SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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March 7, 1997 | 455 - 498 | le 7 mars 1997

APPLICATIONS FOR LEAVE TO APPEAL FILED

Michel Capobianco et al.
Louis Belleau

c. (25725)

Sa Majesté La Reine (Qué.)
Michel-F. Denis
Subs. du procureur général

DATE DE PRODUCTION 13.2.1997

Christos Roumanis et al.
Eugene Meehan
Lang Michener

v. (25827)

Mt. Washington Ski Resort Ltd. et al. (B.C.)
Robert S. Kennedy
Alexander, Holburn, Beaudin & Lang

FILING DATE 10.2.1997

Dennis Alphonse Lebeuf
David J.M. Mochan
Clackson & Mochan

v. (25828)

Her Majesty The Queen (Alta.)
Donna R. Valgardson
Agent of the A.G. of Canada

FILING DATE 10.2.1997

Gabriel Sioui
Jacques Larochelle

c. (25829)

Le sous-ministre du Revenu du Québec et al. (Qué.)
René Bourassa
Veillette et Associés

DATE DE PRODUCTION 10.2.1997

DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES

Quintus Perera et al.
Nagi Ebrahim
Ebrahim, MacLeod, Gervais

c. (25830)

Aristea Stavropoulos (Qué.)
Antonio Sciascia
Sciascia, Fargnoli, Poletto & Assoc.

DATE DE PRODUCTION 12.2.1997

George Fernicola, in trust
L.J. O'Connor
Weir & Foulds

v. (25835)

Mod-Aire Homes Ltd. et al. (Ont.)
Harry B. Radomski
Goodman Phillips Vineberg

FILING DATE 10.2.1997

The Attorney General of Ontario
Robert E. Charney
Min. of the A.G.

v. (25838)

M. et al. (Ont.)
Martha A. McCarthy
McMillan, Binch

FILING DATE 14.2.1997

Akeem Olufemi Folorunsho
Akeem Olufemi Folorunsho

v. (25839)

The Minister of Citizenship and Immigration (F.C.)
Godwin Friday
Dept. of Justice

FILING DATE 13.2.1997

APPLICATIONS FOR LEAVE SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS LA DERNIÈRE PARUTION

FEBRUARY 28, 1997 / LE 28 FÉVRIER 1997

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

Mauro Trinchini

v. (25762)

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

NATURE OF THE CASE

Criminal law - Change of venue - Jurisdiction - Whether the trial judge had jurisdiction to change the venue of the Applicant's trial without an application by the parties - Whether the trial judge did in fact order a change of venue since the trial was to be held in the same judicial region in which the Applicant was indicted - Whether this Court has jurisdiction to entertain an appeal from an interlocutory order in a criminal proceeding where the Applicant is the accused

PROCEDURAL HISTORY

November 22, 1996 Ontario Court (General Division) (Haines J.)	Order changing the venue of the trial
January 21, 1997 Supreme Court of Canada	Application for leave to appeal filed

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Ricky Allen Mason

v. (25716)

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

NATURE OF THE CASE

Criminal law - Sentencing - Sexual assault - "Major sexual assault" - Whether the Alberta Court of Appeal created what amounts to a new common law criminal offence with a minimum penalty of imprisonment when it created and then developed the designation of "major sexual assault" - Whether the Alberta Court of Appeal has demonstrated a fundamental misunderstanding of this Court's decision in *R. v. Shropshire* and *R. v. M.(C.A.)* - Whether Rule 853 of the *Alberta Rules of Court* infringe s. 7 of the *Charter*.

PROCEDURAL HISTORY

November 24, 1995 Court of Queen's Bench of Alberta (Rooke J.)	Conviction: sexual interference (2 counts), invite sexual touching (2 counts). Sentence : 3 years imprisonment
June 17, 1996 Court of Appeal for Alberta (Picard J.A. and Gallant [dissenting] and Bensler JJ.)	Sentence appeal allowed; sentence increased to 4 years imprisonment
December 23, 1996 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

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

Rodrigue Girard

c. (25688)

La municipalité de St-Léonard de Portneuf

et

Claude Parent, greffier de la Cour municipale de St-Raymond de Portneuf (Qué.)

NATURE DE LA CAUSE

Droit municipal - Municipalités - Infractions au règlement de zonage - Délivrance par l'inspecteur de la municipalité d'un permis de construction au demandeur - Annulation deux jours plus tard du permis de construction par l'inspecteur - Poursuite des travaux de construction - Acquittement du demandeur des trois infractions au règlement de zonage en Cour municipale - Appel de la municipalité accueillie en Cour supérieure - Requête du demandeur pour permission d'appel en Cour d'appel rejetée? - Requête subséquente du demandeur en *mandamus* en vue d'obtenir la délivrance d'un permis de construction accordée - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant la requête pour permission d'appel du demandeur?

HISTORIQUE PROCÉDURAL

Le 31 janvier 1995 Cour municipale de Saint-Raymond (Côté J.C.M.)	Demandeur acquitté de trois infractions au règlement de zonage
Le 24 mai 1995 Cour supérieure du Québec (chambre criminelle) (Desjardins J.C.S.)	Appel de l'intimée accueilli
Le 29 juin 1995 Cour d'appel du Québec (Otis J.C.A.)	Requête pour permission d'appel rejetée
Le 19 décembre 1995 Cour supérieure du Québec (Journet J.C.S.)	Requête du demandeur en *mandamus* pour obtenir la délivrance d'un permis de construction accordée
Le 2 décembre 1996 Cour suprême du Canada	Demande d'autorisation d'appel déposée à l'encontre de la décision de la Cour d'appel du 29 juin 1995
Le 30 décembre 1996 Cour suprême du Canada	Demande de prorogation de délai déposée

Lina Germain

c. (25693)

Procureur général du Québec (Qué.)

NATURE DE LA CAUSE

Libertés publiques - Législation - Interprétation - Compétence - Absence de compétence du Tribunal des droits de la personne pour entendre la plainte de la demanderesse - Requête de l'intimé en irrecevabilité accueillie - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant la requête pour permission d'appel de la demanderesse?

HISTORIQUE PROCÉDURAL

Le 18 juin 1996 Tribunal des droits de la personne (Rivet J.)	Requête de l'intimé en irrecevabilité faute de compétence du Tribunal accueillie
Le 24 juillet 1996 Cour d'appel du Québec (Baudouin J.C.A.)	Requête de la demanderesse pour permission d'appel rejetée
Le 9 décembre 1996 Cour suprême du Canada	Demande d'autorisation d'appel et de prorogation de délai déposée

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

Stéphane Ménard

v. (25707)

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

NATURE OF THE CASE

Criminal law - Evidence - Consciousness of guilt - Whether the standard jury charge with respect to consciousness of guilt should include an instruction that the reasonable doubt standard applies to evidence of consciousness of guilt - Hearsay - What is the meaning of necessity in the principled approach to the hearsay rule - What is the proper application of the curative proviso s. 686(1)(b)(iii) where the accused has testified - Character evidence - When should evidence of disposition be admitted on the basis that it is also part of the narrative.

PROCEDURAL HISTORY

October 4, 1994 Ontario Court of Justice (General Division) (Soublière J.)	Convictions: second degree murder and possession of property obtained by crime
July 3, 1996 Ontario Court of Appeal (Arbour, Labrosse and Weiler JJ.A)	Appeal dismissed
December 20, 1996 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

Apotex Inc., Dr. Bernard Sherman, Moshe Green and Harvey Organ

v. (25723)

Merck & Co., Inc. and Merck Frosst Canada Inc. (Ont.)

NATURE OF THE CASE

Procedural Law - Contempt of Court - Whether fundamental justice is violated if contempt proceedings are prosecuted by a party that is adverse in interest to the alleged contemner in related civil proceedings - Whether implied undertaking rule is violated by the potential use in contempt proceedings of documents obtained under compulsion in a related civil proceeding.

PROCEDURAL HISTORY

November 4, 1993 Federal Court Trial Division (MacKay J.)	Applicants ordered to keep and produce records and certified statements
December 14, 1994 Federal Court Trial Division (MacKay J.)	Applicants declared entitled to injunction in Reasons for Judgment
December 22, 1994 Federal Court Trial Division (MacKay J.)	Formal Judgment containing injunction filed (Judgment stayed until January 9, 1995)
April 19, 1995 Federal Court of Appeal (Stone, MacGuigan and Robertson JJ.A.)	Appeal of judgment allowed in part
April 27, 1995 Federal Court Trial Division (Pinard J.)	Respondents ordered to show cause in contempt of court proceedings based on Reasons for Judgment of December 14, 1994
July 6, 1995 Federal Court of Appeal (Stone, Décary, Linden JJ.A.)	Appeal of show cause order quashed as out of time
October 13, 1995 Federal Court Trial Division (Richard J.)	Application for extension of time to appeal show cause order dismissed
December 5, 1995 Federal Court Trial Division (MacKay J.)	Order of November 4, 1993 to maintain and produce records ordered to continue in part
January 23, 1996 Federal Court Trial Division (MacKay J.)	Motions to stay or dismiss contempt proceedings or to set aside show cause order, to prevent use in contempt proceedings of information obtained through discovery ordered on November 4, 1993 and to dismiss subpoenas dismissed
May 9, 1996	Appeal of decision to continue production pursuant to order of November 4, 1993 allowed in part

Federal Court of Appeal
(Stone, MacGuigan, Robertson JJ.A.)

