impartiale, concomitante et faite par une personne compétente. Il faudrait toujours se demander s'il se peut que l'accusé n'ait pas compris une partie des procédures en raison des difficultés qu'il éprouve avec la langue du prétoire. Ce ne sont pas toutes les dérogations à la norme d'interprétation garantie qui violeront l'art. 14 de la *Charte*: celui qui revendique le droit en cause doit établir que la lacune dans l'interprétation avait trait aux procédures elles-mêmes et qu'elle a de ce fait touché aux intérêts vitaux de l'accusé, et qu'elle ne concernait pas simplement quelque question accessoire ou extrinsèque. Pour déterminer si la présumée dérogation dans l'interprétation faisait partie intégrante d'un événement qui a vraiment servi d'une certaine façon à «faire progresser l'affaire», il faut se demander si l'instance s'est déroulée ou a progressé sur une question de procédure, de preuve ou de droit. Puisque l'art. 14 garantit sans réserve le droit à l'assistance d'un interprète, il serait erroné de se demander, pour déterminer si le droit a été violé, si l'accusé a vraiment subi un préjudice lorsqu'on lui a refusé l'exercice de ses droits garantis par l'art. 14. La *Charte* proclame en fait que le refus de fournir une bonne interprétation pendant que l'affaire progresse est préjudiciable en soi et viole l'art. 14. Il y aura des cas où, pour des raisons d'ordre public, il sera impossible de renoncer au droit à l'assistance d'un interprète. Lorsque la renonciation est possible, le ministère public doit non seulement établir qu'elle était claire et sans équivoque et faite par quelqu'un qui connaissait et comprenait ce droit, mais encore qu'elle a été faite personnellement par l'accusé ou avec l'assurance de l'avocat de la défense que le droit et l'effet de la renonciation sur celui-ci ont été expliqués à l'accusé dans une langue qu'il connaît parfaitement.

En l'espèce, l'accusé avait besoin de l'assistance d'un interprète pendant tout son procès puisqu'il ne comprenait pas et ne parlait pas l'anglais, et il ne fait aucun doute que l'interprétation des procédures au cours desquelles l'interprète a servi de témoin était loin de satisfaire à la norme garantie. Premièrement, l'accusé n'a pas obtenu une interprétation continue de toute la preuve produite à son procès puisque les questions posées à l'interprète et ses réponses ont été condensées en deux résumés d'une phrase, et que l'échange entre l'interprète et le juge n'a pas été traduit du tout. Deuxièmement, l'interprétation n'était pas fidèle puisque les résumés n'ont pas transmis tout ce qui avait été dit et que le premier résumé était incorrect du fait qu'il faisait état de quelque chose qui, en réalité, n'avait pas été dit. Troisièmement, bien qu'il n'y ait aucune raison de douter de l'impartialité ou de l'objectivité réelle de l'interprétation fournie en l'espèce, la pratique qui consiste à se servir d'un interprète à la fois comme témoin et interprète devrait être évitée, sauf dans des circonstances exceptionnelles. Enfin, le moment où l'interprétation a été fournie n'était pas satisfaisant étant donné qu'elle aurait dû coïncider avec les questions posées et les réponses données. Ces lacunes n'étaient ni banales ni négligeables. Elles sont plutôt survenues à un moment où les intérêts vitaux de l'accusé étaient manifestement en jeu et, par conséquent, où l'affaire progressait. Les problèmes d'interprétation sont survenus au cours de la déposition d'un témoin, laquelle déposition couvrait un sujet d'importance considérable pour l'accusé, soit la question de l'identification sur laquelle toute sa défense reposait. Il n'y a eu aucune renonciation claire et sans équivoque de l'accusé à son droit à l'assistance d'un interprète. En outre, rien n'indique que l'accusé a personnellement compris la portée de son droit à l'assistance d'un interprète et ce à quoi il renonçait, ni qu'il y a renoncé personnellement. Les dispositions réparatrices du *Code criminel* ne s'appliquent pas lorsque c'est une violation du droit à l'assistance d'un interprète qui est en cause. Bien que la négation d'un droit garanti par la *Charte* constitue une erreur de droit, il s'agit, de par sa nature constitutionnelle même, d'une erreur de droit grave qui, aux fins du *Code criminel*, ne peut certainement pas être qualifiée de négligeable ou d'inoffensive, ni d'«irrégularité de procédure». Il y a lieu de recourir au par. 24(1) de la *Charte* qui permet à un tribunal d'adapter la réparation aux circonstances particulières de la violation. Vu que la violation de l'art. 14 de la *Charte* a, en l'espèce, été commise pendant le procès lui-même, la réparation convenable et juste, au sens du par. 24(1), consiste à annuler la déclaration de culpabilité de l'accusé et à ordonner la tenue d'un nouveau procès.

POURVOI contre un arrêt de la Cour suprême de la Nouvelle-Écosse, Section d'appel (1992), 116 N.S.R. (2d) 300, 320 A.P.R. 300, qui a rejeté l'appel de l'accusé contre sa déclaration de culpabilité relative à une accusation d'agression sexuelle. Pourvoi accueilli et nouveau procès ordonné.

*Marguerite J. MacNeil et Frank E. DeMont*, pour l'appelant.