October 31, 1996 Federal Court of Appeal (Stone, Strayer, Linden JJ.A.)	Appeals from motions to stay or dismiss contempt proceedings or to set aside show cause order, to prevent use of information obtained through discovery and to dismiss subpoenas dismissed
December 30, 1996 Supreme Court of Canada	Application for leave to appeal filed by Apotex Inc. and Dr. Bernard Sherman
January 23, 1997 Supreme Court of Canada	Application for leave to appeal filed by Moshe Green and Harvey Organ
January 28, 1997 Supreme Court of Canada	Application to be added as parties and extension of time to apply for leave to appeal granted to Moshe Green and Harvey Organ

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

Roxy Jean Vekved

v. (25684)

Rick Redlack (B.C.)

NATURE OF THE CASE

Torts - Negligence - Motor vehicles - Did the Court of Appeal err in deciding whether the Applicant rebutted the inference of negligence raised by the principle outlined in *Gauthier & Co. v. The King*, [1945] 2 D.L.R. 48 (S.C.C.) - Whether the Court of Appeal erred in reversing the decision of the trial judge in concluding that the Applicant was negligent - Whether this case raises a similar issue to the issues raised in *Fontaine v. Administrator of the Estate of Larry John Loewe*, leave to appeal granted on December 5, 1996 (S.C.C. File No. 25381).

PROCEDURAL HISTORY

December 2, 1994 Supreme Court of British Columbia (Boyle J.)	Respondent's action for damages dismissed
October 15, 1996 Court of Appeal for British Columbia (Southin, Legg and Donald JJ.A.)	Respondent's appeal allowed
December 13, 1996 Supreme Court of Canada	Application for leave to appeal filed

Wendy Jeworski

v. (25642)

My Van Nguyen (Sask.)

NATURE OF THE CASE

Torts - Motor vehicle - Damages - Assessment of damages - Did the Court of Appeal err in law by substituting its own award for the trial judge's award for damages - Did the Court of Appeal err by intervening and interfering with the findings and conclusions of fact made by the trial judge - Did the Court of Appeal err in reducing the burden of proof by awarding speculative damages for income loss - Did the Court of Appeal err in its award of costs or pre-judgment interest.

PROCEDURAL HISTORY

April 18, 1995 Court of Queen's Bench for Saskatchewan (Kyle J.)	Applicant's action for damages allowed
October 3, 1996 Court of Appeal for Saskatchewan (Vancise, Gerwing, Sherstobitoff JJ.A.)	Respondent's appeal allowed in part; Applicant's damages reassessed
December 16, 1996 Supreme Court of Canada	Application for leave to appeal filed

Gordon Stenner

v. (25680)

The British Columbia Securities Commission, Her Majesty The Queen in Right of the Province of British Columbia, Neil de Gelder, Wade Nesmith and Attorney General of British Columbia (B.C.)

NATURE OF THE CASE

Torts - Negligence - Securities - Statutes - Interpretation - The *Securities Act*, S.B.C. 1985, c. 83 - Whether the Court of Appeal erred in its interpretation of statutory good faith immunity provisions, the common law defence of good faith and the tort liability of senior public officials - Whether the Court of Appeal erred in failing to consider evidence bearing upon objective aspects of the state of mind of senior public officials on the questions of "*knowingly*" acting without power or for purposes foreign to the statute, good faith immunity in the context of the tort of negligence and "*intended*" performance or execution of a duty.

PROCEDURAL HISTORY

November 22, 1993
Supreme Court of British Columbia (Spencer J.)

Action in negligence dismissed

October 9, 1996
Court of Appeal for British Columbia
(Rowles, Donald, and Newbury JJ.A.)

Appeal dismissed

December 9, 1996
Supreme Court of Canada

Application for leave to appeal filed

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

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

Loyd Janes v. Town of Deer Lake (Nfld.) (25357)

MARCH 6, 1997 / LE 6 MARS 1997

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

The Canadian Red Cross Society, George Weber, Dr. Roger A. Perrault, Dr. Martin G. Davey, Dr. Terry Stout, Dr. Joseph Ernest Côme Rousseau, Dr. Noel Adams Buskard, Dr. Raymond M. Guévin, Dr. John Sinclair McKay, Mr. Max Gorelick, Dr. Roslyn Herst and Dr. Andre Kaegi

v. (25810)

The Honourable Horace Krever, Commissioner of the Inquiry on The Blood System in Canada, L'Honorable Horace Krever, es qualité de Commissaire de l'enquête sur le système d'approvisionnement en sang au Canada suivant le décret, C.P. 1993-1879 (F.C.A.)(Ont.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

June 27, 1996
Federal Court of Canada, Trial Division (Richard J.)

Applications for judicial review dismissed

January 17, 1997
Federal Court of Appeal
(Strayer, MacGuigan, and Décary JJ.A.)

Appeal dismissed

February 11, 1997
Supreme Court of Canada

Application for leave to appeal filed

MARCH 3, 1997 / LE 3 MARS 1997

25593 **THOMSON NEWSPAPER COMPANY LIMITED, DOING BUSINESS AS THE GLOBE AND MAIL, THE EVENING TELEGRAM, WINNIPEG FREE PRESS AND TIMES-COLONIST, AND SOUTHAM INC. -and- THE ATTORNEY GENERAL OF CANADA** (Ont.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

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

PROCEDURAL HISTORY

May 15, 1995 Ontario Court (General Division) (Somers J.)	Applicant's Application for a declaration that 322.1 of the Canada *Elections Act* violates ss. 2(b) and 3 of the Charter *of Rights and Freedoms* and is not justified under s. 1 dismissed
August 19, 1996 Court of Appeal for Ontario (Catzman, Carthy and Charron JJ.A)	Appeal dismissed
October 30, 1996 Supreme Court of Canada	Application for leave to appeal filed

MARCH 6, 1997 / LE 6 MARS 1997

25554 **CAROL VILLENEUVE c. PROCUREUR GÉNÉRAL DU QUÉBEC ET LA SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Couronne - Expropriation - Législation - Interprétation - Requête en jugement déclaratoire visant à faire déclarer nulles, illégales et *ultra vires* quatre lois québécoises qui ordonnent à la Société de l'assurance automobile du Québec de verser, à même sa réserve de stabilisation, des sommes importantes au fonds consolidé de la province - La Cour d'appel a-t-elle erré en droit en interprétant d'une manière absolue la notion de domaine public et en ne reconnaissant pas la coexistence possible d'une déclaration de domanialité publique avec les droits de tiers, individus ou personne morale de droit public ou privé? - La Cour d'appel a-t-elle erré en droit en ne reconnaissant pas que les lois sous étude ont affecté les droits des tiers contrairement à l'art. 6 de la *Charte des droits et libertés de la personne*, L.R.Q. 1977, ch. C-12, ou, subsidiairement, en n'appliquant pas le principe qu'aucune loi n'est censée opérer expropriation sans indemnité, à moins qu'elle ne le dise expressément? - La Cour d'appel a-t-elle erré en ne concluant pas que les lois sous étude avaient l'effet d'imposer une taxe indirecte à l'ensemble des québécois qui cotisent à la Société de l'assurance automobile du Québec?

HISTORIQUE PROCÉDURAL

Le 6 juin 1994 Cour supérieure du Québec (Moisan j.c.s.)	Requête pour jugement déclaratoire accueillie: art. 155.4 de la *Loi sur l'assurance automobile* et art. 23.1, 23.4, 23.5, 23.6 de la *Loi sur la Société de l'assurance automobile du Québec* déclarés nuls et inconstitutionnels
Le 26 août 1996 Cour d'appel du Québec (Brossard, Rousseau-Houle et Philippon [*ad hoc*] jj.c.a.)	Appel accueilli
Le 18 octobre 1996 Cour suprême du Canada	Demande d'autorisation d'appel déposée

25548 **JOZSEF LAKOTOS v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Sentencing - Sexual interference - Whether the concept of "major sexual assault" as developed in *R. v. Sandercock* (1985), 22 C.C.C. (3d) 79 (Alta. C.A.) is void for vagueness - Whether the mandatory application of "major sexual assault" concept infringes s. 7 of the *Charter* - Whether the Alberta Court of Appeal's guideline sentences in sexual offences override the trial judge's discretion to individualize sentences - Do the guideline sentences conflict with Part XXIII of the *Criminal Code* - Did the Court of Appeal err by equating the elements of sexual interference with those of sexual assault causing bodily harm - Whether the Court of Appeal erred by presuming that the Applicant had caused serious and long lasting psychological harm to the complainant.