*Robert E. Lutes, c.r.*, pour l'intimée.

*Procureurs de l'appelant: Coady Filliter, Halifax.*

*Procureur de l'intimée: Robert E. Lutes, Halifax.*



The next session of the Supreme Court of Canada commences on October 3, 1994. /  
La prochaine session de la Cour suprême du Canada débute le 3 octobre 1994.

**The next bulletin of proceedings will be published September 30, 1994. /  
Le prochain bulletin des procédures sera publié le 30 septembre 1994**

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**DEADLINES: MOTIONS**

**DÉLAIS: REQUÊTES**

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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** : **October 3, 1994**  
Service : September 12, 1994  
Filing : September 19, 1994  
Respondent : September 26, 1994

**Motion day** : **November 7, 1994**  
Service : October 17, 1994  
Filing : October 24, 1994  
Respondent : October 31, 1994

**Motion day** : **December 5, 1994**  
Service : November 14, 1994  
Filing : November 21, 1994  
Respondent : November 28, 1994

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**DEVANT LA COUR:**

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

**Audience du** : **3 octobre 1994**  
Signification : 12 septembre 1994  
Dépôt : 19 septembre 1994  
Intimé : 26 septembre 1994

**Audience du** : **7 novembre 1994**  
Signification : 17 octobre 1994  
Dépôt : 24 octobre 1994  
Intimé : 31 octobre 1994

**Audience du** : **5 décembre 1994**  
Signification : 14 novembre 1994  
Dépôt : 21 novembre 1994  
Intimé : 28 novembre 1994

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## DEADLINES: APPEALS

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The next session of the Supreme Court of Canada commences on October 3, 1994.

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 five 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 two 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

The Registrar shall enter on a list all appeals inscribed for hearing at the October 1994 Session on August 9, 1994.

## DÉLAIS: APPELS

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La prochaine session de la Cour suprême du Canada débute le 3 octobre 1994.

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'appellant** doit être déposé dans les cinq 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'appellant.

**Le mémoire de l'intervenant** doit être déposé dans les deux 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.

Le 9 août 1994, le registraire met au rôle de la session d'octobre 1994 tous les appels inscrits pour audition.





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

**Judgments reported in [1994] 1 S.C.R., Part 5**

Masters v. Masters, [1994] 1 S.C.R. 883

R. v. R. (D.), [1994] 1 S.C.R. 881

R. v. Finta, [1994] 1 S.C.R. 701

Téléphone Guèvremont Inc. v. Quebec (Régie des télécommunications), [1994] 1 S.C.R. 878

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

**Jugements publiés dans [1994] 1 R.C.S., partie 5**

Masters c. Masters, [1994] 1 R.C.S. 883

R. c. R. (D.), [1994] 1 R.C.S. 881

R. c. Finta, [1994] 1 R.C.S. 701

Téléphone Guèvremont Inc. c. Québec (Régie des télécommunications), [1994] 1 R.C.S. 878

**Judgments reported in [1994] 2 S.C.R., Part 3**

143471 Canada Inc. v. Quebec (Attorney General); Tabah v. Quebec (Attorney General), [1994] 2 S.C.R. 339

Comité paritaire de l'industrie de la chemise v. Potash; Comité paritaire de l'industrie de la chemise v. Sélection Milton, [1994] 2 S.C.R. 406

R. v. Boersma, [1994] 2 S.C.R. 488

R. v. Giesbrecht, [1994] 2 S.C.R. 482

R. v. Godin, [1994] 2 S.C.R. 484

R. v. H. (D.S.) and N. (J.D.), [1994] 2 S.C.R. 392

R. v. McIntyre, [1994] 2 S.C.R. 480

R. v. Oommen, [1994] 2 S.C.R. 507

R. v. Richer, [1994] 2 S.C.R. 486

R. v. Rowbotham; R. v. Roblin, [1994] 2 S.C.R. 463

R. v. Stellato, [1994] 2 S.C.R. 478

Reza v. Canada, [1994] 2 S.C.R. 394

Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co., [1994] 2 S.C.R. 490

**Jugements publiés dans [1994] 2 R.C.S., partie 3**

143471 Canada Inc. c. Québec (Procureur général); Tabah c. Québec (Procureur général), [1994] 2 R.C.S. 339

Comité paritaire de l'industrie de la chemise c. Potash; Comité paritaire de l'industrie de la chemise c. Sélection Milton, [1994] 2 R.C.S. 406

R. c. Boersma, [1994] 2 R.C.S. 488

R. c. Giesbrecht, [1994] 2 R.C.S. 482

R. c. Godin, [1994] 2 R.C.S. 484

R. c. H. (D.S.) et N. (J.D.), [1994] 2 R.C.S. 392

R. c. McIntyre, [1994] 2 R.C.S. 480

R. c. Oommen, [1994] 2 R.C.S. 507

R. c. Richer, [1994] 2 R.C.S. 486

R. c. Rowbotham; R. c. Roblin, [1994] 2 R.C.S. 463

R. c. Stellato, [1994] 2 R.C.S. 478

Reza c. Canada, [1994] 2 R.C.S. 394

Saskatchewan River Bungalows Ltd. c. La Maritime, Compagnie d'assurance-vie, [1994] 2 R.C.S. 490