PROCEDURAL HISTORY

February 26, 1996 Court of Queen's Bench of Alberta (Wilson J.)	Conviction: Sexual interference; Sentence: 3 year suspended sentence with probation, 100 hours community service
June 17, 1996 Court of Appeal of Alberta (Picard J.A., Gallant and Bensler JJ.)	Respondent's sentence appeal allowed; sentence varied to 3 years imprisonment
October 24, 1996 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

25742 **M.S. v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Trial - Offences - Whether Court of Appeal misapplied subsection 3(1) of the *Jury Act*, R.S.B.C. 1979, c. 210 - Whether trial judge improperly curtailed Applicant during his challenge of prospective jurors for cause and his cross-examination of the complainant - Whether Applicant had required intent to commit offence of incest - Defence of consent to incest - Whether section 155 of the *Criminal Code* violates sections 2, 7 and 15 the *Charter* - Whether Court of Appeal erred in failing to conduct a s.1 *Charter* analysis - Did Court of Appeal err in not granting the Applicant a constitutional exemption from section 155 of the *Criminal Code*? - Did Court of Appeal err by giving extraterritorial application to Canadian criminal law outside the material times of the Indictment? - Whether Court of Appeal erred by not allowing the Applicant to argue the rights and interests of his infant children who had appeared as interveners - Whether bias on the part of the Court of Appeal for curtailing Applicant's argument, and for publishing his name in a related case contrary to an order under s.486 of the *Criminal Code*.

PROCEDURAL HISTORY

February 15, 1994 Supreme Court of British Columbia (Meredith J.)	Conviction: incest
November 22, 1996 Court of Appeal for British Columbia (Southin, Legg and Donald JJ.A.)	Appeal dismissed
January 8, 1997 Supreme Court of Canada	Application for leave to appeal filed

25655 **ADI BOMAN IRANI v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Verdicts - Appellate review - *Criminal Code*, R.S.C. 1985, c. C-46, s. 686(1)(a)(i) - Whether s. 686(1)(a)(i) confers on an appellate court the power to set aside a verdict that is unsafe.

PROCEDURAL HISTORY

October 24, 1994 Supreme Court of British Columbia (Stewart J.)	Conviction: 11 counts of indecent assault and one count of sexual assault
September 27, 1996 Court of Appeal for British Columbia (Southin, Ryan and Newbury JJ.A)	Appeal dismissed
November 26, 1996 Supreme Court of Canada	Application for leave to appeal filed

25359 **VANCOUVER SOCIETY OF IMMIGRANT & VISIBLE MINORITY WOMEN v. HER MAJESTY THE QUEEN** (F.C.A.)(B.C.)

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

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

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

NATURE OF THE CASE

Taxation - Are vagueness and uncertainty determinant factors in deciding whether the activities or purposes of an organization are charitable? - Are women a significant part of the community for the purposes of the four components of charity as enunciated by Lord Macnaghten in *The Commissioners for Special Purposes of the Income Tax Act v. John Pemsel*, [1981] A.C. 531?

PROCEDURAL HISTORY

October 14, 1994 Minister of National Revenue	Applicant's application for charitable tax status rejected
March 6, 1996 Federal Court of Appeal (Strayer, Décary and Linden JJ.A.)	

Appeal dismissed

June 6, 1996
Supreme Court of Canada

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

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25425 **DERRICK CONCRETE CUTTING & CORING LTD. v. CENTRAL OILFIELD SERVICE LIMITED** (Alta.)

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

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

La demande de prorogation de délai et la demande d'autorisation d'appel sont rejetées avec dépens.

NATURE OF THE CASE

Commercial law - Contracts - Tender - Obligation to named subcontractors - Whether inclusion of a sub-contractor's bid in a successful tender creates obligations on the part of the contractor - Whether the Court of Appeal erred in finding that a sub-contractor's bid in a successful construction tender created only unilateral, not mutual or reciprocal, obligations - Whether the Court of Appeal erred in its assessment of the implied terms in "Contact A" in a construction tender.

PROCEDURAL HISTORY

June 8, 1994 Court of Queen's Bench of Alberta (Dea J.)	Action for breach of contract dismissed
November 28, 1995 Court of Appeal of Alberta (Irving, Russell and Picard JJ.A.)	Appeal dismissed
July 4, 1996 Supreme Court of Canada	Application for leave to appeal filed

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25157/25174 **CLIFFORD DAVIS, JOHN HESKIN and PEAT MARWICK THORNE v. MAURICE HAMELIN and DEREK PARKER AND GOODMAN, PARKER & ASSOCIATES -and between- DEREK PARKER AND GOODMAN, PARKER & ASSOCIATES v. MAURICE HAMELIN and CLIFFORD DAVIS, JOHN HESKIN and PEAT MARWICK THORNE** (B.C.)

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

The applications for leave to appeal are dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Appeal - Whether an issue determined by an administrative tribunal may be raised in subsequent litigation between the same parties - Whether findings by an administrative tribunal are binding in subsequent judicial proceedings.

PROCEDURAL HISTORY

November 22, 1991 British Columbia Securities Commission	Maurice Hamelin declared ineligible for exemptions under *Securities Act*, S.B.C. 1985, c. 83 for 20 years and prohibited from becoming or acting as a director or officer of a reporting issuer or an issuer providing specified services for 20 years
November 10, 1994 Supreme Court of British Columbia (Drossos J.)	One head of damages and paragraph 22 struck from Maurice Hamelin's Statement of Claim; Maurice Hamelin granted leave to amend Statement of Claim; Declaration that Maurice Hamelin is entitled to a trial
January 25, 1996 Court of Appeal for British Columbia (Goldie and Donald JJ.A., Newbury J.A. dissenting)	Appeals dismissed; Paragraph 22 restored to Maurice Hamelin's Statement of Claim on cross-appeal
February 19, 1996 Supreme Court of Canada	Application for leave to appeal filed by Clifford Davis, John Heskin and Peat Marwick Thorne
March 1, 1996 Supreme Court of Canada	Application for leave to appeal filed by Derek Parker and Goodman, Parker & Associates
March 5, 1996 Supreme Court of Canada	Application to stay proceedings below if leave to appeal is granted filed by Clifford Davis, John Heskin and Peat Marwick Thorne
March 22, 1996 Court of Appeal for British Columbia (Goldie, Donald and Newbury JJ.A.)	Applications for re-hearing of cross-appeal dismissed

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25474 **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND HIGHWAYS v. ANTHONY DALE MOCHINSKI and TRENDLINE INDUSTRIES LIMITED -and between- TRENDLINE INDUSTRIES LIMITED v. ANTHONY DALE MOCHINSKI and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND HIGHWAYS** (B.C.)

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

The application for leave to appeal in *Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation and Highways v. Anthony Dale Mochinski and Trendline Industries Limited* is granted, but only on the issue of non-delegable duty.

The application for leave to appeal in *Trendline Industries Limited v. Anthony Dale Mochinski and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation and Highways* is dismissed with costs to the respondent Anthony Dale Mochinski.

La demande d'autorisation d'appel dans l'affaire *Sa Majesté la Reine du chef de la province de la Colombie-Britannique, représentée par le ministre des Transports et de la Voirie c. Anthony Dale Mochinski et Trendline Industries Limited* est accordée, mais uniquement en ce qui concerne la question de l'obligation non susceptible de délégation.

La demande d'autorisation d'appel dans l'affaire *Trendline Industries Limited c. Anthony Dale Mochinski et Sa Majesté la Reine du chef de la province de la Colombie-Britannique, représentée par le ministre des Transports et de la Voirie* est rejetée avec dépens en faveur de l'intimé Anthony Dale Mochinski.

NATURE OF THE CASE

Torts - Motor Vehicles - Liability for damages suffered in a car accident caused by ice falling from a rock bluff onto a provincial highway in an area maintained by an independent contractor pursuant to a contract with the provincial Minister of Transportation and Highways.

PROCEDURAL HISTORY

May 24, 1994 Supreme court of British Columbia (McKinnon, J.)	Damages awarded to Anthony Mochinski
May 16, 1996 Court of Appeal of British Columbia (Legg, Finch and Newbury JJ.A.)	Appeal dismissed, Cross-appeal allowed
September 11, 1996 Supreme Court of Canada	Application for leave to appeal filed by Trendline Industries Limited
September 12, 1996 Supreme Court of Canada	Application for leave to appeal filed by Her Majesty The Queen in right of the province of British Columbia, as represented by the Minister of Transportation and Highways

25485 **HALIFAX REGIONAL MUNICIPALITY, A BODY CORPORATE v. BARCLAYS BANK OF CANADA AND DELOITTE & TOUCHE INC., BODIES CORPORATE** (N.S.)

CORAM: L'Heureux-Dubé, Sopinka 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

Constitutional - Division of powers - Taxation - Business Tax - Commercial law - Bankruptcy - Statutes - Interpretation - Does s. 118 of the *Assessment Act*, R.S.N.S. 1989, c. 23 re-order the priorities of creditors as provided for in s. 136 of the *Bankruptcy Act*, R.S.C. 1985, c. B-3 - Does the bankruptcy of the debtor render inoperative s. 118 of the *Assessment Act*, which, prior to the bankruptcy, had made a third party (other than the bankrupt) personally liable for taxes assessed in the name of the debtor.

PROCEDURAL HISTORY

March 27, 1995 Supreme Court of Nova Scotia (Saunders J.)	Applicant's application for judgment for outstanding taxes dismissed
May 21, 1996 Nova Scotia Court of Appeal (Hallett, Matthews and Chipman JJ.A.)	Appeal dismissed
September 19, 1996 Supreme Court of Canada	Application for leave to appeal filed

25498 **RITA MARY DYCK v. WILFRED DYCK** (Alta.)

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

The application for extension of time is granted and the application for leave to appeal is dismissed, L'Heureux-Dubé J. dissenting.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée, le juge L'Heureux-Dubé étant dissidente.

NATURE OF THE CASE

Family law - Divorce - Maintenance - Whether the Court of Appeal erred in its application of the test in *Brody v. Brody* (1990) 25 R.F.L. (3rd) 319 as the only rationale for the resumption of continued periodic spousal support - Whether the Court of Appeal erred in failing to interpret and apply the provisions of Section 17(4) of the *Divorce Act*, 1985 to the facts of this case before making its decision to deny support - Whether the Court of Appeal erred in failing to determine whether a material change in the payor's circumstances is sufficient to warrant a variation order to relieve the economic hardship of the payee under the *Divorce Act*, 1985, Section 17(10) - Whether the Court of Appeal erred in failing to properly consider whether the specific changes in circumstances of the spouses were related to the marriage as required by Section 17(10)(a) and specifically failed to consider that a payor's career earning ability can be related to the marriage - Whether the Court of Appeal erred in failing to determine whether an "economic hardship" existed which requires relief pursuant to Section 17(10)(a).

PROCEDURAL HISTORY

November 6, 1996
Court of Queen's Bench of Alberta
(Lefsrud J.)

Divorce judgement rendered January 22, 1990, varied so as to vary spousal support paid by the Respondent to the Applicant

May 22, 1996 Court of Appeal of Alberta (McClung, Agrios and Lutz JJ.A)	Appeal allowed: Chambers judge's order vacated
September 23, 1996 Supreme Court of Canada	Application for leave to appeal filed

25568 **DOUGLAS KENNY v. HER MAJESTY THE QUEEN** (Crim.)(Nfld.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Similar fact evidence - Whether the Court of Appeal erred in its application of the law regarding similar fact evidence, collusion and corroboration - Whether the verdict was reasonably supported by the evidence.

PROCEDURAL HISTORY

March 31, 1992 Newfoundland Supreme Court (Trial Division) (Barry J.)	Conviction: indecent assault (7 counts)
July 10, 1996 Supreme Court of Newfoundland (Court of Appeal) (Gushue C.J.N., Mahoney and Cameron JJ.A.)	Appeal dismissed
October 28, 1996 Supreme Court of Canada	Application for leave to appeal filed

25513 **DUHA PRINTERS (WESTERN) LTD. v. HER MAJESTY THE QUEEN** (F.C.A.)(Man.)

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

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Assessment - *De Jure* Control - Proper scope of an examination to determine *de jure* control - Whether a unanimous shareholders' agreement should be considered when determining who has *de jure* control of a company if the company's share register indicates that one shareholder has voting control of the company.

PROCEDURAL HISTORY

December 6, 1994 Tax Court of Canada (Rip J.)	Appeal allowed; reassessment of taxes ordered
May 30, 1996 Federal Court of Appeal (Linden, Stone And Isaac JJ.A)	Appeal allowed
September 27, 1996 Supreme Court of Canada	Application for leave to appeal filed

25551 **ALLDREW HOLDINGS LIMITED and J.A.D. GRAY TRUST v. NIBRO HOLDINGS LIMITED, W. LORNE GRAY ESTATE, ESTATE OF HELEN GRAY, JOHN C. GRAY, IAN GRAY, W.J.A. GRAY & CO. LIMITED, ST. LAWRENCE STARCH LIMITED, ST. LAWRENCE STARCH COMPANY LIMITED and ALEX GRAY** (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Company law - Group of companies run by family members - Manufacturing aspect of business ceasing - Applicant minority shareholders having lost confidence in Respondents' management brought an application for winding up or oppression remedy pursuant to ss. 207 and 248 of the *Business Corporations Act*, R.S.O., c.B.16 - Did the Court of Appeal err in its interpretation or application of the criteria for granting just and equitable relief to minority shareholders or relief from oppression of minority shareholders pursuant to ss. 207 and 248 of the *Act*.

PROCEDURAL HISTORY

June 30, 1993 Ontario Court (General Division) (MacKenzie J.)	Applicants' application allowed: order granted directing the purchase of Applicants' shares in W.J.A. Gray & Co. Ltd. pursuant to s. 248(3)(f) *BCA*, failing which the St. Lawrence Starch Group to be wound-up pursuant to s. 207 *BCA*; reference directed with respect to the share purchase
October 26, 1994 Ontario Court (Divisional Court) (Southey, Dunnet and Webber JJ.A.)	Respondents' appeal dismissed, minor variation to paragraphs 4 and 6 of the June 30, 1993 judgment
March 20, 1995 Ontario Court (General Division) (MacKenzie J.)	Applicants' motion for an order fixing the valuation date of the determination of the fair value of the shares granted
June 14, 1995 Ontario Court (Divisonal Court) (Southey, Herold and Feldman JJ.A.)	Repondents' appeal allowed setting aside the order dated March 20, 1995; ordered a hearing with respect to the date and fair value of the share purchase
June 19, 1996 Court of Appeal for Ontario (McKinlay, Osborne JJ.A and Morden A.C.J.O.)	Appeals from the Divisional Court allowed
October 15, 1996 Supreme Court of Canada	Application for leave to appeal filed

25675 **HER MAJESTY THE QUEEN v. AMBROSE MEANEY** (Crim.)(Nfld.)

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

The application for leave to appeal is dismissed, L'Heureux-Dubé J. dissenting.

La demande d'autorisation d'appel est rejetée, le juge L'Heureux-Dubé étant dissidente.

NATURE OF THE CASE

Criminal law- Evidence - Hearsay - Out-of-court statements - Whether the Court of Appeal erred in its approach to the admissibility of out-of-court statements with regard to mentally delayed adults, the requirement for physical corroboration, deference to a trial judge's findings of fact as regards reliability, and s. 15 of the *Charter* - Whether the formula in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 applies to all jury trials or only to those that present a stark choice between the evidence of the accused and the evidence of the complainant - Whether the Court of Appeal erred in ignoring the consent given by counsel for the Respondent to the admissibility of the out-of-court statement, the questioning of the complainant before the jury, and the trial judge's charge - Whether the Court of Appeal erred in setting aside the conviction entered by the jury and in adopting a different standard of review for convictions entered by a jury - Whether the Court of Appeal erred in entering an acquittal rather than ordering a new trial.

PROCEDURAL HISTORY

May 28, 1993 Supreme Court of Newfoundland (Trial Division) (O'Regan J.)	Conviction: sexual assault
June 17, 1996 Supreme Court of Newfoundland (Court of Appeal) (Gushue C.J. N., O'Neill and Steele JJ.A.)	Appeal allowed; acquittal entered
December 3, 1996 Supreme Court of Canada	Application for leave to appeal filed

25521/25532 **HER MAJESTY THE QUEEN v. CONTINENTAL BANK -and between- CONTINENTAL BANK LEASING CORPORATION and HER MAJESTY THE QUEEN** (F.C.A.)(Ont.)

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

The applications for leave to appeal are granted.

Les demandes d'autorisation d'appel sont accordées.

NATURE OF THE CASES

Taxation - Assessment - Avoidance transactions - Commercial Law - Partnership - Intent to carry on common enterprise - A subsidiary of a bank formed a partnership, transferred the assets of its leasing business into the partnership and was wound-up into the bank - The bank purported to sell the partnership interest - The Bank's motivation was to dispose of the subsidiary's business - Whether a partnership had been formed - Whether the partnership was void for illegality or *ultra vires* the bank - Whether the disposition of the partnership interest was an adventure in the nature of trade.

PROCEDURAL HISTORY

September 16, 1994 Federal Court (Trial division) (Bowman J.)	Appeals from tax assessments allowed
June 4, 1996 Federal Court of Appeal (Isaac C.J., Linden and McDonald JJ.A.)	Appeal with respect to Continental Bank Leasing Corporation allowed; Appeal with respect to Continental Bank and cross-appeal dismissed;
September 4, 1996 Federal Court of Appeal (Isaac C.J., Linden and McDonald JJ.A.)	Motion for Reconsideration dismissed
October 3, 1996 Supreme Court of Canada	Application for leave to appeal filed by Continental Bank Leasing Corporation
October 4, 1996 Supreme Court of Canada	Application for leave to appeal filed by Minister

26.2.1997

Before / Devant: CHIEF JUSTICE LAMER

Motion for directions **Requête pour obtenir des directives**

Canadian Red Cross Society et al. Earl A. Cherniak, Q.C., for the motion.

v. (25810)

The Honorable Horace Krever et al. (Ont.) Angus T. McKinnon, for the respondent.

GRANTED / ACCORDÉE

It is ordered that:

a) the Commissioner be required to serve his respondent's materials no later than Friday, February 28, 1997 and to file the same no later than Monday, March 3, 1997; and

b) the applicants be required to serve their reply memorandum on Monday, March 3, 1997 and to file it by Tuesday, March 4, 1997; and

c) that the leave application be expedited.

26.2.1997

Before / Devant: GONTHIER J.

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

Stanley Gordon Johnson

v. (25814)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE Time extended to March 3, 1997.

27.2.1997

Before / Devant: CHIEF JUSTICE LAMER

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

BY/PAR: A.G. of Canada

IN/DANS: Robin Susan Eldridge et al.

v. (24896)

Attorney General of B.C. et al. (B.C.)

Requête en prorogation du délai imparti pour déposer la demande d'intervention

With the consent of the parties.

GRANTED / ACCORDÉE

It is hereby ordered: that the time for filing the notice of intention to intervene of the Attorney General of Canada is extended to no later than Tuesday, February 18, 1997.

27.2.1997

Before / Devant: THE REGISTRAR

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

Shaunee Gaelene Geary

v. (24939)

Her Majesty The Queen (B.C.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to February 21, 1997.

3.3.1997

Before / Devant: THE REGISTRAR

Requête en substitution de signification

Titus Nguiagain

c. (25796)

Le Fonds F.C.A.R. (Qué.)

Motion for substitutional service

ACCORDÉE / GRANTED

Il est ordonné que le mémoire de l'intimé Le Fonds F.C.A.R. en réponse à la demande d'autorisation d'appel soit signifié au requérant en laissant une copie du mémoire dans une enveloppe cachetée à son attention dans la boîte aux lettres de son domicile, ou sous l'huis de la porte au même endroit et que rapport en soit dressé par l'huissier instrumentant.

4.3.1997

Before / Devant: L'HEUREUX-DUBÉ J.

Hearing of miscellaneous motion on appeal to vary order of L'Heureux-Dubé J.

Audience sur autres requêtes en appel pour modifier une ordonnance du juge L'Heureux-Dubé

Winnipeg Child and Family Services

v. (25508)

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

GRANTED / ACCORDÉE Oral argument is limited to 15 minutes.

4.3.1997

Before / Devant: CORY J.

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

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

Royal Bank of Canada

v. (25807)

The Kings Mutual Insurance Co. (N.S.)

GRANTED / ACCORDÉE Time extended to February 5, 1997.

5.3.1997

Before / Devant: CORY J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: Parent Student Association of Preston

IN/DANS: R.D.S.

v. (25063)

Her Majesty The Queen (N.S.)

DISMISSED / REJETÉE

5.3.1997

Before / Devant: LE REGISTRAIRE

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

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

Daniel Germain et al.

c. (24964)

La Ville de Montréal et al. (Qué.)

Avec le consentement des parties.

GRANTED / ACCORDÉE Délai prorogé au 27 février 1997.

5.3.1997

Before / Devant: THE REGISTRAR

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

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

Daniel Charland

v. (25656)

Her Majesty The Queen (Alta.)

With the consent of the parties.

GRANTED / ACCORDÉE

5.3.1997

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the respondents' factum

Robin Susan Eldridge et al.

v. (24896)

Attorney General of British Columbia et al. (B.C.)

GRANTED / ACCORDÉE

Requête en prorogation du délai imparti pour déposer le mémoire des intimés

With the consent of the parties.

27.2.1997

Robert J. Dowling

v. (25493)

City of Halifax (N.S.)

28.2.1997

Peter Hamilton

c. (25837)

Sa Majesté La Reine (Qué.)

DE PLEIN DROIT

3.3.1997

Retail, Wholesale and Department Store Union, Local 544 et al.

v. (25366)

Battlefords and District Co-Operative Ltd. (Sask.)

3.3.1997

Retail, Wholesale and Department Store Union, Local 454 et al.

v. (25356)

Canada Safeway Ltd. (Sask.)

5.3.1997

Novopharm Ltd.

v. (25402)

Eli Lilly and Company et al. (F.C.A.)(Ont.)

NOTICES OF INTERVENTION FILED SINCE LAST ISSUE

AVIS D'INTERVENTION DÉPOSÉS DEPUIS LA DERNIÈRE PARUTION

BY/PAR: Attorney General of Saskatchewan

IN/DANS: **Canadian Egg Marketing Agency**

v. (25192)

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

4.3.1997

Donald Rheaume

c. (25422)

Gestion Bo-Ra Ltée et al. (Qué.)

(pourvoi)

AGENDA for the week beginning March 10, 1997.
ORDRE DU JOUR pour la semaine commençant le 10 mars 1997.

Date of Hearing/ Date d'audition	Case Number and Name/ Numéro et nom de la cause
10/03/97	R.D.S. v. Her Majesty the Queen (Crim.)(N.S.)(25063)
11/03/97	Armada Lines Ltd. (now Clipper Shipping Lines) v. Chaleur Fertilizers Ltd. (F.C.A.)(N.B.)(24351)
12/03/97	Patrick Mara, et al v. Her Majesty the Queen, et al (Crim.)(Ont.) (25159)
13/03/97	Hung Duc Vu v. Her Majesty the Queen (Crim.)(Alta.)(25389)
13/03/97	Peter Haberman v. Mauricio Peixeiro, et al (Ont.)(24981)
14/03/97	United States of America et al v. Roberto Barrientos (Crim.)(Alta.)(25085)

NOTE:

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

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

25063 ***R.D.S. v. Her Majesty The Queen***

Criminal law - Canadian Charter of Rights and Freedoms - Reasonable apprehension of bias - Whether the trial judge showed bias in making comments with regard to police treatment of minorities - Whether the summary appeal court judge made no error in law with respect to the test for, or application of the test of, reasonable apprehension of bias on the part of the trial judge - Whether the Court of Appeal erred in dismissing the ss. 7, 11(d) and 15 *Charter* requirements in deciding the legal parameters of a reasonable apprehension of bias.

The Appellant was charged with assaulting a peace officer, assaulting a peace officer with intent to prevent the arrest of another, and resisting a peace officer in the execution of his duty. At trial, the police officer and the Appellant testified. The police officer's story was that he had just arrested another person for theft of an automobile when the Appellant came riding up on his bicycle and ran into the officer's leg. The Appellant then, according to the officer, began shoving the officer with his hands and shoulders. The officer put the Appellant in a choke hold to subdue him. The Appellant's story, on the other hand, is that he saw a small crowd of mostly young children gathered near a police car, and being nosey went to take a look. He saw that the police officer had arrested his cousin, N.R., and placed him in handcuffs. He asked N.R. if he wanted his mother to be told about what was happening. While he was speaking to N.R. the police officer told the Appellant to "shut up" or he would be placed under arrest as well. The police officer then placed the Appellant in a choke hold.

The Appellant was a 15-year-old black male as was N.R. The trial judge is a black woman. After acquitting the Appellant because she was left with a reasonable doubt, the trial judge said:

> "The Crown says, well, why would the officer say that events occurred the way in which he has relayed them to the Court this morning. I'm not saying that the constable has misled the Court, although police officers have been known to do that in the past. And I'm not saying that the officer overreacted, but certainly police officers do overreact, particularly when they're dealing with non-white groups. That, to me, indicates a state of mind right there that is questionable."

The Respondent appealed the decision to the summary conviction appeal court on the grounds that the above-quoted passage gave rise to a reasonable apprehension of bias. The summary conviction appeal court judge agreed and ordered a new trial. The Appellant appealed to the Court of Appeal, but the appeal was dismissed.

Origin of the case:	Nova Scotia
File No.:	25063
Judgment of the Court of Appeal:	October 25, 1995
Counsel:	Burnley A. Jones and R.W. Kuszelewski for the Appellant Robert E. Lutes Q.C. for the Respondent

25063 ***R.D.S. c. Sa Majesté la Reine***

Droit criminel) *Charte canadienne des droits et libertés*) Crainte raisonnable de partialité) Le juge du procès a-t-il fait preuve de partialité en faisant des commentaires concernant la façon dont la police traitait les minorités?) Le juge de la cour des appels sommaires a-t-il commis une erreur de droit relativement au critère applicable à la crainte raisonnable de partialité de la part du juge du procès?) La Cour d'appel a-t-elle commis une erreur en rejetant les exigences fondées sur les art. 7, 11*d*) et 15 de la *Charte* pour l'établissement des paramètres juridiques d'une crainte raisonnable de partialité?

L'appelant a été accusé d'avoir exercé des voies de fait contre un agent de la paix, d'avoir exercé des voies de fait contre un agent de la paix dans l'intention d'empêcher l'arrestation d'une autre personne et d'avoir résisté à un agent de la paix dans l'exécution de ses fonctions. L'agent de police et l'appelant ont témoigné au procès. L'agent de police a dit qu'il venait d'arrêter une autre personne pour le vol d'une auto lorsque l'appelant est arrivé à bicyclette et l'a heurté à la jambe. Selon l'agent, l'appelant a alors commencé à le pousser de ses mains et de ses épaules. L'agent a appliqué à l'appelant une prise de cou pour le maîtriser. L'appelant, par contre, dit qu'il a vu un petit attroupement, de jeunes enfants pour la plupart, près d'une voiture de police et, curieux, il s'est approché. Il a vu que l'agent de police avait arrêté son cousin N.R. et lui avait passé les menottes. Il a demandé à N.R. s'il désirait que sa mère soit avertie de ce qui se passait. Pendant qu'il parlait à N.R., l'agent de police a dit à l'appelant de «se taire», sinon il serait mis sous arrêt également. L'agent de police lui a alors appliqué une prise de cou.

L'appelant, comme N.R., est un jeune homme de race noire; il était alors âgé de 15 ans. Le juge du procès est une femme de race noire. Après avoir acquitté l'appelant parce qu'elle entretenait un doute raisonnable, le juge du procès a dit:

> [Traduction] Le ministère public dit, bien, pourquoi l'agent dirait-il que les événements se sont produits de la façon dont il les a relatés à la Cour ce matin? Je ne dis pas que l'agent a induit la Cour en erreur, même si on sait que des agents de police l'ont fait dans le passé. Je ne dis pas non plus que l'agent a eu une réaction exagérée, mais, assurément, des agents de police réagissent de façon exagérée, particulièrement lorsqu'ils traitent avec des groupes de non-blancs. Cela, pour moi, indique qu'il y a là un état d'esprit sujet à caution.

L'intimée a interjeté appel de la décision auprès de la cour des appels sommaires, invoquant comme moyen que le passage cité ci-dessus donne lieu à une crainte raisonnable de partialité. Le juge de la cour des appels sommaires a exprimé son accord et ordonné la tenue d'un nouveau procès. La Cour d'appel a rejeté l'appel interjeté par l'appelant.

Origine:	Nouvelle-Écosse
N^{o} du greffe:	25063
Arrêt de la Cour d'appel:	Le 25 octobre 1995
Avocats:	Burnley A. Jones et R.W. Kuszelewski, pour l'appelant Robert E. Lutes, c.r., pour l'intimée

24351 ***Armada Lines Ltd. (now Clipper Shipping Lines) v. Chaleur Fertilizers Ltd.***

Commercial law - Maritime law - Contracts - Damages - Carriage of goods - Breach of contract -Whether the Federal Court of Appeal was correct in holding that the guidelines set out in *Third Chandris Shipping Corp. v. Unimarine S.A.* [1979] 2 Lloyd's Rep. 184, are consistent with the criteria for issuing a warrant for the arrest of property pursuant to Rule 1003 of the *Federal Court Rules* - Whether in the absence of bad faith, malice or gross negligence on the part of the Appellant, the Respondent was nonetheless entitled to damages for "wrongful" arrest of its cargo - Whether the Federal Court of Appeal was correct in holding that, with regard to the entitlement of the Respondent to recover its loss after the cargo had been released from the arrest, no account should be taken of the fact that the loss resulted from the Respondent's own inaction.

On February 23, 1982, the Appellant, Armada Lines Ltd. now Clipper Shipping Lines, agreed to carry the Respondent's, Chaleur Fertilizers Ltd., cargo of fertilizer from Belledune, New Brunswick to Lome, Togo. A warrant for the arrest of the cargo was issued and served on the cargo on April 19, 1982. Four days later, the Appellant agreed to the Respondent's request to release the cargo from the arrest in exchange for a "Letter of Understanding". The cargo was shipped later in the month and the Respondent's contract for its sale was completed without loss. The Respondent established a term deposit to fund the "Letter of Understanding", which it characterized as a loss of working capital.

The Appellant brought an action for damages incurred when the Respondent failed to produce a cargo for loading on agreed upon dates. The Respondent counterclaimed for damages incurred when the Appellant arrested the Respondent's cargo to satisfy the Appellant's claim. The Appellant's action was successful at trial, but was set aside by the Federal Court of Appeal and leave to appeal to this Court was refused.

Rouleau J. granted the Respondent's motion to strike the Appellant's Statement of Claim, set aside the arrest of the cargo and released the security. At trial, the Appellant's action for damages, representing the difference between the net revenue it would have earned carrying the Respondent's cargo and the actual revenue earned carrying a replacement cargo, was successful. The Federal Court of Appeal set aside the judgment of the Trial Division; allowed the Respondent's counterclaim for damages incurred by the arrest of the cargo.

Origin of the case:	Federal Court of Appeal
File No.:	24351
Judgment of the Court of Appeal:	July 12, 1994
Counsel:	Jon H. Scott and Bruce W. Johnston for the Appellant Thomas L. McGloan for the Respondent

24351 ***Armada Lines Ltd. (maintenant Clipper Shipping Lines) c. Chaleur Fertilizers Ltd.***

Droit commercial) Droit maritime) Contrats) Avaries) Transport de marchandises) Rupture de contrat) La Cour d'appel fédérale a-t-elle eu raison de conclure que les directives exposées dans *Third Chandris Shipping Corp. c. Unimarine S.A.* [1979] 2 Lloyd's Rep. 184, sont compatibles avec les critères applicables pour octroyer un mandat de saisie de biens en application de la règle 1003 des *Règles de la Cour fédérale*?) Malgré l'absence de mauvaise foi, de malveillance ou de négligence grave de la part de l'appelante, l'intimée a-t-elle droit à des dommages-intérêts pour saisie «injustifiée» de sa cargaison?) La Cour d'appel fédérale a-t-elle eu raison de conclure que, pour ce qui est du droit de l'intimée de recouvrer sa perte après mainlevée de la saisie de la cargaison a été libérée de la saisie, il ne fallait pas tenir compte du fait que la perte résultait de l'inaction de l'intimée elle-même?

Le 23 février 1982, l'appelante, Armada Lines Ltd., maintenant Clipper Shipping Lines, a convenu de transporter une cargaison d'engrais appartenant à l'intimée, Chaleur Fertilizers Ltd., de Belledune (Nouveau-Brunswick) à Lomé (Togo). Un mandat de saisie a été délivré et signifié contre la cargaison le 19 avril 1982. Quatre jours plus tard, l'appelante a accepté la demande l'intimée de donner mainlevée de la saisie de la cargaison en échange d'une «lettre d'entente». La cargaison a été expédiée plus tard dans le mois et le contrat de l'intimée relativement à sa vente a été complété sans perte. L'intimée a fourni un dépôt à terme pour financer la «lettre d'entente», opération qui est qualifiée de perte de fonds de roulement.

L'appelante a intenté une action en dommages-intérêts pour perte subie lorsque l'intimée a fait défaut de présenter une cargaison pour chargement aux dates convenues. L'intimée a présenté une demande reconventionnelle visant les pertes subies lorsque l'appelante a saisi la cargaison de l'intimée pour acquitter sa réclamation. L'action de l'appelante a été accueillie en première instance, mais a été rejetée par la Cour d'appel fédérale et une autorisation de pourvoi à notre Cour a été refusée.

Le juge Rouleau a accueilli la requête de l'intimée visant à l'annulation de la déclaration de l'appelante, l'annulation de la saisie de la cargaison et la libération du cautionnement. La Section de première instance a accueilli l'action de l'appelante en dommages-intérêts, représentant la différence entre le revenu net qu'elle aurait touché si elle avait transporté la cargaison de l'intimée et le revenu réel touché en transportant une cargaison de remplacement. La Cour d'appel fédérale a infirmé le jugement de la Section de première instance et accueilli la demande reconventionnelle de l'intimée visant les pertes subies par la saisie de la cargaison.

Origine:	Cour d'appel fédérale
N^{o} de greffe:	24351
Arrêt de la Cour d'appel:	Le 12 juillet 1994
Avocats:	Jon H. Scott et Bruce W. Johnston pour l'appelante Thomas L. McGloan pour l'intimée

25159 ***Patrick Mara and Allan East v. Her Majesty The Queen***

Criminal law - Canadian Charter of Rights and Freedoms - Constitutional law - Statutes - Interpretation - Whether s. 167(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, is so vague and overbroad as to infringe s. 7 of the *Canadian Charter of Rights and Freedoms*? If s. 167(1) of the *Criminal Code* violates s. 7 of the *Canadian Charter of Rights and Freedoms*, can S. 167 of the *Criminal Code* be demonstrably justified under s. 1 of the *Canadian Charter of Rights and Freedoms* as a reasonable limit prescribed by law?

Cheaters Tavern in midtown Toronto was licensed to sell alcoholic beverages and food and presented "adult entertainment". The Respondent, Patrick Mara, was the owner and operator of the tavern and the Respondent, Allan East, was the manager in charge of entertainment.

Undercover police attended at the tavern on several days in March and April 1991. The officers testified on the adult entertainment being presented. Women performed exotic dances on stage, for which there was no charge. For a fee, the entertainer performed a "table dance" in which she would be nude, save for a long, unbuttoned blouse. For a larger fee, the dancer performed a "special dance" called a lap dance.

The Appellants were charged that, being the manager or agent or person in charge, they allowed an indecent performance to be presented contrary to s. 167(1) of the *Criminal Code*. At trial, both Appellants were acquitted. The Crown appealed and on appeal, the five judge panel of the Court of Appeal for Ontario allowed the appeal, set aside the acquittals and entered a conviction against both Appellants. Although the Appellant Mara had hired the Appellant East to look after the entertainment, the Court of Appeal convicted him for not taking any steps in his own right to prevent the indecent performances. Leave to appeal to this Court was granted and on June 10, 1996, the Chief Justice stated Constitutional Questions.

Origin of the case:	Ontario
File No.:	25159
Judgment of the Court of Appeal:	February 9, 1996
Counsel:	Heather A. McArthur for the Appellants David Butt for the Respondent

25159 ***Patrick Mara et Allan East c. Sa Majesté la Reine***

Droit criminel) *Charte canadienne des droits et libertés*) Droit constitutionnel) Lois) Interprétation) L'article 167(1) du *Code criminel*, L.R.C. (1985), ch. C-46, est-il à ce point vague et de portée trop étendue qu'il viole l'art. 7 de la *Charte canadienne des droits et libertés*?) S'il viole l'art. 7 de la *Charte canadienne des droits et libertés*, l'art. 167 du *Code criminel* peut-il être justifié en vertu de l'article premier de la *Charte canadienne des droits et libertés* en tant que limite raisonnable prescrite par une règle de droit?

Cheaters Tavern, dans les quartiers intermédiaires de Toronto, qui était détenteur d'un permis de vente de boissons alcooliques et de nourriture, présentait des «spectacles pour adultes». L'intimé Patrick Mara était le propriétaire et l'exploitant de la brasserie, et l'intimé Allan East était le gérant responsable des spectacles.

Des policiers en civil ont fréquenté la brasserie pendant plusieurs jours en mars et avril 1991. Les agents ont témoigné relativement aux spectacles pour adultes qui étaient présentés. Des femmes exécutaient des danses exotiques sur une scène; ces spectacles étaient gratuits. Moyennant un certain montant, la danseuse exécutait une «danse à la table» dans laquelle elle était nue sous un long chemisier ouvert. Pour un montant plus élevé, la danseuse exécutait une «danse spéciale», appelée danse-contact.

Les appelants ont été accusés d'avoir, étant le gérant, l'agent ou la personne en charge, permis qu'un divertissement indécent soit présenté en contravention au par. 167(1) du *Code criminel*. Au procès, les deux appelants ont été acquittés. Le ministère public a interjeté appel et une formation de cinq juges de la Cour d'appel de l'Ontario a accueilli l'appel, annulé les acquittements et inscrit une déclaration de culpabilité contre les deux appelants. Bien que l'appelant Mara ait retenu les services de l'appelant East pour s'occuper des spectacles, la Cour d'appel l'a déclaré coupable pour ne pas avoir pris, de sa propre initiative, des mesures pour empêcher les divertissements indécents. Une autorisation de pourvoi devant notre Cour a été accordée et, le 10 juin 1996, le Juge en chef a formulé des questions constitutionnelles.

Origine:	Ontario
N^{o} du greffe:	25159
Arrêt de la Cour d'appel:	Le 9 février 1996
Avocats:	Heather A. McArthur pour les appelants David Butt pour l'intimée

25389 ***Hung Duc Vu v. Her Majesty The Queen***

Criminal law - Evidence - Canadian Charter of Rights and Freedoms - Procedural law - Tape not disclosed because it was lost - What is the extent of the duty to preserve evidence on the part of the state - Whether the Crown is relieved of the duty of disclosure where it has in its possession evidence but later loses that evidence - Whether the trial judge erred in the circumstances of this case by entering a judicial stay of proceedings.

On May 27, 1993, Constables Hollinger and Halford stopped a vehicle, whose driver was known to the police as a pimp. A 13 year old girl, the complainant, who had been reported to the police as a run-away some six weeks earlier, was inside. The complainant was taken to the police headquarters and spoke to the police officers among others. Hollinger took notes and made a 45-minute tape recording of one of the conversations.

Following further investigation, Hollinger discovered two other young girls were also part of the same "prostitution network" and the police continued investigations into the allegations of sexual assault. In August 1993, the police laid several prostitution related charges. Four men were charged with the assault of the young girls; the Appellant, Vu, was charged with the sexual assault of the first complainant.

At trial, counsel for the accused applied for a stay of proceedings based on the Crown failure to disclose the tape recording made by Hollinger of the first complainant. That tape had been inadvertently lost. Wilkins J. granted the application for a stay of proceedings on the charges of sexual assault. On appeal, the Court of Appeal allowed the appeal and ordered a new trial. The Appellant, Vu, appeals to this Court.

Origin of the case:	Alberta
File No.:	25389
Judgment of the Court of Appeal:	March 7, 1996
Counsel:	Balfour Q.H. Der, Robert J. Batting for the Appellant Goran Tomljanovic for the Respondent

25389 ***Hung Duc Vu c. Sa Majesté la Reine***

Droit criminel) Preuve) *Charte canadienne des droits et libertés*) Droit procédural) Bande non divulguée parce que perdue) Quelle est l'étendue de l'obligation de l'État de conserver la preuve?) Le ministère public est-il dégagé de l'obligation de divulgation lorsqu'un élément de preuve en sa possession a par la suite été perdu?) Le juge du procès a-t-il commis une erreur dans les circonstances de la présente affaire en inscrivant un arrêt des procédures?

Le 27 mai 1993, les agents Hollinger et Halford ont intercepté un véhicule dont le conducteur était connu de la police comme étant un proxénète. Une jeune fille de 13 ans, la plaignante, qui avait été rapportée en fugue quelque six semaines auparavant, prenait place dans le véhicule. La plaignante a été amenée au poste de police et a parlé aux agents. Hollinger a pris des notes et fait un enregistrement sur bande de 45 minutes d'une des conversations.

Après plus ample enquête, Hollinger a découvert que deux autres jeunes filles faisaient également partie du même «réseau de prostitution» et la police a continué des enquêtes sur les allégations d'agression sexuelle. En août 1993, la police a déposé plusieurs accusations reliées à la prostitution. Quatre hommes ont été accusés de voies de fait contre les jeunes filles; l'appelant, Vu, a été accusé d'agression sexuelle contre la première plaignante.

Au procès, l'avocat de l'accusé a demandé un arrêt des procédures, invoquant l'omission du ministère public de divulguer l'enregistrement sur bande de la première plaignante fait par Hollinger. Par inadvertance, la bande avait été perdue. Le juge Wilkins a accueilli la demande d'arrêt des procédures relativement aux accusations d'agression sexuelle. La Cour d'appel a accueilli l'appel interjeté et ordonné la tenue d'un nouveau procès. L'appelant, Vu, se pourvoit devant notre Cour.

Origine:	Alberta
N^{o} du greffe:	25389
Arrêt de la Cour d'appel:	Le 7 mars 1996
Avocats:	Balfour Q.H. Der, Robert J. Batting pour l'appelant Goran Tomljanovic pour l'intimée

24981 ***Peter Haberman v. Mauricio Peixeiro and Fernanda Peixeiro***

Torts - Procedural law - Limitation of actions - Statutes - Interpretation - Applicability of discoverability rule - Whether the discoverability rule applies to the limitation period in s. 206 of the *Highway Traffic Act*, R.S.O., c. H8 with respect to personal injury - If it does, does it extend the limitation period in this case where the injured plainfiff acknowledges that almost immediately following the accident he knew he was injured - Whether the liability immunity in s. 266(1) of the *Insurance Act*, R.S.O. 1990, c.I8 modifies the discoverability rule.

The Respondent, Mauricio Peixeiro, was in a motor vehicle accident on October 11, 1990 in which he sustained an injury to his back. The Respondent was subsequently in another motor vehicle accident in January 1992. Mr. Peixeiro had initially been diagnosed as having soft tissue injury to his back; however, in June 1993 a CT scan showed a disc protrusion problem. As the Respondent made no immediate claim, the insurer of the Appellant, Peter Haberman, concluding that the accident was the fault of Mr. Peixeiro, closed its file without making an investigation.

In December 1993, Mr. Peixeiro commenced an action in respect of the second accident with his wife also named as plaintiff pursuant to the *Family Law Act*. The Peixeiros brought a motion in that action to add Mr. Haberman as a tortfeasor with respect to the first accident. Mr. Haberman opposed the motion claiming that the claims were out of time. The motion came on for hearing in the Ontario Court (General Division), but Borins J. refused to hear it because it came within the jurisdiction of a Master.

The parties to this action agreed that a new action would be commenced and a motion held to determine the question of law whether the Respondents' action was statute barred. On November 1, 1994, Paisley J. held that the plaintiffs' claims were statute barred. The Ontario Court of Appeal allowed the Respondents' appeal.

Origin of the case:	Ontario
File No.:	24981
Judgment of the Court of Appeal:	September 5, 1995
Counsel:	T.H. Rachlin Q.C. and Alan L. Rachlin for the Appellant Antonio Azevedo for the Respondents

24981 ***Peter Haberman c. Mauricio Peixeiro et Fernanda Peixeiro***

Responsabilité délictuelle) Droit procédural) Prescription) Lois) Interprétation) Applicabilité de la règle de la possibilité de découvrir le préjudice) La règle de la possibilité de découvrir le préjudice s'applique-t-elle à la période de prescription visée à l'art. 206 du *Code de la route*, L.R.O., ch. H8, relativement à des lésions corporelles?) Dans l'affirmative, étend-elle la période de prescription en l'espèce où le demandeur blessé reconnaît que, presque immédiatement après l'accident, il savait qu'il était blessé?) L'immunité de responsabilité prévue à l'art. 266(1) de la *Loi sur les assurances*, L.R.O. 1990, ch. I8, modifie-t-elle la règle de la possibilité de découvrir le préjudice?

Le 11 octobre 1990, l'intimé Mauricio Peixeiro a été impliqué dans un accident de la circulation dans lequel il a subi une blessure au dos. En janvier 1992, l'intimé a été impliqué dans un autre accident de la circulation. On avait d'abord diagnostiqué que M. Peixeiro avait une blessure au niveau des tissus mous du dos; cependant, en juin 1993, une scanographie a révélé une protrusion discale. Comme l'intimé n'a présenté aucune réclamation immédiate, l'assureur de l'appelant Peter Haberman, concluant que M. Peixeiro était responsable de l'accident, a fermé son dossier sans faire d'enquête.

En décembre 1993, M. Peixeiro a intenté une action relativement au second accident, son épouse étant aussi nommée partie demanderesse conformément à la *Loi sur le droit de la famille*. Dans cette action, les Peixeiro ont présenté une requête visant à ajouter M. Haberman comme auteur de délit relativement au premier accident. M. Haberman s'est opposé à la requête faisant valoir que les réclamations étaient prescrites. La requête a été présentée pour audition en Cour de l'Ontario (Division générale), mais le juge Borins a refusé de l'entendre parce qu'elle était de la compétence d'un protonotaire.

Les parties à la présente action ont convenu qu'une nouvelle action serait intentée et une requête présentée pour trancher la question de droit de savoir si l'action des intimés était prescrite. Le 1er novembre 1994, le juge Paisley a statué que les réclamations des demandeurs étaient prescrites. La Cour d'appel de l'Ontario a accueilli l'appel des intimés.

Origine:	Ontario
N° du greffe:	24981
Arrêt de la Cour d'appel:	Le 5 septembre 1995
Avocats:	T.H. Rachlin, c.r., et Alan L. Rachlin pour l'appelant Antonio Azevedo pour les intimés

25085 ***The United States of America v. Roberto Barrientos***

Criminal law - Extradition - Whether offences under the *Immigration Act* are extradition crimes - Whether "extradition crime" must be true crime - Whether the Court of Appeal erred in holding that Article 2(1) of the Treaty requires that conduct be punishable by a mandatory term of imprisonment before it constitutes an "extradition crime" - Whether the Court of Appeal err in holding that the *Extradition Act* and Treaty apply only to conduct which can be characterized as a "crime".

The Respondent, Roberto Barrientos, was convicted by a United States District Court jury of conspiracy to create and supply false documents to the Immigration and Naturalization Service, and aiding and abetting the filing of false statements to the Immigration and Naturalization Service. He failed to appear for sentencing, and a warrant was issued for his arrest. He had fled to Canada, and as a result, the United States government requested his extradition.

The Respondent was committed for surrender in the Court of Queen's Bench of Alberta. On appeal, the warrant of committal was quashed, with Hetherington J.A. dissenting. Two judgments were issued by the majority. Harradence J.A. held that extradition was limited to "serious offences" for which a term of imprisonment was mandatory, while Conrad J.A. held that the Treaty applied only to conduct which constituted a "crime".

Origin of the case:	Alberta
File No.:	25085
Judgment of the Court of Appeal:	December 21, 1995
Counsel:	Kimberly Prost and Robert Prior for the Appellant Charles R. Darwent for the Respondent

25085 ***Les États-Unis d'Amérique c. Roberto Barriesntos***

Droit criminel - Extradition - Les infractions en vertu de la *Loi sur l'immigration* sont-elles des crimes donnant lieu à l'extradition? - Un «crime donnant lieu à l'extradition» doit-il être un véritable crime? - La Cour d'appel a-t-elle commis une erreur en statuant que le paragraphe 2(1) du Traité exige que la conduite soit punissable d'une peine obligatoire d'emprisonnement pour qu'elle puisse constituer un «crime donnant lieu à l'extradition». La Cour d'appel a-t-elle commis une erreur en statuant que la *Loi sur l'extradition* et le Traité ne s'appliquent qu'à la conduite que l'on peut qualifier de «crime»?

Un jury d'une Cour de district américaine a déclaré l'intimé, Roberto Barrientos, coupable de complot en vue de créer et de fournir des faux documents à l'Immigration and Naturalization Service, et d'avoir aidé et encouragé le dépôt de faux documents destinés à l'Immigration and Naturalization Service. Il a omis de comparaître pour le prononcé de la peine et un mandat d'arrestation a été délivré. Il s'est enfui au Canada et le gouvernement américain demande maintenant son extradition.

La Cour du Banc de la Reine de l'Alberta a prononcé un arrêté d'extradition contre l'intimé. En appel, le mandat de dépôt a été annulé; le juge Hetherington était dissident. Les juges de la majorité ont rédigé deux opinions distinctes. Le juge Harradence a statué qu'il y avait extradition dans le cas d'[TRADUCTION] «infractions graves» comportant une peine d'emprisonnement obligatoire; le juge Conrad était d'avis que le Traité n'était applicable que dans le cas où la conduite constituait un «crime».

Origine:	Alberta
N^{o} de greffe:	25085
Arrêt de la Cour d'appel:	Le 21 décembre 1995
Avocats:	Kimberly Prost et Robert Prior pour l'appelant Charles R. Darwent pour l'intimé

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	**:**	**March 3, 1997**
Service	:	February 10, 1997
Filing	:	February 17, 1997
Respondent	:	February 24, 1997
Motion day	**:**	**April 21, 1997**
Service	:	March 31, 1997
Filing	:	April 7, 1997
Respondent	:	April 14, 1997
Motion day	**:**	**May 5, 1997**
Service	:	April 14, 1997
Filing	:	April 21, 1997
Respondent	:	April 28, 1997

DEVANT LA COUR:

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

Audience du	**:**	**3 mars 1997**
Signification	:	10 février 1997
Dépôt	:	17 février 1997
Intimé	:	24 février 1997
Audience du	**:**	**21 avril 1997**
Signification	:	31 mars 1997
Dépôt	:	7 avril 1997
Intimé	:	14 avril1997
Audience du	**:**	**5 mai 1997**
Signification	:	14 avril 1997
Dépôt	:	21 avril 1997
Intimé	:	28 avril 1997

The Spring session of the Supreme Court of Canada will commence April 21, 1997.

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

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

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

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

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

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

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

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

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

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

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1996 -

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

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

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

- 1997 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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23	24	25	26	27	H 28	29
30	H 31					

APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
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30						

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M

H

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